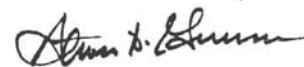




EXHIBIT 25

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13
14 EIGHTH JUDICIAL DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 In the matter of:

Case No.: P-15-083867-T

17
18 The BEATRICE B. DAVIS FAMILY HERITAGE
19 TRUST, dated July 28, 2000, as amended on
February 24, 2014.
20
21
22

Dept. No.: 26


23 CHRISTOPHER D. DAVIS' OPPOSITION TO CAROLINE DAVIS' MOTION TO
24 AMEND OR MODIFY ORDER PURSUANT TO NRCP 60 (b)(3)

25 CHRISTOPHER D. DAVIS, by and through his attorneys HARRIET H. ROLAND,
26 Esq., of the ROLAND LAW FIRM and ANTHONY L. BARNEY, Esq., of the law office of
27 ANTHONY L. BARNEY, LTD., and hereby submits his opposition to Caroline Davis'
28

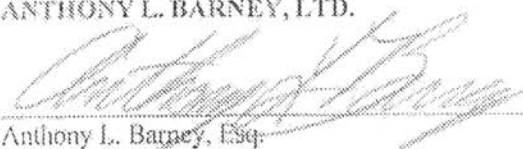
1 ("Caroline") motion to amend or modify order pursuant to NRCP 60(b)(3) ("Motion to
2 Amend"). This pleading is based on the Memorandum of Points and Authorities attached
3 hereto, any exhibits attached hereto, and any oral argument that will be heard in this matter.
4

5 DATED this 27th day of August, 2015.

6 Respectfully Submitted,
7 ROLAND LAW FIRM

8 
9 Harriet H. Roland, Esq.
10 Attorney for Christopher D. Davis

11 Respectfully Submitted,
12 ANTHONY L. BARNEY, LTD.

13 
14 Anthony L. Barney, Esq.
15 Attorney for Christopher D. Davis
16
17
18
19

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1
2 MEMORANDUM OF POINTS AND AUTHORITIES

3 I. INTRODUCTION

4
5 This Court should immediately take note that this Motion to Amend is a vexatious,
6 duplicative and unnecessary pleading. The only relief Caroline seeks in this Motion to Amend
7 is for this Court to "assume jurisdiction over the Trust as a proceeding *in rem*."¹ Caroline could
8 have simply have asserted this point in her Objection to Christopher's Petition for
9 Reconsideration filed on July 14, 2015 and Counterpetition, while objecting to other arguments,
10 to allow the Court to modify or amend the May 19, 2015 Order under the Petition for
11 Reconsideration. This would have saved the parties an inordinate amount of time and money at
12 reviewing, researching, drafting and arguing this motion and the opposition. Unfortunately,
13 Caroline continues to file duplicative and unnecessary pleadings raising the costs of litigation,
14 while audaciously arguing the incorrect notion in her motions requesting sanctions that
15 Christopher has increased the costs of litigation.
16
17

18 Caroline also inappropriately requests that this Court make a finding that "the transfer of
19 the Trust's situs [sic] Alaska to Nevada was consistent with the terms of the Trust", which
20 would require an evidentiary hearing and the inclusion of the prior Alaskan Trustees as part of
21 this proceeding in the unlikely event she is successful in arguing that Tarja is not a current
22 beneficiary entitled to discretionary distributions. Yet, Caroline continues to argue that she is
23 only requesting information and documents and that the Alaskan Trustees are not necessary and
24 indispensable parties to the litigation despite the fact they have the information she seeks.
25 Unsatisfied with the court's well-founded reluctance to exert jurisdiction overly improperly
26
27

28

1 Caroline's Motion to Amend, 17:23-24

1 noticed parties, it is apparent that Caroline, in this Motion to Amend, is seeking to reargue her
2 original petition – not seeking to modify or amend the order based on any “fraud” or “fraudulent
3 misrepresentations”.

4 Christopher agrees that this Court should amend the May 19, 2015 Order, but not based
5 upon NRCP 60(b)(3) and Caroline’s arguments contained in her Motion to Amend. Christopher
6 has filed his Petition for Reconsideration filed on July 14, 2015 (“Petition for Reconsideration”)
7 and his Reply to Caroline Davis’ objection to the Petition for Reconsideration filed on August
8 27, 2015 (“Reply”) outlining why the May 19, 2015 (June 24, 2015) Order should be modified
9 or amended. As Caroline concedes in her Motion to Amend, the court improperly took
10 jurisdiction in this matter as a “constructive trust”. Inasmuch as any of his Facts Presented,
11 Legal Authority, and Legal Argument are relevant herein, they are hereby incorporated herein as
12 if fully set forth herein.

13 Christopher, however, opposes a motion to amend based upon Caroline’s alleged
14 assertion of “fraud” pursuant to NRCP 60(b)(3). There has been no fraud, misrepresentation, or
15 misconduct herein by Christopher and/or his counsel to warrant amendment or modification
16 under this rule.

17 The only basis for which the Court could possibly amend or modify the order based
18 upon this rule is if this court includes ex parte communications by Caroline’s attorneys as a
19 basis for misconduct under NRCP 60(b)(3). Then, Christopher asserts that such misconduct has
20 occurred on behalf of Caroline and her counsel, because the May 19, 2015 Order (June 24, 2015
21 Order) contains handwritten interlineations that appear to have been taken verbatim from an ex-
22 parte letter by Caroline’s counsel to the Court (“Ex Parte Letter”). Although Christopher’s
23 counsel requested the opportunity to rebut the requests and argument made in this Ex-Parte
24

1 Letter to the Court, the Court did not respond to Christopher's counsel, although it did include
2 language from the ex-parte communication in the May 19, 2015 Order.

3 **II. FACTS PRESENTED**

4 Caroline's Motion to Amend basically is another opportunity for her to continue her
5 incorrect narrative to the Court from all prior petitions, objections (oppositions), and counter-
6 motions (counter-petitions) she has filed with this Court. Inasmuch as Christopher D. Davis
7 ("Christopher") has already responded to or replied to Caroline's incorrect narrative, he hereby
8 incorporates the Facts Presented in his Petition for Reconsideration and his Reply as if set forth
9 fully herein. Caroline Motion to Amend is clearly a duplicative, unnecessary, and, thus, a
10 vexatious pleading.
11

12 Caroline's current motion, based solely on her inaccurate narrative and interpretation of
13 the facts of this case, asserts that the order should be amended, because, according to her: 1)
14 Tarja's consent was not required to affect a change in situs; 2) Alaska USA was the then acting
15 trustee and able to consent to the change in situs; and 3) Alaska USA did receive an opinion of
16 counsel as required by the terms of the trust. According to Caroline, Christopher's assertions
17 and argument, which are contrary to her narrative, allegedly constitute fraud, and allegedly give
18 this court justification to amend or modify its original order pursuant to NRCP 60(b)(3).
19

20 To be sure, Caroline has simply put her own label of "fraud" on the proceedings without
21 any finding, evidence, or showing that fraud actually exists. In fact, Christopher's Petition for
22 Reconsideration and his reply to Caroline's opposition to the Petition for Reconsideration
23 provide evidence that Caroline's narrative is without support based on the available evidence
24 and the terms of the FHT; therefore, Christopher's assertions and argument are grounded in fact
25 -- not fraud.
26
27
28

1 In her very introduction to the Court, Caroline misrepresents to this Court the actual
2 facts of this case to further her new "fraud" narrative. Caroline asserts that Christopher's
3 alleged "fraudulent misrepresentations" to the court "caused the court to enter an order
4 assuming jurisdiction over the Trust based upon a theory of 'constructive trust.'"² Yet, it was
5 Caroline's own counsel that requested the court take jurisdiction as a constructive trust to which
6 the court agreed. This Court will recall that Caroline D. Davis' legal counsel, Mark Solomon,
7 Esq. ("Mr. Solomon") initially argued that this Court should take jurisdiction over the TRUST,
8 because "there would be a constructive trust here."³ The Court adopted Mr. Solomon's
9 argument as part of its order.⁴ Caroline's counsel made this request for the first time at the
10 hearing, thereby denying the other parties the opportunity to argue and brief this theory for the
11 court, and the court gave Caroline what she wanted -- a constructive trust -- even if it was an
12 incorrect assumption of "jurisdiction." Christopher did not cause the court to take jurisdiction in
13 such a manner -- it was at Caroline's request, and the fact that Christopher is ensuring this court
14 take proper jurisdiction, if at all, is further proof that Christopher did not cause the court to take
15 jurisdiction under a constructive trust theory based on anything he presented to the court.

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19 Despite their allegations to the contrary, Caroline's counsel received full and valid
20 service of Christopher's Reply dated April 20, 2015 wherein Tarja's status as a beneficiary and
21 the resignation of Alaska USA and their lack of advice from counsel were raised. With this
22 notice, Caroline's counsel then advanced the theory of jurisdiction based on a constructive trust
23 at the April 22, 2015 hearing. This is significant because Caroline introduced the constructive
24 trust theory for the first time at the hearing in the hope that the court would take jurisdiction
25
26

27
28 ² Caroline's Motion to Amend 2:16-17.

³ See Transcript filed 4/28/2015, Page 30:6.

1 based on her new argument, which, as stated above, denied all other parties the ability to
2 research or brief the new theory. Nevertheless, the court adopted the theory based on Mr.
3 Solomon's oral argument.

4
5 Notwithstanding Caroline's other misstatements regarding any alleged "fraud" which
6 will be discussed further below, the fact remains that the change in situs is invalid because it
7 was not done according to the terms of the FHT. Tarja is and was a discretionary beneficiary
8 eligible to receive distributions for health education maintenance and support from her
9 husband's share of the trust. Alaska USA did, in fact, resign effective December 5, 2013 and
10 even if it had statutorily retained *some* powers, was unable to authorize a change in situs
11 according the terms of the FHT. Finally, there was not an independent opinion or advice from
12 counsel provided to a properly serving trustee before the consent to change the situs was
13 effectuated as required by the trust. Christopher has not made fraudulent misrepresentations to
14 this court – the terms of the trust and facts of this case provide evidence to the contrary;
15 therefore Caroline's motion is without a reasonable basis and is frivolous.
16
17

18 III. LEGAL AUTHORITY AND ARGUMENT

19 **A. NRCP 60(b)(3) is the inappropriate way for Caroline to amend or modify the**
20 **order of jurisdiction taken by the Court, because there was no fraud,**
21 **misrepresentation or misconduct by Christopher.**
22

23 As an initial point, the Court should note that throughout Caroline's argument, she
24 would have this Court ignore the terms of the Beatrice B. Davis Family Heritage Trust, dated
25 July 28, 2000 ("FHT"), which a Court cannot or should not do, if it is to assume jurisdiction
26 over the FHT. Throughout the current proceeding, Christopher has alerted the court of the
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28

⁴ See May 19, 2015 Order filed June 24, 2015.

1 various terms and requirements of the FHT so that the FHT is respected both in form and
2 execution,⁵ which Caroline wishes this Court to ignore in order to obtain the relief she seeks.
3 The Court should not and cannot ignore the terms of the FHT.

4 Herein, Caroline, through her attorneys, has again made various misrepresentations in
5 her Motion to Amend. First, Caroline has alleged that they were not served with a copy of
6 Christopher's Reply until after the April 22, 2015 hearing.⁶ They allege that Christopher argued
7 for the first time that Tarja was an alleged beneficiary and that the requisite consent was not
8 received for the change in situs at the April 22, 2015 hearing.⁷

9 Both Mr. Solomon and Mr. Hood are aware that the Nevada Electronic Filing and
10 Conversion Rules adopted by the Supreme Court of Nevada ("NEFCR") 9(b) states that:
11

12 When a document is electronically filed, the court or authorized electronic filing
13 service provider must provide notice to all registered users on the case that a
14 document has been filed and is available on the electronic service system document
15 repository. The notice must be sent by e-mail to the addresses furnished by the
16 registered users under Rule 13(c). *This notice shall be considered as valid and
17 effective service of the document on the registered users and shall have the same
18 legal effect as service of a paper document.* (Emphasis added)

19 Additionally, the NEFCR 9(c) provides that: except for a summons or subpoenas, a party
20 consents to electronic service when that party registers with the electronic filing system. Mr.
21 Solomon's office is registered with the electronic filing system and the e-service master list for
22 this case identifies not only Mr. Solomon and Mr. Hood but also a third employee of the firm as
23 recipients of electronic service in this case.⁸

24
25
26 ⁵ It should not go unnoticed that Christopher was not represented by counsel for the periods in which she seeks
27 information or documents, but is represented now. See Declaration of Christopher D. Davis filed on 8/27/15.

28 ⁶ Motion to Amend 5:11-13.

⁷ Motion to Amend, 5:15-18, 6:1

⁸ See e-service master list for case -- In the Matter of the Trust of: The Beatrice B. Davis Heritage Trust-Case No.
P-15-083867-T on wiznet (e-file service).

1 Furthermore, Caroline's counsel has electronically served pleadings in this matter,
2 besides the filed pleadings, making full use of the electronic filing system.⁹ Particularly,
3 Caroline's counsel has electronically served documents through the electronic filing system,
4 including but not limited to, notices of subpoenas and a notice of deposition.¹⁰ In Caroline's
5 pleadings and notices, Caroline's counsel references Rule 9 of NEFCR as a basis for their
6 proper service.¹¹ This is plain evidence that Caroline's counsel both make use of, are fully
7 aware of, and have a knowledgeable understanding of electronic service pursuant to NEFCR 9.
8

9 Although the April 20th Reply was served on Caroline's counsel well in advance of the
10 hearing; Caroline's counsel are surprisingly alleging they did not have this information in
11 advance of the April 22, 2015 hearing. Caroline's claims that Mr. Barney allegedly made
12 arguments regarding Tarja's interest as a beneficiary and the improper change in trust situs for
13 the first time at the hearing are verifiably false and frivolous as evidenced by the fact that these
14 very arguments are clearly laid out in the reply filed April 20, 2015¹² and the fact that Mr.
15 Solomon and his law firm, as registered users of the electronic filing system, had complete,
16 valid and legal service a full day and a half before the hearing.
17

18 Christopher has not made false allegations in this matter, but rather Caroline's counsel
19 have made false allegations about the information they received. Additionally, Caroline
20 actually admits, contrary to the preceding six pages of her Objection, that Mr. Barney's oral
21 arguments were based upon his Motion to Dismiss and his Reply to Ms. Davis' Opposition to
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26 ⁹ See Mr. Solomon's current and previous filings in this case.

27 ¹⁰ See two Notices of Issuance of Subpoena Duces Tecum and one Notice of Deposition electronically served by
28 Caroline's counsel, which are attached hereto and incorporated herein as Exhibit F; See also, Mr. Solomon's current
and previous filings in this case.

¹¹ Id.

¹² See Reply to Opposition Filed April 20, 2015

1 the Motion to Dismiss.¹³ This clearly reflects the disingenuousness of Caroline's counsel in
2 casting aspersions upon Christopher's legal counsel when they clearly were aware that
3 Christopher's counsel was making arguments based upon pleadings properly served upon them.

4
5 The more salient issue is that Caroline's counsel made these misrepresentations about
6 service, after having been afforded the opportunity to read the pleadings, which, in all
7 likelihood, they did, because, ironically, it was Caroline's counsel, Mr. Solomon, who
8 introduced for the first time, the position that this court should take jurisdiction based on a
9 theory of constructive trust at the April 22, 2015 hearing.¹⁴ This position was not in any
10 pleading prior to the hearing and the issue was not fairly adjudicated. Neither the Court nor any
11 party but Caroline's counsel had an opportunity to research or brief the theory of jurisdiction
12 based on a constructive trust. This court's ruling based on such an unnoticed argument was
13 clearly prejudicial to all parties except Caroline and was Caroline's clear response to
14 Christopher's Reply. Caroline is equitably estopped from arguing any alternate theory of
15 jurisdiction in this Motion to Amend, because she had the opportunity to assert her alternate
16 theory of jurisdiction, which the Court adopted.¹⁵

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19 Furthermore, Caroline casts Christopher's facts, arguments and assertions as
20 "misrepresentations", because they are contrary to her beliefs. She also lacks evidence to
21 support her statements.
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26 ¹³ See Caroline's Objection filed 7/31/15 at Page 7:11-15 (Christopher has not presented any new facts that were
27 not presented in pleadings or falsely presented during Mr. Barney's oral arguments at the Hearing that may give
28 rise to this Court reconsidering its Order. Indeed, Christopher's Petition for Reconsideration is nothing more than a
reiteration of the facts submitted in his Motion to Dismiss and his Reply to Ms. Davis' Opposition to the Motion to
Dismiss."

¹⁴ See Transcript filed April 28, 2015, Page 30:6.

¹⁵ See *Gardner v. Pierce*, 22 Nev. 146, 35 P. 782, 783 (Nev. 1894).

1 First, she incorrectly alleges that Alaska USA provided an opinion of Alaska USA's
2 counsel before the change in situs occurred; and she uses an e-mail¹⁶ from her counsel as the
3 alleged evidence that the requisite opinion or advice about tax and other consequences regarding
4 a change in situs from Trustee's counsel was obtained to satisfy the terms of the trust.¹⁷
5 Notably, Caroline's counsel's e-mail is from counsel for the Trust Protector Stephen K.
6 Lehnardt, which states that an opinion of counsel was provided *solely to support the Trust*
7 *Protector Lehnardt's actions*.¹⁸ The opinion referred to in Caroline's e-mail is not provided so
8 it is unclear if tax or other consequences were discussed or included regarding any intended
9 change in situs. Even so, the Trust Protector is distinct and different from the Trustee who was
10 required to obtain advice from counsel as to the tax and other consequences of a change in situs
11 under the terms of the Trust.
12

13
14 Furthermore, there is no evidence from Alaska USA that states or indicates that the
15 Trustee obtained advice from counsel as to the tax and other consequences of a change in situs
16 required by Article Fourteen, Section 6, Paragraph 1 of the Trust before a change in situs was
17 allegedly executed.¹⁹ New evidence provided by Caroline shows that the Senior Trust Officer
18 for the Alaskan Trustees ("Ms. Tempel") makes no mention of such an opinion in her sworn
19 declaration or that the Alaskan Trustees even sought advice for the tax and other consequences
20
21

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23 ¹⁶ See Caroline's Objection filed 7/31/15 at Exhibit 6.

24 ¹⁷ See Article Fourteen, Section 6, Paragraph 1, of the BEATRICE B. DAVIS FAMILY HERITAGE TRUST,
dated July 28, 2000 ("Trust")

25 ¹⁸ See Caroline's Objection filed 7/31/15 at Exhibit 6 which states "provided an opinion of counsel with
documentation supporting trust protector action"

26 ¹⁹ See Response of Dunham Trust Company filed 7/29/2015 at Exhibit 1 (which will hereafter be referred to as
"Trust") re: Trust, Article Fourteen, Section 6, Paragraph 1 (Except as expressly provided herein, the situs of this
27 agreement or any subtrust established hereunder may be changed by the unanimous consent of all of the
beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement or
28 such subtrust, with the consent of any then-acting 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. (Emphasis
added).

1 that would result in a change of situs.²⁰ Therefore, the Trustee did not have the advice of its
2 own counsel to properly proceed with a change of situs. It could not properly change the situs,
3 without running afoul of the FHT; therefore, Caroline's representations, although zealously
4 advocated, are incorrect.

5
6 Therefore, in the absence of the Alaskan Trustees not obtaining the advice from legal
7 counsel as to the tax and other consequences of a change in situs, thus the Trust requirement in
8 Article Fourteen, Section 6, Paragraph 1 cannot be satisfied and Caroline's evidence supports
9 Christopher's argument that the change in situs is invalid.

10
11 Second, Tarja Davis does, indeed, qualify as a "spouse" despite Caroline's assertions to
12 the contrary. The terms of the FHT not only support Christopher's contention, but they
13 designate her as a beneficiary. Because Caroline reads the FHT differently does not, in the
14 least, make Christopher's representations "fraudulent". Furthermore, Caroline recognized
15 Tarja's status as a beneficiary as the spouse of Christopher through her own actions – Caroline
16 was mailing Tarja notice of the proceedings to the address where she resides at with her
17 husband, Christopher.²¹

18
19 At the April 22, 2015 hearing, Caroline's counsel stated that there was no affidavit
20 proving that Tarja was married to Christopher Davis in an effort to bolster her assertion that
21 Tarja was not a beneficiary for which her consent would be needed for the change in situs.²²
22 The Court also lamented that it did not have such an affidavit.²³ The Court is not empowered to
23 alter the terms of the Trust in order to take jurisdiction with or without an affidavit from the
24 beneficiary unless such a term of trust would violate public policy. Additionally, the rights of a
25
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28 ²⁰ See Caroline's Objection filed 7/31/15 at Exhibit 4.

²¹ See Supplemental Certificates of Mailing filed April 8, 2015.

²² See the Transcript of the April 22, 2015 hearing, Page 16:23-25 and Page 17:1-3.

1 beneficiary under the terms of the FHT do not require that a beneficiary go to expense of filing
2 an affidavit to protect their rights, but notwithstanding the foregoing, the lack of such an
3 affidavit appears to be a factor in this court's prior decision to assume jurisdiction based on a
4 theory of constructive trust.²⁴ Tarja has now filed an affidavit in proper person establishing the
5 fact that she is and was Christopher's wife at the time of the February 24, 2014 amendment, and
6 that she has lived with Christopher since the beginning of their marriage.²⁵ Therefore, she does
7 qualify as a "spouse" under the terms of the FHT and is an FHT beneficiary. This is clearly not
8 a misrepresentation deserving of a motion to alter or amend the order pursuant to NRCP
9 60(b)(3). Furthermore, the purported Nevada trustee (Dunham Trust Company) stated, "In light
10 of Tarja Davis's recently filed Declaration, it appears that the prerequisite consent of all
11 beneficiaries of the Trust was not obtained by the Trust Protector in his effort to change the
12 Trust situs from Alaska to Nevada."²⁶ Therefore, Caroline's motion pursuant to NRCP 60(b)(3)
13 should be denied in its entirety.

