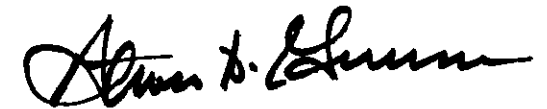


# EXHIBIT 5



CLERK OF THE COURT

1 HARRIET H. ROLAND, ESQ.  
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17 Facsimile: (702) 259-1116  
18 office@anthonybarney.com  
19 *Attorneys for Christopher D. Davis*

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 In the matter of:

Case No.: P-15-083867-T

18 The BEATRICE B. DAVIS FAMILY HERITAGE  
19 TRUST, dated July 28, 2000, as amended on  
20 February 24, 2014.

Dept. No.: 26


23 **CHRISTOPHER D. DAVIS' MOTION FOR A PROTECTIVE ORDER AND TO**  
24 **QUASH OR MODIFY THE SUBPOENA**

25 CHRISTOPHER D. DAVIS ("Christopher"), by and through his attorneys HARRIET H.  
26 ROLAND, Esq., of the ROLAND LAW FIRM and ANTHONY L. BARNEY, Esq., of the law  
27 office of ANTHONY L. BARNEY, LTD., and hereby files his motion for a protective order, for  
28

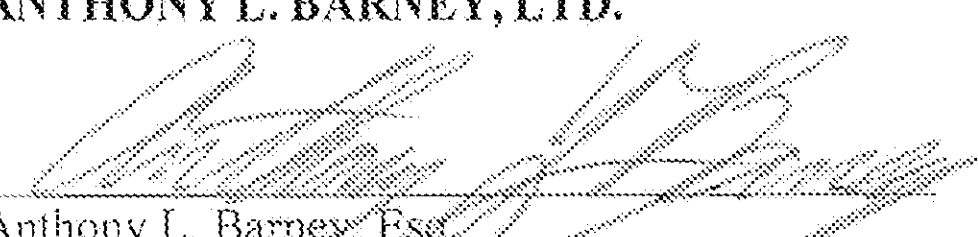
1 the court to quash or modify the subpoena, and for the court to award attorney fees and costs  
2 pursuant to NRCP 37(a)(4). This pleading is based on the Memorandum of Points and  
3 Authorities attached hereto, any exhibits attached hereto, and any oral argument that will be  
4 heard in this matter.  
5

6 DATED this 28<sup>th</sup> day of August, 2015.

7 Respectfully Submitted,  
8 **ROLAND LAW FIRM**

9  
10   
11 Harriet H. Roland, Esq.  
12 Attorney for Christopher D. Davis

13 Respectfully Submitted,  
14 **ANTHONY L. BARNEY, LTD.**

15  
16   
17 Anthony L. Barney, Esq.  
18 Attorney for Christopher D. Davis

19 **NOTICE OF MOTION**

20 TO: CAROLINE DAVIS, Petitioner, by and through her attorneys, MARK SOLOMON,  
21 ESQ., and JOSHUA HOOD, ESQ., of SOLOMON DWIGGINS & FREER, LTD.

22 TO: DUNHAM TRUST, by and through its attorney, CHARLENE RENWICK, ESQ., of  
23 LEE HERNANDEZ LANDRUM & GAROFALO

24 TO: STEPHEN LENHARDT by and through his attorney, JONATHAN W. BARLOW,  
25 ESQ., of CLEAR COUNSEL LAW GROUP


26 TO: FHT HOLDINGS LLC, A Nevada Limited Liability Company, Respondent through  
27 Registered Agent Solutions, Inc.  
28

1 TO: WIN B. DAVIS  
2 TO: ACE DAVIS  
3 TO: CHERYL DAVIS  
4

5 PLEASE TAKE NOTICE that the above-entitled court will hear CHRISTOPHER D.  
6 DAVIS' MOTION FOR A PROTECTIVE ORDER AND TO QUASH OR MODIFY THE  
7 SUBPOENA at the following date and time: September 30, 2015 @ 9:00AM

8 Date:

9 Time:  
10

11  
12   
13 Anthony L. Barney, Esq.  
14 ANTHONY L. BARNEY, LTD.  
15 3317 W. Charleston Blvd., Suite B  
16 Las Vegas, NV 89102  
17 Attorneys for Christopher D. Davis

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. FACTS PRESENTED**

20 As this court is aware, Christopher D. Davis has sought reconsideration of this Court's  
21 order because jurisdiction was improperly taken by this Court over the Beatrice B. Davis Family  
22 Heritage Trust dated July 28, 2000 (hereinafter "FHT" and "Trust") based on an improper  
23 change of situs and that there are indispensable parties that have not been joined by Caroline,  
24 and if they cannot be joined, then the proceeding must be dismissed. He filed his Petition for  
25 Reconsideration of the Order Dated May 19, 2015 re: Petition to Assume Jurisdiction over the  
26 Beatrice B. Davis Family Heritage Trust Dated July 28, 2000, as Amended on February 24,  
27  
28



1 2014, to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor, Stephen  
2 K. Lehnardt as Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed  
3 Trustee, and for Immediate Disclosure of Documents and Information from Christopher D.  
4 Davis ("Petition for Reconsideration") on July 14, 2015. All facts presented in his Petition for  
5 Reconsideration are incorporated herein as if set forth fully herein. Caroline Davis ("Caroline")  
6 then noticed Christopher D. Davis ("Christopher") for a deposition to be taken on September 3,  
7 2015 at 10:00 a.m. in his alleged role as Investment Trust Advisor and Manager of FHT  
8 Holdings, LLC.  
9

10  
11 Just as Christopher is disputing the alleged jurisdiction of the Court taken under the May  
12 19, 2015 Order, Caroline herself is contesting the jurisdiction of the Court by the filing of her  
13 Motion to Amend or Modify Order Pursuant to NRCP 60(b)(3) ("Motion to Amend"). She  
14 recognizes that taking jurisdiction over the Trust as a constructive trust is clearly erroneous.<sup>1</sup> A  
15 constructive trust is a remedy for equitable relief and the court must first take in personam  
16 jurisdiction to award a constructive trust.<sup>2</sup> With Caroline's recognition of the incorrect  
17 jurisdiction taken by this Court in its May 19, 2015 Order, the Court clearly does not have  
18 proper jurisdiction over the Trust, alleged Trust Protector, or alleged Trust Investment Advisor.  
19 Without proper jurisdiction and in personam jurisdiction over his person, Christopher is clearly  
20 not required to obey a subpoena or submit to the deposition scheduled for September 3, 2015.  
21  
22

23 Furthermore, both the Petition for Reconsideration and Motion to Amend will be heard  
24 one day before Caroline has noticed Christopher for his deposition. Therefore, even if this court  
25  
26

27  
28 <sup>1</sup> See Petition for Reconsideration, Page 24-28.

<sup>2</sup> Id.

1 does assert jurisdiction over the Trust, clearly the fifteen day period required by NRCP 45  
2 would be violated unless and until proper jurisdiction, if any, was ordered by this Court.

3 Both Caroline and Christopher are contesting the proper jurisdictional basis upon  
4 which this court asserted jurisdiction. It is clear that a subpoena upon a party over whom this  
5 court does not have personal jurisdiction or as argued, even in his role as an investment trust  
6 advisor (which is currently on reconsideration and over which there is an appeal), is in clear  
7 need of modification and in need of a protective order.  
8

9  
10 In an effort to save attorney fees and costs, Christopher reached out to Caroline's  
11 counsel to postpone the deposition until a time fifteen days after the notice of the entry of the  
12 court's order regarding its further clarification and/or assertion of jurisdiction.<sup>3</sup> On August 27,  
13 2015, Caroline's counsel notified Christopher's counsel by telephone that they were denying  
14 Christopher's request. On August 27, 2015, Christopher's counsel again, in good faith,  
15 requested that Caroline counsel's reconsider their decision;<sup>4</sup> however, Caroline's counsel denied  
16 Christopher's request.<sup>5</sup> Therefore, Christopher was forced to file this motion for a protective  
17 order.  
18

## 19 II. LEGAL AUTHORITY AND ARGUMENT

20 NRCP 26(c) indicates that a protective order may be sought in which justice requires to  
21 protect a party or person from annoyance, embarrassment, oppression, or undue burden or  
22 expense, including one or more of the following situations:  
23

- 24 (1) that the discovery not be had;  
25 (2) that the discovery may be had only on specified terms and conditions, including a  
26 designation of the time or place;

---

27 <sup>3</sup> See Letter from Anthony L. Barney dated August 26, 2015 faxed to Solomon, Dwiggins & Freer, Ltd on August  
28 26, 2015, attached hereto and incorporated herein as Exhibit A.

<sup>4</sup> See letter dated August 27, 2015 from Anthony L. Barney, Esq. faxed to Solomon, Dwiggins & Freer, Ltd on  
August 27, 2015, attached hereto and incorporated herein as Exhibit B.

<sup>5</sup> See Email from Joshua Hood dated August 28, 2015, attached hereto and incorporated herein as Exhibit C.

- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition after being sealed be opened only by order of the court;
- (7) that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way;
- (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

NRCP 45(c) imposes responsibilities upon the parties or attorneys responsible for issuing and serving subpoenas as follows:

- (1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

Additionally, pursuant to NRCP 45(c)(3)(A), the witness upon whom the party is imposing the undue burden or expense, may seek to quash or modify a subpoena if the party or attorney:

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or
- (iv) subjects a person to undue burden.

Addressing the Federal counterparts to NRCP 26 and NRCP 45 the 9<sup>th</sup> circuit held that "Rule 26(c) and Rule 45(c)(3) give ample discretion to district courts to quash or modify subpoenas causing "undue burden." The Federal Rules also afford nonparties special protection

1 against the time and expense of complying with subpoenas.”<sup>6</sup> Additionally, non-party status is s  
2 significant factor when determining whether a subpoena places an undue burden upon a party.<sup>7</sup>

3 In order to obtain *in personam* jurisdiction over a non-resident party the court must  
4 comply with Nevada’s long arm statute found in NRS 14.065. NRS 14.065 requires personal  
5 service of a summons in accordance with NRCP 4, and adherence to the requirements of federal  
6 due process. Due process limitations on the jurisdiction of the court serve two important  
7 functions. “It protects the defendant against the burdens of litigating in a distant or inconvenient  
8 forum. And it acts to ensure that the States, through their courts, do not reach out beyond the  
9 limits imposed on them by their status as coequal sovereigns in a federal system.”<sup>8</sup> Due process  
10 requires at a minimum personal service of process and sufficient minimum contacts with the  
11 forum state.<sup>9</sup> Finally, “a judgment rendered in violation of due process is void in the rendering  
12 State and is not entitled to full faith and credit elsewhere.”<sup>10</sup>

13  
14  
15 Herein, proper jurisdiction over the Trust has not been obtained as conceded by both  
16 Caroline and Christopher.<sup>11</sup> Caroline concedes that the Court does not have jurisdiction as a  
17 constructive trust in her Motion to Amend and she requests the Court take *in rem* jurisdiction.<sup>12</sup>  
18 Christopher disputes that the Court has jurisdiction as a constructive trust because the court has  
19 not taken *in personam* jurisdiction over him to allow for a constructive trust remedy to be  
20 ordered.<sup>13</sup> Indeed, Caroline concedes in her Objection to the Petition for Reconsideration that  
21 she “has not requested this Court to assume jurisdiction over Christopher, individually, or as  
22  
23  
24

25 <sup>6</sup> *Exxon Shipping Co. v. United States Dep’t of Interior*, 34 F.3d 774, 779, (9th Cir. Alaska 1994)

26 <sup>7</sup> *Guy Chemical Co. v. Romaco AG*, 243 F.R.D. 310, 313 (N.D. Ind. 2007)

27 <sup>8</sup> *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, (U.S. 1980)

28 <sup>9</sup> *Omni Capital Int’l v. Rudolf Wolff & Co.*, 484 U.S. 97, 105, (U.S. 1987)

<sup>10</sup> *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, (U.S. 1980)

<sup>11</sup> See Petition for Reconsideration filed July 14, 2015 and Motion to Amend filed August 10, 2015.

<sup>12</sup> See Motion to Amend, Page 17:23-24.

<sup>13</sup> See Petition for Reconsideration, Pages 24-28.

1 Trustee of the Revocable Trust.”<sup>14</sup> Therefore, there is no constructive trust over which this  
2 Court has jurisdiction.

3 Since the May 19, 2015 Order does not invoke proper jurisdiction, it is void; and this  
4 court has no jurisdiction over Christopher in any capacity to require him to appear as a witness  
5 in this proceeding. Therefore, a protective order is required to protect Christopher from  
6 oppression, undue burden and expense.

7  
8 As a non-party, Christopher has, in good faith, requested that Caroline postpone the  
9 deposition until fifteen days after the Court makes any order of jurisdiction in this matter,<sup>15</sup> but  
10 she and her attorneys have failed to allow a reasonable time for compliance pursuant to NRCP  
11 45(c)(3)(A)(i). Additionally, knowing that Christopher lives well over 100 miles away from  
12 Clark County, they are forcing Christopher to expend travel time, expenses, and expose him to  
13 lost earnings and extra attorney fees in traveling to Clark County, Nevada in violation of NRCP  
14 45(c)(3)(A)(ii). Neither Caroline nor her counsel have made any concessions to travel to  
15 Christopher and take his deposition where he is located or compensate him for this travel time  
16 and expenses.<sup>16</sup> This certainly subjects him to an undue burden in violation of NRCP  
17 45(c)(3)(A)(iv). Christopher respectfully requests that the Court make each of these findings.

18  
19  
20 Caroline and her attorney’s actions are solely to annoy, embarrass, oppress, and cause  
21 undue burden or expense to Plaintiff. Therefore, an order of protection is warranted pursuant to  
22 NRCP 26(c) to prevent him from being required to appear for the September 3, 2015 deposition.  
23 Christopher requests this Court grant this order of protection and requests this Court quash or  
24 modify the subpoena which currently requires him to appear for his deposition on September 3,  
25  
26  
27

28  

---

<sup>14</sup> See Objection to Petition for Reconsideration 17:15-17.

<sup>15</sup> See Exhibit A and B.

1 2015. Unless and until there is an order of this Court with proper jurisdiction, then there is no  
2 legal or lawful requirement for Christopher to appear as a witness given the undue burden  
3 placed upon him while this Court does not have proper jurisdiction over him.  
4


5 **III. CONCLUSION**

6 Christopher respectfully requests the Court do the following:

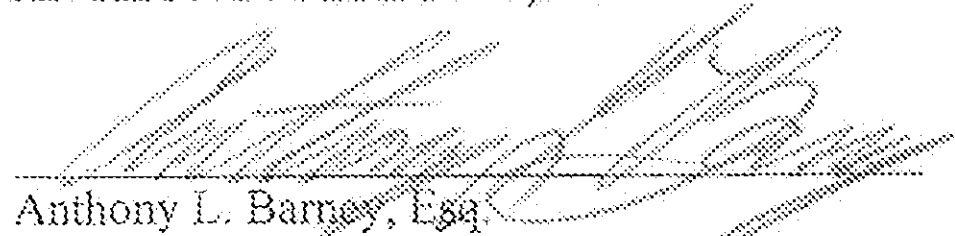
- 7 1. Make the requisite findings as requested herein; and  
8 2. Grant this motion in its entirety  
9

10 DATED this 28<sup>th</sup> day of August, 2015.

11 Respectfully Submitted,  
12 **ROLAND LAW FIRM**

13   
14 Harriet H. Roland, Esq.  
15 NV Bar No. 5471  
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21 Attorney for Christopher D. Davis

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office@anthonybarney.com  
Attorney for Christopher D. Davis

28 <sup>16</sup> See attachment to Exhibit C, where Caroline is forcing Christopher to appear at her attorney's law office in Las Vegas, Nevada.

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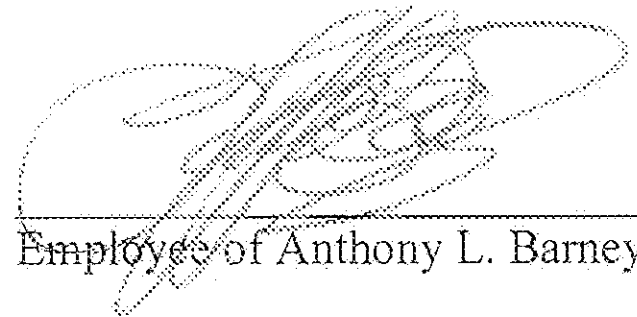
•

1 Registered Agent Solutions, Inc.  
2 Resgistered Agent for FHT Holdings, LLC, a Nevada Limited Liability Company  
3 4625 West Nevso Drive, Suite 2  
4 Las Vegas, Nevada 89103

5 JONATHAN W. BARLOW, ESQ.  
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10 Attorneys for Stephen K. Lenhardt

11 Mark Solomon, Esq.  
12 Joshua Hood, Esq.  
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15 Las Vegas, NV 89129  
16 *Attorney for Petitioner Caroline Davis*

17 DUNHAM TRUST  
18 SHANNA CORESSAL, CTFA  
19 Charlene Renwick, Esq.  
20 Lee, Hernandez, Landrum & Garofalo  
21 7575 Vegas Drive, #150  
22 Las Vegas, Nevada 89128



Employee of Anthony L. Barney, Ltd.



# Exhibit A

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Licensed in Nevada and Idaho

Tiffany S. Barney, J.D.  
Attorney at Law  
Licensed in Nevada

Mary L. Martell, J.D.  
Law Clerk

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Neva Liebe  
Administrative Assistant

Website Address  
www.anthonybarney.com

E-mail Address  
office@anthonybarney.com

---

**FACSIMILE TRANSMITTAL SHEET**

---

**TO: JOSHUA M. HOOD, ESQ.**

**DATE: AUGUST 26, 2015**

**FROM: NEVA LIEBE**  
**ADMINISTRATIVE ASSISTANT**

**FAX NUMBER: 702-853-5485**

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**ACCOMPANYING DOCUMENTS:**

Letter from Anthony L. Barney dated August 26,  
2015

**NOTES/COMMENTS:**

Anthony L. Barney, M.S., J.D., LL.M.  
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Licensed in Nevada and Idaho

Tiffany S. Barney, J.D.  
Attorney at Law  
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August 26, 2015

Joshua M. Hood, Esq.  
Solomon Dwiggin Freer, Ltd.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129

Re: The Beatrice B. Davis Family Heritage Trust ("Trust");  
Case No. P-15-083867-T  
Our Client: Christopher D. Davis

SENT VIA FACSIMILE AND US MAIL

Dear Mr. Hood,

My office is in receipt of Caroline's notice of deposition of Christopher D. Davis in the above-entitled matter. First, we are requesting that you postpone the deposition until fifteen days after the order is entered on the petition for reconsideration. As you are well aware, we are disputing that the Eighth Judicial District Court has jurisdiction over the Trust and, likewise, Christopher D. Davis as alleged Trust Investment Adviser. We will be forced to file a motion for a protective order alerting the court of this fact, considering your deposition is scheduled the day after the Petition for Reconsideration is to be heard. In order to save all parties time and money, we are requesting that you agree to the postponement. Please let us know by tomorrow by 3:00 p.m. if you will agree to postpone the deposition as requested; otherwise we will file the motion on an order shortening time.

Second, please be on notice that Christopher D. Davis ("Mr. Davis") is located over one hundred miles outside of Clark County, Nevada. Therefore, we will request the court quash or modify the subpoena, to require you to take the deposition where Mr. Davis resides or otherwise pay for his travel expenses to travel to Clark County, Nevada. Given the current facts and lack of jurisdiction over the Trust or him, Mr. Davis is not required to travel to Clark County, Nevada for a deposition.

Letter to Joshua M. Hood, Esq.

August 26, 2015

Page 2 of 2

Time is of the essence. Please feel free to contact my office with any comments, questions or concerns, as I look forward to resolving these issues with you. I can be reached at the numbers above or the email address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony L. Barney". The signature is fluid and cursive, with a large, stylized initial "A".

ANTHONY L. BARNEY

Attorney at Law

[anthony@anthonybarney.com](mailto:anthony@anthonybarney.com)

cc: Via U.S. Mail:

Client

Harriet Roland, Esq.

Charlene Renwick, Esq.

Jonathan Barlow, Esq.

\*\*\*\*\*  
 \*\*\* TX REPORT \*\*\*  
 \*\*\*\*\*

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E-mail Address  
[office@anthonybarney.com](mailto:office@anthonybarney.com)

## FACSIMILE TRANSMITTAL SHEET

TO: JOSHUA M. HOOD, ESQ.

DATE: AUGUST 26, 2015

FROM: NEVA LIEBE  
 ADMINISTRATIVE ASSISTANT

FAX NUMBER: 702-853-5485

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ACCOMPANYING DOCUMENTS:

Letter from Anthony L. Barney dated August 26, 2015  
 000148

# Exhibit B

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Attorney at Law  
Licensed in Nevada and Idaho

Tiffany S. Barney, J.D.  
Attorney at Law  
Licensed in Nevada

Marv L. Martell, J.D.  
Law Clerk

**ANTHONY L. BARNEY, LTD.**  
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Neva Liebe  
Administrative Assistant

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E-mail Address  
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---

**FACSIMILE TRANSMITTAL SHEET**

---

**TO: JOSHUA M. HOOD, ESQ.**

**DATE: AUGUST 27, 2015**

**FROM: NEVA LIEBE**  
**ADMINISTRATIVE ASSISTANT**

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**SENDER'S E-MAIL:**  
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**ACCOMPANYING DOCUMENTS:**

Letter from Anthony L. Barney dated August 27, 2015 and Christopher D. Davis Motion for a Protective Order, to Quash or Modify the Subpoena, and for Attorney Fees and Costs Pursuant to NRCP 37 (a)(4)

**NOTES/COMMENTS:**

Anthony L. Barney, M.S., J.D., LL.M.  
Attorney at Law  
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Tiffany S. Barney, J.D.  
Attorney at Law  
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August 27, 2015

**SENT VIA FACSIMILE AND US MAIL**

Joshua M. Hood, Esq.  
Solomon Dwiggin Freer, Ltd.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129

Re: The Beatrice B. Davis Family Heritage Trust ("Trust");  
Case No. P-15-083867-T  
Our Client: Christopher D. Davis

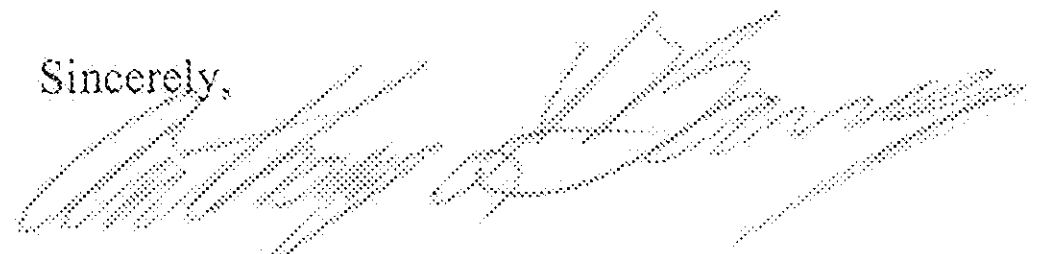
Dear Mr. Hood,

This afternoon, we received telephonic confirmation from you that you were denying our good faith request to postpone the deposition of our client, Christopher D. Davis, until fifteen days after the entry of this Court's order asserting proper jurisdiction over the Trust. You indicated that you would be providing fax confirmation of the same. As of 4:30 p.m., we have not received this fax confirmation.

Therefore, in one last attempt to resolve this matter out of court and before we request our attorney fees pursuant to NRCP 37(A)(4), we are renewing our request for you to postpone Christopher's deposition until fifteen days after the entry of this Court's order outlining proper assertion of jurisdiction over the Trust. Please let us know **10:00 a.m. tomorrow morning**, if you will agree to postpone the deposition as requested; otherwise we will file the attached motion and request an order shortening time to hear this motion.

Time is of the essence. Please feel free to contact my office with any comments, questions or concerns, as I look forward to resolving these issues with you. I can be reached at the numbers above or the email address below.

Sincerely,



ANTHONY L. BARNEY  
Attorney at Law  
[anthony@anthonybarney.com](mailto:anthony@anthonybarney.com)



Attachment: Christopher D. Davis' Motion for a Protective Order, to Quash or Modify the Subpoena, and for Attorney Fees and Costs Pursuant to NRCP 37(a)(4)

cc: Via U.S. Mail:

Client

Harriet Roland, Esq.

Charlene Renwick, Esq.

Jonathan Barlow, Esq.

