

JAN-16-2009 FRI 02:59 PM

FAX NO.

P. 03

Comprehensive Cancer Center
OF NEVADA

EXCUSE SLIP

9280 W. Sunset Rd. Ste. 100

Las Vegas, NV 89148

(702) 952-1251

Date 1/12/09

TO WHOM IT MAY CONCERN:

Kevin Evans is under my care. He/She

☒ was seen in my office today.

☒ is released to return to work on 1/21/09

☐ is unable to return to work at this time because _____

☐ is able to return to school on _____

☐ surgery is scheduled for _____ and patient may
return to work after _____ weeks.

☐ Medications: _____

SCANNED

☐ Restrictions: _____

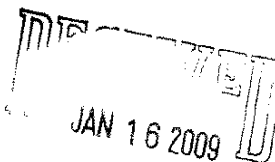
☒ Other: Full Duty

Michael, Paul, E., M.D.

Lic. No 5214

Phone No. 952-1251

Signature Pharmacia



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EXHIBIT 40

EXHIBIT 41

EXHIBIT 42

REGISTER OF ACTIONS

CASE NO. P-15-083867-T

In the Matter of the Trust of: The Beatrice Davis Heritage Trust

§
§
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§
§

Case Type: Probate - Trust/ Conservatorships
Subtype: Individual Trustee
Date Filed: 02/11/2015
Location:
Cross-Reference Case Number: P083867
Supreme Court No.: 68542

PARTY INFORMATION

Petitioner	Davis, Caroline 2501 Nob Hill PL N Seattle, WA 98109	Female	Lead Attorneys Mark Alan Solomon Retained 7028535483(W)
Trust	The Beatrice Davis Heritage Trust		

EVENTS & ORDERS OF THE COURT

09/16/2015 Motion (9:00 AM) (Judicial Officer Sturman, Gloria)
Petition to Stay Discovery until the August 19, 2015 Hearing on Motion for Reconsideration Or in the Alternative, Petition for Protective Order from Discovery By Subpoena

Minutes

09/16/2015 9:00 AM

- PETITION TO STAY DISCOVERY UNTIL THE AUGUST 19, 2015 HEARING ON MOTION FOR RECONSIDERATION OR, IN THE ALTERNATIVE, PETITION FOR PROTECTIVE ORDER FROM DISCOVERY BY SUBPOENA Court noted the Petition to Stay Discovery portion of the motion was withdrawn by counsel and is MOOT. Counsel first argued over whether the subpoena issued to Harriet Roland, counsel for Christopher Davis, breached attorney/client privilege and then the ten individual categories of records being sought. After argument on the issues of in personam jurisdiction over Christopher Davis, client's expectation of confidentiality and privilege, and relevancy, COURT FINDS there is a limited exception to attorney-client privilege when an attorney represents a fiduciary. This limited exception allows a beneficiary to breach the attorney/client privilege. COURT FURTHER FINDS it has in personam jurisdiction over Christopher in his role as trust advisor to the Family Heritage Trust (FHT) and as manager of FHT Holdings, LLC, a Nevada company. As to the specific categories documents were requested from, COURT ORDERED Petition for Protective Order GRANTED IN PART; to the extent documents produced back to the date of Beatrice Davis' incompetence for now, if additional documents are needed prior to that date, the issue can be raised again; produce records listed in all categories of any and all documents related to the FHT and FHT Holdings

under the law firm's control and custody.
COURT FURTHER ORDERED records produced
within thirty (30) days of notice of entry of
order. Any further disputes should be
addressed before the Discovery
Commissioner. Ms. Roland to prepare proposed
Order; Mr. Solomon to review as to form and
content.

Parties Present

Return to Register of Actions

EXHIBIT 43

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

IN THE MATTER OF THE TRUST OF:)
THE BEATRICE DAVIS HERITAGE)
TRUST)
_____)

CASE NO: P-15-083867-T
DEPT NO: XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

MOTION: PETITION TO STAY DISCOVERY UNTIL THE AUGUST 19, 2015
HEARING ON MOTION FOR RECONSIDERATION OR IN THE ALTERNATIVE,
PETITION FOR PROTECTIVE ORDER FROM DISCOVERY BY SUBPOENA

WEDNESDAY, SEPTEMBER 16, 2015

APPEARANCES:

FOR THE PETITIONERS: MARK A. SOLOMON, ESQ.
JOSHUA HOOD, ESQ.

FOR THE RESPONDENTS: ANTHONY BARNEY, ESQ.
HARRIET ROLAND, ESQ.

RECORDED BY KERRY ESPARZA, COURT RECORDER
TRANSCRIBED BY: KARR Reporting, Inc.

1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 16, 2015, 9:47 A.M.

2 * * * * *

3 MS. ROLAND: Good morning, Your Honor. Harriet
4 Roland for Christopher Davis and partially, I suppose, pro per
5 regarding the subpoena.

6 MR. BARNEY: Good morning, Your Honor. Anthony
7 Barney, and I'm going to be arguing a portion of the motion on
8 behalf of Harriet Roland.

9 THE COURT: Okay. Thank you.

10 MR. SOLOMON: Mark Solomon and Joshua Hood on behalf
11 of Caroline Davis.

12 THE COURT: So we've got a couple of issues before
13 us today, which is the petition to stay discovery until the
14 August 19, 2015 hearing. That one was mooted so that's
15 withdrawn, Mr. Barney?

16 MR. BARNEY: Yes.

17 THE COURT: And then so what remains is the petition
18 for protective order from discovery?

19 MR. BARNEY: Ms. Roland.

20 THE COURT: That's what remains. Are there any
21 other issues besides the issue of whether discovery should be
22 allowed? I think that's really the basis of what your motion
23 was.

24 MR. SOLOMON: I thought it was a motion for
25 protective order with respect to the subpoena on Ms. Roland.

1 There is other proceedings, but you pushed those to the 30th.

2 The motions to compel, the motion for contempt on other issues
3 in the case.

4 MR. BARNEY: That's my understanding.

5 THE COURT: So it's just the protective order today.

6 MR. BARNEY: That's my understanding too, Your
7 Honor.

8 THE COURT: All right. Got it. All right.

9 MR. BARNEY: Your Honor, just to give you a little
10 bit of the background, and I know you've been through this
11 case in depth and I appreciate your indulgence in this. As
12 you're aware, Christopher Davis and Caroline Davis, they're
13 co-trustees of a revocable trust out in Missouri. So
14 independent of this action, Christopher, you know, he has
15 various other duties as a co-trustee.

16 He has actually been in contact with regard to
17 providing documents in that matter. And obviously because
18 they're co-trustees, they exchange – they have to exchange
19 documents, and typically have been involved in a document
20 exchange. The concern that I have just right off the bat as
21 I'm looking at this is it says that not one single document
22 has been provided, but – because Chris has already provided a
23 CD.

24 We actually printed up the documents just to see.
25 It's about 6 inches thick, Your Honor, of documents that have

1 been provided. Because the revocable trust was the recipient
2 of loans from the FHT, or a loan. Okay. So there
3 irrespective of what has happened in Nevada, Chris has
4 provided the documents.

5 And ironically, if you actually look at the
6 documents, he has complied with their informal requests and
7 their formal requests irrespective of the Nevada proceeding
8 because of the fact that he is a co-trustee of the revocable
9 trust out in Missouri.

10 I was looking back on this, because obviously this
11 is a request for documentation, and on page 20, line 22 and
12 25, and page 21, lines 1 through 8, as part of Caroline's
13 counsel's oral argument, they argue Article 12, section 4,
14 that says, Trust books and records, along with all trust
15 documents, shall be available and open at all reasonable times
16 to the inspection of the trust beneficiaries and the
17 representatives.

18 Now, that's a trustee provision. Despite the fact
19 that those books and records are supposed to be open to
20 beneficiaries, including -- and I'm just quoting from their
21 statements, including one who is currently the sole
22 beneficiary of her share. We spent over three months, the
23 last quarter of 2012, trying to get information and documents
24 from Christopher.

25 Now, he goes on to say that he wanted those

1 documents regarding, quote, who got the loan proceeds or the
2 benefit of those, what was the purpose of those loans, how
3 were those loan's proceeds being used, what's the repayment
4 terms of the loan, has any repayment been made, was there any
5 collateral given, is there a collateral agreement, is there a
6 promissory note, is there a loan agreement.

7 Your Honor, that sounds suspiciously like an
8 accounting to me. I've done many accountings before this
9 Court, and that looks like a demand for an accounting. But in
10 her counsel's next breath, he argued a little over two years
11 later, on September 15, 2013, Alaska Trust Company resigned
12 and Mr. Lenhardt appointed Dunham Trust Company in Reno.

13 Now, if the record's to be believed, her counsel
14 admits that he's been trying to get this information from
15 Chris when Christopher was simply a beneficiary like Caroline.
16 Now they're both -- they're both trustees of the Missouri
17 trust, but according to the record that's before the Court,
18 and which was filed with the court -- or filed by the Court
19 rather in the form of a transcript, we have this reach in
20 to -- against Christopher all without service of process under
21 Rule 4.

22 Now, it's pertinent, because they've issued a
23 subpoena against Chris's attorney now. And if you look at
24 page 4, 12 through 15 of the hearing transcript, it's clear
25 that Caroline's counsel stated, "Our position is that we

1 properly under statute asked this Court to confirm him as a
2 trust protector and distribution advisor because that's what
3 our law requires." However, the Court didn't confirm
4 Christopher Davis in any role under 163 or 164. The Court
5 alleged that it took jurisdiction.

6 Now, Caroline has indicated in numerous written
7 pleadings that she's not asserting in personam jurisdiction
8 over Chris. The reason she asserts that is because she never
9 served him, and there was insufficiency of service of process.

10 It was held – in the order that this Court filed on 6/24/15,
11 it was held that taking jurisdiction over Chris would – it
12 took jurisdiction over Chris without determining any basis or
13 evidence that Chris was directing trust assets in Nevada.

14 In fact, the only monies alleged by Caroline to have
15 been transferred to the purported trustee, Dunham Trust, were
16 used by them for expenses without any direction from
17 Christopher, and Dunham Trust stood up here and made that
18 disclosure to the Court at the last hearing.