14
15
16
17 **B. The language of the trust controls and, because it was not adhered to, the trust**
18 **situs remains in Alaska, this Court lacks jurisdiction, and Christopher's**
19 **statements are not fraudulent.**

20 The change in situs is invalid because Alaska USA ("hereinafter Alaskan Trustees") did
21 not obtain independent advice from and an opinion of counsel regarding the effects of the
22 change in situs contrary to the terms of Trust. As a resigned trustee, the Alaskan Trustees did
23 not have the power to evaluate and authorize a change in situs according to the terms of the
24

25
26
27 ²³ See Transcript filed April 28, 2015, page 43 lines 5-7.

28 ²⁴ See Transcript filed April 28, 2015 hearing, page 55 lines 2-25 and page 56 lines 1-6. See also Order dated May 19, 2015, page 2 lines 16-17 stating: "IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed at the time the first amendment was signed."

²⁵ See Declaration of Tarja Davis filed as Exhibit 3 to Caroline's Objection to Petition for Reconsideration filed on July 31, 2015.

1 Trust. Accordingly, Alaska retains jurisdiction over the Trust and this court does not have
2 jurisdiction. Christopher's arguments in this regard are not "fraudulent", but supported by the
3 evidence and brought before this court to enable the court to properly assess jurisdiction, if any,
4 that Nevada may have over the Trust, its alleged Trust Protector, and its alleged Trust
5 Investment Advisor.

7 i. The Alaskan Trustees did not follow the terms of the Trust when the alleged
8 change in situs was made; therefore, the change in trust situs is invalid.

9 A trust may only be modified in accordance with its specific terms.²⁷ Where a trust
10 instrument requires the consent of specific parties in order for an amendment to be valid, the
11 lack of consent will invalidate a purported amendment.²⁸ Herein, the change of situs was
12 purportedly accomplished through a purported First Amendment to the Trust on or around
13 February 24, 2014. However, certain requirements were needed to change the trust situs from
14 Alaska to Nevada. In Article Fourteen Section 6, Paragraph 1, of the Trust, the requirements for
15 a change of situs are provided:

17 Except as expressly provided herein, the situs of this agreement or any subtrust
18 established hereunder may be changed by the unanimous consent of all of the
19 beneficiaries then eligible to receive mandatory or discretionary distributions of net
20 income under this agreement or such subtrust, with the consent of any then-acting
21 Protector and the Trustee thereof, which shall be given only after Trustee has obtained
22 advice from counsel as to the tax and other consequences of a change in situs. (Emphasis
23 added).

24 ²⁶ See Response of Dunham Trust Company dated July 29, 2015 at Page 3:6-8.

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

27 ²⁸ *Williams v. Springfield Marine Bank*, 131 Ill. App. 3d 417, 475 N.E.2d 1122 (1985) (This rule was applied where
28 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
consent of one or more of the beneficiaries, or of the trustee, or of a third person, he cannot modify the trust without
such consent.").

1 In Christopher's Reply and at the April hearing, this Court was made aware that Tarja Davis, a
2 beneficiary of Trust, had not consented to the change in situs. Caroline offers evidence attached
3 to her Objection to the Petition for Reconsideration, which shows that Tarja Davis did not
4 consent to move the situs of Trust to Nevada.²⁹

5
6 Furthermore, new evidence demonstrates that Christopher Davis did not have
7 independent counsel during the time of the purported change in situs.³⁰ He was not provided
8 with an opinion of counsel as to the tax and other consequences of a change of situs.³¹ He
9 appears to have been merely aware that Mr. Lehnardt intended to change the situs of the Trust.

10
11 There was neither unanimous consent of all the beneficiaries nor advice from Trustee's
12 counsel as to the tax and other consequences of a change in situs. As discussed above, Caroline
13 uses an e-mail³² from her counsel as alleged evidence that an opinion of counsel was allegedly
14 provided to satisfy this trust provision. Notably, this e-mail is from counsel for the Trust
15 Protector Stephen K. Lehnardt, which states that an opinion of counsel was provided *solely to*
16 *support the Trust Protector Lehnardt's actions.*³³ The opinion referred to in the e-mail is not
17 provided so it is unclear if tax or other consequences were discussed or included regarding any
18 intended change in situs. Even so, the Trust Protector is distinct and different from the Trustee
19 who was required to obtain advice from counsel as to the tax and other consequences of a
20 change in situs under the terms of the Trust.
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23 More importantly, the Alaskan Trustees do not state or indicate that they obtained advice
24 from counsel as to the tax and other consequences of a change in situs required by Article
25
26

27 ²⁹ See Caroline's Objection filed 7/31/15 at Exhibit 3.

28 ³⁰ See Declaration of Christopher Davis dated August 15, 2015 and filed 8/27/15 ("Declaration of Christopher Davis"), Paragraph 4.

³¹ See Declaration of Christopher Davis, Paragraph 6.

³² See Caroline's Objection filed 7/31/15 at Exhibit 6.

1 Fourteen, Section 6, Paragraph 1 of the Trust.³⁴ New evidence provided by Caroline shows that
2 the Senior Trust Officer for the Alaskan Trustees ("Ms. Tempel") makes no mention of such an
3 opinion in her sworn declaration or that the Alaskan Trustees even sought advice for the tax and
4 other consequences that would result in a change of situs.³⁵ In the absence of the Alaskan
5 Trustees not obtaining the advice from legal counsel as to the tax and other consequences of a
6 change in situs, thus the Trust requirement in Article Fourteen, Section 6, Paragraph 1 cannot be
7 satisfied.
8

9
10 Notably, the Alaskan Trustees represented in their resignation that they were no longer
11 serving as trustee of the Trust after December 5, 2015. Although the Alaskan Trustees now
12 claim to have retained some of the powers of a trustee, they had already resigned and therefore
13 cannot be considered the trustee after December 5, 2015. Assuming *arguendo* that the Alaskan
14 Trustees could evaluate and authorize a change in situs as they now claim, the TRUST still
15 requires that the Trustee, not the trust protector, receive advice from counsel prior to authorizing
16 a change in situs. The TRUST provides the trust protector with certain powers regarding the
17 trustee.³⁶ None of these powers include the power to provide legal advice to the trustee.
18 Therefore, the Alaskan Trustees is not authorized to rely on the advice of counsel for the trust
19 protector.
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23 ³³ See Caroline's Objection filed 7/31/15 at Exhibit 6 which states "provided an opinion of counsel with
24 documentation supporting trust protector action"

25 ³⁴ See Response of Dunham Trust Company filed 7/29/2015 at Exhibit 1 (which will hereafter be referred to as
26 "Trust") re: Trust, Article Fourteen, Section 6, Paragraph 1 (Except as expressly provided herein, the situs of this
27 agreement or any subtrust established hereunder may be changed by the unanimous consent of all of the
28 beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement or
such subtrust, with the consent of any then-acting 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. (Emphasis
added).

³⁵ See Caroline's Objection filed 7/31/15 at Exhibit 4.

³⁶ Trust, Article Eleven, Section 8, Paragraphs a-d, providing that the trust protector may: appoint or remove
trustees; advise the trustee regarding distributions; add beneficiaries; and allow beneficiaries to purchase trust
property on favorable terms.

1 The Trust requires the trustee to obtain an opinion from counsel independent of the
2 protector, prior to authorizing a change in situs. As Caroline knows, the Trust relieves the trust
3 protector of all fiduciary responsibility regarding other roles the trust protector fills and in
4 connection with his role as trust protector.³⁷ There would be no reason to include the provision
5 requiring the trustee to obtain advice from counsel if the trust protector could simply provide
6 this opinion, while being absolutely free of any fiduciary duty to the Trust or its beneficiaries.
7 In other words, the purpose of the trustee obtaining the advice of counsel is to protect the
8 beneficiaries of the Trust; and this purpose is not fulfilled by obtaining an opinion from one who
9 is relieved of all fiduciary duty toward the Trust and beneficiaries. The Trust required more
10 than the protector or the protector's attorney to provide advice regarding the change in situs to
11 protect the beneficiaries; the Trust requires an opinion or advice from an *independent attorney*
12 *of the trustee.*

13 Here, despite obtaining an affidavit from the Alaskan Trustees, Caroline has only
14 provided an e-mail and billing statements as evidence purporting that the Alaskan Trustees were
15 provided an opinion of counsel. However, the e-mail and billing statements, at best, indicate
16 that Mr. Lehnardt, as trust protector, may have discussed legal matters with Mr. Brislawn. In
17 Mr. Brislawn's e-mail he explicitly states that he was retained by Mr. Lehnardt.³⁸ The billing
18 statements, if and to the extent they can be relied upon, only indicate that Mr. Lehnardt received
19 and conveyed information from *his attorney* to the Alaskan Trustees and Dunham Trust
20 Company.³⁹

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27 ³⁷ Trust, Article Eleven, Section 8, Page 11-5, Last Paragraph, stating "Some of the persons selected as Trust
28 Protector or successor Trust Protector may have other personal or professional relationships which may impose or
imply fiduciary or other duties to me. I hereby fully relieve such Trust Protector from any such duties to the extent
the Trust Protector is acting as Trust Protector."

³⁸ See Caroline's Objection dated 7/31/15 at Exhibit 6 re: email from Dennis Brislawn.

³⁹ See Caroline's Objection dated 7/31/15 at Exhibit 7 re: billing statements from Stephen Lehnardt.

1 It should be noted that the Trust clearly states that the trustee can provide its consent
2 *"only after Trustee has obtained advice from counsel* as to the tax and other consequences of a
3 change in situs."⁴⁰ At the April 22, 2015 hearing, Caroline, through Mr. Solomon, represented
4 to this court that the consent of the trustee was signed by the Alaskan Trustees, Dunham Trust
5 Company, Caroline, Christopher and Winfield. He then stated "and after this document was
6 signed, then Mr. Lenhardt went out and got his advice of counsel, got a written opinion, and
7 prepared the first amendment."⁴¹ According to Mr. Solomon's representations to the court, any
8 alleged opinion of counsel was provided after the trustee had already provided consent. If the
9 court does not require an independent opinion of counsel as required by the trust and assuming
10 there was an alleged opinion of counsel provided to the trustee through Mr. Lenhardt, this
11 opinion would still have been deficient as it was apparently provided after the trustee allegedly
12 consented to the change in situs, and "not before" as required by the terms of the Trust.
13 Therefore, the legal opinion provided to the trust protector was improperly obtained or contrary
14 to the terms of the Trust for purposes of providing a change in situs.
15

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17
18 As stated above, however, Caroline has no evidence that the Alaskan Trustees ever
19 received advice or an opinion independent of Mr. Lenhardt, as trust protector. In the only sworn
20 document on this issue, the Alaskan Trustees senior trust officer makes no mention of an
21 independent opinion of counsel or even any opinion or advice of counsel being provided by Mr.
22 Lenhardt. This glaring omission in Ms. Tempel's declaration seems to suggest that Ms. Tempel
23 was unwilling or unable to acknowledge receipt of an independent opinion of counsel or
24 Caroline failed to obtain a sworn statement that Alaskan Trustees had in fact received such an
25
26

27
28 ⁴⁰ See Article Fourteen, Section 6 Paragraph 1.

⁴¹ See Transcript dated 4/28/2015, Page 22:12-23

1 independent opinion from counsel prior to the change in situs as required by the terms of the
2 Trust. Again, Christopher has repeatedly stated that the Alaskan Trustees are an indispensable
3 party to this action for purposes of determining whether there was an appropriate change in situs
4 according to the terms of the trust, which is further evidence that the Court must reconsider its
5 prior order and declare that the Alaskan Trustees are an indispensable party to this action, which
6 is discussed further below.

7
8 Because the conditions under the terms of the Trust were not fulfilled, there can be no
9 change in situs. The situs of the Trust remains in Alaska. Thus, this Court is without a basis
10 upon which to obtain *in rem* jurisdiction over the Trust.

11
12 ii. Alaskan Trustees did not retain or have the power to authorize a change in
13 situs for the Trust, because they no longer had the authority to make the
14 change in situs.

15 Caroline claims that the Alaskan Trustees did not effectively resign as Trustee of the
16 Trust until February 24, 2014⁴². This is contrary to the resignation of AUTC which states that
17 the "resignation as Trustee is effective as of December 5, 2013 or upon the acceptance of
18 trusteeship by a successor trustee, *whichever occurs earlier.*"⁴³ It is clear from the Ms.
19 Tempel's declaration that the language contained in the resignation is that the Alaskan Trustees
20 resigned effective December 5, 2013, and therefore were not then serving as trustee of the Trust.
21 Under the terms of the Trust and as a resigned trustee, the Alaskan Trustees were unable to
22 authorize a change in situs.

23
24
25 ⁴² See Motion to Amend at Page 13 and Exhibit 2 referenced therein; See also Caroline's Objection dated 7/31/15,
Page 10; 2-10. See also See Caroline's Objection dated 7/31/15 at Exhibit 6 re: Affidavit of Janet Tempel.

26 ⁴³ See Caroline's 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
27 Adviser and Stephen K. Lehnardt as Distribution Trust Adviser; To Confirm Dunham Trust Company as Directed
28 Trustee; and for Immediate Disclosure of Documents and Information from Christopher D. Davis ("Caroline's
Petition") at Exhibit 4 re: Resignation of Trustee dated October 30, 2013.

1 Additionally, Caroline, through Ms. Tempel, alleges that Alaskan Trustees retained trust
2 duties and powers after the December 5th date identified in the Alaskan Trustees' resignation.⁴⁴
3 Ms. Tempel claims that the Alaskan Trustees retention of trust duties and powers is pursuant to
4 Alaska law.⁴⁵ They fail to recognize, however, the distinction between a trustee having "full"
5 powers and "necessary" powers as designated in the statute.
6

7 Alaska Statutes, section 13.36.077(1) ("AS 13.36.077") provides that "until the trust
8 property is delivered to a successor trustee or another qualified person entitled to the trust
9 property, a trustee who has resigned or been removed has the duties of a trustee and *the powers*
10 *necessary to protect trust property.*" The statute clearly provides that a resigned trustee has
11 something less than the full powers available to a currently serving trustee with its qualification
12 of "necessary powers" in its statutory language. If the Alaska statute intended that the trustee
13 would retain all or full powers it would have simply stated that the trustee retains all the duties
14 and powers of a trustee. However, the statute makes a distinction and provides that the trustee
15 retains duties but *only those powers necessary* to protect trust property.
16
17

18 Is a necessary power of a Trustee one that would allow the trust situs to be moved from
19 one state to another after the Alaskan Trustee's resignation? No, the power to consent to a
20 change in situs or even the power to evaluate such a decision is not necessary to protect trust
21 property under the legislative history of Alaska Statute 13.36.077, which states that the purpose
22 of this statute was simply to encourage a resigned trustee to promptly deliver trust assets to a
23 new trustee.⁴⁶ Accordingly, the powers provided to a resigned trustee by AS 13.36.077 are
24 limited to only those powers required to protect trust assets and to transfer assets. This would
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⁴⁴ Motion to Amend at Page 13:1-2.

⁴⁵ Motion to Amend at Exhibit 2.

1 include the power to prevent distributions or the power to sign transfer of ownership documents.
2 However, the statute does not provide a resigned trustee with the power to evaluate and
3 authorize a change in situs, a condition precedent to transferring assets to any new trustee in a
4 new situs.
5

6 Furthermore, there is no evidence to suggest that a change of situs was necessary.
7 Surely, Caroline will argue that the new trustee was a Nevada trustee to whom the transfer
8 would be made; therefore, a change in situs was necessary; however, we do not have an opinion
9 of counsel for the Trustee to determine whether a change in situs was "necessary" or whether
10 another Alaska trustee was unavailable. We, likewise, do not have the opinion of counsel of the
11 trust protector regarding these issues. The alleged change in situs was, at most, voluntary,
12 because it is clear that trust property could have been transferred to another Alaskan trustee. It
13 was also allegedly done without adhering to the requirements of TRUST in obtaining the
14 requisite documentation and/or consent; and by a Trustee that allegedly had limited powers, if
15 any, at the time the alleged change of situs was effectuated.
16
17

18 Further evidence of the limitations of the power of the Alaskan Trustees is evidenced by
19 the resignation document itself. Since Ms. Tempel indicates that the Alaskan Trustees knew
20 they retained some duties, then their resignation on December 5, 2014 (before the acceptance of
21 trusteeship by a successor trustee) was executed to limit their powers and their exposure to
22 liability for any possible breaches in their fiduciary duties toward the beneficiaries of TRUST.
23 If their resignation was to be totally ineffective until the acceptance of a successor trustee (thus
24 forcing the Alaskan Trustees to retain all powers of a trustee and, in effect, continue serving as a
25 trustee), then the language of the resignation document would have read that the "resignation
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⁴⁶ The Alaska State Legislature, 25th legislature Committee Minutes, Senate Judiciary February 15, 2008, 1:35 P.M.

1 was effective on December 5, 2013 or upon the acceptance of a successor trustee, *whichever*
2 *occurs later.*"

3 More simply, the Alaska Trustee could have made the resignation effective upon the
4 acceptance of a successor trustee, if they intended to retain all powers associated with being
5 Trust's Trustee. However, it is clear that the Alaskan Trustees intended their resignation to be
6 effective at the latest on December 5, 2013. Ms. Tempel and Alaskan Trustees were thus
7 aware that they had limited powers of a resigned trustee to only those necessary to protect trust
8 property pursuant to the Alaska statute, which was to protect them from further liability. They
9 intended not to have the full powers associated with being a trustee; otherwise, they have
10 effectively misrepresented their resignation to the beneficiaries, this Court, and those involved
11 with TRUST.
12

13
14 Assuming *arguendo* that this court interprets the retention of some powers of an Alaskan
15 trustee to qualify a resigned trustee as the then serving trustee under the terms of the Trust, the
16 question still remains as to whether the Alaskan Trustees, after their resignation, retained the
17 power to authorize the change in situs and whether it was necessary. If this Court is
18 comfortable in interpreting the law of Alaska, the statute can only be read as providing only the
19 powers necessary to protect the assets of the Trust. This interpretation lends support that such
20 retained powers would not include a change of situs, leaving the situs of the Trust in Alaska. If
21 this Court believes that the Alaskan Trustees were allowed to change the situs, then they are a
22 necessary and indispensable party to this action, and if they cannot be joined to the action, then
23 this action must be dismissed.
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at http://www.legis.state.ak.us/basis/get_single_minute.asp?session=25.

1 personal jurisdiction Caroline has neither affected personal service on Christopher nor plead the
2 propriety of personal jurisdiction under the due process clause of the 14th amendment. Again
3 there is no *in personam* jurisdiction over Christopher and therefore no finding of contempt can
4 be made.
5

6 **3. Caroline's Motion is deficient based on NRS 22.030 because it lacks an affidavit**
7 **of the facts constituting contempt.**

8 NRS 22.030(2) states that "If a contempt is not committed in the immediate view and
9 presence of the court or judge at chambers, an affidavit must be presented to the court or judge
10 of the facts constituting the contempt, or a statement of the facts by the masters or arbitrators."
11 Regarding this requirement, the Nevada Supreme Court stated "The law is clear in Nevada that
12 before a court can assume jurisdiction to hold a person in contempt, an affidavit must be
13 filed."²⁷
14

15 Here, the alleged contempt did not happen in the immediate view and presence of the
16 court. Therefore, in order to satisfy NRS 22.030(2) there must be an affidavit filed with the
17 court showing the facts constituting contempt. Caroline has not filed an affidavit of the facts
18 constituting the contempt. Therefore, this constitutes a lack of jurisdiction by this Court.
19

20 **4. Even if this court asserts jurisdiction to adjudicate the contempt proceedings,**
21 **Christopher objects to this court hearing the contempt proceeding pursuant to NRS**
22 **22.030.**
23

24 NRS 22.030(3) states that: "Except as otherwise provided in this subsection, if a
25 contempt is not committed in the immediate view and presence of the court, the judge of the
26

27
28 ²⁶ *Blackmer v. United States*, 284 U.S. 421, 433, (U.S. 1932) (explaining that contempt proceedings require in
personam jurisdiction over the defendant.)

²⁷ *Awad v. Wright*, 106 Nev. 407, 409, (Nev. 1990)

1 court in whose contempt the person is alleged to be shall not preside at the trial of the contempt
2 over the objection of the person." NRS 22.030(3) is subject to two exceptions which are
3 inapplicable here.²⁸ Discussing the predecessor to NRS.030 the *Awad* court stated:

4
5 The legislature has thus declared the public policy of the state, not so much for the
6 protection of an individual litigant, as for the preservation of the respect and high regard
7 the public has always maintained for the courts And so the legislature of this state
8 felt it important to eliminate the possibility of a reasonable apprehension that a judge
9 might not be entirely free from bias in enforcing the orders and decrees of the court of
10 which [she] he is the judge.²⁹

11 Here, the alleged contempt did not occur in the immediate view or presence of the court
12 and is not subject to either of the two statutory exceptions. Therefore, if this court finds that its
13 assumption of jurisdiction was not improper, Christopher objects to having the contempt
14 proceeding heard before the Honorable Judge Gloria Sturman ("Judge Sturman"). According to
15 NRS 22.030 Judge Sturman must recuse herself and the contempt proceeding must be heard by
16 a different judge.

17 **D. LACK OF PROPER NOTICE OR IDENTIFICATION OF ACTS**
18 **CONSTITUTING CONTEMPT**

- 19 1. Despite Caroline's assertion's The May 19, 2015 order is unclear, non-specific,
20 or ambiguous.