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18 office@anthonybarney.com

19 *Attorneys for Christopher D. Davis*

20 **EIGHTH JUDICIAL DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 In the matter of:

Case No.: P-15-083867-T

23 The BEATRICE B. DAVIS FAMILY HERITAGE  
24 TRUST, dated July 28, 2000, as amended on  
25 February 24, 2014.

Dept. No.: 26

26 **CHRISTOPHER D. DAVIS' MOTION FOR A PROTECTIVE ORDER, TO QUASH OR**  
27 **MODIFY THE SUBPOENA, AND FOR ATTORNEY FEES AND COSTS PURSUANT**  
28 **TO NRCP 37(a)(4)**

CHRISTOPHER D. DAVIS ("Christopher"), by and through his attorneys HARRIET H. ROLAND, Esq., of the ROLAND LAW FIRM and ANTHONY L. BARNEY, Esq., of the law office of ANTHONY L. BARNEY, LTD., and hereby files his motion for a protective order, for

1 the court to quash or modify the subpoena, and for the court to award attorney fees and costs  
2 pursuant to NRCP 37(a)(4). This pleading is based on the Memorandum of Points and  
3 Authorities attached hereto, any exhibits attached hereto, and any oral argument that will be  
4 heard in this matter.  
5

6 DATED this 27<sup>th</sup> day of August, 2015.

7 Respectfully Submitted,  
8 **ROLAND LAW FIRM**

9  
10 \_\_\_\_\_  
11 Harriet H. Roland, Esq.  
12 *Attorney for Christopher D. Davis*

13 Respectfully Submitted,  
14 **ANTHONY L. BARNEY, LTD.**

15 \_\_\_\_\_  
16 Anthony L. Barney, Esq.  
17 *Attorney for Christopher D. Davis*

18  
19  
20  
21 *[remainder of page intentionally left blank]*  
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1  
2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **I. FACTS PRESENTED**

4 As this court is aware, Christopher D. Davis has sought reconsideration of this Court's  
5 order because jurisdiction was improperly taken by this Court over the Beatrice B. Davis Family  
6 Heritage Trust dated July 28, 2000 (hereinafter "Trust") based on an improper change of situs  
7 and that there are indispensable parties that have not been joined by Caroline, and if they cannot  
8 be joined, then the proceeding must be dismissed. He filed his Petition for Reconsideration of  
9 the Order Dated May 19, 2015 re: Petition to Assume Jurisdiction over the Beatrice B. Davis  
10 Family Heritage Trust Dated July 28, 2000, as Amended on February 24, 2014, to Assume  
11 Jurisdiction over Christopher D. Davis as Investment Trust Advisor, Stephen K. Lehnardt as  
12 Distribution Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for  
13 Immediate Disclosure of Documents and Information from Christopher D. Davis ("Petition for  
14 Reconsideration") on July 14, 2015. All facts presented in his Petition for Reconsideration are  
15 incorporated herein as if set forth fully herein. Caroline Davis ("Caroline") then noticed  
16 Christopher D. Davis ("Christopher") was noticed for a deposition to be taken on September 3,  
17 2015 at 10:00 a.m. in his alleged role as Investment Trust Advisor and Manager of FHT  
18 Holdings, LLC.  
19

20  
21  
22 Just as Christopher is disputing the alleged jurisdiction of the Court taken under the May  
23 19, 2015 Order, Caroline herself is contesting the jurisdiction of the Court by the filing of her  
24 Motion to Amend or Modify Order Pursuant to NRCP 60(b)(3) ("Motion to Amend"). She  
25 recognizes that taking jurisdiction over the Trust as a constructive trust is clearly erroneous.<sup>1</sup> A  
26  
27

28  

---

<sup>1</sup> See Petition for Reconsideration, Page 24-28.

1 a constructive trust is a remedy for equitable relief and the court must first take in personam  
2 jurisdiction to award a constructive trust.<sup>2</sup> With Caroline's recognition of the incorrect  
3 jurisdiction taken by this Court in its May 19, 2015 Order, the Court clearly does not have  
4 proper jurisdiction over the Trust, alleged Trust Protector, alleged Trust Investment Advisor.  
5 Without proper jurisdiction and in personam jurisdiction over his person, Christopher is clearly  
6 not required to obey a subpoena or submit to the deposition scheduled for September 3, 2015.  
7

8 Furthermore, both the Petition for Reconsideration and Motion to Amend will be heard  
9 one day before Caroline has noticed Christopher for his deposition. Therefore, even if this court  
10 does assert assert jurisdiction over the Trust, clearly the fifteen day period required by NRCP 45  
11 would be violated unless and until proper jurisdiction, if any, was ordered by this Court.  
12

13 Because both sides are contesting proper jurisdiction before this Court, then it is clear  
14 that a subpoena upon a party over whom this court does not have personal jurisdiction or  
15 possibly jurisdiction even in his role as an investment trust advisor, which is currently on  
16 reconsideration and over which there is an appeal, is in clear need of modification and in need  
17 of a protective order.  
18

19 In an effort to save attorney fees and costs, Christopher reached out to Caroline's  
20 counsel to postpone the deposition until a time fifteen days after the notice of the entry of the  
21 court's order regarding jurisdiction.<sup>3</sup> On August 27, 2015, Caroline's counsel notified  
22 Christopher's counsel by telephone that they were denying Christopher's request. On August  
23 27, 2015, Christopher's counsel again, in good faith, requested that Caroline counsel's  
24  
25  
26

---

27 <sup>2</sup> Id.

28 <sup>3</sup> See Letter from Anthony L. Barney dated August 26, 2015 faxed to Solomon, Dwiggins & Freer, Ltd on August 26, 2015, attached hereto and incorporated herein as Exhibit A.

1 reconsider their decision; however, Caroline's counsel denied Christopher's request.<sup>4</sup>  
2 Therefore, Christopher was forced to file this motion for a protective order.

## 3 **II. LEGAL AUTHORITY AND ARGUMENT**

### 4 **A. A protective order and quashing or modification of the subpoena are warranted** 5 **pursuant to NRCP 26 and NCRP 45.**

7 NRCP 26(c) indicates that a protective order may be sought in which justice requires to  
8 protect a party or person from annoyance, embarrassment, oppression, or undue burden or  
9 expense, including one or more of the following situations:

- 11 (1) that the discovery not be had;
- 12 (2) that the discovery may be had only on specified terms and conditions, including a  
13 designation of the time or place;
- 14 (3) that the discovery may be had only by a method of discovery other than that selected  
15 by the party seeking discovery;
- 16 (4) that certain matters not be inquired into, or that the scope of the discovery be limited  
17 to certain matters;
- 18 (5) that discovery be conducted with no one present except persons designated by the  
19 court;
- 20 (6) that a deposition after being sealed be opened only by order of the court;
- 21 (7) that a trade secret or other confidential research, development, or commercial  
22 information not be revealed or be revealed only in a designated way;
- 23 (8) that the parties simultaneously file specified documents or information enclosed in  
24 sealed envelopes to be opened as directed by the court.

25 NRCP 45(c) imposes responsibilities upon the parties or attorneys responsible for issuing and  
26 serving subpoenas as follows:

- 27 (1) A party or an attorney responsible for the issuance and service of a subpoena shall take  
28 reasonable steps to avoid imposing undue burden or expense on a person subject to that  
subpoena. The court on behalf of which the subpoena was issued shall enforce this duty  
and impose upon the party or attorney in breach of this duty an appropriate sanction,  
which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

---

<sup>4</sup> See letter dated August 27, 2015 from Anthony L. Barney, Esq. faxed to Solomon, Dwiggins & Freer, Ltd on August 27, 2015, attached hereto and incorporated herein as Exhibit B.

1 Additionally, pursuant to NRCP 45(c)(3)(A), the witness upon whom the party is imposing the  
2 undue burden or expense, may seek to quash or modify a subpoena if the party or attorney:

- 3 (i) fails to allow reasonable time for compliance;  
4 (ii) requires a person who is not a party or an officer of a party to travel to a place more  
5 than 100 miles from the place where that person resides, is employed or regularly  
6 transacts business in person, except that such a person may in order to attend trial be  
7 commanded to travel from any such place within the state in which the trial is held, or  
8 (iii) requires disclosure of privileged or other protected matter and no exception or  
9 waiver applies, or  
10 (iv) subjects a person to undue burden.

11 Herein, Plaintiff proper jurisdiction over the Trust is being disputed by both Caroline  
12 and Christopher. Caroline concedes that the Court does not have does not have jurisdiction as a  
13 constructive trust in her Motion to Amend and she requests the Court take *in rem* jurisdiction.<sup>5</sup>  
14 Christopher disputes that the Court has jurisdiction as a constructive trust because the court has  
15 not taken in personam jurisdiction over him to allow for a constructive trust remedy to be  
16 ordered.<sup>6</sup> Indeed, Caroline concedes in her Objection to the Petition for Reconsideration that  
17 she "has not requested this Court to assume jurisdiction over Christopher, individually, or as  
18 Trustee of the Revocable Trust."<sup>7</sup>

19 Therefore, this court has no jurisdiction over Christopher in any capacity to require him  
20 to appear as a witness in this proceeding. Therefore, a protective order is required to protect  
21 Christopher from oppression, undue burden and expense.

22 As a non-party, Christopher has, in good faith, requested that Caroline postpone the  
23 deposition until fifteen days after the Court makes any order of jurisdiction in this matter,<sup>8</sup> but  
24 she and her attorneys have failed to allow a reasonable time for compliance pursuant to NRCP  
25

26  
27 <sup>5</sup> See Motion to Amend, Page 17:23-24.

28 <sup>6</sup> See Petition for Reconsideration, Pages 24-28.

<sup>7</sup> See Objection to Petition for Reconsideration 17:15-17.

<sup>8</sup> See Exhibit A and B.

1 45(c)(3)(A)(i). Additionally, knowing that Christopher lives well over 100 miles away from  
2 Clark County, they are forcing Christopher to expend travel time, expenses, and expose him to  
3 lost earnings and extra attorney fees in traveling to Clark County, Nevada in violation of NRCP  
4 45(c)(3)(A)(ii). Neither Caroline nor her counsel have made any concessions to travel to  
5 Christopher and take his deposition where he is located or compensate him for this travel time  
6 and expenses. This certainly subjects him to an undue burden in violation of NRCP  
7 45(c)(3)(A)(iv). Christopher respectfully requests that the Court make each of these findings.  
8

9  
10 Caroline and her attorney's actions are solely to annoy, embarrass, oppress, and cause  
11 undue burden or expense to Plaintiff. Therefore, an order of protection is warranted pursuant to  
12 NRCP 26(c) and the court should quash or modify the subpoena requiring Christopher's  
13 presence for his deposition on September 3, 2015. Unless and until there is an order of this  
14 Court with proper jurisdiction, then there is no legal or lawful requirement for Christopher to  
15 appear as a witness given the undue burden.  
16

17 **B. NRCP Rule 37(4)(a) provides for the award of attorney fees after a good faith effort**  
18 **has been made, thus Christopher is entitled to his attorney fees after his good faith**  
19 **effort.**

20 NRCP 26(c) indicates that NRCP 37(4)(a) applies to the award of expenses incurred in  
21 relation to a motion for a protective order. NRCP 37(4)(a) provides the following:  
22

23 If the motion is granted or if the disclosure or requested discovery is provided after the  
24 motion was filed, the court shall, after affording an opportunity to be heard, require the  
25 party or deponent whose conduct necessitated the motion or the party or attorney  
26 advising such conduct or both of them to pay to the moving party the reasonable  
27 expenses incurred in making the motion, including attorney's fees, unless the court finds  
28 that the motion was filed without the movant's first making a good faith effort to obtain  
the disclosure or discovery without court action, or that the opposing party's  
nondisclosure, response or objection was substantially justified, or that other  
circumstances make an award of expenses unjust.



1       Herein, Christopher attempted to resolve this matter with Defendants outside of court by  
2 agreeing to postpone the deposition to time fifteen days after the entry of the order of this Court  
3 taking proper jurisdiction over the Trust.<sup>9</sup> On August 27, 2015, Caroline's counsel called and  
4 indicated to Christopher's counsel that he was denying this request without explanation.  
5 Therefore, the protection order and motion to quash and/or modify the subpoena are necessary.  
6

7       If Plaintiff's motion is granted, Plaintiff requests attorney fees and costs in the amount of  
8 \$2,000.00 for the necessity of filing this motion. To be clear, Christopher is not submitting to  
9 the jurisdiction of the court for this award of attorney fees and costs, but is requesting such an  
10 award as a non-party for being forced to file this motion after having made good faith efforts  
11 pursuant to NRCp 37(A)(4) to resolve this matter outside of court.  
12

### 13       **III. CONCLUSION**

14       Christopher respectfully requests the Court do the following:

- 15       1. Make the requisite findings as requested herein;
- 16       2. Grant this motion in its entirety; and

17       ///

18       ///

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22       ///

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26       <sup>9</sup> See Exhibit A and B.  
27  
28

1 3. Award attorney fees and costs in the amount of \$2,000.00 from Caroline and/or  
2 Caroline's counsel.

3 DATED this 27<sup>th</sup> day of August, 2015.  
4

5 Respectfully Submitted,  
6 **ROLAND LAW FIRM**

7  
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9 Harriet H. Roland, Esq.  
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27 *Attorney for Christopher D. Davis*  
28

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9 Attorneys for Stephen K. Lenhardt

8 Mark Solomon, Esq.  
9 Joshua Hood, Esq.  
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13 *Attorney for Petitioner Caroline Davis*

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13 SHANNA CORESSAL, CTFA  
14 Charlene Renwick, Esq.  
15 Lee, Hernandez, Landrum & Garofalo  
16 7575 Vegas Drive, #150  
17 Las Vegas, Nevada 89128

20 Employee of Anthony L. Barney, Ltd.

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## FACSIMILE TRANSMITTAL SHEET

TO: JOSHUA M. HOOD, ESQ.

DATE: AUGUST 27, 2015

FROM: NEVA LIEBE  
 ADMINISTRATIVE ASSISTANT

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SENDER'S E-MAIL:  
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ACCOMPANYING DOCUMENTS:

Letter from Anthony L. Barney dated August 27,  
 2015 re: Joshua M. Hood, Esq. David M. Hood, Esq.

# Exhibit C

## Tiffany Barney

---

**From:** Joshua M. Hood <jhood@sdfnvlaw.com>  
**Sent:** Friday, August 28, 2015 9:28 AM  
**To:** 'Harriet Roland' (harrietroland@gmail.com); Anthony L. Barney (anthony@anthonybarney.com); office@anthonybarney.com  
**Cc:** Mark Solomon; Renee Guastaferro  
**Subject:** Christopher D. Davis Deposition  
**Attachments:** 2015-08-27 ltr to A Barney w fax confirmation.pdf

Ms. Roland and Mr. Barney:



I received a fax from Mr. Barney this morning regarding our declination to postpone the deposition of Christopher Davis. Although a letter formally declining the request was faxed to the correct fax number, as indicated on Mr. Barney's letterhead, and the fax confirmation sheet indicates it was received by Mr. Barney's office at 2:07 p.m. (see attached SDF fax confirmation sheet and letter), Mr. Barney claims that the fax was not received. In an effort to avoid any issues, I am sending this email, as well as the letter that was to Mr. Barney's office, to both of you, as Christopher's counsel.

Please be advised that the request to postpone Christopher Davis' deposition is denied.


Should you have any additional questions or concerns, please do not hesitate to contact me.

Sincerely,

Joshua M. Hood

SOLOMON DWIGGINS & FREER, LTD.  
Cheyenne West Professional Center | 9060 W. Cheyenne Avenue | Las Vegas, NV 89129  
Direct: 702.589.3506 | Office: 702.853.5483  
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\* \* \* Communication Result Report ( Aug. 27. 2015 2:07PM ) \* \* \*

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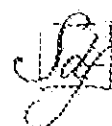
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Las Vegas, Nevada 89119  
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Website: sdfflaw.com

FROM: JOSEUA M. HOOD, ESQ.

Date: August 27, 2015

TOTAL NUMBER OF PAGES: 2, including cover sheet

FILE NUMBER/NAME: In the Matter of the Beatrice Davis Heritage Trust

SDF File #3414.0001

## TO THE FOLLOWING:

NAME	FIRM/COMPANY	FAX NO.
Anthony L. Boney, Esq.	Anthony L. Boney Ltd	702-259-1116

COMMUNICATIONS

Please find attached correspondence of today's date from Mr. Hood

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August 27, 2015

Via facsimile to: 702-259-1116

Anthony L. Barney, Esq.  
Anthony L. Barney, Ltd.  
3317 W. Charleston Blvd., Suite B  
Las Vegas, Nevada 89102

**Re: The Beatrice B. Davis Family Heritage Trust**

Dear Mr. Barney:

I am in receipt of your correspondence, dated August 26, 2015, wherein you requested the deposition of Christopher D. Davis, currently scheduled for September 3, 2015, be "postponed until fifteen days after the order is entered on the petition for reconsideration." Please accept this letter as a denial of such request. Additionally, be please be advised that the deposition date, time and location (September 3, 2015, 10:00 a.m. at the Law offices of Solomon Dwiggin & Freer, Ltd.) has been confirmed and a court reporter will be present.

Sincerely,

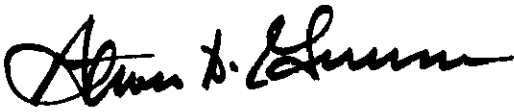


Joshua M. Hood.

Cc: Client.



# EXHIBIT 4

  
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

IN THE MATTER OF THE TRUST OF: ) CASE NO. P-15-083867  
THE BEATRICE DAVIS HERITAGE ) DEPT. NO. XXVI  
TRUST. )  
**Transcript of Proceedings**

BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

**ALL PENDING MOTIONS**

WEDNESDAY, SEPTEMBER 2, 2015

APPEARANCES:

For Caroline Davis: MARK ALAN SOLOMON, ESQ.  
JOSHUA M. HOOD, ESQ.  
For Christopher Davis: ANTHONY L. BARNEY, ESQ.  
HARRIET H. ROLAND, ESQ.  
For Dunham Trust Company: CHARLENE N. RENWICK, ESQ.

RECORDED BY: KERRY ESPARZA, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

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

1 WEDNESDAY, SEPTEMBER 2, 2015 AT 10:25 A.M.

2

3 THE COURT: P083867.

4 MR. BARNEY: Good morning, Your Honor. Anthony  
5 Barney on behalf of Christopher Davis.

6 THE COURT: Okay.

7 MS. RENWICK: Good morning, Your Honor. Charlene  
8 Renwick on behalf of the Dunham Trust Company.

9 THE COURT: Okay.

10 MS. ROLAND: Good morning, Your Honor. Harriet  
11 Roland on behalf of Christopher Davis.

12 MR. SOLOMON: Mark Solomon and Joshua Hood on  
13 behalf of Caroline Davis.

14 THE COURT: Okay. We've got several different  
15 motions. So I guess we need to discuss what's the best  
16 order in which to take them.

17 There's a Motion to Quash, which I think everybody  
18 agreed is best heard after the fact because we need to know  
19 what's going to happen otherwise going forward. So  
20 probably the order makes sense would be me to do the  
21 Petition for Reconsideration and then the Motion to Amend  
22 or Modify, to the extent that there's really any  
23 difference. They're really kind of overlapping and they're  
24 kind of the same thing, I think, but that probably is the  
25 order that makes the most sense, Mr. Barney.

1           MR. BARNEY:   Okay.

2           THE COURT:   All right.

3           MR. BARNEY:   Thank you, Your Honor.   It's always  
4 good to be here.

5           THE COURT:   I'm sure.

6           MR. BARNEY:   Well, I actually enjoy arguing  
7 before you, Your Honor.

8           THE COURT:   Okay.

9           MR. BARNEY:   First I want to just take you back to  
10 the Motion to Dismiss, because that's the Petition for  
11 Reconsideration upon which we're here today and I'll direct  
12 you essentially back to pages 10 and 11 of that Petition  
13 where I set forth the factors under NRCP 12(b) which was  
14 the lack of jurisdiction over the subject matter, lack of  
15 jurisdiction over the person, insufficiency of process, and  
16 the insufficiency of service of process.

17           Now, in that petition, I said:   The petitioner,  
18 Caroline, is relying solely upon the validity of a  
19 purported amendment to an irrevocable trust which must  
20 be properly determined under Alaska law.   Only after  
21 determination of the validity of the purported  
22 amendment to an irrevocable trust by an Alaskan Court  
23 could the Court properly rely upon the jurisdictional  
24 arguments raised by Caroline, as the petitioner, as the  
25 basis to assert jurisdiction over the trust.

1           And if the 1<sup>st</sup> amendment is invalid, then there's  
2 no basis upon which to assume the interim jurisdiction over  
3 the trust and without determining the validity of the  
4 purported amendment, petitioner, Caroline, seeks to  
5 bootstrap her request to the Court to take in rem  
6 jurisdiction by confirming Dunham Trust Company as the  
7 trustee of the trust without addressing the condition  
8 precedent, as you know, which is the validity of the  
9 amendment.

10           Okay. Or whether there was clear lack of service  
11 of process necessary to take in personam jurisdiction over  
12 Christopher Davis. Now it's pretty clear. I set forth the  
13 law in Nevada that if the Court doesn't have proper  
14 jurisdiction, that essentially it's authority is a nullity  
15 in regards to the order and the -- I'd first like to  
16 address the condition precedent which did not occur and  
17 therefore resulted in an invalid amendment to the FHT  
18 Trust. And because the condition precedent wasn't met,  
19 this Court is essentially without jurisdiction to further  
20 consider the matter. The change in trust is invalid if any  
21 one of the following are met: Whether or not the -- and if  
22 these are true, there isn't a proper change in situs and  
23 therefore a lack of the ability for this Court to take  
24 jurisdiction.

25           Number one is whether the Alaskan trustees if they

1 were not provided with independent advice and an opinion of  
2 legal counsel regarding the effects of the change in situs  
3 which would be contrary to the terms of the FHT; number  
4 two, whether the Alaskan trustee did not have the power to  
5 evaluate and offer as a change in trust according to the  
6 terms of the FHT; and, three, whether Taria [phonetic]  
7 Davis is a discretionary beneficiary at the time of the  
8 purported change in situs. Because all of these statements  
9 are true, the trust situs remains in Alaska and the Court  
10 is without jurisdiction.

11           We have no evidence to suggest that an Alaskan  
12 trustee was provided with an independent advice and opinion  
13 of counsel regarding the effects of the change in situs,  
14 which is contrary to the terms of the trust. In fact, it  
15 appears the mastermind behind all of the documents prepared  
16 in this regard was Mr. Lehnardt, the trust protector. One  
17 of the terms of the trust is essentially absolved with  
18 liability.

19           Now, it's interesting to note the absolution of  
20 liability on Mr. Lehnardt's part because when you look at  
21 the trust and you understand that the protections built  
22 into the terms of the trust were for the trust -- trustee  
23 itself to obtain independent advice. You realize that this  
24 is because of the fact that Mr. Lehnardt is essentially  
25 absolved of liability and so, therefore, any major change,

1 such as a change in situs, would be one in which the  
2 trustee would have to obtain independent counsel on.

3           It's for this reason that the Alaskan trustee was  
4 tasked with getting their own legal opinion prior to  
5 agreeing to the change in situs or the transfer. One would  
6 expect that the Alaska trustee to have signed the 1<sup>st</sup>  
7 amendment indicating that the opinion or the advice of  
8 legal counsel had been obtained prior to the change in  
9 situs, however if you look at the 1<sup>st</sup> amendment, purportedly  
10 Dunham Trust Company is listed as the trustee agreeing to  
11 the situs change in the 1<sup>st</sup> amendment, not the Alaska  
12 trustee from whose jurisdiction the trust would be  
13 transferred from.

14           The Nevada trustee, Dunham Trust Company, which is  
15 allegedly put forth as the new trustee under the 1<sup>st</sup>  
16 amendment, does not indicate whether they reviewed an  
17 opinion of counsel and I've spoken with counsel. They  
18 didn't review an opinion according to her that there was  
19 such an opinion provided [sic]. Furthermore, it appears  
20 that instead they indicated that they relied solely upon  
21 the trust protector that all the consent had been obtained.

22           So, Dunham Trust, if you look at their response,  
23 they said that we relied, essentially, upon all of the ref  
24 -- all of the recommendations, essentially, that were set  
25 forth by Mr. Lehnardt, which, ironically, is not before



1 this Court because accordingly his acts didn't rise to the  
2 level that would require jurisdictional [indiscernible] and  
3 yet the plan that he masterminded and had essentially  
4 different beneficiaries sign, not all of which -- well, the  
5 facts to my knowledge, none of which were represented by  
6 counsel, supposedly, one of those individuals, Christopher  
7 Davis, there is sufficient to take jurisdiction over him as  
8 the trust advisor. There really is no evidence before this  
9 Court that such an independent opinion of counsel was  
10 really obtained and, in fact, enormous evidence presented  
11 by Caroline under Alaska law to suggest that it did not.

12           This is one of the cases where, Your Honor, I've  
13 ask that the Alaska trustees be considered an indispensable  
14 party and yet Caroline is actually the one that makes the  
15 points well for me. We are arguing Alaska law, whether or  
16 not they retain sufficient jurisdiction after their alleged  
17 resignation, whether or not they had the ability to change  
18 situs under their powers after the alleged resignation and  
19 yet, at the same time, Caroline's arguing that they're not  
20 a necessary party to this even though we're arguing about  
21 all of the issues that go into the condition precedent as  
22 to whether or not this trust was properly changed and its  
23 situs.

24           The Alaska trustees are necessary parties for  
25 factual determinations of their potential liability

1 regarding their records. They were the trustees for 13, I  
2 believe 14 years, and yet all of the records that are being  
3 requested which, admittedly by Caroline, are in their  
4 possession. They just believe that there's another copy  
5 somewhere held by a beneficiary. Okay? Christopher Davis.

6 It does prove that the condition precedent was not  
7 met though in order to transfer the jurisdiction of the FHT  
8 to the situs of Nevada.

9 Now the next question is this: Did the Alaskan  
10 trustees have the power to evaluate and authorize a change  
11 in situs according to the terms of the FHT? Well, I guess  
12 that depends on how one interprets Alaskan law and that's  
13 what we're reduced to is trying to determine what an  
14 Alaskan Court would say with regard to whether or not the  
15 trustee in Alaska retained the powers to change in situs  
16 because we know not all of the powers have been changed,  
17 according to their statute.

18 Caroline argues that the Alaska trustee retained  
19 the duties to transfer the situs and therefore they did;  
20 however, I ask the Court: What evidence is there to  
21 suggest that such a transfer was properly incurred? And  
22 the trustee -- the Alaska trustee did not sign the 1<sup>st</sup>  
23 amendment and we don't have any evidence to suggest that  
24 anyone other than the trust protector may have seen an  
25 opinion and, in fact, we even offered inferior evidence

1 that -- we've offered e-mails and so forth.

2           Now, if an opinion existed, why not just produce  
3 the opinion? And if the opinion is produced, why was it  
4 produced and not produced originally? And, if this opinion  
5 is produced, whose attorney was it? Was it Lehnardt's  
6 attorney? Because that's not what the trust calls for.  
7 He's absolved of liability. Was it an independent counsel  
8 for the trustee? According to my discussions with Dunham,  
9 they never saw it. They were just relying on Lehnardt.  
10 According to the affidavit that was filed by the Alaskan  
11 trustee, she doesn't say she's -- saw an opinion and she  
12 had every ample opportunity to say: I saw the opinion and  
13 here's my declaration. And she's silent.

14           The reality is it's more like what was referred to  
15 by Mr. Solomon in court. They made the situs change and  
16 then they went out and got an opinion and those are his  
17 words. Okay. I'm paraphrasing of course.

18           Now, it's clear that if this was the case, and if  
19 we were to believe Mr. Solomon's recitation of the facts,  
20 that the trustee didn't obtain independent advice and  
21 there's a breach of the terms of the trust, Taria  
22 [phonetic] Davis is the next question. Is Taria [phonetic]  
23 Davis a discretionary beneficiary at the time of the  
24 purported change in the trust?