19 So let's look a moment at the statute. Senate
20 Bill 44, that becomes effective on October 1, indicates that
21 at Section 63, that NRS 164.010 will have a new provision
22 added to it to enable the court to expand its jurisdiction
23 under the relaxed requirements of the notice provisions under
24 155. It states, If the court grants the petition, the court
25 shall be deemed to have personal jurisdiction.

1 That's a new -- that's a new provision, Your Honor,
2 that we passed, that if you go up to the nexus of 59, and you
3 look at all of the different nexus points that are pointed out
4 in the statute, that's the attempt of the legislature to give
5 notice essentially to people, to put them on notice.

6 Now, I don't know if that's constitutional, Your
7 Honor, yet or not. I think someone will probably challenge
8 that, because the reality is, is does a statute put you on
9 notice that you can be held in under in personam jurisdiction.

10 But what is clear from the new change, Your Honor, is that
11 it's a change from the past statute. The past statute didn't
12 give in personam jurisdiction to the court for purposes of
13 taking it over an investment trust advisor.

14 Now, we have that section, because Section 59 sets
15 forth all the jurisdictional nexus determinations for due
16 process. However, as I said before, the fact that that's not
17 the law yet clearly suggests that in personam is lacking. And
18 this has been our argument throughout these proceedings, that
19 there is no in personam jurisdiction over Christopher Davis in
20 his role as investment trust advisor, or as manager of FHT
21 Holdings LLC.

22 Now, could there have been? Yes, if he had been
23 served. And it was a \$100 procedure, Your Honor. You go
24 serve somebody -- I do it all the time. I do out of state
25 subpoenas all the time. You serve them and you serve them

1 pursuant to their statute so that you can get them here. You
2 don't -- you don't send notice under 155, because the reality
3 is you can't get in personam jurisdiction.

4 Even our courts, when they're demanding an
5 accounting where they're doing an order to show cause, they'd
6 actually issue a citation and have it served. In this case
7 Christopher was never served pursuant to Rule 4. And if you
8 look, even under the new statutory scheme that will be
9 introduced on October 1, it's clear that no nexus was properly
10 drawn by this Court as a basis for jurisdiction over
11 Christopher Davis even under the analysis that's set forth
12 under the new provisions that have been introduced by Senate
13 Bill 44.

14 And Your Honor, if I could, I want to just -- I'd
15 like to yield some time to Harriet Roland, unless you have any
16 questions for me, Your Honor.

17 THE COURT: Okay. Right. Thank you.

18 MS. ROLAND: Good morning, Your Honor. You've seen
19 the subpoena. You've seen that it is addressed to me as
20 custodian of -- or addressed to custodian of records for
21 Roland Law Firm, and it is not directed at my client.

22 My primary concern in appearing before this Court is
23 number one, as you so succinctly put it in -- or addressed in
24 the first case this morning, I have no desire to be held in
25 contempt for not responding to a subpoena. On the other hand,

1 everything that I do as an attorney is -- is with regard to my
2 concern for confidentiality and privilege.

3 What Mr. Solomon has effectively requested with the
4 subpoena, and I will go through the -- just briefly the
5 documents that he has requested, is the client file that I
6 received from Mr. Davis in his expectation of confidentiality
7 and privilege by providing to me documents. Some documents
8 are responsive. Some documents are not responsive. Some
9 documents, I believe, are privileged. I did provide a
10 privilege log.

11 THE COURT: And I guess that was a question I had,
12 is did I -- it did seem that the subpoena specifically said
13 non-privileged records.

14 MS. ROLAND: It did say that.

15 THE COURT: So is that -- does that protect the
16 concern that you have, or no, do you still have --

17 MS. ROLAND: It does not protect the client's -- my
18 concern with regard to expectation -- the client's concern of
19 expectation of confidentiality in his dealings with his
20 attorneys and my duties under the Ethics Rule 1.4, regarding
21 confidentiality. Beyond that, we have broad issues with
22 relevance. And I know that relevance is broadly interpreted
23 with regard to discovery.

24 So let's assume for a moment that we've gotten by
25 our jurisdictional concerns, which I believe we have not at

1 this point, but let's just assume for a moment that we have.
2 This Court has not taken jurisdiction over the revocable
3 trust. That is a question right now in front of the Missouri
4 court.

5 This Court did address in its order that was entered
6 June 24, that all documents providing -- all documents
7 relating to Christopher Davis in his capacity as investment
8 trust advisor be produced. And part of, I think, our issues
9 with this are -- and our questions regard the procedural briar
10 patch that we are in that things got a little bit out of order
11 with the hearings.

12 We received the subpoena on June 8. It was --
13 whether it was valid or not I'm not -- I probably should bring
14 up that point just for the -- for future arguments in this
15 court. But let's assume for a minute that the subpoena was
16 valid. So June 8 we received this very broad subpoena that
17 goes back requesting years and years of documents even during
18 Beatrice Davis's competency. Because Christopher Davis was
19 her son, he was helping her with her affairs, as presumably
20 Caroline was.

21 So anyway, we have a very broad base for this
22 subpoena. And then you issue your order which is -- which
23 constrains the discovery to -- constrains the production to
24 Christopher Davis in his capacity as investment advisor. So
25 in a way, his -- the order directed at him is also the order

1 directed at my file, because I was also in possession of at
2 least some of the documents that you required him to produce.

3 So we produced 804 pages Bates stamped with regard
4 to the period from February 24, when he was in -- purportedly
5 invested with Fiduciary Tower, through the whatever time my
6 file was at that time. And Mr. Solomon has those documents
7 and he has my privilege log, which is -- I don't think the
8 fact that these documents have been produced are under
9 dispute. I don't think -- maybe a few of the documents in the
10 privilege log are in dispute.

11 But what we were not able to accomplish and resolve
12 was number one, and I'll just briefly again go through the
13 numbers, the documents in the subpoena, any and all
14 non-privileged records regarded to -- in your possession
15 regarding the FHT. Well, the FHT goes back to 2000. So are
16 we -- do I as an attorney, am I required to turn over
17 documents in my possession that go back way before any --
18 there was any court intervention in this?

19 We're going back to the year 2000, so we're going
20 back 15, 16 years. This is burdensome, and especially in a
21 case where at this point there has been no allegation -- maybe
22 some innuendo, but no written action against Christopher for
23 anything that he has done. The only question that we've
24 managed to get before this Court or that Mr. Solomon has
25 brought is the issue with the Court taking jurisdiction over

1 the trust.

2 Number two, all records regarding the Beatrice B.
3 Davis Revocable Trust dated 1990. Well, now we're going back
4 to 1990. This is not constrained by any date. And again, the
5 RLT is under the jurisdiction of the court. And remember,
6 this is the subpoena issued to me as custodian of records.
7 Before this current dispute, I never represented Christopher
8 in anything. I didn't know him. I was not in possession of
9 corporate records. I did not act for corporations or any
10 entities.

11 So again, here we're addressing the subpoena to me
12 as – or to custodian of records at Roland Law Firm.
13 Potentially, I suppose, it could bring in paralegals and
14 everything else, because custodian of records has different
15 definitions depending on who's taking care of what records.
16 Would you want me to continue through the rest of mine, my
17 concerns on this?

18 THE COURT: Well, I guess one question that I had is
19 because there are all these different categories, there is the
20 Beatrice Davis Family Heritage Trust, the Beatrice Davis
21 Revocable Living Trust. There's the Davis Family Office LLC,
22 FHT Holdings LLC. I know that at least one of these entities
23 is now a Nevada LLC, of which Mr. Davis is the managing –

24 MS. ROLAND: The FHT Holdings LLC, that was actually
25 the simple one, because that one was created in February or

1 March, I think March of 2014 by Dunham Trust Company. So
2 that's the shortest and easiest one that we have, and we did
3 have to retrieve an operating agreement from that. I can't
4 remember if we retrieved it from Dunham or whoever. We had to
5 order copies of articles from the secretary of state, all of
6 which Mr. Solomon has.

7 THE COURT: Okay. So I guess the question is if we
8 look at the ten categories, the 11th being if you think you
9 have a privilege give us the privilege log, but the ten
10 categories, which of those are you seeking protection as to?

11 Because as you've indicated, you provided the
12 privilege log references paragraph 11. You've also provided
13 800 and some pages, including it sounds like specifically
14 paragraph 5, the FHT LLC, that's the Nevada entity. So is it
15 the -- is it all the others that you're seeking protection
16 as to?

17 MS. ROLAND: No, Your Honor. What we -- excuse me.

18 THE COURT: Certainly.

19 (Attorneys confer.)

20 MS. ROLAND: Some of the -- the documents that were
21 produced, the 800 and some pages were produced within the
22 constraints of your -- of the order that is still -- still
23 under contest, I suppose, and is on appeal with regard to
24 the -- with regard to Christopher in his capacity as an
25 investment advisor and the revocable living trust. We have

1 produced other documents with regard to -- I'm sorry, the FHT
2 trust.

3 We have produced other documents in regard to the
4 revocable trust, which I did not bring the stack up, and the
5 Missouri action, and we have produced even other documents.
6 And in good faith, not in response to the subpoena. I don't
7 want to go there at this point, because my concern with the
8 subpoena is that all the documents in my possession are
9 privileged and have confidentiality protection under the rules
10 of ethics.

11 And for me to release them without specific and --
12 orders from this Court put me as an attorney in not -- maybe
13 not in jeopardy, maybe that is too strong a word. But as a
14 practicing attorney before you took the bench, and Mr. Solomon
15 understands my concerns about privilege, protecting my client
16 file. If this had -- if this subpoena duces tecum had been
17 properly issued to Christopher Davis, not to me as an attorney
18 for what amounts to my file, then this could be a different
19 discussion.

20 But this is issued to me as custodian of records for
21 my law firm. So my concern relates to all of these matters.
22 If you hypothetically were to say, Ms. Roland, all of these
23 need to be released, then I have other concerns regarding the
24 relevance of going back 20-some years for records and having
25 to -- and what is where we stop it.