21 Even assuming arguendo and in the unlikely event that this court asserts jurisdiction
22 regarding the underlying order or the contempt proceeding and Judge Sturman is not required to
23 recuse herself, contempt is not available because the order is unclear, non-specific and
24 ambiguous. Caroline correctly points out that contempt must be based on an order which makes
25 "the details of compliance in clear, specific and unambiguous terms so that such person will
26

27
28 ²⁸ See NRS 22.030(3)(a) and (b)

²⁹ *Id.* at 410, citing *McCormick v. Sixth Judicial Dist. Court*, 218 P.2d 939, 945, (Nev. 1950)

1 readily know exactly what duties or obligations are imposed on him."³⁰ The Supreme Court of
2 Nevada found that where an injunction specifically prohibited the Department of Industrial
3 relations from refusing to accept or process future claims from the Plaintiff, the party could not
4 be held in contempt for deliberately denying all of the defendant's claims.³¹ The Court reasoned
5 that deliberate denial of all claims was not the same as a refusal to accept or process the claims
6 and therefore was not in violation of the clear, specific, or unambiguous terms of the order and
7 therefore could not be the basis for contempt.³²

8
9 Here, the underlying order was unclear, unspecific, and ambiguous by its very terms,
10 especially given the circumstances of its entry. At the hearing the court appeared to limit its
11 holding to require only information in Christopher's possession as investment advisor. This is
12 evidenced by the transcript and the fact that every attorney at the hearing (with the exception of
13 Caroline's attorney) signed Christopher's proposed order signed acknowledging this fact. The
14 confusion began when Caroline's counsel submitted its competing order in secret with an
15 attached ex-parte letter setting forth further un-noticed arguments in support of her order. As
16 described above, Caroline's proposed order would have specifically and clearly required
17 disclosure of the documents upon which she appears to base her claim of contempt. Her order
18 however was not signed by this Court. Caroline however, appears to have successfully
19 persuaded the court post-hearing to include certain language which caused further confusion as
20 it was not in conformance to this court's clear oral ruling and unclear in its interlineations.
21 While more expanded than Christopher's proposed order (which was based upon the oral and
22 minute transcripts) it was still far more limited than Caroline's propose order. The issue became
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27 ³⁰ *Southwest Gas Corp. v. Flintkote Co.-U.S. Lime Div.*, 99 Nev. 127, 131, (Nev. 1983)

28 ³¹ *Department of Indus. Rels., Div. of Indus. Ins. Regulation v. Albanese*, 112 Nev. 851, 857, (Nev. 1996)

³² *Id.*

1 even more muddled when Caroline issued subpoenas seeking information which was not in
2 Christopher's possession in his role as investment trust advisor or as manager of the FHT. These
3 subpoenas were issued prior to the entry of this court's order. This confusion is exacerbated by
4 the fact that jurisdiction was allegedly taken under a theory of constructive trust, which remedy
5 requires jurisdiction to first be proper prior to the construction of a trust by court remedy.
6

7 Essentially, Caroline seeks to have this court find contempt based on an order that is not
8 clear and unambiguous, and does not require specific information that one could reasonably
9 ascertain based upon the interlineations and/or the order itself. Additionally, the court
10 specifically rejected an order which would have required production of specific documents and
11 information, instead requiring information (although ambiguously) in a more limited capacity.
12

13 It is apparent that Caroline believes that any information in Christopher's possession,
14 custody or control is fair game, however the order is limited by the requirement that the
15 information be in his roles as investment trust advisor and manager of FHT Holdings LLC,
16 while it is unclear if possession, custody or control refers to both of his alleged capacities.
17 Caroline's assertion that the order is clear specific and unambiguous is belied by her inability to
18 make an argument for contempt based on the order itself. Instead, Caroline improperly attempts
19 to tie in her original petition claiming that the original petition sought certain specific
20 information and the order allegedly granted the petition, therefore improperly arguing that the
21 court required disclosure of the information requested in her petition. These incorrect and
22 vexatious allegations which clearly are not based upon the facts of this case should be
23 disregarded by this Court. These allegations, however, demonstrate that apparently even
24 Caroline is unclear about what this court's order actually provided in terms of the information
25 she seeks. Therefore, Christopher cannot be held in contempt based upon this Court's order.
26
27
28

1 **E. CONCLUSION**

2 Wherefore, Christopher D. Davis respectfully requests that this Court deny Caroline's Motion to
3 Hold Christopher in Contempt and For Attorneys' Fees and Costs in its entirety, and that
4 Caroline take nothing thereby.
5

6 Dated Aug 26, 2015.

Respectfully Submitted,

7 **ROLAND LAW FIRM**

8 

9 Harriet H. Roland, Esq.

10 Attorney for Christopher D. Davis

11 Respectfully Submitted,

12 **ANTHONY L. BARNEY, LTD.**

13 

14 Anthony L. Barney, Esq.

15 Attorney for Christopher D. Davis
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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 August 27, 2015, I served the foregoing

4 OPPOSITION TO CAROLINE DAVIS' MOTION TO HOLD CRISTOPHER D. DAVIS

5 IN CONTEMPT AND FOR ATTORNEY'S FEES AND COSTS by first class US mail,

6
7 postage prepaid, upon the following persons or entities:

8
9 Cheryl Davis
10 5403 West 134 Terrace, Unit 1525
Overland Park, KS 66209

11 Tarja Davis
12 3005 North Beverly Glen Circle
13 Las Angeles, California 90077

14 And
15 514 West 26th Street, #3E
16 Kansas City, Missouri 64108

17 Winfield B. Davis
18 Skyline Terrace Apts.
19 930 Figueroa Terr. Apt. 529
20 Los Angeles, California 90012-3072

21 Ace Davis
22 c/o Winfield B. Davis
23 Skyline Terrace Apts.
24 930 Figueroa Terr. Apt. 529
25 Los Angeles, California 90012-3072

26 Christopher D. Davis
27 3005 North Beverly Glen Circle
28 Los Angeles, California 90077

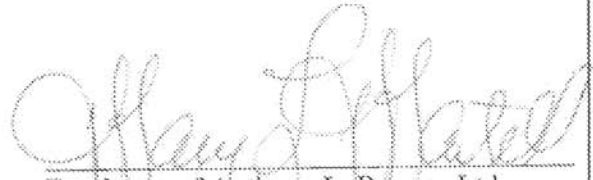
And
514 West 26th Street, #3E
Kansas City, Missouri 64108

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

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6 Attorneys for Stephen K. Lenhardt

7 Mark Solomon, Esq.
8 Joshua Hood, Esq.
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10 9060 W. Cheyenne Ave.
11 Las Vegas, NV 89129
12 *Attorney for Petitioner Caroline Davis*

13 Dunham Trust Company
14 c/o Charlene Renwick, Esq.
15 Lee, Hernandez, Landrum & Garofalo
16 7575 Vegas Drive, #150
17 Las Vegas, Nevada 89128


Employee of Anthony L. Barney, Ltd.

on July 30, 2015. You, Mr. Solomon and a legal assistant were all electronically served with the order shortening time on July 30, 2015.

It is unclear to me why you would engage in such verifiable misrepresentations, however if you fail to withdraw these misrepresentations, I will be forced to file the accompanying Motion for Sanctions. Please consider this letter and the attached Motion as service of the Motion for Sanctions. You now have 21 days to voluntarily withdraw the above misrepresentations according the safe harbor provision of Rule 11(c)(1)(A).

Feel free to contact my office with any questions or concerns, as I look forward to resolving these issues with you.

Sincerely,



ANTHONY L. BARNEY
Attorney at Law

cc: Via U.S. Mail:

Client

Harriet Roland, Esq.

Charlene Renwick, Esq.

Jonathan Barlow, Esq.

EXHIBIT F

NOTC

Mark A. Solomon, Esq.
Nevada Bar No. 0418
E-mail: msolomon@sdfnlaw.com
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Nevada Bar No. 12777
E-mail: jhood@sdfnlaw.com
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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
The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014.

Case No.: P-15-083867
Dept.: Probate (26)

**NOTICE OF ISSUANCE OF
SUBPOENA DUCES TECUM**
(No Appearance Required)

PLEASE TAKE NOTICE that CAROLINE DAVIS, by and through her counsel of,
Mark A. Solomon, Esq. and Joshua M. Hood, Esq., of the law firm of Solomon Dwiggins &
Freer, Ltd., has issued a Subpoena Duces Tecum for Records ("Subpoena") to ROLAND LAW
FIRM. ("ROLAND"). Pursuant to the Subpoena, attached hereto as Exhibit 1, ROLAND is
required to respond by delivering a true, legible, and durable copy of the

///

///

///

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

SOLOMON
DWIGGINS & FREER
ATTORNEYS AT LAW



1 requested records to the offices of Solomon Dwiggins & Freer, Ltd., 9060 West Cheyenne
2 Avenue, Las Vegas, Nevada 89129, no later than June 25, 2015.

3 DATED this 8th day of June, 2015.

4 SOLOMON DWIGGINS & FREER, LTD.

5 By: 

6 MARK A. SOLOMON, ESQ.
7 Nevada Bar No. 0418
8 E-mail: msolomon@sdfnlaw.com
9 JOSHUA M. HOOD, ESQ.
10 Nevada Bar No. 12777
11 E-mail: jhood@sdfnlaw.com
12 Cheyenne West Professional Center
13 9060 West Cheyenne Avenue
14 Las Vegas, Nevada 89129
15 Telephone (702) 853-5483
16 Facsimile (702) 853-5485

17 Attorneys for CAROLINE DAVIS

18 CERTIFICATE OF SERVICE

19 I HEREBY CERTIFY that on June 8, 2015, pursuant to NRCP 5(b)(2)(B), I placed a true
20 and correct copy of the following NOTICE OF ISSUANCE OF SUBPOENA DUCES TECUM
21 FOR RECORDS, in the United States Mail, with first-class postage prepaid, addressed to the
22 following, at their last known address, and, pursuant to Rule 9 of N.E.F.C.R., caused an electronic
23 copy to be served via Odyssey, to the email address noted below:

24 Mail only:

25 Tarja Davis
26 3005 North Beverly Glen Circle
27 Los Angeles, California 90077
28 and
514 West 26th Street, #3E
Kansas City, Missouri 64108

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

9040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5486
WWW.SDMVLAW.COM

SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



1 And did mail via US Mail and email Via the Court's electronic system, WizNet pursuant to Rule
2 9 of NEFCR at the email address noted to the following:

3 HARRIET ROLAND, ESQ.,
4 ROLAND LAW FIRM
5 2470 E. St. Rose Parkway, #105
6 Henderson, NV 89052
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26 Attorneys for Stephen Lenhardt

27
28

An employee of Solomon Dwiggin & Freer, Ltd.

EXHIBIT 1

EXHIBIT 1

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DWIGGINS & FREER
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13 Attorneys for Caroline Davis, Petitioner

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 In the Matter of
11 The BEATRICE B. DAVIS FAMILY
12 HERITAGE TRUST, dated July 28, 2000, as
13 amended on February 24, 2014.

Case No.: P-15-083867-T
Dept.: Probate (26)

14 SUBPOENA DUCES TECUM
15 (No Appearance Required)

16 THE STATE OF NEVADA SENDS GREETINGS TO:

17 The Custodian of Record or Other Qualified Person at

18 ROLAND LAW FIRM.
19 2470 East Saint Rose Parkway, Suite 105.
20 Henderson, Nevada 89074

21 **YOU ARE ORDERED**, pursuant to Nevada Rule of Civil Procedure ("NRC") 45, to
22 produce and permit inspection and copying of the books, documents, or tangible things
23 ("records") set forth below that are in your possession, custody, or control, by one of the
24 following methods:

25 [] Making the original records described below available for inspection at your
26 business address by the attorney's representative or party appearing in proper person and
27
28

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

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DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



1 permitting copying at your business address under reasonable conditions during normal business
2 hours.

3 [X] Delivering a true, legible, and durable copy of the financial records described
4 below to the requesting attorney or party appearing in proper person, by United States mail or
5 similar delivery system, no later than May 18, 2015 at the following address:

6
7 Solomon Dwiggins & Freer, Ltd.
8 9060 West Cheyenne Avenue
9 Las Vegas, Nevada 89129
10 jhood@sdfnlaw.com

11 All documents shall be produced as they are kept in the usual course of business or shall be
12 organized and labeled to correspond with the categories listed below (NRCP 45(d)(1)).


13 **YOU ARE FURTHER ORDERED** to authenticate the business records produced,
14 pursuant to Nevada Revised Statute ("NRS") 52.260, and to provide with your production a
15 completed Certificate of Custodian of Records in substantially the form attached as Exhibit "B."

16 **CONTEMPT:** Failure by any person without adequate excuse to obey the Subpoena
17 served upon that person may be deemed contempt of the court. (NRCP 45(e)). If you fail to obey,
18 you may be liable to pay \$100, plus all damages caused by such failure. (NRS 50.195).

19 Please see Exhibit "A" attached hereto for information regarding the rights of the person
20 subject to this Subpoena.

21 Dated this 8th day of June, 2015.

22 SOLOMON DWIGGINS & FREER, LTD.

23 By: 
24 Mark A. Solomon, ESQ. (Bar No. 0)418
25 E-mail: msolomon@sdfnlaw.com
26 JOSHUA M. HOOD, ESQ. (Bar No. 12777)
27 E-mail: jhood@sdfnlaw.com
28 9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Phone: (702) 853-5483
Facsimile: (702) 853-5485
Attorneys for Caroline Davis, Petitioner

ITEMS TO BE PRODUCED

1. Any and all non-privileged records in your possession, custody, or control related to the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended.

2. Any and all non-privileged records in your possession, custody, or control related to the Beatrice B. Davis Revocable Living Trust, dated April 4, 1990, as amended.

3. Any and all non-privileged records in your possession, custody, or control related to Ashley Cooper Life Insurance Policy, Policy Number ACLI 1105-8007 PC, formerly known as Policy Number ALIP 008-1031.

4. Any and all non-privileged records in your possession, custody, or control related to the Davis Family Office, Limited Liability Company.

5. Any and all non-privileged records in your possession, custody, or control related to the FHT Holdings, Limited Liability Company.

6. Any and all non-privileged records in your possession, custody, or control related to any and all entities of which Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended, owns, in whole or in part, an interest therein.

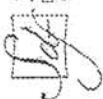
7. Any and all non-privileged records in your possession, custody, or control related to any and all entities of which the Beatrice B. Davis Revocable Living Trust, dated April 4, 1990, as amended, owns, in whole or in part, an interest therein.

8. Any and all non-privileged records in your possession, custody, or control related to any and all entities of which Christopher D. Davis is the owner, manager, director, or officer of such entity, which records concern any business or financial relationship between such entity or entities and the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000 and/or the Beatrice B. Davis Revocable Living Trust, dated April 4, 1990, as amended.

9. Any and all non-privileged records in your possession, custody, or control related to: (1) Promissory Note, dated September 1, 2011; (2) Promissory Note (With Revolving Line of

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LAS VEGAS, NEVADA 89129
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1 Credit), dated April 4, 2013; and (3) Promissory Note (With Revolving Line of Credit), dated
2 March 25, 2013 (collectively, the "Loans"), including, but not limited to: (i) the identity of any
3 entity, trust, or individual who has received and/or benefited from any and all distributions
4 pursuant to any of the Loans; (ii) the purpose of such Loans; (iii) the circumstances surrounding
5 the distribution and use of the funds pursuant to any of the Loans; (iv) the repayment of any of the
6 Loans; (v) the collateral for such Loans; and any and all other information related to the Loans.

7 10. Any and all non-privileged records in your possession, custody, or control related
8 to any additional loans, lines of credit, or obligations currently held by the Beatrice B. Davis
9 Family Heritage Trust, dated July 28, 2000, as amended.

10 11. For any records withheld on the basis of privilege, please provide a privilege log in
11 compliance with NRCP 26(b)(5).
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9060 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89128
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FACSIMILE (702) 853-5485
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TRUST AND ESTATE ATTORNEYS



AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK) ss.

I, _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the SUBPOEAN DUCES TECUM on _____, 20____; and that I served the same on _____, 20____, by delivering and leaving a copy with _____ at _____.

Dated this ____ day of June, 2015.

By _____
Signature of Affiant/Declarant

SIGNED and SWORN to before me
this ____ day of June, 2015.

Notary Public



EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena

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

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

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

- (iv) subjects a person to undue burden.

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

9060 WEST CHEYENNE AVENUE
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FACSIMILE (702) 853-5465
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DWIGINS & FREER
TRUST AND ESTATE ATTORNEYS

Solomon

EXHIBIT "B"
CERTIFICATE OF CUSTODIAN OF RECORDS

STATE OF NEVADA)
COUNTY OF CLARK)

Case No.: P-15-084094-T

NOW COMES _____, (*name of custodian of records*) who after first being duly sworn deposes and says:

1. That the deponent is the _____ (*position or title*) of _____ (*name of employer*) and in his or her capacity as _____ (*position or title*) is a custodian of the records of _____ (*name of employer*).

2. That _____ (*name of employer*) is licensed to do business as a _____ in the State of _____.

3. That on the ____ day of the month of _____ of the year _____, the deponent was served with a subpoena in connection with the above-entitled cause, calling for the production of records pertaining to _____

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or _____ (*name of employer*).

Executed on: _____
(Date)

(Signature of Custodian of Records)

SUBSCRIBED AND SWORN to
before me this ____ day of June, 2015.

Notary Public

NOTC

Mark A. Solomon, Esq.
Nevada Bar No. 0418
E-mail: msolomon@sdfnlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
E-mail: 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
Dept.: Probate (26)

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

NOTICE OF ISSUANCE OF
SUBPOENA DUCES TECUM
(No Appearance Required)

PLEASE TAKE NOTICE that CAROLINE DAVIS, by and through her counsel of,
Mark A. Solomon, Esq. and Joshua M. Hood, Esq., of the law firm of Solomon Dwiggins &
Freer, Ltd., has issued a Subpoena Duces Tecum for Records ("Subpoena") to ROLAND LAW
FIRM. ("ROLAND"). Pursuant to the Subpoena, attached hereto as Exhibit 1, ROLAND is
required to respond by delivering a true, legible, and durable copy of the

///

///

///

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LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5483
FACSIMILE (702) 853-5485
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SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

1 requested records to the offices of Solomon Dwiggins & Freer, Ltd., 9060 West Cheyenne
2 Avenue, Las Vegas, Nevada 89129, no later than July 10, 2015.

3 DATED this 25th day of June, 2015.

4 SOLOMON DWIGGINS & FREER, LTD.

5 By: 

6 MARK A. SOLOMON, ESQ.
7 Nevada Bar No. 0418
8 E-mail: msolomon@sdfnlaw.com
9 JOSHUA M. HOOD, ESQ.
10 Nevada Bar No. 12777
11 E-mail: jhood@sdfnlaw.com
12 Cheyenne West Professional Center
13 9060 West Cheyenne Avenue
14 Las Vegas, Nevada 89129
15 Telephone (702) 853-5483
16 Facsimile (702) 853-5485

17 Attorneys for CAROLINE DAVIS

18 CERTIFICATE OF SERVICE

19 I HEREBY CERTIFY that on June 25, 2015, pursuant to NRCP 5(b)(2)(B), I placed a true
20 and correct copy of the following NOTICE OF ISSUANCE OF SUBPOENA DUCES TECUM
21 FOR RECORDS, in the United States Mail, with first-class postage prepaid, addressed to the
22 following, at their last known address, and, pursuant to Rule 9 of N.E.F.C.R., caused an electronic
23 copy to be served via Odyssey, to the email address noted below:

24 Mail only:

25 Tarja Davis
26 3005 North Beverly Glen Circle
27 Los Angeles, California 90077

28 and
514 West 26th Street, #3E
Kansas City, Missouri 64108

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

9040 WEST CHEYENNE AVENUE
LAS VEGAS, NEVADA 89129
TELEPHONE (702) 853-5485
FACSIMILE (702) 853-5485
WWW.SOLOMONLAW.COM



1 And did mail via US Mail and email Via the Court's electronic system, WizNet pursuant to Rule
2 9 of NEFCR at the email address noted to the following:

3 HARRIET ROLAND, ESQ.,
4 ROLAND LAW FIRM
5 2470 E. St. Rose Parkway, #105
6 Henderson, NV 89052
7 hroland@rolandlawfirm.com
8 Attorneys for Christopher D. Davis

9 ANTHONY L. BARNEY, ESQ.
10 ANTHONY L. BARNEY, LTD.
11 3317 West Charleston Boulevard, Suite B
12 Las Vegas Nevada 89102
13 abarney@anthonybarney.com
14 Attorneys for Christopher D. Davis

15 CHARLENE RENWICK, ESQ.
16 LEE HERNANDEZ LANDRUM & GAROFALO
17 7575 Vegas Drive #150
18 Las Vegas, Nevada 89128
19 crenwick@lee-lawfirm.com
20 Attorneys for Dunham Trust

21 JONATHAN W. BARLOW, ESQ.
22 Clear Counsel Law Group
23 50 Stephanie Street, Suite 101
24 Henderson, Nevada 89012
25 jonathan@clearcounsel.com
26 Attorneys for Stephen Lenhardt

27
28

An employee of Solomon Dwiggins & Freer, Ltd.

EXHIBIT 1

EXHIBIT 1

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

SOLOMON
DWIGGINS & FREER
NIGHT AND DAY ATTORNEYS

CC03
Mark A. Solomon, Esq.
Nevada Bar No. 0418
E-mail: msolomon@sdfnylaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
E-mail: jhood@sdfnylaw.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
The BEATRICE B. DAVIS FAMILY
HERITAGE TRUST, dated July 28, 2000, as
amended on February 24, 2014.

Case No.: P-15-083867-T
Dept.: Probate (26)

SUBPOENA DUCES TECUM
(No Appearance Required)

THE STATE OF NEVADA SENDS GREETINGS TO:

The Custodian of Record or Other Qualified Person at

ROLAND LAW FIRM.
2470 East Saint Rose Parkway, Suite 105.
Henderson, Nevada 89074

YOU ARE ORDERED, pursuant to Nevada Rule of Civil Procedure ("NRCP") 45, to
produce and permit inspection and copying of the books, documents, or tangible things
("records") set forth below that are in your possession, custody, or control, by one of the
following methods:

[] Making the original records described below available for inspection at your
business address by the attorney's representative or party appearing in proper person and

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TRUST AND ESTATE ATTORNEYS

1 permitting copying at your business address under reasonable conditions during normal business
2 hours.