25           I set forth, Your Honor, at length, the reading of

1 the trust. And, Your Honor, I've got to tell you, it's 110  
2 pages of very small print and I've read it many, many  
3 times. The reality is that in order to understand this  
4 trust, you've got to read the whole thing. I know that as  
5 attorneys, oftentimes, you know, we want to cherry pick.  
6 We want to pick one provision that looks good and that's  
7 essentially what Caroline has done. She's cherry picked a  
8 provision and actually not even cited the full provisions  
9 of Article 8 to demonstrate that she is defined as a  
10 surviving spouse living with the primary beneficiary.

11 Because all of the statements are true, the trust  
12 situs remains in Alaska and this Court lacks jurisdiction.  
13 It's clear that if you look at -- and I'm more than happy,  
14 Your Honor, to discuss the various matters regarding the  
15 trust, but the most salient parts of the trust showing  
16 forth that Taria [phonetic] is the beneficiary of the trust  
17 are set forth in Article 8.

18 We don't dispute that Article 14 sets forth the  
19 qualifying period. I think that's pretty clear. All of  
20 the provisions from Article 3 all the way to the end refer  
21 to that qualifying period. What is the salient point is:  
22 Who are the primary beneficiaries? Now the primary  
23 beneficiaries, it's very clear, are set forth by Beatrice  
24 herself. She says: It's my kids. It's my children's  
25 spouses. It's my descendants and it's any other person

1 that qualifies under the terms of the trust.

2           There's only one qualifying provision to become a  
3 primary beneficiary of the trust and that's on 14. And  
4 even that provision, Your Honor, isn't the 10-year  
5 requirement that they're alleging. If you read the term  
6 closely and you look at part A at 14 that's referenced by  
7 J.

8           THE COURT: Right.

9           MR. BARNEY: It's very clear that if there's an  
10 involuntary separation, that 10 years isn't really 10 years  
11 and the reason we know is because the interest that's held  
12 by an after adopted or a potential child of the marital  
13 union, his share is retained. His or her share is retained  
14 in trust. And the reality is when you look at that and you  
15 understand that their share is retained no matter what, you  
16 understand that there is a share arising right there under  
17 the qualifying period. We know it. We know it does  
18 because it's defined that the trustee must do it.

19           The trustee is given great discretion in this  
20 trust. The purported trustee, we don't believe Dunham  
21 Trust is the correct trustee in this, but they're alleging  
22 that Taria [phonetic] is a beneficiary. I do agree with  
23 the argument, I just don't agree that they're the trustee  
24 right now because of the fact that the 1<sup>st</sup> amendment, it was  
25 -- was not validly executed under the terms of the trust

1 because the condition precedent was not met.

2           It's further known, when we look at the trust  
3 itself, that we have a situation where the issues with  
4 regard to a share of the trust are important and if you  
5 look at Article 8, which is probably the most salient point  
6 that we're looking at, Article 8 indicates that a spouse  
7 that receives a share, which is limited, for health,  
8 education, and maintenance, and support, is limited even in  
9 that share unlike you would -- unlike it's clear from  
10 earlier provisions at Article 3 that a qualifying person's  
11 share is taken from the general trust, not from any  
12 specific shares.

13           So we know that a primary beneficiary's share is  
14 taken from the general trust. It's not taken subject to  
15 anybody else's share and yet, in Article 8, that's exactly  
16 what's called out. There's a new definition of a spouse  
17 that's being qualified. That spouse is one that -- who is  
18 living with the primary beneficiary and also who has a  
19 narrow, limited, discretionary standard to health,  
20 education, maintenance, and support. And it's actually  
21 even --

22           THE COURT: But is a spouse --

23           MR. BARNEY: -- more narrow than that.

24           THE COURT: -- even entitled to anything unless  
25 they meet the qualifying period?

1 MR. BARNEY: They absolutely are.

2 THE COURT: The qualifying period, to me, looks  
3 like it's pretty clear. It defines spouse:

4 An individual is a spouse. If such individual is  
5 the then current spouse of a child --

6 MR. BARNEY: And who is that?

7 THE COURT: -- and --

8 MR. BARNEY: That would be Cheryl, his first  
9 wife.

10 THE COURT: Correct. Following the signing and  
11 date of this trust. If an individual enters into a  
12 valid marital union as defined in Paragraph A of this  
13 section with a child of mine or a beneficiary of mine,  
14 following the sign and the date of the trust, then such  
15 individual may --

16 MR. BARNEY: That's the qualifying --

17 THE COURT: May.

18 MR. BARNEY: -- spouse. You're right.

19 THE COURT: May qualify as a spouse if the marital  
20 union exists continuously for a period of 10 years and  
21 if the individual is not legally separated.

22 I mean, so I think we've got a valid point that  
23 Taria [phonetic] -- that until Taria [phonetic] meets that  
24 qualifying period she doesn't have any rights.

25 MR. BARNEY: No. She's -- what would Taria

1 [phonetic] be qualifying for then, Your Honor, if it's only  
2 a share to be taken from a primary beneficiary's share?  
3 What would she be qualifying for?

4 THE COURT: Under D.

5 MR. BARNEY: No.

6 THE COURT: 8D

7 MR. BARNEY: No.

8 THE COURT: I don't think she's got any right to  
9 anything until she qualifies.

10 MR. BARNEY: She wouldn't -- but what would she be  
11 qualifying for? A limited standard that's set forth under  
12 Article 8? That would be absurd because essentially what  
13 we're saying then is Taria [phonetic], even after you  
14 qualify, your share is subject to a discretionary standard  
15 of health, education, maintenance, and support but only  
16 after the share is allocated and the trustee looks at the  
17 needs of the primary beneficiary.

18 THE COURT: Right.

19 MR. BARNEY: So what would she be qualifying for  
20 because clearly what Beatrice is saying early on is that  
21 the beneficiaries of this are her when she qualifies, but  
22 until she qualifies, she has a limited discretionary  
23 standard and that's very clear.

24 THE COURT: Well, I guess the concern that I have  
25 here is that your position, if I understand your position,



1 is it leaves this trust somewhat adrift because it is --  
2 the issues that were raised by Dunham were very valid  
3 concerns. They were like: Well, what do we do? Because  
4 if what -- if the position that your clients are taking,  
5 Mr. Barney, is that this was all done invalidly, then there  
6 are all these people out there who have done work in good  
7 faith acting, believing that they were acting for this  
8 trust who got claims, who have performed services, and this  
9 trustee is a putative trustee. They're acting on the  
10 assumption that they were properly appointed. They're --  
11 all of a sudden, they have this fiduciary duty still even  
12 though they're not properly appointed, apparently,  
13 according to you, and they're like: But what are we going  
14 to do? Who -- how do we administer this trust if you would  
15 leave it an orphan? It would be -- not be subject to the  
16 jurisdiction really of any state. It would not be subject  
17 to the management of any trustee. It's just out there  
18 adrift and --

19 MR. BARNEY: It would be --

20 THE COURT: -- that's my concern.

21 MR. BARNEY: Well, and I disagree with the  
22 Court's characterization because that's not what I'm asking  
23 for. I'm asking --

24 THE COURT: Well what are you asking for?

25 MR. BARNEY: I'm asking that Alaska be brought in

1 as an indispensable party. If not, it needs to be  
2 dismissed. The Alaskan Court needs to determine and  
3 appoint a trustee.

4           There -- this issue of having the trust adrift, a  
5 Court appoints all the time a trustee for a trust. There  
6 really is no issue with regard -- and if you want to talk  
7 about adrift, it was actually the actions of Mr. Lehnardt  
8 that left it adrift. We have resignations supposedly by  
9 the Alaskan trustee only holding certain requirements. We  
10 already know it's been adrift. We're not asking that it be  
11 put into the adrift mode. It was already put in adrift by  
12 the actions that occurred. And that therein lies the  
13 liability for the Alaska trust.

14           THE COURT: So you're -- you believe that this  
15 trust, it needs to -- jurisdiction is properly in Alaska, -  
16 -

17           MR. BARNEY: Yes.

18           THE COURT: -- and that the Alaska Court needs to  
19 deal with this, and what are they going to be doing? This  
20 is the concern is that all of this activity has gone on in  
21 the last, I don't know, 18 months or however it's been here  
22 in Nevada and we're -- what we're going to hale people into  
23 court in Alaska who have in good faith been dealing with  
24 this trust here in Nevada thinking that they were -- that  
25 it had been properly transferred here to Nevada? I mean, I

1 just -- what's the jurisdiction of the Court over them  
2 there? None.

3 MR. BARNEY: Well, here's the thing. When we  
4 don't have jurisdiction and this case is a perfect example.  
5 They've actually filed suit out in Missouri and do you know  
6 why they filed suit in Missouri, Your Honor? Because when  
7 they raise the issue that they're trying to get  
8 jurisdiction over Christopher as -- in his capacity  
9 belonging to the revocable trust and other capacities, they  
10 realize: You know what? We can't get that here so we're --  
11 --

12 THE COURT: Oh no. They're -- that's clear.  
13 That's --

14 MR. BARNEY: -- going to file suit in the --

15 THE COURT: That's clear. I mean, I don't think  
16 anybody's disputing --

17 MR. BARNEY: They can file suit here.

18 THE COURT: That's Missouri. That's Missouri.  
19 But, you know, he's at least got contacts with those  
20 states. I don't see --

21 MR. BARNEY: you're right. It doesn't --

22 THE COURT: -- any contacts that anybody has with  
23 Alaska.

24 MR. BARNEY: Except that the trust is set forth  
25 under the laws of Alaska and unless the condition precedent

1 is met, you can't change those --

2 THE COURT: Okay.

3 MR. BARNEY: -- to Nevada and the reality is --  
4 and let's go back to the issue of Taria's [phonetic]  
5 beneficiary status. Back to part A.

6 Part A is very clear that if a spouse is married,  
7 in this case to Christopher, and she's living with him,  
8 okay, and it's redefined. We know that's a term of art. If  
9 it just said spouse, it would have just said spouse. Okay?  
10 It wouldn't have a qualifying and living with him. And it  
11 wouldn't have the qualifier and, oh by the way, the  
12 interest that you get is limited not as a primary  
13 beneficiary, which Beatrice announced is going to apply to  
14 her children, their spouses, and any other after qualified  
15 person, but this standard is much different. This is one  
16 that says while you're qualifying, you get this limited  
17 standard, but only after the needs of, in this case,  
18 Christopher are met.

19 THE COURT: Okay. Well I guess -- and here's the  
20 thing. This is a Motion for Reconsideration. So the only  
21 thing I can look at is there something new or has there  
22 been an error made previously? So the new is we now have  
23 Taria's [phonetic] affidavit, which we didn't have before.  
24 We've got it now. So, it's helpful because it tells us  
25 that she's been married to this guy for two years. That's

1 an important point.

2 MR. BARNEY: And that she didn't consent to a  
3 transfer of the situs to Nevada and doesn't even believe  
4 that it's here.

5 THE COURT: Okay. All right. With all due  
6 respect, it doesn't matter what she believes.

7 So, the other question that I have then is the --  
8 what's new or not previously considered by the Court? You  
9 make an argument that the Court can't just take  
10 jurisdiction over some things but there is lots of case law  
11 in Nevada that says it is appropriate to go forward with  
12 discovery on jurisdictional issues. You can proceed with  
13 discovery on jurisdictional issues where there's this  
14 argument about whether there is proper jurisdiction over  
15 somebody for personal jurisdiction to bring somebody in  
16 litigation. It's in the context of --

17 MR. BARNEY: I'd be --

18 THE COURT: -- corporations, --

19 MR. BARNEY: -- to address that.

20 THE COURT: -- everything else.

21 MR. BARNEY; I'd be happy to address that.

22 THE COURT: So, really, it's a question of -- as I  
23 said, somebody has to take jurisdiction over this thing so  
24 we can resolve this issue of where is jurisdiction? That's  
25 what I think we're doing here.

1 MR. BARNEY: One last thing.

2 THE COURT: So, okay. So it's your position that  
3 it's Alaska. Okay. Fine. Thank you. Okay. We're --

4 MR. BARNEY: So, let's talk about --

5 THE COURT: -- good.

6 MR. BARNEY: -- jurisdiction then. The issue with  
7 regard to whether or not this Court can take in rem  
8 jurisdiction.

9 So, aside from the fact -- and on page 36 of the  
10 trust:

11 A distribution to or for the benefit of a  
12 beneficiary shall be charged to the trust as a whole  
13 rather than against the beneficiary's ultimate share.

14 Which demonstrates again that the lesser  
15 discretionary standard under Chapter 8 absolutely applies  
16 to Taria [phonetic]. Let's look about -- even if the  
17 condition for precedent -- condition precedent for change  
18 of situs was met, okay, let's assume arguendo that it was.  
19 The trust must then determine if the jurisdiction is proper  
20 over the trust as proceeding in rem under 164010, which the  
21 evidence just doesn't support.

22 Because there was a lack of evidence, this Court  
23 adopted Mr. Solomon's theory that this Court could take  
24 jurisdiction as a constructive trust. That was the  
25 argument raised by him. However, a court must first obtain

1 jurisdiction prior to constructing a trust under the legal  
2 remedy of constructive trust. No sooner had this Court  
3 adopted this theory than Caroline objected on her theory  
4 and another theory, apparently, in her Motion to Amend.

5 Now, assuming for argument sake, that this Court  
6 found a basis for in rem jurisdiction because according to  
7 Caroline's pleadings, they are not seeking in personam  
8 jurisdiction over Christopher. The Court granted discovery  
9 rights to Caroline over Christopher in his purported role  
10 as investment trust advisor under 163.55555 [sic]. Okay?

11 However, 163.5555 is a derivative jurisdiction  
12 after trust has been brought under the jurisdiction of  
13 Nevada under 164.010. And that's highly contested,  
14 obviously, in this matter, Your Honor. Because of its  
15 derivative nature, 163.55555 [sic] can only be asserted  
16 upon actions arising out of a decision made by the advisor.  
17 There's no evidence to suggest that the decisions were made  
18 by the advisory -- by this advisor.

19 And, in fact, if you look at the arguments,  
20 they're asserting that about 1 percent of all the policy  
21 loans, which, by the way, are secured by the trustee, okay,  
22 those supposedly occurred here. I've spoken with Dunham  
23 Trust. Christopher had no import in that. They received  
24 those apparently for their fees. So he didn't make any  
25 decisions regarding that money that would arise in Nevada

1 and that's clearly something that needs to be looked at in,  
2 you know, in the case of Dunham.

3           Now, it's interesting because the mastermind of  
4 this whole thing is Mr. Lehnardt who apparently -- his name  
5 is all over the documents, supposedly he reached out to an  
6 attorney that was his own attorney. He is, by nature, an  
7 attorney himself and he devises that -- we have a  
8 declaration from Christopher saying that this essentially  
9 is the case and yet, after all of those actions, he's not  
10 here because under 163.5555, apparently there's nothing  
11 that gives rise to those actions and yet there is for  
12 Christopher whose name apparently he put on these documents  
13 and who apparently didn't have any contact with Dunham with  
14 regard to the \$2,500 [sic] in terms of distribution or  
15 anything.

16           So, the question remains with Christopher, what  
17 acts could have arisen even in his role as investment trust  
18 advisor that would operate to give the Court jurisdiction?  
19 And what it really means is this Court's jurisdiction under  
20 163.5555 is strictly limited to the rest which arises out  
21 of a decision made by the trust advisor who clearly isn't  
22 present here.

23           Now, while it's clear that the transaction on  
24 behalf of the FHT were designed and orchestrated by Mr.  
25 Lenhardt, he's not here and Christopher supposedly is;



1 however there was no evidence to suggest that Christopher  
2 was subject to this Court's derivative jurisdiction and a  
3 clear lack of service to this Court to assume in personam  
4 jurisdiction. I mean, that was clearly absent. There is  
5 no in personam jurisdiction here.

6 Now during the court hearing, this Court indicated  
7 it was taking jurisdiction in his role as investment trust  
8 advisor. And I asked the Court repeatedly to be clear  
9 because I want to know how to help the client understand  
10 the Court's order. I was very concerned about the  
11 dismissal of Mr. Lehnardt and then this Court's assertion  
12 of jurisdiction over Christopher because Caroline had  
13 requested jurisdiction over Christopher in various other  
14 capacities, none of which were related to Nevada. This  
15 Court was very clear during the hearing about the extent  
16 that it would allow Caroline to seek documents; however,  
17 during the pendency of the final order, Mark Solomon  
18 submitted an ex parte letter to this Court seeking a more  
19 expansive order than had been announced.

20 I immediately sent a letter to Mr. Solomon  
21 concerning this ex parte -- or an e-mail to Mr. Solomon  
22 concerning this letter and the nature of this communication  
23 because the letter was replete with new case law that had  
24 never been argued in the court.

25 Now, Your Honor, I understand. I have a law clerk

1 that used to work for the courts. I understand that  
2 oftentimes the judges make revisions to orders and they  
3 delegate that to law clerks and other staff and then they  
4 report back and I don't think that this Court truly looked  
5 at this in any type of aggressive or negative nature;  
6 however, what's clear is that Mr. Solomon's letter was  
7 submitted ex parte.

8           Now, he says it was a mea culpa. I -- he says --  
9 and I've got to trust him at his word that -- but one of  
10 the concerns that I had was I wrote a letter to the Court  
11 because I understand under 2.9 of the Judicial Rules of  
12 Conduct that I'd be given the ability to brief or answer,  
13 at least have a responsive request to those, because I have  
14 the right to respond and my letter went completely  
15 unanswered.

16           And then what essentially was generated by the  
17 Court was an interlineated order which even created more  
18 vagueness because everyone read the order a little bit  
19 different and you couldn't tell if it was an "or" or an  
20 "an". I wasn't sure if it was a comma or if it was  
21 referring to the handwritten interlineation above it, if  
22 those apply to both roles because clearly the second role  
23 was one that was not stated during the oral arguments as  
24 being a role that he would be required to comply with and  
25 that was of the FHT Holdings. He's an officer of the

1 company. It's the trust that owns it. He wasn't served  
2 with in personam jurisdiction for any of these requests  
3 that were being made.

4           As I look at this, it's clear from all of the  
5 voluminous arguments about the Alaska trustee and whether  
6 or not they had juris -- you know, the ability to change  
7 situs and it's clear from the order and also from the trust  
8 itself that something's gone awry because we have a  
9 situation now where not only have the conditions precedent  
10 been ignored to try to change the trust situs, but we're  
11 trying to exclude somebody as a beneficiary. And in my  
12 attempt to try to respond to the ex parte letter that was  
13 submitted and -- and, really, I wanted to take away the  
14 taint that appeared on this letter that was delivered to  
15 the Court in hopes that I would be able to respond  
16 appropriately. That's all I was asking was to be able to  
17 respond before a final order was entered and I wasn't given  
18 that opportunity.

19           And, Your Honor, I don't know to what degree this  
20 was delegated and I'm not even going to make assumptions  
21 because you've always treated me with great respect in this  
22 court and I've never felt like you've ever done anything  
23 untoward towards me with regard to, you know, my arguments  
24 and my presentation in this court, however, it is clear  
25 from the evidence that is here that there isn't proper

1 jurisdiction over Christopher Davis in this matter. There  
2 isn't proper jurisdiction over the trust. They admit that  
3 they never even sought in personam jurisdiction. There are  
4 no acts that he could be alleged of committing that would  
5 give rise to even a derivative jurisdiction under 163.5555.

6 THE COURT: Okay.

7 MR. BARNEY: And, therefore, our Motion to Dismiss  
8 should be granted.

9 THE COURT: Thank you.

10 MR. BARNEY: Thank you, Your Honor.

11 THE COURT: With respect to the position that  
12 Dunham Trust is taking, as I said, I think some interesting  
13 issues were raised. So, counsel, do you want to address  
14 those briefly?

15 MS. RENWICK: Yes, thank you, Your Honor.

16 We set forth a very, very limited response and I'd  
17 just like to reiterate: We take no position on the  
18 Petition for Reconsideration.

19 Our concern here is that, you know, in the event  
20 that the petition is granted with respect to the Court's  
21 order related to that, or even if the petition is denied,  
22 we'd like a reaffirmation from the Court's prior ruling in  
23 the earlier hearing that the Dunham Trust has been acting  
24 in good faith as the directed trustee and based on its  
25 reliance that the trust situs was changed pursuant to the

1 terms of the trust, as represented by the trust protector,  
2 Mr. Lehnardt.

3           A couple of clarifying points, Mr. Barney  
4 mentioned a \$25,000 distribution from the trust. The  
5 \$25,000, Your Honor, was not a fee paid to Dunham Trust.  
6 That amount was actually used to pay Mr. Lehnardt's fees  
7 and his attorneys' fees. We've -- I believe my client has  
8 already provided an accounting of that to Ms. Davis'  
9 counsel. To the extent that that's required again, we're  
10 certainly happy to produce it, but at no point did Dunham  
11 Trust take a \$25,000 fee for its services is my  
12 understanding based on what the client has produced to me.

13           THE COURT: Okay.

14           MR. BARNEY: Your Honor, I stand corrected then on  
15 that point. It was my understanding that those fees were  
16 paid to Dunham Trust, but it sounds like it's -- those fees  
17 have also been taken by Mr. Lehnardt, a party not a party  
18 to this action.

19           THE COURT: Okay. Thanks.

20           MS. RENWICK: And, again, coming back to those  
21 fees, one of the points we raised in our position is: What  
22 is Dunham Trust's role then? That's what we're trying to  
23 get some clarification --

24           THE COURT: Exactly.

25           MS. RENWICK: -- on. We'd like a comfort order at

1 this stage, given the dispute as to whether or not Dunham  
2 Trust can continue acting as the directed trustee and  
3 perform its duties, which includes paying the  
4 administrative expenses of the trust, including the fees  
5 that have been submitted by the trust protector for his own  
6 fees as well as his attorneys' fees, which do involve this  
7 dispute. That also involves Dunham Trust having to retain  
8 counsel and obviously its attorneys' fees. So that's one  
9 of our underlying concerns is: Well, where do we go from  
10 here? And --

11 THE COURT: Right.

12 MS. RENWICK: -- what is our role?

13 THE COURT: understood.

14 MS. RENWICK: So that's what we're seeking  
15 clarification on, Your Honor.

16 THE COURT: Mr. Solomon.

17 MR. SOLOMON: Thank you, Your Honor. May I  
18 address our Motion to Amend at the same time because, --

19 THE COURT: Yes.

20 MR. SOLOMON: -- as you observed, it's really the  
21 same --

22 THE COURT: And Mr. Barney did address it.

23 MR. SOLOMON: -- thing?

24 THE COURT: Yeah.

25 MR. SOLOMON: It just makes logical sense to do

1 that. I appreciate it.

2 I'll try not to be as long as Mr. Barney, but --  
3 we can get through this, but I think my arguments are  
4 pretty clear.

5 THE COURT: He made a good record.

6 MR. SOLOMON: And I know you've read our brief.

7 I think factual background is really important  
8 because I know we're talking about jurisdiction --

9 THE COURT: Correct.

10 MR. SOLOMON: -- here but if you -- but you really  
11 need to get the gist of why we're here and what we're  
12 trying to accomplish.

13 You know, Beatrice created a fairly sophisticated  
14 estate plan before her death in January of 2012. Mr.  
15 Barney alluded to the revocable living trust that was dated  
16 1990. Caroline and Mr. Barney's client were 50/50  
17 beneficiaries under that revocable trust. Mom wanted  
18 everything to go 50/50 to her kids. In fact, Caroline is  
19 entitled to outright distributions of at least the  
20 nonexempt share of that trust, but it's now three and a  
21 half years after her death and we haven't received a dime,  
22 not a dime.

23 Now Caroline was originally a co-trustee of that  
24 trust, but in 2007, five years before mom died, mom became  
25 incompetent. And so, the kids, Chris and Caroline, took

1 over as co-trustees under the terms of that trust and they  
2 agreed between them that Chris would do all the financial  
3 details with respect to mom's estate and Caroline would  
4 take care of all of the healthcare issues. And Caroline  
5 executed a delegation of authority making Chris, in  
6 essence, all the power of the trustee of the revocable  
7 trust and that was done March 22, 2007. Caroline was --  
8 she is an attorney still. She's now a mediation attorney,  
9 but in 2013 she owned a nonprofit in the doing court  
10 appointed advocacy for indigents and was very busy doing  
11 that. Chris was the business person so he took care of the  
12 business.

13 And then in addition to the living trust, we have  
14 the trust that we're dealing with here today which is the  
15 Family Heritage Trust. That's also -- let's see. That was  
16 dated 2000 and it was amended, as you know, by the 1<sup>st</sup>  
17 amendment, February 24, 2014, and Caroline is an equal 50  
18 percent beneficiary of that trust also under Article 8,  
19 Section 1.

20 Now, the trust's own entities -- we knew about the  
21 Family Heritage Trust owning FHT Holdings, LLC, and we  
22 believe, although we've never been able to get confirmation  
23 because of what I'm going to tell you next, that the  
24 revocable trust owns the Davis Family Office, which is a  
25 Missouri entity.



1           We knew that in -- even before mom died, we knew  
2 that loans were being taken, but we didn't know a lot of  
3 details and after, -- and, frankly, Caroline didn't care  
4 because mom was still alive. But after mom died and she  
5 became a current 50 percent beneficiary of all of mom's  
6 estate, she started asking Chris: What's going on? What's  
7 going on with these loans? What are they being used for?  
8 Are you getting -- why am I not -- am I getting any benefit  
9 from these? And wouldn't talk to her. Wouldn't tell her  
10 anything.

11           So, she hired counsel in Washington, a lady named  
12 Vance, Mary Anne Vance, to obtain the information and she  
13 started corresponding with Chris and they got nowhere. And  
14 then they retained my firm and we reached out to Dunham on  
15 August 21<sup>st</sup>, 2014, who very cordially provided everything  
16 they had at that point at least.

