



# EXHIBIT 17

DISTRICT COURT  
CLARK COUNTY, NEVADA

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IN THE MATTER OF THE TRUST OF: ) CASE NO. P-15-082867  
 )  
 THE BEATRICE DAVIS HERITAGE ) DEPT. NO. XXVI  
 TRUST. )  
 ) **Transcript of Proceedings**

BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

MOTION TO DISMISS: MOTION ON CHRISTOPHER DAVIS' MOTION TO DISMISS PURSUANT TO NRCP 12(B) AND NRCP 19; PETITION TO ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY TRUST, ASSUME JURISDICTION OVER CHRISTOPHER DAVID 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

WEDNESDAY, APRIL 22, 2015

APPEARANCES :

For Caroline Davis: MARK ALAN SOLOMON, ESQ.  
JOSHUA M. HOOD, ESQ.

For Christopher Davis: ANTHONY L. BARNEY, ESQ.

For Stephen Lehnardt: JONATHAN W. BARLOW, ESQ.

For Dunham Trust Company: CHARLENE N. RENWICK, ESQ.

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

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produced by transcription service.

1 WEDNESDAY, APRIL 22, 2015 AT 10:09 A.M.

2

3 THE COURT: Okay. Will everybody state  
4 appearances and we're ready to go?

5 MR. BARLOW: Jonathan Barlow for Stephen Lehnardt,  
6 the Trust Protector.

7 THE COURT: Okay.

8 MS. RENWICK: Charlene Renwick on behalf of  
9 Dunham Trust Company.

10 MR. BARNEY: Anthony Barney on behalf of  
11 Christopher Davis.

12 THE COURT: All right.

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

15 THE COURT: Okay. So, this is, again, my day to  
16 deal with these family issues. So, anyway, let's discuss.  
17 This is -- Mr. Solomon, your Petition to Assume  
18 Jurisdiction over the Trust. I didn't really see that that  
19 issue, the assuming that jurisdiction over the trust, was  
20 really opposed. So to that specific relief requested, is  
21 anybody really opposing that?

22 MR. BARNEY: Yes. I filed a Motion to Dismiss --

23 THE COURT: Okay.

24 MR. BARNEY: -- his Petition in that regard.

25 THE COURT: Okay. All right. But I thought that

1 was -- just to dismiss the petition or just to dismiss your  
2 client or to dismiss the petition?

3 MR. BARNEY: Dismiss the --

4 THE COURT: Okay. It was Mr. Barlow who was just  
5 looking -- who did his Joinder the right way. Nobody ever  
6 does Joinders the right way. He --

7 MR. BARLOW: Well, thank you.

8 THE COURT: He made it really clear: I'm only  
9 joining -- people always just file joinders and I'm like:  
10 What are you joining? He made it real clear what he's  
11 joining. He is joining only to the extent that --

12 MR. BARLOW: Right. We turned in Mr. Barney's  
13 arguments --

14 THE COURT: Right.

15 MR. BARLOW: -- related to the jurisdiction and --

16 THE COURT: Jurisdiction only.

17 MR. BARLOW: -- the -- limited to the --

18 THE COURT: Okay.

19 MR. BARLOW: -- joinder parties. There was a  
20 concern that we had that we didn't join and subsequent  
21 conversations after review of the Reply that we may have  
22 changed our position on that.

23 THE COURT: Okay.

24 MR. BARLOW: So, essentially, we're all  
25 essentially in full joinder with the --



1 THE COURT: Okay. So you're --  
2 MR. BARLOW: -- Motion now after reviewing --  
3 THE COURT: All right. So then --  
4 MR. BARLOW: -- the Reply.  
5 THE COURT: -- what's your client's position on --  
6 any other --  
7 MR. SOLOMON: Yeah, we did file a Reply, Your  
8 Honor.  
9 THE COURT: Okay.  
10 MR. SOLOMON: You mean to Mr. Barlow?  
11 THE COURT: Yeah. Okay.  
12 MR. SOLOMON: Yeah, our position is that we  
13 properly, under our statute, asked the Court to confirm him  
14 as Trust Protector and Distribution Advisor because that's  
15 what our law requires.  
16 THE COURT: Okay. So, --  
17 MR. SOLOMON: How do you want to tackle this, Your  
18 Honor?  
19 THE COURT: I think -- that's why -- I think,  
20 first of all, can we just make it clear who is on first?  
21 So, --  
22 MR. SOLOMON: It's my petition but they never  
23 really responded to my petition --  
24 THE COURT: Right. So, --  
25 MR. SOLOMON: -- substantively.

1 THE COURT: -- the interests --

2 MR. SOLOMON: What they did was just took this

3 jurisdictional --

4 THE COURT: Right.

5 MR. SOLOMON: -- Motion to Dismiss --

6 THE COURT: That was why I was wondering because -

7 -

8 MR. SOLOMON: -- which I don't -- I opposed

9 specifically --

10 THE COURT: I know. It seemed like nobody was

11 really -- it didn't -- it had gotten to this jurisdictional

12 issue, we didn't really get to the issue of, you know, does

13 this Court have -- can this Court, you know, assume

14 jurisdiction?

15 MR. BARNEY: And, Your Honor, therein lies the

16 Motion to Dismiss. If the Motion to Dismiss is determined

17 on its merits, --

18 THE COURT: So --

19 MR. BARNEY: -- this Court does not have

20 jurisdiction to --

21 THE COURT: -- I guess that's my question is --

22 MR. SOLOMON: We only accept jurisdiction to

23 determine jurisdiction, obviously. So, --

24 THE COURT: Right.

25 MR. SOLOMON: -- that's where I think we are, Your

1 Honor.

2 THE COURT: So, yeah. And -- okay. So I guess  
3 that's the question then is: Does it make more sense to  
4 start with the Petition to Dismiss --

5 MR. SOLOMON: I think so, yes.

6 THE COURT: -- and make the decision with respect  
7 to jurisdiction --

8 MR. SOLOMON: And I can cover both in my response  
9 --

10 THE COURT: Okay.

11 MR. SOLOMON: -- because --

12 THE COURT: Perfect.

13 MR. SOLOMON: -- they're relevant.

14 THE COURT: Then excellent. And I don't know, Mr.  
15 Barney, who is arguing -- okay. Good. Thanks.

16 MR. BARNEY: Thank you, Your Honor.

17 Your Honor, as you are aware, the issue of  
18 jurisdiction arises or fails under the issue of whether or  
19 not there is a valid amendment to the trust. The terms of  
20 the trust specifically indicate that in order to create an  
21 amendment there must be a change in situs that is  
22 effectively ratified as a condition precedent to any  
23 amendment amending the trust to the laws of the state of  
24 Nevada.

25 Under the terms of the trust, the change in situs

1 is required only after the consent of all of the  
2 beneficiaries. The then acting Protector and the consent  
3 of the Trustee after it has received its counsel during the  
4 life of the testator a written opinion and thereafter an  
5 opinion by counsel that a change in situs is proper.

6 In this case, in order for there to be a first  
7 amendment, to even give the Court jurisdiction on the basis  
8 upon which to take jurisdiction under 164.010, there had to  
9 be a proper change in situs and there didn't occur a proper  
10 of situs in this case. There are certain beneficiaries of  
11 this trust. We have Christopher Davis, we have Caroline  
12 Davis, we have their son, and we also have Taria [phonetic]  
13 Davis. Okay. The amendment would have required all of  
14 their consents to --

15 THE COURT: But it said it was unanimous.

16 MR. BARNEY: It was unanimous.

17 THE COURT: Oh.

18 MR. BARNEY: And the trust, Your Honor, doesn't  
19 require unanimous consent, it requires all beneficiaries.  
20 That's the pertinent part of the trust and that's set forth  
21 under Article 14. All beneficiaries must consent to this.

22 As far as we know --

23 MR. SOLOMON: Who didn't consent?

24 MR. BARNEY: Taria [phonetic].

25 MR. SOLOMON: Who is that?

1           MR. BARNEY: Taria [phonetic] is the wife of  
2 Christopher Davis.

3           THE COURT: Okay.

4           MR. SOLOMON: Not at the time of this.

5           THE COURT: Okay. All right.

6           MR. BARNEY: Yes. And, in fact, it's clear that  
7 they understood she was a beneficiary because in their  
8 Opposition to our Motion to Dismiss, they actually notice -  
9 - they took to notice her, okay, but they hadn't previously  
10 done so. Okay. It's clear that she did not consent to  
11 this.

12           There also wasn't an acting Alaska Trustee at that  
13 point to consent to the transfer. Mr. Solomon presented  
14 evidence that was very clear that on December 5<sup>th</sup> that  
15 Alaska Trust USA tendered their resignation and was no  
16 longer the Trustee at that point. Then, allegedly, in  
17 February, the first amendment was produced wherein the  
18 change in situs occurred, allegedly, and a new Trustee was  
19 appointed in that same document.

20           Now, Your Honor, that begs the question: How  
21 could a Nevada Trustee based in Nevada who could only  
22 operate within that situs be the Trustee that referred to  
23 in the trust but had to receive counsel before they made  
24 the change in situs that would also make the amendment  
25 operative as a condition precedent and then go ahead and

1 sign on an amendment where they were only appointed in that  
2 same amendment? It's impossibly, Your Honor.

3           Clearly, the trust envisioned that it was the  
4 Alaska Trustee that would obtain advice and understanding  
5 from counsel before they agreed to transfer the situs.  
6 Dunham Trust couldn't even agree to have it transferred and  
7 administered under a situs other than Nevada because  
8 they're only licensed in Nevada to administer this trust  
9 and clearly it wasn't them.

10           So we know in this matter that neither the Trustee  
11 nor the beneficiary under the trust consented. So we  
12 didn't have all of the beneficiaries as required. We  
13 didn't have the Trustee, therefore no condition precedent  
14 of the situs actually being changed and thereby allowing  
15 any amendment to the trust. And that was originally what I  
16 raised in the first -- in my first pleading in the Motion  
17 to Dismiss. I expanded upon that in our Reply where I set  
18 forth the very parameters of what the Court needed in order  
19 to justify jurisdiction.

20           In effect, Your Honor, what we have is the -- it's  
21 the first time I've seen it in my career where someone is  
22 actually asking for information obviously in the context of  
23 an accounting not from the Trustee, Your Honor, but from  
24 the beneficiaries, the purported beneficiaries, of that  
25 distribution. Therein lies the concern. We've got several

1 entities that have been named as supposedly distributees of  
2 this money under the tenure of the Alaska Trustee to the  
3 tune of \$2.2 million at a time when Christopher Davis was  
4 not a fiduciary in any capacity. And yet, now under this  
5 purported amendment that's clearly defective, for the  
6 amount of \$25,000 apparently that Dunham Trust received  
7 most likely for their administration costs, that there is a  
8 backend run to try to use this \$25,000 out of the \$2.2  
9 million to obtain jurisdiction to find documents that are  
10 in the possession of the prior Trustee who would have had  
11 to account for that under Alaska law and yet the recipients  
12 of that money are the ones that are being asked, under our  
13 statute, to account -- under a trustee statute, under  
14 164.015.

15           And therein lies the indispensable party dilemma  
16 that we have. We've got a situation now where, A, the  
17 whole basis of their jurisdiction is based upon a faulty  
18 amendment that never should have occurred and to which Mr.  
19 Lehnardt, it's my understanding, has agreed is a faulty  
20 amendment based upon the fact that all of the parties were  
21 not brought to the table and the Trustee did not properly  
22 consent.

23           And then we have the issue, Your Honor, that is  
24 also concerning in that under NRCP 19(b), we're asking that  
25 the case be dismissed because the parties that are asked to

1 provide the documents apparently are all indispensable  
2 parties or not indispensable parties, according to  
3 Caroline, but apparently are indispensable for purposes of  
4 providing the documents that they need. None of the  
5 service in this matter was provided properly under 164.010.

6 And, in fact, let's look at the recipients that  
7 they want to receive the funds from or get an accounting of  
8 those funds. They want to get it from a distributee, the  
9 Davis Family Office, which is a Missouri Corporation.

10 Now, Your Honor, I don't see anything on the  
11 service record that would indicate that that Davis Family  
12 Office partnership was properly served. There's no Rule 4  
13 service. I don't see anything that indicates that any of  
14 the companies that are considered persons under our law  
15 were properly served under Rule 4. They're using the  
16 relaxed standard of 155.010, essentially, to serve everyone  
17 and then those people that they want documents from that  
18 they think essentially they can dispense with, they don't  
19 notice it even at all.

20 And, so, we have a real dilemma here. One of the  
21 important things about the 164.010 jurisdiction is that it  
22 was given to courts essentially to reach out and to take  
23 jurisdiction over property, not persons. Even in the fact  
24 of trust proceedings, if we want to go against a Trustee,  
25 we've got to serve personal service and get a citation on



1 the Trustee because this Court has limited jurisdiction,  
2 and rightly so under the relaxed standards that are set  
3 forth under 155.010, which is simply a mailing. There's no  
4 clear understanding of whether or not any of these  
5 individuals would even receive it under the relaxed  
6 standard, but, in this case, we know that they didn't  
7 receive it at all because they weren't even noticed up.  
8 And the ones that were noticed up, in hindsight, when they  
9 realized, oops we forgot, we didn't get that other  
10 beneficiary's consent and therefore we have the invalidity  
11 now of the first amendment, we're going to try to serve her  
12 under 155.010 and send her notice through the mail at --  
13 not upon the original motion but upon their Opposition to  
14 the Motion to Dismiss.

15           And, therefore, Your Honor, I would respectfully  
16 request that this matter be dismissed entirely for lack of  
17 jurisdiction.

18           THE COURT: Okay. I'm still trying to understand  
19 where they have an error in this amendment.

20           MR. BARNEY: Okay.

21           THE COURT: I'm looking at Article 11.

22           MR. BARLOW: It's Article 14, Section 6 is where  
23 the change of situs provision.

24           THE COURT: Okay.

25           MR. BARNEY: It's on page 14-7.

1           THE COURT: So the issue is not changing the  
2 Trustee? That's not what you're arguing about?

3           MR. BARNEY: The --

4           THE COURT: Your argument changing the situs?

5           MR. BARNEY: The change in Trustee could  
6 potentially be --

7           THE COURT: Because that doesn't require it --

8           MR. BARNEY: No. That could be potentially  
9 changed by Mr. Lehnardt but it -- but the fact is it could  
10 not be changed under an amendment unless the change in  
11 situs had occurred in that regard.

12           So, his ability to appoint a Trustee in Nevada to  
13 work over an Alaska trust where they're not licensed to do  
14 so would obviously most likely be invalidated even under  
15 that theory of whether or not he could appoint a Trustee.  
16 Apparently, they're appointing a Nevada Trustee based upon  
17 a defection -- or a defective change in situs which was --  
18 never occurred.

19           THE COURT: Yeah.

20           MR. BARNEY: And they did it --

21           THE COURT: So --

22           MR. BARNEY: -- in the same amendment.

23           THE COURT: So: Except as expressly provided in  
24 here in the situs of this agreement or any sub trust  
25 established hereunder, may be changed by the unanimous

1 consent of all of the beneficiaries then eligible to  
2 receive mandatory or discretionary distributions.

3 MR. BARNEY: Okay.

4 THE COURT: So isn't that just the children?

5 MR. BARNEY: What's that?

6 THE COURT: That's the children and who else?

7 MR. BARNEY: Well the --

8 THE COURT: In other words, Christopher -- the two  
9 -- who -- to the children. Who else is entitled to  
10 mandatory or discretionary --

11 MR. BARLOW: No. So the children are the  
12 mandatory dis --

13 THE COURT: Right.

14 MR. BARLOW: Beneficiaries.

15 THE COURT: Right.

16 MR. BARLOW: But the trust also provides that  
17 their spouses and their decedents are discretionary  
18 beneficiaries of the --

19 THE COURT: Okay.

20 MR. BARLOW: -- trust. So that would be the  
21 discretionary -- the spouses and decedents.

22 THE COURT: Okay. So --

23 MR. BARLOW: Those -- that would be encompassed in  
24 the all.

25 THE COURT: Okay.

1 MR. BARLOW: And --

2 THE COURT: Okay.

3 MR. BARLOW: If I just -- really briefly. I'd  
4 just add also on that point then -- so the position of the  
5 Protector who took this and, of course, he's very hesitant  
6 to come and say, yeah it looks like I made a mistake, but  
7 upon review, it does look like we're missing some of the  
8 beneficiaries.

9 And then the second clause of that sentence that  
10 you just started says with all the -- consent of all the  
11 beneficiaries, then, comma, and then it also says:

12 With the consent of the then acting Protector --  
13 obviously, he consented, and the Trustee that are involved.  
14 We had an absence of Trustee actually at that point because  
15 the previous Trustee had resigned about three months  
16 earlier.

17 THE COURT: Okay.

18 MR. BARLOW: So technically what should have  
19 happened, it appears now in retrospect, is a new Alaska-  
20 based Trustee should have been appointed in the interim for  
21 the purpose of consenting to the change of situs to Nevada  
22 so that that Trustee could get the advice of counsel that  
23 was called for in that paragraph to make sure that there  
24 were no adverse consequences. So that appears to be the  
25 step that was missing and Mr. Lehnardt's going to have to

1 go back to the drawing board to determine whether he needs  
2 to go now go appoint an Alaska Trustee and whether it's  
3 then advisable to then move it down here to Nevada if all  
4 beneficiaries consent to do so.

5 THE COURT: Okay.

6 MR. BARLOW: So that's position on that.

7 THE COURT: Great.

8 MR. SOLOMON: Your Honor, I'd like to spell the  
9 word sandbag because this is the first time I've heard the  
10 issue that's been raised. It's not in their brief, despite  
11 what Mr. Barney just said. They've never taken the  
12 position that Taria [phonetic] was a beneficiary. We  
13 understood she was divorced and first time I've ever heard  
14 it.

15 THE COURT: And she was the wife of --

16 MR. SOLOMON: Supposedly.

17 THE COURT: -- the grandson?

18 MR. BARNEY: No. She was the wife of Chris Davis.

19 THE COURT: But she's not the one with the life  
20 insurance policy?

21 MR. BARNEY: No.

22 MR. BARLOW: No.

23 MR. BARNEY: She is the wife of Chris Davis and  
24 was during this period.

25 MR. SOLOMON: Where is the evidence of that, Your

1 Honor? There is none. They didn't file an affidavit.  
2 They didn't file -- they didn't even raise this issue in  
3 any of their pleadings. Total sandbag to wait until you  
4 get here and say: Hold on. We all made a mistake that  
5 we've been acting on for over a year.

6 I guess their whole theory now is that since she  
7 didn't consent to this amendment and jurisdiction here that  
8 the whole first amendment is invalid. Chris is --  
9 Christopher is not the --

10 MR. HOOD: Trust Advisor.

11 MR. SOLOMON: Trust Advisor, no --

12 MR. HOOD: Investment Advisor.

13 MR. SOLOMON: Investment Advisor. He's been  
14 wrongfully investing and holding and making all of the  
15 decisions for this trust for the last year.

16 THE COURT: There's apparently no Trustee.

17 MR. SOLOMON: This -- apparently there's no  
18 Trustee. Dunham has been administering this for the last  
19 year without -- it's all a big mistake because Taria  
20 [phonetic] didn't join in this thing, there's not even a  
21 line for her signature in the agreement. Mr. Lehnardt  
22 prepared it, contrary to counsel's statement, he did have  
23 an opinion of counsel in Missouri, Mr. Bresolan [phonetic],  
24 say that it was valid and parties went off and proceeded on  
25 that basis. That is a -- as I said, a complete sandbag

1 without any support from the record other than counsel  
2 standing up here and making this argument at this late date  
3 without any ability to check the facts or determine what  
4 the heck happened here.

5 THE COURT: Yeah, because the change in situs it's  
6 done by Christopher Davis, Caroline Davis, and the copy I  
7 have -- I don't see the signature of Winfield [phonetic]  
8 but --

9 MR. SOLOMON: It is there. There's a signature  
10 page in there that --

11 THE COURT: Was there a signature page because I  
12 didn't it?

13 MR. SOLOMON: I think it's the last page.

14 MR. HOOD: it's one more page over.

15 MR. SOLOMON: One more page over. It just sort of  
16 does a little w. That's the way he signs on everything.  
17 Actually there are two agreements. I can point to both  
18 exhibits that are signed the same way that accomplish the  
19 same thing.

20 Let me put this in context though. We had a  
21 petition to assume jurisdiction over this trust to confirm  
22 Dunham as the Directed Trustee, to confirm Christopher  
23 individually and as manager of FHT Holdings, LLC, as the  
24 Investment Trust Advisor, which I guess they're going to  
25 contend that's not valid either because we'll hear that was

1 created in this last year, we also wanted to confirm  
2 Stephen Lehnardt as the Distribution Trustee -- I'm sorry.  
3 Distribution Trust Advisor and the Trust Protector. And we  
4 wanted an order for immediate disclosure of the books,  
5 records, and information from Chris -- Christopher  
6 regarding over \$2,000,000 of loans that were taken against  
7 a \$35,000,000 policy that's owned by the trust and  
8 apparently now signed by Dunham, who they're claiming isn't  
9 the Trustee, to a wholly owned LLC called FHT Holdings  
10 which is managed by Chris.

11           These funds were paid out or leant to Christopher  
12 individually, to Christopher as the Trustee of the Beatrice  
13 B. Davis Family Revocable Trust, which is another trust in  
14 Missouri, Your Honor, which my client is a 50 percent  
15 beneficiary and a co-Trustee of but can't get any  
16 information from her brother, calling for an outright  
17 distribution. And we have now filed a proceeding in  
18 Missouri with respect to that one because he won't give us  
19 any information with respect to that trust or why  
20 distributions haven't been sent to us because mom died over  
21 three years ago. And then, finally, monies were leant to  
22 Chris again as manager of the Davis Family Office, LLC.  
23 They won't give us information with respect to that entity.

24           The Family Heritage Trust's main asset is this  
25 Ashley Cooper [phonetic] life insurance policy for



1 \$35,000,000 according to notice that it was on the life of  
2 Cheryl Davis [phonetic], a former wife of Chris's and  
3 there's a \$4,000,000 line of credit on it.

4 Article 8, Section 1 of this Trust says: Upon  
5 these death, the trust is to split into two equal shares,  
6 one for Caroline and one for Chris and his issue and his  
7 spouse. So that's interesting all by itself. That was  
8 supposed to have already happened. I don't know if that's  
9 happened or not because we can't get information as to  
10 whether that trust is even split into two separate shares  
11 and Christopher, his wife, if he had one, and wouldn't even  
12 be beneficiaries of our share.

13 Now, under Section 8 -- Article 8, Section 4,  
14 Caroline is entitled to distributions of income and  
15 principal in the discretion of the Trustee but has never  
16 received a dime and this is extremely significant, Your  
17 Honor. Article 12, Section 4 says:

18 The trust's books and records along with all trust  
19 documentation shall be available and open at all  
20 reasonable times to the inspection of the trust  
21 beneficiaries and their representatives.

22 Despite the fact that those books and records are  
23 supposed to be open to beneficiaries, including one who is  
24 the -- currently the sole beneficiary of her share, we  
25 spent over three months the last quarter of 2012 trying to

1 get information and documents from Christopher and his  
2 counsel, Harriet Rowland [phonetic], regarding who got the  
3 loan proceeds or the benefit of those, what was the purpose  
4 of those loans, how were those loan proceeds being used,  
5 what's the repayment terms of the loans, has any repayment  
6 been made, was there any collateral given, is there a  
7 collateral agreement, is there a promissory note, is there  
8 a loan agreement? We were virtually stonewalled. Just  
9 stonewalled. We're not getting anything with respect to  
10 this even though Caroline is entitled to half of this and  
11 half of everything to the entities that these were leant to  
12 with Chris's control.

13           Now the Alaska Trust Company was the original  
14 Trustee. Stephen Lehnardt was the original Trust  
15 Protector. On August 2<sup>nd</sup>, 2011, Mr. Lehnardt, in his  
16 capacity pursuant to the provisions of the trust, removed  
17 Alaska Trust Company and appointed Alaska USA Trust  
18 Company. And then two years later -- a little over two  
19 years later, on December 5<sup>th</sup>, 2013, Alaska USA Trust Company  
20 resigned and Mr. Lehnardt appointed Dunham Trust Company in  
21 Reno and I think he has the right to do that, period.

22           On February 24<sup>th</sup>, 2014, which is Exhibit 7 to the  
23 Motion to Dismiss, Alaska USA -- that may be a different  
24 document than Your Honor was looking at.

25           THE COURT: Okay.

1 MR. SOLOMON: Oh Exhibit 7 is a Motion to Dismiss.  
2 I'm sorry.

3 [Colloquy between Mr. Solomon and Mr. Hood]

4 MR. SOLOMON: It's Exhibit 5, Your Honor, I  
5 misspoke.

6 THE COURT: Okay.

7 MR. SOLOMON: And actually it's Exhibit 1 to the  
8 Motion -- Christopher D. Davis' Motion to Dismiss Exhibit  
9 1. It's called Release -- Resignation, Release,  
10 Acknowledgement, Consent, and Indemnification Agreement.

11 THE COURT: Right.

12 MR. SOLOMON: And the parties to that, contrary to  
13 what counsel said, include Alaska USA, which is the present  
14 Trustee, Dunham Trust, Mr. Lehnardt, Chris, Caroline,  
15 Winfield [phonetic], and they all executed this changing  
16 the situs -- [indiscernible] to change the situs of the  
17 trust from Alaska to Nevada, purports to be signed by all  
18 of the beneficiaries and it consented to Mr. Lehnardt  
19 amending the trust to change the situs, applicable law,  
20 provisions required by Dunham, and other amendments.