1 But initially my -- and most importantly, my
2 concerns are privilege, their confidentiality, that the only
3 question before this Court at this point has been taking
4 jurisdiction over the trust, and that these do not relate to
5 the jurisdictional questions at all.

6 THE COURT: Understood. Okay. Thank you.

7 MR. SOLOMON: Let me start, if I can, with
8 Mr. Barney's argument, because I don't understand how it has
9 any relevancy to this case. This is a subpoena that we served
10 upon Harriet Roland's firm. The issue is whether or not it
11 was properly served and whether or not there's any basis not
12 to produce the documents.

13 I don't know what Mr. Barney was arguing, because it
14 doesn't make sense to me. Your Honor knows he's already held
15 that under 163.555, this Court has in personam jurisdiction
16 over Christopher in his capacity as investment trust advisor
17 and as -- I mean, it's also been found that you have
18 jurisdiction over him as the manager of a Nevada LLC.

19 But none of that has anything to do with what's
20 before this Court today that has to do with the order that the
21 Court entered that he produce documents, which he hasn't
22 produced any at this point.

23 But let me go back and I -- what they're really
24 saying is I gave you 800 pages of documents, but they're
25 documents that were generated only after Chris became the

1 investment trust advisor in February of '14, and even though
2 he may have all these other documents that show what was in
3 the trust initially, what happened to the trust, where it is
4 now, I don't have to produce any of that stuff because you
5 only took jurisdiction over me in this limited capacity. And
6 that doesn't make any sense at all, Your Honor.

7 Beatrice was incompetent in 2007. Chris took over
8 her affairs at that point. She died in 2012. Her estate plan
9 leaves everything 50/50 to Chris and Caroline. It is split
10 jurisdiction because their actions got this trust into Nevada.
11 We've been trying since August of 2014, I have from Solomon
12 Dwiggins & Freer, trying to obtain information about this
13 trust from Christopher. We've sent him letters which he
14 ignored.

15 I told you about -- last hearing about a phone call
16 I had finally with Harriet Roland on November 19, 2014, where
17 she told me she had been provided numerous files
18 electronically, filled a couple banker boxes concerning this
19 trust and its interplay with revocable trusts and the Davis
20 Family Office. She said she was going to cooperate and give
21 us the information because she knew we were entitled to it.
22 And then apparently she was instructed by her client not to.

23 So we filed this petition to assume jurisdiction,
24 and it required -- asked this Court to require Chris to
25 produce the information and documentation regarding policy

1 loans that we knew about, and his response was to file a
2 motion to dismiss. Your Honor's certainly familiar with that.

3 But in June 24th of this year, you enter an order
4 requiring Christopher to produce all information in his
5 possession, custody or control in his role as investment trust
6 advisor, and his role as manager of FHT Holdings.

7 Notwithstanding what they've said, he hasn't produced
8 anything, and that's part of the motion for contempt you're
9 going to hear on the 30th. The only thing we've ever got is
10 from Ms. Roland's office pursuant to the subpoena, and that
11 was woefully incomplete. And I'll get into that in a second.

12 We did issue a subpoena to her because she told us
13 she was going to have all these documents that were relevant
14 to what I needed to know, and then she was going to give them
15 to me, and then she wasn't going to give them to me. There's
16 nothing in law that prohibits my firm or my client from
17 subpoenaing a person in Nevada that's holding property or
18 information that's relevant to this subject matter.

19 I don't have to go to Chris in Missouri or wherever
20 he is. If he puts documents that are relevant to this case,
21 the subject matter of this case in Nevada subject to this
22 Court's subpoena power, I'm entitled to go after it. And so
23 we issued that subpoena. And yes, it's worded broadly, but
24 what was Chris giving her? What would you assume that she had
25 in her possession based upon this case? It would be the stuff

1 that would be pertinent to this case.

2 Ms. Roland has never come to me and said, I have
3 documents in my possession and control that are not relevant
4 to your case. Not one. She didn't do it in this motion here.
5 It's obvious that what Chris sent her were documents that he
6 had in his possession that are relevant to this case, that are
7 subject to the inquiry, that are pertinent to it, and we were
8 entitled to make that assumption.

9 If she comes back and says, hey, I have all sorts of
10 documents that have nothing to do with this case, I'll say
11 keep them. But that isn't what she's done. She said, I'm
12 only going to give you, in compliance, and that's in quotes,
13 with this subpoena, stuff I'm going to interpret this as I'm
14 really just holding this for Chris. And so this is going to
15 be Chris's compliance. It has nothing -- let me out of this.

16 I'm just going to say, since the Court ordered us to
17 produce or Chris to produce certain things, I'm going to
18 interpret that narrowly as possible and say that's only from
19 February of '14, when he became appointed, even though he may
20 have tons of documents that are related to what these assets
21 are, how they're being managed.

22 I mean, he is the form of the change from the two
23 trusts, where you had trustees that did everything before.
24 And when they came into Nevada and they created this first
25 amendment, they changed that. The trustee became a directed

1 trustee with a very limited role, follow the instructions of
2 Chris on investments and management of assets. He effectively
3 is the trustee of this trust.

4 And then he got himself appointed as the manager of
5 an LLC in Nevada and had the major asset of this trust
6 transferred over there, and he's managing that. I can't go to
7 the trustee and ask them anything, because they don't know
8 anything. It's all in their possession, as Chris's possession
9 as that investment advisor which is effectively the trustee of
10 this trust and clearly a fiduciary under our statutes. It's
11 defined as such.

12 THE COURT: That was going to be a question.
13 Because as I said earlier, as was alluded by Ms. Roland, there
14 is a limited exception to the attorney-client privilege where
15 you are providing advice and counsel to a fiduciary.
16 Technically I've been kind of trying to analyze how -- what
17 kind of jurisdiction we can take here.

18 The jurisdiction is over him in his role as an
19 investment trust advisor. And in your view, that is a
20 fiduciary capacity under our statute. And so to the extent
21 there's any limited exception, and I feel it is a limited
22 exception, that it would be -- he would be the kind of
23 fiduciary that his -- a beneficiary could seek to breach that
24 attorney-client privilege.

25 MR. SOLOMON: I'm not even going there, Your Honor,

1 but you're right. I could go there. I have a whole different
2 theory of this case, and I think I'm right. And that is Chris
3 is a fiduciary with a duty to disclose Caroline all
4 information, whether it was generated during his possession,
5 his formal fiduciary period, or whether he's in possession of
6 it otherwise.

7 All information that's reasonably appropriate to
8 protect her half interest in this trust. Let's start with
9 that proposition. I don't think anybody can argue with that.
10 That's the law. If that's true, Your Honor, if that
11 information is in the hands of a third party and it's relevant
12 to the subject matter of this action, it must be produced
13 pursuant to a subpoena properly served in Nevada if it's not
14 truly privileged. That's my theory.

15 And there are – and Your Honor is familiar with
16 this caselaw. There's hundreds of cases, and I'll quote for a
17 few of them, that says the attorney-client privilege only
18 applies to communications between the attorney and client. It
19 doesn't apply to discoverable documents that the client
20 provides to his attorney.

21 If that were the case, if that were the law, every
22 client would shield all the underlying documents subject to
23 discovery by handing them over to his attorney and say, ah, I
24 don't have them anymore, they're privileged, there's an
25 expectation of privacy that she's already given me, because he

1 turned all the relevant documents over to her. Hogwash.

2 That's never been the law.

3 People vs. Lee, Cal.App. case, 83 Cal.Rptr. 715. It
4 says, The physical object or information itself does not
5 become privileged merely by reason of its transmission to the
6 attorney.

7 Arkansas National Bank vs. Cleburne County Bank, 525
8 SW.2d 82 (Ark. 1975). It says, An attorney may be required to
9 produce papers belonging to his client if as here the client
10 may be compelled to produce them.

11 Palmer vs. Superior Court, 231 Cal.App.4th, 1214
12 (2014). It says, Where the privilege applies, it may not be
13 used to shield facts, as opposed to communications, from
14 discovery, and knowledge that is not otherwise privileged does
15 not become so by being communicated to an attorney.

16 So I've got, because she told me, information from
17 Ms. Roland that her client sent her underlying documents
18 relevant to my case and to my inquiry about which this case is
19 solely about at this point, and she's saying, hey, because he
20 gave them to me they're somehow clothed with protection and I
21 don't have to produce them.

22 Getting to the rub of this case, I have the
23 documents she's produced, these 800 pages. I had some or most
24 of those already. What they largely ignore, Your Honor, what
25 they largely ignore, if not totally, is any information we're

1 seeking relating to the loans from the Heritage Trust to the
2 revocable trust to the Davis Family Office and to Christopher
3 individually.

4 There's over \$2 million of money that my client is
5 vitally interested in that has gone out at or at the behest of
6 Christopher to himself individually, to himself as effectively
7 the only trustee. Contrary to Ms. -- counsel's statement, we
8 haven't gotten anything in Missouri. They're fighting us
9 tooth and nail over that too. They're still trying to hide
10 the ball in Missouri.

11 Yes, there's initial discussions. Nothing's been
12 produced to my knowledge at least. We've been forced into
13 these proceedings. He has largely ignored, Your Honor -- do
14 you remember we had last hearing, they asked for a protective
15 order on the deposition and Your Honor denied it. Guess what
16 happened the next day. He refused to show. Absolutely
17 refused to show. So now we have another motion to compel, a
18 motion for sanctions.

19 It's been a constant battle of throwing one obstacle
20 after another at us to prevent us our legitimate pursuit of
21 information to which we're entitled to protect my client's
22 interest in this trust. I'm not saying they don't have the
23 right to file things. A lot of these things I think are not
24 in good faith, and they're designed as a shell game to stall
25 us. This is another one.

1 We are entitled to the information in her file that
2 was provided by her client unless it's truly privileged. And
3 if they claim she has something that's just not relevant to
4 what we're trying to ascertain, it is pertinent what the
5 revocable trust is.

6 It is pertinent what Christopher's done with our
7 money. It is pertinent what Family Office is all about and
8 what it's using our money, and whether they're going to get it
9 back, and that information needs to be produced to us. They
10 haven't produced any of that, Your Honor, and it's
11 intentionally.