17           Then we sent a letter to Chris dated August 26<sup>th</sup>,  
18 2014 requesting information, documentations regarding the  
19 loan. No response. We sent a follow-up correspondence on  
20 September 23<sup>rd</sup>, 2014. No response. And then finally I get  
21 a letter from Harriet Roland here who tells me that she's  
22 been retained and that she has received a slew of documents  
23 from Chris, she's in the process -- boxes of them. In the  
24 process of reviewing them. She's outlining the various  
25 entities. She was creating this diagram and spreadsheet to

1 show the interplay between the estate planning entities and  
2 that she would share all of that with me when she had it  
3 done. Then all of a sudden, I get another letter from Ms.  
4 Rowland saying Chris has told her not to cooperate and not  
5 to provide us any information. And that's the genesis of  
6 having to file the petition here.

7           Now, we don't have a lot of information regarding  
8 these loans and all we've sought in this petition, other  
9 than asking the Court to assume jurisdiction so you can  
10 give us this relief, at least at this point, is information  
11 about these loans. We know there's a \$4,000,000 line of  
12 credit on a \$35,000,000 policy held by the Heritage Trust.  
13 We know or knew at some point that there was roughly  
14 2,000,000 plus or minus borrowed against that line of  
15 credit. We don't know why the loans were made. Was there  
16 any benefit to Caroline as a 50 percent beneficiary in  
17 these loans? What was the money used for? Is there any  
18 security for the loans? What's the status of the loans?  
19 Have any payments been made on the loans? What's the  
20 current balances of the loans? Are the borrowers in a  
21 position to ever repay it? Are there any new advances on  
22 the loans?

23           We got an e-mail recently from Harriet Roland that  
24 said in 2014 there was a contemplated loan again to Chris  
25 individually, to the revocable trust, and to the Family

1 Office, but we don't know if that went through. Were those  
2 loans -- were any of the loans that are outstanding ever  
3 extended? Were -- for thOSE current loans and what was  
4 that money for? Are any of the loans in default? Has  
5 there been any collection efforts?

6 All stuff we're entitled to know and we're being  
7 totally stonewalled by the -- by Chris, frankly, because  
8 he's the one --

9 THE COURT: Okay. Well, what's really relevant  
10 here because this is a Motion for Consideration is: Was  
11 there an error by the Court previously? That's what I  
12 asked Mr. Barney and his position is you can't take a  
13 constructive -- make this a constructive trust and -- or,  
14 B, you don't have any jurisdiction.

15 So, with respect to those issues, the new  
16 evidence, as I said, that was significant to me, now we  
17 have this affidavit which indicates plain as day that, yes,  
18 while Christopher -- there may not have been notice to his  
19 wife, the question is how is that relevant? It's kind of a  
20 valid concern. I mean, it -- I read it the way you read  
21 it, which is spouse is a specific term of art in this  
22 trust. There's a reference to a spouse in Chapter 14,  
23 Section 6. If you're going to be changing the situs, then  
24 you have to give notice to all eligible beneficiaries, but  
25 if you look at the definition of who the beneficiary in

1 Chapter 8, it references spouse, but you have to look at  
2 how spouse is defined. Spouse is defined in 14 (4)(J) as  
3 somebody who has been married 10 years.

4 I mean, I don't see that --

5 MR. SOLOMON: Yeah. Can I walk --

6 THE COURT: -- there's any other definition for  
7 it. It's --

8 MR. SOLOMON: Your Honor, it will take me two  
9 minutes.

10 THE COURT: -- pretty clear.

11 MR. SOLOMON: I know it's a long trust. It will  
12 take me two minutes to walk you through the key --

13 THE COURT: Yeah.

14 MR. SOLOMON: -- provisions of the trust that show  
15 that Mr. Barney's argument about primary and secondary  
16 beneficiary are simply incorrect. Can I take the time to  
17 do that?

18 THE COURT: Sure.

19 MR. SOLOMON: Thank you. Do you have a copy of  
20 the trust?

21 THE COURT: I do.

22 MR. SOLOMON: Great. All right. What we start  
23 with page 3-1, --

24 THE COURT: Yes.

25 MR. SOLOMON: -- which is Article 3. It says --

1 it's: My Lifetime Beneficiaries. That's the title of the  
2 article.

3 THE COURT: Correct.

4 MR. SOLOMON: And then you get down to the first  
5 full paragraph, it's about an inch. It says:

6 During my lifetime, except as otherwise provided  
7 in this instrument, the beneficiary to this trust shall  
8 be my children, my children's spouses, my children's  
9 descendants, and any other natural person added as a  
10 beneficiary pursuant to other provisions of this trust  
11 agreement -- of this agreement which permits such  
12 persons to be added as beneficiaries.

13 Now, that included, at the time that it was done,  
14 Cheryl Davis who was then currently married to Chris  
15 because Beatrice was alive and it's during her lifetime and  
16 she was [indiscernible] calls her a primary beneficiary,  
17 but she was a beneficiary and she might as well been a  
18 primary beneficiary during her lifetime, but that changed.

19 THE COURT: Correct.

20 MR. SOLOMON: And that changed on Section 11 on -  
21 -

22 THE COURT: Correct.

23 MR. SOLOMON: -- 3-10.

24 THE COURT: Right.

25 MR. SOLOMON: There --

1 THE COURT: Because mom dies.

2 MR. SOLMON: -- it says: This lifetime trust  
3 shall terminate upon the death of the trust maker --

4 THE COURT: Exactly.

5 MR. SOLOMON: -- and the principal and any -- and  
6 undistributed net income shall be distributed under the  
7 articles that follow below.

8 THE COURT: Yeah.

9 MR. SOLOMON: All right. So then you go below.  
10 The first thing you come to is Article 8 on 8-1. In  
11 Section 1 of that, the first paragraph, it says:

12 All trust property not previously distributed in  
13 the terms of my trust agreement, shall be divided into  
14 equal, separate shares so as to create one equal share  
15 for each of my then living children and one equal share  
16 for each of my deceased children.

17 There were no deceased children. So that means  
18 Chris and Caroline. Right? So now we know under the post  
19 lifetime trust, it's in two shares.

20 You go to Section 3, which is on page 8-2, first  
21 paragraph, about halfway down. I won't read the whole  
22 paragraph. It says:

23 During the lifetime of the named beneficiary of  
24 any share, Chris and Caroline again, such named  
25 beneficiary shall be the primary beneficiary of such

1 share.

2 So that means Caroline and Chris are the only  
3 primary beneficiaries of this post lifetime trust.

4 Then you go to page 8.4. And this is the only  
5 status that Taria [phonetic] would have at this point and  
6 it says:

7 Distributions for primary beneficiary, spouse, and  
8 descendants. My trust may make distributions from the  
9 trust chair of a primary beneficiary to or for the  
10 health, education, maintenance, support of a spouse of  
11 a primary beneficiary if the spouse is living with the  
12 primary beneficiary.

13 Well, first of all, it can't be a former spouse at  
14 that point because --

15 THE COURT: Correct.

16 MR. SOLOMON: -- not living with him. So that  
17 gets rid of the argument that they raised for the first  
18 time about --

19 THE COURT: Yes.

20 MR. SOLOMON: -- Cheryl in the Reply.

21 All right. Then we turn to 8-13, Subsection 4.  
22 That tells us what happens at Christopher's death. It  
23 says:

24 Upon the death of Christopher Davis, any property  
25 remaining in his trust share shall be divided and

1 allocated to the then living descendants of Christopher  
2 Davis [indiscernible], blah, blah, blah.

3 His wife no longer becomes a beneficiary. If she  
4 ever qualified under the trust, Taria [phonetic] would lose  
5 her rights upon his death because then it goes down to his  
6 issue.

7 All right. Then we turn to the definitions, which  
8 referring to page 14-1. It says:

9 For the purposes of this agreement, the following  
10 words and phrases shall be defined as follows:

11 Now Mr. Barney spends an inordinate amount of time  
12 on paragraph A but paragraph A has nothing to do with this  
13 case.

14 THE COURT: No.

15 MR. SOLOMON: This is dealing with descendants  
16 and spouses of descendants --

17 THE COURT: Right.

18 MR. SOLOMON: -- to become even -- it has nothing  
19 to do with this case.

20 And the key provision that Your Honor's already  
21 read is the definition of the -- on J of 14-4 where it  
22 says: Before Taria [phonetic] can qualify, she has to be  
23 married 10 years. She's not a beneficiary. There's no way  
24 under the trust you can construe it to say that she's a  
25 current beneficiary and that's important because if you



1 turn to Article 14, Subsection 6, it says:

2 Changing the situs of the trust, except as  
3 expressly provided herein, the situs of this agreement  
4 or any sub trust established hereunder may be changed  
5 by the unanimous consent of all beneficiaries then  
6 eligible to receive mandatory discretionary  
7 distributions of net income.

8 Not Taria [phonetic]. Okay. But let's now move  
9 to the other points because the same paragraph goes on and  
10 it says:

11 With the consent of the acting protector and the  
12 trustee thereof, which would have been Alaska USA at  
13 that point, which shall be given only after the trustee  
14 is obtained advice of counsel as to the tax and other  
15 consequences of a change in situs.

16 THE COURT: Now, Mr. Barney's point that he  
17 doesn't think that the affidavit of the Alaska trustee  
18 adequately lays out that she did, in fact, have advice.

19 MR. SOLOMON: It probably doesn't and I wish I  
20 knew that was an issue at the time that I got it because we  
21 didn't, but what we do have is -- first of all, we start  
22 with a proposition, Your Honor, and this is where Mr.  
23 Barney has it completely backwards. The trust amendment is  
24 presumed to be valid. He has the burden --

25 THE COURT: To prove.

1           MR. SOLOMON:  -- to prove otherwise.  So the lack  
2 of evidence is his problem, not ours, --

3           THE COURT:  Okay.

4           MR. SOLOMON:  -- number one.

5           THE COURT:  Right.  So, just for the record, it's  
6 Janet Tempel, T-E-M-P-E-L.

7           MR. SOLOMON:  Yes.

8           THE COURT:  Who is -- who was the Alaska trustee,  
9 who signed her declaration saying:  Once I provisionally  
10 resigned, I just waited to be told what was going to happen  
11 and then I signed the final paperwork because it was --  
12 then it was final.

13           MR. SOLOMON:  But let's take a look at a document  
14 --

15           THE COURT:  In February.

16           MR. SOLOMON:  -- that answers most of the  
17 questions all by itself that this Court has had the whole  
18 time and that Mr. Barney repeatedly ignores and that is  
19 Exhibit 5 of the Objection.  My Objection to his Petition  
20 for Reconsideration.

21           THE COURT:  The resignation?

22           MR. SOLOMON:  To his Petition for  
23 Reconsideration.

24           THE COURT:  Oh.

25           MR. SOLOMON:  I misstated that.  Our Objection to

1 his Petition for Reconsideration. Exhibit 5. It's called  
2 a Resignation, --

3 THE COURT: Right.

4 MR. SOLOMON: -- Release, Acknowledgement,  
5 Consent, Indemnification.

6 THE COURT: Yeah.

7 MR. SOLOMON: Okay?

8 THE COURT: I've got that.

9 MR. SOLOMON: That was also dated February 24<sup>th</sup>,  
10 2014. First recital whereas AUTC, and that's Alaska USA,  
11 is:

12 The currently serving trustee of the trust and has  
13 stated that it is unwilling to continue to serve as  
14 trustee and wishes to resign.

15 A recital saying they're currently the trustee.  
16 And then on page 2 at the top of that -- right before  
17 paragraph number 2, the last sentence of paragraph number  
18 1, number 1, it says:

19 AUTC and the protector hereby consent to changing  
20 the situs of the trust from Alaska to Nevada.

21 Okay? Then we have as Exhibit 6, the following  
22 exhibit, an e-mail from Dennis Briswan [phonetic] who says  
23 in the second paragraph:

24 In 1999 and 2000 or so, I assisted attorney  
25 Lehnardt in consulting and document drafting and his

1 representation of B. Davis. This year, which means  
2 2014, I was retained by Mr. Lehnardt in acting in his  
3 capacity as trust protector to provide limited support  
4 in changing the trust situs from Alaska, where I'm also  
5 licensed to practice, to Nevada. I communicated with  
6 both trust companies in documenting the transfer  
7 consistent with the terms of the trust and the  
8 requirements of the new jurisdiction trustee, provide  
9 an opinion of counsel with documentation supporting  
10 trust protector action.

11 And then he says it concluded.

12 Yesterday, we contacted Mr. Briswan [phonetic] and  
13 asked him to get us a copy of the opinion, and we got it,  
14 and we filed it yesterday. And here is the opinion letter  
15 and counsel has it.

16 Your Honor, may I approach?

17 THE COURT: Okay.

18 MR. BARNEY: Your Honor, I'm going to object --  
19 when did this get filed?

20 THE COURT: Yeah, I don't --

21 MR. SOLOMON: It got filed yesterday and I have a  
22 file stamped copy of it. You were served --

23 MR. BARNEY: And --

24 MR. SOLOMON: -- electronically.

25 MR. BARNEY: And with regard to this, has it been

1 authenticated? I mean, let's -- and is it an opinion for  
2 the trustee or is it an opinion that Lehnardt got from his  
3 counsel --

4 MR. SOLOMON: Your Honor, --

5 MR. BARNEY: -- because we're right back in the  
6 same --

7 MR. SOLOMON: -- counsel can make all the  
8 arguments that he wants during his time.

9 THE COURT: Okay.

10 MR. SOLOMON: I didn't --

11 THE COURT: Okay.

12 MR. SOLOMON: -- interrupt him.

13 THE COURT: Okay. Thank you.

14 MR. SOLOMON: The opinion is dated February 24<sup>th</sup>,  
15 2014, also the same day. It's made to all applicable  
16 parties addressed to it. In the third paragraph it says:

17 FHT requires, quote, advice from counsel as to the  
18 tax and other consequences in a change of situs, citing  
19 Article 14, Section 6.

20 First sentence of the next paragraph: Nevada,  
21 in my opinion, meets the requirements of an appropriate  
22 jurisdiction for FHT.

23 And then the next paragraph at the bottom, second  
24 sentence:

25 This opinion may be relied on by the law firm of

1       Lehnardt and Lehnardt, LLC, and the trustee of the FHT  
2       Trust, a -- it may not otherwise be relied upon by  
3       others.

4               THE COURT: It's not addressed to the trustee, but  
5 -- it says to all applicable parties [indiscernible]. That  
6 doesn't -- it's not -- it's addressed to Mr. Lehnardt.

7               MR. SOLOMON: Well, --

8               THE COURT: To his law firm.

9               MR. SOLOMON: -- it's sent to Mr. Lehnardt. It's  
10 to everybody else.

11              Your Honor, again, he has the burden of proving  
12 that this 1<sup>st</sup> amendment was not regular. Every indication  
13 shows that it was. If he can produce evidence that they  
14 didn't have this in hand, then that's [indiscernible]  
15 story, but that's his burden.

16              THE COURT: But that gets us to the point of your  
17 motion, which is, at this point in time, there's now  
18 sufficient evidence for the Court to just assume  
19 jurisdiction and the question is what jurisdiction are you  
20 asking the Court to assume?

21              MR. SOLOMON: I'm asking the Court to assume full  
22 jurisdiction over the trust. You have a presumptively 1<sup>st</sup> -  
23 - valid 1<sup>st</sup> amendment that was -- I'll also say, Your Honor,  
24 and I will answer your question the way you posed it, but  
25 how can Chris raise this argument? He signed it all. He

1 acted upon it. We don't have Taria [phonetic] here. We  
2 don't have somebody who didn't consent to all this coming  
3 in here and trying to undo it.

4 THE COURT: Right.

5 MR. SOLOMON: We have the very person who signed  
6 and consented to all of this and who acted upon it, and who  
7 assumed a role, and relied upon it to everybody's detriment  
8 coming in here now and saying: Oh, I'm not going to give  
9 you the information and you can't make me, Your Honor,  
10 because you don't have jurisdiction over me.

11 THE COURT: Well, that was my point about then  
12 you're leaving the trust adrift. So, yeah.

13 MR. SOLOMON: Yeah.

14 THE COURT: Okay. Fine. So, --

15 MR. SOLOMON: So, I'm asking Your Honor because --  
16 -- and I'm a -- I don't know if this has been mentioned, but  
17 I think you know, it was in our brief, they filed an appeal  
18 already from your order that they're asking to be  
19 reconsidered.

20 So, we're under a *Honeycutt* Motion at this point.

21 THE COURT: Right.

22 MR. SOLOMON: Because that's all we're limited  
23 to.

24 I'm asking this Court to enter an order that says  
25 based on the document that you -- evidence presented so

1 far, you're assuming jurisdiction over the trust.

2 Now, I will also point out that -- and this came  
3 as a surprise to me. You'll recall that when we were here  
4 for -- originally arguing the Motion to Dismiss, Mr. Barney  
5 stood up and started making all of his arguments about  
6 Taria [phonetic], and this opinion letter, and the lack of  
7 consent and I said: These are all the first time I've ever  
8 heard of any of this stuff. And, at the time -- apparently  
9 he filed a Reply two days before the hearing  
10 electronically, but we did not have possession of it and  
11 this Court expressly said you didn't even have a copy of it  
12 at that point.

13 And so, when we got into this thing, Your Honor  
14 was concerned about some of these issues. We hadn't had  
15 opportunity to address them like we now have in our  
16 Petition to Amend and I threw out the word constructive  
17 trust and it turns out that it's pretty darn close. The  
18 doctrine is a little bit different. It's called de facto  
19 trust and there's a ton of authority throughout the country  
20 that allows a Court to assume jurisdiction of a de facto  
21 trust. It's been recognized in Washington, Alabama, New  
22 York, Oklahoma, Oregon. You can just Google the term and  
23 find a ton of cases on it, including the *Matter of*  
24 *Irrevocable Trust of Michael McKean* 183 P.3d 317, a  
25 Washington appellate case in 2008.



1           And the doctrine basically says: A person is a de  
2       factor trustee where the person assumed the office of  
3       the trustee under a color of right or a title and, two,  
4       exercised the duties of the office. A person assumes  
5       the position of a trustee under color of right or title  
6       where the person asserts, quote, an authority that was  
7       derived from an election or appointment no matter how  
8       irregular the election or appointment might be. A de  
9       facto trustee's good faith actions are binding.

10           And I don't even think we're there. I think that  
11      was probably what the order should have initially said,  
12      but, at this point, when we got -- we've disposed of Mr.  
13      Barney's arguments that Taria [phonetic] didn't get notice,  
14      that -- and there's supposedly no proof of -- that Alaska  
15      USA consented or that there was any opinion given.

16           The opinion -- the provision of the trust does not  
17      require in any way, shape, or form that the trustee obtain  
18      an independent attorney opinion. It just says the trustee  
19      has to obtain advice from counsel. And we have evidence  
20      that that occurred and whether or not they want to contest  
21      it is their problem, but they haven't met their burden of  
22      showing it didn't happen or the presumption that it's a  
23      valid and regular transfer and -- of situs pursuant to a  
24      valid amendment.

25           THE COURT: So what's the -- who -- what's the

1 jurisdiction over? Because, as I said, there's a lot of  
2 case law in Nevada that says you can do discovery to  
3 establish jurisdiction -- questions of jurisdiction. So  
4 we've now addressed the questions of jurisdiction to the  
5 Court's satisfaction and the -- perhaps we were inartful in  
6 our terminology in taking jurisdiction saying let's do  
7 discovery and find out who has got jurisdiction because  
8 otherwise, as you said, this de facto trust, you leave a  
9 trust adrift. So you're going to find out who's got  
10 jurisdiction. We've now satisfied ourselves that this  
11 Court has jurisdiction, what is that jurisdiction over?

12 MR. BARNEY: Your Honor, is there a new theory  
13 being advanced here because de facto --

14 THE COURT: Okay. I listened to you for a half an  
15 hour, Mr. Barney.

16 MR. BARNEY: Okay.

17 THE COURT: You'll get a chance.

18 MR. SOLOMON: It is not a new theory. Your  
19 Honor, I'll respond to that.

20 THE COURT: Okay.

21 MR. SOLOMON: it was I misstated constructive  
22 trust. It should have been de facto trust. That's all I'm  
23 trying to make a point of. It's the exact same theory that  
24 the -- that Your Honor stated and articulated and that is  
25 we -- all the parties got together and they all agreed in

1 good faith to sign documents that had recitals saying it  
2 was all proper and transfer the trust, hire Dunham Trust  
3 who accepted it, who acted in good faith, and started  
4 administering the trust, Christopher took over the position  
5 of investment manager and, as a result of that, became the  
6 sole manager of an LLC, a Nevada LLC, and has been managed  
7 here for a year and a half. That is a de facto trust.  
8 That is a -- what Your Honor intended to say is a  
9 constructive trust.

10 But we now say and we are now requesting in our  
11 Motion to Amend that this Court alter or amend the order  
12 and assume jurisdiction over the trust under NRS 164.010  
13 and find that the transfer of the trust situs was  
14 consistent with the trust terms. That's what we think  
15 we're entitled to.

16 We are asking this Court to certify its intent to  
17 so modify its June 24<sup>th</sup>, 2015 order so that the appeal  
18 initiated by Christopher can be remanded back to this Court  
19 for the entry of an order granting the relief in our Motion  
20 to Amend. And that's required, as Your Honor knows, under  
21 *Foster versus Dingwall* and *Honeycutt versus Honeycutt*. But  
22 that's what we're requesting with respect to that.

23 Now, can I move on with respect to -- well, we're  
24 also asking for sanctions, Your Honor, under 7.60(b). Your  
25 Honor knows that the Court has authority to grant sanctions

1 when an attorney or a party without just cause presents to  
2 the Court a motion which is obviously unnecessary and  
3 unwarranted, nothing -- each and every one of the issues  
4 that Chris has regurgitated in this Petition for  
5 Reconsideration is demonstratively wrong or false. The  
6 only thing new that he's added is Taria's [phonetic]  
7 affidavit, which is irrelevant because of the very reason  
8 that we've already discussed. Her consent was not required  
9 to transfer situs. Alaska USA was the acting trustee at  
10 the time in which the agreement of transfer was executed,  
11 and an opinion of counsel was obtained, and Cheryl was not  
12 the beneficiary to the trust at the time the situs was  
13 transferred.

14 We're asking for an award of our attorneys' fees  
15 for having to oppose this essentially frivolous,  
16 unnecessary, and unwarranted Petition for Reconsideration.

17 THE COURT: Thank you.

18 MR. SOLOMON: I think we still have a protective  
19 order that they're seeking [indiscernible].

20 THE COURT: Yeah.

21 MR. BARNEY: Your Honor, I just want to address  
22 obviously a few of the issues that Mr. Solomon raised.

23 First, I don't have the burden. It's his Petition  
24 to Establish Jurisdiction under 164.010. It's his burden  
25 to prove that jurisdiction is proper based upon the

1 condition precedent. It's not my burden. I didn't bring  
2 the petition, Your Honor. He did. And, therefore, it is  
3 not my burden and that is clearly an error in this matter.

4 He has lots of questions. He says: I want to  
5 know about this policy, I want to know about that policy, I  
6 want to know about this policy loan. Ask the Alaska  
7 trustee, ask the custodian of the policy. Issue them a  
8 subpoena. That's what I do, Your Honor. If I've got an  
9 out of state defendant, I issue an out of state subpoena,  
10 but it's clear that their burden is to prove that this was  
11 done properly so that they can obtain jurisdiction under  
12 164.010.

13 Now, this argument about de facto trustee, this is  
14 the first argument. Again, it's like the last hearing.  
15 It's a new argument raised at the hearing itself. If the  
16 Court is inclined to take jurisdiction, I want the ability  
17 brief this. I want the ability to respond to what I didn't  
18 get to respond to before, which was his additional  
19 arguments that he inserted and successfully getting put  
20 interlineated into the order.

21 As to Taria's [phonetic] status as a beneficiary,  
22 he's argued at great length that Taria [phonetic] and  
23 Christopher were beneficiaries and that's been my argument  
24 all along. They were beneficiaries. While these loans  
25 were given, he was a beneficiary. The terms of the trust

1 don't even require him to account for the prior acts of the  
2 Alaska trustee. He can't even be required under the terms  
3 of the trust and yet that's what this is about.

4 And, in fact, if you look at the pleadings, this  
5 is about to verify, according to them, what documents they  
6 already have in their possession. That's improper and it's  
7 abusive.

8 Now, with regard to Taria [phonetic] as a  
9 beneficiary, Mr. Solomon quoted 8.2. He says:

10 During the lifetime of the named beneficiary of  
11 any share, such named beneficiary shall be the primary  
12 beneficiary of such share. Thereafter, if the share is  
13 subdivided into separate shares for my descendants or  
14 otherwise, the person for whom the separate share is  
15 established shall be the primary beneficiary thereof.

16 So there's more primary beneficiaries. And what  
17 is the primary beneficiary? The primary beneficiary is  
18 somebody who ultimately qualifies.

19 Now, the qualification he set forth, he says:  
20 Well, let's look at J. He doesn't really refer to A. We  
21 know absolutely it does. In J, it refers exactly to A to  
22 define what a marital union is and that marital union is  
23 actually defined as something less than 10 years if there's  
24 an involuntary separation. So, this argument that this  
25 qualifying period had -- is simply so that she can get a

1 discretionary share after the primary shares are  
2 [indiscernible], then there's no reason to qualify. There  
3 --

4 THE COURT: Well, here's the problem. I --

5 MR. BARNEY: -- just simply isn't.

6 THE COURT: She wasn't married to him when mom  
7 died. Was she?

8 MR. BARNEY: No, she was not.

9 THE COURT: So, --

10 MR. BARNEY: And we haven't addressed Cheryl's --

11 THE COURT: So she --

12 MR. BARNEY: We haven't addressed Cheryl's issue  
13 at all.

14 THE COURT: -- wasn't married to him when mom  
15 died. So she's --

16 MR. BARNEY: And --

17 THE COURT: She has to start all over with the  
18 sections that have to do with after mom dies and I just --  
19 respectfully, Mr. Barney, I think you're wrong on that. I  
20 disagree with you on your analysis of that. I have read  
21 all 110 pages. I agree with you. You've got to read the  
22 whole thing. I don't understand why Mr. Lehnardt wrote it  
23 the way he wrote it, but it's very thorough.

24 MR. BARNEY: Are you --

25 THE COURT: Interesting.

1 MR. BARNEY: -- saying Mr. Lenhardt wrote the  
2 trust?

3 THE COURT: It says on the front he did.

4 MR. BARNEY: Okay. So, -- no, that's good. I  
5 just want that fact for the record because Mr. Lehnardt  
6 isn't here.