21 And then after this document was signed, then Mr.  
22 Lehnardt went out and got his advice of counsel, got a  
23 written opinion, and prepared the first amendment. And  
24 that was dated on February 24<sup>th</sup>, 2014 and that, again, was  
25 executed by Mr. Lehnardt, Dunham Trust, and specifically

1 proved by Chris, Caroline, and Winfield [phonetic] and  
2 that's the document that names Chris as the Investment  
3 Trust Advisor under NRS 163.5543, as a fiduciary under  
4 163.554, that names Mr. Lehnardt as the Distribution Trust  
5 Advisor under 164.5537, a fiduciary under 163.554, and then  
6 it -- so basically it's Chris individually or as manager of  
7 an LLC to be owned by the trust full power to manage  
8 investments and reinvestments of the trust and to direct  
9 Dunham with respect to the same.

10           And then, finally, on March 28<sup>th</sup>, 2014, Dunham,  
11 presumably at the direction of Chris, because that's what  
12 he was up -- empowered to do, created a -- the FHT Holdings  
13 Company, naming Chris as manager and thereafter assigning  
14 the policy to the LLC which Chris is now managing.

15           So, you know, we start off with the resumption of  
16 where we were that the first amendment to the trust is  
17 presumed valid and there was contrary to this new claim  
18 that there was another beneficiary out there that didn't  
19 sign, it was never challenged until this moment, other than  
20 to say likely that we have a burden to prove validity.  
21 That's all they said in their moving papers, Your Honor.  
22 We have the power -- we have the obligation to prove  
23 validity. They didn't specify one reason in that or in his  
24 Reply that -- did we see a Reply?

25           MR. HOOD: No. He just did a Joinder in

1 opposition to --

2 MR. SOLOMON: I don't think he --

3 MR. HOOD: -- our petition.

4 MR. SOLOMON: Counsel alluded to a Reply. I  
5 haven't seen a Reply.

6 THE COURT: I saw your Reply.

7 MR. SOLOMON: Yes. But I have not seen a Reply by  
8 Mr. Barney --

9 THE COURT: I have no Reply from Mr. Baney.

10 MR. SOLOMON: -- but he alluded in his argument  
11 that, you know, they specified the grounds for invalidity  
12 in this motion and then reinforced them in the Reply. They  
13 didn't. All they said is: We have the burden to prove the  
14 validity of the first amendment before we could move  
15 forward and our response was: Well, take a look at NRS  
16 47.250 subsection 18(c). There's a rebuttal for resumption  
17 that it's valid. And then we said: Nobody has suggested  
18 any particular grounds of invalidity.

19 And then I pointed out that Chris, who is the only  
20 person challenging it, expressly consented to it. Not  
21 once, but twice in two different documents you just looked  
22 at. So how can he raise it? I don't think he can even  
23 raise this issue he's now trying to raise with respect to  
24 some other party, especially when he consented to it and  
25 then he took repeated actions.

1 THE COURT: Well the only person who I'm going to  
2 have standing would be Taria [phonetic]?

3 MR. SOLOMON: I believe she would, assuming she is  
4 a beneficiary. I don't even know that, Your Honor. I was  
5 advised that he wasn't married at that time, at the time  
6 the thing was done. He may be married now, so I gave her  
7 notice now, but, at this time, I don't know that they were  
8 and none of their documents suggest that she was a  
9 beneficiary. I'm hearing it for the first time and that's  
10 why I stood up and said sandbag because that's what's  
11 happening here.

12 Now, I think the Court had jurisdiction at least  
13 over Dunham, irrespective of this issue, but based upon the  
14 record that you have now, anything in front of you, all of  
15 the beneficiaries can sign -- consented to it. This isn't  
16 evidence standing up here and saying this.

17 Nevada situs, our Court can clearly give Nevada  
18 jurisdiction over this. It's Nevada situs under the first  
19 amendment, Nevada law applies, you have a Nevada Trustee.  
20 That's sufficient all by itself under 164.010 because it's  
21 doing business here. We know books and records are kept  
22 here because contrary to counsel's argument, the first  
23 thing we did, Your Honor, is go to Dunham Trust to try to  
24 get this information. We're not stupid and they said: We  
25 don't have it. We have to get it from Chris. They

1 supplied us what they have. They gave us a few indications  
2 of what's going on, but they don't have the information.  
3 They do have books and records of the trust though,  
4 including they have possession of the policy and recently  
5 transferred, as I said, to FHT Holdings Company, a Nevada  
6 LLC.

7 164.010 is met. There's in personam jurisdiction  
8 over these people that are in front of you. 163.5555 says  
9 that Chris and Stephen Lehnardt submitted to this  
10 jurisdiction by accepting their appointments as Investment  
11 and Distribution Advisors. Again, FHT Holdings, LLC, is a  
12 Nevada entity doing business here. There's no question we  
13 have in personam jurisdiction.

14 And then this argument that Alaska Trust and  
15 Alaska USA are somehow necessary or indispensable parties,  
16 it's ridiculous. When is a former Trustee a necessary or  
17 indispensable party in any proceeding that you are not  
18 asking for any relief from them? And the answer -- are you  
19 telling me every time I have to do something that some  
20 event occurred even though they're not being asked to be  
21 held responsible for it, I have to name them because they  
22 have some input? Well of course not. It's ridiculous.

23 Caroline is not objecting in her petition to any  
24 act or admission of Alaska or Alaska USA. She seeks no  
25 relief against them. Chris, in one capacity or another,

1 received all of the money that we're talking about here.  
2 He has all of the information we seek about the use and the  
3 status of those loans to him. The former Trustees are not  
4 being placed in the position by our petition where they  
5 need to protect their interest and no one's being exposed  
6 to multiple liability or prejudice, except for us, if the  
7 Court doesn't take jurisdiction and require him to produce  
8 this information because Alaska Trustees are not subject to  
9 jurisdiction here and I don't think Alaska has jurisdiction  
10 over Chris. There's no reason to believe he does. This is  
11 the jurisdiction.

12 And [indiscernible] process our statute, 164,  
13 specifically tells you you serve it under 155.010 and we  
14 complied in that regard.

15 THE COURT: Now Mr. Barlow didn't address this  
16 separate issue, but his issue with respect to the petition  
17 was that it doesn't specifically state a claim against Mr.  
18 Lehnardt. It doesn't --

19 MR. SOLOMON: I'll over that, Your Honor.

20 THE COURT: -- allege -- okay. Mr. Barlow, you'll  
21 get a chance to --

22 MR. SOLOMON: As Your Honor knows, there wasn't an  
23 action until recently that we amended Chapter 164 in 1999  
24 [indiscernible]. Prior to that date, you used to file a  
25 petition to ask the Court to assume jurisdiction and you



1 weren't allowed to do anything more and all the Court could  
2 do at the initial point was to determine whether sufficient  
3 connections nexus to Nevada were sufficient to assume  
4 jurisdiction and confirm the Trustees. Then you had to  
5 file separate petitions for any type of relief.

6           So in 1999, we amended the statute and added  
7 subsection 2 that says that at the same time that you file  
8 the petition to assume jurisdiction under subsection 1, you  
9 may file additional petitions for relief. So the law  
10 hasn't changed. In order to get jurisdiction over a trust,  
11 you have to assume jurisdiction over the trust and confirm  
12 the Trustees or the fiduciaries. That's what we're doing.  
13 I think it may have been defective if we didn't try and  
14 confirm. That's all we're doing is confirming the Trustees  
15 or the Trust Protectors and the fiduciaries at this point.

16           One other additional petition request for relief  
17 which is to ask for an order that Chris, who is in  
18 possession of all of this information that belongs to the  
19 trust, produce it to the beneficiary to whom the trust says  
20 is entitled to it explicitly.

21           So, it is true that we're not seeking any  
22 additional relief against Stephen Lehnardt at this time but  
23 it's appropriate to confirm him in the role that's done.  
24 That gives the Court interim jurisdiction over this and if  
25 we can't get the information that we need from Chris for

1 any reason, we certainly intend to seek it from Mr.  
2 Lehnardt and if we have to use another petition to do that  
3 or discovery to do that, we will and that's appropriate to  
4 do and we don't have to re-file a petition to confirm him  
5 as Trust Protector, which is a step that we are  
6 accomplishing now.

7           We know that Mr. Lehnardt was intimately involved  
8 in these loan transactions and we put that in our Reply,  
9 Your Honor. There's designation after designation in his  
10 time sheet showing that he was involved in these  
11 transactions. So he is presumable a repository of some  
12 information. We just wanted to get it from the horse's  
13 mouth, the person who actually got the use -- apparent use  
14 and benefit of these proceeds first, which is Chris, and  
15 hopefully that will satisfy our inquiry. But if we have  
16 additional issues and have additional claims of Mr.  
17 Lehnardt, then we if are, based upon a Court order,  
18 confirming him as the fiduciary, we can proceed.

19           THE COURT: Okay.

20           MR. SOLOMON: So that's where I think we are, Your  
21 Honor.

22           There is nothing before this Court at this point  
23 that in any way, shape, or form shows the petition that we  
24 didn't [sic] file is not proper in every respect. They had  
25 the burden to come in here to show that anything was

1 invalid and they haven't done that. There's no evidence  
2 before this Court at this point and I -- you know, if this  
3 were, in fact, invalid, what if -- there would be a, you  
4 know, I haven't had a lot of time to ruminate about this  
5 because I'm just hearing it for the first time, but there  
6 would be a constructive trust here anyway. This has been  
7 operated -- this trust has been in Nevada for over a year  
8 and huge transactions, including the assignment of a  
9 \$35,000,000 policy all taken place. There's a whole slew  
10 of actions that have taken place by the very people who are  
11 now coming here and saying: Oh, well, it's all invalid.  
12 Without presenting any evidence whatsoever of why it's not  
13 true or is in fact true and I think our petition should be  
14 granted, Your Honor.

15 THE COURT: Okay. Thank you. Mr. Barlow.

16 MS. RENWICK: Your Honor, if I may?

17 THE COURT: Yes.

18 MS. RENWICK: Charlene Renwick on behalf of Dunham  
19 Trust.

20 THE COURT: Yes.

21 MS. RENWICK: I do have to agree with Mr. Solomon  
22 with respect to the issue, the invalidity of Dunham Trust  
23 being appointed as the successor Trustee. I don't believe  
24 that issue was clearly addressed in the moving papers, to  
25 which extent, I did not respond to it as I didn't

1 understand that was that argument that was going --

2 THE COURT: Okay.

3 MS. RENWICK: -- to be raised before the Court  
4 today.

5 To the extent that the Court is being asked to  
6 determine whether the assignment to Nevada was valid, I  
7 request that the hearing be continued and that a briefing  
8 schedule be provided to the parties so that we can properly  
9 address that --

10 THE COURT: Okay.

11 MS. RENWICK: -- address that issue.

12 THE COURT: Good point. Thank you. All right.  
13 Mr. Barlow.

14 MR. BARLOW: Your Honor, just briefly because I  
15 think our role in this is really [indiscernible] here, but,  
16 again, the issues about the validity of the first amendment  
17 were raised to us just yesterday for the first time and I  
18 went through the analysis of the trust and it appears that  
19 there are problems with the first amendment as far as the  
20 consents that were necessary to do that. That's where that  
21 came from.

22 Our concern, if the Court is tending toward taking  
23 jurisdiction of this in some manner, 164.010 only requires  
24 the Court to assume jurisdiction -- or excuse me, to  
25 confirm the appointment of the Trustee. If the Court wants

1 to confirm the appointment of Dunham Trust Company, then  
2 you have a Trustee that you confirmed the appointment of in  
3 this matter.

4           There -- in his capacity as the Trust Protector  
5 and Trust Advisor, he may be a fiduciary under the statute,  
6 not necessarily the Trustee in that situation. And Mr.  
7 Solomon himself just said, in response to the question, I  
8 don't need to bring in these two Alaskan Trustees because  
9 I'm not bringing any claims against the Alaska Trustees.  
10 Well why is he trying to bring Mr. Lehnardt into this as  
11 well if he's not bringing any claims -- admittedly not  
12 bringing any claims against Mr. Lehnardt?

13           THE COURT: Oh but he might be amending this if  
14 the issue is that Mr. Lehnardt screwed up moving it.

15           MR. BARLOW: Maybe. But that's the point. If he  
16 has a claim, bring the claim and bring us in.

17           Court Right.

18           MR. BARLOW: But he -- don't bring us in and make  
19 us sit here and wait --

20           THE COURT: Doesn't he have a point that when you  
21 move a trust, even if ineffectually you move a trust,  
22 Dunham takes it over, they start operating, they assumed  
23 they are responsible as a Trustee. There's all this  
24 activity that goes on. Doesn't this Court in this  
25 jurisdiction, doesn't that give me jurisdiction? I mean, I

1 -- you know, you're kind of somewhat changing your position  
2 on this, but originally it seemed -- it was my  
3 understanding that it was conceded that even though your  
4 client had come to this jurisdiction, you weren't -- didn't  
5 think that they necessarily needed to be in the case, but  
6 that the case was -- it was properly in this jurisdiction.

7 MR. BARLOW: If the first amendment is valid --

8 THE COURT: Okay.

9 MR. BARLOW: -- and were going to be treated as  
10 valid, then we're operating under 163, which sets out what  
11 happens in these [indiscernible] jurisdiction, things of  
12 that nature. It does say that a --

13 THE COURT: Well doesn't this Court have to assume  
14 it's valid absent some evidence? I don't know who Taraja  
15 [phonetic] is or however her name is pronounced.

16 MR. BARLOW: Taria [phonetic].

17 THE COURT: Taria [phonetic]? Okay.

18 MR. BARLOW: Right. And --

19 THE COURT: She's not mentioned anywhere.

20 MR. BARLOW: And, at this point, we --

21 THE COURT: Doesn't seem to be a big life  
22 insurance policy on her life. Who is she?

23 MR. BARLOW: By the representations of counsel,  
24 that's -- as Ms. Renwick just suggested, maybe there may be  
25 further briefing required to get that information in front

1 of the Court and sort that particular issue out.

2           If we're going to assume that's it valid and go  
3 back to the original argument we had originally made in our  
4 Opposition, when Mr. Lehnardt accepted the employment as  
5 Distribution Trust Advisor under NRS 163, yes that -- the  
6 statute does say he submits to the jurisdiction of Nevada.  
7 I've submitted to the jurisdiction of Nevada. Your Clerk  
8 has submitted to the jurisdiction of Nevada. It doesn't  
9 mean that we are -- that you have to observe that  
10 jurisdiction over them in this case just to make us sit  
11 around with no claims being brought against us.

12           THE COURT: Okay.

13           MR. BARLOW: And that's the point. Just because  
14 there is jurisdiction in Nevada, doesn't mean you should  
15 exercise it over Mr. Lehnardt where there are no current  
16 claims against him or they're not --

17           THE COURT: Because, I mean, it did --

18           MR. BARLOW: -- asking for any information from  
19 him.

20           THE COURT: -- occur to me that -- well, nothing  
21 is mentioned but just out of -- is that a grounds to  
22 dismiss it or does it just require more definite statement?

23           MR. BARLOW: I'm just saying in this situation  
24 that Mr. Lehnardt doesn't need to be a party to this case.

25           THE COURT: Okay.

1 MR. BARLOW: Okay. Until an order or something --

2 THE COURT: At this point?

3 MR. BARLOW: That's --

4 THE COURT: If I said -- if there is this issue  
5 that this was somehow missed, --

6 MR. BARLOW: Right.

7 THE COURT: -- that there's a central person --

8 MR. BARLOW: If there --

9 THE COURT: -- missed --

10 MR. BARLOW: -- are claims brought against him, if  
11 -- some other basis to bring something that would make him  
12 be necessary to this action, then revisit that when that  
13 arises, but as it stands right now, there's no point in  
14 making him just come here and hang out and --

15 THE COURT: Okay.

16 MR. BARLOW: -- sit around and wait to be -- to  
17 have a claim brought against him.

18 THE COURT: Understood. Okay. Mr. Barney.  
19 Interesting.

20 MR. BARNEY: Thank you, Your Honor.

21 You didn't really give me a chance to answer the  
22 question that you had asked previously about the trust and  
23 changing the trust situs. You began to read it. It says:

24 Expressly as under Article 14, Section 6, changing  
25 the trust situs, such as expressly provided herein, the



1 situs of this agreement or any sub trust established  
2 hereunder may be changed by the unanimous consent of  
3 all of the beneficiaries.

4 It didn't say the majority consent. It said the  
5 unanimous consent, okay, of all of the beneficiaries.

6 Then eligible to receive mandatory and  
7 discretionary distributions of net income.

8 Now, there have been allegations of sandbagging  
9 and yet my Motion to Dismiss hit on this very issue right  
10 out of the gate. I said: In order for this Court to take  
11 proper jurisdiction over this case, there was a condition  
12 precedent that had to have been met and it wasn't met. And  
13 therefore, the Trust Protector could not amend this  
14 instrument by written action to change the references to  
15 [indiscernible] references to such new situs or the law of  
16 such new situs and take such action as may be required to  
17 conform the terms of the agreement of this trust.

18 That's exactly what happened in this amendment.  
19 It was changed purportedly without the consent of  
20 Christopher Davis' wife who was a discretionary distributee  
21 and included as part of the all requirement.

22 Now, the person that drafted that amendment, the  
23 purported first amendment, has already indicated that it  
24 was defective. He stands here today and says: It was  
25 defective. Okay. He didn't get all of the necessary

1 requirements of all of the beneficiaries.

2 THE COURT: But your client acted on it.

3 MR. BARNEY: The --

4 THE COURT: Your client did things based on the  
5 assumption that he had this new role and this amendment.  
6 He accepted the role.

7 MR. BARNEY: And under what legal theory would --  
8 with him without independent counsel would he be able to  
9 effectuate a document that by the terms of the trust  
10 couldn't be effectuated? He clearly isn't res judicata  
11 because there was no prior proceeding. Okay. And our  
12 courts have been very clear about the res judicata  
13 requirements.

14 Under this situation, Chris was clearly under a  
15 mistake that this could have been done and it wasn't -- the  
16 irony of this whole situation is for an argument of res  
17 judicata even to have grounds, they would have had to  
18 follow the statute in Alaska that was succinctly set forth  
19 in my moving papers. They could have gone to the Court.  
20 They could have ratified the amendment in Alaska. They  
21 didn't. And, in fact, when it became defective, what Mr.  
22 Solomon offered was a document dated February 2014, after  
23 his admitted document that he put in before where the  
24 Trustee resigned on December 5<sup>th</sup>. Okay?

25 So on December 5<sup>th</sup>, 2013, Mr. Solomon alleges in

1 his moving papers, in his petition, and also in his  
2 documentary evidence that he provided to the Court that  
3 this Trustee had in fact resigned two months earlier. And  
4 so, what I did in my Motion to Dismiss, was I put the Court  
5 on notice of that very fact. Not to hide the document, but  
6 to actually put the Court on notice that this document was  
7 invalid. It couldn't have been signed by a Trustee who had  
8 already advocated and had no authority to sign on that  
9 amendment.

10 And with that, --

11 THE COURT: But Mr. Solomon's constructive trust  
12 point is that if that has to be litigated, whether this was  
13 a valid amendment or not, doesn't the Court still have to  
14 take jurisdiction so that we can litigate that? Because  
15 your clients acted on it. They've moved -- they turned  
16 this over to Dunham. They're acting as the Trustee.  
17 There's all this activity taking place based on the  
18 assumption that it was valid. You client's now coming in  
19 and saying all that activity I took was based on a void  
20 document. So everything I have done is wrong. Mr.  
21 Lehnardt screwed up because he did this wrong.

22 MR. BARNEY: Your Honor, I'm --

23 THE COURT: Everything we've done is wrong. We  
24 shouldn't have taken any of the action that we took. It's  
25 all wrong, but you can't sue us for it because it's all

1 wrong.

2 MR. BARNEY: Your Honor, on numerous occasions --

3 THE COURT: It doesn't make any sense.

4 MR. BARNEY: On numerous occasions we've had the  
5 Court look at situations that were admittedly all wrong and  
6 we've had to go back and we've had to fix it. And, in this  
7 case, it needs to go back to Alaska so that they can fix  
8 it.

9 I've got no objection. If the Alaska Trustee  
10 that's appointed with power and authority that hasn't  
11 already resigned wants to change the situs and they have an  
12 opinion from their counsel, you know, in Alaska that moving  
13 it down to Nevada is a great idea and that we get all of  
14 the signatures on that paper that are requisite under the  
15 terms of the trust, I've got no objection to this Court in  
16 a situation like that taking jurisdiction but that didn't  
17 occur in this situation and the idea that --

18 THE COURT: But we've already got a Nevada --

19 MR. BARNEY: -- things have happened --

20 THE COURT: -- Trustee acting as Nevada Trustee on  
21 the assumption they were acting under a valid amendment and  
22 change of situs. They're acting on that. They're taking  
23 instruction apparently from your client.

24 MR. BARNEY: Your Honor, they were an independent  
25 professional fiduciary that has the right to counsel before

1 they sign any document. I'm not going to propose that --

2 THE COURT: Right, but --

3 MR. BARNEY: -- my client had any duty --

4 THE COURT: -- the fact is there --

5 MR. BARNEY: -- or Mr. Lehnardt, for that matter,  
6 had any duty to Dunham Trust --

7 THE COURT: I'm not saying they did.

8 MR. BARNEY: -- for their --

9 THE COURT: I'm saying that doesn't this Court  
10 have jurisdiction because Dunham is operating under the  
11 assumption that these guys gave me a document that they  
12 reported -- they purported to me and hold out to me as  
13 being valid because -- how -- they were told. That's your  
14 point is shouldn't I have a chance to argue this and brief  
15 this because nobody told me there is a wife out there  
16 somewhere?

17 MR. BARNEY: So, if I'm understanding you  
18 correctly, you're saying that Dunham should be appointed as  
19 a Trustee to respond to the 25,000 out of the \$2.2 million  
20 that occurred up in Alaska? Because that's really what  
21 they're asking. They're saying that, in essence, there was  
22 \$25,000 supposedly in a loan and they're asking for the  
23 information regarding that \$25,000 loan supposedly that  
24 Dunham received and the irony of the whole situation of --  
25 and that was argued, and which is completely false, is

1 supposedly it was received by FHT Holdings that supposedly  
2 was established by -- actually it was established by  
3 Dunham. Okay? Dunham is the sole member of that.

4           Now, the idea of -- you said earlier -- you said:  
5 Well I don't know Taria [phonetic]. Your Honor, with all  
6 respect, I don't think that matters that you know whether,  
7 you know, the identity of Taria [phonetic]. The fact is  
8 that they knew who Taria [phonetic] was. They put her on  
9 the notice for their Opposition and ironically that didn't  
10 even -- that wasn't even proper under 155.010 because she  
11 wasn't given the requisite period. So they knew about her  
12 because they were the ones that noticed her. Not us,  
13 originally, because the fact is she was -- she wasn't made  
14 a party to this but she was a beneficiary that required her  
15 consent in order for this Court to take jurisdiction.

16           And the idea that things have happened, Your  
17 Honor, things happen all of the time. That's what courts  
18 are about and that's what litigation is all about. It's  
19 attempting to right the wrongs that have happened, but, in  
20 this case, by assuming jurisdiction over a trust amendment  
21 that is clearly defective by the drafter's own words -- by  
22 the drafter's own counsel they've admitted is defective in  
23 order to transfer jurisdiction, I think this Court would be  
24 stepping outside of what authority it's been given under  
25 164.010 to take jurisdiction.

1           And if the Court is inclined to want us to brief  
2 this, I'd be more than happy to brief this, Your Honor. In  
3 fact, when you were newly called, I actually prepared a  
4 brief for you on this very issue with regard to interim  
5 jurisdiction on an in personam matter and I'd be happy to  
6 reply to this and indicate, but clearly this matter must be  
7 dismissed under the facts that we have. Even the evidence  
8 that's been presented actually lends credence to the fact  
9 that this amendment was improper.

10           THE COURT: Okay. Well my problem here is that  
11 everybody relied on it as being proper and Dunham has been  
12 acting in good faith on the assumption that they're the  
13 properly appointed Trustee, that situs has been changed and  
14 they're the proper Trustee. And now you're coming in here  
15 and saying: Oh, I, as Trust Protector, or whatever -- or  
16 Trust Investment Protector, whatever your client's role is,  
17 whatever Mr. Lehnardt's role is, we were all wrong. We did  
18 this wrong because we forgot Chris was married.

19           MR. BARNEY: Your Honor, you're --

20           THE COURT: Ah, what?

21           MR. BARNEY: -- assuming that my client even had  
22 counsel to know what was going on in this and the fact is  
23 he --

24           THE COURT: I'm not saying he did have counsel or  
25 didn't have counsel.

1 MR. BARNEY: He was not. He was --

2 THE COURT: He knows whether he's married or not.

3 MR. BARNEY: He does know whether he's married or  
4 not, but the fact is he is not --

5 THE COURT: I have no affidavit in front of me  
6 telling me that he is married, that the marriage was valid  
7 at the time, that she was therefore entitled to take under  
8 -- I mean, I don't have anything. All I have is the  
9 Trustee that's acting apparently based on instructions from  
10 you and Mr. Lehnardt dealing with this trust having been  
11 told we have a valid change of situs. They're acting in  
12 reliance on it. They assume they've got proper authority  
13 and now you're coming in here and saying: All of those  
14 things I've told you to do in the last year, I was wrong.  
15 I never should have told you to do those things because I  
16 don't have a valid authority. Ooops. My bad. Let's go  
17 back to Alaska and fix it.

18 Well okay. Go back to Alaska and fix it, but, in  
19 the meantime, I think I have jurisdiction of -- at least as  
20 put by Mr. Solomon, at least we have the constructive trust  
21 because it's here. There is --

22 MR. BARNEY: Your Honor, --

23 THE COURT: -- action you've taken here.

24 MR. BARNEY: Your Honor, I would respectfully  
25 disagree in the fact that we have demonstrated the actual



1 drafter of the amendment has admitted that it is incorrect.