3 [X] Delivering a true, legible, and durable copy of the financial records described
4 below to the requesting attorney or party appearing in proper person, by United States mail or
5 similar delivery system, no later than July 10, 2015 at the following address:

6
7 Solomon Dwiggins & Freer, Ltd.
8 9060 West Cheyenne Avenue
9 Las Vegas, Nevada 89129
10 jhood@sdfnlaw.com

11 All documents shall be produced as they are kept in the usual course of business or shall be
12 organized and labeled to correspond with the categories listed below (NRCPC 45(d)(1)).

13 **YOU ARE FURTHER ORDERED** to authenticate the business records produced,
14 pursuant to Nevada Revised Statute ("NRS") 52.260, and to provide with your production a
15 completed Certificate of Custodian of Records in substantially the form attached as Exhibit "B."

16 **CONTEMPT:** Failure by any person without adequate excuse to obey the Subpoena
17 served upon that person may be deemed contempt of the court. (NRCPC 45(e)). If you fail to obey,
18 you may be liable to pay \$100, plus all damages caused by such failure. (NRS 50.195).

19 Please see Exhibit "A" attached hereto for information regarding the rights of the person
20 subject to this Subpoena.

21 Dated this 25th day of June, 2015.

22 SOLOMON DWIGGINS & FREER, LTD.

23 By: 
24 MARK A. SOLOMON, ESQ. (Bar No. 0418)
25 E-mail: msolomon@sdfnlaw.com
26 JOSHUA M. HOOD, ESQ. (Bar No. 12777)
27 E-mail: jhood@sdfnlaw.com
28 9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Phone: (702) 853-5483
Facsimile: (702) 853-5485
Attorneys for Caroline Davis, Petitioner



ITEMS TO BE PRODUCED

1. Any and all non-privileged records in your possession, custody, or control related to the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended.
2. Any and all non-privileged records in your possession, custody, or control related to the Beatrice B. Davis Revocable Living Trust, dated April 4, 1990, as amended.
3. Any and all non-privileged records in your possession, custody, or control related to Ashley Cooper Life Insurance Policy, Policy Number ACLI 1105-8007 PC, formerly known as Policy Number ALIP 008-1031.
4. Any and all non-privileged records in your possession, custody, or control related to the Davis Family Office, Limited Liability Company.
5. Any and all non-privileged records in your possession, custody, or control related to the FHT Holdings, Limited Liability Company.
6. Any and all non-privileged records in your possession, custody, or control related to any and all entities of which Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended, owns, in whole or in part, an interest therein.
7. Any and all non-privileged records in your possession, custody, or control related to any and all entities of which the Beatrice B. Davis Revocable Living Trust, dated April 4, 1990, as amended, owns, in whole or in part, an interest therein.
8. Any and all non-privileged records in your possession, custody, or control related to any and all entities of which Christopher D. Davis is the owner, manager, director, or officer of such entity, which records concern any business or financial relationship between such entity or entities and the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000 and/or the Beatrice B. Davis Revocable Living Trust, dated April 4, 1990, as amended.
9. Any and all non-privileged records in your possession, custody, or control related to: (1) Promissory Note, dated September 1, 2011; (2) Promissory Note (With Revolving Line of

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Credit), dated April 4, 2013; and (3) Promissory Note (With Revolving Line of Credit), dated March 25, 2013 (collectively, the "Loans"), including, but not limited to: (i) the identity of any entity, trust, or individual who has received and/or benefited from any and all distributions pursuant to any of the Loans; (ii) the purpose of such Loans; (iii) the circumstances surrounding the distribution and use of the funds pursuant to any of the Loans; (iv) the repayment of any of the Loans; (v) the collateral for such Loans; and any and all other information related to the Loans.

10. Any and all non-privileged records in your possession, custody, or control related to any additional loans, lines of credit, or obligations currently held by the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended.

11. For any records withheld on the basis of privilege, please provide a privilege log in compliance with NRCP 26(b)(5).

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



AFFIDAVIT/DECLARATION OF SERVICE

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I, _____, being duly sworn, or under penalty of perjury, state that at all times herein I was and am over 18 years of age and not a party to or interested in the proceedings in which this Affidavit/Declaration is made; that I received a copy of the SUBPOEAN DUCES TECUM on _____, 20____; and that I served the same on _____, 20____, by delivering and leaving a copy with _____ at _____.

Dated this ____ day of June, 2015.

By _____
Signature of Affiant/Declarant

SIGNED and SWORN to before me
this ____ day of June, 2015.

Notary Public

EXHIBIT "A"
NEVADA RULES OF CIVIL PROCEDURE

Rule 45

(c) Protection of Persons Subject to Subpoena

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

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

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

(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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SOLOMON
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TRUST AND ESTATE ATTORNEYS

EXHIBIT "B"
CERTIFICATE OF CUSTODIAN OF RECORDS

STATE OF NEVADA }

Case No.: P-15-084094-T

COUNTY OF CLARK }

NOW COMES _____, (*name of custodian of records*) who after first being duly sworn deposes and says:

1. That the deponent is the _____ (*position or title*) of _____ (*name of employer*) and in his or her capacity as _____ (*position or title*) is a custodian of the records of _____ (*name of employer*).

2. That _____ (*name of employer*) is licensed to do business as a _____ in the State of _____.

3. That on the ____ day of the month of _____ of the year _____, the deponent was served with a subpoena in connection with the above-entitled cause, calling for the production of records pertaining to _____

4. That the deponent has examined the original of those records and has made or caused to be made a true and exact copy of them and that the reproduction of them attached hereto is true and complete.

5. That the original of those records was made at or near the time of the act, event, condition, opinion or diagnosis recited therein by or from information transmitted by a person with knowledge, in the course of a regularly conducted activity of the deponent or _____ (*name of employer*).

Executed on: _____
(Date)

(Signature of Custodian of Records)

SUBSCRIBED AND SWORN to
before me this ____ day of July, 2015.

Notary Public

1 **NOTC**

2 Mark A. Solomon, Esq.
3 Nevada Bar No. 0418
4 E-mail: msolomon@sdfnlaw.com
5 Joshua M. Hood, Esq.
6 Nevada Bar No. 12777
7 E-mail: jhood@sdfnlaw.com
8 SOLOMON DWIGGINS & FREER, LTD.
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, Petitioner*

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

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

Case No.: P-15-083867-T
Dept.: Probate (26)

20 **NOTICE OF TAKING DEPOSITION OF CHRISTOPHER D. DAVIS**

21 PLEASE TAKE NOTICE that CAROLINE DAVIS, by and through her attorneys, the law
22 offices of SOLOMON DWIGGINS & FREER, LTD., will take the deposition of
23 CHRISTOPHER DAVIS, Investment Trust Advisor and Manager of FHT Holdings, LLC, on the
24 3rd day of September, 2015, beginning at 10:00 a.m., at the law office of SOLOMON DWIGGINS
25 & FREER, LTD., 9060 West Cheyenne Avenue, Las Vegas, Nevada 89129. The deposition will
26
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28

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



1 take place upon oral examination pursuant to Rules 26 and 30 of the Nevada Rules of Civil
2 Procedure, before a Notary Public or before some other officer authorized by law to administer
3 oaths and by videographer.

4 You are invited to attend and cross examine.

5 DATED this 6th day of August, 2015.

6
7 SOLOMON DWIGGINS & FREER, LTD.

8
9 By: 
10 Mark A. Solomon, Esq.
11 Nevada Bar No. 0418
12 E-mail: msolomon@sdfnlaw.com
13 Joshua M. Hood, Esq.
14 Nevada Bar No. 12777
15 E-mail: jhood@sdfnlaw.com
16 9060 West Cheyenne Avenue
17 Las Vegas, Nevada 89129
18 Telephone: 702.853.5483
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20 *Attorneys for Caroline Davis, Petitioner*

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SOLOMON
DWIGGINS & FREER
ATTORNEYS AT LAW

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 6th, 2015, pursuant to NRCP 5(b)(2)(B), I placed a true and correct copy of the following NOTICE OF TAKING DEPOSITION OF CHRISTOPHER D. DAVIS, in the United States Mail, with first-class postage prepaid, addressed to the following, at their last known address, and, pursuant to Rule 9 of N.E.F.C.R., caused an electronic copy to be served via Odyssey, to the email address noted below:

Mail only:

Tarja Davis
3005 North Beverly Glen Circle
Los Angeles, California 90077

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

and

514 West 26th Street, #3E
Kansas City, Missouri 64108

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

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

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ROLAND LAW FIRM
2470 E. St. Rose Parkway, #105
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Attorneys for Christopher D. Davis

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An employee of Solomon Dwiggin & Freer, Ltd.



EXHIBIT 24



CLERK OF THE COURT

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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


**OPPOSITION TO CAROLINE DAVIS' MOTION TO HOLD CHRISTOPHER D.
DAVIS IN CONTEMPT AND FOR ATTORNEY'S FEES AND COSTS**

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 opposition to Caroline Davis'

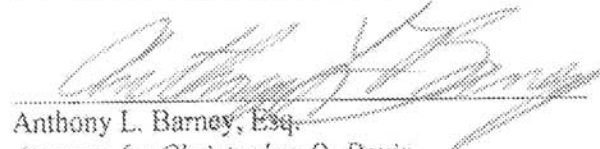
1 ("Caroline") Motion to hold Christopher D. Davis in contempt and for attorney's fees and costs
2 ("Motion") This pleading is based on the Memorandum of Points and Authorities attached
3 hereto, any exhibits attached hereto, and any oral argument that will be heard in this matter.
4

5 DATED this 26th day of August, 2015.

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

8 
9 Harriet H. Roland, Esq.
10 Attorney for Christopher D. Davis

11
12 Respectfully Submitted,
13 **ANTHONY L. BARNEY, LTD.**

14 
15 Anthony L. Barney, Esq.
16 Attorney for Christopher D. Davis
17
18
19

20 [remainder of page intentionally left blank]
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**
2 **I. INTRODUCTION**

3 Christopher D. Davis ("Christopher") hereby incorporates by reference the
4 memorandum of points and authorities including the Statement of Facts and the Legal Argument
5 contained in Christopher's Petition for Reconsideration and his Reply to Caroline's opposition
6 and his Opposition to Caroline's Motion and Amended Motion for Sanctions. In addition
7 Christopher further states the following:

8 **A. STATEMENT OF FACTS**

9
10 Caroline filed a petition to assume jurisdiction over the Beatrice B. Davis Family
11 Heritage Trust dated July 28, 2000, as amended February 24, 2014 ("FHT"). In her petition
12 Caroline sought information regarding loans made from an Ashley Cooper Life Insurance
13 Policy owned by the FHT. The overwhelming majority of the loans which Caroline sought
14 information about were generated during the tenure of Alaska USA Trust Company or Alaska
15 Trust Company, the previous trustees of the FHT. This court assumed jurisdiction over the trust
16 based on a theory of constructive trust. Caroline sought to have this court order Christopher to:

17
18 disclose any and all documentation and information related to (a) the Policy Loans,
19 including, but not limited to, the identity of any entity, trust or individual who has
20 received and or benefited from such loans, the purpose of such loans, the circumstances
21 surrounding the distribution and use of such loans, the repayment of such loans (if any),
22 the collateral for such loans, executed promissory notes, etc.; and (B) FHT holdings
23 LLC.¹

24 On May 11, 2015, Caroline submitted a proposed order to the court. Caroline's proposed
25 order would have specifically ordered Christopher to produce:

26 Any and all information and documentation in his possession, custody or control related
27 to any and all loans taken from the trust, including but not limited to those showing or
28 relating to:

¹ See Caroline's Petition to Assume Jurisdiction dated 2/10/2015 at Page 9:12-19.

- 1 (a) The purpose of each loan;
2 (b) Who received the loan proceeds or the benefit of such loan proceeds;
3 (c) How the loan proceeds were used;
4 (d) The repayment terms for each loan and whether any repayment was made;
5 (e) Any and all collateral agreements related to any and all loans; and
6 (f) Any and all loan agreements and/or promissory notes for any and all loans.²

7 After receipt of Caroline's proposed order, Christopher submitted a competing order
8 signed by all other parties which followed the Court's oral pronouncements and minute order.
9 Ultimately, the court did not sign Caroline's proposed order, and signed Christopher's order
10 with additional hand-written interlineations.

11 However, during the period in which the court considered both orders, Mr. Solomon
12 submitted an ex-parte letter containing unnoticed arguments and new case law meant to justify
13 Caroline's departure from the oral and written record from the April 22, 2014 hearing.³
14 Specifically Mr. Solomon argued that Christopher's proposed order should be rejected because
15 it did not grant access to information in Christopher's *custody or control*,⁴ and it did not assume
16 jurisdiction over Christopher *as manager of FHT holdings*.⁵ Although, Mr. Solomon argued at
17 the hearing that the court could assume jurisdiction over Christopher as manager of FHT
18 Holdings LLC,⁶ the transcript indicates that the court did not, in fact, take such jurisdiction at
19 the hearing.⁷ In fact the court explicitly limited jurisdiction to Christopher's role as Investment
20 Trust Advisor.⁸ This is indicated by the numerous requests by Mr. Barney for the court to clarify
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22
23
24

25 ² See Proposed Order submitted by Caroline Davis May 11, 2015.

26 ³ See Letter to Judge Gloria Sturman from Mark Solomon, Esq. dated May 11, 2015, which is attached to
27 Christopher's Reply and Opposition dated 8/27/15 at Exhibit B.

28 ⁴ *Id* at Page 2, Last Paragraph

⁵ *Id* at Page 1, Last Paragraph.

⁶ See Transcript dated 4/28/15 at Page 18: 20-25.

⁷ *Id* at Page 51:4-16, see also Page 53:21-23

⁸ *Id* at Page 54:23-24 wherein Court stated: "It's what Mr. — It's what he has in his role as Investment Trust
Advisor. That's it."

1 how it was taking jurisdiction and over what/whom and in what role.⁹ Additionally, the
2 transcript indicates that the court when asked about the breadth of the required disclosure
3 specifically limited disclosure to the information in Christopher's *possession* as investment
4 advisor.¹⁰

5
6 Upon receiving Mr. Solomon's letter to the court (which Mr. Barney received the day
7 after it was hand delivered to the Court), he requested from the Court the opportunity to brief
8 the new arguments advanced by Mr. Solomon in his May 11, 2015 letter. Without providing the
9 opportunity to brief the arguments, the court signed Christopher's proposed order with two
10 significant interlineations that were requests made by Mr. Solomon in his May 11, 2015 letter.
11 The order submitted by Christopher's counsel and signed by all other parties except Caroline's
12 counsel, originally stated that Christopher must disclose information "in his possession as
13 investment trust advisor." It appears the court considered Mr. Solomon's letter dated May 11,
14 2015, as Mr. Solomon's requests in the letter were interlineated into Christopher's proposed
15 order almost verbatim depending on the interpretation of the interlineations.¹¹ Specifically the
16 court added "custody or control" to the order which was a request made by Mr. Solomon.¹²
17 Additionally, Mr. Solomon argued that the order should require information from Mr. Davis "in
18 his individual capacity and as manager of FHT Holdings, LLC,"¹³ and "As such, any
19 information or documentation Mr. Davis has in his possession as Manager of FHT Holdings,
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24 ⁹ *Id.* at Pages 51-55.

25 ¹⁰ *Id.* at Page 54:14-25 and Page 55:1-4, specifically Page 55:2-4 states: "If that's not -- you know, if that's not in
his possession, it's not in his possession. It's only what's -- what he's got in his possession."

26 ¹¹ See Order dated May 19, 2015 (June 24, 2015) at Page 3: 3-7, See also Letter to Judge Sturman from Mark
Solomon, Esq. at Page 1, Last Paragraph and Page 2, Last Paragraph

27 ¹² See Letter to Judge Sturman from Mark Solomon, Esq. dated May 11, 2015 at Page 2, Last Paragraph ("As such
this court should require Mr. Davis to disclose any and all information and documentation in his possession,
28 custody, or control.")

¹³ *Id.* at Page 1, Last Paragraph.

1 LLC or individually, he also has in his possession as investment trust advisor, and therefore he
2 must be required to produce it.”¹⁴ Unfortunately, the actual wording of the order appears to read
3 one of several ways depending on the way in which one interprets the interlineations set forth by
4 the Court order. These are as follows:

5
6 “IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
7 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
8 all information in his possession custody or control in his role as Investment Trust Advisor, and
9 (in) (or) his role as manager of the FHT Holdings.”

10
11 The other reading if one interprets the mark between “possession” and “in” is a comma
12 and not a “line” directing the reader to the above interlineation, the following interpretation is:

13 “IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
14 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
15 all information in his possession, custody or control in his role as Investment Trust Advisor, and
16 (in) (or) his role as manager of the FHT Holdings.”

17
18 The greatest difficulty in interpretation arises with regard to whether the word “in” or
19 “or” is the actual word of the court between the words, “and,” and “his role as manager of FHT
20 Holdings.” The reader is simply left to guess, which clearly isn’t sufficient for finding the
21 specificity necessary to impose contempt. Therefore, even if Christopher were to guess correctly
22 or in error concerning whether the word is an “in” or and “or”, this cannot be the basis for
23 contempt due to the uncertainty left by the wording of the court. Furthermore, it is not clear
24 whether information in Christopher’s possession, custody, or control applies to his role as
25 manager of FHT Holdings, LLC.
26
27

28

¹⁴ *Id.* at Page 2, First Paragraph.

1 After receipt of Caroline's proposed order and Mr. Solomon's letter, this court ratified
2 the current order which expanded production to only information in Christopher's "possession
3 custody or control *in his role as Investment Trust Advisor, and (in) (or) his role as manager of*
4 *FHT Holdings.*" Despite having apparently persuaded the court to adopt arguments advanced in
5 her May 11, 2015 letter, it is clear that the May 19 order was far more limited than Caroline's
6 original requests even despite the court's unclear interlineations.
7

8 Even with the addition of her requested interlineations, Caroline is apparently unhappy
9 with the current order because it limits her attempts to force production from Christopher, of
10 information held in a fiduciary capacity by the Alaska trustees, the Policy Custodian, and likely
11 other parties. She has recently filed a motion to amend this court's order.
12

13 **B. CAROLINE'S INCONSISTENT ALLEGATIONS (ADMISSIONS)**
14 **REGARDING INFORMATION SOUGHT IMPROPERLY FROM**
15 **CHRISTOPHER**
16

17 Christopher has pointed out the incongruent and inconsistent statements made by
18 Caroline and her legal counsel throughout these proceedings, and further demonstrates these
19 inconsistencies through Caroline's earlier admissions.
20

21 Caroline alleges, "Christopher is the Investment Trust Advisor of the Trust, and the sole
22 Manager of the FHT Holdings, LLC, which is wholly owned by the Trust. Additionally, FHT
23 Holdings, LLC currently owns the Ashley Cooper Life Insurance Policy (the "Policy") with a
24 face value of \$35,000,000.00. Christopher is the only individual who possesses the information
25 or who has the authority to obtain the necessary information to comply with the Court Order.
26

27 As such, it cannot reasonably be argued that Christopher does not have the information
28 responsive to Ms. Davis' request within his possession, custody, or control. (Emphasis

1 added)¹⁵ However, Christopher is clearly not the only individual who possesses the information
2 or is the only individual that has authority to obtain the necessary information to comply with
3 the Court order, and therefore isn't relegated to argue such a response.

4
5 Ironically, Caroline has already established these facts for Christopher through her own
6 admissions concerning yet unserved necessary and indispensable parties. Two weeks prior to
7 this statement, Caroline argued that Christopher was not the only party that possessed
8 information that she seeks. Caroline stated, "Christopher's argument regarding the joinder of
9 Alaska and Alaska USA may be more compelling if they were the only parties with such
10 information. This, however, is not the case."¹⁶ Christopher agrees with Caroline that Alaska
11 and Alaska USA are the parties holding the information she seeks. This information is also
12 likely held by the custodian of the Policy, which has also not been added as an indispensable
13 party to this action.
14

15
16 Caroline and her attorneys represent that, "While Ms. Davis' counsel understands that
17 retrieving the necessary documentation from the Policy's custodian could take several weeks to
18 obtain, if necessary....,"¹⁷ they seem to believe that because she doesn't want to name the
19 Policy's custodian as a proper and necessary party, she should be able to force Christopher to
20 provide the information or face contempt within that same several week period that it would
21 take to receive any information from the custodian! It is clear that Ms. Davis' counsel's
22 representations of "understanding" in the regard is simply a disguised attempt to seem
23 "reasonable" as they generate unnecessary and vexatious litigation in this matter.
24
25

26
27 ¹⁵ See Caroline's Motion to Hold Christopher D. Davis in Contempt And For Attorneys' Fees and Costs dated
28 August 12, 2015 and filed August 17, 2015 at Page 4:4-10.

¹⁶ See Caroline's Objection and Counterpetition for Sanction dated 7/31/2015 at Page 16:3-5.

¹⁷ See Caroline's Motion to Hold Christopher D. Davis in Contempt And For Attorneys' Fees and Costs dated
August 12, 2015 and filed August 17, 2015 at Page 4:13-15.

1 Caroline then attempts to portray the documents provided under protest by Christopher
2 as "woefully insufficient."¹⁸ Unless Caroline has possession of all of the information from the
3 Alaskan Trustees, the Policy custodian, and Caroline herself, how could this Court reasonably
4 be expected to trust such an unverified, unsworn, and self serving statement given the history of
5 this case.¹⁹

7 Caroline had the ability to join the parties that she admits and believes have such
8 information, or at a minimum, issue a subpoena to such parties in possession of this information.
9 Instead, she has improperly sought information from Christopher all without ever obtaining
10 proper jurisdiction over him to do so.