7 THE COURT: Correct.

8 MR. BARNEY: He --

9 THE COURT: It says right here: This Family  
10 Heritage Trust prepared for Beatrice Davis by Stephen K.  
11 Lehnardt and Kenneth Ziskin and Stan Miller.

12 MR. BARNEY: And Mr. Lehnardt isn't here under  
13 163.5555.

14 THE COURT: Right. And then it gives you the law  
15 firm names Miller and Schrader, Kenneth Ziskin Law  
16 Corporation, and Lehnardt and Lehnardt, LLC.

17 MR. BARNEY: Thank you, Your Honor.

18 THE COURT: So, this was drafted. She had very  
19 thorough -- I mean, people in multiple states giving her  
20 advice on her estate plan. It's an interesting trust. I -  
21 - she had very definite ideas about what marriage was.  
22 Anyway, so, I just disagree with you and --

23 MR. BARNEY: Well --

24 THE COURT: -- I -- as I said, the only new  
25 evidence that you've given me is this -- now we have this



1 affidavit from Taraja [phonetic] or whatever her name is.

2 MR. BARNEY: No, --

3 THE COURT: It helps. It actually helps because -

4 -

5 MR. BARNEY: We have new evidence in the form of  
6 supposedly all of the arguments that they're trying to  
7 prove with regard to whether or not there was an opinion.  
8 Okay. They're the ones that --

9 THE COURT: And do you --

10 MR. BARNEY: -- [indiscernible] and they have the  
11 duty. They have the duty because they have the burden.  
12 Okay?

13 THE COURT: And we do not have the affidavit of  
14 the previous trustee. So those are two things that we  
15 didn't have before that we now have.

16 So that's what I have to look at. What have you  
17 given me that's new that would tell me -- and with all due  
18 respect, when somebody gives me a Motion for  
19 Reconsideration and the Reply brief to the Motion for  
20 Reconsideration is 63 pages long, I have to say to myself:  
21 How could I possibly have been mistaken about something if  
22 it takes them 63 pages in the Reply brief to explain to me  
23 how I was wrong about something that was so clear I  
24 shouldn't have gotten it wrong the first time? I, you  
25 know, -- it's insane.

1 MR. BARNEY: Your Honor, please --

2 THE COURT: And, I mean, I had a law clerk --

3 MR. BARNEY: -- understand --

4 THE COURT: -- whose father was a federal judge  
5 and who used to say to me I wouldn't read this, my father  
6 wouldn't read this, because it's over 30 pages. And I  
7 always told him, with all due respect to his father who is  
8 a federal judge and he has a lifetime appointment and I  
9 don't, so I still read things. So I read the 63 pages and  
10 I -- seriously, how can there be anything so clear that I  
11 obviously got it wrong if it takes you 63 pages in a Reply,  
12 not even in your original motion, to tell me how wrong I  
13 am?

14 MR. BARNEY: Well, Your Honor, let's first  
15 consider what that 67 pages is. It's my Reply. It's my  
16 Objection. And the Objection also -- and the Reply deal  
17 with issues that actually subsequently were withdrawn by  
18 Mr. Solomon at my request concerning Rule 11 Motion and --

19 THE COURT: Okay. All right.

20 MR. BARNEY: -- he withdrew those from that. So,  
21 you can kind of understand why when somebody spends  
22 numerous pages withdrawing what he says from the record and  
23 that it's really two pleadings in one, I think you can get  
24 to understand that we're kind of dealing with all of the  
25 misrepresentations that were made about me, which clearly

1 were because they were withdrawn.

2 THE COURT: Okay. Well, so -- as it's been  
3 pointed out, technically this has been appealed. So we  
4 have -- it's essentially a *Honeycutt* motion, but the point  
5 is in Nevada there is substantial case law that says you  
6 can do discovery on jurisdictional issues and I would cite  
7 you to the two most recent cases being *Viega*, V-I-E-G-A,  
8 328 P.3<sup>rd</sup> 110 -- 1152 and *Fulbright Jaworski*, 342 P.3<sup>rd</sup> 599  
9 or 597. I can't even read my own -- 997.

10 Like I said -- as you said, my handwriting is very  
11 poor. It's difficult to read. So, I can't even read my  
12 own handwriting but these are two cases decided in May of  
13 last year and February of this year and they talk about  
14 this concept. In Nevada, we'll let you do discovery to see  
15 if you can establish your jurisdiction.

16 So that's what we allowed to have happen here. I  
17 understand your argument that the Court shouldn't have  
18 taken jurisdiction and maybe called the constructive trust  
19 because that's like a different form of a remedy, but, as I  
20 said at the time, my concern was you're leaving this trust  
21 adrift while we try to figure out discovery because over  
22 here we've got -- people, who everybody admits are acting  
23 in good faith as they act as trustees. Nobody said  
24 anything about Dunham other than, yes, they were  
25 administering it appropriately and we don't know if

1 anything's gone wrong with them. I mean, they're just over  
2 here and they're like: What are we supposed to do?  
3 Because now you're telling us that we're not properly  
4 appointed.

5           Somebody has to take jurisdiction and take this in  
6 their hands and say: Okay, figure out what state we're  
7 going to go forward in because otherwise you've got a  
8 trustee sitting over here managing things without any  
9 authority and it's just a big mess. Somebody has to take  
10 jurisdiction.

11           So, if the Court takes jurisdiction and you're  
12 saying it's wrong because it's not technically a  
13 constructive trust, okay, fine. As I said, I think Nevada  
14 case law says I can take jurisdiction. It's not in the  
15 context of a trust. It's in the context of corporate  
16 litigation and the law firm -- an out of state law firm and  
17 figure out whether there's jurisdiction here. And that's  
18 the purpose and intent of taking jurisdiction initially was  
19 to figure out jurisdiction.

20           I -- your reconsideration now, though it's  
21 technically on appeal, so all I can say is advisory. What  
22 I would do, with all due respect, I'm not inclined to  
23 reconsider this because I think that the evidence that's  
24 been provided only shows more specifically that Taraja  
25 [phonetic] is not entitled to any kind of notice, that the

1 people who were entitled to notice got notice and signed  
2 off on it, and we have this dispute over whose burden of  
3 proof it is. Yes, I understand that they have the initial  
4 burden of proving it, but then when you're challenging it  
5 and saying, no, you didn't meet these standards, then it's  
6 your burden of proof and the evidence you've given me is  
7 that Taraja [phonetic], who married this guy after his  
8 mother died, so it's the trust after his mother dies, I  
9 don't think she's entitled to anything. I think that's the  
10 way it reads. So I don't think she's entitled to this kind  
11 of notice.

12           So, I think we're good going forward with  
13 jurisdiction here. I think the people who had notice got  
14 notice and they got the advice that they needed.

15           MR. BARNEY: Well, Your Honor, --

16           THE COURT: And that would be my inclination. If  
17 this is sent back, would be to say: Now having had  
18 jurisdictional issues addressed, which is what the Court  
19 was intending to have done, which is what we're allowed to  
20 do under these cases, do jurisdiction and to the -- to  
21 determine who had -- do discovery to determine who has  
22 jurisdiction. We have to take jurisdiction over this trust  
23 in order to do so and perhaps Mr. -- I was wrong in  
24 accepting Mr. Solomon's description of that as a  
25 constructive trust. Technically, you're right. It's not a

1 constructive trust, but we needed to somehow assume  
2 jurisdiction on some temporary basis to allow this  
3 jurisdictional discovery to take place.

4           Now we've got some additional information and,  
5 frankly, the additional information makes me more convinced  
6 than ever that this is where the jurisdiction is because I  
7 believe that the trust was properly changed to a Nevada  
8 trust with the full notice to the people who were entitled  
9 to get it under Section 14-6 and I think it's a Nevada  
10 trust now.

11           So, --

12           MR. BARNEY: Your Honor, --

13           THE COURT: -- that would be my inclination if it  
14 is sent back from the Supreme Court would be to say: Yes,  
15 I think discovery has shown us that this is where this case  
16 belongs.

17           MR. BARNEY: And, Your Honor, I want to reserve  
18 time for my co-counsel obviously in this case because she  
19 hasn't had an opportunity to address the Court, but I --  
20 I'm looking at Article 8 and you're saying: Well, it was a  
21 term of art, spouse. I agree with you. It actually was a  
22 term of art. So why in Article 8 is it defined again as  
23 living with the primary beneficiary? If it's a term of  
24 art, you don't need to redefine it. Actually --

25           THE COURT: No. You have a preliminary

1 qualification. A spouse is somebody who has been married  
2 to them for 10 years and who is living with them. That's  
3 the additional definition. It's not a separate definition  
4 or a new definition. It's the overlying definition for the  
5 entire case, for the entire trust, is 10 years and then you  
6 have other qualifiers through -- for other -- at other  
7 stages of the trust.

8 MR. BARNEY: Yeah, and let me address -- let me  
9 address what --

10 THE COURT: I'm done. I'm just done. We're done.  
11 I mean, you've had an hour. We've made, I think, a very  
12 good record here.

13 MR. BARNEY: Well, --

14 THE COURT: I'm done.

15 MR. BARNEY: I know, but, Your Honor, there is an  
16 issue. He's saying in his description of spouse, he's  
17 actually going forward and he's saying: Look, this spouse  
18 is one of two things. At the time of the signing, which is  
19 Cheryl, and he's saying that everything terminates at the  
20 time of the lifetime trust. If it terminates, then the  
21 following sections indicate that there's supposed to be a  
22 distributed share that's supposed to be passed out to the  
23 then beneficiaries.

24 So, I don't think that that's what it means. I  
25 think that the trust continued on because if we were to

1 take that argument then we have to argue essentially that  
2 Cheryl is a beneficiary and that she was entitled to notice  
3 and the reality is that's --

4 THE COURT: No, she's not, because she -- because  
5 the additional qualifier, she's no longer living with him.  
6 She's no longer his -- by definition, his spouse, because  
7 spouse is defined -- that marriage was terminated and the  
8 way it's defined in this definition is --

9 MR. BARNEY: But that's not how it's defined in  
10 the trust for the distributed share.

11 THE COURT: Okay.

12 MR. BARNEY: And that's very clear, Your Honor,  
13 from the terms --

14 THE COURT: It --

15 MR. BARNEY: -- of the trust.

16 THE COURT: And here's the thing. If that marital  
17 union exists continuously for a period of 10 years and the  
18 individual is not legally separated from the person under a  
19 decree of divorce or separate maintenance. She's no longer  
20 qualified as a spouse. She was divorced. Cheryl doesn't  
21 have any rights.

22 MR. BARNEY: Well, we respectfully can disagree  
23 on that point.

24 THE COURT: Okay. I think we're going to.

25 MR. BARNEY: Yeah.



1 THE COURT: So, at this point, let's just wrap  
2 this up.

3 MR. BARNEY: Okay. Well, --

4 MS. ROLAND: Your Honor, in all due respect, may  
5 I have just a couple of minutes of the Court's time if I --

6 THE COURT: Okay.

7 MS. ROLAND: I understand you're frustrated and I  
8 won't reargue Mr. Barney's points.

9 THE COURT: Okay.

10 MR. SOLOMON: Is this on the same motion or is  
11 this on the --

12 THE COURT: I've got no idea what it's on.

13 MR. BARNEY: It's the same motion.

14 MS. ROLAND: This -- it actually overlaps  
15 [indiscernible], Your Honor.

16 First of all, just to clarify a couple of  
17 statements. All of the -- the revocable trust is currently  
18 in, as Mr. Solomon stated, in dispute in Missouri. The --  
19 all of the family LLCs and the Davis Family Office are also  
20 entities created and administered in Missouri. Presumably,  
21 those will be called into that Court if the lawsuit goes  
22 forward there.

23 Mr. Solomon stated and just oversimplified that  
24 Caroline is a half beneficiary of the FHT. That --  
25 potentially, she's half, but it's subject to when's -- to

1 Christopher's issues remainder interest because, at this  
2 point in time, Caroline has no remainder interest. I --  
3 no issue to take the remainder interest on her part. So  
4 it's not a 50/50.

5           With regard to the loans, and presumably some  
6 discovery would go forth on those, but those are loans  
7 taken by the Alaska trustee and some of the money was then  
8 loaned to Christopher and to other beneficiaries by the  
9 Alaska trustee. It wasn't a matter of Caroline  
10 participating in those loans or how that impacted her  
11 interest because the trustee borrowed it from the insurance  
12 policy. Those are questions for after the death of one of  
13 the beneficiaries as far as how any outstanding loans would  
14 be allocated.

15           Dunham has not put forth anything before this  
16 Court and or -- discussions with Dunham would indicate that  
17 none of the loans are in default and that there are no  
18 questions with regard to those loans. And the trustee is  
19 certainly authorized to go forward and would even -- before  
20 this Court took jurisdiction, to protect its own rights in  
21 those particular loans.

22           With regard to the documents in my possession, Mr.  
23 Solomon characterized them as boxes. Unfortunately they're  
24 electronic boxes. So the discovery in this is a bit more  
25 than just going through boxes of papers. I wish it were

1 that -- that it would be that simple.

2 With regard to the revocable trust, back to that  
3 just to [indiscernible] issue, Caroline was also -- and is  
4 also a one-half trustee to that trust. She had trustee  
5 powers over that trust -- over the revocable trust and  
6 does, even though she delegated them to Christopher under  
7 another document that's before the Court in Missouri.

8 With regard to the FHT loans, Caroline at any  
9 time, could and can still request loans from a trustee of  
10 the FHT. She has -- to our knowledge has never requested  
11 loans. The fact that Christopher required loans from the  
12 trustee --

13 THE COURT: But I'm -- how is any of this relevant  
14 to the issue of my reconsideration because, again, it's on  
15 appeal. The Court can say I'm wrong and then you're back  
16 here --

17 MS. ROLAND: No, Your Honor. I --

18 THE COURT: -- [indiscernible].

19 MS. ROLAND: -- agree. It isn't. I'm just  
20 housekeeping as far as some of the statements that Mr.  
21 Solomon made.

22 THE COURT: Okay. Okay.

23 MS. ROLAND: And I think because you're done, I'm  
24 done at this point, too.

25 MR. BARNEY: Your Honor, am I going to be given

1 the opportunity to brief these new arguments because he's  
2 made this argument about this de facto jurisdiction that  
3 he's now raised? I didn't get a chance to address the  
4 constructive trust and ended up having to file an appeal.  
5 I would at least like to brief this because we don't have  
6 an order, frankly, right now that is clear and he wants to  
7 go forward in a deposition tomorrow against my client with  
8 an order that is --

9 THE COURT: Right.

10 MR. BARNEY: It sounds like this Court --

11 THE COURT: All right.

12 MR. BARNEY: -- has said is not correct as it  
13 regards constructive trust.

14 THE COURT: Right. Well, here's the issue. It's  
15 on appeal. So all I can say is what would I do if it's  
16 remanded. If it's remanded, I would indicate that -- my  
17 intention would be to say I think that our purpose here was  
18 to do sufficient discovery to figure out what the  
19 jurisdiction is; does this Court, in fact, have  
20 jurisdiction?

21 And I think we now have sufficient discovery to  
22 answer that question in the affirmative and I think this  
23 Court does have jurisdiction. I think that the two things  
24 that we needed were the two affidavits, that of the Alaska  
25 trustee and that of the spouse of Christopher, both of

1 which answer any questions that we had about notice and/or  
2 the right to notice.

3           And I think Taraja [phonetic] didn't have the  
4 right to notice. The trustee indicates that she was acting  
5 in any authority she felt she had retained. So I think  
6 we're done. So I think there's jurisdiction here. If it's  
7 remanded, we can take complete jurisdiction.

8           So what have we got right now? We've got -- what  
9 we've got is limited jurisdiction that we took at the time  
10 because we weren't going to -- and that's all it can go  
11 forward on because you -- it's on appeal and it wasn't  
12 stayed, so they can go forward on -- to the extent that we  
13 took -- the Court said, yes, I'll take jurisdiction. And I  
14 thought what we told you guys at the time was we're taking  
15 this jurisdiction to figure out -- let me see here.

16           All right. Christopher has been directing the  
17 trust in Nevada and everybody involved has relied on this  
18 amendment as being proper. There's no affidavit that  
19 there's any other beneficiary that existed at the time of  
20 the 1<sup>st</sup> amendment was signed. And that's been satisfied.  
21 To my satisfaction, there is no other -- there is nobody  
22 else.

23           So the Court has jurisdiction, quote, as a  
24 constructive trust. If that's a technical error as a  
25 matter of law. On remand, the Court can address that and

1 say you're right, it's not technically considered a  
2 constructive trust, but you needed some sort of  
3 jurisdiction to allow discovery to be done so that we could  
4 address this issue of who's got this jurisdiction. Now I'm  
5 satisfied that we have jurisdiction, so if it's remanded, I  
6 would take complete jurisdiction.

7           On the Petition to Assume Jurisdiction over the  
8       Beatrice B. Davis Family Heritage Trust is granted.  
9       The petition to assume jurisdiction over Christopher  
10      Davis as an investment trust advisor is granted without  
11      prejudice.

12           If we've got figured out that there was no  
13      jurisdiction, then naturally they can still get out of it.

14           The Court further ordered Petition to Assume  
15      Jurisdiction over Stephen K. Lehnardt was denied until  
16      a more definite statement was filed.

17           Remember? It wasn't denied in its entirety. It  
18      was denied until a more definite statement was filed. We  
19      don't have any. We don't understand the jurisdiction over  
20      him would be or what the basis would be. So, it was denied  
21      without prejudice for a more definite statement.

22           The Petition to Confirm Dunham is granted and it  
23      is further ordered immediate disclosure of documents and  
24      information from Christopher Davis is granted as to the  
25      information in his possession and the Motion to Dismiss was

1 otherwise denied.

2 I mean, to me, we were -- he -- it was in his  
3 capacity as investment advisor. That was pretty clear that  
4 -- assume -- to assume jurisdiction over Christopher Davis  
5 as investment trust advisor.

6 MR. BARNEY: That's not what the order said, Your  
7 Honor. It says:

8 And in his capacity as manager of FHT Holdings.

9 THE COURT: Okay.

10 MR. SOLOMON: No, it doesn't, Your Honor.

11 MR. BARNEY: That was the interlineation on the  
12 order. I mean, I --

13 MR. SOLOMON: That has nothing to do with assuming  
14 jurisdiction, what he's asked to produce.

15 MR. BARNEY: I -- Your Honor, I'm just looking at  
16 a moving target. First it was constructive trust, now it's  
17 de facto, neither of which I've been able to brief this  
18 Court on.

19 THE COURT: No. Unfortunately, Mr. Barney, it is  
20 -- right now, that's on appeal. So I can't change it. All  
21 I can do is say if it's remanded, this is what I would  
22 change it to. I -- I'm -- I can't -- I'm deprived of  
23 jurisdiction to change it because there is an appeal.

24 MR. BARNEY: Your Honor, I would ask you to stay  
25 then your order so that we can get a clear understanding

1 because right now, if they're able to go forward, we can't  
2 basically take back everything that is -- this Court is  
3 going to require under what -- this Court has already said  
4 if it's remanded, it will change.

5 MR. SOLOMON: There is no stay motion pending.  
6 There is no basis for a stay.

7 MR. BARNEY: I'm making an oral motion, Your  
8 Honor, because this is --

9 MR. SOLOMON: No.

10 MR. BARNEY: This is clearly unjust if he's  
11 allowed to argue yet another alternative theory that this  
12 Court said it would adopt if it was on remand without me  
13 giving -- having the opportunity to address and brief this.

14 THE COURT: No, it's not his alternative theory.  
15 I'm -- what I'm saying is that discovery was done such that  
16 it satisfied me that that the Court has jurisdiction,  
17 period, end of story. We have jurisdiction. I'm not  
18 saying it's not constructive versus de facto. I'm saying  
19 we maybe used the wrong term to allow us to do discovery,  
20 but now the discovery has been done. I am now satisfied  
21 that there is sufficient evidence here that satisfies the  
22 requirements of this trust as to the -- that there was a  
23 proper amendment and the Court has jurisdiction, period,  
24 end of story. Not that I would say it was de facto. I'm  
25 saying we have jurisdiction.



1           MR. BARNEY: Your Honor, what basis for the  
2 business that Chris is conducting here is the basis for  
3 164.010 jurisdiction or de facto? I mean, this is a new  
4 theory, but I mean, what basis is there to let this go  
5 forward in discovery -- what -- just even based upon the  
6 order itself. What did those interlineations -- could you  
7 clarify what those interlineations on the order itself say?  
8 Just so that we at least know what the interlineated order  
9 means?

10           THE COURT: Where is that order?

11           [Colloquy between the Court and staff]

12           THE COURT: All right. Okay. So, the inter --  
13 what I interlineated was that:

14           Immediate disclosure of documents and information  
15 from Christopher D. Davis is granted as to all  
16 information in his possession, custody, or control.

17           MR. BARNEY: Okay. So, is it possession, comma,  
18 custody control or is that a line above it?

19           THE COURT: No. It's just inserting --

20           MR. BARNEY: Oh, okay. So that's an insertion  
21 line? Okay.

22           THE COURT: -- in its possession, custody, or  
23 control.

24           MR. BARNEY: Custody or control in his -- if you  
25 could continue? I'm making notes.

1           THE COURT:  You're right.  It doesn't have to be  
2 in his possession because he may not have this with him at  
3 his home, but he has somebody who -- he has an agent or  
4 somebody that works for him that's got it, so it's it  
5 within his control.  I mean, that's what I meant by that.

6           MR. BARNEY:  Okay.

7           THE COURT:  Is that it's within his possession,  
8 custody, or control.

9           In his role as investment trust advisor and in his  
10 role as a manager of FHT Holdings.

11          MR. BARNEY:  So that's an "N" because it's --  
12 there's a -- it look like "O".

13          THE COURT:  Yeah.

14          MR. BARNEY:  It's an "I" not an "O"?

15          THE COURT:  And in his role as a manage -- as  
16 manager of FHT Holdings.

17          MS. ROLAND:  Your Honor, if I may, Mr. Solomon and  
18 I have a long day tomorrow as he is deposing Christopher  
19 Davis.  Possibly you're willing to give us some guidance so  
20 that we're not on the phone with your office or the  
21 Discovery Commissioner as far as, and I'm not trying to be  
22 facetious here, what all information is.  Is that from the  
23 time that Christopher Davis took his office as investment  
24 trust advisor forward or are we going back and scooping in  
25 all of the past transactions --

1           THE COURT: Absolutely.

2           MS. ROLAND: If you could give me just a moment,

3 Mark, --

4           MR. SOLOMON: Okay.

5           MS. ROLAND: Are we --

6           THE COURT: The information --

7           MS. ROLAND: Are we pulling in the past

8 transactions from Alaska Trust Company that then forwarded

9 over to Dunham Trust Company and the loans no matter if --

10 because some of those loans from -- were to Beatrice

11 herself. So, when -- I think we need some guidance to try

12 to limit this or to let us know where we are going with it.

13           THE COURT: Okay.

14           MR. BARNEY: I'd like my protective order heard

15 though first if we could.

16           THE COURT: Okay. All right. The protective

17 order is denied. Okay. So, yeah. I mean, I'm -- he --

18           MR. SOLOMON: Can I be heard on that issue? I --

19           THE COURT: Okay. I've got five minutes.

20           MR. SOLOMON: Okay. I'll make it quick, Your

21 Honor.

22           MR. BARNEY: May I argue my motion or does -- is

23 it just a response?

24           MR. SOLOMON: I don't know where we are

25 procedurally. I just heard Harriet Roland get up and make

1 a pitch to the Court and I want to respond to it.

2 THE COURT: Correct.

3 MR. SOLOMON: Now that's what I'm trying to --

4 THE COURT: Okay.

5 MR. SOLOMON: -- do and I think I have a very  
6 cogent response to that, Your Honor.

7 THE COURT: All right.

8 MR. SOLOMON: All right. And that is this. Your  
9 June 24<sup>th</sup>, 2015 order, which you just read, assumes  
10 jurisdiction over Chris as the investment trust advisor and  
11 ordered to produce these documents and information,  
12 [indiscernible] as such, and as manager of FHT. FHT  
13 Holdings is a Nevada LLC. Chris is the sole manager. His  
14 Secretary of State filing shows a Nevada address for that.  
15 163.5555 says that if he accepted his appointment as a  
16 trust advisor, he submitted himself to the jurisdiction of  
17 this Court. That's in personam jurisdiction, Your Honor,  
18 because there's no such thing as in rem jurisdiction over a  
19 person.

20 Chris is the sole investment manager. He has sole  
21 responsibility for the loan receivables, whether they were  
22 made during his tenure or whether they were made prior.  
23 He's the one who has to know what the status is even if  
24 they were made before him because he's managing those as  
25 the current investment advisor.

1           Their entire argument, which I'm sure we're going  
2 to hear again, is that this Court can only order him to  
3 produce information he has as the trust investment advisor  
4 and that is technically absurd when you think about it.  
5 What he's saying is: Caroline, I'm your fiduciary. I have  
6 a duty of full disclosure to you, because, remember  
7 163.5555 expressly says he's the fiduciary. I have a  
8 fiduciary duty and full disclosure duty, but I don't have  
9 to tell you what I know even if it affects your interest in  
10 this trust because I know that information as maybe the  
11 borrower of the loans and not technically as the investment  
12 advisor who manages those very loans. That's absurd and it  
13 is against the law.

14           We are entitled to know, since he is currently  
15 managing those loans, all the information he has about  
16 those loans that in any way concern or affect my client's  
17 interest in the trust. There's a number of cases which we  
18 already cited in our brief, one of which says:

19           The Court may direct a fiduciary to exhibit all  
20 information within its control which bears on the  
21 fortunes of the estate and to take whatever actions may  
22 be necessary to get the required data.

23           That's the matter of [indiscernible] will, which  
24 we cited.

25           Another case, *In Re: Stewers Estate* [phonetic],

1 which we also cited, there, the executors of an estate, one  
2 of whom was also an officer and director of a corporation  
3 that was only partially owned by the estate, opposed the  
4 beneficiary's request for information that the executors  
5 had in their possession, custody, and control as the  
6 director. The Court said this:

7           The activities of an executor in a corporate  
8           affairs and his knowledge of the actions of others and  
9           running affairs are proper subjects of inquiry as long  
10          as they affect the trust's interest.