2 Now, if somebody wants to bring an action for  
3 unjust reliance or they want to bring a claim of that sort,  
4 let them do it in the proper fashion and serve them  
5 pursuant to Rule 4 to get proper jurisdiction over these  
6 parties.

7 However, we have the truth and the fact that they  
8 noticed up the wife. They clearly knew who the wife was.  
9 They're the first ones who noticed the wife in this  
10 proceeding. She was the wife. She was the wife during the  
11 period of the reported first amendment. The drafter of  
12 that amendment has admitted that neither an acting Trustee  
13 nor all of the beneficiaries that were required did sign  
14 and that it was invalid.

15 Any presumption that would be there has been  
16 clearly rebutted. We have the person that drafted it. We  
17 have the notice that was given by Caroline to Taria  
18 [phonetic] on -- and it wasn't timely notice, which would  
19 invalidate, you know, the proceeding in that regard, but  
20 they did know who she was and the idea that we sandbagged  
21 when they came up with the notice first, really shocks the  
22 conscience, Your Honor, because --

23 THE COURT: Okay. Mr. Solomon, do you have  
24 anything further to say on your Petition to -- for  
25 Jurisdiction?

1           MR. SOLOMON: Just one. I'll give you another  
2 basis to get where we need to go.

3           They just admitted their own downfall. Taria  
4 [phonetic] was given notice of this proceeding timely and  
5 she's had the full time to do it and she has never  
6 objected. She has never raised that she didn't know about  
7 this, didn't consent to it, was even married at the time.  
8 Now she --

9           THE COURT: Isn't she in Japan? Is she in Japan?

10          MR. SOLOMON: No. I think that's --

11          THE COURT: Somebody's in Japan.

12          MR. SOLOMON: Windield [phonetic].

13          THE COURT: Windield [phonetic] is in Japan.

14          MR. SOLOMON: Yeah, but -- and I don't know where  
15 --

16          MR. HOOD: California or Missouri.

17          THE COURT: Oh. It's the person with the two  
18 houses.

19          MS. HOOD: Taria [phonetic].

20          MR. SOLOMON: Yeah. This --

21          THE COURT: Okay.

22          MR. SOLOMON: -- is Christopher's -- step up, the  
23 father, who is apparently --

24          THE COURT: okay.

25          MR. SOLOMON: -- now married. I don't know how

1 long he's been married. I've never -- this is the first  
2 time.

3 But the point is she has full notice, never  
4 objected. She's waived her objection by not appearing and  
5 not making that. The only person here objecting is the  
6 person who acted upon it and never, ever raised this issue  
7 until you got in front of this Court on this hearing.

8 THE COURT: Okay. Well, I guess my concern is --  
9 and this is -- where I think counsel has indicated that  
10 they would like a chance to be heard on this and brief  
11 this. I think I have to take jurisdiction over this at  
12 least under a theory of constructive trust because they've  
13 been relying on this in good faith thinking they're  
14 operating properly and all of a sudden they're being told,  
15 by the very people who made that representation to them,  
16 oops, my bad, even though my sister knew I was married, she  
17 who -- I don't know if she had legal counsel telling her  
18 anything, but I didn't have legal counsel -- or at least  
19 his attorney says he didn't have legal counsel, so I didn't  
20 know -- needed it. So she went and hired and is now saying  
21 maybe I messed up here. I mean, but everybody's been  
22 relying on that.

23 MR. SOLOMON: And you don't have the evidence.  
24 All you have --

25 THE COURT: And acting on it.

1 MR. SOLOMON: -- is a statement.

2 THE COURT: And so I just --

3 MR. SOLOMON: There is no evidence at this point

4 other than --

5 THE COURT: It's -- I just have a real problem

6 with this --

7 MR. SOLOMON: -- that.

8 THE COURT: -- in saying that there's no

9 jurisdiction because there's no Trustee in Alaska. The

10 only Trustee is here.

11 MR. SOLOMON: It's true.

12 THE COURT: And that's my problem with this -- you

13 have a trust with no Trustee.

14 MR. BARNEY: Your Honor, --

15 THE COURT: If I follow your theory, Mr. Barney,

16 you have a trust with no Trustee and --

17 MR. BARNEY: And the Court --

18 THE COURT: -- and your client has been acting

19 without any authority and this is -- I mean, do you

20 seriously want us to go down that road?

21 MR. BARNEY: I do, Your Honor, and under the terms

22 of the trust --

23 THE COURT: Okay.

24 MR. BARNEY: -- if the Protect --

25 THE COURT: I think that -- doesn't that expose

1 your client to huge liability?

2 MR. BARNEY: If the Protector does not appoint a  
3 Trustee, they can come together unanimously and they can  
4 appoint a Trustee.

5 The whole idea is -- what you're saying, Your  
6 Honor, is: Okay, well, there would be no Trustee. Do you  
7 know how many trusts come before us where there is no  
8 Trustee and the courts appoint a Trustee? Numerous times.

9 THE COURT: Okay.

10 MR. BARNEY: A Trustee dies. There is no Trustee  
11 for a certain period.

12 THE COURT: Yeah, but there's no Trustee in  
13 Alaska. We have a Trustee.

14 MR. BARNEY: The Trustee could be appointed in  
15 Alaska by the very terms of the --

16 THE COURT: Okay. Okay.

17 MR. BARNEY: -- trust.

18 THE COURT: I'm done, Mr. Barney. I'm done.

19 MR. BARNEY: Okay.

20 THE COURT: I'm going to take jurisdiction over  
21 this trust and I'm going to confirm Dunham as Trustee.

22 But we have this issue, which they've asked for  
23 the opportunity because this is not well developed. I  
24 think it raises some issues. I have a real concern about  
25 Mr. Lehnardt because I didn't really see anything

1 specifically alleged about him in this pleading. But Mr.  
2 Barlow's got a point. However -- we now know what the  
3 issue is so I think we need a more definite statement.

4           So I'm granting Mr. Barlow alternative relief in  
5 the form of I think he's entitled to -- his client is  
6 entitled to a more definite statement as to what it is  
7 allegedly Mr. Lehnardt already did. I think we all know  
8 it, but he's entitled to have it in a pleading. So, Mr.  
9 Lehnardt's Motion is granted with alternative relief. We  
10 need a more definite statement as to what it is Mr.  
11 Lehnardt allegedly did.

12           MR. BARLOW: If anything.

13           THE COURT: If anything. He's entitled to that.  
14 So it's -- we need a more definite statement because right  
15 now we don't have anything about him. He's right. We  
16 need something about him.

17           So, the issue is Chris. My problem here, even if  
18 it's just constructive trust because Dunham's acting -- as  
19 I've indicated, I believe in a good faith reliance on what  
20 everybody told them that here's a valid change of situs and  
21 trust amendment, I think that -- I appreciate this argument  
22 that it's all invalid and so Mr. Davis can't be sued, but  
23 my problem with that is he's been acting here, I have to  
24 assume because stuff has been going on, apparently giving  
25 instruction to Dunham and I just think that means he's

1 consented to the jurisdiction of this Court.

2 MR. SOLOMON: Yeah, I mean, he's de facto at a  
3 minimum.

4 THE COURT: Yeah.

5 MR. BARNEY: Your Honor, did you say that Mr.  
6 Davis could be sued?

7 THE COURT: Yeah. I think he's consented to the  
8 jurisdiction of this Court.

9 MR. BARNEY: And in what capacity are you making -  
10 - I just want to be clear for the record?

11 THE COURT: He has been acting in -- under the  
12 assumption, and I understand your argument that it may all  
13 be void. If so, it all gets unwound some other way but I  
14 think I have to -- I have to take jurisdiction at this  
15 point and we have to have some form in which this can be  
16 litigated. I respectfully don't think it's Alaska. I  
17 think it's here because you've got a Trustee appointed  
18 here. Everybody is acting on this assumption and your  
19 client, perhaps in as good of faith as Dunham, has been  
20 acting under the assumption that he had a role and he had  
21 authority to take certain actions. He considered the  
22 jurisdiction of this Court by acting on it. So I think  
23 he's -- I think he can be sued here. He's consented to it  
24 by acting --

25 MR. BARNEY: And when you say he can be sued, are

1 you saying in his individual capacity or are you saying --

2 THE COURT: That's -- what -- I keep forgetting.

3 It was Investor?

4 MR. BARNEY: Investment Trust Advisor.

5 THE COURT: Investment Trust Advisor, yes.

6 MR. BARNEY: Because they're not asking to sue  
7 him. At least the pleadings I read, they're not asking to  
8 sue him. They're asking for information, Your Honor, and  
9 your -- you jumped to the he can be sued --

10 THE COURT: No. I'm saying I've got jurisdiction  
11 over it. So in his capacity as this Investment Trust  
12 Advisor, if they want to get records and stuff from him,  
13 then fine. He's consented to act in that capacity in this  
14 jurisdiction. Until it's shown that, in fact, he didn't  
15 have that capacity, I think he's consented because he acted  
16 on it.

17 MR. BARNEY: Okay. So, just to be clear, you're  
18 assuming jurisdiction under 164.010 in what capacity? Over  
19 Dunham Trust?

20 THE COURT: Dunham Trust because there's a trust -  
21 - they -- the trust has been -- they took the role of  
22 Trustee acting on an assumption that they were properly  
23 appointed and they had a valid amendment and the change of  
24 situs. They acted on that. Your client also acted on it  
25 in his role of Investment Trust Advisor.



1           So, to the extent that that's a role that he was  
2 acting in, then I think we've got like a jurisdiction over  
3 him in that role because everybody was acting on that. If  
4 it's proven that, in fact, that's all void because Taria  
5 [phonetic] was entitled to be a signator, if we've got  
6 evidence on that and it's proven, then we've got a whole  
7 different problem, but we've got to litigate that somewhere  
8 and I don't think it's Alaska because this trust isn't in  
9 Alaska. Everybody is operating on the assumption that it  
10 is here. If it shouldn't be here, that's a problem for  
11 another day.

12           MR. BARNEY: And just as a point of clarification,  
13 when you're indicating that you have jurisdiction, are you  
14 -- is the extent of your ruling that you have jurisdiction  
15 or that you're just taking jurisdiction over Dunham and --  
16 because there's relief that's been requested and I'm --

17           MR. SOLOMON: And I'd like to get to that, Your  
18 Honor.

19           THE COURT: I know.

20           MR. SOLOMON: You've already -- you indicated that  
21 you're going to assume jurisdiction over Chris, --

22           THE COURT: Right.

23           MR. SOLOMON: -- and --

24           THE COURT: In his role of Investment Trust  
25 Advisor.

1 MR. SOLOMON: I understand. Again, Article 12,  
2 Section 4 of the trust, and nobody disputes this, says,  
3 quote:

4 The trust books and records along with all trust  
5 documents shall be available and open at all reasonable  
6 times for the inspection of the trust beneficiaries and  
7 the representatives.

8 He has not opposed that he has these type of  
9 records in his possession. In fact, I know he does because  
10 Harriet Rowland [phonetic] told me that she had them, that  
11 he had produced them to her. She was prepared to turn them  
12 over to me when he said: No, don't give them anything.

13 THE COURT: Okay. Okay. So you asked for  
14 multiple types of relief. The petition is to assume  
15 jurisdiction over this trust. I'm going to assume  
16 jurisdiction over this trust, even though, as I said, it's  
17 without prejudice to litigate whether it's actually validly  
18 moved. If it's not, then, you know, we've got a problem,  
19 but it appears that everybody is acting on the assumption  
20 that it's here. So we have to take jurisdiction.

21 So, then I'm assuming jurisdiction over  
22 Christopher Davis as Investment Trust Advisor, which is the  
23 specific relief requested.

24 Stephen Lehnardt, I agree, I would also have  
25 jurisdiction for the same analysis, but the problem is we

1 don't have a statement as to what it is he's allegedly  
2 done. So, for the moment, I'm not taking jurisdiction over  
3 him because we need a more definite statement in order to  
4 say whether or not we can go forward against Mr. Lehnardt.

5           And then to confirm the Dunham Trust Company as  
6 Directed Trustee, for now, it appears they're acting in  
7 good faith on what was represented to them to be a valid  
8 amendment and change of situs. They have been acting, as  
9 far as I can tell, nobody's raised that that they would  
10 have any notice. So, I think we have to confirm them.  
11 They're the Trustee, until it's proven that maybe they  
12 shouldn't be because unknown to them there was a wife out  
13 there.

14           Okay. And then the final thing was immediate  
15 disclosure of documents and information from the Investment  
16 Trust Advisor.

17           MR. BARNEY: And what would that include with  
18 regard to those records? Clearly Alaska Trust has the  
19 records of their tenure as Trustee for the \$2.2 million.

20           THE COURT: Right.

21           MR. BARNEY: And they're not a party to this  
22 action. So --

23           THE COURT: It's what Mr. -- it's what he has in  
24 his role as Investment Trust Advisor. That's it.

25           MR. BARNEY: Because they've alleged \$25,000 was

1 handled between Dunham and Christopher Davis in Nevada.

2 THE COURT: If that's not -- you know, if that's

3 not in his possession, it's not in his possession. It's

4 only what's -- what he's got in his possession.

5 MR. SOLOMON: I'll prepare the --

6 THE COURT: So you'll prepare the order. Okay?

7 MR. SOLOMON: -- order, Your Honor.

8 THE COURT: Thank you.

9 MR. SOLOMON: And I'll submit it to counsel.

10 THE COURT: And we'll be -- like I said, this is

11 all without prejudice to actually litigate and give, you

12 know, Dunham a chance to --

13 MR. BARNEY: Did you --

14 THE COURT: -- lay out this whole issue.

15 MR. BARNEY: So to understand this correctly --

16 and I'd like to sign off on the order, Your Honor.

17 THE COURT: Sure. Absolutely. Mr. Solomon --

18 MR. BARNEY: If that's --

19 THE COURT: -- always very good about that.

20 MR. BARNEY: But you're giving jurisdiction

21 subject to a determination of whether or not --

22 THE COURT: Yeah. It's without prejudice to --

23 allergies. Without prejudice to raise the issue.

24 MR. SOLOMON: I understand.

25 MR. BARNEY: Of the validity --

1 THE COURT: Properly --

2 MR. BARNEY: -- of the first amendment. Is that

3 correct?

4 THE COURT: Properly with evidence and -- because

5 right now we don't even have an affidavit from Tarjia

6 [phonetic] and who knows? I don't have her -- Taria

7 [phonetic].

8 MR. BARNEY: Taria [phonetic].

9 THE COURT: Thank you.

10 And Dunham. You know, surely they'd like to be

11 heard. So, you know, it's without prejudice on that issue,

12 but right now, everybody is acting on it, so --

13 MR. SOLOMON: Thank you, Your Honor.

14 MS. RENWICK: Thank you, Your Honor.

15 THE COURT: -- we'll litigate it all later. Thank

16 you all for coming in.

17 THE CLERK: Is this [indiscernible]?

18 THE COURT: Yes. We're keeping it. Mr. Solomon,

19 specifically just for the record, Mr. Solomon specifically

20 requested that this be handled from its inception here and

21 nobody's objected to that part. So we're --

22 MR. BARNEY: Yeah. I'd prefer that, Your Honor.

23 THE COURT: You got it. Okay. We're good. We'll

24 see you guys back here.

25 MR. BARNEY: If the Court has jurisdiction.

1                   THE COURT: Exactly. Subject to your right to say  
2 I don't have jurisdiction.

3

4                   PROCEEDING CONCLUDED AT 11:15 A.M.

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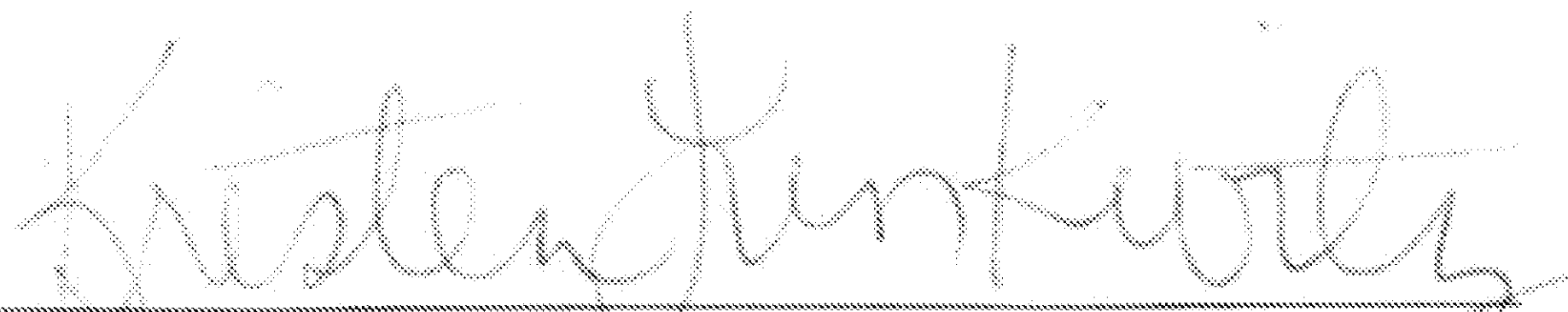
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**CERTIFICATION**

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

**AFFIRMATION**

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

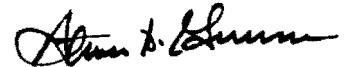
A handwritten signature in cursive script, reading "Kristen Lunkwitz", written in dark ink. The signature is positioned above a horizontal line.

KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER



# EXHIBIT 16





CLERK OF THE COURT

**OPP**

Mark A. Solomon, Esq., Bar No. 418  
msolomon@sdfnlaw.com  
Joshua M. Hood, Esq. Bar No. 12777  
jhood@sdfnlaw.com  
SOLOMON DWIGGINS & FREER, LTD.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: 702.853.5483  
Facsimile: 702.853.5485

*Attorneys for Caroline Davis, Petitioner*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of:

Case No.: P-15-083867-T

Dept.: Probate (26)

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

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

**OPPOSITION TO CHRISTOPHER D. DAVIS' MOTION TO DISMISS PURSUANT TO  
NRCP (12)(b) AND NRCP 19**

Caroline D. Davis, as beneficiary of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended February 24, 2014, by and through her counsel, the law firm of Solomon Dwiggins & Freer, Ltd., hereby files this Opposition To Christopher D. Davis' Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19 (the "Opposition"). The foregoing Opposition is made and based on the pleadings and papers on file in this action, the attached Memorandum Of Points And Authorities, all attached exhibits, and any oral argument that this honorable Court may entertain at the time of hearing.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Beatrice B. Davis ("Beatrice") executed the Beatrice B. Davis Heritage Trust on July 28, 2000 (the "Trust").<sup>1</sup> Pursuant to Article One, Section 1 of the Trust, Alaska Trust Company

<sup>1</sup> See, 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

1 (“Alaska”) was named as the initial Trustee, and Stephen K. Lehnardt (“Mr. Lehnardt”) was  
2 named as the initial Protector.<sup>2</sup> The primary asset held within the Trust is an Ashley Cooper Life  
3 Insurance Policy, on which there is a revolving line of credit for \$4,000,000.00.<sup>3</sup>

4 Article Three of the Trust, entitled “My Lifetime Beneficiaries”, provides that  
5 Christopher D. Davis (“Mr. Davis”), Caroline D. Davis (“Ms. Davis”); and Winfield Davis  
6 (“Winfield”) were the beneficiaries during Beatrice’s lifetime.<sup>4</sup> Upon Beatrice’s death, January  
7 5, 2012, the Trust was to be divided into two (2) shares, one for each of Beatrice’s living  
8 children, namely: (1) Mr. Davis and (2) Ms. Davis.<sup>5</sup>

9 On August 2, 2011, Mr. Lehnardt, as Protector, removed Alaska as Trustee and appointed  
10 Alaska USA Trust Company (“Alaska USA”).<sup>6</sup> Alaska USA resigned as Trustee on December  
11 5, 2013.<sup>7</sup> During their tenure as Trustee, both Alaska and Alaska USA distributed approximately  
12 \$2,164,744.68, from loans taken against the Ashley Cooper Life Insurance Policy, to Mr. Davis  
13 individually, as Trustee of the Beatrice B. Davis Revocable Living Trust, dated April 4, 1990, as  
14 amended (the “Revocable Trust”), and as Manager of the Davis Family Office, a Missouri  
15 limited liability company (the “Davis Office”).<sup>8</sup>

16 Shortly after Alaska USA’s resignation, Dunham Trust Company, located in Reno,  
17 Nevada (“Dunham”), was appointed by Mr. Lehnardt as a Directed Trustee.<sup>9</sup> Dunham accepted

18  
19 Advisor And Stephen K. Lehnardt As Distribution Trust Advisor; To Confirm Dunham Trust Company As Directed  
20 Trustee; And For Immediate Disclosure Of Documents And Information From Christopher D. Davis, filed with this  
Court on February 10, 2015 (the “Petition”), at Ex. 1.

21 <sup>2</sup> *Id.*, at Art. 1, § 1.

22 <sup>3</sup> *See*, Petition at Ex. 6 and Ex. 8.

23 <sup>4</sup> *Id.*, at Art. 3, § 1.

24 <sup>5</sup> *Id.*, at Art. 8, § 1.

25 <sup>6</sup> *See*, Petition, at Ex. 3.

26 <sup>7</sup> *Id.*, at Ex. 4.

27 <sup>8</sup> *See*, Petition, at ¶ 21, and accompanying exhibits.

28 <sup>9</sup> *See*, Petition, at Ex. 5.

1 such position on or about February 24, 2014. Article One, Section 2 of the Trust provides that  
2 Alaska law is the governing law.<sup>10</sup> However, Article Fourteen, Section 6 of the Trust provides  
3 that, upon unanimous consent of all of the beneficiaries entitled to receive mandatory or  
4 discretionary distributions, “the situs of this agreement...may be changed...with the consent of  
5 any then-acting Protector and the Trustee thereof...”<sup>11</sup> Article Fourteen, Section 6 further  
6 provides that:

7 “[u]pon the change of situs, the Trust Protector may amend this instrument by its  
8 written action to change the references to Alaska or Alaska law to reference to  
9 such new situs or the law of such new situs, and take such action as may be  
10 required to conform the terms of this agreement to the terms of law of such situs  
11 in order to achieve the purposes for which this trust was created”.<sup>12</sup>

12 On February 24, 2014, Mr. Lehnardt, as Protector, executed the First Amendment to the  
13 Trust (the “First Amendment”), effectively transferring the situs of the Trust to Nevada, and  
14 amending the Trust to comply with Nevada law.<sup>13</sup> Alaska USA, as Trustee, and Mr. Davis, Ms.  
15 Davis, and Winfield as the beneficiaries entitled to distributions from the Trust, acknowledged  
16 and consented to the change in situs of the Trust from Alaska to Nevada and further  
17 acknowledged that Nevada law shall govern the administration of the Trust.<sup>14</sup>

18 The First Amendment appointed Mr. Davis “individually or in his capacity as manager of  
19 an LLC wholly-owned by the trust” as the “Investment Trust Advisor” pursuant to NRS  
20 163.5543, and designated him a “Fiduciary” under NRS 163.554.<sup>15</sup> The First Amendment

21 <sup>10</sup> *Id.* at Ex. 1, Art 1, § 2.

22 <sup>11</sup> *Id.*, at Ex. 1, Art. 14, § 6.

23 <sup>12</sup> *Id.*

24 <sup>13</sup> *See*, Petition, at Ex. 5.

25 <sup>14</sup> *Id.*, at p. 8-10. *See also*, Christopher D. Davis’ Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP  
26 19 (the “Motion To Dismiss”), at Ex. 1, entitled “Resignation, Release, Acknowledgement, Consent And  
27 Indemnification (providing that “[t]he Beneficiaries unanimously consent to changing the situs of the Trust from  
28 Alaska to Nevada, further unanimously consent to the amendment of the trust by the Protector to reflect the change in  
situs, applicable law...”)

<sup>15</sup> *Id.*, at Art. Thirteen, § 2d (Second) (Emphasis added).

1 further appointed Mr. Lehnardt as the "Distribution Trust Advisor" pursuant to NRS 163.5537,  
2 and designated him as a "Fiduciary" pursuant to NRS 163.554 as well.<sup>16</sup>

3 On or about March 28, 2014, Dunham, ostensibly at the direction of Mr. Davis as the  
4 Trust Investment Advisor, created FHT Holdings, LLC, a Nevada limited liability company, as  
5 an investment tool for the Trust. Indeed, according to Mr. Davis' Motion to Dismiss, Dunham  
6 "is the sole member of FHT, Holdings, LLC", and the primary asset of the Trust, the Ashley  
7 Cooper Life Insurance Policy, was transferred to FHT Holdings, LLC.<sup>17</sup> According to the  
8 Nevada Secretary of State, Mr. Davis is also the Manager of FHT Holdings, LLC.

9 **II. This Court May Properly Assume Jurisdiction Over The Trust, As Amended;  
10 Over Christopher D. Davis, As Investment Trust Advisor And As Manager Of  
11 FHT Holdings, LLC; And Over Stephen K. Lehnardt, As Distribution Trust  
Advisor And May Grant The Relief Requested.**

12 Replete throughout Mr. Davis' Motion To Dismiss is his notion that before this Court may  
13 assume jurisdiction over the Trust, Mr. Davis, and Mr. Lehnardt, it must first be determined  
14 whether or not the First Amendment is valid,<sup>18</sup> (which, according to Mr. Davis, is a question of  
15 Alaska or Missouri law<sup>19</sup>). Such circular argument is, however, baseless for the following  
16 reasons. First, Article Fourteen, Section 6 of the Trust expressly authorizes the Protector to  
17 amend the Trust for the purposes of ensuring compliance with the laws of the new situs.<sup>20</sup> Indeed,  
18 the First Amendment specifically states that "Article Fourteen of the trust permits the Trust  
19 Protector to amend the trust..."<sup>21</sup> In addition to the express authority provided to the Trust  
20 Protector to amend the Trust, all of the beneficiaries of the Trust, including Mr. Davis, expressly

21 \_\_\_\_\_  
22 <sup>16</sup> *Id.* at Art. Thirteen, § 2d (Third).