12 After setting forth a litany of documents provided by Christopher under protest, Caroline
13 states that, "Neither Christopher nor his counsel have provided Ms. Davis the information as
14 required by the June 24, 2015 Order. Specifically, Christopher has failed to provide: (1) the
15 identity of the entities or individuals who received loan proceeds; (2) the disposition and use of
16 such loan proceeds; (3) the purpose for such loans; (4) whether there has been a default or
17 repayment of the loans; (5) the current outstanding balance(s); (6) the existence and status of
18 any security; and (7) any other information that a beneficiary would reasonably want to know
19 about the loans."²⁰ Does Caroline really expect Christopher to research the work of the Alaskan
20 Trustees and Policy custodians for the last 14 years to answer these questions, all while
21 continuing to deny they are not necessary parties to action?
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27 ¹⁸ See Caroline's Motion to Hold Christopher D. Davis in Contempt And For Attorneys' Fees and Costs dated
August 12, 2015 and filed August 17, 2015 at Page 4:17.

28 ¹⁹ See Letter from Anthony L. Barney, Esq. to Joshua Hood, Esq. dated August 21, 2015 regarding Rule 11
Sanctions attached to Christopher's Reply and Opposition filed 8/27/15 as Exhibit E.

²⁰ See Caroline's Motion to Hold Christopher D. Davis in Contempt And For Attorneys' Fees and Costs dated
August 12, 2015 and filed August 17, 2015 at Page 3:13-18.

1 Caroline has already conceded that the information they seek in this regard is with the
2 Alaskan Trustees and/or the Policy custodian. In fact 99% of the loan proceeds were issued to
3 the Alaskan Trustees, with the remaining 1% apparently after Dunham Trust Company was
4 contacted by the trust protector. Caroline wants to know the identity of the entity or individual
5 who received the loan proceeds obtained by the Alaskan Trustee from the Policy custodian
6 while Christopher was merely a beneficiary. As set forth, this both a violation of the terms of
7 the Trust if Christopher is deemed a trustee, and/or a clear basis for requiring this Court to
8 dismiss this action for Caroline's failure to add the Alaskan Trustee that both secured the loan
9 and made disbursement, if any, of those loan proceeds.
10

11
12 Caroline proceeds to demand the purpose of such loans from Christopher who was
13 merely a beneficiary like Caroline at the time the Alaskan Trustees secured the loan. The
14 Alaskan trustees would have been the party(ies) tasked with providing the documentation and
15 purpose of such a loan to the Policy custodian.
16

17 Caroline then proceeds to request information regarding whether there had been a
18 default or repayment of the loans. This information would also be held by the Alaskan Trustees
19 and the Policy custodian. Presumably it would also be held by Dunham Trust Company. The
20 remaining questions continue to demonstrate that Caroline simply wants Christopher to provide
21 what she admittedly knows is in the possession of a party she has failed to properly join in this
22 action. This is not a basis for contempt, but is a proper basis to dismissing this action for failing
23 to join an indispensable party.
24

25 C. LACK OF JURISDICTION

- 26 1. Where the court lacks jurisdiction to issue an order, that order is void and
27 may not be the basis for contempt.
28

1 Where the court lacks proper jurisdiction to issue an order, that order cannot be the basis
2 of a contempt charge.²¹ "It is not contempt to disobey a void mandate, order, judgment, or
3 decree, or one issued by a court *without jurisdiction of the parties involved* and of the subject
4 matter."²² (Emphasis added). Essentially, an order which attempts to adjudicate the rights of a
5 person, issued without personal jurisdiction is void, therefore no party may be held in contempt
6 for violation of the void order.
7

8 As described in the motion for reconsideration and his subsequent reply, Christopher has
9 alleged that this court lacks jurisdiction over him because the purported change in situs of the
10 FHT to Nevada was invalid. If proven, the underlying order is void for lack of jurisdiction and
11 therefore inapplicable as a basis for contempt. However, even if this court could establish *in rem*
12 jurisdiction, it never had *in personam* jurisdiction over Christopher Davis. This is also explained
13 in depth in the Reply, and admitted by Caroline in both her opposition and subsequent
14 pleadings. Christopher has never been served personally according to the requirements of NRS
15 12 and pursuant to lawful due process. Therefore, this court could not have made an order
16 requiring him to:
17
18

19 disclose any and all documentation and information related to (a) the Policy Loans,
20 Including, but not limited to, the identity of any entity, trust or individual who has
21 received and or benefited from such loans, the purpose of such loans, the circumstances
22 surrounding the distribution and use of such loans, the repayment of such loans (if any),
23 the collateral for such loans, executed promissory notes, etc.; and (B) FHT holdings
24 LLC.²³
25
26

27 ²¹ *VANDERBILT v. VANDERBILT*, 1 L. Ed. 2d 1456, 1459, (U.S. 1957) ("It has long been the constitutional rule
28 that a court cannot adjudicate a personal claim or obligation unless it has jurisdiction over the person of the
defendant.") See also *Ex parte Grossman*, 267 U.S. 87; *Michaelson v. United States*, 266 U.S. 42, 66-67; *Ex parte*
Terry, 128 U.S. 289.

²² *Western Fruit Growers, Inc. v. Gotfried*, 136 F.2d 98, 100, (9th Cir. Cal. 1943)

²³ See Caroline's Petition dated 2/10/15 at Page 9:12-19.

1 Such an order would have been outside the scope of even its purported *in rem*
2 jurisdiction which Caroline now claims to be the only applicable form of jurisdiction. Caroline's
3 original request is outside the scope of *in rem* jurisdiction as it seeks information from
4 Christopher which is not property of the trust but of a beneficiary. Any information in
5 Christopher's possession, custody or control from prior to February 24, 2014 was either
6 obtained by him as a beneficiary from the Alaska Trustee's or would require of him what the
7 trust specifically prohibits that; "No successor Trustee shall be required to examine the
8 accounts, records, and acts of any previous Trustees."²⁴ Therefore, any attempt to gain
9 information from Christopher, generated prior to February 24, 2014 requires *in personam*
10 jurisdiction over him.
11

12
13 **2. Contempt proceedings require personal jurisdiction which still has not been**
14 **established.**
15

16 The court can only find contempt if it establishes *in personam* jurisdiction in the
17 contempt proceeding. Contempt by its very nature would adjudicate the rights of the person and
18 therefore requires service of process.²⁵ As outlined in the reply to opposition neither NRS
19 164.010 nor NRS 163.5555 provides this court with *in personam* jurisdiction. As detailed above,
20 the original proceeding must have exercised *in personam* jurisdiction in order to be the basis for
21 a contempt charge. The contempt proceeding itself must exercise *in personam* jurisdiction,
22 otherwise any resulting order is void.²⁶ Nevada's long arm statute requires personal service of a
23 summons and adherence to federal due process to establish personal jurisdiction over a non-
24 resident of the state. Here, despite nearly 6 months of litigation and multiple filings that require
25
26

27
28 ²⁴ See Beatrice B. Davis Family Heritage Trust dated July 28, 2000 as amended February 28, 2014, Article Eleven,
Section 7 at Page 11-4.

²⁵ *Rochte v. Rochte*, 1992 Conn. Super. LEXIS 3241, *3-4 (Conn. Super. Ct. Nov. 9, 1992)

1 parties. Caroline and her counsel have actually attempted to circumvent jurisdictional
2 limitations to obtain the relief she seeks. Christopher's pleadings thus far in this matter, have
3 been to ensure that the Court has the proper authority to make its orders and findings. This
4 certainly is not unreasonable.

5
6 To be clear, the pleadings filed by Christopher have been a motion to dismiss, a reply
7 to the motion to dismiss, the motion for reconsideration, a notice of appeal, case appeal
8 statement, and this reply and opposition. Whereas, Caroline has filed multiple motions in
9 excess of the pleadings filed by Christopher – including the initial petition, the opposition to the
10 motion to dismiss, the opposition to the motion for reconsideration and counterpetition for
11 sanctions, a motion for sanctions, a motion to amend, petition for an order shortening time, and
12 a motion to compel production as well as others. Therefore, it is Caroline who has pushed the
13 litigation in this matter and filed many motions needlessly increasing the cost of litigation.
14

15 Additionally, according to this rule, Caroline could be considered a vexatious litigant,
16 because, if she were clearly seeking simply only documents and information as she contends,
17 then she could have done so through formal requests from the appropriate trustees and/or a
18 court's subpoena power in the proper jurisdiction. Instead, she attempts to cast a wide net to
19 attempt to gain all information and documents from inappropriate parties and she encourages the
20 court to take jurisdiction without a proper basis over not only the trust, but as to *in personam*
21 jurisdiction over the beneficiaries as well as other entities when it suits her. This is beyond the
22 court's reach and is inappropriate, especially given the fact that there has been no finding of *in*
23 *personam* jurisdiction over any party.
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¹⁴⁷ EDCR 7.60(b)(3).

1 A beneficiary like Christopher who is defending himself against improper claims and
2 pleadings is the contrary of a vexatious litigant. Christopher is simply protecting his due
3 process rights, which is afforded every litigant in this Court. As such, Caroline's petition for
4 sanctions is without merit and should be denied in their entirety.

5
6 **CONCLUSION**

7 For the foregoing reasons, Christopher respectfully requests the Court do the following.

- 8 1. Reconsider the Court's May 19, 2015 Order (June 24, 2015 Order);
- 9 2. Grant all relief requested in Christopher's Motion to Dismiss, Reply, Motion for
10 Reconsideration, this Reply and Objection/Opposition to Caroline's Counter-Petition for
11 Sanctions;
- 12 3. Deny Caroline's Objection and Counter-Petition in their entirety, including any and all
13 claims raised therein;
- 14 4. Dismiss this action in its entirety until an Alaska court determines the validity of the
15 change in situs, and/or the First Amendment; and

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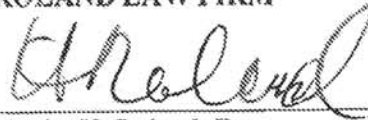
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1 5. Deny the exercise of *in rem* and *in personam* jurisdiction over any and all parties in this
2 matter.

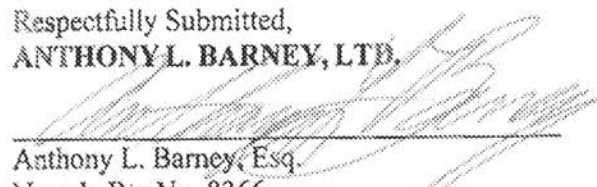
3 DATED this 26th day of August, 2015.

4
5 Respectfully Submitted,
6 **ROLAND LAW FIRM**

7 

8 Harriet H. Roland, Esq.
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16
17 Respectfully Submitted,
18 **ANTHONY L. BARNEY, LTD.**

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28

1 Ace Davis
2 c/o Winfield B. Davis
3 Skyline Terrace Apts.
4 930 Figueroa Terr. Apt. 529
5 Los Angeles, California 90012-3072

6 Christopher D. Davis
7 3005 North Beverly Glen Circle
8 Los Angeles, California 90077

9 And
10 514 West 26th Street, #3E
11 Kansas City, Missouri 64108

12 Registered Agent Solutions, Inc.
13 Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability Company
14 4625 West Nevso Drive, Suite 2
15 Las Vegas, Nevada 89103

16 JONATHAN W. BARLOW, ESQ.
17 CLEAR COUNSEL LAW GROUP
18 50 Stephanie Street, Suite 101
19 Henderson, Nevada 89012
20 Jonathan@clearcounsel.com
21 Attorneys for Stephen K. Lenhardt

22 Mark Solomon, Esq.
23 Joshua Hood, Esq.
24 SOLOMON DWIGGINS & FREER, LTD.
25 9060 W. Cheyenne Ave.
26 Las Vegas, NV 89129
27 Attorney for Petitioner Caroline Davis

28 DUNHAM TRUST COMPANY
29 SHANNA CORESSAL, CTFA
30 c/o Charlene Renwick, Esq.
31 Lee, Hernandez, Landrum & Garofalo
32 7575 Vegas Drive, #150
33 Las Vegas, Nevada 89128



Employee of Anthony L. Barney, Ltd.

EXHIBIT A

IN THE DISTRICT COURT OF JOHNSON COUNTY, KANSAS
CIVIL COURT DEPARTMENT
DIVISION NO. 14

In the Matter of the Marriage of:
CHRISTOPHER D. DAVIS and
CHERYL L. DAVIS

Case No. 10CV6256
Chapter 60

JOURNAL ENTRY AND DECREE OF DIVORCE

NOW on this 15th day of August, 2011, this case comes on for hearing on the verified Petition for Divorce filed herein by the Petitioner.

The Petitioner, Christopher D. Davis, appears by and through counsel, Thomas E. Ruzicka of Hubbard, Ruzicka, Kreamer & Kincaid, L.C., and the Respondent, Cheryl L. Davis, appears by and through counsel, David R. Smith, Attorney at Law. There are no other appearances.

WHEREUPON, the Court, having heard statements of counsel and having considered the pleadings and information in the file, makes the following findings of fact:

1. The Petitioner's verified Petition for Divorce was filed on July 14th, 2010 and at the time of the filing of such Petition, the Petitioner had been an actual resident of the State of Kansas for a period in excess of sixty (60) days. Respondent filed an Answer on September 20th, 2010.
2. The Court has personal jurisdiction of the parties and jurisdiction of the subject matter of this action and venue is properly in this Court.
3. The parties were married to each other on July 30th, 1981, in Kansas City, Jackson County, Missouri.
4. The parties have no minor children.
5. The Respondent is not now pregnant.

CLERK OF DISTRICT COURT
JOHNSON COUNTY, KS

2011 AUG 15 PM 12:53

6. The parties are incompatible. Their deep and irreconcilable differences make it impossible for the marriage to continue on a viable basis and the parties can no longer live together as husband and wife.

7. The parties have entered into a written Separation and Property Settlement Agreement which has been admitted into evidence as "Exhibit 1". The Agreement has been examined by the Court and the Court finds that it contains equitable provisions for the support of the parties, and division of the property interests acquired by the parties during the marriage and prior thereto, it was freely and voluntarily entered into by the parties and the agreement is valid, just, and equitable and should be approved by the Court and incorporated in this decree by reference.

Having made the preceding findings of fact, the Court **ORDERS, ADJUDGES AND DECREES** as follows:

IT IS, THEREFORE, BY THE COURT ORDERED, ADJUDGED, AND DECREED that the parties be divorced, each from the other, on the ground of incompatibility.

IT IS FURTHER BY THE COURT ORDERED that the property of the parties shall be divided between them in conformity with the terms of the Separation and Property Settlement Agreement dated August 15, 2011, which has been admitted into evidence as "Exhibit 1", and all of the terms of that Agreement are hereby specifically approved and incorporated in this decree by reference. **All payments and acts therein required are hereby ordered.**

IT IS FURTHER ORDERED that commencing on September 1, 2011, Petitioner shall pay to Respondent, as spousal maintenance the sum of \$10,000.00 until modified

or terminated as set forth in the parties Separation and Property Settlement Agreement. Petitioner may make his payments in equal installment payments of \$5,000.00 on the 1st and 15th day of each month. There are no maintenance arrears owed on any temporary orders entered herein.

IT IS FURTHER ORDERED that for good cause shown, Petitioner's spousal maintenance payments to Respondent shall be made directly payable to the order of the Kansas Payment Center, P.O. Box 758599, Topeka, Kansas 666758599. Each payment must include the Court Order Number (JO 10 CV 6256).

IT IS FURTHER ORDERED the District Court Trustee shall enforce the order of support entered herein. Each party shall inform the Kansas Payment Center in writing of any change of name and residence within seven (7) days after such change.

IT IS FURTHER ORDERED that each party shall pay their own attorney's fees and that the court costs in this action are hereby taxed against the Petitioner's court cost deposit.

IT IS FURTHER ORDERED that this Decree shall be effective when it has been signed by the Court and filed in the Office of the Clerk of the Court and that any marriage contracted by either of the parties hereto with any third party either within or without the State of Kansas within a period of thirty (30) days from the effective date of this decree, is voidable unless any appeal from this Judgment is waived as provided by K.S.A. 60-1610. The parties have agreed in their Separation and Property Settlement Agreement to waive any rights they may have to appeal.

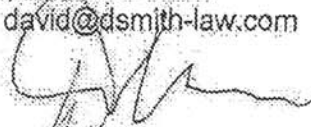
IT IS SO ORDERED.

Kevin P. Moriarty


District Judge

JOURNAL ENTRY APPROVED BY:

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Thomas E. Ruzicka #07553
Attorneys for Petitioner

CERTIFICATE OF CLERK OF THE DISTRICT COURT. The
above is a true and correct copy of the original instrument
filed on the 15 day of AUG, 2011, and re-
corded in this Court, Tenth Judicial District, Johnson County,
Kansas.
dated this 15 day of AUG, 2011.

Chief Clerk of the District Court.

Deputy.




EXHIBIT B



SOLOMON | DWIGGINS | FREER^{LTD}
TRUST AND ESTATE ATTORNEYS

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Alexander G. LeVeque
Joshua M. Hood
*Christopher J. Fowler

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May 11, 2015

Via Hand Delivery

The Honorable Gloria J. Sturman
Regional Justice Center
Dept. XXVI, Courtroom 3H
200 Lewis Avenue
Las Vegas, Nevada 89155

RE: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: April 22, 2015

Dear Judge Sturman:

Since the hearing on the above-referenced matter, we prepared and submitted the *Order Granting In Part and Denying In Part 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 And Order Denying Christopher D. Davis' Motion To Dismiss Pursuant To NRCP 12(b) And NRCP 19* (the "Order") to all counsel who appeared at the hearing on April 24, 2015. A copy of the Order is enclosed herewith for your review. On April 29, 2015, Anthony L. Barney, Esq. ("Mr. Barney"), counsel for Christopher D. Davis ("Mr. Davis"), provided a competing order on behalf of remaining parties and their respective counsel (the "Competing Order").

The Competing Order provided by Mr. Barney attempts to limit this Court's ruling by picking and choosing preferential statements from the hearing transcript, and including such preferential statements, which are taken out of context, in the Competing Order. For example, during the hearing, Mark A. Solomon, Esq. ("Mr. Solomon"), counsel for Caroline D. Davis ("Mrs. Davis"), informed the Court that Mr. Davis was and is serving as the Investment Trust Advisor of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as amended on February 14, 2014 (the "Trust") in his individual capacity and as manager of FHT Holdings, LLC, an entity wholly owned by the Trust. In her petition, Mrs. Davis specifically requested

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TRUST AND ESTATE ATTORNEYS

The Honorable Gloria J. Sturman
RE: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: April 22, 2015

Page 2
May 11, 2015

certain information and documentation from Mr. Davis in his capacity as Investment Trust Advisor and in his capacity as the manager of FHT Holdings, LLC. As part of Mr. Barney's Competing Order, Mr. Barney attempts to limit the information requested to information in Mr. Davis' possession in his capacity as Investment Trust Advisor only. Mr. Barney attempts to substantiate such limitation by selecting particular language from the transcript, without taking into account any of the prior arguments of counsel or statements by the Court. It is well established that an individual serving as a fiduciary of a trust and as the manager of an entity owned by such trust cannot simply "switch hats", and subsequently claim that he or she has information and documents in one capacity, but not in the other capacity. Indeed, even when acting in his or her individual capacity, a fiduciary is required to disclose any and all information that may affect the beneficiaries of a trust. *See, e.g. Blue Chip Emerald LLC*, A.D.2d 278, 279 N.Y. 2008) "[w]hen a fiduciary, in furtherance of its individual interest, deals with the beneficiary in a matter relating to the fiduciary relationship, the fiduciary is strictly obligated to make full disclosure of all material facts." (referencing *Brinbaum v. Brinbaum* 73 N.Y.2d 461, 539 N.E.2d 574 (N.Y. 1989)). As such, any information or documentation Mr. Davis has in his possession as Manager of FHT Holding, LLC or individually, he also has in his possession as Investment Trust Advisor, and, therefore, he must be required to produce it.

Additionally, Mr. Barney attempts to limit the disclosure to "information" that is in Mr. Davis' "possession". Again, Mr. Barney pinpointed a specific statement from the transcript, which was taken out of context, to limit this Court's ruling. To suggest that the ruling by this Court limited Mr. Davis' duty to only produce "information" in his "possession" is absurd. Such a ruling would be tantamount to denying Mrs. Davis' request in its entirety as Mr. Davis could essentially argue that he has no "information" and/or documentation in his "possession", when in fact such information and documentation is clearly in his custody or control. As such, this Court should require Mr. Davis to disclose any and all information and documentation in his possession, custody or control. Based on the foregoing, Mrs. Davis respectfully requests that that this Court enter the enclosed Order as we believe it accurately captures and reflects this Court's ruling.

Thank you,


Mark A. Solomon

MAS/

Enclosure: (As Stated)

cc: Charlene N. Renwick, Esq.; Harriet H. Roland, Esq.; Jonathan W. Barlow, Esq.; and Anthony L. Barney, Esq.

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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.

**ORDER GRANTING IN PART AND DENYING IN PART 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
AND
ORDER DENYING CHRISTOPHER D. DAVIS' MOTION TO DISMISS PURSUANT TO
NRCP 12(b) AND NRCP 19**

This matter came on for hearing on April 22, 2015 on Caroline D. Davis' 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

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SOLOMON
DAVID CLAUSS & BREER
TRUST AND ESTATE ATTORNEYS

(the "PETITION"; Christopher D. Davis' MOTION TO DISMISS PURSUANT TO NRCP 12(b) AND NRCP 19 (the "MOTION TO DISMISS"), and Stephen K. Lehnardt's OPPOSITION TO PETITION AND LIMITED JOINDER TO THE MOTION TO DISMISS. Counsel for Caroline D. Davis, Mark A. Solomon, Esq. and Joshua M. Hood, Esq.; counsel for Christopher D. Davis, Anthony L. Barney, Esq.; counsel for Stephen K. Lehnardt, Jonathan W. Barlow, Esq.; and counsel for Dunham Trust Company, Charlene N. Renwick, Esq. were present.