11           We're entitled admittedly [indiscernible] assume  
12          jurisdiction over him as the investment advisor, but we're  
13          entitled to know what information he has with respect to  
14          the facts that affect Caroline's interest in this trust and  
15          contrary to Ms. Roland's statement earlier, my client is  
16          currently a 50 percent beneficiary of the Heritage Trust.  
17          She may lose her interest if she doesn't have children at  
18          some point in the line, but that's not the status of the  
19          matter of now.

20           THE COURT: Okay.

21           MR. SOLOMON: We're entitled to this information,  
22          Your Honor.

23           THE COURT: All right. All right. So, Mr.  
24          Barney, I'm going to -- because we've dealt with the  
25          Petition for Reconsideration, we've dealt with the Motion

1 to Alter or Amend, we've dealt with the Objection. The  
2 only thing left is the Motion for Protective Order or to  
3 Quash or Modify the Subpoena.

4 As I said, technically this is on appeal. There  
5 is nothing I can do to alter or change my order other than  
6 tell you that this is how I would change it if it does come  
7 back. I think it's sufficient. Discovery has been done  
8 and additional evidence has been provided to the Court.  
9 The Court has jurisdiction over this trust. It was a  
10 properly amended trust. It is a Nevada trust. So that  
11 would be the change I would make.

12 The order that I entered was that -- at that time,  
13 the Court had jurisdiction over Christopher Davis as  
14 investment trust advisor. I indicated that he need to turn  
15 over information that he had in that capacity or in the  
16 capacity of FHT, which is a Nevada corporation. So I have  
17 jurisdiction over the Nevada corporation.

18 So, the question is with respect to your Motion  
19 for Protective Order or to Quash the Subpoena, I don't  
20 think I can quash it because I think that as a executive of  
21 or an officer of a Nevada corporation or LLC, he's subject  
22 to the jurisdiction of this Court. I don't think there's  
23 any basis to quash it.

24 So the question is either a protective order or  
25 modifying the subpoena and you've got three minutes.

1 MR. BARNEY: Thank you, Your Honor.

2 I think it's pretty clear from the subpoena  
3 they're requesting documents outside of the -- what the  
4 Court has just outlined and that's clear and that's why the  
5 subpoena does need to be quashed. The reality is they're  
6 far adrift of what this Court has said. Even under the  
7 interlineations that the Court created, they're now saying  
8 that they're seeking in personam jurisdiction. Their  
9 written pleadings said that they weren't seeking in  
10 personam jurisdiction.

11 THE COURT: Well, but, I mean, I can't change  
12 that. At this point in time, I can't change that because  
13 that's what's on appeal.

14 MR. BARNEY: What I need to --

15 THE COURT: So, --

16 MR. BARNEY: What I need to know is under the  
17 order, --

18 THE COURT: -- it's --

19 MR. BARNEY: -- did -- are you --

20 THE COURT: The order stands until we're told by  
21 the Supreme Court that either I'm wrong, that there is no  
22 jurisdiction at all, or that they're going to remand it and  
23 say, you know, go ahead and do what you said you'd do if  
24 it's remanded.

25 MR. BARNEY: And then for this deposition that's



1 scheduled for tomorrow, we don't know whether or not the  
2 Court has assumed in personam jurisdiction over him as an  
3 officer of FHT Holdings. Is that my understanding?  
4 Because that's clearly what we're being led into. We're  
5 being led into a situation where you're saying essentially  
6 that I have jurisdiction over him. It must be in personam  
7 if that's what you're --

8 THE COURT: Right. Correct.

9 MR. BARNEY: -- claiming. He didn't get served  
10 with a summons. So, the question then becomes, because he  
11 didn't get served under Rule -- service of process, how  
12 could there be in personam jurisdiction over Christopher  
13 Davis and then subject him tomorrow to inquiry into that  
14 role?

15 THE COURT: Okay.

16 MR. BARNEY: It's manifestly unjust. It --  
17 this is new -- considering that they said they didn't ask  
18 for in personam jurisdiction and now it sounds like the  
19 Court is saying they've taken in personam jurisdiction  
20 without service of process under Rule --

21 THE COURT: Well FHIT is not a party. FHT is a  
22 Nevada corporation and if he is being -- if he is the  
23 managing --

24 MR. BARNEY: He's not the owner.

25 THE COURT: If he is the manager of -- if he's the

1 manager --

2 MR. BARNEY: Yeah. He's an officer, exactly.

3 THE COURT: -- of the Nevada --

4 MR. BARNEY: He's an officer that needs to be  
5 served.

6 THE COURT: Of a Nevada corporation.

7 MR. BARNEY: -- pursuant to Rule 4.

8 THE COURT: Okay. That's a different issue. So  
9 if the corporation has not been served, then that's a whole  
10 different problem, but as I said, I -- in my view, there's  
11 a different problem with respect to FHT because FHT is a  
12 Nevada entity. So FHT is subject to the jurisdiction of  
13 this Court and a corporate entity in this jurisdiction, if  
14 somebody wants to take a deposition or do any discovery  
15 with respect to that corporate entity, you can do it  
16 because -- if you do it the proper way.

17 And so, your position is that they're not properly  
18 noticed a deposition of him as the managing agent or  
19 whatever it is that he is of FHT, then --

20 MR. BARNEY: That's correct.

21 THE COURT: -- that's a valid objection. So, if  
22 that's the limitation that you're asking for is that FHT is  
23 not -- has not been -- is a corporate entity that's not a  
24 party to this litigation, this Court has only taken  
25 jurisdiction over Christopher Davis to the extent that he

1 is the investment advisor for the trust, then what's the  
2 basis for him being deposed if he's being deposed in his  
3 capacity as investment advisor, then he needs to -- that's  
4 the scope. But if -- this corporate entity is subject to  
5 the jurisdiction of this state. So they asked for the  
6 records of the corporate entity, then the corporation is a  
7 Nevada corporation and --

8 MR. BARNEY: And if they want to get that  
9 information without a duces tecum because they didn't  
10 notice if up for a deposition with a duces tecum --

11 THE COURT: Okay.

12 MR. BARNEY: If they want to get hat information,  
13 then they need to serve him personally under Rule 4 if they  
14 want to get it as an officer or manager of the company.  
15 This --

16 THE COURT: Because it's not a party.

17 MR. BARNEY: Yeah. This Court is assuming that it  
18 has jurisdiction over the FHT Holdings and even if the  
19 Court goes in that direction, my question still goes to the  
20 fact that this is improper in that they're seeking to get  
21 documents --

22 THE COURT: I'm late for a meeting. So, that  
23 would be my ruling is that if -- my jurisdiction over  
24 Christopher Davis, I indicated, was only in his capacity as  
25 the investment advisor. However, any documents that he has

1 that are documents of this FHT, which is a Nevada entity,  
2 are subject to being subpoenaed. If you're saying they  
3 weren't properly subpoenaed, okay, fine. They weren't  
4 properly subpoenaed. Then raise that objection at the time  
5 of your deposition and you'll go forward from there, but  
6 I'm done.

7 MR. BARNEY: And I -- Your Honor, I'm asking the  
8 Court's indulgence to set out that deposition until we have  
9 a clear understanding of the order because, at this point,  
10 there's a lot of vagueness and lack of clarity in this  
11 matter. So, less than essentially 24 hours, we now have a  
12 different understanding of the order upon which supposedly  
13 we're supposed to do a deposition tomorrow under and that's  
14 some of the concerns I have and I would respectfully  
15 request that the Court --

16 THE COURT: Okay. Well, that's really an issue --

17 MR. BARNEY: -- to consider [indiscernible].

18 THE COURT: -- for the Discovery Commissioner and  
19 -- because she hears the discovery disputes for my cases  
20 and so if you have a problem with it tomorrow, you can  
21 certainly call her and indicate to her that the -- it's a  
22 Nevada corporation but the Nevada corporation portion of it  
23 wasn't properly noticed because the only jurisdiction right  
24 now that this Court has because it's on appeal, so I can't  
25 change the order, is over him in his capacity as the

1 investment trust advisor.

2 MR. BARNEY: This Court can set out the deposition  
3 so that we can clarify this because there's really no harm  
4 to any of the parties in doing that.

5 THE COURT: Okay. Thanks.

6 MR. BARNEY: Thank you.

7 THE COURT: One minute, Mr. Solomon, with respect  
8 to moving to moving the date.

9 MR. SOLOMON: I'm not even going to say anything  
10 other than the fact that the deposition, just to clarify  
11 the record, was of a party and we didn't have to subpoena  
12 him and all we're asking him to do is appear, ask questions  
13 consistent with this Court's order of what he has to tell  
14 us. That's it.

15 THE COURT: Okay. Fine. All right. So those  
16 issues I think need to be brought to the Discovery  
17 Commissioner if you have problems with it tomorrow at the  
18 deposition.

19 MR. SOLOMON: Thank you for your patience.

20 THE CLERK: [Indiscernible]?

21 THE COURT: I'm just saying that that can be  
22 brought to the Discovery Commissioner tomorrow. It's a  
23 discovery matter. It's not me.

24 MS. RENWICK: Thank you, Your Honor.

25 MR. HOOD: Thank you.

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MR. BARNEY: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 12:04 P.M.

\* \* \* \* \*

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from  
5 the audio-visual recording of the proceedings in the  
6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social  
11 security or tax identification number of any person or  
12 entity.

13

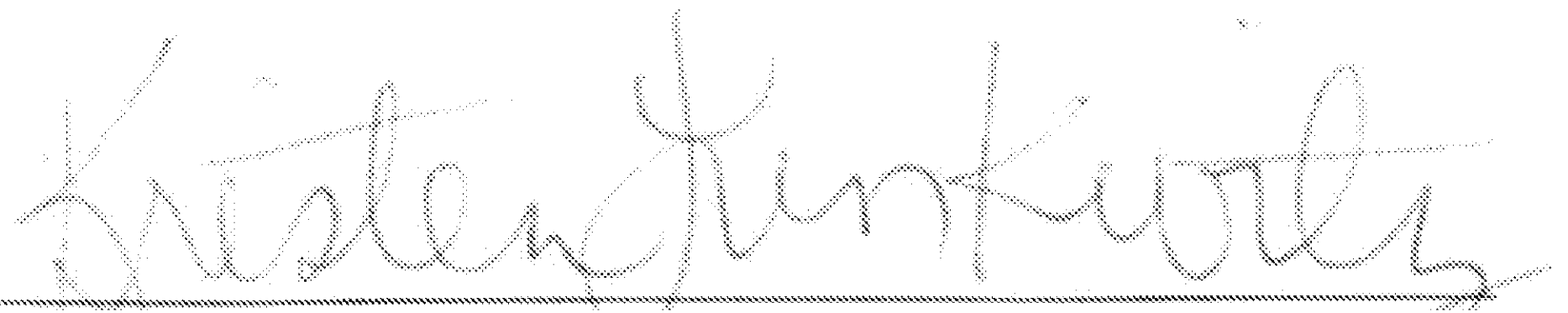
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20

21

22 KRISTEN LUNKWITZ  
23 INDEPENDENT TRANSCRIBER

24

25



# EXHIBIT 3



## Anthony L. Barney

---

**From:** Dana Dwiggins <ddwiggins@sdfnlaw.com>  
**Sent:** Monday, October 5, 2015 10:59 AM  
**To:** anthony@anthonybarney.com  
**Cc:** Renee Guastaferrero; Joshua M. Hood; Mark Solomon  
**Subject:** Davis

Anthony,

In response to your email sent to Mark and Josh this morning, please be advised that we will not agree to stay this matter.

Dana A. Dwiggins  
SOLOMON DWIGGINS & FREER, LTD.  
Cheyenne West Professional Center | 9060 W. Cheyenne Avenue | Las Vegas, NV 89129  
Direct: 702.589.3505 | Office: 702.853.5483 |  
Direct Facsimile: 702.473.2834 | Facsimile: 702.853.5485  
Email: [ddwiggins@sdfnlaw.com](mailto:ddwiggins@sdfnlaw.com) | Website: [www.sdfnlaw.com](http://www.sdfnlaw.com)  
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# EXHIBIT 2

## Anthony L. Barney

---

**From:** Anthony L. Barney <anthony@anthonybarney.com>  
**Sent:** Monday, October 5, 2015 10:37 AM  
**To:** 'Renee Guastaferro'; 'hroland@rolandlawfirm.com'; 'jhood@sdfnlaw.com'; 'msolomon@sdfnlaw.com'  
**Cc:** 'Allie Carnival'; 'secretary@anthonybarney.com'; 'Tiffany Barney'; 'zach.anthonybarney@gmail.com'  
**Subject:** RE: In the Matter of Beatrice Davis, Case No. P-15-083867-T  
**Importance:** High

Dear Mark/Joshua,

Due to the last court's hearing ruling last Wednesday, I am requesting that you agree to stay all matters in this case until the appeal can be heard and adjudicated. It is clear that the Court has reaffirmed at the last hearing on September 30, 2015 that it is enforcing the order currently on appeal. Therefore, we believe it is appropriate to request this stay.

Please let me know if you are willing to sign a Stipulation and Order in this regard. I would appreciate a response by the end of the day and apologize for the immediacy of the request; however, I have been unwell and working in a limited capacity since before the hearing on Wednesday. If you do not agree or if we, otherwise, do not hear a response from you, then we plan to file an emergency request to stay all matters on an emergency basis (before the October motions are heard). We will provide these pleadings to you by facsimile (without exhibits) and by mail with exhibits.

Sincerely,  
Anthony L. Barney, Esq.  
ANTHONY L. BARNEY, LTD.  
3317 W. Charleston Boulevard, Suite B  
Las Vegas, Nevada 89102-1835  
Telephone: (702) 438-7878  
Facsimile: (702) 259-1116  
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---

**From:** Renee Guastaferro [mailto:RGuastaferro@sdfnlaw.com]  
**Sent:** Thursday, October 1, 2015 11:42 AM  
**To:** abarney@anthonybarney.com; hroland@rolandlawfirm.com  
**Cc:** Joshua M. Hood <jhood@sdfnlaw.com>; Mark Solomon <msolomon@sdfnlaw.com>; Allie Carnival <acarnival@sdfnlaw.com>  
**Subject:** In the Matter of Beatrice Davis

Dear Counsel: Please find attached a copy of the proposed Order from the hearing on September 30, 2015 attached for your review. Please advise if you sign the order and when it will be available for pick up. Thank you,

Renee Guastaferrero, Legal Assistant

SOLOMON DWIGGINS & FREER, LTD.

Cheyenne West Professional Center | 9060 W. Cheyenne Avenue | Las Vegas, NV 89129

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1 cannot satisfy the second element of the specific jurisdiction test. In fact Caroline  
2 has not alleged any cause of action/  
3

4       Additionally, the exercise of jurisdiction over Christopher is not reasonable  
5 under the circumstances. Here, a Washington resident is seeking information from  
6 a Missouri resident regarding action taken by an Alaska trustee. The only  
7 transaction alleged to have occurred in Nevada is regarding a purported loan of  
8 \$25,000.00 to Dunham, which Dunham initiated and acknowledged in open court  
9 was used to pay for legal fees for the trust protector.<sup>68</sup> The remaining information  
10 Caroline seeks stems from the acts of the Alaskan trustees in the state of Alaska.  
11 The FHT mandates that a trustee does not have to account for a previous trustee;<sup>69</sup>  
12 therefore, her requests are more appropriate to the Alaska trustee and are wholly  
13 unrelated to the state of Nevada.  
14  
15  
16  
17

18       Although it was her burden, Caroline has raised no decisions made or  
19 actions taken by Christopher in Nevada that would subject him to the jurisdiction  
20 of the DC.  
21

22       **D. Caroline has failed to serve pursuant to NRCP 4(i), therefore the**  
23       **Court must dismiss Christopher from this matter.**  
24  
25  
26  
27

28 <sup>68</sup> See Appendix IX:1418:3-18.

<sup>69</sup> See Appendix I:64: section 7

1 Without providing personal service to Christopher, Caroline is attempting to  
2 obtain his personal testimony and documents by order of the DC. NRS§ 14.065

3  
4 (2) mandates the following regarding personal service:

5 Personal service of summons upon a party outside this state is sufficient to  
6 confer upon a court of this state jurisdiction over the party so served if the  
7 service is made by delivering a copy of the summons, together with a copy  
8 of the complaint, to the party served in the manner provided by statute or  
rule of court for service upon a person of like kind within this state.

9 Nevada Rule of Civil Procedure (“NRCP”) 4(d) requires the delivery of personal  
10 service.  
11

12 NRCP 4(i) further provides that:

13  
14 If a service of the summons and complaint is not made upon a defendant  
15 within 120 days after the filing of the complaint, the action shall be  
16 dismissed as to that defendant without prejudice upon the court’s own  
17 initiative with notice to such party or upon motion, unless the party on  
18 whose behalf such service was required files a motion to enlarge the time  
19 for service and shows good cause why such service was not made within  
20 that period. If the party on whose behalf such service was required fails to  
21 file a motion to enlarge the time for service before the 120-day service  
22 period expires, the court shall take that failure into consideration in  
determining good cause for an extension of time. Upon a showing of good  
cause, the court shall extend the time for service and set a reasonable date  
by which service should be made.

23 The initial petition was filed February 10, 2015.<sup>70</sup> It is well beyond the 120  
24 day time limit provided by NRCP 4(i) and Christopher still has not been  
25

26  
27  
28  

---

<sup>70</sup> See Appendix I:1

1 personally served. Caroline has not filed a motion to enlarge the time for service,  
2 and has not shown good cause why such service was not timely made.  
3

4 The Court has indicated that only a showing of good cause would justify an  
5 untimely service of process.<sup>71</sup> This Court outlines a number of considerations that  
6 may govern an analysis of good cause under NRCP 4(i) where no one  
7 consideration is controlling.<sup>72</sup> Caroline has not shown good cause why service  
8 was not made. Furthermore, an amended Petition/complaint would not cure the  
9 lack of service on parties to the Petition.<sup>73</sup>  
10  
11

12 Even an amendment to the Petition (complaint) will not cure the procedural  
13 defect of lack of service pursuant to NRCP 4(i) for all parties named in the  
14 Petition.  
15

16 Therefore, Caroline's action must be dismissed as to Christopher  
17 personally, and in all capacities requiring *in personam* jurisdiction. Caroline must  
18 refile and personally serve another petition (complaint) for any relief she seeks  
19  
20  
21

---

22  
23 <sup>71</sup> *Scrimmer v. Eighth Judicial Dist. Court*, 116 Nev. 507, 516, (Nev. 2000),  
24 overruling in part *Lacey v. Wen-Neva, Inc.*, 109 Nev. 341, 346, (Nev. 1993).

25 <sup>72</sup> *Id.*

26 <sup>73</sup> *Lacey v. Wen-Neva, Inc.*, 109 Nev. 341, 349, 849 P.2d 260, 264-265, 1993 Nev.  
27 LEXIS 58, \*14-15 (Nev. 1993), overruled in part by *Scrimmer v. Eighth Judicial*  
28 *Dist. Court*, 116 Nev. 507, 516, 998 P.2d 1190, 1195-1196, 2000 Nev. LEXIS 68,  
\*15, 116 Nev. Adv. Rep. 60 (Nev. 2000), citing *Baden v. Craig-Hallum, Inc.*, 115  
F.R.D. 582, 586 n.3 (D. Minn. 1987) (citations omitted); see also *McGuckin v.*  
*U.S.*, 918 F.2d 811, 813 (9th Cir. 1990) (where amended complaint adds a new

1 from Christopher. Notably, Christopher requested dismissal of the Petition based  
2 upon lack of personal service including NRCP 12(b)(3) and (4).<sup>74</sup> It was denied  
3 despite Caroline's failure to prove personal service. The DC then refused to  
4 reconsider his request based upon the pending appeal.  
5

6  
7 ***E. Indispensible Parties were not named and because they were not***  
8 ***joined; Demanding documents from Christopher's attorneys is***  
9 ***improper; The Matter must be dismissed.***

10 In his request to dismiss the Petition, Christopher argued that Caroline had  
11 failed to name indispensable parties to whom she was seeking information  
12 pursuant to NRCP 19(a) and (b).  
13

14 This Court has indicated that "this court has required all persons materially  
15 interested in the subject matter of the suit be made parties so that there is a  
16 complete decree to bind them all. If the interest of absent parties may be affected  
17 or bound by decree, they must be brought before the court or it will not proceed to  
18 decree."<sup>75</sup> It also concluded, that "[f]ailure to join an indispensable party is fatal  
19 to a judgment and may be raised by an appellate court sua sponte."<sup>76</sup>  
20  
21

22 The U.S. Supreme Court has also held the following:  
23  
24  
25

26  
27 party, plaintiff has 120 days from filing the amended complaint to serve the new  
28 party)

<sup>74</sup> See Appendix II:293-298

<sup>75</sup> *Olsen Family Trust v. DC*, 110 Nev. 548, 553 (1994).



1 Joinder as a party, rather than knowledge of a lawsuit and an opportunity to  
2 intervene, is the method by which potential parties are subjected to the  
3 jurisdiction of the court and bound by a judgment or decree. The parties to a  
4 lawsuit presumably know better than anyone else the nature and scope of  
5 relief sought in the action, and at whose expense such relief might be  
6 granted. It makes sense, therefore, to place on them a burden of bringing in  
7 additional parties where such a step is indicated, rather than placing on  
potential additional parties a duty to intervene when they acquire  
knowledge of the lawsuit.<sup>77</sup>

8 Initially, the FHT had the Alaska Trust Company (“ATC”) serve as trustee,  
9  
10 until its removal in 2011, at which time Alaska USA Trust Company (“AUTC”)  
11 became successor trustee of the FHT (hereinafter collectively as “Alaskan  
12 Trustees”). The Alaskan Trustees are indispensable parties to this matter because  
13 the time period in which the documents and information are being requested from  
14 Caroline were during the period in which they acted as trustees of the FHT,  
15 borrowed funds and made loans. More specifically, Caroline has requested  
16 information regarding approximately two (2) million dollars in alleged loans, **all**  
17 of which, except for a disbursement of \$25,000.00 explained previously, occurred  
18 during the tenure of the Alaskan Trustees and were made by the Alaskan Trustees.  
19  
20  
21  
22  
23  
24  
25

---

26 <sup>76</sup> *Schwob v. Hemsath*, 98 Nev. 293, 294 (1982), citing *Provident Bank v.*  
27 *Patterson*, 390 U.S. 102 (1968) and *Johnson v. Johnson*, 93 Nev. 655, 572 P.2d  
28 925 (1977).

<sup>77</sup> *Martin v. Wilks*, 490 U.S. 755, 765 (1988).

1 It is important to note that according to the terms of the FHT, no other trustee was  
2 required to account for their actions.<sup>78</sup>  
3

4 Even under the DC's June 24, 2015 order, relief cannot be afforded among  
5 the remaining parties because the Alaskan Trustees were the custodial trustees  
6 who possessed the information requested by Caroline, and under whose tenure the  
7 transactions occurred. Notwithstanding this fact, Caroline has subpoenaed  
8 Christopher's attorney, Harriet Roland, Esq. as custodian of records of her law  
9 firm in an attempt to obtain copies of documents that were in Christopher's before  
10 he allegedly became a trust advisor and was merely a beneficiary. Caroline filed a  
11 motion to compel production of documents that Harriet Roland alleged are  
12 confidential and/or subject to attorney client privilege. The DC granted Caroline's  
13 request,<sup>79</sup> and such production is to extend to periods almost ten years before  
14 Christopher purportedly became investment trust advisor, and before Dunham  
15 Trust Company allegedly took office.<sup>80</sup> Making such a ruling for production of  
16 documents alleged to have been confidential and/or privileged will result in  
17 immediately and irreparable harm to Christopher Davis.  
18  
19  
20  
21  
22  
23

24 Making a ruling concerning this beneficiary information without including  
25 the Alaskan Trustees as custodial party would expose other named parties to a  
26

---

27  
28 <sup>78</sup> See Footnote 69 Supra

<sup>79</sup> See Appendix IX:1540-1541

1 substantial risk of incurring double, multiple, or otherwise inconsistent obligations  
2 by reason of the claimed interest to those documents,<sup>81</sup> particularly in light of the  
3  
4 Caroline's indemnifications of the Alaska Trustees. In other words, the named  
5 parties (over which Caroline requested this Court take jurisdiction) could be  
6  
7 exposed unnecessarily to other court actions in other jurisdictions with double or  
8 multiple obligations by reason of Petitioner's requested relief and documents from  
9  
10 them for documents that are not in this jurisdiction or in their possession and/or  
11 control. This has already been evidenced by Caroline's request for sanctions  
12 against Christopher's counsel; Harriet Roland, Esq.<sup>82</sup> Despite Christopher having  
13  
14 provided his confidential records to Harriet Roland in anticipation of litigation,  
15 Caroline sought sanctions against Harriet Roland to obtain beneficiary information  
16  
17 belonging to Christopher.

18 Caroline's Petition must be dismissed, because she has failed to even  
19  
20 request jurisdiction over the Alaskan Trustees, the very indispensable parties she  
21 admits in her Petition borrowed the funds and under whose authority and tenure  
22 all of the loans to Christopher and other persons were made, and who was or is in  
23  
24 possession of the information and documents requested.<sup>83</sup>

---

26  
27 <sup>80</sup> NRCP 19(a)(1).

<sup>81</sup> NRCP 19(a)(2)(ii)

28 <sup>82</sup> See Appendix VI:897-976

<sup>83</sup> See Appendix I:6:3-5.