12 I mean, I can't prove anything at this point because
13 I need documents. But I think the handwriting's on the wall.
14 This smells. When somebody doesn't turn over records to which
15 they're required to return and stonewalls you like this,
16 they're hiding something.

17 And what we do know is that my client was entitled
18 to half of Beatrice's estate generally, and she hasn't
19 received a dime since 2012. But Christopher, because of his
20 role in either as a fiduciary or as influence over
21 fiduciaries, has strongly benefited from this, but won't tell
22 us how, why or anything else about it. Instead, it can't
23 happen, and the court has no jurisdiction and it can't force
24 me, and even if the court tells me to do it, I'm not going to
25 do it.

1 THE COURT: Okay. Well, the -- with respect to the
2 items requested, as we discussed earlier, we have this whole
3 issue of, you know, is -- these are arguably Christopher's
4 documents that are in the custody of an entity here in Las
5 Vegas. That entity happens to be a law firm. The law firm
6 has certain attorney-client obligations that it owes to its
7 client, Mr. Davis.

8 So what -- is it your view that all of your ten
9 categories of -- all of them are entirely open and
10 discoverable, that even though this is -- some of this is, I
11 think, specifically the revocable trust, isn't under the
12 jurisdiction of this court?

13 MR. SOLOMON: Misty Roland's under the jurisdiction
14 of the court. That's all -- the only analysis Your Honor
15 needs to do.

16 THE COURT: Okay. So that's your position, that --

17 MR. SOLOMON: That is clearly our position.

18 THE COURT: -- because the documents are in the
19 possession of an attorney who is under the jurisdiction of the
20 court, because it's a subpoena properly served in the state of
21 Nevada, that -- and these documents are relevant to your
22 litigation, that they can be subpoenaed?

23 MR. SOLOMON: Yes. And let me give you an example
24 of that, that you encounter more frequently. Let's assume I
25 think I have a claim against somebody that's located in a

1 foreign jurisdiction. It could be a foreign -- a different
2 state or it could be a foreign jurisdiction. I can subpoena
3 his records at a bank here. I mean, I can do a lot of things
4 here as long as this court has the jurisdiction over the
5 person subpoenaed. That's the relevant analysis now.

6 We have jurisdiction over Christopher in any case in
7 personam because of 163.555. But even if we didn't, if that
8 person was just a witness in some case and had no reason to be
9 adjourned even, you can subpoena his records that are here.
10 You can subpoena his stuff that's here. It's the raw power of
11 this Court to do that that's at issue, not whether I've named
12 that witness in a lawsuit and made him subject to
13 jurisdiction.

14 I mean, I may have to give him notice of the
15 subpoena obviously. But that's a whole different -- I give
16 the notice to the party, but I follow the rules of the
17 subpoena. The records of Christopher again, he's the one who
18 received the loans. That's what I'm looking for. That's the
19 relevant stuff. That's what I assume that he produced over to
20 Misty.

21 They made loans to the revocable trust of over a
22 million dollars. It's the revocable trust records that are
23 relevant to the inquiry before this Court with respect to
24 those loans. I can get those if I can find them in the state
25 of Nevada and properly serve a subpoena. And that's clearly

1 the law, Your Honor.

2 THE COURT: Okay. So with respect to the request
3 for protective order, it's your position that all -- because
4 the documents -- I mean, to the extent any documents -- we're
5 sort of assuming there are documents.

6 But assuming there are documents being held by an
7 attorney here in Nevada that fall into these categories, it's
8 your position they're automatically discoverable because
9 they're in the possession and control of counsel in Nevada,
10 and not privileged because they're not the communications,
11 they're not the work product. There are things that might be
12 privileged.

13 MR. SOLOMON: Of course.

14 THE COURT: If there are communications, if there is
15 work product, those things are privileged.

16 MR. SOLOMON: Yes.

17 THE COURT: But the records of the trust and the
18 activities of the trust, since they're now in the possession
19 of a counsel, would be discoverable.

20 MR. SOLOMON: Absolutely.

21 THE COURT: Okay.

22 MR. SOLOMON: I mean, there's another test obviously
23 of relevancy which you didn't mention, but that's -- I've
24 already argued that. She hasn't told me they're not relevant.
25 She didn't -- it didn't even make sense that she'd have

1 possession of anything of his that wouldn't be relevant. Why
2 would he send it to her in the first place. But that's
3 exactly correct. That is our position.

4 THE COURT: All right. Got it. Thanks. All right.
5 I don't know if Mr. Barney or Ms. Roland, who wants to respond
6 first.

7 MR. BARNEY: Yes.

8 MS. ROLAND: I do have a brief response after
9 Mr. Barney's finished.

10 THE COURT: Okay. Perfect. We'll do that.

11 MR. BARNEY: Your Honor, I see your concerns as you
12 asked about whether or not all of the requests in that
13 subpoena should carte blanche be turned over, especially
14 because when you talk about whether or not there's a
15 custodian. And I agree with Mark, if you are going to
16 subpoena bank records of a foreign company you subpoena the
17 bank, and you do that because they're the custodian. They
18 have the originals. They're the ones that can be trusted.

19 If you don't, if you've got \$2 million in loans that
20 came out from Alaska Trust, you subpoena Alaska Trust, because
21 they're going to be the ones that are the custodians. Having
22 a copy of a document does not make you the custodian of that
23 document. Okay. And there's a very distinct difference
24 between subpoenaing a bank that truly is the custodian of the
25 records than subpoenaing your friend Marvin that might have

1 for instance a copy of partial, you know, bank statements.

2 One of the interesting and more salient points
3 though, Your Honor, is that you issued an order and clearly
4 obviously we've objected to the jurisdiction. We -- I asked
5 for an extension so that I could file some emergency relief
6 with the Supreme Court even as to the deposition. Because
7 clearly it is my belief that there is an in personam
8 jurisdiction.

9 And having a client come and appear, or recommending
10 that he appear, or even conceding when he wants to appear or
11 objecting to his request to appear, or having him say he wants
12 to appear, it doesn't make any difference with regard to the
13 fact that unless there was in personam jurisdiction, he wasn't
14 properly made a party to this. Because he wasn't, there's
15 been this end run. And that's the reason I raised my
16 arguments. There's been an end run to go around him to his
17 attorney. Okay. And they've done this through the subpoena.

18 Now, it's interesting, because when I requested an
19 extension, I did so to be able to make an emergency -- the
20 Court wouldn't hear even my request. But the reality is as we
21 look at this, and let's assume arguendo that this Court has
22 jurisdiction. Let's just assume for a moment that it does.
23 In its order, it was a discovery order it appears, it says
24 that there are documents that are limited.

25 And in fact, in the first hearing I asked the Court

1 several times in what role is the Court going to allow any
2 discovery. The Court was very specific. It limited those.
3 This subpoena's far outside the court order. In fact, it's
4 exponentially outside of the Court's directive. And so as a
5 result, they're doing an end run around the Court's order with
6 a subpoena to try to get copies of documents from a
7 non-custodian.

8 MS. ROLAND: Your Honor, I would like to just put a
9 point on the record right now that I do have many documents in
10 my file that are – that I can't imagine under any judicial
11 review would be deemed relevant to this action, or even the
12 revocable trust action. So that's – no, I've not told
13 Mr. Solomon that. We haven't had that level of discussion.

14 And before I could address relevance, I had to get
15 by the issue of privilege and confidentiality. Once you make
16 your ruling, if we're beyond that, then we can discuss
17 relevance. And for example, all non-privileged records with
18 regard to the revocable trust dated 1990, well, let's assume
19 for a moment just hypothetically that I have records from 1992
20 forward, which I do not.

21 But just hypothetically for the revocable trust,
22 those are required to be produced under the subpoena, so now
23 we have the whole issue of relevance. Documents from say
24 2006, from the Family Heritage Trust before Beatrice became
25 incompetent, if I have those, are those part of the relevancy

1 that we're addressing? These are the kind of instructions
2 that I will need if you get beyond confidentiality and
3 privilege, and that possibly Mr. Solomon and I can rewrite our
4 history and start figuring out some of this.

5 THE COURT: Well, I guess let's talk about
6 confidentiality for a minute, because those are issues that
7 Mr. Solomon said those are easily -- because you can't -- as
8 he pointed out, and that was what I was thinking was, well,
9 people with just anything they want to hide, they would give
10 it to their attorney and say, oh, it's privileged, you know,
11 you can't touch it because, you know, it's in the possession
12 of my attorney. And that's not what it's intended to do.

13 MS. ROLAND: That's correct, except that these are
14 copies of electronic discovery, electronic copies of documents
15 which there is more than one copy, and which my client still
16 assumedly still has copies of what he gave me.

17 THE COURT: Correct. So this would not be the sole
18 source of the information --

19 MS. ROLAND: Correct.

20 THE COURT: -- in proper litigation. Because
21 particularly to the extent that some of this is related to
22 litigation that's ongoing in another state, it -- you get into
23 your relevance issue.

24 But so we got the -- we got first the issue of
25 confidentiality. You can't just assume that everything is

1 going to be protected by confidentiality just because it's in
2 the possession of your attorney. You can't shield otherwise
3 discoverable information by turning it over to your counsel.
4 That's -- we're talking here about what is really truly
5 privileged.

6 MS. ROLAND: Thank you. But I had to submit it to
7 the Court. I have a duty to my client to raise these
8 concerns.

9 THE COURT: I understand. So the issue with respect
10 to confidentiality is you cannot automatically shield
11 otherwise discoverable information from discovery simply by
12 turning it over to the possession of your counsel. That
13 doesn't cloak it with any kind of confidentiality. Because
14 confidentiality is those communications between the attorney
15 and their client.

16 And privilege, that's a different issue. Privilege
17 is maybe a little bit broader. What are privileged records,
18 those are records that may not necessarily be subject to the
19 confidentiality of an attorney that you've got -- you've got
20 work product.

21 You've got all sorts of things that might even be
22 produced by third parties but nevertheless have some sort of a
23 privilege that might attach to it, because it's somehow in the
24 course of litigation, prepared in the course and context of
25 litigation. So those might have a privilege that attaches to

1 them. So those privileges would still attach, even though
2 technically it may be not a confidential document.