23 <sup>17</sup> *See*, Motion to Dismiss, at p. 4:5-6.

24 <sup>18</sup> *Id.*, at p. 11:7-8

25 <sup>19</sup> *Id.*, p. 3:7-10.

26 <sup>20</sup> *See*, Petition at, Ex. 1, at Art. 14, § 6 (providing that "the Trust Protector may amend this instrument by its  
27 written action to change the references to Alaska or Alaska law to references to such new situs, and take such actions  
as may be required to confirm the terms of this agreement to the terms of the law of such situs..." (Emphasis added).

28 <sup>21</sup> *Id.*, at Ex. 1, preamble.

1 acknowledged and consented to the transfer of the Trust situs to Nevada and for the  
2 administration thereof to be governed by Nevada law.<sup>22</sup> Notwithstanding the aforementioned,  
3 there have been no allegations brought before this Court regarding the validity or invalidity of the  
4 First Amendment. Indeed, other than an unsupported contention that this Court must first  
5 determine the validity of the First Amendment, Mr. Davis has not produced any evidence that the  
6 First Amendment is anything other than valid. As such, the First Amendment is presumed to be  
7 valid, unless proven otherwise, and this Court has the authority to assume jurisdiction over the  
8 Trust, as amended.<sup>23</sup>

9 In addition to this Court having jurisdiction over the Trust, this Court has jurisdiction over  
10 Mr. Davis, as the Investment Trust Advisor, pursuant to NRS 163.5543, NRS 163.554, and NRS  
11 164.5555. As mentioned above, Mr. Davis was nominated as the Investment Trust Advisor in  
12 either his individual capacity or in his "capacity as manager of an LLC wholly owned by the  
13 trust."<sup>24</sup> Indeed, Mr. Davis, has accepted his position as Investment Trust Advisor, either  
14 individually or as Manager of FHT Holdings, LLC, and acted in such capacity. The First  
15 Amendment expressly provides that Dunham, as the Directed Trustee, "shall have no authority  
16 and shall not interfere with any actions of the Investment Trust Advisor [and] shall act solely on  
17 the direction of the Investment Trust Advisor with respect to all matters relating to the  
18 management and investment of trust assets..."<sup>25</sup> As Dunham Trust lacked the authority to act, the  
19 transfer of the Ashley Cooper Life Insurance Policy must have been done at the direction of Mr.  
20 Davis, as Investment Trust Advisor. This Court also has jurisdiction over Mr. Lehnardt, as the  
21 Trust Protector and as Distribution Trust Advisor, pursuant to NRS 163.5537, NRS 163.554 and  
22

23  
24 <sup>22</sup> *Id.*, at Ex. 1, p. 8-10. *See also*, Motion To Dismiss, at Ex. 1.

25 <sup>23</sup> *See*, NRS 47.250(18)(c) (providing "[t]hat private transactions have been fair and regular.") *See, also In re*  
26 *Melter*, 167 Wash.App. 285, 298, 273 P.3d 991, 998 (Wash.App. 2012) (providing that unless proven otherwise, "[a]  
will [or trust] is presumed to be valid.").

27 <sup>24</sup> *Id.*, at Ex. 5, Art.13, §2.d(Second).

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

the Revocable Trust, or as Manager of the Davis Office, was the only individual to receive

NRS 163.5555. Pursuant to the nomination and acceptance of Mr. Davis and Mr. Lehnardt in their respective capacities as Investment Trust Advisor and Distribution Trust Advisor, Mr. Davis and Mr. Lehnardt have consented to the jurisdiction of this Court by operation of law.<sup>26</sup>

With specific reference to FHT Holdings, LLC, and the information requested from such entity, this Court has the authority to compel Mr. Davis, as Manager thereof, to produce the requested documents as Mr. Davis is Manager of FHT Holdings, LLC, which is wholly-owned by the Trust, because he is a fiduciary of the Trust. Indeed, Mr. Davis is acting as Investment Trust Advisor and Manager of the LLC and must not be permitted to use FHT Holdings, LLC as a shield to his obligation to provide the requested documents and information. The information and documentation that Mr. Davis possesses or controls as Manager of FHT Holdings, LLC is also in his possession and control as Investment Trust Advisor and must be disclosed. Indeed, a trustee who is acting as manager or director of a corporation is not alleviated from his duties and obligations as a Trustee (including the duty of full disclosure), and may be held liable to a beneficiary for breach of fiduciary duty where the exercise of such discretion is inconsistent with or contrary to the terms of a trust. *See, In the Matter of Schnur Estate*, 39 Misc.2d 880, 886, 242 N.Y.S.2d 126, 132 (1963). While Mr. Davis has certain discretion acting as Manager of FHT Holdings, LLC, Mr. Davis, as Investment Trust Advisor-Manager, must still take into account the terms of the Trust where the entity is owned or controlled by the Trust or Trustee *Id.*, 39 Misc.2d, at 877, 242 N.Y.S.2d, at 132 ("where an estate or trust owns all or substantially all of the shares of a corporation, the corporate form may be disregarded and the situation viewed just as if the fiduciaries held title to the corporate assets...It is not so much a matter of disregarding the corporate form, but rather giving paramount consideration to the testamentary plan and scheme, and effectuating it in the manner prescribed by the testator.")

<sup>26</sup> See, NRS 163.5555 (providing that "[i]f a person accepts an appointment to serve as a trust protector or a trust adviser of a trust subject to the laws of this State, the person submits to the jurisdiction of the courts of this State, regardless of any term to the contrary in an agreement or instrument. A trust protector or a trust adviser may be made a party to an action or proceeding arising out of a decision or action of the trust protector or trust adviser.)



1 In the instant matter, FHT Holdings, LLC has received the primary asset of the Trust (i.e.  
2 the Ashley Cooper Life Insurance Policy with a face cover value of \$35,000,000.00)<sup>27</sup> at the  
3 direction of Mr. Davis as Investment Trust Advisor-Manager. As such, the administration of the  
4 Trust and the management of FHT Holdings, LLC by Mr. Davis are inextricably intertwined, and  
5 this Court has the authority to look beyond the entity structure of the LLC to ensure that Mr.  
6 Davis is abiding by his fiduciary obligations as Investment Trust Advisor. Therefore, this Court  
7 has jurisdiction over the Trust, as amended; FHT Holdings, LLC, as an asset of the Trust; Mr.  
8 Davis, as Investment Trust Advisor and Manager of FHT Holdings, LLC; and Mr. Lehnardt, as  
9 Distribution Trust Advisor, and possesses the authority to grant the relief requested in Ms. Davis'  
10 Petition.

### 11 **III. Alaska And Alaska Trust Are Not Or Necessary Indispensable Parties**

12 Mr. Davis' contends that Alaska and Alaska Trust are necessary or indispensable parties  
13 pursuant to NRCP 19 because the documents and information requested are perhaps still in their  
14 possession, and because the loans taken against the Ashley Cooper Life Insurance Policy were  
15 done so during Alaska and/or Alaska USA's tenure as Trustee. Such contention is, however,  
16 without merit.

17 NRCP 19(a), in relevant part, requires the joinder of a party to an "action if (1) in the  
18 person's absence complete relief cannot be accorded among those already parties." Although the  
19 loans from the Ashley Cooper Life Insurance Policy were taken/distributed during Alaska and/or  
20 Alaska USA's tenure as Trustee, Mr. Davis in his individual capacity, his capacity as Trustee of  
21 the Revocable Trust, or as Manager of the Davis Office, was the only individual to receive  
22 distributions as a result of such loans and the only one privy to the information sought by Ms.  
23 Davis, particularly the use and status of those distributions during such period.

24 Ms. Davis is not now objecting to the loans and distributions being made or claiming any  
25 breach of fiduciary duty on Alaska or Alaska USA's part. Rather, Ms. Davis is simply requesting  
26

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27  
28 <sup>27</sup> See, Petition at, Ex. 6.

1 from Mr. Davis information related to who received and/or benefited from the loans, the purpose  
2 of the loans, the circumstances surrounding the distribution and use of the loan proceeds, the  
3 repayment of such loans, the collateral, and any other relevant information. As Mr. Davis has  
4 complete access to or possession and control over such information, relief can be granted without  
5 joining either Alaska or Alaska USA. Alaska and Alaska USA are not prejudiced in any manner  
6 whatsoever as Ms. Davis is not seeking any relief against them. Although Ms. Davis executed an  
7 Indemnification<sup>28</sup> as to Alaska USA, such indemnification only acknowledged that the Trust  
8 instrument provided indemnification for Alaska USA except for "willful misconduct or gross  
9 negligence."<sup>29</sup> Indeed, the Indemnification simply states that "[Alaska USA], Dunham, and the  
10 Beneficiaries hereby acknowledge the provisions of the Trust which provide for the  
11 indemnification of Trustee from liability, excepting only willful misconduct or gross  
12 negligence."<sup>30</sup> Specifically, Article 12, Section 7, entitled "Indemnification of the Trustee, in  
13 relevant part, provides that the Trustee shall be indemnified, "except for any claim or demand  
14 based on my Trustee's own willful misconduct or gross negligence proven by clear and  
15 convincing evidence."<sup>31</sup> As such, the Indemnification simply acknowledges the terms of the  
16 Trust, and is not a release of any conduct or liability that may arise from Alaska USA's willful  
17 misconduct or gross negligence. Once more, however, Ms. Davis is not now claiming any willful  
18 misconduct or gross negligence by Alaska or Alaska USA, and, therefore, Alaska and Alaska  
19 USA have no interest in the outcome of the relief being sought by Ms. Davis in her Petition.

20 Further, Mr. Davis's reliance on NRCP 19(a)(2) is misplaced because by Ms. Davis  
21 seeking information from Mr. Davis, Alaska and Alaska USA are not being placed in a position in  
22 which they would need to protect any interest, nor are they subjected to any "substantial risk of  
23

24  
25 <sup>28</sup> See, Motion To Dismiss, at Ex. 1.

26 <sup>29</sup> See, Petition, at Ex. 1, Art. 12, § 7.

27 <sup>30</sup> *Id.*, at ¶ 3.

28 <sup>31</sup> See, Petition, at Ex. 1, Art 12, § 7.



1 incurring double, multiple, or otherwise inconsistent obligations by reason of the claimed  
2 interest.”<sup>32</sup> Additionally, NRCP 19(b) is inapplicable to the matter at hand as Alaska and Alaska  
3 USA are not “person[s] described in subdivision (a)(1)-(2) [of NRCP 19(a)].”<sup>33</sup> If, however, this  
4 Court determines that Alaska and Alaska USA are persons described in NRCP 19(a)(1)-(2), this  
5 Court may nevertheless proceed and grant the relief requested by Ms. Davis for the following  
6 reasons:

- 7 (1) Ordering Mr. Davis to provide the requested information and documentation  
8 without the presence of Alaska or Alaska USA will not result in any prejudice to  
9 Mr. Davis;
- 10 (2) As Mr. Davis is not subjected to any prejudice, this Court need not consider any  
11 methods to lessen or avoid prejudice to Mr. Davis;
- 12 (3) Ordering Mr. Davis to provide the requested information and documentation will  
13 be an adequate remedy; and
- 14 (4) Dismissal of Ms. Davis’ Petition will result in eliminating any adequate remedy as  
15 Alaska cannot assume jurisdiction over Mr. Davis.<sup>34</sup>

16 Therefore, joinder of Alaska and Alaska USA in the instant matter is not necessary or  
17 integral to granting Ms. Davis’ relief requested (i.e. compelling Mr. Davis to produce information  
18 and documents relative to the Trust administration pursuant to his obligation to do so as  
19 Investment Trust Advisor).

#### 20 **IV. Service Of Process Has Been Properly Provided**

21 NRS 155.010, in pertinent part, provides as follows:

22 “a petitioner shall cause notice of the time and place of the hearing of a petition to  
23 be given to each interested person and to every other person entitled to notice  
24 pursuant to this title or his or her attorney if the person has appeared by attorney  
25 or requested that notice be sent to his or her attorney. Notice must be given:

26 <sup>32</sup> See, NRCP 19(a)(2)(i)-(ii).

27 <sup>33</sup> See, NRCP 19(b).

28 <sup>34</sup> *Id.*

9060 WEST CHEYENNE AVENUE  
LAS VEGAS, NEVADA 89129  
TELEPHONE (702) 853-5483  
FACSIMILE (702) 853-5485  
WWW.SDFNLAW.COM

**SOLOMON DWIGGINS & FREER, LTD**  
TRUST AND ESTATE ATTORNEYS



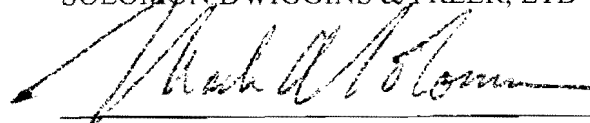
1 (a) By mailing a copy thereof at least 10 days before the time set for the hearing  
2 by certified, registered or ordinary first-class mail addressed to the person being  
3 notified at the post office address given in the person's demand for notice, if any,  
4 or at his or her office or place of residence, if known, or by personally delivering  
a copy thereof to the person being notified at least 10 days before the time set for  
the hearing."

5 On March 5, 2015, Ms. Davis, by and through her counsel, sent Notice to each interested  
6 party as required by NRS 155.010.<sup>35</sup>

7 **WHEREFORE**, Ms. Davis respectfully request that Mr. Davis' Motion To Dismiss be  
8 denied in its entirety.

9 DATED this 13<sup>th</sup> day of April, 2015.

10 SOLOMON DWIGGINS & FREER, LTD



11 Mark A. Solomon, Esq. (Bar No. 418)  
12 Joshua M. Hood, Esq. (Bar No. 12777)  
13 9060 Cheyenne Avenue  
14 Las Vegas, Nevada  
15 Telephone: (702) 853-5483  
16 Facsimile: (702) 853-5485  
17 Attorneys for Caroline D. Davis

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26 <sup>35</sup> See, Second Amended Notice Of Hearing On Petition To Assume Jurisdiction Over The Beatrice B. Davis  
27 Family Heritage Trust, Dated July 28, 2000, As Amended On February 24, 2014; To Assume Jurisdiction Over  
28 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, filed with this Court on March 5, 2015.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of April 2015, I served a true and correct copy of the above and foregoing **OPPOSITION TO CHRISTOPHER D. DAVIS' MOTION TO DISMISS PURSUANT TO NRCP (12)(b) AND NRCP 19**, by depositing a copy of the same in the United States Mail, addresses are as follows:

Tarja Davis  
3005 North Beverly Glen Circle  
Los Angeles, California 90077  
and  
514 West 26<sup>th</sup> Street, #3E  
Kansas City, Missouri 64108

Ace Davis  
c/o WINFIELD B. DAVIS  
366-6 Habu Aridagawa Arida  
Wakayama 643-0025  
JAPAN

CHRISTOPHER D. DAVIS, Individually  
INVESTMENT TRUST ADVISOR  
MANAGER of FHT HOLDINGS, LLC, a Nevada Limited Liability Company  
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

STEPHEN LEHNARDT  
DISTRIBUTION TRUST ADVISOR  
20 Westwoods Drive  
Liberty, Missouri 64068  
[Stephen@lehnardt.com](mailto:Stephen@lehnardt.com)

WINFIELD B. DAVIS  
366-6 Habu Aridagawa Arida  
Wakayama 643-0025  
JAPAN  
[winsane@gmail.com](mailto:winsane@gmail.com)

1 DUNHAM TRUST COMPANY  
2 TRUSTEE

3 SOLE MEMBER of FHT HOLDINGS, LLC, a Nevada Limited Liability Company  
4 c/o SHANNA CORESSEL, CTFA  
5 241 Ridge Street, Suite 100  
6 Reno, Nevada 89501  
7 [Shanna.coressel@dunham.com](mailto:Shanna.coressel@dunham.com)

8 **And did email Via the Court's electron system via WizNet pursuant to Rule 9 of NEFCR at**  
9 **the email address noted to the following:**

10 HARRIET ROLAND, ESQ.,  
11 ROLAND LAW FIRM  
12 2850 W. Horizon Ridge Parkway, #200  
13 Henderson, NV 89052  
14 [hroland@rolandlawfirm.com](mailto:hroland@rolandlawfirm.com)

15 ANTHONY L. BARNEY, ESQ.  
16 ANTHONY L. BARNEY, LTD.  
17 3317 West Charleston Boulevard, Suite B  
18 Las Vegas Nevada 89102  
19 [abarney@anthonybarney.com](mailto:abarney@anthonybarney.com)

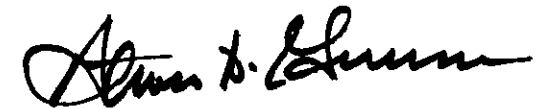
20 CHARLENE RENWICK, ESQ.  
21 LEE HERNANDEZ LANDRUM & GAROFALO  
22 7575 Vegas Drive, #150  
23 Las Vegas, Nevada 89128  
24 [crenwick@lee-lawfirm.com](mailto:crenwick@lee-lawfirm.com)

25  
26  
27  
28

  
An Employee of SOLOMON DWIGGINS & FREER, LTD.



# EXHIBIT 15



CLERK OF THE COURT

HARRIET H. ROLAND, ESQ.  
NV Bar No. 5471

**ROLAND LAW FIRM**  
2470 E. St. Rose Pkwy, Ste. 105  
Henderson, NV 89074  
Telephone: (702) 452-1500  
Facsimile: (702) 920-8903  
hroland@rolandlawfirm.com

ANTHONY L. BARNEY, ESQ.  
Nevada Bar No. 8366  
TIFFANY S. BARNEY, ESQ.  
Nevada Bar No. 9754  
**ANTHONY L. BARNEY, LTD.**  
3317 W. Charleston Blvd., Suite B  
Las Vegas, NV 89102  
Telephone: (702) 438-7878  
Facsimile: (702) 259-1116  
*Attorneys for Christopher D. Davis*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the matter of:

Case No.: P-15-083867-T

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

Dept. No.: 26

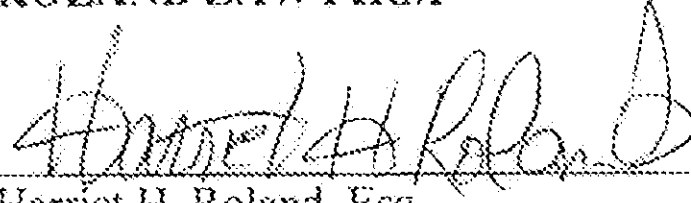
**CHRISTOPHER D. DAVIS' REPLY TO CAROLINE DAVIS' OPPOSITION TO HIS  
MOTION TO DISMISS PURSUANT TO NRCP (12)(b) AND NRCP 19**

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 submits his reply to Caroline Davis'  
("Caroline") opposition to his motion to dismiss the Petition of Caroline Davis ("Caroline")

1 pursuant to Nevada Rules of Civil Procedure 12(b) and for failure to join an indispensable party  
2 under NRCP 19. This pleading is based on the Memorandum of Points and Authorities attached  
3 hereto, any exhibits attached hereto, and any oral argument that will be heard in this matter.  
4

5 DATED this 17th day of April, 2015.

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

8   
9 Harriet H. Roland, Esq.  
10 Attorney for Christopher D. Davis  
11  
12  
13  
14

15 *[remainder of page intentionally left blank]*  
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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTS PRESENTED

Christopher Davis hereby incorporates the Facts Presented in his Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19 ("Original Motion") as if set forth fully herein. By way of summary, he alleges:

Christopher's mother, Beatrice B. Davis ("Beatrice"), a life-long resident of Missouri, created several trusts and did extensive, sophisticated estate planning after her husband Ilus W. Davis died. Her long-time attorney was the Missouri firm of Lehnhardt & Lehnardt. She created the Beatrice B. Davis Revocable Trust, in Missouri, on April 4, 1990, (the Revocable Trust) and the Beatrice B. Davis Family Heritage Trust (the "FHT"), in Missouri, on July 28, 2000. She participated in the Davis Family Office, a Missouri limited liability company, formed on November 3, 1999. None of these entities had any Nevada contacts until the purported appointment of Dunham Trust Company on February 24, 2014.

Christopher Davis ("Christopher") and his wife Tarja are residents of Missouri. Caroline Davis is a resident of Washington. (Caroline and Christopher serve as co-trustees of the Revocable Trust which is administered under Missouri law, in Missouri.) Winfield Davis and his son Ace Davis are residents of Japan, but citizens of the United States. Stephen Lehnardt, the Trust Protector, is a resident of Missouri. Alaska Trust Company and its successor in interest, Alaska USA Trust Company, do business in Alaska and, upon information and belief, have no Nevada contacts. Among all the entities and assets, the only contact with Nevada is Dunham Trust Company, ("Dunham") which is alleged to be currently acting as directed trustee of the FHT. Even the Ashley Cooper insurance policy (the product of a tax-free exchange from the



1 year 2000), which is the primary asset of the trust and the subject matter of Caroline's petition,  
2 is not administered in Nevada. It is administered under a custodian domiciled in Puerto Rico,  
3 and its investment advisor is a Canadian broker-dealer.

4 Dunham created FHT Holdings, LLC, ("FHT Holdings") on March 28, 2014, and  
5 transferred the insurance policy to it. Dunham is the 100% owner/member of FHT Holdings.  
6 Christopher is the manager, and Dunham purportedly acts as "directed trustee" pursuant to the  
7 purported First Amendment to the FHT dated February 24, 2014. Upon information and belief,  
8 the directed trustee and LLC structure was put into place by Dunham in an attempt to shield  
9 itself from the fiduciary liability inherent in holding large assets without diversification.  
10

11  
12 Christopher Davis, as manager of FHT Holdings, has no power over the Ashley Cooper  
13 policy, or over the Puerto Rico custodian, or over the Canadian broker-dealer investment  
14 adviser. Upon information and belief, the sole purpose of his appointment and the formation of  
15 FHT Holdings, LLC, was to shield Dunham from fiduciary liability for its action or inaction.  
16 Christopher receives no compensation or benefit in his position as manager of FHT Holdings.  
17

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

### 19 **A. Lack of Subject Matter Jurisdiction Invalidates Nevada's Jurisdiction Due To** 20 **Absence of Conditions Precedent to Change of Situs from Alaska to Nevada.**

21 The entirety of Caroline's petition and her opposition to the motion to dismiss, and her  
22 request for the Nevada court to assert jurisdiction over Christopher and the Revocable Family  
23 Trust, rests defectively upon the presumed validity of the change of situs of the Beatrice B.  
24 Davis Family Heritage Trust dated July 28, 2000 (the "FHT") from Alaska to Nevada,  
25 purportedly accomplished by the February 24, 2014 First Amendment.  
26  
27  
28

1       It is important to note that the question of the validity of the change of situs is different  
2 than the question of the validity of the First Amendment. Although Caroline asserts that the  
3 purported First Amendment is "presumed to be valid unless proven otherwise", all the facts and  
4 evidence prove the change of situs (a condition precedent to the amendment) was invalid and  
5 not allowed under the terms of the FHT. The validity of the change of situs of the FHT (and  
6 presumably the amendment purporting to accomplish it) must be determined under the express  
7 mandate of Article 14, Section 6 of the FHT.  
8

9       Section 6, Paragraph 1, of the FHT provides the requirements for a change of situs as:

10       Except as expressly provided herein, the situs of this agreement or any subtrust  
11 established hereunder may be changed by the unanimous consent of all of the  
12 beneficiaries then eligible to receive mandatory or discretionary distributions of net  
13 income under this agreement or such subtrust, with the consent of any then-acting  
14 Protector and the Trustee thereof, which shall be given only after Trustee has obtained  
advice from counsel as to the tax and other consequences of a change in situs.<sup>1</sup>

15       The conditions precedent to the change of situs require that all of the beneficiaries then eligible  
16 to receive mandatory or discretionary distributions must consent to the change of the situs. In  
17 addition, both the FHT Trust Protector and Trustee must consent to the change of situs after the  
18 Trustee has been able to meet with an attorney to discuss the tax and other consequences of a  
19 change in situs, and after all the current income beneficiaries of the FHT have consented. These  
20 conditions did not occur. Therefore the situs of the FHT remains in Alaska until the conditions  
21 are performed.  
22

23       Caroline recognizes that Tarja Davis is a discretionary beneficiary of the FHT. This is  
24 immediately clear by a simple review of the terms of the FHT<sup>2</sup> and by a simple review of the  
25

26  
27  
28 <sup>1</sup> See Article 14, Section 4, Page 14-7, attached as Exhibit 1 to Caroline Davis's Original Petition (emphasis added).

<sup>2</sup> See Trust, Article Three, Section 1, Page 3-1; See also Article Eight, Section 3.d., Page 8-4, See also Article 8-4.b.1-2, Pages 8-12 and 8-13 attached as Exhibit 1 to Caroline Davis' Original Petition.