1       **IV. Conclusion**

2               For the foregoing reasons Christopher respectfully requests that the Court:

- 3
- 4       1. Find that the DC lacks in rem jurisdiction over Christopher D. Davis as trust
- 5               investment advisor under the theory of constructive trust;
- 6
- 7       2. Find that the DC lacks in personam jurisdiction over Christopher D. Davis
- 8               as investment trust advisor under the theory of constructive trust;
- 9
- 10       3. Find that Christopher D. Davis was not personally served;
- 11
- 12       4. Find that the DC lacks *in personam* jurisdiction over Christopher D. Davis
- 13               in any role or capacity;
- 14
- 15       5. Order the DC to grant Christopher's motion to dismiss for lack of
- 16               jurisdiction;
- 17
- 18       6. Order the DC to dismiss Caroline's Petition for failure to join indispensable
- 19               parties;
- 20
- 21       7. Order the DC to dismiss Caroline's petition based on her failure to serve
- 22               Christopher D. Davis within 120 days as required by NRCP rule 4(i)
- 23
- 24       8. Order the DC to dismiss all other pending motions which rely on the Order
- 25               entered June 24, 2015, including all motions for contempt and motions to
- 26               compel as to Christopher Davis and his attorneys;
- 27
- 28       9. Stay all proceedings of the DC until such requested relief can be granted;
- and

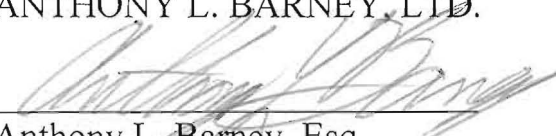
1 10. Any further and proper relief that may be warranted in this matter.

2 DATED this 7<sup>th</sup> day of October, 2015.

3  
4 Respectfully Submitted,  
5 ROLAND LAW FIRM

6   
7 Harriet H. Roland, Esq.  
8 Nevada Bar No. 5471  
9 2470 E. St. Rose Pkwy, Ste. 105  
10 Henderson, NV 89074  
11 Telephone: (702) 452-1500  
12 Facsimile: (702) 920-8903  
13 [hroland@rolandlawfirm.com](mailto:hroland@rolandlawfirm.com)  
14 *Attorney for Christopher D. Davis*

Respectfully Submitted,  
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Telephone: (702) 438-7878  
Facsimile: (702) 259-1116  
[office@anthonybarney.com](mailto:office@anthonybarney.com)  
*Attorney for Christopher D. Davis*

1  
2  
3 VERIFICATION  
4

5 I, Christopher D. Davis, the Petitioner herein, being first duly sworn, depose  
6 and say that I make this verification for the reason that I have read the above and  
7 foregoing Writ and know the contents thereof. I am informed and believe the  
8 contents stated in the Writ to be true and any matter alleged upon information and  
9 belief, I also believe to be true. Pursuant to NRS § 53.045, I declare under penalty  
10 of perjury under the law of the State of Nevada that the foregoing is true and  
11 correct.  
12

13  
14 DATED this 7<sup>th</sup> day of October, 2015.  
15

16  
17   
18 Christopher D. Davis  
19  
20  
21  
22  
23  
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28

**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to this action. I further certify that on the 8<sup>th</sup> day of October, 2015, I served the foregoing **EMERGENCY MOTION UNDER NRAP 27(e) FOR PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS** by first class US mail, postage prepaid, upon the following persons or entities:

Cheryl Davis 5403 West 134 Terrace, Unit 1525 Overland Park, KS 66209	Tarja Davis 3005 North Beverly Glen Circle Los Angeles, California 90077 And 514 West 26 <sup>th</sup> Street, #3E Kansas City, Missouri 64108
Winfield B. Davis Skyline Terrace Apts. 930 Figueroa Terr. Apt. 529 Los Angeles, California 90012-3072	Ace Davis c/o Winfield B. Davis Skyline Terrace Apts. 930 Figueroa Terr. Apt. 529 Los Angeles, California 90012-3072
Christopher D. Davis 3005 North Beverly Glen Circle Los Angeles, California 90077 And 514 West 26 <sup>th</sup> Street, #3E Kansas City, Missouri 64108	Registered Agent Solutions, Inc. Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability Company 4625 West Nevso Drive, Suite 2 Las Vegas, Nevada 89103
JONATHAN W. BARLOW, ESQ. CLEAR COUNSEL LAW GROUP 50 Stephanie Street, Suite 101 Henderson, Nevada 89012 <a href="mailto:Jonathan@clearcounsel.com">Jonathan@clearcounsel.com</a> Attorneys for Stephen K. Lehnardt Via Hand Delivery	Mark Solomon, Esq. Joshua Hood, Esq. <b>SOLOMON DWIGGINS &amp; FREER, LTD.</b> 9060 W. Cheyenne Ave. Las Vegas, NV 89129 <i>Attorney for Petitioner Caroline Davis</i> Via Hand Delivery

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DUNHAM TRUST COMPANY  
SHANNA CORESSAL, CTFA  
c/o Charlene Renwick, Esq.  
Lee, Hernandez, Landrum & Garofalo  
7575 Vegas Drive, #150  
Las Vegas, Nevada 89128  
Via Hand Delivery

Eighth Judicial District Court  
Department 26, Judge Gloria Sturman  
200 Lewis Ave  
Las Vegas, Nevada 89155  
Via Hand Delivery



Employee of Anthony L. Barney, Ltd.



1 This Court should be aware that the only trust with any arguable ties to  
2 Nevada (and which is clearly in dispute as a result of the invalidity of the  
3 purported First Amendment and improper attempt to change in situs to Nevada) is  
4 the FHT. The only other entity located in Nevada is FHT Holdings, LLC, which  
5 is owned by the FHT, and according to the DC is not a party to this matter.<sup>32</sup>  
6  
7 Despite the narrow language of the June 24, 2015 order, Caroline re-issued  
8 subpoenas to Christopher's attorney's improperly requesting the same and  
9 additional information she originally sought from Christopher,<sup>33</sup> and is asking for  
10 sanctions against Christopher for his failure to comply.  
11  
12

13  
14 In July 2015, Christopher filed a petition for reconsideration of the June 24,  
15 2015 order.<sup>34</sup> Caroline also filed a motion to amend the June 24, 2015 order,  
16 providing evidence to suggest that even Caroline was aware of the defective basis  
17 upon which the DC asserted jurisdiction. At the same time, Caroline admitted that  
18 they did not seek in personam jurisdiction over Christopher.<sup>35</sup> Christopher  
19  
20 opposed Caroline's Motion to Amend because she had based her request to amend  
21 the order on alleged fraud by Christopher's attorney.<sup>36</sup> Caroline's statements in  
22  
23

24  
25 <sup>32</sup> See Footnote 32 supra.

26 <sup>33</sup> See Subpoena Duces Tecum dated June 25, 2015 on Wiznet.

27 <sup>34</sup> See Appendix IV:446-477.

28 <sup>35</sup> See Appendix V:718:15-19

<sup>36</sup> See Appendix VIII:1332-1357, Ironically, Caroline's own statements in the Motion to Amend were misrepresentations to the Court, and, after Christopher

1 the Motion to Amend were misrepresentations to the Court, and, after Christopher  
2 made a NCRP 11 request to Caroline's counsel, they were withdrawn from the  
3 record.<sup>37</sup>

4  
5 Due to the absence of *in personam* jurisdiction over Christopher, he also  
6 filed a motion for a protective order or to modify/quash the subpoena which  
7 sought to require his submission to a deposition in Nevada or face contempt.<sup>38</sup> As  
8 a non-party witness, travel accommodations had not been made for him to appear  
9 in Nevada, which is several hundred miles from his residence.

10  
11 At the September 2, 2015 hearing on the three petitions/motions: 1) Petition  
12 for Reconsideration, 2) Motion to Amend and 3) Motion for Protective Order or to  
13 Quash or Modify the Subpoena, the Court indicated that it could not rule on the  
14 motions/petitions, but it was allowing discovery under this Court's holdings in  
15 Viega GmbH v. Eighth Judicial DC, 328 P.3d 1152 (Nev. 2014) (hereinafter  
16 "Viega") and Fulbright & Jaworski v. Eighth Judicial DC, 342 P.3d 997 (Nev.  
17 2015) (hereinafter "Fulbright") and stated that the "purpose and intent of taking  
18 jurisdiction initially was to figure out jurisdiction."<sup>39</sup> This is an error of law in  
19 that neither of these cases authorized discovery without jurisdiction. Herein, the  
20  
21  
22  
23  
24  
25

26  
27 made a Rule 11 Request to Caroline's counsel, they later withdrew their false  
28 statements from the record.

<sup>37</sup> See Appendix VII:1119-1138

<sup>38</sup> See Appendix VIII:1185-1221.

1 DC took jurisdiction upon an admittedly incorrect legal basis and then began  
2 enforcing discovery, not to obtain jurisdiction, but to “sue” Christopher without  
3 raising any claims for relief.<sup>40</sup>

4  
5 Notably, the DC is aware of its jurisdictional error. It stated, “**I was wrong**  
6 **in accepting Mr. Solomon’s description of that as a constructive trust.**  
7 **Technically, you’re right** [speaking to Christopher’s counsel]. **It’s not a**  
8 **constructive trust...**”<sup>41</sup> The DC also further acknowledged that FHT Holdings,  
9 LLC was not a party to this matter.<sup>42</sup>

10  
11  
12 Despite the realization of its jurisdictional error and the overbreadth of the  
13 subpoena, the DC declined to rule on Christopher’s motion for a protective order  
14 or to quash or modify Caroline’s subpoena. Instead, the DC wanted the discovery  
15 commissioner to rule on any objections at the deposition<sup>43</sup> in its attempt to have  
16 Christopher submit to its jurisdiction by appearance. In light of the DC’s  
17 admissions and its lack of *in personam* jurisdiction, Christopher chose not to  
18 appear at the deposition. The DC has various motions pending before it including  
19 a motion for sanctions, a motion for contempt, and a motion to compel which all  
20 stem from Christopher’s alleged lack of compliance with discovery. At the  
21  
22  
23  
24  
25

---

26  
27 <sup>39</sup> See Appendix IX:1449: 17-19

<sup>40</sup> See Footnote 23 Supra

28 <sup>41</sup> See Appendix IX:1450: 23-25 and 1451:1

<sup>42</sup> See Appendix IX: 1470: 9-14, 21-23; 1472:12-25.

1 September 30, 2015 hearing, the DC postponed the motion for sanctions to  
2 October 28, 2015 and indicated that the DC would proceed with discovery based  
3 upon its June 24, 2015 order. The DC also declined to hear the motion for  
4 contempt because Christopher objected to DC Judge Gloria Sturman hearing it  
5 pursuant to NRS§ 22.010 (3). However, the DC sua sponte decided that it would  
6 view the contempt motion as a NRCP 37 motion and alluded to the fact that it will  
7 request or impose sanctions upon Christopher pursuant to NRCP 37, despite the  
8 fact that Caroline never pled such a request.<sup>44</sup> This had the appearance of  
9 sidestepping the mandates of NRS §22.010 in order to continue to exacerbate the  
10 onerous discovery demands being leveled upon Christopher. NRCP 37 sanctions  
11 typically are initiated only on party motion, which did not occur in this case.  
12  
13  
14  
15  
16

17 As noted, the DC has improperly attempted to justify jurisdiction under its  
18 alleged interpretation of *Viega* and *Fulbright*<sup>45</sup> and has improperly allowed  
19 discovery to proceed upon Christopher without obtaining proper *in personam*  
20 jurisdiction. Dismissal of the Original Petition is proper, because there is no basis  
21 for in personam jurisdiction over Christopher D. Davis and because personal  
22 service of the petition was not effectuated within the one hundred and twenty  
23 (120) days as required by NRCP 4(i).  
24  
25  
26  
27

28 <sup>43</sup> See Appendix IX:1437.

<sup>44</sup> See Appendix IX:1543 and XI:1544-1548

1           **III.    LEGAL ARGUMENT**

2                           ***A. The DC does not have proper jurisdiction over any of the parties***  
3                           ***under a theory of constructive trust.***

4                           NRS § 164.010 provides that the court may take *in rem* jurisdiction over a  
5 trust. After assuming *in rem* jurisdiction, a court then has only the power to  
6 adjudicate title to or ownership of trust property without personal liability to the  
7 trustee or any other person involved with the trust.  
8

9                           A constructive trust is entirely different from a trust proceeding *in rem*. The  
10 Court explained that, “[a] constructive trust is a remedial device by which the  
11 holder of legal title to property is held to be a trustee of that property for the  
12 benefit of another who in good conscience is entitled to it.”<sup>46</sup> This Court and the  
13 Ninth Circuit have both indicated that a constructive trust is an equitable remedy  
14 to prevent or redress unjust enrichment.”<sup>47</sup>  
15

16                           This Court indicated that three specific findings are necessary to impose a  
17 constructive trust, because “[a] constructive trust will arise and affect property  
18  
19

20  
21  
22  
23                           <sup>45</sup> See Appendix IX:1521-1632.

24                           <sup>46</sup> *DeLee v. Roggen*, 111 Nev. 1453, 1457, (Nev. 1995) quoting *Locken v. Locken*,  
25 98 Nev. 369, 650 P.2d 803 (1982)

26                           <sup>47</sup> *Taylor Assocs. v. Diamant* (In re Advent Mgmt. Corp.), 178 B.R. 480, 486,  
27 1995 Bankr. LEXIS 346, \*17, 95 Daily Journal DAR 10590 (B.A.P. 9th Cir. Cal.  
28 1995); *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1027, 967 P.2d 437, 441, 1998  
Nev. LEXIS 132, \*10 (Nev. 1998), citing Dan B. Dobbs, *Law of Remedies* §  
4.3(2) (2d ed. 1993) (“The constructive trust is no longer limited to [fraud and]  
misconduct cases; it redresses unjust enrichment, not wrongdoing.”)

1 acquisitions under circumstances where (1) a confidential relationship exists  
2 between the parties; (2) retention of legal title by the holder thereof against  
3 another would be inequitable; and (3) the existence of such a trust is essential to  
4 the effectuation of justice."<sup>48</sup> This Court also recognized that "a constructive  
5 trustee have title (not mere possession) to the property" because this "is critical to  
6 the imposition of a constructive trust."<sup>49</sup>

7  
8  
9 The Federal Sixth Circuit clarified that:

10  
11 A constructive trust is not really a trust. A constructive trust is a legal  
12 fiction, a common-law remedy in equity that may only exist by the grace of  
13 judicial action...a constructive trust, unlike an express trust, is a remedy, **it**  
14 **does not exist until a plaintiff obtains a judicial decision finding him to**  
15 **be entitled to a judgment** "impressing" defendant's property or assets with  
a constructive trust.<sup>50</sup>

16 A constructive trust is very different from an express trust over which *in*  
17 *rem* jurisdiction might be imposed under NRS 164.010. A constructive trust is a  
18 remedy, which can be ordered only after 1) jurisdiction has been obtained over the  
19 persons or entities over which the court seeks to impose the constructive trust or  
20  
21  
22

23  
24 <sup>48</sup> *DeLee v. Roggen*, 111 Nev. 1453, 1457, 907 P.2d 168, 170, 1995 Nev. LEXIS  
170, \*6-7 (Nev. 1995), citing *Locken v. Locken*, 650 P.2d 803, 805 (Nev. 1982).

25 <sup>49</sup> See *Danning v. Lum's, Inc.*, 86 Nev. 868, 871, 478 P.2d 166, 167, 1970 Nev.  
26 LEXIS 639, \*4 (Nev. 1970), citing *Cherno v. Dutch Am. Mercantile Corp.*, 353  
27 F.2d 147 (2d Cir. 1965); *Thompson v. Mobile Producing Co.*, 163 F.Supp. 402 (D.  
Mont. 1958); G. Bogert, *Law of Trusts* 208 (4th ed. 1963)

28 <sup>50</sup> *XL/Datacomp v. Wilson (In re Omegas Group)*, 16 F.3d 1443, 1449, 1451, 1994  
U.S. App. LEXIS 2682, \*22, 1994 FED App. 0051P (6th Cir.), 15, Bankr. L. Rep.

1 against whom the court is entitled to enter judgment and 2) the elements for  
2 obtaining a constructive trust are satisfied.

3  
4 Herein, the DC has not obtained *in personam* jurisdiction over Christopher  
5 as detailed below, nor has it found him to have title to any trust property. As such,  
6 the DC is without the authority to make the findings of fact to satisfy the elements  
7 of imposing a constructive trust upon the parties. Due process was not provided to  
8 the parties before a constructive trust was imposed. A constructive trust is a  
9 remedy the court can pronounce after establishing jurisdiction, not a vehicle to  
10 gain jurisdiction.

11  
12  
13  
14 ***B. NRS §163.5555 does not permit the court to assume general or***  
15 ***specific in personam jurisdiction absent proof of personal service***  
16 ***and satisfaction of due process requirements.***

17 Caroline's most recent attempt to justify jurisdiction over Christopher  
18 appears to be her claim that NRS§ 163.5555 grants *in personam* jurisdiction over  
19 an investment trust advisor without personal service and without further findings  
20 regarding compliance with the due process clause of the Fourteenth Amendment.<sup>51</sup>

21 As this Court previously held, "jurisdiction over a nonresident defendant is proper  
22 only if the plaintiff shows that the exercise of jurisdiction satisfies the  
23  
24  
25  
26

27 (CCH) P75,722, 30 Collier Bankr. Cas. 2d (MB) 1019, 25 Bankr. Ct. Dec. 413  
28 (6th Cir. Ky. 1994) (Emphasis added).

<sup>51</sup> See Appendix IX:1481:9-17

1 requirements of Nevada's long-arm statute and does not offend principles of due  
2 process.”<sup>52</sup> NRS§ 163.5555 states that

3  
4 If a person accepts an appointment to serve as a trust protector or a trust  
5 adviser of a trust subject to the laws of this State, the person submits to the  
6 jurisdiction of the courts of this State, regardless of any term to the contrary  
7 in an agreement or instrument. A trust protector or a trust adviser may be  
8 made a party to an action or proceeding arising out of a decision or action of  
the trust protector or trust adviser.

9 The second sentence of the statute substantively requires the same contacts as the  
10 test for specific jurisdiction discussed in *Fulbright*.<sup>53</sup>

11  
12 NRS§ 164.005 makes NRS chapters 132, 153, and 155 applicable and  
13 supplemental to NRS chapters 162 through 167. NRS § 155.010 states

14  
15 Except as otherwise provided in a specific statute relating to the kind of  
16 notice required or otherwise ordered by the court in a particular instance, a  
17 petitioner shall cause notice of the time and place of the hearing of a  
18 petition to be given to each interested person and to every other person  
entitled to notice pursuant to this title or his or her attorney if the person has  
appeared by attorney or requested that notice be sent to his or her attorney.

19  
20 <sup>52</sup> *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152, 1156,  
21 (Nev. 2014)

22 <sup>53</sup> *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 342 P.3d 997, 1002,  
23 (Nev. 2015) (Stating the test for specific jurisdiction: “Unlike general jurisdiction,  
24 **specific jurisdiction is proper only where 'the cause of action arises from the**  
25 **defendant's contacts with the forum.**” In other words, in order to exercise  
26 specific personal jurisdiction over a nonresident defendant, “[t]he defendant must  
27 purposefully avail himself of the privilege of acting in the forum state or of  
28 causing important consequences in that state. The cause of action must arise from  
the consequences in the forum state of the defendant's activities, and those  
activities, or the consequences thereof, must have a substantial enough connection  
with the forum state to make the exercise of jurisdiction over the defendant  
reasonable.” Emphasis added, Citations omitted.)



1  
2 NRS §155.010 further authorizes notice to be mailed to interested parties  
3 ten (10) days prior to a hearing. NRS §§155.040 and 155.050 provide, however,  
4 that if personal notice is required it may be done by citation served in the same  
5 manner as the personal service of a summons. NRS §153.041 requires that an  
6 action to force an accounting from a trustee be initiated by the issuance of a  
7 citation. Finally, Nevada's long arm statute NRS §14.065 requires personal  
8 service on a nonresident defendant and adherence to the limitations of due process  
9 in order for the court to exercise jurisdiction.  
10  
11  
12

13 NRS§164.005 makes NRS §155 applicable to and supplementary to NRS §  
14 163. NRS §155 allows an exception to traditional methods of notice and service  
15 based on the limited *in rem* nature of probate and trust proceedings. However,  
16 NRS §155 also requires adherence to specific statutes relating to the kind of notice  
17 required for purposes of *in personam* jurisdiction. This includes Nevada's long-  
18 arm statute which requires personal service pursuant to NRCP 4 in order to obtain  
19 *in personam* jurisdiction over a non-resident person or entity.  
20  
21  
22

23 Caroline's proposed reading of NRS§ 163.5555 ignores due process in  
24 order to justify her belated requests of *in personam* jurisdiction over Christopher  
25 without proper service, which were not introduced until after the DC's June 24,  
26 2015 order. Caroline is now suggesting that mailed notice ten (10) days before a  
27 hearing as provided in NRS§ 155.010 is sufficient to satisfy the requirements of  
28

1 obtaining *in personam* jurisdiction over a non-resident. However, due process  
2 cannot be ignored; and therefore, the only two possible justified readings of  
3 NRS§ 163.5555 are that 1) it grants only *in rem* jurisdiction over the role of an  
4 investment trust advisor and any trust property held by the investment trust  
5 advisor in that capacity based upon mailed notice under NRS§ 155.010, or 2) it  
6 requires personal service and satisfaction of the due process requirements for  
7 establishing jurisdiction over the investment trust advisor if *in personam*  
8 jurisdiction is sought. If the latter is true, an exercise of *in personam* jurisdiction  
9 over an investment trust advisor is only appropriate after due process requirements  
10 are met requiring: 1) proof of personal service; 2) a finding that the defendant has  
11 purposefully availed himself of the forum state; 3) proof that the cause of action  
12 arises out of the defendant's contacts with the state, or as the statute reads, the  
13 action or proceeding is one arising out of a decision or action of the trust advisor;  
14 and finally 4) proof that the exercise of jurisdiction would not offend traditional  
15 notion of fair play and substantial justice.

22 This position is also supported by the fact that NRS§ 155 requires the  
23 issuance of a citation in the same manner as personal service of a summons for  
24 certain actions that require *in personam* jurisdiction. The Nevada legislature  
25 understood that the relaxed standards of notice under NRS§ 155.010 do not satisfy  
26 due process for the purpose of obtaining *in personam* jurisdiction. For example, a  
27  
28

1 citation is required for an action regarding conversion of estate assets,<sup>54</sup> and an  
2 action to compel an accounting from a trustee.<sup>55</sup> Caroline's recent position that  
3 NRS § 163.5555 grants general *in personam* jurisdiction without the need for  
4 personal service and additional findings is simply unconstitutional. Additionally,  
5 Caroline's reading of the statute is contrary to public policy and would make  
6 Nevada an extremely unfavorable jurisdiction for investment trust advisors.<sup>56</sup>

7  
8  
9  
10 ***C. Absent Caroline's unfounded proposal of the automatic grant of***  
11 ***jurisdiction, the DC has no in personam jurisdiction over***  
12 ***Christopher D. Davis.***

13 This Court stated "[a]s a question of law, the district court's determination  
14 of personal jurisdiction is reviewed de novo, even in the context of a writ  
15 petition."<sup>57</sup> Furthermore, "[i]t is the plaintiff's burden to establish the court's  
16 personal jurisdiction over a defendant."<sup>58</sup> In order to overcome a motion to  
17

---

18  
19  
20 <sup>54</sup> See NRS§ 143.110

21 <sup>55</sup> See NRS§ 153.041

22 <sup>56</sup> Automatic general in personam jurisdiction would discourage potential trust  
23 advisors from accepting such a position. No reasonable person, let alone a skilled  
24 investment advisor would willingly subject themselves to Caroline's proposed  
25 jurisdiction and risk suit in Nevada for any cause of action regardless of how  
26 related it is to the advisor's contact with the state. In short Caroline's proposed  
27 reading of NRS§ 163.5555 would undermine the Nevada's position as a leader in  
28 trust law, and discourage the use of trust advisors and trust protectors in the state  
of Nevada.

<sup>57</sup> *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152, 1156,  
(Nev. 2014)

<sup>58</sup> *Doe v. Unocal Corp.*, 248 F.3d 915, 922, 2001 (9th Cir. Cal. 2001). See also,  
*Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 342 P.3d 997, 1001

1 dismiss based on lack of jurisdiction the plaintiff needs “to make a prima facie  
2 showing of either general or specific personal jurisdiction by "produc[ing] some  
3 evidence in support of all facts necessary for a finding of personal jurisdiction.”<sup>59</sup>  
4

5 “Jurisdiction over a nonresident defendant is proper only if the plaintiff  
6 shows that the exercise of jurisdiction satisfies the requirements of Nevada's long-  
7 arm statute and does not offend principles of due process.”<sup>60</sup> Nevada’s long-arm  
8 statute reaches the outer limits of the due process clause of the Fourteenth  
9 Amendment and requires personal service and minimum contacts with the forum  
10 state. Caroline failed to establish a basis for jurisdiction over Christopher.  
11  
12

13 *In personam* jurisdiction is either specific or general. General jurisdiction  
14 requires the defendant to have substantial, systematic and continuous contacts  
15 with the forum state so that the defendant is essentially at home in the forum  
16 state.<sup>61</sup> The US Supreme Court has stated:  
17  
18

19 Only a limited set of affiliations with a forum will render a defendant  
20 amenable to all-purpose jurisdiction there. ‘For an individual, the paradigm  
21 forum for the exercise of general jurisdiction is the individual’s **domicile**;  
22  
23

---

24 (Nev. 2015) (stating, “When a nonresident defendant challenges personal  
25 jurisdiction, the plaintiff bears the burden of showing that jurisdiction exists.”  
26 Citation omitted)

27 <sup>59</sup> *Id.* Citation omitted.

28 <sup>60</sup> *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152, 1156,  
(Nev. 2014)

<sup>61</sup> *Daimler AG v. Bauman*, 134 S. Ct. 746, 760, (U.S. 2014)

1 for a corporation, it is an equivalent place, one in which the corporation is  
2 fairly regarded as at home.’<sup>62</sup>

3 General jurisdiction as a practical matter typically only applies to corporations.  
4 Even so, Christopher is not domiciled in Nevada, and therefore is not subject to  
5 general jurisdiction.<sup>63</sup> There was no evidence presented that suggests substantial,  
6 systematic, or continuous contacts within the state of Nevada by Christopher.  
7

8 To determine specific jurisdiction the Ninth Circuit applies a three part test:  
9

10 (1) The nonresident defendant must do some act or consummate some  
11 transaction with the forum or perform some act by which he purposefully  
12 avails himself of the privilege of conducting activities in the forum, thereby  
13 invoking the benefits and protections[;] (2) the claim must be one which  
14 arises out of or results from the defendant's forum-related activities[; and]  
(3) exercise of jurisdiction must be reasonable.’<sup>64</sup>

15 This court applied a similar test in both the *Viega* and *Fulbright* cases.<sup>65</sup>  
16

17 The DC did not find any specific acts that Christopher performed as an  
18 alleged investment trust advisor in Nevada through which he purposefully availed  
19 himself or conducted activities in Nevada. In fact, the Court only assumed that  
20 such activities had occurred by virtue of the fact that he was allegedly appointed  
21

22  
23  
24  
25 <sup>62</sup> *Id.* Citation omitted, emphasis added.