3 So my problem here is that, and it's Mr. Solomon's
4 position that every single category of the ten would be
5 discoverable here and relevant here, and this Court should say
6 if they're in the possession of an attorney here in this state
7 then they should be discovered. So with respect to that
8 argument, as I understand your position is it's – you
9 produced the documents related to the Nevada LLC.

10 MS. ROLAND: Correct.

11 THE COURT: You did that. FHT.

12 MS. ROLAND: With regard to – to what I have in my
13 possession.

14 THE COURT: Yeah. In your – the documents you have
15 with respect to that LLC, you've produced those?

16 MS. ROLAND: Correct.

17 THE COURT: Okay. Got it. With respect to I think
18 it's what I'm understanding from you is that it's more of a
19 relevancy issue, and so when we get to relevancy we have a
20 couple different issues. One is some of these are documents
21 that are related to a trust over which this court's never been
22 asked to take any kind of jurisdiction, and it's actually
23 being litigated in another state.

24 So am I understanding that your position is that
25 that exceeds the scope of what this court's power would be

1 because it's not relevant to this litigation that I have
2 jurisdiction over?

3 MS. ROLAND: I would concede with Mr. Solomon that
4 some of it is relevant. And because he brought up the point
5 that there are revocable -- that the revocable trust borrowed
6 money from the FHT, that obviously has a connection to the
7 FHT.

8 THE COURT: All right. And then I think another
9 issue that you just mentioned is that with respect to Category
10 No. 1, non-privileged records in your possession related to
11 the Beatrice B. Davis Family Heritage Trust, that's the trust
12 at issue in this litigation, dated July 28, 2000. Well, as
13 you pointed out, it wasn't until --

14 MS. ROLAND: 2013.

15 THE COURT: -- 2006, I think, that we -- '6 or '7?
16 I can't remember the date that Beatrice became incompetent.

17 MS. ROLAND: Mr. Solomon said 2007. I thought it
18 was 2009. We can check our records.

19 THE COURT: Okay. And then she died in 2012?

20 MR. SOLOMON: '12.

21 MS. ROLAND: '12.

22 MR. SOLOMON: But she wasn't the trustee of this
23 trust, Your Honor.

24 THE COURT: All right. So --

25 MR. SOLOMON: Even before her death she wasn't,

1 because it's an irrevocable trust with a --

2 THE COURT: Okay. So that's what I'm trying to

3 understand with respect to the 2000 trust, what the issue

4 would be with producing, going back all the way to 2000.

5 Because you mentioned something about her incompetence, some

6 of this would predate her incompetency, predate her death, you

7 know, what's the relevance or the discoverability of those

8 records. So what is your argument there? I wasn't -- didn't

9 quite --

10 MR. SOLOMON: To me?

11 THE COURT: -- follow it.

12 No. I'm asking Ms. Roland.

13 MR. SOLOMON: Thank you.

14 MS. ROLAND: Again, assuming we're past

15 confidentiality and privilege then, Your Honor, it's

16 relevance. What Beatrice did with loans that she took from

17 the family Heritage Trust while she was competent, how is that

18 relevant to the current action of this Court taking

19 jurisdiction over the family Heritage Trust and confirming

20 Dunham as trustee?

21 THE COURT: Okay. I guess -- so I guess --

22 MR. SOLOMON: Because they're assets of the trust.

23 THE COURT: Yeah. So I guess that's the question,

24 is --

25 MS. ROLAND: Not if they were already paid off and

1 gone far away. That's the problem I'm having with this is the
2 scope of it.

3 MR. SOLOMON: I don't know that's true.

4 MS. ROLAND: And no, you don't know that it's -- you
5 don't know that it's true and I don't know that it's true.

6 But we're having a huge problem with scope. Does this put a
7 burden on me as the attorney, because again, the subpoena is
8 directed towards me as custodian of records to search the
9 electronic shoebox of records to find out, okay, well, what do
10 I have from say 2003 that -- that I need to make a relevancy
11 objection. This is huge. So I think you can understand --

12 THE COURT: So it's unduly burdensome on counsel to
13 be asked to be making these kinds of determinations.

14 MS. ROLAND: Correct. With regard to the loans
15 that --

16 THE COURT: Because it's a 15-year time period.

17 MS. ROLAND: Because --

18 MR. BARNEY: Your Honor, there's two people that we
19 could ask. The Alaska trustee and Mr. Lenhardt, but those
20 both aren't parties, but those were the people that would have
21 the records. They'd be the custodians actually.

22 MR. SOLOMON: Your Honor, I'm talking about the
23 records in her possession. So then -- you know, and I'm
24 getting double-teamed here. But we -- there's a trust
25 provision --

1 MS. ROLAND: Yeah. I don't mean to do that to you,
2 Mark.

3 MR. SOLOMON: -- that says we're entitled to all the
4 records of that very trust. How could that possibly not be
5 producible to us? It's a baseline of what's happened here. I
6 need to know what's happened here. It's a prelude to where we
7 are today.

8 THE COURT: Okay. But at what point is your client
9 entitled to information? Because was she at any time a
10 beneficiary prior to her mother's death?

11 MR. SOLOMON: Yes. From the inception of the trust.

12 THE COURT: She was a -- was she a beneficiary or
13 was she a -- like a future --

14 MR. SOLOMON: The mother was never a beneficiary of
15 this trust. It's always been Chris and my client.

16 THE COURT: Okay.

17 MS. ROLAND: But Mother did --

18 MR. SOLOMON: And others.

19 MR. BARNEY: I was going to say, Your Honor, that
20 Cheryl and --

21 MR. SOLOMON: And others, but --

22 MR. BARNEY: -- we've argued [unintelligible].

23 MR. SOLOMON: -- the point is, I know you wanted to
24 find out if my client was the beneficiary today, well, the
25 answer is yes.

1 MS. ROLAND: They were both beneficiaries, Your
2 Honor, during that time. But Beatrice again, when she
3 borrowed money from the trust, because this was part of her
4 huge estate plan, was that these funds would be put into a
5 life insurance trust and then she would have access to them as
6 loans.

7 And I -- without searching my file, I can tell you
8 that I probably do have bits and pieces from the period of
9 time that she took loans very early on, while she was still in
10 mental control of her faculties, before there was any concern
11 at all about her mental abilities. And it's unduly burdensome
12 to put that particularly on me as the attorney as custodian of
13 records, which I dispute that I am for these records. But I
14 do have copies.

15 THE COURT: Well, you're not the custodian of
16 records for the -- you aren't the custodian of the records.
17 You're --

18 MS. ROLAND: For the law firm.

19 THE COURT: Of your law firm, these are records
20 within the control of your law firm --

21 MS. ROLAND: Correct.

22 THE COURT: -- which would be otherwise
23 discoverable. I don't think anybody is saying that you are
24 obligated in any way to maintain a complete file, because you
25 only have what you're given by counsel.

1 MS. ROLAND: Correct.

2 THE COURT: I don't think anybody is taking the
3 position that somehow by becoming employed as counsel for the
4 trust advisor and Mr. Davis, that somehow you have taken on
5 some obligation to the -- to hold all the records. And
6 nobody's argued that.

7 MS. ROLAND: But once -- okay.

8 THE COURT: With respect to these other entities,
9 the non-privileged records related to the life insurance
10 policy and Davis Family Office limited liability companies,
11 those are -- I remember talking a little bit about the family
12 office. Does it now -- has it not been transferred to FHT?

13 MS. ROLAND: No, Your Honor, it has not. What I
14 know about the Davis Family Office and Mr. Solomon, after a
15 conversation I had with him yesterday, it sounds like he knows
16 a bit more about it than I do, but it's a Missouri LLC that
17 Christopher Davis is the sole member of.

18 THE COURT: Okay.

19 MS. ROLAND: And there is a note. I believe the
20 note is still outstanding from the FHT to the Davis Family
21 Office. I could be mistaken on whether it's still
22 outstanding.

23 THE COURT: But that would be an FHT record.

24 MS. ROLAND: That's an FHT issue clearly.

25 THE COURT: Right. Okay.

1 MS. ROLAND: But not any and all records regarding
2 the DFO, if that's in here, and I – which point are you on?

3 THE COURT: That was four.

4 MS. ROLAND: Okay. So the – and again, if we can
5 limit this to any and all records from regarding the Davis
6 Family Office with regard to the FHT, then we have a different
7 point than the sweeping any and all records of Davis Family
8 Office that may never have had anything to do with the FHT.

9 THE COURT: That's – because I understand both
10 parties' concerns. I do think I understand Mr. Barney's point
11 too, that this is an attempt to get discovery before we've
12 really gotten through the full issue of, you know, what really
13 is the jurisdiction of this court. And that's that whole, you
14 know, Jaworski law firm found where you can do discovery to
15 see what the jurisdiction of the court is or is not over an
16 entity.

17 So as I said, I believe I'm beyond that. I'm to the
18 point where I've said I think that what we have jurisdiction
19 over here is the capacity that he holds as a managing agent, a
20 managing member, whatever it would be of a Nevada LLC.

21 So I think any records related to him in that
22 capacity are – that are held there again not confidential and
23 with respect to attorney-client confidentiality, not otherwise
24 privileged with respect to, you know, some of the privilege
25 you may raise, those I think are discoverable.

1 With respect to the Family Heritage Trust, I
2 understand the burden of going back all the way to 2000, and
3 I -- so I was trying to figure out if there's some date on
4 which we could say this is a date that we'll go back to.
5 Because at some point maybe we need to go back all the way. I
6 don't know.

7 MS. ROLAND: And again, we're just talking about my
8 file at this point.

9 THE COURT: Within your file, correct. Within your
10 file.

11 MS. ROLAND: Suppose we go back to the date of her
12 incompetence?

13 THE COURT: If we can establish what that was.

14 MS. ROLAND: I think it --

15 THE COURT: Was there an order?

16 MS. ROLAND: I believe --

17 THE COURT: Somebody must have done an order.

18 MR. SOLOMON: That is not acceptable to us. We need
19 the baseline documents. If he's in possession of it, they're
20 records of the trust and we're entitled to them.