The Court having reviewed the pleadings, examined the evidence, and heard the arguments of counsel, and for good cause appearing makes the following Findings and Orders:

FINDINGS

1. Due and legal notice of the time and place of the hearing has been given in this matter as required by law.

2. Pursuant to Article 14, Section 6 of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000 (the "Trust"), on or about February 24, 2014, Stephen K. Lehnardt ("Mr. Lehnardt"), as Trust Protector, purported to change the situs of the Trust from Alaska to Nevada, and upon such change of situs, to amend the Trust to conform to the laws Nevada. This action was memorialized in the First Amendment to the Beatrice B. Davis Family Heritage Trust, dated February 24, 2014 (the "First Amendment") Christopher D. Davis ("Mr. Davis") expressly consented to the terms of the First Amendment.

3. The First Amendment nominates and appoints Mr. Davis as Investment Trust Advisor pursuant to NRS 163.5543 and as a Fiduciary pursuant to NRS 163.554, and Mr. Davis accepted such appointment as Investment Trust Advisor.

4. The First Amendment further nominates and appoints Mr. Lehnardt as Distribution Trust Advisor pursuant to NRS 163.5537 and as a Fiduciary pursuant to NRS 163.554, and Mr. Lehnardt accepted such appointment as Distribution Trust Advisor.

5. The First Amendment further nominates and appoints Dunham Trust Company ("Dunham") as Directed Trustee, and Dunham accepted such appointed as Directed Trustee.

///

1 6. Dunham and Mr. Davis relied upon such appointments and authority bestowed
2 upon them pursuant to the First Amendment, and Dunham and Mr. Davis further acted upon such
3 reliance in the exercise of their authority pursuant to the First Amendment.

4 7. Notwithstanding Mr. Davis' unsupported objection as to the validity of the First
5 Amendment, after all beneficiaries of the Trust received proper notice of the PETITION, no
6 objections were made by any other beneficiary or purported beneficiary concerning the validity of
7 the First Amendment, nor were any objections received as to the authority exercised by Mr.
8 Davis, Mr. Lehnardt, and/or Dunham pursuant to the First Amendment.

9 8. Because Mr. Davis, Mr. Lehnardt, and/or Dunham have acted pursuant to such
10 authority provided under the First Amendment, the Court can assume jurisdiction over the Trust
11 as a proceeding *in rem*.

12 9. Because Mr. Davis has accepted appointment as the Investment Trust Advisor and
13 has acted pursuant to such appointment, the Court may properly assume jurisdiction over Mr.
14 Davis, and order him to perform any actions necessary to comply with the relief requested in the
15 PETITION.

16 10. Because Mr. Davis has exercised his authority as Investment Trust Advisor, is a
17 Fiduciary pursuant to NRS 163.554, has submitted to the jurisdiction of this Court pursuant NRS
18 163.5555, and has within his possession, custody, or control certain information and documents
19 requested in the PETITION, Mr. Davis is required to disclose such information to Petitioner
20 pursuant to Article 12, Section 4 of the Trust.

21 11. Because Dunham has accepted appointed as the Directed Trustee and has acted
22 pursuant to such appointment, the Court may properly confirm Dunham, as Directed Trustee

23 12. Until such time as a demand or claim for relief is made against Mr. Lehnardt in his
24 capacity as Distribution Trust Advisor, the Court need not assume personal jurisdiction over Mr.
25 Lehnardt; however, Caroline D. Davis may provide a more definite statement or otherwise assert
26 a demand or claim for relief against Mr. Lehnardt, at which time the Court may assume personal
27 jurisdiction over him.

28

1 13. The Motion To Dismiss should be denied, but without prejudice to any claim by
2 Mr. Davis that the First Amendment is invalid.

3 **ORDER**

4 **IT IS HEREBY ORDERED** that the Court assumes jurisdiction over the Beatrice B.
5 Davis Family Heritage Trust, dated July 28, 2000, as amended on February 24, 2014 (the
6 "Trust"), as a proceeding *in rem*.

7 **IT IS HEREBY FURTHER ORDERED** that Dunham Trust Company ("Dunham") is
8 confirmed as the Directed Trustee of the Trust.

9 **IT IS HEREBY FURTHER ORDERED** that the Court shall abstain from assuming
10 jurisdiction over Stephen K. Lehnardt ("Mr. Lehnardt"), in his capacity as Distribution Trust
11 Advisor, until such time that Petitioner provides a more definite statement or otherwise asserts a
12 demand or claim for relief against Mr. Lehnardt, in his capacity as Distribution Trust Advisor, at
13 which time this Court may assume personal jurisdiction over him.

14 **IT IS HEREBY FURTHER ORDERED** that Christopher D. Davis ("Mr. Davis") is
15 confirmed as the Investment Trust Advisor.

16 **IT IS HEREBY FURTHER ORDERED** that Mr. Davis shall forthwith produce to
17 counsel for Petitioner any and all information and documentation in his possession, custody or
18 control related to any and all loans taken from the Trust, including, but not limited to those
19 showing or relating to:

- 20 (a) the purpose of each loan;
- 21 (b) who received the loan proceeds or the benefit of such loan proceeds;
- 22 (c) how the loan proceeds were used;
- 23 (d) the repayment terms for each loan and whether any repayment was made;
- 24 (e) any and all collateral agreements related to any and all loans; and
- 25 (f) any and all loan agreements and/or promissory notes for any and all loans;

26 **IT IS HEREBY FURTHER ORDERED** all further matters will be heard by the probate
27 judge.

28

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TRUST AND ESTATE ATTORNEYS

1 **IT IS HEREBY FURTHER ORDERED** that Christopher D. Davis' Motion To Dismiss
2 Pursuant to NRCF 12(b) And NRCF 19 is hereby denied, but without prejudice to the claim by
3 Mr. Davis that the First Amendment to the Beatrice B. Davis Family Heritage Trust, dated
4 February 24, 2014 is invalid.

5 Dated this ____ day of May, 2015.

6
7 **DISTRICT COURT JUDGE**

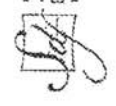
8 **Prepared and submitted by:**

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

10 
11 Mark A. Solomon, Esq. (Bar No. 0418)
12 Joshua M. Hood, Esq. (Bar No. 12777)
13 9060 West Cheyenne Avenue
14 Las Vegas, Nevada 89129
15 Telephone: (702) 853-5483
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17 *Attorneys for Caroline D. Davis*

18 **Approved as to Form and Content:**

19 **CLEAR COUNSEL LAW GROUP**

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Approved as to Form and Content:

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GAROFALO**

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Attorneys for Christopher D. Davis

EXHIBIT C

Anthony L. Barney

From: Anthony L. Barney <anthony@anthonybarney.com>
Sent: Tuesday, May 12, 2015 10:39 AM
To: 'Renee Guastaferro'; 'abarney@anthonybarney.com'; 'crenwick@lee-lawfirm.com'; 'hroland@rolandlawfirm.com'
Cc: 'jonathan@clearcounsel.com'; 'Joshua M. Hood'; 'Ioudina, Tamara'
Subject: RE: In the Matter of the Beatrice B. Davis Family Heritage Trust

Dear Mr. Solomon/Hood,

Is it my understanding that the joint requests of four attorneys that we observe the court's minute order and transcript were rejected on every point by you without a single revision? Please keep in mind that we followed the court's minutes and transcript with exactness. I received your e-mail this morning. When did you submit this order and letter? Your letter is dated yesterday, and has case law and argument to the court. Was this submitted ex-parte? I am very concerned by this apparent attempt to argue additional merits without the proper notice to the rest of legal counsel involved in this case. With your apparent refusal to adopt even the court's own record, I will plan on submitting the joint competing order approved by all counsel but your firm.

Sincerely,

Anthony L. Barney, Esq.
ANTHONY L. BARNEY, LTD.
Attorneys and Counselors at Law

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From: Renee Guastaferro [mailto:RGuastaferro@sdfnlaw.com]
Sent: Tuesday, May 12, 2015 9:57 AM
To: abarney@anthonybarney.com; crenwick@lee-lawfirm.com; hroland@rolandlawfirm.com
Cc: jonathan@clearcounsel.com; Joshua M. Hood
Subject: In the Matter of the Beatrice B. Davis Family Heritage Trust

Dear All: Please find attached correspondence and the Order that was submitted to Judge Sturman. Thank you,

Renee Guastaferro, Legal Assistant
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EXHIBIT D

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

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

Mary L. Martell, J.D.
Law Clerk

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Neva Liebe
Administrative Assistant

Website Address
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May 12, 2015

Via Hand Delivery

The Honorable Gloria J. Sturman
Regional Justice Center
Dept. XXVI, Courtroom 3H
200 Lewis Avenue
Las Vegas, Nevada 89155

Re: The Beatrice B. Davis Family Heritage Trust
Case No. P-15-083867-T
Hearing Date: April 22, 2015
Court Minutes: April 22, 2015
Date of Transcript: April 28, 2015

Re: The Beatrice B. Davis Family Heritage Trust

Dear Judge Sturman,

Upon receipt of the proposed order from Messrs. Solomon and Hood, it was circulated among all of the parties. A transcript was ordered, and provided to Mr. Hood as a courtesy.¹ He indicated that upon his review of the transcript, he "would get back to [us] immediately with any suggested revisions or comments on the proposed order."² Instead, today (May 12, 2015) we received a letter and a signed proposed order from Mr. Solomon via e-mail that had been hand delivered to the Court yesterday (May 11, 2015).

Upon review of yesterday's letter to the Court, Mr. Solomon presents further legal arguments with foreign case law in furtherance of his proposed order. We disagree with his representations, and feel confident that the minute and oral record speaks for itself in this regard. His action is quite unorthodox in the context of the rules of this Court. It is clear that Mr. Solomon is raising new arguments in informal correspondence to this Court that were not raised during the hearing on April 22, 2015. It appears that this is being

¹ See e-mail to Joshua Hood, Esq. from Anthony L. Barney, Esq. dated May 4, 2015.

² See e-mail from Joshua Hood, Esq. to Anthony L. Barney, Esq. dated May 4, 2015.

done to buttress the unsupportable statements that have been included in his proposed order, as there could be no other logical reasoning for such an informal and unnoticed submission.

I respectfully defer to your discretion in this regard, but would request an opportunity to respond with proper notice to these new legal arguments, if necessary, prior to any further action in this regard to avoid any prejudice to the parties.

With the exception of Mr. Solomon, all other legal counsel (including those which did not object to the movant's petition) have signed our proposed order from the hearing on April 22, 2015.³ In order to be faithful to the Court's direction and record, our order is based upon both this Court's minutes and its transcript.⁴ In order to maintain the integrity of the record, our proposed order comes directly from this Court's own written minute and oral records, and we respectfully request that our proposed order be signed by the Court.

Sincerely,



ANTHONY L. BARNEY
Attorney at Law

cc: Mark A. Solomon, Esq. via e-mail at msolomon@sdfnlaw.com & Joshua M. Hood, Esq. via e-mail at jhood@sdfnlaw.com; Jonathan W. Barlow, Esq. via e-mail at jonathan@clearcounsel.com; Charlene N. Renwick, Esq. via e-mail at crenwick@lee-lawfirm.com; Department 26 via e-mail at Dept26LC@clarkcountycourts.us.

Attachments: E-mail Correspondence between Parties dated May 4, 2015; Proposed Order signed by Counsel; Proposed Order Drafted From Minutes and Transcript with Citations to Court Transcript.

³ Proposed Order signed by Counsel.

⁴ See Proposed Order Drafted From Minutes and Transcript with Citations to Court Transcript.

E-Mail Dated May 4, 2015



Anthony Barney

From: Joshua M. Hood [jhood@sdfnlaw.com]
Sent: Monday, May 04, 2015 10:20 AM
To: Anthony L. Barney; crenwick@lee-lawfirm.com; jonathan@clearcounsel.com;
abarney@anthonybarney.com; hroland@rolandlawfirm.com
Cc: Mark Solomon; Renee Guastaferrro; 'Ioudina, Tamara'; Terri Maxfield
Subject: RE: Beatrice Davis Family Heritage Trust


Thank you for providing this. I'll get back to you all as soon as I can regarding the proposed order.

Sincerely,

Joshua M. Hood

SOLOMON DWIGGINS & FREER, LTD.
Cheyenne West Professional Center | 9060 W. Cheyenne Avenue | Las Vegas, NV 89129
Direct: 702.589.3506 | Office: 702.853.5483
Facsimile: 702.853.5485
Email: jhood@sdfnlaw.com | Website: www.sdfnlaw.com
 www.facebook.com/sdfnlaw
 www.linkedin.com/company/solomon-dwiggins-&-freer-ltd-



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From: Anthony L. Barney [mailto:anthony@anthonybarney.com]
Sent: Monday, May 04, 2015 10:04 AM
To: Joshua M. Hood; crenwick@lee-lawfirm.com; jonathan@clearcounsel.com; abarney@anthonybarney.com;
hroland@rolandlawfirm.com
Cc: Mark Solomon; Renee Guastaferrro; 'Ioudina, Tamara'; Terri Maxfield
Subject: RE: Beatrice Davis Family Heritage Trust

Josh,

Here is the transcript that my office already ordered from the court.

Anthony L. Barney, Esq.
ANTHONY L. BARNEY, LTD.
Attorneys and Counselors at Law

5/12/2015

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From: Joshua M. Hood [mailto:jhood@sdfnlaw.com]
Sent: Monday, May 04, 2015 9:42 AM
To: Anthony L. Barney; crenwick@lee-lawfirm.com; jonathan@clearcounsel.com; abarney@anthonybarney.com; hroland@rolandlawfirm.com
Cc: Mark Solomon; Renee Guastaferrro; 'Ioudina, Tamara'; Terri Maxfield
Subject: RE: Beatrice Davis Family Heritage Trust

All:

I just wanted to touch base with you all to inform you that I am in the process of obtaining transcript and 4/22/15 hearing video to review the same in connection with your proposed order. As soon as I have had the opportunity to review the same, I will get back to you immediately with any suggested revisions or comments on the proposed order.

Sincerely,

Joshua M. Hood

SOLOMON DWIGGINS & FREER, LTD.
 Cheyenne West Professional Center | 9060 W. Cheyenne Avenue | Las Vegas, NV 89129
 Direct: 702.589.3506 | Office: 702.853.5483
 Facsimile: 702.853.5485
 Email: jhood@sdfnlaw.com | Website: www.sdfnlaw.com
 www.facebook.com/sdfnlaw
 www.linkedin.com/company/solomon-dwiggins-&-freer-ltd-



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5/12/2015

From: Anthony L. Barney [mailto:anthony@anthonybarney.com]
Sent: Wednesday, April 29, 2015 3:13 PM
To: Gaby Chavez; crenwick@lee-lawfirm.com; jonathan@clearcounsel.com; abarney@anthonybarney.com; hroland@rolandlawfirm.com
Cc: Mark Solomon; Joshua M. Hood; Renee Guastaferrro; 'Ioudina, Tamara'
Subject: RE: Beatrice Davis Family Heritage Trust

Dear Mark,

All four attorneys have reviewed your proposed order, and we would like to offer the following collective changes to the order. As a courtesy to you these changes have been made and prepared in a format that you may use to submit it to the court if you have no further changes. If you have any questions or opt not to include our requested changes, please let us know prior to the submission of any order, and we can circulate an agreeable order or, if necessary, a compelling order. It is my understanding that each of the four attorneys has reviewed the court transcript, and the proposed changes have been notated from the transcript in the proposed order (taken directly from the Court's minutes) with the accompanying basis from the transcript.

While I disagree with the Court's findings and orders, I believe that it is important that we work to keep the court record accurate with any proposed order. If you would like to discuss any changes, please do not hesitate to contact us.

Sincerely,

Anthony L. Barney, Esq.
 ANTHONY L. BARNEY, LTD.
 Attorneys and Counselors at Law

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From: Gaby Chavez [mailto:gchavez@sdfnlaw.com]
Sent: Friday, April 24, 2015 2:30 PM
To: crenwick@lee-lawfirm.com; jonathan@clearcounsel.com; abarney@anthonybarney.com; hroland@rolandlawfirm.com
Cc: Mark Solomon; Joshua M. Hood; Renee Guastaferrro
Subject: Beatrice Davis Family Heritage Trust

Good Afternoon Counsel,

As per Mr. Solomon's request, I am forwarding the attached correspondence regarding the above-referenced matter, which encloses an order for your review and signature.

Thank you,

Gaby Chavez
 Secretary to Mark A. Solomon and Dana A. Dwiggin


5/12/2015


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 www.linkedin.com/company/solomon-dwiggins-&-freer-ltd-



Proposed Order Drafted From Minutes and
Transcript with Citations to Court Record

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

In the matter of:

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

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

ORDER

This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19 and Caroline Davis's 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. Christopher D. Davis was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq., of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court

1 record, hearing oral arguments by both parties in this matter, being fully advised in the
2 premises, and for good cause appearing, the Court hereby finds and orders the following:

3 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
4 Nevada, and that everyone involved relied on this amendment as being proper.¹
5

6 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
7 at the time the first amendment was signed.²

8 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
9 action on behalf of the trust has been taken in Nevada.³
10

11 IT IS SO FOUND.

12 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
13 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
14 granted without prejudice.⁴

15 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
16 Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
17 more definite statement is filed.⁵
18

19 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
20 Confirm Dunham Trust Company as Directed Trustee is granted.⁶
21

22
23 ¹ Transcript, Page 42:11.

24 ² Transcript, Page 55:5.

25 ³ Transcript, Page 46:12; 49:18.

26 ⁴ Transcript, Page 55:10-12.

27 ⁵ Transcript, Page 54:2-4.

28 ⁶ Transcript, Page 54:5-6.

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
2 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
3 all information in his possession⁷ in his role as Investment Trust Advisor.⁸
4

5 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
6 Davis's Motion to Dismiss is denied.⁹

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
8 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.¹⁰
9

10 IT IS SO ORDERED, ADJUDGED AND DECREED.

11 DATED this ____ day of _____, 2015.
12
13
14
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18
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23
24

DISTRICT COURT JUDGE

25 _____
26 ⁷ Transcript, Page 55:2-4.

27 ⁸ Transcript, Page 54:23-24.

28 ⁹ Transcript, Page 53:21-23.

¹⁰ Transcript, Page 56:18-25; Page 57:1-2.

Proposed Order Signed by Counsel

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3 ROLAND LAW FIRM
4 2470 E. St. Rose Pkwy, Ste. 105
5 Henderson, NV 89074
6 Telephone: (702) 452-1500
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9 ANTHONY L. BARNEY, ESQ.
10 Nevada Bar No. 8366
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12 Nevada Bar No. 9754
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14 3317 W. Charleston Blvd., Suite B
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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

15 In the matter of:

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

Case No.: P-15-083867-T

Dept. No.: 26

Hearing Date: April 22, 2015

Hearing Time: 9:00 a.m.

20
21
22 ORDER

23 This matter came before the Court for hearing on the 22nd day of April, 2015 at 9:00
24 a.m., upon the Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP
25 19 and Caroline Davis's Petition to Assume Jurisdiction over the Beatrice B. Davis Family
26 Heritage Trust, Dated July 28, 2000, as Amended on February 24, 2014, to Assume Jurisdiction
27 over Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution
28

1 Trust Advisor, to Confirm Dunham Trust Company as Directed Trustee, and for Immediate
2 Disclosure of Documents and Information from Christopher D. Davis. Christopher D. Davis
3 was represented by Harriet Roland, Esq. of the Roland Law Firm and Anthony L. Barney, Esq.,
4 of the law office of Anthony L. Barney, Ltd., Caroline Davis was represented by Mark
5 Solomon, Esq., of the law firm of Solomon Dwiggin and Freer, Ltd.; Stephen K. Lehnardt was
6 represented by Jonathan W. Barlow, Esq. of the law office of Clear Counsel Law Group; and
7 Dunham Trust Company was represented by Charlene N. Renwick, Esq., of the law office of
8 Lee Hernandez Landrum & Garofalo. After reviewing the pleadings on file and in the court
9 record, hearing oral arguments by both parties in this matter, being fully advised in the
10 premises, and for good cause appearing, the Court hereby finds and orders the following:

13 IT IS FOUND that since the first amendment, Christopher has been directing the trust in
14 Nevada, and that everyone involved relied on this amendment as being proper.

16 IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed
17 at the time the first amendment was signed.

18 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
19 action on behalf of the trust has been taken in Nevada.

20 IT IS SO FOUND.

22 WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the
23 Petition to Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is
24 granted without prejudice.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
26 Assume Jurisdiction over Stephen K. Lehnardt as Distribution Trust Advisor is denied until a
27 more definite statement is filed.
28

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition to
2 Confirm Dunham Trust Company as Directed Trustee is granted.

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
4 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
5 all information in his possession in his role as Investment Trust Advisor.
6

7 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Christopher D.
8 Davis's Motion to Dismiss is denied.

9 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that upon agreement of
10 all parties, this Court will retain jurisdiction and all matters will be heard by the probate judge.
11


12 IT IS SO ORDERED, ADJUDGED AND DECREED.


13 DATED this ____ day of _____, 2015.
14
15

16 DISTRICT COURT JUDGE
17

18 Respectfully Submitted by the Following:

Approved as to Form and Content:

19 
20
21 HARRIET H. ROLAND, ESQ.
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23 ROLAND LAW FIRM
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25 Henderson, NV 89074
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Attorney for Stephen K. Lehnardt

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Attorneys for Dunham Trust Company

Approved as to Form and Content:

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JOSHUA M. HOOD, ESQ.

NV Bar No. 12777

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Attorneys for Caroline D. Davis

EXHIBIT E

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Attorney at Law
Licensed in Nevada and Idaho

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

Mary L. Martell, J.D.
Law Clerk

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Zachary D. Holyoak
Law Clerk

Neva Liebe
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www.anthonbarney.com

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office@anthonbarney.com

August 21, 2015

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

Re: The Beatrice B. Davis Family Heritage Trust; Case No. P-15-083867-T

SENT VIA HAND DELIVERY

Dear Mr. Hood,

My office is in receipt of Caroline's many recent filings regarding the above referenced matter. It is apparent from a review of these filings that these pleadings have provided the court with a number of misrepresentations. One misrepresentation in particular (explained below) will be the subject of our Motion for Sanctions Pursuant to N.R.C.P. 11 ("Motion for Sanctions") if all references are not promptly withdrawn.