26 <sup>63</sup> See Appendix VI:977-979

27 <sup>64</sup> *Ballard v. Savage*, 65 F.3d 1495, 1498, (9th Cir. Cal. 1995)

28 <sup>65</sup> *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152 (Nev.  
2014), *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 342 P.3d 997  
(Nev.2015)

1 as an investment trust advisor under what the FHT draftsman conceded was a  
2 defective first amendment.<sup>66</sup>  
3

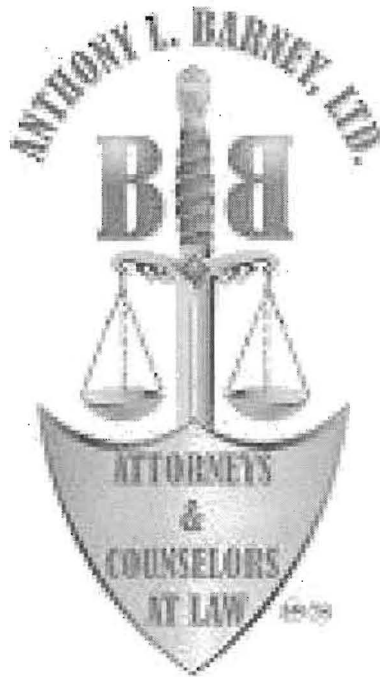
4 The second prong of the test is whether the cause of action arises out of the  
5 defendant's forum related activities. The Ninth Circuit Court of Appeals ("Ninth  
6 Circuit") has stated that "we rely on a 'but for' test to determine whether a  
7 particular claim arises out of forum-related activities and thereby satisfies the  
8 second requirement for specific jurisdiction."<sup>67</sup> Here, Caroline did not and still  
9 has not provided personal service upon any party to this action including  
10 Christopher D. Davis and FHT Holdings LLC. Caroline did not state any acts  
11 effectuated by Christopher or his consent that would satisfy the "but for" test, and  
12 therefore there is no general or specific in personam jurisdiction.  
13  
14  
15  
16

17 Even assuming the most expansive and unlikely reading of NRS§ 163.5555,  
18 which is that the acceptance of the position of an investment trust advisor is a  
19 minimum contact sufficient to satisfy the first element of the test, Caroline has not  
20 carried her burden to satisfy the second prong of the specific jurisdiction test. She  
21 must demonstrate that the cause of action arises out of Christopher's actions taken  
22 or decisions made as investment trust advisor. Here, Caroline has not alleged that  
23 her cause of action arises out of any such actions by Christopher, and therefore  
24  
25  
26  
27

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28 <sup>66</sup> See Footnote 20 Supra

<sup>67</sup> *Ballard v. Savage*, 65 F.3d 1495, 1500, (9th Cir. Cal. 1995)



# EXHIBIT 1

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3           CHRISTOPHER D. DAVIS

Case No.:

4                   Petitioner

5  
6           vs.

7           THE EIGHTH JUDICIAL DISTRICT  
8           COURT OF THE STATE OF NEVADA,  
9           IN AND FOR THE COUNTY OF CLARK,  
10          AND THE HONORABLE JUDGE  
11          GLORIA J. STURMAN, Respondent

Eighth Judicial District Court  
Case No.: P-15-083867-T (In re  
the Beatrice B. Davis Family  
Heritage Trust, dated July 28,  
2000)

12          and

13          CAROLINE DAVIS, Real Party in Interest

14  
15                   **EMERGENCY WRIT UNDER NRAP 27(e)**

16                   **PETITION FOR WRIT OF PROHIBITION AND/OR MANDAMUS**

17                   **ACTION NECESSARY ON OR BEFORE OCTOBER 23, 2015**

18  
19           **I. NRAP 27(E) CERTIFICATE**

20           Petitioners respectfully certify that this writ is filed on an emergency basis  
21  
22           requiring relief in less than fourteen days to avoid irreparable harm. Immediate  
23           relief is necessary because the Eighth Judicial District Court (“DC”) continues to  
24           improperly assert jurisdiction over parties that are not under the jurisdiction of the  
25           DC. The DC continues to hear discovery matters and has allowed motions to  
26           compel and for sanctions against Christopher for his alleged non-compliance with  
27           discovery when he has not submitted to the jurisdiction of this Court. This Court  
28



has made no findings regarding acts, which would enable the assertion of either *in rem* or *in personam* jurisdiction. At the September 30, 2015 hearing, the DC scheduled deadlines for initial disclosures on October 23, 2015 and motions to compel and for sanctions against Christopher on October 28, 2015. Therefore, this writ is necessary and warranted on an expedited basis.

A. NRAP 27(e)(3)(a) Telephone Numbers and Office Addresses of The Attorneys for the Parties.

Harriet H. Roland, Esq. Nevada Bar No. 5471 ROLAND LAW FIRM, INC. 2470 E. St. Rose Pkwy, Ste. 105 Henderson, NV 89074 Telephone: (702) 452-1500 Facsimile: (702) 920-8903 <a href="mailto:hroland@rolandlawfirm.com">hroland@rolandlawfirm.com</a> <i>Attorney for Christopher D. Davis</i>	Anthony L. Barney, Esq. Nevada Bar No. 8366 ANTHONY L. BARNEY, LTD. 3317 W. Charleston Blvd., Suite B Las Vegas, NV 89102 Telephone: (702) 438-7878 Facsimile: (702) 259-1116 <a href="mailto:office@anthonybarney.com">office@anthonybarney.com</a> <i>Attorney for Christopher D. Davis</i>
Mark Solomon, Esq. Joshua Hood, Esq. SOLOMON DWIGGINS & FREER, LTD. 9060 W. Cheyenne Ave. Las Vegas, NV 89129 <i>Attorneys for Caroline Davis</i>	DUNHAM TRUST COMPANY SHANNA CORESSAL, CTFA c/o Charlene Renwick, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, #150 Las Vegas, Nevada 89128

B. Facts Showing the Existence and Nature of the Claimed Emergency (NRAP 27(e)(3)(b))

The DC's June 24, 2015 order purported to assume jurisdiction over the FHT under the remedial theory of constructive trust. An appeal was filed based upon a lack of jurisdiction, including the fact that there is no *in personam* jurisdiction over Christopher either as an investment trust advisor or as an officer

1 of FHT Holdings, LLC, which the DC admitted was not a party to the action.<sup>1</sup>  
2 The DC later acknowledged that its assumption of jurisdiction was “wrong.”<sup>2</sup>  
3  
4 Despite this admission, the DC has allowed discovery to proceed. Therefore,  
5 emergency relief is warranted and respectfully requested herein.  
6  
7 CHRISTOPHER D. DAVIS (“Christopher”), by and through his attorneys  
8 HARRIET H. ROLAND, Esq., of the ROLAND LAW FIRM and ANTHONY L.  
9 BARNEY, Esq., of the law office of ANTHONY L. BARNEY, LTD., hereby  
10 submits his Petition for Writ of Prohibition and/or Mandamus pursuant to NRS  
11 34.330 and NRAP 21 to prohibit the Eighth Judicial District Court, Department  
12 26, the Honorable Judge Gloria J. Sturman (hereinafter, “DC”) from exercising  
13 jurisdiction over Christopher D. Davis. This pleading is based on the  
14 Memorandum of Points and Authorities herein, exhibits attached hereto, and any  
15 oral argument that will be heard in this matter.  
16  
17  
18

## 19 **II. Notification of Parties pursuant to NRAP 27(e)(3)(c)**

20  
21 Christopher has notified the parties of the filing of this Writ of Prohibition  
22 and/or Mandamus. This notification was made by electronic mail.<sup>3</sup> Service of the  
23 Writ will take place by hand delivery upon the attorneys and by mail to the other  
24 interested parties.  
25  
26  
27

28 <sup>1</sup> See Petitioner’s Appendix (“Appendix”) IX:79:21

<sup>2</sup> See Appendix IX:1450:23-25.

1 Dated this 7<sup>th</sup> day of October 2015

2  
3 Respectfully Submitted,  
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5   
6 Harriet H. Roland, Esq.

7 Nevada Bar No. 5471

8 2470 E. St. Rose Pkwy, Ste. 105

9 Henderson, NV 89074

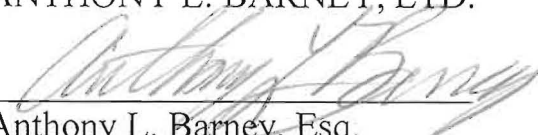
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13 *Attorney for Christopher D. Davis*

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*Attorney for Christopher D. Davis*

### CERTIFICATE OF COMPLIANCE

14 1. I hereby certify that this brief complies with the formatting requirements of  
15 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style  
16 requirements of NRAP 32(a)(6) because:

17 [X] This brief has been prepared in a proportionally spaced typeface using  
18 Times New Roman in Microsoft Word in 14 point font.

19 2. I further certify that this brief complies with the page- or type-volume  
20 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted  
21 by NRAP 32(a)(7)(C), it:

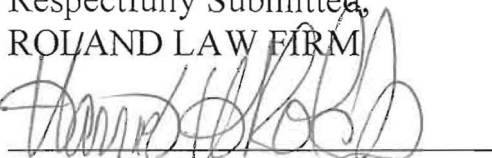
22 [X] Does not exceed 30 pages.

23  
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25  
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27  
28 <sup>3</sup> See Appendix IX:1550

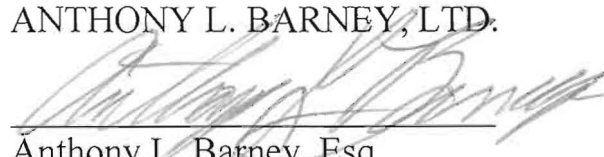
1 3. Finally, I hereby certify that I have read this Writ, and to the best of my  
2 knowledge, information, and belief, it is not frivolous or interposed for any  
3 improper purpose. I further certify that this Writ complies with all applicable  
4 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which  
5 requires every assertion in the Writ regarding matters in the record to be supported  
6 by a reference to the page and volume number, if any, of the transcript or  
7 appendix where the matter relied on is to be found. I understand that I may be  
8 subject to sanctions in the event that the accompanying Writ is not in conformity  
9 with the requirements of the Nevada Rules of Appellate Procedure.  
10  
11  
12

13  
14 Dated this 7th day of October, 2015.

15  
16 Respectfully Submitted,  
17 ROLAND LAW FIRM

18   
19 Harriet H. Roland, Esq.  
20 Nevada Bar No. 5471  
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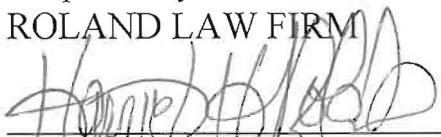
27   
28 Anthony L. Barney, Esq.  
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[office@anthonybarney.com](mailto:office@anthonybarney.com)  
*Attorney for Christopher D. Davis*

**ATTORNEY'S CERTIFICATE PURSUANT TO NRAP 28.2**


1. The undersigned attorneys hereby certify that they have read the Writ.
2. To the best of the attorneys' knowledge, information and belief, the Writ is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
3. The Writ complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of Rule 28(e) that every assertion in the briefs regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found.
4. The Writ complies with the formatting requirements of Rule 32(a)(4)-(6), and either the page- or type-volume limitations stated in Rule 32(a)(7).

DATED this 7<sup>th</sup> day of October, 2015.

Respectfully Submitted,  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3  
4 On June 24, 2015, the DC filed an order (hereinafter, “June 24, 2015  
5 order”) later entered confirming Dunham Trust Company (hereinafter, “Dunham”)  
6 as the trustee of the Beatrice B. Davis Family Heritage Trust dated July 28, 2000  
7 as amended on February 24, 2014 (“FHT”). Despite Christopher’s motion to  
8 dismiss based upon the failure of a condition precedent pursuant to the terms of  
9 the Trust, failure to join indispensable parties, lack of jurisdiction over the person,  
10 and insufficiency of service and insufficiency of service of process, the court  
11 purportedly assumed jurisdiction over the Trust under a theory of constructive  
12 trust pled orally by Caroline Davis (“Caroline”).<sup>1</sup>  
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14  
15  
16

17 Christopher filed an appeal based on NRS 155.190 (h) which makes an  
18 order instructing or appointing a trustee an appealable order.<sup>2</sup> The appeal is still  
19 pending; however, neither NRS 132.355 nor NRS 163.5545 identifies an  
20 investment trust advisor as a trustee. Additionally, case law seems to indicate that  
21 a trust advisor is something less than a trustee or a quasi-trustee.<sup>3</sup> Therefore, to  
22 the extent that a trust advisor does not satisfy the meaning of NRS §155.190(h) so  
23  
24  
25

26  
27 <sup>1</sup> See Appendix III:406:6 and Appendix III: 437:18-19.

28 <sup>2</sup> See Case #68542

<sup>3</sup> *Wilmington Trust Co. v. Stuart*, 1983 Del. Ch. LEXIS 524, \*25 (Del. Ch. July 19, 1983), describing a trust advisor as a “quasi-trustee”.

1 that the purported assumption of jurisdiction over Christopher does not qualify as  
2 an appealable order under NRS § 155.190(h), Christopher submits this writ of  
3 prohibition and/or mandamus.  
4

## 5 **II. FACTS PERTAINING TO WRIT**

6  
7 Caroline's initial petition filed in the DC did not allege any claims  
8 (hereinafter "Petition").<sup>4</sup> Caroline requested the DC to take jurisdiction over the  
9 following alleged parties: Dunham Trust Company (as trustee), Stephen K.  
10 Lehnardt (as trust protector), and Christopher D. Davis (as investment trust  
11 advisor), and all other parties seemingly related to the FHT to obtain documents  
12 from various parties related to the FHT.<sup>5</sup>  
13  
14

15 Notably, the only acts alleged against Christopher were those purportedly in  
16 his individual capacity, as the beneficiary or trustee of another trust, or as the sole  
17 manager of a Missouri Limited Liability Company.<sup>6</sup> The DC was made aware of  
18 a pending lawsuit in Missouri, and noted that these alleged acts were in Missouri  
19 where Christopher had contact with those states.<sup>7</sup>  
20  
21  
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23  
24 <sup>4</sup> See Appendix I

25 <sup>5</sup> See Appendix I:10: 3-20.

26 <sup>6</sup> See Appendix I: 8-9; Paragraphs 23, 24.

27 <sup>7</sup> See Appendix IX:1408: lines 3-20.

28 Mr. Barney: "Well, here's the thing. When we didn't have jurisdiction and  
this case is a perfect example. They've actually filed suit out in Missouri  
and do you know why they filed suit in Missouri, Your Honor? Because

1 All other references to Christopher in the Petition were to argue to the DC  
2 his purported roles in relation to the FHT.<sup>8</sup> The Petition did not allege claims or  
3 acts performed by any party in Nevada. The Petition was mailed to various  
4 parties, however personal service was not effectuated on any party.<sup>9</sup> Christopher  
5 is not a resident and does not reside in Nevada.<sup>10</sup>

6  
7  
8 The FHT was an express trust Settled by a Missouri resident under Alaska  
9 law with an Alaskan Trustee.<sup>11</sup> The FHT requires the consent of all beneficiaries  
10 thereunder and the opinion or advice from legal counsel before the trustee is  
11 enabled to change the situs from Alaska.<sup>12</sup> The Alaska Trustee resigned on  
12 December 5, 2013, and thereafter the FHT situs was allegedly changed on  
13  
14  
15

16 when they raise the issue that they're trying to get jurisdiction over  
17 Christopher as – in his capacity belonging to the revocable trust and other  
18 capacities, they realize: You know what? We can't get that here so we're—  
19 “

20 Court: Oh no. They're – that's clear. That's –“

21 ---

22 Court: “That's clear. I mean, I don't think anybody's disputing –“

23 ---

24 Court: **“That's Missouri. That's Missouri. But, you know, he's at least  
25 got contacts with those states...”**

26 <sup>8</sup> See Appendix I:3:12 and I:8:26.

27 <sup>9</sup> The Court can take judicial notice under NRS 47.130 that neither a summons nor  
28 a citation was ever issued or served upon any party.

<sup>10</sup> See Appendix VI:978:27.

<sup>11</sup> See Appendix I:13.



1 February 24, 2014.<sup>13</sup> The Alaska trustee had not obtained an opinion from their  
2 own counsel as required by the FHT<sup>14</sup> regarding the purported change in situs that  
3 allegedly occurred without the consent of all beneficiaries, including Tarja  
4 Davis.<sup>15</sup>

5  
6 Upon receiving the mailed Petition, Christopher filed a motion to dismiss  
7 based upon the lack of jurisdiction over FHT and over him in any capacity,  
8 because 1) the Alaskan trustees of who were in possession of the documents being  
9 requested were indispensable custodial parties<sup>16</sup>; 2) the change in situs was  
10 ineffective due to a lack of consent by all beneficiaries and the lack of opinion  
11 from the Alaskan Trustee's legal counsel.<sup>17</sup> Additionally, Christopher requested  
12 dismissal because there was no personal service upon him in any capacity.<sup>18</sup>  
13  
14 Caroline opposed the motion to dismiss.<sup>19</sup>

15  
16 At the hearing on the motion to dismiss, Stephen K. Lehnardt (trust  
17 protector and drafter of the FHT) admitted through his counsel that the disputed  
18 first amendment and purported change in situs was not done pursuant the terms of  
19  
20  
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24 <sup>12</sup> See Appendix I:110.

25 <sup>13</sup> See Appendix I:133-144

26 <sup>14</sup> See Appendix VI:977-979

27 <sup>15</sup> See Appendix V:478-483

28 <sup>16</sup> See Appendix II:288.

<sup>17</sup> See Appendix I:110.

<sup>18</sup> See Appendix II:298:9-12 and Appendix III:350-375

<sup>19</sup> See Appendix II:309-321

1 the FHT.<sup>20</sup> The DC did note there were insufficient facts to assume jurisdiction  
2 over Stephen K. Lehnardt as the trust protector until a more definite statement had  
3 been made.<sup>21</sup> After asserting jurisdiction under the theory of constructive trust, the  
4 DC later admittedly “assumed” that Christopher had been acting in Nevada  
5 although no facts were presented or findings made for such an assumption.<sup>22</sup>  
6  
7

8 On September 2, 2015, the DC suddenly announced that Christopher could  
9 be sued in Nevada, and when clarification was sought concerning this statement,  
10 the DC clarified that to the extent that Christopher performed acts as an  
11 investment trust advisor, the District court had jurisdiction.<sup>23</sup> However, the DC  
12 never identified any acts that were performed by Christopher.  
13  
14

15 Caroline’s counsel then sent an *ex parte* letter to the DC requesting certain  
16 additions be added to the pending June 24, 2015 order – mainly to include the  
17 release of documents from Christopher in other roles in which Christopher was  
18 alleged to have served. However, the DC did not have jurisdiction over him in  
19 any of these alleged capacities.<sup>24</sup> After becoming aware of this *ex parte* letter,  
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23  
24 <sup>20</sup> See Appendix III:391: 3-25, 392:1-4, see also Appendix III:407:17-31

25 <sup>21</sup> See Appendix III:425:4-11.

26 <sup>22</sup> See Appendix IX:1440: 23-25, 1441:1 where the DC indicates, “... he’s been  
27 acting here, I have to assume because stuff has been going on, apparently giving  
instruction to Dunham and I just think that means he’s consented to the  
jurisdiction of this Court.”

28 <sup>23</sup> See Appendix III:425:18-24, 426:5-25, and 427:1-3.

<sup>24</sup> See Appendix VII:1063-1069.

1 Christopher's counsel requested the opportunity to address the new issues raised  
2 in Caroline's counsel's *ex parte* letter.<sup>25</sup>  
3

4 Despite this request, the DC adopted Caroline's requested changes and  
5 purportedly expanded its order for production from Christopher as manager of  
6 FHT Holdings, LLC via hand-written interlineations on the June 24, 2015 order<sup>26</sup>  
7 thereby expanding its original jurisdictional assertions during the prior oral  
8 hearing.<sup>27</sup> The DC's interlineated order was particularly egregious in light of its  
9 later admission that FHT Holdings, LLC was not a party.<sup>28</sup>  
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14  
15 <sup>25</sup> See Appendix VII:1073-1074

16 <sup>26</sup> See Appendix III:435-439

17 <sup>27</sup> See Appendix III:430:23-25 and 431:1-4

18 <sup>28</sup> Appendix IX:

19 -Page 1470, lines 9-14, 21-23

20 Mr. Barney: "...He [Chris] didn't get served with a summons. So, the  
21 question then becomes, because he didn't get served under Rule – service of  
22 process, how could there be in personam jurisdiction over Christopher  
23 Davis and then subject him tomorrow to inquiry into that role?"

24 ---

25 Court: "Well **FHIT [sic] is not a party.** FHT is a Nevada Corporation..."

26 -Page 1472, lines 12-25

27 Mr. Barney: "If they want to get hat [sic] information, then they need to  
28 serve him personally under Rule 4 if they want to get it as an officer of  
manager of the company. This –"

Court: "**Because it's not a party.**"

Mr. Barney: "Yeah, This Court is assuming that it has jurisdiction over the  
FHT Holdings and even if the Court goes in that direction, my question still

1 No findings of personal service or any other findings pursuant to NRS  
2 14.065 have been made regarding Christopher in any of his alleged roles.<sup>29</sup>  
3

4 The DC continues to issue *in personam* orders and will likely shortly issue  
5 orders on October 28, 2015 compelling discovery and discovery sanctions where  
6 proper jurisdiction is absent. Accordingly, Christopher filed an appeal on August  
7 4, 2015 pursuant to NRS 155.190(h). However, such an appeal does not stay the  
8 proceedings if he is deemed a trustee for purposes of NRS 164.010.  
9  
10

11 Prior to the issuance of the DC's June 24, 2015 order, Caroline issued  
12 defective electronic subpoenas dated June 8, 2015.<sup>30</sup> These subpoenas requested  
13 documents from Christopher's attorneys who have a duty of confidentiality to  
14 their client.<sup>31</sup> Additionally, Caroline sent notice of Christopher's deposition  
15 without any restrictions.  
16  
17  
18

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19  
20 goes to the fact that this is improper in that they're seeking to get  
21 documents –“

22 Court: “I’m late for a meeting. So, that would be my ruling is that if – my  
23 jurisdiction over Christopher Davis, I indicated, was only in his capacity as  
24 the investment advisor...”

25 <sup>29</sup> Christopher respectfully requests that the Appellate Court take judicial notice  
26 pursuant to NRS 47.130 that a summons and/or citation has been issued or served.

27 <sup>30</sup> See Subpoena Duces Tecum issued June 8, 2015 on Wiznet. The subpoenas  
28 were defective because they sought production on May 18, 2015, (prior to the  
issuance of the subpoenas) and were electronically served in contravention of  
Nevada Electronic Filing and Conversion Rules (“NEFCR”) 9.

<sup>31</sup> Id.

1                                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2  
3  
4       CHRISTOPHER D. DAVIS,

5                                   Appellant,

6       v.

7       CAROLINE DAVIS,

8                                   Respondent.  
9

Case No.: 68542  
Electronically Filed  
Oct 08 2015 09:05 a.m.  
Tracie K. Lindeman  
Eighth Judicial District Court  
Clerk of Supreme Court  
Case No.: P-15-083867-T (In re  
the Beatrice B. Davis Family  
Heritage Trust, dated July 28,  
2000)

10  
11                                   **EXHIBITS TO**  
12                                   **EMERGENCY MOTION UNDER NRAP 27(e)**  
13                                   **FOR 1) STAY PENDING APPEAL AND 2) AFFIRMATIVE RELIEF**

14                                   **TABLE OF CONTENTS**

<b><u>Exhibit</u></b>	<b><u>Title of Document</u></b>	<b><u>Bates Numbers</u></b>
1	Emergency Writ Under NRAP 27(e) Petition for Writ of Prohibition and/or Mandamus Action Necessary On or Before October 23, 2015	1-40
2	Email dated October 5, 2015 from Anthony L. Barney, Esq.	41-43
3	Email dated October 5, 2015 from Dana Dwiggins, Esq.	44-45
4	September 2, 2015 Transcript	46-131
5	Christopher D. Davis' Motion for Protective Order and to Quash or Modify the Subpoena	132-168
6	Notice of Petition and Petition to Stay Discovery Until the August 19, 2015 Hearing on the Motion for Reconsideration, or in the Alternative, Petition for Protective Order from Discovery by Subpoena	169-202
7	September 30, 2015 Court Minutes	203-204
8	Notice of Entry of Order, filed with Order	205-210
9	Subpoenas Duces Tecum dated June 25, 2015	211-234
10	September 16, 2015 Court Minutes	235-237
11	Petition to Assume Jurisdiction Over the Beatrice B.	238-518

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	Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014; to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution Trust Advisor; to Confirm Dunham Trust Company as Directed Trustee; and for Immediate Disclosure of Documents and Information from Christopher D. Davis	
12	Second Amended Notice of Hearing on Petition to Assume Jurisdiction Over the Beatrice B. Davis Family Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014; to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution Trust Advisor; to Confirm Dunham Trust Company as Directed Trustee; and for Immediate Disclosure of Documents and Information from Christopher D. Davis	519-523
13	Declaration of Christopher Davis	524-526
14	Christopher D. Davis' Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19	527-552
15	Christopher D. Davis' Reply to Caroline Davis' Opposition to His Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19	553-578
16	Opposition to Christopher D. Davis' Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19	579-591
17	Transcript of Proceedings – Wednesday, April 22, 2015	592-650

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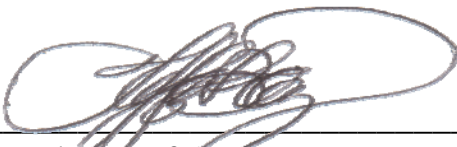
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