1 certificate of service filed by Caroline.<sup>3</sup> Furthermore, Caroline asserts and provides written  
2 proof that Alaska USA Trust Company ("Alaska USA") resigned as Trustee on December 5,  
3 2013. The resignation of Alaska USA as Trustee occurred almost three months prior to the  
4 execution of the purported first amendment on February 24, 2014 and the appointment of  
5 Dunham Trust Company ("Dunham") as successor Trustee.  
6

7 There is no evidence that anyone or any entity assumed the office of Trustee and was in  
8 authority to act and provide consent of the Trustee during the period between the resignation of  
9 Alaska USA in December 2013 and the purported first amendment attempting the change of  
10 situs and appointing Dunham almost three months later. In contravention of the terms of the  
11 FHT, there was a purported change in situs made while there was no acting Trustee to provide  
12 informed consent to the change in situs. Further, it appears everyone overlooked the necessity  
13 of obtaining the consent Christopher's wife, Tarja, who was and is a beneficiary entitled to  
14 discretionary distributions. Tarja did not consent to the change in situs, and her signature cannot  
15 be found on any of the documents purporting to achieve the change in situs to Nevada and  
16 Dunham's appointment as successor trustee.  
17

18 The law of Alaska, as the situs and place of administration of the FHT before the  
19 attempted change of situs, and the place of residence of Alaska USA Trust Company, the then  
20 Trustee, governs the validity of the First Amendment's change of situs to Nevada, the  
21 appointment of Dunham, and the other terms of the First Amendment, as well as the validity of  
22 the Trust and the First Amendment itself.  
23  
24  
25  
26

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27 <sup>3</sup> See Certification of Service for Opposition to Christopher D. Davis' Motion to Dismiss Pursuant to NRCP (12)(b)  
28 and NRCP 19 dated April 13, 2015 (This correction was made by Caroline Davis after Christopher Davis filed his  
Motion to Dismiss alerting the parties as to the defectiveness of both the service of process and the defective nature  
of the purported first amendment).

1 Article 12, Section 3 of the FHT requires "Any proceedings to seek judicial instructions  
2 or a judicial determination shall be initiated by my Trustee in the appropriate state court having  
3 original jurisdiction of those matters relating to the construction and administration of trusts.  
4 Because under the terms of the FHT, questions of validity must be determined under Alaska  
5 law, and Alaska is the venue which has original jurisdiction of the FHT until the attempted  
6 change of situs is accomplished, and an Alaska court must determine whether the change of  
7 situs and the First Amendment were valid. Only then should the Nevada court take jurisdiction  
8 over the FHT, and only if jurisdiction is then appropriate.  
9

10  
11 Alaska law allows for modification of an irrevocable trust upon consent, but by court  
12 approval. AS 13.36.360 Modification or Termination of Irrevocable Trust By Consent, reads:

13 (a) Except as otherwise provided by this section, on petition by a trustee,  
14 settlor, or beneficiary, a court may modify or terminate an irrevocable trust if all of the  
15 beneficiaries consent and if continuation of the trust on the existing terms of the trust is  
16 not necessary to further a material purpose of the trust. However, the court, in its  
17 discretion, may determine that the reason for modifying or terminating the trust under  
18 the circumstances outweighs the interest in accomplishing the material purposes of the  
19 trust. The inclusion of a restriction on the voluntary or involuntary transfer of trust  
20 interests under AS 34.40.110 may constitute a material purpose of the trust under this  
21 subsection, but is not presumed to constitute a material purpose of the trust under this  
22 subsection.  
23  
24

25 (b) Unless otherwise provided in the trust instrument, an irrevocable trust  
26 may not be modified or terminated under this section while a settlor is also a  
27 discretionary beneficiary of the trust.  
28

1 (c) If a beneficiary other than a qualified beneficiary does not consent to a  
2 modification or termination of an irrevocable trust that is proposed by the trustee, settlor,  
3 or other beneficiaries, a court may approve the proposed modification or termination if  
4 the court determines  
5

6 (1) if all the beneficiaries had consented, the trust could have been  
7 modified or terminated under this section; and

8 (2) the rights of a beneficiary who does not consent will be adequately  
9 protected or not significantly impaired.  
10

11 (d) In (c) of this section, "qualified beneficiary" means a beneficiary who

12 (1) on the date the beneficiary's qualification is determined, is entitled or  
13 eligible to receive a distribution of trust income or principal; or

14 (2) would be entitled to receive a distribution of trust income or principal  
15 if the event causing the trust's termination occurs.  
16

17 It is well settled that a trust may only be modified in accordance with its specific terms.<sup>4</sup>

18 Where a trust instrument requires the consent of specific parties in order for an amendment to be  
19 valid, the lack of consent will invalidate a purported amendment.<sup>5</sup> This required consent  
20 demonstrates the importance of having Alaska USA Trust Company ("Alaska USA") or their  
21 successor-in-interest (and predecessor trustee) Alaska Trust Company demonstrate authority and  
22 consent to change the situs of the FHT from Alaska to Nevada, because unless this evidence of  
23

24  
25  
26 <sup>4</sup> *Dallinger v. Abel*, 199 Ill. App. 3d 1057, 1059-1060 (Ill. App. Ct. 1990) citing *Parish v. Parish* (1963), 29 Ill. 2d  
141, 149, 193 N.E.2d 761, 766.) (It is elementary that if the method of exercising a power of modification is  
27 described in the trust instrument, the power can be asserted only in that manner.)

28 <sup>5</sup> *Williams v. Springfield Marine Bank*, 131 Ill. App. 3d 417, 475 N.E.2d 1122 (1985) (This rule was applied where  
the trust instrument permitted amendment by the settlors, the appellate court holding that an attempted amendment  
by only one settlor, after the other had died, was invalid.); See also Restatement (Second) of Trusts § 331,  
Explanatory Notes, comment e, at 144 (1959) ("If the settlor reserves a power to modify the trust only with the

1 consent is provided, the FHT situs cannot be changed. The consents of some of the beneficiaries  
2 and the FHT Trust Protector was not enough to meet the strict requirements of the condition  
3 precedent (i.e. change of situs) for the purported First Amendment.

4  
5 Caroline has provided no evidence of any written or even oral consent of any trustee  
6 authorizing the FHT's change in situs prior to Alaska USA's resignation on December 5, 2013.  
7 She has not provided any evidence of Tarja having consented to the change of situs. She has not  
8 provided any evidence of the unanimous agreement of Beatrice Davis's children to appoint a  
9 successor trustee in the event the Trust Protector fails to appoint a Successor Trustee within  
10 thirty (30) days after Alaska USA resigned, <sup>6</sup> and even if they had, the successor trustee and  
11 Tarja would have had to consent to the change of situs. Therefore, the change of situs under the  
12 purported First Amendment must be presumed invalid until such evidence of an acting Trustee's  
13 consent can be produced and evidence of the Trustee's and all beneficiaries' consent of the  
14 change in situs can be obtained. Further and most importantly, such a dispute, which includes  
15 the validity of the First Amendment, must be brought in Alaska, as the original situs of the FHT  
16 before the purported First Amendment and the attempted change of situs.

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18  
19 Christopher asserts that the change of situs is invalid because of the lack of consent of all  
20 beneficiaries and the absence of action by an Alaska Trustee. The determination of the validity  
21 of the purported First Amendment and the change of situs (as well as its other provisions) is a  
22 condition precedent to the Nevada court taking jurisdiction over the FHT. That determination  
23 must be made under Alaska law before the Nevada court can assert jurisdiction over the FHT.  
24 Caroline alleges that the FHT Trust Protector validly appointed Dunham as successor Trustee on  
25

26  
27 consent of one or more of the beneficiaries, or of the trustee, or of a third person, he cannot modify the trust without  
28 such consent." ).

<sup>6</sup> See Trust, Article Eleven, Section 3(c), Page 11-3, attached as Exhibit 1 to Caroline Davis's Original Petition.

1 February 24, 2014, citing the second paragraph of Article 14, Section 6 as his authority to do so;  
2 however as noted herein, she omitted the preceding paragraph relating to the change of situs  
3 which is the condition precedent before an amendment can be authorized. Although the FHT  
4 authorizes the Trust Protector and/or the beneficiaries to appoint a successor trustee in certain  
5 circumstances, the change of situs could only be authorized upon consent by all beneficiaries,  
6 and approval by a trustee in the original situs of Alaska  
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8 When the terms of a trust are not followed, the resulting actions based upon such  
9 deviation may be invalidated.<sup>7</sup> Under the terms of the FHT, discussed above, it was not  
10 Dunham's consent that was required to change the situs. The timing of the purported First  
11 Amendment and Dunham's consent put the cart before the horse. In order to move the situs of  
12 the FHT from Alaska to Nevada or any other jurisdiction, all the beneficiaries had to consent,  
13 the "then acting Trust Protector" had to consent, and the Alaska trustee had to consent only after  
14 obtaining the requisite legal advice. Only then could a change in situs occur. (This is a  
15 different and more demanding standard than merely changing the trustee to another Alaska  
16 trustee.) Another Alaska Trustee could have been appointed, and the consent of all the  
17 beneficiaries could have been obtained; then upon agreement by the Trustee, all beneficiaries,  
18 and the Trust Protector, the situs could have been validly changed. However, the FHT's  
19 purported First Amendment attempts to change the FHT's situs while concurrently appointing  
20 Dunham as a "directed trustee". Again, Dunham's valid appointment as a Trustee, and its  
21 consent to serve, could have been achieved only after the situs of the FHT was changed from  
22 Alaska to Nevada. Had all of the beneficiaries consented, the decision to change the situs may  
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28 <sup>7</sup> *Northwestern University v. McLoraine*, 108 Ill. App. 3d 310, 438 N.E.2d 1369 (1982) (This rule was applied where the settlor had neglected to follow the terms of the trust which required for an amendment only that the settlor put the amendment in writing, sign it, and deliver it to the trustees during the settlor's lifetime.)



1 have found a more stable legal basis had Dunham been doing business in Alaska. But as a  
2 Nevada trustee, Dunham would have had to already be in tenure as trustee, procured advice  
3 from legal counsel about the tax and other consequences of moving the FHT situs, and then  
4 authorized the actual change in FHT's situs from Alaska. The requisite consent of an authorized  
5 Alaska trustee and all the beneficiaries does not appear in the purported First Amendment or in  
6 any other document, and Caroline Davis does not provide any other evidence of a Trustee's  
7 consent between December 2013 and February 2014. The condition precedent of all the  
8 beneficiaries' consents and the Alaska trustee's consent was not met in order to provide  
9 authority to then acting Trust Protector, Stephen Lehnardt, to change the situs of the FHT  
10 without the consent of an Alaska Trustee as required by the terms of the FHT. The FHT's  
11 purported First Amendment's change of situs is, therefore, invalid.

14 Establishing the validity of the FHT's purported First Amendment under NRS 164.010  
15 without invoking Alaska jurisdiction is Caroline's "attempted foothold" in her urging for this  
16 Court to take improper *in rem* jurisdiction over the FHT, FHT Holdings, and personal  
17 jurisdiction over Dunham, but more importantly it is the defective basis upon which she urges  
18 this Court to assume jurisdiction over Christopher in all his capacities within any family entity,  
19 foreign or domestic, including the Revocable Trust and the Davis Family Office which are  
20 residents of Missouri. Even assuming *arguendo* that jurisdiction is proper through the untenable  
21 theory that the the First Amendment is valid, this court could only obtain jurisdiction over the  
22 FHT. Thus, Caroline is more than willing to overlook the FHT's requirements for change of  
23 situs and the jurisdictional prerequisites, and arrive at the erroneous conclusion that somehow  
24 Christopher and Mr. Lenhardt "consented to the jurisdiction of this Court by operation of law."  
25 Noticeably, Caroline cites NRS 163.5555 as authority for this statement but ignores the  
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1 requirement that the FHT be subject to the laws of Alaska, which, is clearly in dispute precisely  
2 because of the invalidity of the purported First Amendment's change of the FHT's situs to  
3 Nevada.

4  
5 It is clear that even during the life of Beatrice B. Davis, the situs of the FHT could not be  
6 changed unless her Alaska trustee had obtained an opinion of legal counsel to the effect that the  
7 change in situs would not impact adversely on the spendthrift provisions of the FHT.<sup>8</sup> The  
8 express purpose of the FHT was to support and protect Beatrice's family for generations to  
9 come, through the protection for the shares allocated to each beneficiary, so that no situation  
10 would be created that could expose any of the beneficiary's shares to the claims of creditors  
11 including amongst any beneficiary acting as a creditor to another.<sup>9</sup> The attempted appointment  
12 as Dunham as a directed trustee shedding all its liability onto Christopher clearly contravened  
13 her intent.  
14

15  
16 Beatrice Davis, the trustmaker, was very clear that even if a power was granted to her  
17 Trustee by applicable state and federal statutes, it would be strictly limited to any express  
18 limitations or contrary directions in the FHT.<sup>10</sup> Any amendment to change the situs of the FHT  
19 would require the opinion of legal counsel as to its effect and be curtailed, if applicable, by the  
20 terms of the FHT. This protection is implicit in the requirement that the advice of legal counsel  
21 be sought by the Trustee prior to a change in situs of the FHT.<sup>11</sup> There is simply no evidence to  
22 suggest that such an opinion was obtained by the Alaska Trustee prior to the purported change  
23 in FHT situs.  
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28 <sup>8</sup> See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

<sup>9</sup> See Trust, Article 8, Section 3 (b), Page 8-3.

<sup>10</sup> See Trust, Article Thirteen, Section 3.z, Page 13-19.

<sup>11</sup> See Trust, Article Fourteen, Section 6, Page 14-7 and 14-8.

1 Because of the lack of evidence of the required consent by the Alaska trustee and all the  
2 beneficiaries, and because the Alaska trustees initiated and completed all the transactions for  
3 which Caroline is demanding an account, the presence of the predecessor Alaska trustees acting  
4 prior to February 24, 2014 (the date of the purported First Amendment) is indispensable to this  
5 matter, in order to determine the validity and consent issues discussed herein. Without the  
6 indispensable party(ies) being joined, including Alaska Trust, the predecessor trustee and  
7 successor in interest of Alaska USA, and/or another Alaskan successor after December 5, 2013,  
8 the matter cannot properly adjudicated.  
9

10  
11 **B. Indispensible Parties to this Action and Caroline's Failure to Provide Notice or**  
12 **Service**

13 Caroline alleges that "During their tenure as Trustee, both Alaska<sup>12</sup> and Alaska USA  
14 distributed approximately \$2,164,744.68, from loans taken against the Ashley Cooper Life  
15 Insurance Policy, to Chrstioher individually, and as a co-trustee with Caroline of the Beatrice B.  
16 Davis Revocable Living Trust, dated April 4, 1990, as amended (the "Revocable Trust"), and as  
17 Manager of the Davis Family Office, a Missouri limited liability company (the "Davis Office").  
18 Caroline apparently believes that the Alaska trustees which allegedly procured more than two  
19 million dollars in policy loans from Ashley Cooper Life Insurance Policy for various FHT  
20 purposes, including making loans to Beatrice and paying their own fees, are not indispensable  
21 parties, simply because she alleges that, Mr. Davis, in his individual capacity, and in capacity as  
22 Trustee of the Revocable Trust, and as Manager of the Davis Office, was the only individual to  
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<sup>12</sup> Alaska Trust Company was the predecessor trustee of the Beatrice B. Davis Family Heritage Trust dated July 28, 2000 prior to Alaska USA Trust Company.

1 receive distributions as a result of such loans and the only one privy to the information sought  
2 by Ms. Davis,..."<sup>13</sup> Her allegation is misplaced.

3 Caroline apparently believes that neither Beatrice, nor the Alaska trustees, nor any other  
4 entity, were the recipients of any of the FHT funds borrowed, distributed, or otherwise disbursed  
5 from the Ashley Cooper Life Insurance Policy, which based upon the administration expenses  
6 by Alaska and/or Alaska USA or the Trust Protector is improbable at best. Under Alaska law  
7 and almost every other jurisdiction in the United States, a trustee is entitled to fees, and the  
8 mandate of an accounting for trust assets is directed to the trustee that actually administered the  
9 trust funds or assets, not to a beneficiary or other creditor or debtor of the trust.<sup>14</sup> In this case,  
10 those trustees required to account would be Alaska Trust and Alaska USA (now merged into  
11 Alaska USA) and they are the only ones who could account for these transactions, and whether  
12 or not they received any of those funds including but not limited to their administration costs or  
13 other investment expenses, as well as for what purposes the loans, distributions, or  
14 disbursements were made. Because only they would have such information, they are a  
15 necessary and indispensable party. Caroline's request would greatly prejudice and unduly  
16 burden Christopher to attempt secure information from and in the possession of the prior  
17 trustees in Alaska for documentation that Caroline desires through a proceeding in Nevada,  
18 during the time that she had co-equal status with him as a beneficiary. Alaska and/or Alaska  
19 USA would be the proper parties from whom to request her desired information.

20 Notably, Caroline alleges that Dunham Trust Company is an indispensable party, having  
21 allegedly received a mere \$25,000 of the total amount of policy loans (presumably for its fees  
22 and expenses) while Alaska and Alaska USA are not indispensable parties after having  
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<sup>13</sup> See Opposition at 7:20-22.

1 allegedly received and distributed \$2,164,744.68 as well as allegedly transferring all the assets  
2 of the FHT to Dunham. Interestingly, the information Caroline Davis is requesting would be in  
3 the possession of the two Alaska trustees that she claims are not indispensable, which is an  
4 unreasonable argument. It is unclear if Caroline even bothered to request an accounting from  
5 either Alaska Trust or Alaska USA concerning their alleged receipt and distribution of  
6 \$2,164,744.68, or from Dunham regarding the \$25,000 that was allegedly loaned during  
7 Dunham Trust Company's alleged trusteeship before rushing to this court for a remedy. As a  
8 beneficiary, she could have easily requested this information from these trustees without filing  
9 the present court action.  
10

11  
12 Because of her rush to court without apparently requesting these documents from the  
13 trustees, Caroline now attempts twice to indicate that she is "not now objecting to the loans and  
14 distributions being made or claiming any breach of fiduciary duty..." or she "is not now  
15 claiming any willful misconduct or gross negligence by Alaska or Alaska USA."<sup>14</sup> However,  
16 she has asked this court to assume jurisdiction over the Nevada trustee, the FHT, the Trust  
17 Protector and trust adviser, and if she succeeds, she will file any future action in this same  
18 Nevada case. Therefore, her allegation that "Alaska and Alaska USA have no interest in the  
19 outcome of the relief being sought by Ms. Davis in her Petition" is incorrect. Alaska and Alaska  
20 USA would have every interest in the outcome of this action because they were trustees of the  
21 Trust who made the trust loans which are the subject of Caroline's concerns, and over which she  
22 has asked this Court to exercise *in rem* jurisdiction. Furthermore, they were trustees for the time  
23 periods in which Caroline seeks all information and, therefore, logically any information and/or  
24 claims arising from the information in Alaska and Alaska USA's possession is relevant to them.  
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<sup>14</sup> See Alaska Statute 13.36.080; See also NRS 164.015 and NRS 153.031(1)(h).

1 Relying on the purported validity of the First Amendment to the FHT, Caroline comes to  
2 the misleading conclusion that, “[because] Dunham Trust lacked the authority to act, the transfer  
3 of the Ashley Cooper Life Insurance Policy must have been done at the direction of Mr. Davis,  
4 as Investment Trust Advisor.” Noticeably, Caroline removes any reference to the Alaska or  
5 Alaska USA Trustees who would have the information or approved any alleged transfers and  
6 have the information pertaining thereto. Caroline freely omits information to wrongfully obtain  
7 the information she seeks. She further ignores that the manager of an LLC wholly owned by  
8 the Trustee who is a beneficiary of the trust would not have the authority to transfer the policy  
9 to itself. Caroline leaps to her finger-pointing apparently without bothering to request the  
10 transfer documents either from Dunham or the Puerto Rico custodian.  
11

12 Caroline is simply attempting to gain access to records that she could request from the  
13 parties that she claims are not indispensable, and to delve into Christopher’s personal affairs.  
14 She has asked for an accounting from him as to the use of all the loan proceeds, disbursements  
15 or distributions from the FHT, without regard to the entity or person who in fact was the  
16 borrower or recipient. It is a question for the Alaska trustee as to whether the loans or  
17 distributions were made in accordance with the provisions of the FHT. With 20/20 hindsight,  
18 Caroline may regret that she did not borrow funds, request distributions, or demand an  
19 accounting from the Alaska trustees while she was able to do so. Now she is asking this Court  
20 to turn a blind eye and “look beyond”<sup>16</sup> her failure to even make any appropriate request on the  
21 proper parties or serve the proper parties that would have the information that she is seeking.  
22 Christopher respectfully requests that this Court grant his motion to dismiss and deny Caroline’s  
23 claims in their entirety.  
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<sup>16</sup> See Page 7, lines 24-25 and Page 8, lines 17-18 of Caroline Davis’s Objection.

1       **C. Individual Parties or Entities Were Not Properly Served for the Court to Exercise**  
2               **Jurisdiction, and FHT Holdings' Corporate Form May Not Be Disregarded**

3               In an effort to buttress her argument regarding their lack of proper service upon FHT  
4 Holdings, LLC, Caroline cites to inapplicable case law from Surrogate's Court of New York,  
5 New York County, which does not address the necessity of providing proper service to a  
6 corporation. In similar fashion to her omission of the language of the FHT as it related to the  
7 condition precedent to any future amendment, she even withheld the pertinent language for the  
8 cited case which actually held that, "It is sometimes said that where an estate or trust owns all or  
9 substantially all of the shares of a corporation, the corporate form may be disregarded and the  
10 situation viewed just as if the fiduciaries held title to the corporate assets. This would appear to  
11 be an oversimplification of the matter. It is not so much a matter of disregarding the corporate  
12 form, but rather of giving paramount consideration to the testamentary plan and scheme, and  
13 effectuating it in the manner prescribed by the testator. (citation omitted) Sometimes, due  
14 consideration of the testamentary plan demands that the corporate form be respected. This is  
15 particularly true where the testator directed the formation of a corporation or the continuance of  
16 one formed during his lifetime. (citation omitted).<sup>17</sup>

17               Under the facts of this case, Beatrice, as Trustmaker, did not form FHT Holdings, LLC,  
18 and did not specify that FHT Holdings be given consideration as part of her testamentary plan  
19 and scheme. Based upon the definition of the case cited by Caroline, she is attempting to  
20 oversimplify this matter, which cannot be done with regard to the facts presented in this matter.  
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28 <sup>16</sup> Petition at 7:5-6.

<sup>17</sup> In the Matter of Schnur, 39 Misc. 2d 880, 887, 242 N.Y.S.2d, at 132 (1963).

1 Furthermore, in *Swensen v. Sheppard*, our Nevada Supreme Court recognized that NRS  
2 164.010(1) and NRS 164.015(6) do not give the court jurisdiction to impose personal  
3 judgments.<sup>18</sup> Likewise, it found that it could not impose personal liability on individuals or  
4 entities which “required the court to acquire ‘personal jurisdiction over [them as] part[ies],  
5 normally through appropriate process based on contacts with the jurisdiction or through [their]  
6 general appearance therein to defend on the merits.’”<sup>19</sup>

7  
8 In her Opposition, however, Caroline attempts to request this court take exception to the  
9 requirements for proper service and notice, which is entirely improper. Caroline is attempting  
10 to use the relaxed standards of statutory *in rem* jurisdiction for the more stringent requirements  
11 necessary to obtain the necessary personal jurisdiction over Christopher Davis, individually or  
12 upon FHT Holdings, LLC. Again, this is improper and contrary to due process requirements.  
13 Proper notice and service are required for personal jurisdiction over a party especially when  
14 requesting the court to exercise power and authority over an individual party or upon a business  
15 entity.  
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18 Furthermore, when assets are transferred with proper authority to a business entity, then  
19 the property becomes part of the business entity and not the trust.<sup>20</sup> Thus, a district court’s *in*  
20 *rem* jurisdiction under NRS 164.010(1) and NRS 164.015(6) over the trust assets do not extend  
21 to assets transferred from the trust to a business entity or to a third party from that business  
22 entity.<sup>21</sup> Therefore, even if the Court were to obtain jurisdiction over the insurance policy  
23 administered by a Puerto Rico insurer with the advice of the Canadian broker-dealer investment  
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27 <sup>18</sup> *Swensen v. Sheppard (In re Aboud)*, 314 P.3d 941, 946 (Nev. 2013)

<sup>19</sup> *Id.*, citing Restatement (Second) of Judgments § 30(2) cmt. c; see *Young v. Nev. Title Co.*, 103 Nev. 436, 442, 744 P.2d 902, 905 (1987) (“A court does not have jurisdiction to enter judgment for or against one who is not a party to the action.”)

<sup>20</sup> *Swensen v. Sheppard (In re Aboud)*, 314 P.3d 941, 945-946 (Nev. 2013)

<sup>21</sup> *Id.*

1 advisor, Caroline would also have to seek personal jurisdiction over Christopher, individually,  
2 or FHT Holdings, LLC to obtain any relief she seeks. She did not do so.

3 Therefore, the due process rights of the entities must be respected, and service properly  
4 administered in order to obtain jurisdiction over Christopher, individually, and FHT Holdings,  
5 LLC. Therefore, Caroline's Original Petition should be dismissed.

7 **D. Additional Indispensable Parties Named in Opposition Were Not Served; therefore,**  
8 **Jurisdiction is Improper over Them.**

9 Caroline admittedly did not include additional parties in her Original Petition that she  
10 now alleges were recipients of FHT funds and loans from the insurance policy. Caroline alleges  
11 that, "During their tenure as Trustee, both Alaska and Alaska USA distributed approximately  
12 \$2,164,744.68, from loans taken against the Ashley Cooper Life Insurance Policy, to Mr. Davis  
13 individually, as co-Trustee (with her) of the Beatrice B. Davis Revocable Living Trust, dated  
14 April 4, 1990, as amended (the "Revocable Trust"), and as Manager of the Davis Family Office,  
15 a Missouri limited liability company (the "Davis Office"). In order to allegedly distribute loans,  
16 Alaska and Alaska USA must have been recipients of FHT funds. In order to make a loan of  
17 FHT funds to Alaska and Alaska, the custodian of the Ashley Cooper Life Insurance Policy  
18 must have been in receipt of FHT funds. If, as alleged, FHT funds were received by  
19 Christopher, the Revocable Trust, and the Davis Family Office from Alaska and Alaska USA,  
20 all three would have been recipients of those funds. Of the prior six alleged recipients, none of  
21 them was afforded proper notice or service in this matter. Therefore, this court lacks  
22 jurisdiction over these parties. Particularly, Nevada law does not allow for this Court to take  
23 jurisdiction over the Revocable Trust and the Davis Family Office, which are Missouri entities,  
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1 without examining the requirements necessary for jurisdiction over foreign entities holding only  
2 personal property.