21 THE COURT: All right. Thanks.

22 Do we know what the date of incompetence is then?
23 There's going to have to be an order, right?

24 MS. ROLAND: We have a letter in the file, but I
25 don't know what it was.

1 THE COURT: I'll go back as far as that for now, and
2 if they can establish some need to go back and do further,
3 then we'll discuss that at a later date. But for right now to
4 me this is just – it's a pretty big burden to put on an
5 attorney. So I'm only going to say we'll go back as far as
6 the incompetency of Beatrice.

7 The problem we have here is if she was always a
8 beneficiary of this trust, then they've got a good argument
9 that they're entitled to know everything since the beginning
10 because she was always a beneficiary. That was my question,
11 so.

12 MS. ROLAND: That who was always a beneficiary?

13 THE COURT: If Mr. Solomon's clients have always
14 been a beneficiary.

15 MS. ROLAND: Okay.

16 THE COURT: And so –

17 MS. ROLAND: And so was my client then.

18 THE COURT: – there's an argument there that she's
19 entitled to know everything from day one. But my concern
20 right now is this is a burden on counsel, because it isn't
21 going to anybody who's been a trustee, anybody who's been
22 any – held any of those positions.

23 So that's the only reason why I'm limiting it now,
24 is because this is not a subpoena to an entity or party. This
25 is a subpoena to an attorney. And to me it just seems unduly

1 burdensome to have an attorney search 15 years of records when
2 maybe they only really need to be searching six or seven or
3 eight of those years.

4 MS. ROLAND: And Your Honor, again, my client was --

5 THE COURT: It's just a burden on counsel.

6 MS. ROLAND: My client was beneficiary. He did not
7 become investment trust advisor until February of 2014. He
8 was a co-beneficiary with Caroline. Presumably they had the
9 same good relationship with their mother at that time.

10 THE COURT: And who was -- who was running this for
11 them then? I guess that's -- because I guess that's my
12 concern here, is --

13 MS. ROLAND: Alaska Trust Company.

14 THE COURT: -- that to go back to at some point in
15 time --

16 MS. ROLAND: The Alaska trustees, and it was the
17 Alaska trustees that at some point early on were in
18 communication with Beatrice, maybe with Mr. Lenhardt, because
19 he was Beatrice's attorney.

20 THE COURT: It seems that somebody -- after her
21 incompetency, somebody had to have been --

22 MS. ROLAND: After her --

23 THE COURT: -- directing this.

24 MS. ROLAND: After her incompetence.

25 THE COURT: And so that's kind of what I was trying

1 to figure out, if there's some other – because it doesn't
2 seem to me that it should be her date of death. Because at
3 some point in time somebody was managing all this.

4 MR. SOLOMON: Beatrice was never managing this,
5 ever.

6 MS. ROLAND: No.

7 MR. SOLOMON: Okay.

8 THE COURT: Right.

9 MR. SOLOMON: So it –

10 THE COURT: I understand.

11 MR. SOLOMON: And –

12 MR. BARNEY: Mark is correct. Beatrice never did
13 manage this. It was managed by Alaska Trust Company, and
14 that's why my contention has always been let's get these
15 documents from them, the custodians.

16 THE COURT: And I'm not saying that they shouldn't
17 be.

18 MR. BARNEY: Yeah.

19 THE COURT: I'm just saying that if the records are
20 here in the state of Nevada that are relevant to this
21 litigation that are being held by somebody who the court has
22 jurisdiction over, what's the relevant document and what's the
23 least burdensome way of getting these things produced.
24 Because right now we're talking about a burden on somebody
25 who's not a party. This is a counsel that is being asked

1 to -- and we're putting a big burden on her, because it's not
2 the attorney --

3 MR. SOLOMON: Can I be heard on that, because --

4 THE COURT: No. I don't think -- we've talked
5 enough about that.

6 MS. ROLAND: And just one point, if I may, Your
7 Honor, a quick point. Under both tax and insurance law,
8 nobody other than an independent trustee could be managing
9 this or directing -- even the trustee does not have the
10 ability to direct the policy custodian. That would cause a --

11 THE COURT: I'm just trying to get a date, and it
12 seems to me that the only really I can come up with is her
13 date of incompetency.

14 MS. ROLAND: I have that date. I believe Mr.
15 Solomon has it. We have the date of her incompetence.

16 THE COURT: And so again, it's just because I'm
17 looking at trying to limit a burden on a --

18 MS. ROLAND: There's a doctor's letter, I believe.

19 THE COURT: Okay. All right. Well, we'll get that
20 and that'll be our date.

21 Paragraph 2, non-privileged documents relating to
22 the Beatrice Davis Revocable Living Trust. I'm not going to
23 order that counsel produce any documents. Again, unless they
24 have to do with transactions with the Family Heritage Trust.

25 MR. SOLOMON: That's what I want.

1 THE COURT: If there was transaction between the two
2 of them, yes, but not every document related --

3 MS. ROLAND: But that's not what's in here.

4 MR. SOLOMON: Your Honor, I never wanted all of
5 them. Again, I made the argument. I don't know if you
6 understood it. But I assume that what they produced to her
7 was relevant, because that's all that was here. All she had
8 to do was call me and say I will produce -- that's too broad,
9 because I'm in possession of documents that don't have
10 anything to do with this, I will produce. She didn't do that.

11 MS. ROLAND: We tried to limit the scope of the
12 subpoena, Your Honor.

13 MR. SOLOMON: Absolutely not true.

14 MS. ROLAND: We need your help in doing it.

15 MR. SOLOMON: You said, You can't have them. That's
16 what happened here. The only thing produced is what they
17 wanted to produce was after 2014, and solely with respect to
18 the loans between the insurance policy and the trust itself,
19 and not the other loans from the trust down. And those are
20 what we're after. That's what we've always been after. Those
21 records are admittedly relevant.

22 THE COURT: Okay. As I said, I think they're
23 relevant because they would be -- to me, those would be Family
24 Heritage Trust documents. Documents that are just revocable
25 living trust documents, you know, that's not my litigation.

1 MR. SOLOMON: But Your Honor, if a trustee of our
2 trust has that information, then he has it for this trust
3 also. You can't compartmentalize that.

4 THE COURT: Well, but that's not what we're -- we're
5 not subpoenaing a trustee. We're subpoenaing a law firm.

6 MR. SOLOMON: But it's relevant. It's still
7 relevant to the case. The --

8 THE COURT: Okay.

9 MR. SOLOMON: If it -- it doesn't matter whether the
10 record belongs to John Doe. As long as it's relevant to the
11 issue in this case, it should be produced.

12 THE COURT: All right. Here's what I'm -- because
13 I'm being asked to protect or to compel production of
14 documents from counsel for a party.

15 MR. SOLOMON: And it doesn't matter whether they're
16 counsel or somebody else, Your Honor, that's my point.

17 THE COURT: All right. I think it does, because
18 documents, as I said before, there are protections that extend
19 to documents that are in the possession of counsel that there
20 is a limited exception to where there's a fiduciary involved.
21 And that's why -- the only reason why we're even talking about
22 this, is because our argument is Chris Davis is a fiduciary,
23 therefore his counsel, some of her information can be
24 discovered, that's why I think we can do it.

25 But it's only with respect to what this litigation's

1 over. To the extent that she may have tons of documents, I
2 don't know, he may have given her everything he has, if it's
3 related to this Family Heritage Trust and doesn't have
4 anything to do with any transactions or interactions or
5 interrelationship with the FHT, then I don't think it's -- I
6 don't think it's relevant to this litigation.

7 MR. SOLOMON: And I would agree with that, Your
8 Honor.

9 THE COURT: Family Heritage Trust, this litigation
10 only. So if there are revocable living trust documents that
11 are related somehow to something with respect to the Family
12 Heritage Trust, then yes, I think those need to be produced,
13 but that's because they're related to the Family Heritage
14 Trust, not because they are revocable living trust documents.

15 MR. SOLOMON: I agree with that, Your Honor.

16 THE COURT: So not every single -- if there's a file
17 that has everything having ever have been done with respect to
18 the revocable living trust back to 1990, I think that's her
19 concern --

20 MS. ROLAND: It is.

21 THE COURT: -- [unintelligible] back 25 years, no,
22 you don't.

23 MR. SOLOMON: I absolutely agree with you. I
24 misunderstood what you were saying before. I thought you were
25 saying that if it's technically a revocable living trust

1 document, even though it's related to the loan they have with
2 HTC, they don't have to produce it.

3 THE COURT: No.

4 MR. SOLOMON: And that's what they would do if that
5 was the order.

6 THE COURT: No, that's not what I'm saying. I'm
7 saying that we're not expecting Ms. Roland to go back through
8 a file, granted, it's a virtual file, but a file that may go
9 back to 1990, and have to do exclusively with the revocable
10 living trust that's not being litigated here. You know, I'm
11 not asking that. All I'm saying is that I think that if
12 there's anything related to the Family Heritage Trust, that's
13 a part of Family Heritage Trust, that should be produced.

14 I'm just a little puzzled and I always have been
15 since day one about these life insurance policies.

16 MR. SOLOMON: That is the asset of this trust, Your
17 Honor.

18 THE COURT: Okay. So if that's related to this
19 trust, then okay, fine.

20 MS. ROLAND: Yes.

21 THE COURT: Number 4, again, it – this Davis Family
22 Office. Again, if it's back to the creation of Davis Family
23 Office and doesn't have anything to do with any notes –

24 MR. SOLOMON: No, it does, Your Honor. It's the
25 exact same ruling you just made with respect to the Davis

1 Revocable Trust, because they took loans also.

2 THE COURT: All right. So anything that's related
3 to the FHT, then that's fine. But I'm not asking that she go
4 back and gather every single document related to -- and this
5 is again, only with -- to the extent that it's within your
6 possession.

7 MS. ROLAND: You're asking for things that have
8 either at least a tangential connection with the FHT.

9 THE COURT: Right. Some sort of a transaction or
10 interrelationship between these two entities, fine, but not if
11 it's simply -- because the way it's written, it's all
12 documents in your possession related to the Davis Family
13 Office limited liability company. I don't know what's out
14 there. There may be something that's totally unrelated to any
15 loans, transactions. It might be, I don't know, a lease with
16 a third party. I don't know.