Mr. Solomon claimed at the April 22, 2015 hearing ("the Hearing") that your firm was not served with CHRISTOPHER D. DAVIS' REPLY TO CAROLINE DAVIS' OPPOSITION TO HIS MOTION TO DISMISS PURSUANT TO NRCP (12)(b) AND NRCP 19 ("Reply") filed April 20, 2015. Based on this misrepresentation Mr. Solomon then claimed that the arguments regarding Tarja's beneficiary status and lack of consent were raised for the first time at the Hearing. In nearly all of your subsequent pleadings you have repeated these misrepresentations.¹ A review of the relatively simple Eighth Judicial District Court Rules ("EDCR") regarding electronic filing and service shows that the above statements are verifiably false.

EDCR rule 8.05(a) states: "All documents in the E-Filing System will be served through E-Service. Each party who submits an E-Filed document through the E-Filing System consents to electronic service pursuant to NRCP 5(b)(2)(D). *An E-Filed document accepted by the Clerk will be electronically served on all parties registered in that case through the E-Filing System.*" Additionally, in 2014 e-service became

¹ See: Objection to Petition filed July 31, 2015; Motion to Amend, filed August 10, 2015; Amendment and Supplement to Counterpetition for Sanctions, filed August 10, 2015; Motion to Hold Christopher D. Davis in Contempt, filed August 17, 2015; and Motion to Compel Harriet Roland, filed August 17, 2015.

mandatory in the Eighth Judicial District.² The rules also provide that except for a summons or subpoena, all other pleadings may be electronically served.³ EDCR rule 8.05(g) states that: "The electronic service of a pleading or other document *shall be considered as valid and effective service on all participants and shall have the same legal effect as an original paper document.*" Finally, electronic service is complete at the time of transmission.⁴

Mr. Hood, you and Mr. Solomon have represented to the court that you were not served with our Reply prior to the Hearing. However, the Reply was e-filed April 20, 2015. Our office received confirmation of the filing at 2:57 pm on April 20, 2015. According to the rules this document was electronically served on all parties registered in the case. You, Mr. Solomon and a legal assistant, Renee Guastafarro are all registered in this case.⁵

Your firm is required to e-file documents and as such has consented to electronic service. A reply is not excluded from the e-service requirements. Electronic service is valid service and has the same legal effect as the paper document. Therefore, your firm was served with the Reply on April 20, 2015.

Based on the foregoing information Mr. Solomon's assertion at the hearing and your continued assertions in your pleading that Tarja's beneficiary status was not raised prior to the hearing is false. Your firm had valid service of the pleading a full day and a half before the hearing. The Reply included complete arguments regarding Tarja's beneficiary status. In fact, after our subsequent review of the filings, it is now clear that your firm first noticed Tarja and did so in your Supplemental Certificate of Mailing filed April 8, 2015. Our Reply contained arguments regarding the Alaska Trustee, whose involvement has been called into question, and who we believe is a necessary party to this action for purposes of determining whether the terms of the Trust were followed, including but not limited to the change in trust situs. Therefore, I request that you withdraw any and all references, in any and all pleadings regarding a lack of service of the Reply as well as any statement claiming that the arguments contained in the Reply were not raised prior to the hearing. These misrepresentations were clearly made to gain an improper procedural and substantive advantage, and to improperly influence the court to discount our legal arguments.

Additionally, based on this letter, I request that you correct your sworn declaration attached to the Amendment and Supplement to Counter Petition for Sanctions and Petition for an Order Shortening Time dated August 4, 2015, wherein you claim, under penalty of perjury, that the order shortening time filed July 30, 2015 was not served

² See Administrative Order of the Eighth Judicial District, 14-2, dated May 8, 2014. Stating: "Therefore it is hereby ordered that service by electronic means, for documents identified by Rule 9 of N.E.F.C.R., will be mandatory in the Eighth Judicial District Court on June 1, 2014."

³ See Nevada Electronic Filing and Conversion Rules ("N.E.F.C.R.") Rule 9(a). See also EDCR rule 8.05 (d)

⁴ EDCR rule 8.06(d)

⁵ See attached Motion For Sanctions Pursuant to N.R.C.P. 11

1 and support, but only from his share, and only after his needs as a primary beneficiary are met
2 because she is not yet a primary beneficiary.⁵³

3 Because Tarja is entitled to receive current discretionary distributions as a secondary or
4 other beneficiary from Christopher's primary share, she is not entitled to such discretionary
5 distributions for health, education, maintenance, and support until after the Trustee considers the
6 needs of Christopher as the primary beneficiary.⁵⁴ Without acknowledging the first definition of
7 a "spouse" to qualify for primary beneficiary status, Caroline points to the remaining provisions
8 of Article Fourteen, Section 1, Paragraphs (j) and (a) which defines the second definition of the
9 term "spouse" to qualify to be added as a primary beneficiary.
10

11 Caroline's reference to Article Fourteen only strengthens the proper interpretation of the
12 FHT in this regard. Quotation marks are used around the term "spouse" in Article Fourteen to
13 demonstrate that it is a term of art as defined in Article Fourteen, requiring no further
14 definitional explanation unless such an additional definition is intended. However, Article
15 Eight, Section 3, Paragraph d. does just that in providing a third definition for what constitutes a
16 current spousal beneficiary entitled to distributions only from the share of a primary beneficiary.
17 This definition doesn't just state that the "spouse of a Primary Beneficiary is entitled to
18 distributions," as the reader would expect for a primary beneficiary spouse, but instead qualifies
19 the term "spouse" by further stating " the spouse of the Primary Beneficiary if the spouse is
20 living with the Primary Beneficiary."⁵⁵ This secondary or other beneficiary spouse has much
21 more limited discretionary rights than a primary beneficiary spouse, because this secondary or
22 other spouse (that is qualifying for primary status) only takes discretionary distributions for
23
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28 ⁵³ *Id.*

1 health, education, maintenance, and support from the share of the Primary Beneficiary and only
2 after the trust meets the needs of the Primary Beneficiary.⁵⁶ This secondary or other beneficiary
3 spouse does not receive distributions as an independent primary beneficiary as defined in the
4 second sentence in Article Fourteen, Section 1, Paragraph (j) (which is further modified by
5 Paragraph a. of the same section), because this spouse has not qualified as a primary
6 beneficiary.
7

8 Caroline argues that Article Fourteen, Section 1, Paragraph (j) (which refers to and
9 incorporates by reference Article Fourteen, Section 1, Paragraph (a)) imposes a ten year
10 requirement of marriage upon Tarja before she can be entitled to discretionary trust distributions
11 as a primary beneficiary. This is only partly correct in that beneficiaries do not receive “primary
12 beneficiary” status until the requirements of Article Three and Article Fourteen are met (which
13 could be less than ten years under an involuntary separation), but fails to completely address if
14 non-primary beneficiaries are entitled to limited discretionary distributions under Article Eight,
15 Section 3, Paragraph d. during the qualification period to become a “primary beneficiary” under
16 Article Fourteen, Section 1. Article Three, Section 1 defines who can become a primary
17 beneficiary, and Article Fourteen sets forth the qualification requirements to become a primary
18 beneficiary. However neither Article Three nor Article Fourteen address the discretionary
19 distributions made available to the spouse who is a secondary or other beneficiary that is in the
20 process of qualifying as a primary beneficiary under Article Eight, Section 3, Paragraph d.
21
22
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24

25 ⁵⁴ Trust, Article Eight, Section 3, Paragraph d. (Distributions shall only be made by my Trustee to a spouse or a
26 descendant of the Primary Beneficiary after considering the needs of the Primary Beneficiary of the trust share.”)

27 ⁵⁵ Trust, Article Eight, Section 3(d).

28 ⁵⁶ Trust, Article Fourteen, Section 1, Paragraph a. as referred to by Paragraph j.; See also Trust, Article 8, Section 3,
Paragraph d. (“Distributions shall only be made by my Trustee to a spouse or a descendant of the Primary
Beneficiary after considering the needs of the Primary Beneficiary of the trust share.”)

1 The purported trustee has even agreed that Tarja is a current discretionary beneficiary
2 entitled to discretionary distributions for health, education, maintenance and support, because
3 she is living with Christopher.⁵⁷ Tarja is a spouse that qualifies as a current beneficiary that
4 qualifies to receive current discretionary distributions only after the needs of the primary
5 beneficiary are met. Notably, if she was already a primary beneficiary, her needs would not be
6 secondary to those of the primary beneficiary in providing for her health, education,
7 maintenance, and support. Reading the FHT in any other way creates internal inconsistencies or
8 rather repugnant provisions within the body of the FHT.

9
10
11 Caroline seems to fail to understand or acknowledge that all distributions under the
12 terms of the FHT at this time are discretionary for both primary and secondary or other
13 beneficiaries. Caroline's simplistic reading of the FHT simply does not rest upon an entire
14 reading of the FHT as will be discussed further below.

15
16 **d. Reasons for which there are qualifying provisions to become a primary**
17 **beneficiary under the terms of FHT.**

18 It is also helpful to understand the purpose of the qualifying period to become a primary
19 beneficiary, which is to ensure that trust assets are not diverted surreptitiously through an illicit
20 relationship to the detriment of the qualified primary beneficiaries. This is precisely the reason
21 that Beatrice required that any discretionary distributions to a secondary or other beneficiary for
22 health, education, maintenance and support be made solely from the primary beneficiary's share
23 and not the primary beneficiaries shares, and only after the primary beneficiary's needs had
24

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26
27 ⁵⁷ See Response of Dunham Trust Company dated July 29, 2015 at Page 3:6-8 (In light of Tarja Davis's recently
28 filed Declaration, it appears that the prerequisite consent of all beneficiaries of the Trust was not obtained by the
Trust Protector in his effort to change the Trust situs from Alaska to Nevada.) (Although Christopher agrees with
Dunham Trust Company's analysis that Tarja is a beneficiary, he disputes Dunham Trust Company's role under the
purported first Amendment to the FHT Trust)

1 already been met. This is evidenced by the extensive provisions of Trust, Article Eight, Section
2 3, paragraph d.

3 While the period of ten years can be shortened through involuntary separation, this
4 protection for the primary beneficiaries' shares is evidenced by the extensive after-born child
5 provisions contained in Article Fourteen, Section 1, paragraph a., and the requirement that such
6 an after born child be the product of the Article 14, Section 1, paragraph (j) qualified marital
7 union. The qualification period for becoming a primary beneficiary is unnecessary and
8 repugnant if the spouse of primary beneficiary is only ever entitled to a secondary or derivative
9 share for health, education, maintenance, support from the primary share of a primary
10 beneficiary, and only after the primary beneficiary's needs are met. In other words, the
11 qualification period in Article Fourteen, Section 1, Paragraph (j) is only necessary to protect the
12 FHT from someone improperly receiving a primary share of the FHT as primary beneficiary
13 before they have qualified for it.

14 As discussed previously, Tarja is not required to be a primary beneficiary to receive
15 current discretionary distributions for health, education, maintenance and support as the spouse
16 living with the primary beneficiary derived solely from the primary beneficiaries share and only
17 after the trustee has met the needs of primary beneficiary. There is no risk to the assets of the
18 FHT in providing, as Article Eight Section 3, Paragraph d. does, limited discretionary
19 distributions to Tarja under these circumstances. This is the only reading of the FHT that makes
20 the qualification period a valid protection for the assets of the FHT, and gives proper meaning to
21 the qualification period for adding new primary beneficiaries.

22 Article Eight, Section 3 of FHT also contains provisions for establishing sub trusts for
23 the primary beneficiaries. This section states that further sub trusts can be created for shares of
24

1 other beneficiaries and those added pursuant to the trust terms. This section is only reconcilable
2 if the FHT contains provisions for creating a qualified or vested primary beneficiary as
3 explained above. Other beneficiaries and later added beneficiaries become the primary
4 beneficiaries of the FHT sub trust. This again shows the intent to create a primary beneficiary
5 status for future beneficiaries under the terms of the FHT. This further supports the position that
6 the Article Fourteen, Section 1, Paragraph j. defines "spouse" for the purpose of creating a
7 primary beneficiary status, which does not apply to a secondary or other beneficiary spouse then
8 living with a primary beneficiary as in the case of Tarja.
9

10
11 **e. Tarja is eligible to receive distributions from FHT and is an interested**
12 **party; therefore, without her consent the change in situs is invalid.**

13 Although the FHT does not clearly outline what is meant by "mandatory distributions"
14 and "discretionary distributions" as all distributions are discretionary, there is clearly a
15 distinction when one considers the nature of a primary and secondary beneficiary set forth under
16 the terms of the FHT. The term "primary beneficiary" is also undefined in the FHT. Although,
17 the term "secondary beneficiary" is never used, it is clear that one who is not a "primary
18 beneficiary" is a "secondary or other beneficiary." It is clear that an after born or adopted child
19 is a secondary beneficiary along with a spouse living with the primary beneficiary, because the
20 after born or adopted child's trust share must be retained by the Trustee until he or she qualifies,
21 and the after-married spouse takes a secondary or share during the period in which he or she is
22 qualifying as a primary spousal beneficiary while living with a primary beneficiary. Here the
23 term "primary beneficiary" refers to those beneficiaries entitled to receive something more than
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1 discretionary distributions for health, education, maintenance and support from the FHT. This is
2 evidenced by the trust's reference to primary beneficiaries receiving a "share" of the trust.⁵⁸

3 Those entitled to receive discretionary distributions for health, education, maintenance,
4 and support are secondary beneficiaries, their distribution is derived solely from the share of a
5 primary beneficiary, because they don't have their own share until they properly qualify as a
6 primary beneficiary. Therefore, Article Fourteen Section 1, Paragraph j. creates a primary
7 beneficiary status whereas Article Eight, Section 3, Paragraph d. authorizes distributions to a
8 secondary or other beneficiary independent of any qualifying period, but subject to a more
9 narrow and limited standard.
10
11

12 Tarja was legally married to, and then living with Christopher D. Davis at the time of the
13 February 24th, 2014 amendment⁵⁹ and therefore was eligible to receive discretionary
14 distributions from the FHT for health, education, maintenance and support. She is a beneficiary
15 eligible to receive distributions and would be an interested party in all actions involving the
16 FHT.
17

18 Tarja's consent would have been necessary to change the situs of FHT. Because Tarja
19 did not provide her consent, the FHT provision requiring the consent of all beneficiaries then
20 eligible to receive distributions to enable a change in trust situs was not met.⁶⁰ Therefore, the
21 situs of the FHT remains in Alaska and this court remains without proper jurisdiction over FHT.
22
23

24 ⁵⁸ Trust, Article Eight, Section 3, opening paragraph stating ("Except to the extent, if any, otherwise provided by
25 more restrictive provisions contained in subsequent sections of this Article with respect to a particular trust share,
26 each trust share created for a beneficiary pursuant to Section 1 of this Article shall be held, administered, and
27 distributed in accordance with the following directives. During the lifetime of the named beneficiary of any share,
such named beneficiary shall be the Primary Beneficiary of such share; thereafter, if the share is subdivided into
separate shares for my descendants or otherwise, the person for whom the separate share is established shall be the
Primary Beneficiary thereof.")

28 ⁵⁹ See Caroline's Objection dated July 31, 2015 at Exhibit 3 re: Affidavit of Tarja Davis dated July 24, 2013.

⁶⁰ Trust, Article Fourteen, Section 6, Paragraph i (Except as expressly provided herein, the situs of this agreement
or any subtrust established hereunder may be changed by the unanimous consent of all of the beneficiaries then
eligible to receive mandatory or discretionary distributions of net income under this agreement or such subtrust,

1 **B. This Court does not have proper jurisdiction over any of the parties.**

2 *In rem* jurisdiction is significantly different from *in personam* jurisdiction.⁶¹ *In*
3 *personam* jurisdiction allows the court to “impose a personal obligation on an individual.”⁶² *In*
4 *rem* jurisdiction provides the court with only the power to adjudicate title to or ownership of
5 property without the liability to the property owner.⁶³ In order to obtain *in personam* jurisdiction
6 over a non-resident party the court must comply with Nevada’s long arm statute found in NRS
7 14.065. NRS 14.065 requires personal service of a summons in accordance with NRCP 4, and
8 adherence to the requirements of federal due process.
9

10 Due process limitations on the jurisdiction of the court serve two important functions.
11 “It protects the defendant against the burdens of litigating in a distant or inconvenient forum.
12 And it acts to ensure that the States, through their courts, do not reach out beyond the limits
13 imposed on them by their status as coequal sovereigns in a federal system.”⁶⁴ Finally, “a
14 judgment rendered in violation of due process is void in the rendering State and is not entitled to
15 full faith and credit elsewhere.”⁶⁵
16
17

18 Caroline has never personally served Christopher with a summons. She has not even
19 addressed due process requirements for the court to assume personal jurisdiction over
20 Christopher. She admits that she “has not requested this court to assume jurisdiction over
21 Christopher, individually, or as Trustee of the Revocable Trust”⁶⁶
22

23
24 with the consent of any then-acting Protector and the Trustee thereof, which shall be given only after Trustee has
25 obtained advice from counsel as to the tax and other consequences of a change in situs. (Emphasis added).

26 ⁶¹ *Shaffer v. Heitner*, 433 U.S. 186, 199, (U.S. 1977).

27 ⁶² *Id.* stating: “If a court’s jurisdiction is based on its authority over the defendant’s person, the action and judgment
28 are denominated “in personam” and can impose a personal obligation on the defendant in favor of the plaintiff.”

29 ⁶³ *Id.* stating: “If jurisdiction is based on the court’s power over property within its territory, the action is called “in
30 rem” or “quasi in rem.” The effect of a judgment in such a case is limited to the property that supports jurisdiction
31 and does not impose a personal liability on the property owner, since he is not before the court.”

32 ⁶⁴ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292, (U.S. 1980)

33 ⁶⁵ *Id.* At 291

34 ⁶⁶ Caroline’s Objection filed 7/31/15 at Page 17:15-17.

1 Caroline, however, continues to improperly seek information from Christopher which is
2 unrelated to either his purported role as investment trust advisor or his purported role as
3 manager of FHT Holdings, LLC. Even if this court had personal jurisdiction over FHT
4 Holdings, LLC, which it does not, "personal jurisdiction over a limited liability company does
5 not automatically extend to its members."⁶⁷ In other words, "membership in a business entity is
6 not sufficient in and of itself to confer personal jurisdiction."⁶⁸ This jurisdictional principle also
7 extends to officers and employees of a corporation.⁶⁹ All parties – members, directors, officers,
8 employees – must have the requisite minimum contacts with the forum state independently of
9 the limited liability company.
10
11

12 Although heavily criticized by other courts and the Nevada federal district court as a
13 departure from the well-established *Shaffer v. Heitner* United States Supreme Court decision,
14 the Nevada Supreme Court has allowed a district court to exercise personal jurisdiction over an
15
16

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18 ⁶⁷ *Shaffer v. Heitner*, 433 U.S. 186, 97 S. Ct. 2569, 53 L. Ed. 2d 683 (1977) (finding membership in a business
19 entity is not sufficient in and of itself to confer personal jurisdiction); *Mountain Funding, LLC v. Blackwater*
20 *Crossing, LLC*, 2006 U.S. Dist. LEXIS 96763, *7-8, 2006 WL 1582403 (W.D.N.C. June 5, 2006); see also *Lasalle*
21 *Bank N.A. v. Mobile Hotel Props., LLC*, 274 F.Supp.2d 1293, 1300 (S.D. Ala. 2003); *Graymore, LLC v. Gray*,
22 2007 U.S. Dist. LEXIS 25882, *23, 2007 WL 1059004 (D. Colo. Apr. 6, 2007) ("[p]ersonal jurisdiction over a
23 [LLC] does not automatically extend to its members")

24 ⁶⁸ *Id.*

25 ⁶⁹ *Schmitz v. Xiqing Diao*, 2013 U.S. Dist. LEXIS 160685, *25, 2013 WL 5965882 (D. Wyo. Nov. 7, 2013)
26 (Individual Defendants' positions as directors and/or officers of a Wyoming corporation and their actions as such
27 simply are not enough to justify forcing them before a Wyoming court); *In re Terrorist Attacks on Sept. 11, 2001*,
28 718 F. Supp. 2d 456, 471, 2010 U.S. Dist. LEXIS 69371, *77-78 (S.D.N.Y. 2010) ("Jurisdiction over a
corporation's board member, officer or employee, in his or her individual capacity, must be premised on the
defendant's own personal contacts with the forum, and not the acts and/or contacts carried out by the defendant in
his or her corporate capacity") citing, *In re AstraZeneca Sec. Litig.*, 559 F.Supp.2d 453, 467 (S.D.N.Y. 2008) ("A
person's status as a board member is not alone sufficient to establish jurisdiction ..." (citations omitted), *aff'd sub*
nom.; *State Univs. Ret. Sys. of Illinois v. Astrazeneca, PLC*, 334 Fed.Appx. 404 (2d Cir. 2009); *In re Alstom SA Sec.*
Litig., 406 F.Supp.2d 346, 398 (S.D.N.Y. 2005) ("Jurisdiction over the representatives of a corporation 'may not be
predicated on jurisdiction over the corporation itself, and jurisdiction over the individual officers and directors must
be based on their individual contacts with the forum state.' ") (quoting *Charas v. Sand Tech. Sys. Int'l. Inc.*, 1992
U.S. Dist. LEXIS 15227, 1992 WL 296406, at *4-*5 (S.D.N.Y. Oct. 7, 1992)); *Pilates, Inc. v. Pilates Inst., Inc.*,
891 F.Supp. 175, 180-181 (S.D.N.Y. 1995) ("[I]t is well established that individual officers and employees of a
corporation are not automatically subject to personal jurisdiction in New York simply because a court can exercise
jurisdiction over the corporation.").