3 Caroline, in effect, argues 1) the entity authorized to make the policy loan is not an  
4 indispensable party, 2) that the party making the loans or distributions does not even need to be  
5 noticed or served concerning the policy loans, 3) the only individual alleged as a recipient does  
6 not need to be served pursuant to NRCP 4; and 4) that notice or service either under NRCP 4 or  
7 NRS 155.010 does not need to be provided to the remaining alleged distributees and recipients  
8 of FHT funds. These four arguments violate all constitutionally protected due process rights  
9 and related laws existent in Nevada, and likely every other jurisdiction in the United States.  
10 Proper parties should be included in lawsuits affecting their rights or responsibilities and proper  
11 personal and subject matter jurisdiction should be obtained over all parties in such lawsuits.  
12

13 Caroline admittedly understands the importance of obtaining *in rem* jurisdiction over a  
14 trustee of a trust pursuant to NRS 164.010, because she asks this Court to assume jurisdiction of  
15 the FHT pursuant to this statutory authority. Notwithstanding this admission, she seeks  
16 jurisdiction over Christopher Davis, individually, as trustee of the Revocable Trust, and as  
17 manager of FHT Holdings without even bothering to serve notice under NRS 155.010 or  
18 pursuant to NRCP 4. Furthermore, Caroline failed to serve the custodian of the Ashley Cooper  
19 Life Insurance Policy of which she claims provided the loans to the FHT.  
20

21 Admittedly, all of these parties were admittedly never even served by Caroline, and  
22 therefore her Petition must be dismissed for lack of proper jurisdiction over these parties.  
23

24 Notice and service of process were never given to these parties, and the Court is without  
25 jurisdiction over them. Therefore, Caroline's claims in her Original Petition must be dismissed.  
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1       **E. The Alaska Trustees are Indispensible Parties and Meet NRCP 19 Requirements;**  
2       **therefore, without a Joinder of these Parties, this Matter Must be Dismissed.**

3       In Reply to the NRCP 19 factors discussed by Caroline in her Opposition, it is evident  
4       that Caroline belies her own statements. Caroline indicates on the one hand that Alaska and  
5       Alaska USA would not be "placed in a position in which they would need to protect any  
6       interest"<sup>22</sup> while on the other indicating that Caroline is "not now claiming any willful  
7       misconduct or gross negligence by Alaska or Alaska USA" suggesting that when she obtains  
8       any of Alaska or Alaska USA documents that possible claims are likely to follow.<sup>23</sup> Alaska or  
9       Alaska USA must be allowed to defend themselves if necessary or protect themselves from  
10       liability in the accuracy of information that may be provided during their tenure as Trustees of  
11       the FHT to avoid claims of willful misconduct or gross negligence by Caroline.  
12

13       Furthermore, Christopher will be subjected to double or multiple or otherwise  
14       inconsistent obligations in possibly many jurisdictions as a result of Caroline's claims without  
15       the necessary parties, Alaska and Alaska USA, joined to the present matter. Caroline seems to  
16       ignore the fact that she has now named multiple Defendants in this matter whose interests must  
17       all be considered, especially in light of the fact that proper service has not been effectuated on  
18       them for an order or judgment to be rendered against them in this matter.  
19

20       Curiously, Caroline then requests the Court to seek relief from Christopher individually  
21       if the Court does find that Alaska and Alaska USA are indispensable parties. She wrongfully  
22       asks the court to order Christopher to provide the documents that are in Alaska and Alaska  
23       USA's possession without gaining proper jurisdiction over him individually. She wrongfully  
24       alleges that such a request would allegedly not be prejudicial to Christopher and allegedly  
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<sup>22</sup> See Caroline's Opposition, Page 8, lines 21-22.

1 would be an adequate remedy, although the requested documents would be in the Trustee's  
2 possession.

3 She also falsely alleges that Alaska cannot allegedly assume jurisdiction over  
4 Christopher, erroneously citing NRCP 19(b) for this proposition.<sup>24</sup> With proper service to  
5 Christopher, Caroline could obtain jurisdiction over Christopher in Alaska if Alaska has  
6 jurisdiction over the FHT.<sup>25</sup>

7 Joinder of Alaska and Alaska USA, Inc., is necessary as previously explained in  
8 Christopher's Original Motion to Dismiss and herein. If their joinder is not feasible, then this  
9 matter must be dismissed, because they are necessary and indispensable parties to this matter.  
10

### 11 **III. CONCLUSION**

12 For the foregoing reasons, Christopher respectfully requests the Court do the following,  
13

- 14 1. Deny Caroline's Original Petition in its entirety;
- 15 2. Deny Caroline's Opposition in its entirety; and
- 16 3. Grant the relief requested in Christopher's Original Motion to Dismiss and all further  
17 requests made in his Reply to Caroline's Opposition to his Original Motion to Dismiss;
- 18 4. Deny jurisdiction over the FHT Trust as a proceeding *in rem* until an Alaska court  
19 determines the validity of the change in situs, and/or the First Amendment;  
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23 <sup>23</sup> See Caroline's Opposition, Page 8, lines 17-18 (emphasis added).

24 <sup>24</sup> See Caroline's Opposition, Page 9, lines 14-15 and fn 24.


25 <sup>25</sup> See AS 13.36.375. Trustee Advisor: (a) A trust instrument may provide for the appointment of a person to act as  
26 an advisor to the trustee with regard to all or some of the matters relating to the property of the trust. (b) Unless the  
27 terms of the trust instrument provide otherwise, if an advisor is appointed under (a) of this section, the property and  
28 management of the trust and the exercise of all powers and discretionary acts exercisable by the trustee remain  
vested in the trustee as fully and effectively as if an advisor were not appointed, the trustee is not required to follow  
the advice of the advisor, and the advisor is not liable as or considered to be a trustee of the trust or a fiduciary  
when acting as an advisor to the trust.; See also AS 13.36.035 (a) The court has exclusive jurisdiction of  
proceedings initiated by interested parties concerning the internal affairs of trusts, including trusts covered by (c) of  
this section. Except as provided in (c) and (d) of this section, proceedings that may be maintained under this section  
are those concerning the administration and distribution of trusts, the declaration of rights, and the determination of  
other matters involving trustees and beneficiaries of trusts.

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5. Deny jurisdiction over the Revocable Trust and the Davis Family office;
6. Deny jurisdiction over Christopher Davis personally;

DATED this 17<sup>th</sup> day of April, 2015.

Respectfully Submitted,  
**ROLAND LAW FIRM**

  
\_\_\_\_\_  
Harriet H. Roland, Esq.  
NV Bar No. 5471  
2470 E. St. Rose Pkwy, Ste. 105  
Henderson, NV 89074  
Telephone: (702) 452-1500  
Facsimile: (702) 920-8903  
hroland@rolandlawfirm.com

*Attorney for Christopher D. Davis*

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to this action.  
3 I further certify that except as otherwise noted on April 20, 2015, I served the foregoing  
4 CHRISTOPHER D. DAVIS' REPLY TO CAROLINE DAVIS' OPPOSITION TO HIS  
5 MOTION TO DISMISS PURSUANT TO NRCP (12)(b) AND NRCP 19 by first class US  
6 mail, postage prepaid, upon the following persons or entities:

7 Tarja Davis  
8 514 West 26<sup>th</sup> Street, #3E  
9 Kansas City, Missouri 64108

10 Ace Davis  
11 c/o Winfield B. Davis  
12 366-6 Habu Aridagawa Arida  
13 Wakayama 643-0025  
14 JAPAN

15 Christopher D. Davis  
16 514 West 26<sup>th</sup> Street, #3E  
17 Kansas City, Missouri 64108

18 Registered Agent Solutions, Inc.  
19 Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability Company  
20 4625 West Nevso Drive, Suite 2  
21 Las Vegas, Nevada 89103

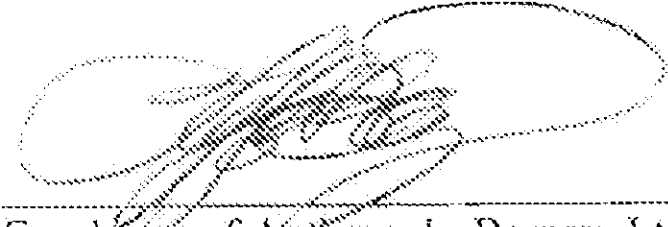
22 Stephen Lehnardt  
23 20 Westwoods Drive  
24 Liberty, Missouri 64068  
25 [Stephen@lehnardt.com](mailto:Stephen@lehnardt.com)

26 Winfield B. Davis  
27 366-6 Habu Aridagawa Arida  
28 Wakayama 643-0025  
JAPAN

29 Mark Solomon, Esq.  
30 Joshua Hood, Esq.  
31 **SOLOMON DWIGGINS & FREER, LTD.**  
32 9060 W. Cheyenne Ave.  
33 Las Vegas, NV 89129  
34 *Attorney for Petitioner Caroline Davis*

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Charlene Renwick, Esq.  
Lee, Hernandez, Landrum & Garofalo  
7575 Vegas Drive, #150  
Las Vegas, Nevada 89128  
*Attorney for Dunham Trust Company*

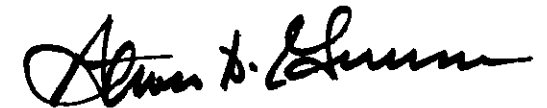


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Employee of Anthony L. Barney, Ltd.



# EXHIBIT 14



CLERK OF THE COURT

HARRIET H. ROLAND, ESQ.  
NV Bar No. 5471  
**ROLAND LAW FIRM**  
2470 E. St. Rose Pkwy, Ste. 105  
Henderson, NV 89074  
Telephone: (702) 452-1500  
Facsimile: (702) 920-8903  
hroland@rolandlawfirm.com

ANTHONY L. BARNEY, ESQ.  
Nevada Bar No. 8366  
TIFFANY S. BARNEY, ESQ.  
Nevada Bar No. 9754  
**ANTHONY L. BARNEY, LTD.**  
3317 W. Charleston Blvd., Suite B  
Las Vegas, NV 89102  
Telephone: (702) 438-7878  
Facsimile: (702) 259-1116  
*Attorneys for Christopher D. Davis*

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

In the matter of:

Case No.: P-15-083867-T

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

Dept. No.: 26

**CHRISTOPHER D. DAVIS' MOTION TO DISMISS PURSUANT TO NRCP (12)(b)**  
**AND NRCP 19**

COMES NOW, 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 submits his  
motion to dismiss the Petition of Caroline Davis ("Caroline") pursuant to Nevada Rules of Civil

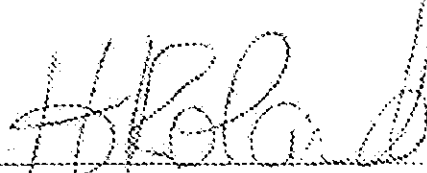


1 Procedure 12(b) and for failure to join an indispensable party under NRCP 19, and his refusal to  
2 have this matter heard before the Honorable Probate Commissioner. This pleading is based on  
3 the Memorandum of Points and Authorities attached hereto, any exhibits attached hereto, and  
4 any oral argument that will be heard in this matter.  
5

6 DATED this 4th day of March, 2015.

7 Respectfully Submitted,

8 **ROLAND LAW FIRM**

9 

10 Harriet H. Roland, Esq.

11 *Attorney for Christopher D. Davis*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

I. **FACTS PRESENTED**

The Beatrice B. Davis Family Heritage Trust (the "Trust") was settled by Beatrice B. Davis on July 28, 2000, as an irrevocable trust. The Trust was purportedly amended on February 24, 2014 by the Trust Protector. (The validity of the trust and the amendment are questions of Alaska or Missouri law, not Nevada law, and the determinations of their validity are conditions precedent to any finding of jurisdiction by this Court and to the fiduciary's delegation of duties.)

The Trust was part of the very sophisticated estate plan of Beatrice B. Davis ("Beatrice"), who was a Missouri resident until her death. Before his death, her husband Ilus W. Davis, was an accomplished attorney and the mayor of Kansas City, Missouri. Beatrice and Ilus had two children, Caroline, and Christopher. Christopher is a resident of Missouri, who has one child, Winfield, who resides in Japan. Caroline is an attorney in Seattle, Washington. Those three descendants are the current beneficiaries of the Trust.

The Trust at all times relevant has held as its primary asset a single-premium life insurance policy which would not mature until the death of Beatrice's daughter-in-law. The policy was exchanged for a different policy, Ashley Cooper Policy, Policy Number ACLI 1105-8007 PC (the "Policy") during Beatrice's lifetime. The then-custodian of the policy was a company in the Cayman Islands. Now, the custodian is in Puerto Rico. Initially, Alaska Trust Company ("ATC") served as trustee, until its removal in 2011, at which time Alaska USA Trust Company ("AUTC") became successor Trustee. Neither ATC nor AUTC is registered to do business in Nevada. ATC and AUTC were the Trustees and sole fiduciaries acting on behalf of

1 the Trust from 2000 until December 5, 2013, during the times of the transactions questioned by  
2 Caroline as Petitioner herein.

3 On February 24, 2014, Dunham Trust Company ("DTC") took office as next successor  
4 trustee. On March 28, 2014, DTC created FHT Holdings, LLC, and effectuated the transfer of  
5 the current life insurance policy to it. DTC is the sole member of FHT Holdings, LLC.  
6 Christopher did not serve in any fiduciary capacity relating to the Trust until his purported  
7 appointment as Investment Advisor of the Trust under the 2014 First Amendment ("first  
8 amendment"), which was consented to, in writing, by all beneficiaries, including Caroline. (By  
9 her consent, Caroline also indemnified AUTC from liability, excepting willful misconduct or  
10 gross negligence.)  
11

12  
13 It is important that only ATC and AUTC borrowed funds from the insurer; and that the  
14 settlor and the beneficiaries were not able to access or borrow any money from the insurer or the  
15 policies. All loans were made with funds from the Trust, by the Alaskan trustees, with the sole  
16 exception of the \$25,000 June 2014 withdrawal made by DTC, which presumably was for trust  
17 purposes. Caroline is requesting documents and information concerning funds borrowed from  
18 the insurer by ATC and AUTC while the policy was owned and controlled by them as trustees  
19 of the Trust, yet she has not requested the Court take jurisdiction over either ATC or AUTC,  
20 possibly because she has previously agreed in writing to AUTC's indemnification.  
21

22  
23 Contrary to Petitioner's assertions, Christopher did not at any time have authority to  
24 direct ATC, AUTC, or the custodian of the Policy to make the loans, nor to obtain specific  
25 information about the loans between the trustees and the insurer. He had no authority to borrow  
26 from the policy, and he had no investment authority over the FHT assets during ATC's and  
27  
28

1 AUTC's tenure as trustee.<sup>1</sup> He had only the same beneficiary rights as Caroline has, to request,  
2 not demand, information or a loan of Trust funds from the trustee.

3 Petitioner is requesting documents and information produced during the tenure of ATC and  
4 AUTC,<sup>2</sup> which she admits would be in the possession of AUTC.<sup>3</sup> Thus, ATC and AUTC as the  
5 Alaskan trustees who borrowed the funds from the insurer, and who made loans to any person or  
6 entity, are necessary and indispensable parties herein. The Court must dismiss Petitioner's  
7 Petition pursuant to NRCP 12(b) and 19, because relief cannot be awarded as a result of the  
8 non-joinder of indispensable parties, ATC and AUTC, and due to a lack of jurisdiction over the  
9 subject matter, lack of jurisdiction over the parties, insufficiency of process in these  
10 proceedings, and an insufficiency of service of process.

## 13 II. LEGAL AUTHORITY AND ARGUMENT

### 14 A. Petitioner has failed to bring a necessary party to entitle her to relief against 15 Defendants pursuant to NRCP 12(b)(6) and the Court should find AUTC is an 16 indispensable party.

17 Pursuant to Nevada Rules of Civil Procedure ("NRCP") 12(b)(6), a party can bring a  
18 motion for failure to join a party under NRCP 19. Herein, Petitioner has failed to join an  
19 indispensable party pursuant to NRCP 19; therefore, a dismissal of Petitioner's requested relief  
20 is warranted as a matter of law, because complete relief cannot be accorded among the named  
21 parties.  
22

23 NRCP 19(a) and (b) provide the following,  
24  
25

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26 <sup>1</sup> The Petitioner goes to great lengths to discuss the Successor Trustees of the Beatrice B. Davis Revocable Living  
27 Trust in her Petition, but this is not the Trust over which Petitioner requests this Court take jurisdiction.

28 <sup>2</sup> See Petition, Page 5:3-5. Petitioner further admits to the necessary statement from AUTC stating at footnote 35,  
"Note that we do not have possession of statements from Alaska USA Trust Company indicating the disposition of  
the loan proceeds."

<sup>3</sup> Id.

1 (a) **Persons to Be Joined if Feasible.** A person who is subject to service of process  
2 and whose joinder will not deprive the court of jurisdiction over the subject matter of the  
3 action shall be joined as a party in the action if (1) in the person's absence complete  
4 relief cannot be accorded among those already parties, or (2) the person claims an  
5 interest relating to the subject of the action and is so situated that the disposition of the  
6 action in the person's absence may (i) as a practical matter impair or impede the person's  
7 ability to protect that interest or (ii) leave any of the persons already parties subject to a  
8 substantial risk of incurring double, multiple, or otherwise inconsistent obligations by  
9 reason of the claimed interest. If the person has not been so joined, the court shall order  
10 that the person be made a party. If the person should join as a plaintiff but refuses to do  
11 so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff.

12 (b) **Determination by Court Whenever Joinder Not Feasible.** If a person as  
13 described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall  
14 determine whether in equity and good conscience the action should proceed among the  
15 parties before it, or should be dismissed, the absent person being thus regarded as  
16 indispensable. The factors to be considered by the court include: first, to what extent a  
17 judgment rendered in the person's absence might be prejudicial to the person or those  
18 already parties; second, the extent to which, by protective provisions in the judgment, by  
19 the shaping of relief, or other measures, the prejudice can be lessened or avoided; third,  
20 whether a judgment rendered in the person's absence will be adequate; fourth, whether  
21 the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

22 The Nevada Supreme Court has indicated that "this court has required all persons materially  
23 interested in the subject matter of the suit be made parties so that there is a complete decree to  
24 bind them all. If the interest of absent parties may be affected or bound by the decree, they must  
25 be brought before the court or it will not proceed to decree."<sup>4</sup> It also concluded, that "[f]ailure  
26 to join an indispensable party is fatal to a judgment and may be raised by an appellate court sua  
27 sponte."<sup>5</sup>

28 The U.S. Supreme Court has also held the following:

Joinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is  
the method by which potential parties are subjected to the jurisdiction of the court and  
bound by a judgment or decree. The parties to a lawsuit presumably know better than  
anyone else the nature and scope of relief sought in the action, and at whose expense  
such relief might be granted. It makes sense, therefore, to place on them a burden of

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<sup>4</sup> *Olsen Family Trust v. District Court*, 110 Nev. 548, 553 (1994).

<sup>5</sup> *Schwob v. Hemsath*, 98 Nev. 293, 294 (1982), citing *Provident Bank v. Patterson*, 390 U.S. 102 (1968) and *Johnson v. Johnson*, 93 Nev. 655, 572 P.2d 925 (1977).

1 bringing in additional parties where such a step is indicated, rather than placing on  
2 potential additional parties a duty to intervene when they acquire knowledge of the  
lawsuit.<sup>6</sup>

3 Petitioner has failed to request jurisdiction over ATC or AUTC in its Petition, the very  
4 party(ies) that she admits was the party who borrowed the funds and under whose authority and  
5 tenure the loans were made, and who was or is in possession of the information and documents  
6 requested.<sup>7</sup> The indispensable parties are located in the state of Alaska, were the trustees during  
7 the period in which documents and information are requested to be disclosed, and, therefore,  
8 ATC and/or AUTC would possess the requested documents and information that are being  
9 requested.  
10  
11

12 ATC and AUTC are necessary parties because the time period in which the documents  
13 and information are being requested was during the period that ATC and AUTC were trustees  
14 of the Trust, and it was ATC and AUTC who borrowed the funds and made the loans.  
15 Furthermore, complete relief cannot be afforded among the remaining parties because ATC and  
16 AUTC were the trustees who possessed the requested documents and information, and under  
17 whose tenure the transactions occurred, before Christopher purportedly became Investment  
18 Advisor, and before DTC took office.<sup>8</sup> Additionally, if the Court makes a ruling on behalf of  
19 the actions of these absent trustees (ATC and AUTC), then it would leave those persons already  
20 parties to the case subject to a substantial risk of incurring double, multiple, or otherwise  
21 inconsistent obligations by reason of the claimed interest to those documents,<sup>9</sup> particularly in  
22 light of the Petitioner's indemnifications of AUTC. In other words, the named parties (over  
23  
24  
25

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26 <sup>6</sup> *Martin v. Wilks*, 490 U.S. 755, 765 (1988).

27 <sup>7</sup> See Petition, Page 5:3-5.

28 <sup>8</sup> NRCP 19(a)(1).

<sup>9</sup> NRCP 19(a)(2)(ii)

1 which Petitioner requests this Court take jurisdiction) may be exposed unnecessarily to other  
2 court actions in other jurisdictions with double or multiple obligations by reason of Petitioner's  
3 requested relief.

4  
5 ATC and AUTC are corporate residents of Alaska, and the transactions and occurrences  
6 for which Petitioner has requested documents and information occurred by these trustees in  
7 Alaska. Upon information and belief, the Trust had no connections to Nevada during the time  
8 period in which the documents and information have been requested. The Petitioner is  
9 attempting to bootstrap her requests concerning the actions and records of ATC and AUTC to  
10 DTC, the current trustee of the Trust. Because the Petitioner has failed to request jurisdiction  
11 over ATC and AUTC, this Court is without authority to assume jurisdiction over ATC and  
12 AUTC as indispensable parties.<sup>10</sup> Petitioner even admits that AUTC is necessary party even as  
13 to the sole transaction of \$25,000.00 purportedly made by DTC on June 13, 2014, stating in her  
14 footnote that, "Note that we do not have possession of statements from Alaska USA Trust  
15 Company indicating the disposition of the loan proceeds." Mr. Davis respectfully requests that  
16 the Court find that ATC and AUTC are indispensable parties because they alone had actually  
17 authority to borrow from the policy and invest FHT assets.

18  
19  
20 **B. Agreement by Petitioner under Alaska Law to Release Alaska USA Trust Company**  
21 **of Anchorage, Alaska**  
22

23 While it remains unclear why ATC was omitted as a necessary party, it has become more  
24 clear why AUTC was intentionally omitted as a necessary party. The Petitioner agreed to release  
25 AUTC from serving as Trustee and acknowledged indemnification of AUTC under the terms of  
26 the Trust for the period of the Policy loans, and agreed that her consent effectuating the removal  
27

28  

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<sup>10</sup> See NRCP 19(b).

1 of AUTC would be governed under Alaska law, with venue in Anchorage, Alaska.<sup>11</sup> The  
2 Petitioner's agreement came after the Policy loans were authorized and approved by ATC and  
3 AUTC, who were the legal owners of the Policy. At the time of ATC's and AUTC's ownership,  
4 Christopher had no authority to direct ATC, AUTC, or the custodian of the Policy to make loans  
5 nor did he have authority to direct Trust assets. The Petitioner, a resident of Seattle,  
6 Washington, is now attempting to avoid the jurisdiction of her neighboring state of Alaska in  
7 favor of Nevada, because of her prior release and indemnification of AUTC, an indispensable  
8 party to this action.  
9

10  
11 **C. Because joinder is not feasible, the Court should make the determination that the**  
12 **case be dismissed.**

13 Pursuant to NRCP 19(b) quoted above, which outlines the various factors for this  
14 Court's determination, Mr. Davis respectfully requests the Court make the determination that  
15 the case be dismissed for the following reasons. First, an order or judgment rendered without  
16 ATC and AUTC would be prejudicial to the named parties, because the information and  
17 documents requested would have been produced or received by ATC and AUTC during the time  
18 period in which ATC and AUTC were trustees of the Trust. The named parties would be forced  
19 to double or multiple obligations in other jurisdictions if ATC and AUTC are not included as a  
20 party in this action.  
21

22  
23 Second, even if protective provisions could be made in the order or judgment for the  
24 named parties, prejudice would still exist (it would not be lessened or avoided), because the sole  
25 relief being requested is for documents and information during the period in which ATC and  
26 AUTC were trustees, and during a period of time neither DTC nor Christopher had any  
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28  

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<sup>11</sup> See Resignation, Release, Acknowledgment, Consent and Indemnification Agreement dated February 24, 2014



1 fiduciary relationship to the Trust. These documents and information for this period would be  
2 in the possession and control of ATC and AUTC.

3 Third, judgment rendered in ATC's and AUTC's absence would not be adequate,  
4 because, again, the relief being requested is for documents and information during the time  
5 period in which ATC and AUTC were the trustees of the Trust. The documents and information  
6 requested are in the possession and control of ATC and AUTC.

7  
8 Fourth, Petitioner would still have an adequate remedy if the action is dismissed for  
9 nonjoinder, because Petitioner is not foreclosed from seeking her relief in another jurisdiction,  
10 specifically, Alaska through proper service upon ATC and AUTC. In other words, Petitioner  
11 has the possibility to obtain the information she seeks in a jurisdictionally appropriate forum.