17 MS. ROLAND: That's my understanding, that there are
18 transactions -- because again, he's --

19 THE COURT: With third parties that are totally
20 unrelated.

21 MS. ROLAND: -- he's the sole member that had -- it
22 had nothing to do at all with the FHT.

23 THE COURT: Yeah. And so it's to the extent it's
24 related to FHT, then absolutely yes. Otherwise no. It's
25 just -- it's not involved in this litigation. Only to the

1 extent that it would be involved in this litigation would
2 you --

3 MS. ROLAND: And I can hear Mr. Barney sigh behind
4 me, and I think I know his thoughts, that the DFO LLC has not
5 been served. And he's correct.

6 THE COURT: Right. But that's not -- like I said,
7 we aren't going any beyond any --

8 MS. ROLAND: No, we're talking about my file at this
9 point.

10 THE COURT: Just only what's within your control
11 that has to do with FHT and its interaction with Davis Family
12 Trust, only to that extent. If there's third party leases, I
13 don't know, maybe this is a huge office building and there's,
14 you know, a bank in there or something.

15 MS. ROLAND: They may well be. This was a family
16 with significant holdings and significant entities in estate
17 planning.

18 THE COURT: Maybe that's a shopping mall. I don't
19 know. I don't want to have you produce every single lease for
20 every tenant that's ever been in there.

21 MS. ROLAND: Right. Thank you. That helps.

22 THE COURT: Yeah. So just to the extent that it has
23 to do with transactions between these entities, that's all
24 we're looking at here. FHT Holdings, I said before, I think
25 anything having to do with FHT Holdings, you know, even it's

1 just a Nevada limited liability corporation. I think that
2 that's properly --

3 MS. ROLAND: And again, that's the simple one,
4 because it's short term.

5 THE COURT: Right. Yeah. The -- I guess I'm not
6 understanding the difference between non-privileged records
7 relating to any and all entities which Beatrice Davis Family
8 Heritage Trust owned in whole or part. And I think it's
9 covered by all the other ones. I don't think that's a
10 separate --

11 MS. ROLAND: Which number are you on, Your Honor?

12 THE COURT: That's Number 6.

13 MS. ROLAND: Six.

14 THE COURT: I think that's basically what we've
15 all -- what we've been talking about up to this point.

16 MR. SOLOMON: Yeah. That was added. I don't
17 know -- I know if there's any other entities it owns, and so I
18 needed to cover that. We know that FHT is one of them.

19 MS. ROLAND: I don't have a problem with that.

20 THE COURT: Yeah.

21 MR. SOLOMON: I mean, if they have other entities,
22 I'm entitled to that because it's --

23 THE COURT: And so that's why I said it may already
24 be covered, but to the extent it's not, then anything else. I
25 just -- number -- paragraph 7 is the one I have problems with,

1 which is the revocable living trust up to 1990, what else they
2 own. I'm just -- no. That's the one I would say no to,
3 because it's got to be something that somehow relates to this,
4 the Family Heritage Trust or the LLC, the FHT LLC.

5 MR. SOLOMON: What if it does? Can we restrict it
6 to that? If any of those entities --

7 THE COURT: Correct. I mean, yeah. I mean, that --

8 MS. ROLAND: I'm fine doing that.

9 MR. SOLOMON: All right.

10 THE COURT: Yeah. I think we've already covered
11 that. But this to me looks like this was just a catch-all
12 that went beyond it. Because of the scope of paragraph 8, I
13 think it goes beyond. Everything that Chris Davis has, I'm
14 not sure we're there yet. And that one I would have to say at
15 this point in time, I think, is overbroad, and I don't even
16 know --

17 I'm just not comfortable that this court has
18 jurisdiction to compel production of everything that
19 Christopher Davis owns, manages, directs or has an interest
20 in.

21 MR. SOLOMON: How about to the extent that loans
22 were made to him from FHT? It's the same issue again.

23 THE COURT: To that extent I would have to agree,
24 because -- but it would be an FHT document --

25 MR. SOLOMON: That's what I'm after.

1 THE COURT: That would be an FHT document as opposed
2 to a Christopher Davis document, in my view. Because
3 Christopher Davis may have tons of other interests that are
4 totally unrelated.

5 MR. BARNEY: And Your Honor, I want to object to
6 that on jurisdictional basis that I set forth earlier, because
7 he's never been served.

8 THE COURT: Correct. And that's why I said I'm --
9 my limit on that one would be it has to be something from FHT
10 that he had somehow received -- FHT has made a loan to some
11 entity that is otherwise owned by Chris Davis. That would be
12 FHT. I am not going to allow this issue, paragraph 8, with
13 respect to Mr. Davis generally. I'm just not. But to the
14 extent it's the Family Heritage Trust, then --

15 MR. SOLOMON: What if he took a loan, proceeds that
16 he took and stuck it into an entity, am I entitled to know
17 that?

18 MS. ROLAND: I -- Your Honor --

19 MR. BARNEY: No, he's not.

20 MS. ROLAND: Excuse me. I'm sorry, Tony. I was in
21 the middle of a thought.

22 MR. BARNEY: Yeah. I'm sorry.

23 THE COURT: Okay.

24 MR. SOLOMON: That's my ability to get it repaid.

25 MS. ROLAND: The question for repayment is not -- is

1 a question for Dunham as trustee and for Alaska Trust Company.

2 If we -- if we provide documentation --

3 THE COURT: Right.

4 MS. ROLAND: Let's go back to when Christopher Davis

5 was merely a beneficiary at the beginning of this and if that

6 loan was properly made. And again, if you were to borrow

7 money from your insurance policy, Your Honor, there are

8 generally for those kinds of term -- of loans, there's no

9 repayment provision to the trust. Those loans are repaid from

10 proceeds at the death of the -- of the policy person, so --

11 THE COURT: All I'm saying is that generally I think

12 that the way this was written, it was too broad for me. It

13 goes beyond the scope of the Family Heritage Trust or the LLC,

14 which are what I think there's jurisdiction over. And that's

15 for everything that Mr. Davis is involved in, and that I don't

16 think is appropriate.

17 To the extent that there is any relationship between

18 Mr. Davis and the Family Heritage Trust or the LLC, fine.

19 Once the money goes into his hands, what he does with it is

20 his own and what he does, you know, no. We're not going any

21 further.

22 MS. ROLAND: That was one of our concerns. If for

23 example, and I don't know, again hypothetically let's say he

24 took a legitimately documented loan from the Family Heritage

25 Trust and went to --

1 THE COURT: I don't know. Maybe he has a 7-Eleven
2 franchise.

3 MS. ROLAND: -- Fiji for a month, I think that we
4 don't need to produce receipts for showing that he went to
5 Fiji.

6 THE COURT: No. No. Yeah, no. I'm just saying
7 that to the extent that there is a transaction between Mr.
8 Davis in his individual capacity, I am just borrowing money as
9 a beneficiary from the trust or somehow in my role as managing
10 agent of this LLC, fine. But other than that, it stops there.
11 I mean, I'm not saying what he does from that point forward is
12 discoverable. If he's got other entities that it gets passed
13 into, then no.

14 MR. SOLOMON: Your Honor, can I just say one thing
15 about that?

16 THE COURT: At this point, no.

17 MR. SOLOMON: And that's this. He is the manager of
18 that asset for FHT currently. Whether or not it was extended,
19 be it somebody else or whatever, he is managing that
20 receivable. We are entitled to know what he knows about
21 collectibility of that.

22 THE COURT: Okay. At this point, no.

23 And then moving on to Number 9, there is specific
24 promissory notes. I don't know what these notes are.

25 MS. ROLAND: The promissory notes with regard to the

1 FHT, Your Honor, I believe they already have those. But we
2 have no problem with that.

3 THE COURT: That's September 1, 2011.

4 MS. ROLAND: There -- yeah. And I'm assuming that
5 would have to do with the loan documentation and the payback,
6 if any. And again, we're not going into where the -- where
7 the proceeds were spent.

8 THE COURT: Okay. Agreed. On paragraph 10, any
9 other, I guess, loans -- assets, I guess, of the trust. It
10 looks to me that's what they're looking for.

11 MS. ROLAND: Currently held, I don't think that
12 that's going to be -- I don't think that's going to be too
13 burdensome from the look of it. Again, I don't know. I might
14 be get into it and find that it is, but...

15 And Mr. Barney wanted to say something and I was
16 rude the way I cut you off telling you I was in the middle of
17 a thought.

18 MR. BARNEY: No.

19 MS. ROLAND: I'm sorry.

20 MR. BARNEY: You covered it perfectly.

21 THE COURT: All right. So to the extent we're
22 talking about what's currently held by the trust, again, this
23 is to the extent that it's something you -- I -- there's a new
24 trustee and I don't even know -- they aren't being subpoenaed
25 apparently. What if they've done something. I don't know.

1 MR. SOLOMON: What have they done?

2 MS. ROLAND: The only thing that we know that
3 they've done --

4 MR. SOLOMON: They're a directed trustee.

5 MS. ROLAND: And their counsel is here. They --
6 there was a -- that they've paid it, administrative expenses
7 of the trust, and that was not -- that was not done under the
8 direction of our client. I don't know that it really needed
9 to be under the direction of the client.

10 THE COURT: But there would be no notes or deeds or
11 any --

12 MS. ROLAND: I don't know.

13 THE COURT: -- kind of transactions that the trust
14 company would --

15 MS. ROLAND: Other than the \$25,000 that I believe
16 was paid to Mr. Lenhardt, I don't think I've seen
17 documentation on that, I don't think there's been any activity
18 in this trust --

19 THE COURT: Right. And so that's the thing. You
20 wouldn't have it in your control anyway.

21 MS. ROLAND: -- since it moved to Nevada.

22 THE COURT: Something that you would have in your --
23 probably in your file. I mean, [unintelligible] is there
24 an -- is it -- to me that doesn't seem like there's an
25 obligation to go out and gather things.