12 Mr. Davis thus requests that the Court find that ATC and AUTC are indispensable  
13 parties and that the case should be dismissed as a result, noting each of the four factors above.

14  
15 **D. Lack of Jurisdiction of the Nevada Court over Parties Due to Lack of Service of**  
16 **Process**

17  
18 NRCP 12 (b) sets for the following jurisdictional and process grounds for a motion to  
19 dismiss as (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the  
20 person, (3) insufficiency of process, and (4) insufficiency of service of process.

21 Petitioner is relying solely upon the validity of a purported amendment to an irrevocable  
22 trust<sup>12</sup> which must be properly determined under Alaskan law.<sup>13</sup> Only after a determination of  
23 the validity of purported amendment to an irrevocable trust by an Alaskan court, could the Court  
24

25  
26 attached hereto as Exhibit 1.

27 <sup>12</sup> See Beatrice B. Davis FHT dated July 28, 2000 at Section 4 (This trust is irrevocable, and I shall have no power  
28 to...alter, amend, revoke, or terminate...") emphasis added.

<sup>13</sup> See Beatrice B. Davis FHT dated July 28, 2000 at Section 2 and Section 7(e).

1 properly rely upon the jurisdictional arguments raised by the Petitioner as a basis to assert  
2 jurisdiction over the Trust. If the first amendment is invalid, then there is no basis upon which  
3 to assume *in rem* jurisdiction over the Trust.  
4

5 Without determining the validity of the purported amendment, Petitioner seeks to bootstrap  
6 her request for this Court to take in rem jurisdiction by confirming DTC as the trustee of the  
7 Trust without addressing her the condition precedent (i.e. validity of the first amendment) or the  
8 clear lack of service of process necessary to take *in personam* jurisdiction in this proceeding  
9 over the parties.  
10

11 The Nevada Supreme Court held, "It is a fundamental and universal rule of law that a  
12 court must have jurisdiction of the matter before it and of the proceedings concerning that  
13 matter, or else its proceedings therein will be nullity."<sup>14</sup> The Court explained that "it is the  
14 primal duty of all courts to keep strictly within their jurisdiction...But unless prohibited by the  
15 constitutional provisions creating a court and providing the jurisdiction thereof, such court may  
16 be given special and limited jurisdiction in certain specified cases by the legislature."<sup>15</sup>  
17

18 The United States Supreme Court acknowledged that *in rem* proceedings were  
19 developed primarily to expand the reach of the courts, which might have lacked *in personam*  
20 jurisdiction over the owner of property.<sup>16</sup> In *Lewis v. Lewis & Clark Marine, Inc.*, the United  
21 States Supreme Court held that a proceeding *in rem* is not a remedy afforded by common law, it  
22 is a proceeding under the civil law.<sup>17</sup> The U.S. Supreme Court cited its earlier cases in which it  
23  
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25 <sup>14</sup> *State ex rel. Smith v. Sixth Judicial Court*, 58 Nev. 214 (Nev. 1937).

26 <sup>15</sup> *State ex rel. Smith v. Sixth Judicial Dist. Court*, 58 Nev. 214 (Nev. 1937).

27 <sup>16</sup> *Austin v. United States*, 509 U.S. 602, 616 (U.S. 1993).

28 <sup>17</sup> 531 U.S. 438, 444-445 (U.S. 2001).

1 held that when a proceeding *in rem* is used in the common-law courts, it is given strictly by  
2 statute.<sup>18</sup>

3 There are substantial differences between *in rem* and *in personam* jurisdiction that have  
4 been defined by the courts.<sup>19</sup> The Ninth Circuit defined the differences between *in personam*  
5 jurisdiction and *in rem* jurisdiction as such, “*In personam* jurisdiction, simply stated, is the  
6 power of a court to enter judgment against a person. *In rem* jurisdiction is the court’s power  
7 over property. Before a court may exercise the state’s coercive authority over a person or  
8 property, some statute must authorize the act.”<sup>20</sup>

10 Even assuming arguendo that there was a proper jurisdictional basis for confirming DTC  
11 as trustee under a proceeding *in rem*, there is no basis for asserting *in personam* jurisdiction over  
12 Christopher in his personal capacity or FHT Holdings, LLC (a Nevada limited liability  
13 company) under the current circumstances which would warrant intrusion into their records.  
14 Again, even if the first amendment were proven valid, the Nevada Supreme Court held, “It is  
15 one thing to possess jurisdiction. It is another to exercise it.”<sup>21</sup>

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18 *The Moses Taylor*, 71 U.S. 411, 4 Wall. 411, 431, 18 L. Ed. 397, 32 How. Pr. 460 (1867) and *The Hine v. Trevor*,  
21 71 U.S. 555, 4 Wall. 555, 571-572, 18 L. Ed. 451 (1867).

22 <sup>19</sup> *SEC v. Ross*, 504 F.3d 1130 (9th Cir. 2007); See also *Hanson v. Denckla* 357 U.S. 235, 246 fn 12 (1958) (“A  
23 judgment *in personam* imposes a personal liability or obligation on one person in favor of another. A judgment *in*  
24 *rem* affects the interests of all persons in designated property.”)

25 <sup>20</sup> *Sec. Investor Prot. Corp. v. Vigman*, 764 F.2d 1309, 1313-14 (9th Cir. 1985) emphasis added; See also *Trump v.*  
26 *Eighth Judicial Dist. Court*, 109 Nev. 687, 698-700 (1993).anstina.)

27 <sup>21</sup> *State ex rel. Crummer v. Fourth Judicial Dist. Court*, 69 Nev. 276, 280-281 (Nev. 1952).

1 Under Nevada law, a limited liability company is considered a person.<sup>22</sup> And while the  
2 Nevada legislature set forth certain relaxed standards for service of process regarding certain  
3 persons such as a trust by statute,<sup>23</sup> it did not do so for foreign or domestic limited liability  
4 companies.<sup>24</sup> The Nevada Supreme Court held, "In addition to authority, however, the courts  
5 must by statute be provided with the necessary machinery. Thus it is recognized that exercise of  
6 jurisdiction through its courts by a state over its domiciliaries (other than by personal service of  
7 process) cannot be had in the absence of express statutory provision."<sup>25</sup> There is no such express  
8  
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12 <sup>22</sup> NRS 0.039 "Person" defined. Except as otherwise expressly provided in a particular statute or required by  
13 the context, "person" means a natural person, any form of business or social organization and any other  
14 nongovernmental legal entity including, but not limited to, a corporation, partnership, association, trust or  
unincorporated organization. The term does not include a government, governmental agency or political  
subdivision of a government. (emphasis added).

15 <sup>23</sup> See *Id.*, see also NRS 164.010 and 155.010 (Service by mail vs. personal service pursuant to NRCP 4).

16 <sup>24</sup> The Nevada Legislature was well aware that in the absence of voluntary submission to the Court's jurisdiction by  
17 an interested party, an attempt by the Court to assert in personam jurisdiction under the relaxed requirements of  
18 NRS 155.010 over an interested party may violate the due process of law under the Fourteenth Amendment to the  
U.S. Constitution; See also *Mullane v. Cent. Hanover Bank & Trust Co.*, 336 U.S. 306, 314 (1950); NRCP 4(d)  
Summons: Personal Service. The summons and complaint shall be served together. The plaintiff shall furnish the  
person making service with such copies as are necessary. Service shall be made by delivering a copy of the  
summons attached to a copy of the complaint as follows:

19 (1) Service Upon Nevada Corporation. If the suit is against an entity or association formed under the  
20 laws of this state or registered to do business in this state, to the registered agent thereof or, if the entity or  
21 association is (i) a corporation, to any officer thereof; (ii) a general partnership, to any partner thereof; (iii) a limited  
22 partnership, to any general partner thereof; (iv) a member-managed limited-liability company, to any member  
23 thereof; (v) a manager-managed limited-liability company, to any manager thereof; (vi) a business trust, to any  
24 trustee thereof; (vii) a miscellaneous organization mentioned in NRS Chapter 81, to any officer or director thereof;  
25 provided, when for any reason service cannot be had in the manner hereinabove provided, then service may be  
26 made upon such entity by delivering to the secretary of state, or the deputy secretary of state, a copy of said  
27 summons attached to a copy of the complaint, and by posting a copy of said process in the office of the clerk of the  
28 court in which such action is brought or pending; defendant shall have 20 days after such service and posting in  
which to appear and answer; provided, however, that before such service shall be authorized, plaintiff shall make or  
cause to be made and filed in such cause an affidavit setting forth the facts showing that personal service on or  
notice to the entity or association cannot be had in the manner provided in this subsection within the state; and  
provided further, that if it shall appear from such affidavit that there is a last known address of a known officer,  
general partner, member, manager, trustee or director of said entity or association outside the state, plaintiff shall, in  
addition to and after such service upon the secretary of state and posting, mail or cause to be mailed to such known  
officer, general partner, member, manager, trustee or director at such address by registered or certified mail, a copy  
of the summons and a copy of the complaint, and in all such cases defendant shall have 20 days from the date of  
such mailing within which to answer or plead.

<sup>25</sup> *State ex rel. Crummer v. Fourth Judicial Dist. Court*, 69 Nev. 276 at 281 (Nev. 1952).

1 statutory provision that relaxed the standard of service of process required under NRCP 4 for  
2 service upon Christopher, individually or upon FHT Holdings, LLC.

3 It is clear that personal service of process was not effectuated upon Christopher,  
4 individually or upon FHT Holdings, LLC, either by summons and complaint or service pursuant  
5 to the Nevada Rules of Civil Procedure 4, therefore the Petitioner's improper demand for  
6 company records from FHT Holdings, LLC must fail for insufficiency of process, insufficiency  
7 of service of process and a lack of jurisdiction regarding Christopher, individually, and FHT  
8 Holdings, LLC.  
9

10 Furthermore, Petitioner is requesting that FHT Holdings, LLC, a Nevada limited liability  
11 company, be required to turn over its records to her concerning prior Policy Loans, without  
12 bothering to make this request upon those trustees, ATC and AUTC, that authorized and  
13 initiated the Policy loans.  
14

15 The Trust was settled by a Missouri resident in Missouri, and its situs and applicable law  
16 was Alaska. Upon information and belief, the policy is held by a custodian in Puerto Rico. The  
17 validity of the Trust, which is irrevocable, and the validity of the amendment to the irrevocable  
18 trust are determinations which must be made before the court can assert subject matter  
19 jurisdiction over the Trust. This determination cannot be made under Nevada law. It is  
20 respectfully submitted that this court cannot assert subject matter jurisdiction at this time.  
21  
22

23 **E. Lack of Subject Matter Jurisdiction and Purported First Amendment**

24 The Trust was settled by a Missouri resident, in Missouri, invoking Alaska law and  
25 declaring Alaska situs. The irrevocable Trust was amended to change not only the situs but the  
26 terms under which the trust would be governed, and to provide for a delegation of fiduciary  
27 duties. The validity of the Trust and the purported first amendment are determinations which  
28

1 must be made before the court can assert subject matter jurisdiction over the Trust; these  
2 determinations are a condition precedent for jurisdiction.<sup>26</sup>

3 **III. CONCLUSION**

4 WHEREFORE, Christopher D. Davis respectfully requests the following of the Court:

- 5
- 6 1. The Court find that ATC and AUTC are indispensable parties;
  - 7 2. The Court dismiss Petitioner's claims for failure to bring an indispensable party pursuant  
8 to NRCP 19, noting the four factors under NRCP 19(b);
  - 9 3. The Court dismiss Petitioner's claims for insufficiency of process, insufficiency of  
10 service of process and a lack of jurisdiction over the person of Christopher D. Davis,  
11 individually;
  - 12 4. The Court dismiss Petitioner's claims for insufficiency of process, insufficiency of  
13 service of process and a lack of jurisdiction over the person of FHT Holdings, LLC;
  - 14 5. The Court dismiss Petitioner's claim for lack of subject matter jurisdiction as to all  
15 named parties,
  - 16 6. The Court dismiss all Petitioner's claims against all named parties in this matter;
  - 17 7. The Court deny Petitioner's Petition in its entirety;
  - 18 8. The Court award attorney fees and costs to Christopher D. Davis in an amount deemed  
19 reasonable by this court; and

20 ///

21 ///

22 ///

23  
24  
25  
26  
27 <sup>26</sup> See *Rafert v Meyer*, \_\_\_\_\_ N.W. 2d \_\_\_\_\_, 290 Neb 219, 2015 (determining that an exculpatory clause did not  
28 relieve the trustee of fiduciary obligations under an irrevocable life insurance trust.)

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9. The Court awards such other and further relief as the Court may deem just and proper in the premises.

DATED this 4th day of March, 2015.

Respectfully Submitted,  
ROLAND LAW FIRM



Harriet H. Roland, Esq.  
NV Bar No. 5471  
2470 E. St. Rose Pkwy, Ste. 105  
Henderson, NV 89074  
Telephone: (702) 452-1500  
Facsimile: (702) 920-8903  
hroland@rolandlawfirm.com

*Attorney for Christopher D. Davis*

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to  
3 this action. I further certify that except as otherwise noted on March 4, 2015, I served the  
4 foregoing CHRISTOPHER D. DAVIS' MOTION TO DISMISS PURSUANT TO NRCP  
5 12(b) and NRCP 19 by first class US mail, postage prepaid, upon the following persons or  
6 entities:  
7

8  
9 Mark Solomon, Esq.  
10 Joshua Hood, Esq.  
11 **SOLOMON DWIGGINS & FREER, LTD.**  
12 9060 W. Cheyenne Ave.  
13 Las Vegas, NV 89129  
14 *Attorney for Petitioner Caroline Davis*  
15 *U.S. Mail and Facsimile*

16 DUNHAM TRUST  
17 SHANNA CORESSAL, CTFA  
18 241 Ridge Street, Suite 100  
19 Reno, Nevada 89501

20 Stephen Lehnardt  
21 20 Westwoods Drive  
22 Liberty, Missouri 64068

23 Win B. Davis  
24 366-6 Habu Aridagawa Arida  
25 Wakayama 643-0025  
26 JAPAN  
27 *U.S. Mail on February 5, 2015*  
28



Employee of Anthony L. Barney, Ltd.



# EXHIBIT 1

# RESIGNATION, RELEASE, ACKNOWLEDGMENT, CONSENT AND INDEMNIFICATION AGREEMENT

This Agreement ("Agreement") is executed as of this 24<sup>th</sup> day of February, 2014, by and among Alaska USA Trust Company of Anchorage, Alaska ("AUTC"), Dunham Trust Company of Reno, Nevada ("Dunham"), Christopher D. Davis of Kansas City, Missouri ("Chris"), Caroline D. Davis of Seattle, Washington ("Caroline"), and Winfield B. Davis of Los Angeles, California ("Win") (Chris, Caroline and Win are collectively referred to herein as the "Beneficiaries"), and Stephen K. Lehnardt, in his capacity as "Protector" of the BEATRICE B. DAVIS FAMILY HERITAGE TRUST, dated July 28, 2000 (the "Trust").

## RECITALS

WHEREAS, AUTC is the currently serving trustee of the Trust and has stated that it is unwilling to continue to serve as trustee and wishes to resign;

WHEREAS, Article Eleven, Section 3.b. of the Trust grants the Protector the authority to remove and replace the trustee when a trustee is unable or unwilling to serve;

WHEREAS, Article Twelve, Section 7 of the Trust indemnifies the trustee of the trust from all liability in connection with its service as trustee, excepting only willful misconduct or gross negligence;

WHEREAS, Article Fourteen, Section 6 of the Trust authorizes the change of situs of the trust, upon the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under the trust, and the consent of any then-acting Protector and Trustee. Article Fourteen, Section 6 further authorizes the Protector to amend the Trust in writing so as to change situs, conform the terms of the trust so that it may achieve its purposes in the new situs; and

WHEREAS, Dunham is willing to accept its appointment as successor trustee to AUTC, expressly conditioned on the appointment of one or more outside (non-Dunham) investment advisors and/or investment trustees so that Dunham serves as a directed trustee under Nevada law.

## AGREEMENT

NOW, THEREFORE, the parties hereto agree to and do hereby take the following actions:

1. Consent to Change of Situs and Amendment of Trust. The Beneficiaries hereby unanimously consent to changing the situs of the Trust from Alaska to Nevada, and further

unanimously consent to the amendment of trust by the Protector to reflect the change of sites, applicable law, provision required by Dunham, and other amendments as required to allow the trust to achieve its purposes, substantially in the form of First Amendment to the Beatrice B. Davis Family Heritage Trust attached hereto as Exhibit 1. AUTC and the Protector hereby consent to changing the situs of the Trust from Alaska to Nevada.

2. Removal of AUTC and Appointment of Dunham. Protector shall, effective February 24, 2014, take the actions described in the Memorandum of Action by Protector, substantially in the form of memorandum attached hereto as Exhibit 2.1, and shall issue written notices to AUTC and Dunham, substantially in the forms attached hereto as Exhibit 2.2 and Exhibit 2.3, to remove AUTC as Trustee of the Trust, and Appoint Dunham as successor trustee of the Trust.

3. Acknowledgment of Indemnification of Trustee. AUTC, Dunham, and the Beneficiaries hereby acknowledge the provisions of the Trust which provide for the indemnification of Trustee from liability, excepting only willful misconduct or gross negligence.

4. Miscellaneous.

a. Independent Counsel. The parties hereto acknowledge and agree that each of them has had an opportunity to review this Agreement and all Exhibits and to seek its own independent legal counsel with respect to the legal consequences of entering this Agreement.

b. Attorney's Fees. In any action brought either party to enforce any of the terms of this Agreement, the prevailing party in such action shall be entitled to such reasonable attorney fees as the court or arbitrator shall determine to be appropriate

c. Entire Agreement. This Agreement shall not be modified, amended or changed in any respect except by written document signed by all parties hereto. This Agreement and all attachments thereto, contain the entire agreement and understanding of the parties and supersedes any and all prior negotiations, understandings and written agreements.

d. Interpretation/Venue. If any portion of this Agreement shall be held to be void or unenforceable, the balance thereof shall nonetheless be effective. This Agreement has been made and entered into in the State of Alaska and shall be governed by the laws of the State of Alaska. Venue for any dispute shall be Anchorage, Alaska.

e. Headings. The headings used herein are for convenience only, and shall not be construed as a part of this Agreement or as a limitation on the scope of the particular paragraphs to which they refer.

f. Binding Effect. This Agreement shall bind and shall inure to the benefit of the heirs, legal representatives, successors and assigns of the parties.

g. Counterparts/Facsimile Signatures. This Agreement may be executed in counterparts, which together shall constitute one instrument. The parties hereto agree to accept signatures transmitted by facsimile.

[ REMAINDER OF THIS PAGE INTENTIONALLY BLANK ]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

ALASKA USA TRUST COMPANY

By: [Signature]

Name: Janet K. Tempel

Title: Senior Trust Officer

DUNHAM TRUST COMPANY

By: [Signature]

Name: Shanna Corewell

Title: Trust Officer

MANDATORY AND DISCRETIONARY  
BENEFICIARIES

[Signature]

Christopher D. Davis

\_\_\_\_\_  
Caroline D. Davis

\_\_\_\_\_  
Winfield B. Davis

PROTECTOR of the  
BEATRICE B. DAVIS FAMILY  
HERITAGE TRUST, dated July 28, 2000

By: \_\_\_\_\_  
Stephen K. Lehnardt, Protector

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**ALASKA USA TRUST COMPANY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DUNHAM TRUST COMPANY**

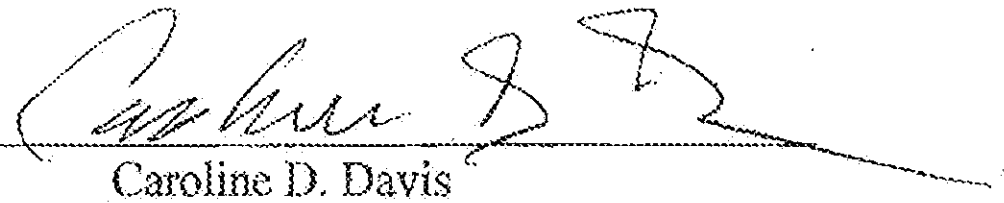
By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MANDATORY AND DISCRETIONARY  
BENEFICIARIES**

\_\_\_\_\_  
Christopher D. Davis

  
Caroline D. Davis

\_\_\_\_\_  
Winfield B. Davis

**PROTECTOR of the  
BEATRICE B. DAVIS FAMILY  
HERITAGE TRUST, dated July 28, 2000**

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

Stephen K. Lehnardt, Protector



**DUNHAM TRUST COMPANY**

By:

Name:

Title:

**MANDATORY AND DISCRETIONARY  
BENEFICIARIES**

Christopher D. Davis

Caroline D. Davis

Winfield B. Davis

**PROTECTOR of the  
BEATRICE B. DAVIS FAMILY  
HERITAGE TRUST, dated July 28, 2000**

By:

Stephen K. Lehnardt, Protector

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

**ALASKA USA TRUST COMPANY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DUNHAM TRUST COMPANY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**MANDATORY AND DISCRETIONARY  
BENEFICIARIES**

\_\_\_\_\_  
Christopher D. Davis

\_\_\_\_\_  
Caroline D. Davis

\_\_\_\_\_  
Winfield B. Davis

**PROTECTOR of the  
BEATRICE B. DAVIS FAMILY  
HERITAGE TRUST, dated July 28, 2000**

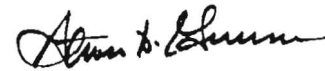
By: \_\_\_\_\_

Stephen K. Lehhardt, Protector





# EXHIBIT 13



CLERK OF THE COURT

1 HARRIET H. ROLAND, ESQ.  
2 NV Bar No. 5471  
3 ROLAND LAW FIRM  
4 2470 E. St. Rose Pkwy, Ste. 105  
5 Henderson, NV 89074  
6 Telephone: (702) 452-1500  
7 Facsimile: (702) 920-8903  
8 hroland@rolandlawfirm.com

9 ANTHONY L. BARNEY, ESQ.  
10 Nevada Bar No. 8366  
11 TIFFANY S. BARNEY, ESQ.  
12 Nevada Bar No. 9754  
13 ANTHONY L. BARNEY, LTD.  
14 3317 W. Charleston Blvd., Suite B  
15 Las Vegas, NV 89102  
16 Telephone: (702) 438-7878  
17 Facsimile: (702) 259-1116  
18 Attorneys for Christopher D. Davis

13 EIGHTH JUDICIAL DISTRICT COURT  
14 CLARK COUNTY, NEVADA

16 In the matter of:

Case No.: P-15-083867-T

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

Dept. No.: 26

22 DECLARATION OF CHRISTOPHER D. DAVIS

23 I, Christopher Davis, under penalty of perjury under the laws of the State of Nevada, do  
24 hereby declare and state as follows:  
25

- 26 1. I am over the age of eighteen.  
27 2. I am a resident of Missouri.  
28

1 3. I am a primary beneficiary of the Beatrice B. Davis Family Heritage Trust, dated  
2 July 28, 2000, as allegedly amended on February 24, 2014.

3 4. At no time during the alleged amendment to the trust was I represented by  
4 independent legal counsel.  
5

6 5. While I was made aware of Stephen Lehnardt's efforts to change the situs of the  
7 Trust to Nevada, at no time did I receive independent legal advice regarding the legal effects of  
8 a change in situs or my appointment as investment trust advisor.  
9

10 6. At no time was I made aware that an opinion of counsel had been provided to Mr.  
11 Lehnardt, Alaska USA, or Dunham Trust Company. I conveyed to Mr. Barney that no opinion  
12 of counsel had been provided to myself or the other beneficiaries of which I am aware.

13 7. I was married to Cheryl Davis at the time the Beatrice B. Davis Family Heritage  
14 Trust was created.  
15

16 8. I was married to Tarja Davis at the time of the alleged amendment dated February  
17 24, 2014, and I remain married to Tarja Davis. I currently reside with my wife, Tarja Davis.

18 9. Caroline Davis, through her attorney Mr. Solomon, has served subpoenas on Mr.  
19 Barney and Ms. Roland seeking information regarding assets and entities that are not related to  
20 my alleged roles as investment trust advisor and manager of FHT holdings.  
21

22 10. Caroline is seeking information regarding loans and distributions made prior to my  
23 alleged appointment as investment trust advisor.

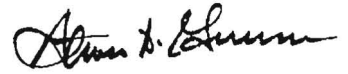
24 I declare under penalty of perjury under the law of the state of Nevada that the foregoing  
25 is true and correct.

Dated this 15 day of August 2015

26  
27   
28 Christopher D. Davis, Declarant



# EXHIBIT 12



CLERK OF THE COURT

1 **NOTC**

2 Mark A. Solomon, Esq., Bar No. 418  
3 msolomon@sdfnlaw.com  
4 Joshua M. Hood, Esq. Bar No. 12777  
5 jhood@sdfnlaw.com  
6 SOLOMON DWIGGINS & FREER, LTD.  
7 9060 West Cheyenne Avenue  
8 Las Vegas, Nevada 89129  
9 Telephone: 702.853.5483  
10 Facsimile: 702.853.5485

11 *Attorneys for Caroline Davis, Petitioner*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 In the Matter of:

Case No.: P-15-083867-T  
Dept.: 26

15 The BEATRICE B. DAVIS FAMILY  
16 HERITAGE TRUST, dated July 28, 2000, as  
17 amended on February 24, 2014

To be heard by Judge Sturman

Hearing Date: April 22, 2015  
Hearing Time: 9:00 a.m.

18 **SECOND AMENDED NOTICE OF HEARING ON**  
19 **PETITION TO ASSUME JURISDICTION OVER THE BEATRICE B. DAVIS FAMILY**  
20 **HERITAGE TRUST, DATED JULY 28, 2000, AS AMENDED ON FEBRUARY 24, 2014;**  
21 **TO ASSUME JURISDICTION OVER CHRISTOPHER D. DAVIS AS INVESTMENT**  
22 **TRUST ADVISOR AND STEPHEN K. LEHNARDT AS DISTRIBUTION TRUST**  
23 **ADVISOR; TO CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE;**  
24 **AND FOR IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION**  
25 **FROM CHRISTOPHER D. DAVIS**

26 NOTICE IS HEREBY GIVEN that CAROLINE DAVIS ("Petitioner") by and through her  
27 counsel, Mark A. Solomon, Esq., and Joshua M. Hood, Esq., of the law firm of Solomon  
28 Dwiggins & Freer, Ltd., hereby Petitions this Court to Assume Jurisdiction over THE  
BEATRICE B. DAVIS FAMILY HERITAGE TRUST, dated July 28, 2000, as amended on  
February 24, 2014 ("Trust") to assume Jurisdiction and for granting the aforementioned Petitions.

A hearing in this matter has been set for Wednesday, April 22, 2015, at 9:00 a.m. before  
the Honorable Judge Sturman in Department 26, Courtroom 3H at the Regional Justice Center,  
200 Lewis Avenue, Las Vegas, Nevada 89155;

///

1 For details of the Petition, please review the Court file or contact the Petitioner at the  
2 address show above:

3 **DATED** this 5<sup>th</sup> day of March, 2015.

4 SOLOMON DWIGGINS & FREER, LTD.

5 

6 MARK A. SOLOMON, ESQ. (Bar No. 418)  
7 JOSHUA M. HOOD, ESQ. (Bar No. 12777)  
8 Cheyenne West Professional Center  
9 9060 West Cheyenne Avenue  
10 Las Vegas, Nevada 89129  
11 Telephone (702) 853-5483  
12 Facsimile (702) 853-5485

13 *Attorneys for Caroline Davis*

9060 WEST CHEYENNE AVENUE  
LAS VEGAS, NEVADA 89129  
TELEPHONE (702) 853-5483  
FACSIMILE (702) 853-5485  
WWW.SDFNLAW.COM

SOLOMON  
DWIGGINS & FREER  
TRUST AND ESTATE ATTORNEYS



9060 WEST CHEYENNE AVENUE  
LAS VEGAS, NEVADA 89129  
TELEPHONE (702) 853-5483  
FACSIMILE (702) 853-5485  
WWW.SDFNLAW.COM



CERTIFICATE OF SERVICE

I hereby certify that on the 5<sup>th</sup> day of March 2015, I mailed a true and correct copy of the above and foregoing SECOND AMENDED NOTICE OF HEARING ON THE 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 DUHAM TRUST COMPANY AS DIRECTED TRUSTEE; AND FOR IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION FROM CHRISTOPHER D. DAVIS AND the PETITION to the following persons at their last known address, by depositing a copy of the same in the United States Mail, via certified mail, addresses are as follows:

CHRISTOPHER D. DAVIS, Individually  
INVESTMENT TRUST ADVISOR  
MANAGER of FHT HOLDINGS, LLC, a Nevada Limited Liability Company  
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

And having previously mailed the Petition to the following, did EMAIL and send via US Mail

ONLY THE SECOND AMENDED NOTICE OF HEARING AS FOLLOWS:

STEPHEN LEHNARDT  
DISTRIBUTION TRUST ADVISOR  
20 Westwoods Drive  
Liberty, Missouri 64068  
[Stephen@lehnardt.com](mailto:Stephen@lehnardt.com)

1 WINFIELD B. DAVIS  
2 366-6 Habu Aridagawa Arida  
3 Wakayama 643-0025  
4 JAPAN  
5 [winsane@gmail.com](mailto:winsane@gmail.com)

6 DUNHAM TRUST COMPANY  
7 TRUSTEE  
8 SOLE MEMBER of FHT HOLDINGS, LLC, a Nevada Limited Liability Company  
9 c/o SHANNA CORESSEL, CTFA  
10 241 Ridge Street, Suite 100  
11 Reno, Nevada 89501  
12 [Shanna.coressel@dunham.com](mailto:Shanna.coressel@dunham.com)

13 And did mail via US Mail and email Via the Court's electron system via WizNet pursuant to Rule  
14 9 of NEFCR at the email address noted to the following:

15 HARRIET ROLAND, ESQ.,  
16 ROLAND LAW FIRM  
17 2850 W. Horizon Ridge Parkway, #200  
18 Henderson, NV 89052  
19 [hroland@rolandlawfirm.com](mailto:hroland@rolandlawfirm.com)

20 ANTHONY L. BARNEY, ESQ.  
21 ANTHONY L. BARNEY, LTD.  
22 3317 West Charleston Boulevard, Suite B  
23 Las Vegas Nevada 89102  
24 [abarney@anthonybarney.com](mailto:abarney@anthonybarney.com)

25  
26  
27  
28  
  
An Employee of SOLOMON DWIGGINS & FREER, LTD.



established from one or more sources, nonexempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions. If, for example, the terms of what would otherwise be one trust direct that, on termination (or on failure to exercise a power of appointment), trust property is to be added to another trust, the exempt property of a separate trust that had been derived from the terminating trust shall be added only to an exempt trust derived from the recipient trust; nonexempt property shall be added only to a nonexempt recipient trust; and if no appropriate recipient trust exists for either exempt or nonexempt property, then a new trust of that character shall be established with the same terms and provisions as those of the trust that would otherwise receive that property under the original trust terms.

(d) For purposes of this paragraph, the term "exempt" refers to a trust or property that has a generation-skipping tax inclusion ratio of zero, and the term "nonexempt" refers to a trust or property that has a generation-skipping inclusion ratio of one.

34. The Trustees may entrust sole custody of any securities, cash, or other property held by them to either of them. Either Trustee may, by instrument in writing, from time to time, delegate to the other the exercise of any or all of the powers conferred upon the Trustees by this instrument, and may at pleasure revoke any such delegation, which revocation shall be effective upon receipt. Any person dealing with the Trustees shall be absolutely protected in relying upon the certification of any Trustee as to (a) who are the Trustees at any time and from time to time; and (b) the extent of the authority of the Trustee or Trustees by reason of any delegation or otherwise.

IN WITNESS WHEREOF, this instrument has been executed, as of the day and year first above written, in multipart, each one of which shall be deemed an original, by the Settlor and the Trustee.

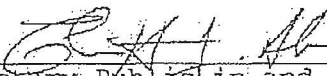
Beatrice B. Davis  
BEATRICE B. DAVIS, SETTLOR

Beatrice B. Davis  
BEATRICE B. DAVIS, TRUSTEE

STATE OF MISSOURI    )  
                              )   SS.  
COUNTY OF JACKSON    )

On this 11 day of May, 1998, before me, the undersigned, a Notary Public, personally appeared BEATRICE B. DAVIS, to me known to be the same person described in and who executed the foregoing instrument and acknowledged that she executed the same as her free and voluntary act and deed as Settlor and Trustee of this Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.

  
\_\_\_\_\_  
Notary Public in and for said  
County and State

My commission expires:

CHRISTOPHER J. ANDERSON Notary Public - Notary Seal STATE OF MISSOURI Jackson County My Commission Expires: Nov. 12, 2001
---

# Exhibit 23

# Exhibit 23

## Affidavit of Trust

### ~~The Beatrice B. Davis Revocable Trust Indenture~~

1. The following trust is the subject of this Affidavit:

Christopher D. Davis and Caroline D. Davis, Trustees, or their successors in trust, under the BEATRICE B. DAVIS REVOCABLE TRUST INDENTURE, dated April 4, 1990, as amended. (the "Trust")

2. The name and address of the currently acting Trustees of the trust is as follows:

Name:	Address:
Christopher D. Davis	514 West 26 <sup>th</sup> Street, Suite 3E Kansas City, Missouri 64108
Caroline D. Davis	2501 Nob Hill Place North Seattle, Washington 98109

3. Beatrice B. Davis, initial trustee of the Trust, who had been observed by home healthcare workers, and hospital nurses as periodically exhibiting impaired judgment and behavior, was diagnosed by her attending physician, Dr. Peter Holt as suffering from mild dementia on or about March 13, 2007.
4. Article Eighth, Paragraph 1 of the Trust states: "If for any reason Beatrice B. Davis is incapacitated or otherwise cannot act or shall cease to serve as Trustee hereunder, Christopher D. Davis and Caroline D. Davis shall serve as Successor Trustees."
5. On March 22, 2007, Christopher D. Davis and Caroline D. Davis, after discussion, determined that it would be in the best interest of Beatrice B. Davis for them to assume their roles as Successor Trustees pursuant to Article Eight of the Trust.
6. The Trust was amended on February 3, 1997, was subsequently amended on May 11, 1998, and has not been amended since May 11, 1998. The Trust is presently in full force and effect.
7. The signatories of this Affidavit are the currently acting Trustees of the Trust and hereby declare that the foregoing statements and the attached trust provisions are true and correct, under penalty of perjury.
8. This Affidavit is dated March 22, 2007.

[ SIGNATURES AND ACKNOWLEDGMENTS ON NEXT PAGE ]

IN WITNESS WHEREOF, as affiants, we have executed this Affidavit as of this 22<sup>nd</sup> day of March, 2007 in multiple counterpart originals, and have directed photographic copies of this Affidavit be made which shall have the same force and effect as an original.

\_\_\_\_\_  
Christopher D. Davis

\_\_\_\_\_  
Caroline D. Davis

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

SS:

On this \_\_\_\_ day of March, 2007, before me the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared Christopher D. Davis, to me known to be the person who signed the foregoing affidavit and acknowledged that he signed the same as his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

(Seal)

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ )

SS:

On this \_\_\_\_ day of March, 2007, before me the undersigned, a Notary Public, in and for the County and State aforesaid, personally appeared Caroline D. Davis, to me known to be the person who signed the foregoing affidavit and acknowledged that she signed the same as her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

(Seal)

# Exhibit 24

# Exhibit 24

## DELEGATION OF AUTHORITY

I, Caroline D. Davis Successor Trustee under the Beatrice B. Davis Revocable Trust Indenture, dated April 4, 1990, as amended (the "Trust"), hereby delegate to Christopher D. Davis, Successor Trustee of the Trust:

Authority to act singly on behalf of the Trust, and without prior consultation or agreement in exercising the all of the powers granted in Article NINTH of the Trust, and to perform all acts on behalf of the Trust as may be appropriate, necessary, or proper for the Trust in contemplation of such Article NINTH.

I hereby agree to ratify and confirm all and whatsoever acts Christopher D. Davis may lawfully do or cause to be done by virtue of this Delegation of Authority.

This Delegation of Authority is made pursuant to Article NINTH, Paragraph 34 of the Trust and shall remain effective until revoked, in writing, by the undersigned.

IN WITNESS WHEREOF, I have signed this Delegation of Authority as of the 22<sup>nd</sup> day of March, 2007.

---

Caroline D. Davis, Trustee

# Exhibit 25

# Exhibit 25



### REVOCATION OF DELEGATION OF AUTHORITY


This Revocation of Delegation of Authority is made and entered into this \_\_\_\_ day of September, 2014 by CAROLINE D. DAVIS, as Successor Co-Trustee of the Beatrice B. Davis Revocable Trust, dated April 4, 1990, as amended (the "Trust").

WHEREAS, pursuant to Article Ninth, Section 34, CAROLINE D. DAVIS executed a "Delegation of Authority" on March 22, 2007, authorizing CHRISTOPHER D. DAVIS, as Successor Co-Trustee, to act singly on behalf of the Trust, and without prior consultation or agreement in exercising all of the powers granted in Article Ninth of the Trust, and to perform all acts on behalf of the Trust as may be appropriate, necessary, or proper for the Trust in contemplation of such Article Ninth.

WHEREAS, pursuant to Article Ninth, Section 34, CAROLINE D. DAVIS possesses the authority to terminate such Delegation of Authority.

NOW, THEREFORE, pursuant to Article Ninth, Section 34, CAROLINE D. DAVIS does hereby revoke the Delegation of Authority, executed on March, 22, 2007. Such Revocation of Delegation of Authority shall become effectively immediately upon receipt by CHRISTOPHER D. DAVIS.

Dated this 23 day of September, 2014.

  
CAROLINE D. DAVIS, Successor Co-Trustee

# Exhibit 26

# Exhibit 26



DAVIS

Ms. Shanna Coressel  
Dunham Trust Company  
241 Ridge Street, Suite 100  
Reno, Nevada  
89501

Dear Shanna,

Re: Ashley Cooper Life Policy # 1105-8007

Further to your recent request to transfer the ownership of policy AGLI 1105-8007PC, please be advised that this life insurance policy has outstanding loans totaling \$2,164,744.68.

We require confirmation that the new owner is aware of the responsibility to repay these loans and that the policy has been pledged as collateral for these loans. Would you kindly arrange for an authorised signatory of the FHT Holdings LLC to sign below as acknowledgement of the loans?

Yours sincerely

Paul Fordham  
Client Services Manager

Confirming acknowledgement of the outstanding policy loans:

Signature: Shanna Coressel  
Authorised Signatory, FHT Holdings LLC,

Date:

4-11-19

Ashley Cooper Life International Insurer, SPC

Administration Office: 5<sup>th</sup> Floor Windward 3, Regatta Office Park, West Bay Road, P.O. Box 2185  
Grand Cayman (KY) 1-105, Cayman Islands  
Tel: (345) 949 1599; Fax: (345) 949 0520; Email: [info@crusader.com.ky](mailto:info@crusader.com.ky)

Registered Office: Fidler González & Rodríguez P.S.C.  
BBVA Tower, 254 Muñoz Rivera Avenue, 6<sup>th</sup> Floor, Plaza Rey, P.O. Box 00918

CHRISDAVIS000518

B. When each descendant for whom a trust is created shall attain the age of twenty-five (25) years, or upon establishment of these separate trusts for any descendant who has attained the age of twenty-five (25) years but not attained the age of thirty (30) years at that time, one-third (1/3) of the assets at that time comprising his or her trust estate shall be distributed to him or her free and clear of all trusts. When each descendant for whom a trust is created shall attain the age of thirty (30) years, or upon establishment of these separate trusts for any descendant who has attained the age of thirty (30) years but who has not attained the age of thirty-five (35) years at that time, one-half (1/2) of the assets at that time comprising his or her trust estate shall be distributed to him or her free and clear of all trusts. When each descendant for whom a trust is created shall attain the age of thirty-five (35) years, or upon establishment of these separate trusts for any descendant who has attained the age of thirty-five (35) years at that time, all of the assets at that time comprising his or her trust estate, including all accrued interest and income, shall be distributed to him or her free and clear of all trusts.

C. If any descendant of Settlor for whom a trust is created shall die during the administration of his or her trust without attaining the age of thirty-five (35) years, his or her trust shall terminate and all of the unappointed assets at that time comprising his or her trust estate shall be distributed as he or she appoints by Will specifically referring to this power of

appointment, each such descendant of Settlor hereby being granted full power to appoint, free of the trust, the entire principal and income remaining in his or her trust at the time of his or her death, so appointing the same in favor of his or her estate or in favor of any one or more persons or partly in favor of any one or more persons in any manner, either outright or in trust, and under any conditions, limitations or provisions which he or she may designate, and said general power of appointment shall be exercisable by Settlor's descendant alone and in all events. If, however, Settlor's descendant fails to exercise said general power of appointment, or if any exercise by him or her is invalid or for any reason whatsoever fails to take effect, his or her trust shall terminate and all of the unappointed assets at that time comprising his or her trust estate shall be distributed to such descendant's issue then living, per stirpes. If such descendant has no issue then living, all of the unappointed assets at that time comprising his or her trust estate shall be distributed to his or her parent's issue then living, per stirpes, and if none, then to Settlor's issue then living, per stirpes; provided, that if any then living descendant of Settlor is under the age of thirty-five (35) years, the assets which otherwise would be distributed to him or her outright if he were not under such age shall be distributed to his or her trust estate. If Settlor has no issue then living, any trust then in existence shall terminate and the Trustees shall distribute all of the unappointed assets then comprising the trust estate, including all accrued interest and income, to such person

or persons in the shares and proportions in which Settlor's Administrator would have been required to distribute the same had Settlor died intestate, a resident of the State of Missouri and possessed of such property at such time.

4. In any event, and regardless of each and any of the above and foregoing provisions, twenty-one (21) years after the death of the last to die of all of the beneficiaries herein named or described who are living at the date of Settlor's death, all trusts hereunder shall terminate, if the same have not already terminated by said time, and all of the assets then comprising the trust estate, including all accrued interest and income, shall be distributed free and clear of all trusts to the person or persons then entitled to receive the same in accordance with the foregoing provisions.

#### EIGHTH.

1. If for any reason BEATRICE B. DAVIS is incapacitated or otherwise cannot act or shall cease to serve as Trustee hereunder, CHRISTOPHER D. DAVIS and CAROLINE D. DAVIS shall serve as Successor Trustees. If either CHRISTOPHER D. DAVIS or CAROLINE D. DAVIS cannot act or shall cease to serve as Trustee, CHRISTOPHER J. ANDERSON shall serve as Trustee in his or her place. If for any reason any two of the above three persons cannot act or shall cease to serve as Trustee, the remaining Trustee shall serve as sole Trustee.

2. The individual Trustees, acting unanimously if there is more than one, may appoint, as Co-Trustee or as Successor Trustee, any bank or trust company possessing trust powers and having an aggregate capital, surplus and undivided profits of at least Five Million Dollars (\$5,000,000.00). In the event a Successor Trustee is designated, such designation shall include the consent of the Successor Trustee to serve as such. Any such designated corporate Co-Trustee or Successor Trustee may be removed at any time by the individual Trustee or Trustees (acting unanimously if there is more than one).

3. Any Trustee acting hereunder may resign at any time by delivering not less than thirty (30) days' written notice to Settlor, during her lifetime, and, after her death, to all of the legally competent beneficiaries over twenty-one (21) years of age to whom income may then be payable and, thereafter, the successor Trustee or Trustees, as provided herein, shall serve until all trusts hereunder are terminated. Settlor may remove any Trustee at any time acting hereunder by an instrument in writing delivered to her not less than thirty (30) days prior to the effective date of such removal.

4. Settlor, or the beneficiaries, to whom such notice of resignation shall be given by the Trustee or who shall exercise such power of removal, may, without liability to any present or future beneficiary, approve the accounts of, and give a full and complete release and discharge to, any such resigned or removed Trustee and if there are no Trustees named in paragraph 1 or

designated in paragraph 2 willing and able to serve, may appoint as Successor Trustee any bank or trust company organized under the laws of the United States, or one of the States thereof, possessing trust powers and having an aggregate capital, surplus and undivided profits of at least Five Million Dollars (\$5,000,000.00).

NINTH. The Trustee shall have the following powers, and any others that may be granted by law, with respect to each trust, to be exercised as the Trustee in her discretion shall determine to be to the best interests of the beneficiaries:

1. To retain any property or undivided interests in property received from any source, including residential property, regardless of any lack of diversification, risk or nonproductivity;

2. To invest and reinvest the trust estate in bonds, notes, stocks of corporations regardless of class, common trust funds, real estate or any interest in real estate, interests in trusts or in any other property or undivided interests in property, wherever located, without being limited by any statute or rule of law concerning investments by trustees;

3. To sell any trust property, for cash or on credit, at public or private sales; to exchange any trust property for other property; to grant options to purchase or acquire any trust property; and to determine the prices and terms of sales, exchanges and options;

4. To operate, maintain, repair, rehabilitate, alter, improve or remove any improvements on real estate; to make leases and subleases for terms of any length, even though the terms may extend beyond the termination of the trust; to subdivide real estate; to grant easements, give consents and make contracts relating to real estate or its use; and to release or dedicate any interest in real estate;

5. To borrow money for any purpose, either from the banking department of a corporate trustee or from others, and to mortgage or pledge any trust property;

6. To employ attorneys, auditors, depositaries and agents, with or without discretionary powers; to exercise in person or by proxy all voting and other rights with respect to stocks or other securities; and to keep any property in bearer form or in the name of the Trustee, a nominee of the Trustee or a nominee of the depositary used by the Trustee with or without disclosure of any fiduciary relationship;



7. To determine in an equitable manner with due regard to the respective interests of any income beneficiary and any remainderman the allocation or apportionment of all receipts and disbursements between income and principal; the Trustee shall not set aside reserves for depreciation unless the Trustee deems it to be necessary for the preservation of tangible property to create reasonable reserves for rehabilitation, major repairs or replacement of such property;

8. To take any action with respect to conserving or realizing upon the value of any trust property and with respect to foreclosures, reorganizations or other changes affecting the trust property; to collect, pay, contest, compromise or abandon demands of or against the trust estate wherever situated; and to execute contracts, notes, conveyances and other instruments, including instruments containing covenants, representations and warranties binding upon and creating a charge against the trust estate and containing provisions excluding personal liability;

9. To receive additional property from any source and add it to the trust estate;

10. To enter into any transaction authorized by this paragraph with trustees, executors or administrators of any trust or estate in which any beneficiary has an interest even though any such trustee or representative is also a trustee under this instrument; and in any such transaction to purchase property, or make loans on notes secured by property, even though similar or identical property constitutes all or a large proportion of the balance of the trust estate, and to retain any such property or note with the same freedom as if it had been an original part of the trust estate;

11. To make any distribution or division of the trust property in cash or in kind or both, and to continue to exercise any powers and discretion for a reasonable period after the termination of the trust, but only for so long as no rule of law relating to perpetuities would be violated;

12. To allocate different kinds or disproportionate shares of property or undivided interests in property among the beneficiaries or trusts, and to determine the value of any such property; and to make joint investments of funds in the trusts, and to hold the several trusts as a common fund dividing the net income among the beneficiaries of the several trusts proportionately;

13. To transfer the assets of any trust to another situs and to appoint as a special trustee any individual or corporation authorized under the laws of the United States or of any state to administer trusts and to remove any special trustee and reappoint itself;

14. To collect in any manner the net proceeds of any employee benefit plan, individual retirement account, deferred compensation plan or life insurance policy; payment to and the receipt of the Trustee shall be a full discharge of the liability of any payor, which need not take notice of this instrument or see to the application of any payment; the Trustee need not engage in litigation to enforce payment without indemnification satisfactory to her for any resulting expense.

15. The Trustee shall allow Settlor the right personally to occupy rent-free any residential property, which property or any interest therein (including any interest as owner, lessee, shareholder, trust beneficiary, or otherwise) from time to time forms a part of the trust principal. At any time or times while Settlor shall have that right the Trustee may, with Settlor's written approval (that approval being required only if Settlor is not incapacitated):

(a) Sell the interest in residential property forming a part of the trust principal and invest such amounts as the Trustee believes desirable in any other interest in residential property selected by the Trustee; or

(b) Terminate the right given to Settlor under this paragraph and lease, sell, or otherwise dispose of or administer any such interest in residential property in the same manner as any other trust asset.

Additionally, for so long as any such residential property is encumbered with a mortgage or deed of trust incorporating a "due on sale" acceleration clause, the Trustee shall have no authority to sell or transfer any interest in the property to any one except Settlor without the lender's written consent (or payment of the balance due secured by the mortgage or deed of trust); and no amendment to this indenture which changes the beneficiary during Settlor's lifetime shall be effective unless the lender gives its prior written consent to such amendment.

16. If any beneficiary to whom the Trustee is directed in a preceding provision to distribute any share of trust principal is under the age of twenty-one years or a legal disability other than age when the distribution is to be made and if the Trustee is not otherwise directed in this instrument to hold such share in trust, such beneficiary's share shall vest in interest in him indefeasibly, but the Trustee may in her discretion distribute such share to a custodian under any transfer to minors law (including any appropriate Gifts to Minors Act or Transfer to Minors Law) or hold it as a separate trust for such period of time as the Trustee deems advisable, but not after the time the beneficiary reaches that age or is no longer under a disability other than age. If the Trustee holds such share as a separate trust, the Trustee may use for the benefit of the beneficiary so much of the income and

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 09:30 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**

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2	Email dated October 5, 2015 from Anthony L. Barney, Esq.	41-43
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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
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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
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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

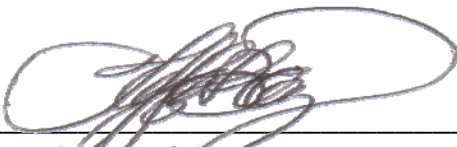
1 514 West 26<sup>th</sup> Street, #3E  
2 Kansas City, Missouri 64108

3 Registered Agent Solutions, Inc.  
4 Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability  
5 Company  
6 4625 West Nevso Drive, Suite 2  
7 Las Vegas, Nevada 89103

8 JONATHAN W. BARLOW, ESQ. Via Hand Delivery  
9 CLEAR COUNSEL LAW GROUP  
10 50 Stephanie Street, Suite 101  
11 Henderson, Nevada 89012  
12 [Jonathan@clearcounsel.com](mailto:Jonathan@clearcounsel.com)  
13 Attorneys for Stephen K. Lenhardt

14 Mark Solomon, Esq. Via Hand Delivery  
15 Joshua Hood, Esq.  
16 **SOLOMON DWIGGINS & FREER, LTD.**  
17 9060 W. Cheyenne Ave.  
18 Las Vegas, NV 89129  
19 *Attorney for Petitioner Caroline Davis*

20 DUNHAM TRUST COMPANY Via Hand Delivery  
21 SHANNA CORESSAL, CTFA  
22 c/o Charlene Renwick, Esq.  
23 Lee, Hernandez, Landrum & Garofalo  
24 7575 Vegas Drive, #150  
25 Las Vegas, Nevada 89128

26   
27 Employee of Anthony L. Barney, Ltd.  
28