1 MS. ROLAND: That's one of my concerns.

2 THE COURT: It's what's in your -- in your control.

3 Right now you don't have anything. Like you said, there's
4 nothing --

5 MS. ROLAND: If I have it, Your Honor --

6 THE COURT: -- that documents why Mr. Lenhardt was
7 paid.

8 MS. ROLAND: I'm not aware of any activity in this
9 trust since it was moved to Nevada.

10 THE COURT: Right. This is what's in your
11 documents. I'm not asking that you go out and search. I
12 think that's the point, is that you -- the way I read it is
13 it's what's in your -- what were you provided by your client.

14 MS. ROLAND: I was provided -- yeah.

15 THE COURT: So it's not -- it's not that you have to
16 go out and say I'm going to -- I'm going to go out and I'm
17 going to request records from this place and that place. No.
18 It's what's in -- what you were provided, what is in your
19 file. You can't be compelled to go out and do discovery to
20 find other things.

21 MS. ROLAND: You can go ahead, Tony.

22 MR. BARNEY: As a clarification, we said moved to
23 Nevada. We're talking about FHT Holdings? Because the trust
24 we're alleging was not moved to Nevada. Is that what we're
25 talking about is the FHT Holdings?

1 MR. SOLOMON: But the Court's already found it's in
2 Nevada, so.

3 THE COURT: Right. That's my view, that the trust
4 is here and --

5 MS. ROLAND: Thank you. Everything I said was
6 assuming -- meant to be assuming the trust has been moved to
7 Nevada.

8 THE COURT: I understand that that's still being
9 litigated --

10 MS. ROLAND: Yes, it is.

11 THE COURT: -- or Mr. Barney wishes to litigate it.
12 But yeah, my -- that I'm assuming --

13 MS. ROLAND: Good point, Tony.

14 MR. BARNEY: Okay. I just wanted that
15 clarification.

16 THE COURT: I'm assuming that based on that there's
17 been nothing overturning in [unintelligible], so my assumption
18 is it's here and that's what [inaudible].

19 MR. BARNEY: Thank you.

20 MR. SOLOMON: Your Honor, is your ruling that
21 Number 9 is producible if she's in possession of it?

22 THE COURT: Number 9.

23 MR. SOLOMON: That's what I've heard, but I want to
24 make sure, because I'm sure there's going to be a fight over
25 what's producible here.

1 THE COURT: I don't think so. Any and all
2 non-privileged documents concerning promissory, the 2011
3 promissory note and revolving line of credit --

4 MR. SOLOMON: These are all assets of FHT. I mean,
5 I don't -- it's consistent with your ruling that this would be
6 fully producible.

7 MS. ROLAND: May we go through that, Your Honor,
8 just briefly to try to avoid future discussions. Any and
9 all --

10 MR. SOLOMON: You know, I'm at an unfair advantage
11 over here. Go ahead.

12 MS. ROLAND: No, you go ahead, Mark. You can read
13 it, Number 9.

14 THE COURT: Number -- promissory note dated
15 September 1, 2011.

16 MR. SOLOMON: Promissory note dated September 1,
17 2011, a promissory note revolving line of credit
18 [unintelligible] 4, 2013, a promissory note revolving line of
19 credit dated March 25, 2013, including but not limited to the
20 identity of who received it and benefited from it, the purpose
21 of it, the circumstances surrounding the distribution and use
22 of the funds, the repayment of the loans and the collateral.

23 MS. ROLAND: We're back to the issue you addressed
24 early on that you weren't going to follow any loan that had
25 been made into where the proceeds were spent. So that's --

1 THE COURT: Yeah, beyond FHT.

2 MR. SOLOMON: Right. But we're entitled to know the
3 purpose of the loan for why FHT produced it or made it.

4 MS. ROLAND: So --

5 MR. SOLOMON: That's what this is asking for.

6 MS. ROLAND: So again, if for example and this is
7 totally hypothetical in let's go back 2004. I'm trying to
8 think of our dates here, and Beatrice borrowed money --

9 THE COURT: No, no. This is -- if this is a
10 specific note of 2011 and 2013, where those proceeds went.
11 But any record in your possession --

12 MS. ROLAND: In my possession.

13 THE COURT: -- with respect to the note.

14 MS. ROLAND: So if I have records in my possession
15 that when Christopher borrowed money, which he did borrow
16 money, that's undisputed, and used that money for his vacation
17 in Fiji, totally hypothetical, what do we produce? Do we
18 produce -- do we produce receipts from the vacation in Fiji?

19 THE COURT: No. No. Once it goes beyond --

20 MS. ROLAND: We just produce the note and that it
21 went to him --

22 THE COURT: Correct.

23 MR. SOLOMON: Your Honor, just to put -- I am not
24 arguing with you. But this is going to be a big fight here.
25 I can smell it. So if there's FHT records showing

1 Christopher's making application for a loan because he wants
2 to use the proceeds to go somewhere, that's an FHT record.
3 I'm entitled to that, am I not? What you're saying, once it
4 hits his hands it's a different issue.

5 THE COURT: Right.

6 MS. ROLAND: Correct.

7 MR. SOLOMON: That's all this asks for.

8 MS. ROLAND: Okay.

9 THE COURT: Correct.

10 MS. ROLAND: And I apologize, Mark. That's not how
11 I read it, and I'm not arguing with that.

12 THE COURT: All right. So Ms. Roland, your relief
13 is granted in part. So are you going to do the order for us
14 then and show it to Mr. Solomon, and how much time then would
15 you need to comply, 30 days from --

16 MR. SOLOMON: I'm sorry. I don't know that we went
17 through 10 either. Is that granted? It's all with respect to
18 FHT.

19 MS. ROLAND: Any and all non-privileged records in
20 your possession, custody or control related to any additional
21 loans, lines of credits or obligations held by --

22 THE COURT: Currently.

23 MS. ROLAND: -- currently held. I don't think that
24 that's broad at all from reading it. Maybe there's a surprise
25 in it that I'm not seeing.

1 THE COURT: Yeah. And I thought that the agreement
2 was that there was no objection to that. Because if we limit
3 it to currently held, not every loan that was ever made for
4 the 15 plus years of its existence, but what is -- what are
5 the current -- at least in the records you have, and it may
6 not --

7 That was why I was saying, that was when I told you
8 do we know if there's been anything happen that maybe wouldn't
9 necessarily be in Ms. Roland's file. I'm not asking that she
10 go out and do discovery on that. What is in her possession
11 and control that it would be a current.

12 MS. ROLAND: Okay.

13 THE COURT: And I don't know if it's been updated to
14 the present date.

15 MS. ROLAND: I can agree to -- this has taken so
16 much time that I need to spend a little bit of time on other
17 clients. I can begin to produce documents within two weeks.
18 And Mark, I don't mean just dribbling them out to you. I'm
19 talking about a good faith effort under what -- under your
20 order. And I will prepare the order.

21 The practical issue that we are here within 30 days,
22 I am -- I know something about e-discovery. I am not an
23 e-discovery expert. When I do this, I have to do it with a
24 team of electronic review attorneys who are familiar with the
25 relativity database that this is -- that this has been

1 uploaded to by Quivx, which Quivx is hosting for me, because
2 that was the only way to even screen out what I had to
3 produce.

4 THE COURT: Right. Search terms. They use -- they
5 develop search terms and --

6 MS. ROLAND: So it could take -- yeah. It could
7 take more than 30 days.

8 THE COURT: Okay.

9 MR. SOLOMON: She's had these forever.

10 MS. ROLAND: Well, no, it won't take forever, Your
11 Honor. And I'm --

12 MR. SOLOMON: She's had them forever, Your Honor.

13 MS. ROLAND: -- fine with setting -- I'm fine with
14 setting a status check on this.

15 THE COURT: Okay. We'll do a 30 day status check
16 then.

17 (Court confers with the clerk.)

18 THE COURT: There is a hearing on October 7. Maybe
19 we could just have a status report on October 7.

20 MS. ROLAND: Okay. 9:00 a.m.?

21 THE COURT: Yeah. We have already got a motion to
22 strike administrative --

23 MR. BARNEY: I'm out of town on that day. Could --

24 THE COURT: Okay.

25 MR. BARNEY: -- we move it maybe just back to the

1 original what did we say, the 14th?

2 THE COURT: Okay. That means you're coming the
3 30th, the 7th and the 14th.

4 MS. ROLAND: And what's on the 7th?

5 THE COURT: Okay. On the 30th it's to hold
6 Christopher Davis in contempt for attorney's fees and costs,
7 and Harriet Roland to produce documents responsive to subpoena
8 for attorney's fees and costs. Maybe -- are some of those
9 mooted?

10 MS. ROLAND: Which I think one of those is going to
11 go off then, but depend --

12 MR. SOLOMON: The 30th September, Your Honor, I
13 mean --

14 MS. ROLAND: That's two weeks. I don't -- I can't
15 do it in two weeks.

16 MR. SOLOMON: I don't understand that, Your Honor.

17 MS. ROLAND: I can do some of it.

18 MR. SOLOMON: She's had these documents and she's
19 told me she's reviewed these documents. Why do we have to
20 wait another 30 days for her to plow through them?

21 THE COURT: Okay. We won't go back to 30 days.
22 It's on the 14th.

23 MS. ROLAND: And Your Honor, assuming -- and I
24 certainly don't want to come whining to you and I know
25 Mr. Solomon doesn't either, but if we run into an unresolvable

1 dispute, do you want us to come to you or to the discovery
2 commissioner?

3 THE COURT: It's really more appropriate for the
4 discovery commissioner probably at this point. Okay. So once
5 we get our order in place, then if there are issues with
6 respect where there's something really falls within a certain
7 category of what we would order or not, that's really more
8 discovery commissioner can deal with it from that point on.

9 MS. ROLAND: Okay. Great. Thank you, Your Honor.

10 MR. SOLOMON: Am I getting a copy of the order
11 before it's sent?

12 MS. ROLAND: Oh, absolutely.

13 MR. BARNEY: Thank you, Your Honor.

14 (Proceeding concluded at 11:14 a.m.)
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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.

KARR REPORTING, INC.
Aurora, Colorado

KIMBERLY LAWSON

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Dec 02 2015 01:21 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

ALPHABETICAL
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