1 officer or director that has "purposefully directed harm towards a Nevada citizen."⁷⁰ Even with
2 this disputed decision, Caroline has failed to allege or make a claim that Christopher has
3 purposefully directed harm toward FHT Holdings, LLC as either an officer or director, to
4 warrant the exercise of personal jurisdiction in this way. Furthermore, she does not claim that
5 she is a Nevada citizen that would be harmed. Indeed, Caroline concedes she is only requesting
6 information and documents (i.e. not making a claim) and concedes she is not seeking personal
7 jurisdiction over Christopher. Additionally, personal service has not been effectuated on
8 Christopher to allow the court to assume personal jurisdiction over him pursuant to this Nevada
9 case.
10
11

12 Caroline continues to pursue information from both the current trustee and Christopher
13 regarding accounts, records, and acts of the previous trustees, Alaska USA and Alaska Trust
14 Company. Despite her acknowledgement that jurisdiction must be *in rem* to even move forward
15 in these proceedings and her admission that she has not requested *in personam* jurisdiction,
16 Caroline continues to demand information she could only obtain if this court properly assumed
17 *in personam* jurisdiction over the Alaskan Trustees and Christopher.
18

19 Caroline indicates that she does not seek jurisdiction over Christopher personally, but yet
20 she seeks documents and information that is only appropriate if *in personam* jurisdiction is
21 obtained. For example, prior to the issuance of this court's order, Caroline issued defective
22
23

24 ⁷⁰ *Consipio Holding, BV v. Carlberg*, 282 P.3d 751, 755, 2012 Nev. LEXIS 85, *7-8, 128 Nev. Adv. Rep. 43, 2012
25 WL 3241913 (Nev. 2012), but see *Andes Indus. v. Chen Sun Lan*, 2014 U.S. Dist. LEXIS 163571, *17 (D. Nev.
26 Nov. 19, 2014) ("Like the district court in *Schmitz v. Xiqing Dio*, the undersigned believes that *Consipio Holding, BV v. Carlberg* is contrary to the United States Supreme Court's decision in *Shaffer v. Heitner*, and that a court does
27 not have personal jurisdiction over nonresident shareholders based solely on the fact that the plaintiff is
28 incorporated in the forum.) Nevada has not allowed personal jurisdiction, however, over parent corporations when
their subsidiaries are located in Nevada – See *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d
1152, 1154, 2014 Nev. LEXIS 48, *1, 130 Nev. Adv. Rep. 40, 2014 WL 2428848 (Nev. 2014) (Corporate entities
are presumed separate, and thus, the mere existence of a relationship between a parent company and its subsidiaries
is not sufficient to establish personal jurisdiction over the parent on the basis of the subsidiaries' minimum contacts
with the forum state).

1 subpoenas dated June 8th, 2015 which were later discovered by Christopher's counsel.⁷¹ These
2 subpoenas requested information regarding among other things: the Beatrice B Davis Revocable
3 living trust; The Davis Family Office; Companies owned by the Beatrice B. Davis revocable
4 living trust; Any companies which Christopher D. Davis is the owner, manager, director, or
5 officer which have a business or financial relationship with the Beatrice B. Davis Revocable
6 Living Trust; promissory notes dated prior to Christopher's alleged appointment as investment
7 trust advisor; and any loans currently held by the Beatrice B. Davis Family Heritage Trust.
8 None of these requests can be justified by *in rem* jurisdiction over the current trustee or even
9 any purported *in rem* jurisdiction regarding Christopher's alleged role as investment advisor.
10

11
12 After the June 8th subpoenas, this Court issued its order which limits Christopher's
13 disclosure of information and documentation to such information and documentation that are in
14 his possession [...] custody or control *in his role as investment trust advisor and [in] [or]*
15 *manager of FHT holdings LLC*.⁷² Despite the narrow language of this order, on June 25, 2015,
16 Caroline re-issued subpoenas requesting the same information she sought in her original
17 defective subpoenas.⁷³ Caroline attempts to justify her requests for information by asserting that
18
19

20
21 ⁷¹ See Subpoena Duces Tecum issued June 8, 2015 on wiznet. The subpoenas were defective because they sought
22 production on May 18, 2015, (prior to the issuance of the subpoenas) and were electronically served in
23 contravention of Nevada Electronic Filing and Conversion Rules ("NEFCR") 9.

24 ⁷² See Order signed May 19, 2015 and dated June 24, 2015 (Unfortunately, the actual wording of the order appears
25 to read one of several ways depending on the way in which one interprets the interlineations set forth by the Court
26 order. These are as follows:

27 "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for Immediate Disclosure of
28 Documents and Information from Christopher D. Davis is granted as to all information in his possession custody or
control in his role as Investment Trust Advisor, and (in) (or) his role as manager of the FHT Holdings."

The other reading if one interprets the mark between "possession" and "in" is a comma and not a "line" directing
the reader to the above interlineation, the following interpretation is:

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for Immediate Disclosure of
Documents and Information from Christopher D. Davis is granted as to all information in his possession, custody or
control in his role as Investment Trust Advisor, and (in) (or) his role as manager of the FHT Holdings."

The greatest difficulty in interpretation arises with regard to whether the word "in" or "or" is the actual word of the
court between the words, "and," and "his role as manager of FHT Holdings." The reader is simply left to guess at
the correct interpretation.)

⁷³ See Subpoena Duces Tecum dated June 25, 2015 on wiznet.

1 based on *in rem* jurisdiction, Christopher cannot be made to account for information he obtained
2 as a beneficiary and at a time when he held no fiduciary duty to the FHT. Caroline would also
3 have this Court require Christopher to produce information that is in the control of the previous
4 Alaskan Trustees simply because he may have received some of the information as a beneficiary
5 or, even more concerning, because she has failed to add the Alaskan Trustees as necessary
6 parties to this action. Caroline's actions are clearly improper.

8 Caroline's requests would require the court to exercise *in personam* jurisdiction over
9 Christopher which Caroline now acknowledges is not applicable.⁷⁴ Despite her recent
10 acknowledgment that *in personam* jurisdiction is not applicable; at the hearing Caroline argued
11 exactly the opposite. Specifically, her counsel said, "164.010 is met. There's *in personam*
12 jurisdiction over these people that are in front of you."⁷⁵ Again Caroline's counsel claimed,
13 "There's no question we have *in personam* jurisdiction."⁷⁶ There surely is a question whether
14 this Court has *in personam* jurisdiction and the evidence suggests that it does not.

17 As conceded in Caroline's Objection and as discussed below, any jurisdiction exercised
18 by this court is limited to *in rem* jurisdiction. Caroline's Objection and her motion to amend
19 both assert that *in rem* jurisdiction is the proper jurisdiction. Therefore, to the extent that
20 Caroline's pleadings seek to impose a personal obligation on Christopher, they are improper. In
21 fact, without *in personam* jurisdiction, any order by this court which purports to assess personal
22 liability on Christopher or requires disclosure of information or documentation which the court
23

26 ⁷⁴ See Objection to Petition for Reconsideration of the order dated May 19, 2015 re: petition to assume jurisdiction
27 over the Beatrice B. Davis Family Heritage Trust dated July 28, 2000, as amended on February 24, 2014, to assume
28 jurisdiction over Christopher D. Davis as investment trust advisor, 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; and counter petition for sanctions at Page 22:15-21

⁷⁵ See Transcript page 26 lines 7-8

⁷⁶ *Id* at lines 12-13

1 does not have *in rem* jurisdiction over is void and unenforceable. Therefore, the Court must
2 reconsider the May 19, 2015 Order.

3 C. Neither NRS 164.010 nor NRS 163.5555 provide *in personam* jurisdiction over
4 Christopher D. Davis.
5

6 NRS 164.010 provides jurisdiction over a trust as a proceeding *in rem*. This means that
7 the trust is the thing or the *res* over which the court may exercise power.⁷⁷ As is well
8 established, a trustee may be made to account for current trust property over which the trustee
9 has control; however, the court cannot require disclosure of information from or account for a
10 previous trustee.⁷⁸
11

12 The role of trust advisor derives its powers from the role of trustee and has a smaller
13 subset of the duties and powers of a trustee.⁷⁹ As such, NRS 163.5555 must be read in
14 conjunction with NRS 164.010. Jurisdiction based on acceptance of the role of an investment
15 trust advisor is limited by NRS § 163.5555 to actions arising out of a decision made by the
16 advisor. This means that the court's jurisdiction based on NRS 163.5555 is strictly limited to the
17 *res* which arises out of a decision made by a trust advisor.
18

19 NRS 163.5555 does not authorize personal jurisdiction – it is derived from *in rem*
20 jurisdiction over the property which is under a trust advisors control based on decisions made by
21 the advisor in that role. For this reason, “a trust protector or a trust adviser may be made a party
22
23
24
25

26 ⁷⁷ See *Shafer*, supra at footnote 57

27 ⁷⁸ *In re Mashburn Marital Trust*, 924 So. 2d 242, 246, (La.App. 1 Cir. Dec. 29, 2005) “We also can find no
28 authority, statutory or otherwise, which requires a successor trustee or trustees to provide an annual account for the
administration of a previous trustee.”

⁷⁹ *Wilmington Trust Co. v. Stuart*, 1983 Del. Ch. LEXIS 524, *25 (Del. Ch. July 19, 1983), describing a trust
advisor as a “quasi-trustee”.

1 to an action or proceeding arising out of a decision or action of the trust protector or trust
2 adviser.”⁸⁰

3
4 Conversely, a trust advisor may not be made a party to an action which does not arise
5 out of a decision made by the advisor in that role. Without establishing *in personam* jurisdiction
6 over the trust advisor by personal service of process, NRS 163.5555 grants only *in rem*
7 jurisdiction over the property affected by the trust advisor’s decisions or actions.

8
9 Caroline implies that NRS 163.5555 grants *in personam* jurisdiction allegedly based on
10 the language that “the person submits to the jurisdiction of the courts of this State,” by accepting
11 an appointment as Trust advisor. However, even if a trust advisor submits to the jurisdiction of
12 the court, the court may not exercise *in personam* jurisdiction without proper service of process.
13 To find *in personam* jurisdiction based on NRS 163.5555 where there has been no personal
14 service would be clearly unconstitutional.⁸¹

15
16 Article Eleven, Section 7 of the FHT states: “No successor Trustee shall be required to
17 examine the accounts, records, and acts of any previous Trustees.” The position of trust advisor
18 derives its powers from the position of trustee, therefore no trust advisor shall be required to
19 examine or account for the actions of a previous trustee. Any attempt to coerce disclosure of
20 information from Christopher which is not based on a decision or action taken by him as trust
21 advisor is an attempt to exercise *in personam* jurisdiction over him and is unconstitutional.

22
23 Christopher was allegedly appointed as investment trust advisor on February 24, 2014.
24 Since that date approximately \$25,000.00 has been received and/or distributed from the FHT.
25 Caroline’s original petition sought information regarding all loans made from the Ashley
26

27
28 ⁸⁰ NRS 163.5555

⁸¹ See *World-wide Volkswagen* supra at footnote 60.

1 Cooper policy not just those made after Christopher's appointment — approximately 99% of
2 which were done during the trusteeship of the Alaskan Trustees.

3 Indeed, Caroline has issued multiple subpoenas attempting to gather information
4 regarding the previous loans as well as Christopher's personal estate plans and other entities
5 which have no relation to Christopher's role as Investment Trust Advisor.⁸² Christopher asserts
6 that even if this Court finds the first amendment to be valid, which is clearly contrary to the
7 weight of all of the evidence, it can only require Christopher to produce information or
8 documentation in his role as investment trust advisor for his limited actions arising out of his
9 limited decisions in that role. Likewise, if this Court were to establish that Christopher owed
10 fiduciary duties to the FHT those duties did not exist prior to February 24, 2014; therefore, any
11 information prior to February 24, 2014, must be obtained from the Alaskan Trustees. Caroline's
12 requests for information in Christopher's possession not based on his alleged role as investment
13 trust advisor can only be ordered through *in personam* jurisdiction, which this Court does not
14 have.
15

16 Additionally, Caroline has not alleged that any money has been distributed based on a
17 decision made by Christopher as an investment trust advisor. If this Court is requiring that
18 Christopher produce information and documentation for any decisions made outside of his role
19 as an investment trust advisor, then the order is clearly erroneous. Most importantly, this court
20 has made no finding that this action arises out of any decisions made by him in his role as
21 investment trust advisor. Any attempt to gain access, through Christopher, to distributions made
22 during the Alaska trustees' tenure is beyond this court's jurisdiction based on 163.5555 and the
23 terms of the FHT.
24
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⁸² See Subpoena dated June 25, 2015.

1 In order for this court to exercise any jurisdiction regarding Christopher Davis's alleged
2 role as trust advisor, pursuant to NRS 164.010 or NRS 163.5555, it must make a finding that
3 this action arises out of decisions made by Christopher as investment advisor. No such finding
4 has been made and no such allegations have been pled. Therefore, this court does not have *in*
5 *personam* jurisdiction over Christopher to force him to produce documents and information
6 outside the scope of his role as an investment advisor. The May 19, 2015 Order must be
7 reconsidered.
8

9
10 D. Caroline cannot assert a claim against a party over which this Court does not have
11 *in personam* jurisdiction, such as equitable estoppel.

12 Caroline raises an equitable estoppel argument against Christopher for acts that allegedly
13 occurred while he was merely a beneficiary of FHT. First, because this court does not have *in*
14 *personam* jurisdiction over Christopher as discussed above, they cannot provide relief for this
15 claim being raised against him, when he clearly was acting only as a beneficiary.⁸³ Therefore,
16 Caroline's requests in this regard are without merit.
17

18 Particularly, she argues that Christopher is equitably estopped from disputing the change
19 in situs of the FHT, because he was allegedly aware of a legal opinion, while failing to
20 acknowledge that it was the duty of the trustee to secure a legal opinion prior to any change in
21 situs. When she had the opportunity to get a sworn statement from the Ms. Tempel concerning
22 whether or not the Alaskan Trustees obtained an independent opinion or even bothered to rely
23 upon a second hand opinion from Mr. Brislawn or Mr. Lehnardt, Caroline failed to provide any
24 sworn statements. Instead, Caroline argues for pages concerning inferior evidences of an
25
26

27
28 ⁸³ See Caroline's Objection filed 7/31/15 at Page 13:15-16, wherein her requests for estoppel are when the situs transfer occurred, when Dunham Trust was appointed and when Christopher was appointed as investment trust advisor, which all clearly took place when Christopher was a beneficiary.

1 alleged opinion obtained by Mr. Lehnardt, the trust protector and not the trustee, without simply
2 providing the court with an opinion! Under Nevada law, it must be presumed that in the
3 absence of such an independent legal opinion being presented to the Court, it does not really
4 exist.⁸⁴

5
6 It would be impossible for Christopher and the other beneficiaries to be apprised of the
7 true facts when Christopher has sworn that, "While I was aware of Stephen Lehnardt's efforts to
8 change the situs of the Trust to Nevada, at no time did I receive independent legal advice
9 regarding the legal effects of a change in situs or my appointment as investment trust advisor.
10 At no time was I made aware that an opinion of counsel had been provided to Mr. Lehnardt,
11 Alaska USA, or Dunham Trust Company. I conveyed to Mr. Barney that no opinion of counsel
12 had been provided to myself or the other beneficiaries of which I am aware."⁸⁵

13
14 It is clear that Christopher did not understand the true state of facts surrounding the
15 change in trust situs, or the role of an investment trust advisor. Furthermore, in light of the lack
16 of independent legal advice, it is clear that Christopher would not have understood the legal
17 effect of any authority and/or power of the Alaska Trustee retained after their purported
18 resignation. Even Caroline, like Christopher, appears to concede that role of investment trust
19 advisor is not clearly understood by her, from a legal perspective.⁸⁶

20
21 Most importantly, Caroline brings a claim of equitable relief or equitable estoppel
22 attempting to restrain Christopher from arguing against the change in situs when this was a
23 period in which he was acting solely as a beneficiary. Therefore, Caroline would need to bring
24 her claim against Christopher in his individual capacity, which, again, would require personal
25

26
27
28 ⁸⁴ NRS 47.250 (4) Disputable presumption is one where higher evidence would be adverse from inferior being produced; See also NRS 47.250 (3) which mandates that evidence willfully suppressed would be adverse if produced.

1 service. No finding of service, minimum contacts, or *in personam* jurisdiction was found or
2 ordered by this Court. Caroline admits that she has not requested this Court to assume
3 jurisdiction over Christopher individually.⁸⁷ Therefore, Caroline's requests for relief must be
4 denied.
5

6 **E. The Court cannot provide relief on an alter ego theory of liability where there has**
7 **been no proper finding of jurisdiction.**

8 Caroline now raises an alter ego theory of liability or claim for relief to have this Court
9 pierce the corporate veil of FHT Holdings, LLC, and obtain documents from a manager of this
10 limited liability company. However, there continues to be jurisdictional defect that exists. Just
11 because the court may have personal jurisdiction over a parent company, does not mean that the
12 court has jurisdiction over the alleged alter ego.⁸⁸ The alter ego defendants have "a
13 constitutionally protected liberty interest in not being subject to binding judgments of a forum to
14 which they have no meaningful contacts, ties, or relations."⁸⁹
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20 ⁸⁵ See Declaration of Christopher D. Davis dated August 15, 2015.

21 ⁸⁶ *Id.*; See also Caroline's Objection filed 7/31/15 at Page 14:4-7.

22 ⁸⁷ Caroline's Objection filed 7/31/15 at Page 17:15-17.

23 ⁸⁸ *RMS Titanic, Inc. v. Zaller*, 978 F. Supp. 2d 1275, 1302, 2013 U.S. Dist. LEXIS 149301, *55-57, 2013 WL
24 5673523 (N.D. Ga. 2013), citing, *In Home-Stake Prod. v. Talon Petroleum*, 907 F.2d 1012, 1021 (10th Cir.1990),
25 (The Tenth Circuit concluded that a controlling parent's contacts with the forum could not be imputed to its
26 subsidiaries for personal jurisdiction purposes based on an alter ego theory stating, "When one defendant
27 completely controls another, the latter's contacts with the forum may fairly be imputed or attributed to the former. .
28 . . In such situations, attribution of contacts to the [controlling] individual defendant merely reflects the reality that,
although the contacts were ostensibly those of the corporation, the true actor was the individual. The same situation
obtains in those cases holding a corporate parent to answer for conduct within the forum carried out by an alter ego
subsidiary. . . But the rationale of these cases does not support the proposition that, because the court has jurisdiction
over a parent corporation or dominating individual, without more, it has jurisdiction over the alter ego corporation.
The dominated corporation does not direct and control its dominating corporate or individual alter ego.
Accordingly, it is unfair to impute to the dominated corporation the forum contacts of its alter ego. . . [The alter
ego defendants] have, as much as any other defendant, a constitutionally protected liberty interest in not being
subject to the binding judgments of a forum with which [they have] established no meaningful contacts, ties, or
relations.)

⁸⁹ *Id.*

1 Interestingly, from the outset, Caroline has contended that she simply is requesting
2 documents, when this clearly is not the case. She is making claims against parties and entities
3 over which this Court clearly does not have jurisdiction.
4

5 This Court made no finding justifying jurisdiction over Christopher Davis as manager of
6 FHT Holdings LLC. There was no finding that a summons was served or personal service was
7 provided to Christopher Davis as a manager of FHT Holdings, LLC. There was no finding that
8 the registered agent or the Trustee had been provided with a summons for this claim to be able
9 to defend against it, although FHT is allegedly the owner of FHT Holdings, LLC. The
10 assumption of jurisdiction over Christopher Davis or any manager, owner or officer of FHT
11 Holdings, LLC is clear error, unless and until proper service has been effectuated and
12 jurisdiction is found to be proper afterward.
13

14 Even assuming *arguendo* that Caroline establishes jurisdiction based on NRS 163.5555
15 over Christopher, this does not justify jurisdiction over Christopher as manager of FHT
16 Holdings LLC. Essentially, Caroline seeks, in practice, to use the relaxed jurisdictional
17 standards of NRS 164.010 and 163.5555 to obtain jurisdiction over Christopher personally even
18 though she admits that she has not requested for this court to take personal jurisdiction over
19 Christopher.⁹⁰ As discussed above, NRS 163.5555 extends jurisdiction only regarding actions
20 taken or decisions made by the trust advisor and would not extend jurisdiction to cover other
21 roles fulfilled by the trust advisor such as the role of manager of an LLC owned by the FHT.
22 Alleged jurisdiction over a trust advisor does not unravel the normal requirements of personal
23 jurisdiction over that same person who is serving in an entirely different capacity. The Court
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28 ⁹⁰ Caroline's Objection filed 7/31/15 at Page 17:15-17.

1 must then engage in an inquiry whether Christopher has sufficient minimum contacts with the
2 state to justify jurisdiction over him as *manager*, not owner of the LLC.

3 Notably, Caroline urges the court to disregard the corporate form of FHT Holdings,
4 LLC, and essentially pierce the corporate veil; however, even if this court did so, the court
5 would pierce to the owner of the company -- FHT and its Alaskan trustee. Thus, Caroline is
6 essentially requesting relief from the FHT or bringing a claim against the Trust itself. Thus, her
7 request is not only inappropriate; it is superfluous, since she has always claimed to be allegedly
8 requesting documents from FHT this entire time.

9
10 While Christopher allegedly has some control over the investments of the FHT and the
11 LLC, this does not justify a departure from established jurisdictional principles. NRS 163.5555
12 only provides jurisdiction over the decisions made by a trust protector or a trust advisor. There
13 is no statute which provides automatic jurisdiction based upon acceptance to serve as a manager
14 of a Nevada company. Absent such a statute, Caroline must establish personal jurisdiction over
15 Christopher in order to require production from him in his role as manager of FHT Holdings
16 LLC. In order to obtain personal jurisdiction, the court must find that there was proper service
17 including the service of a summons according to NRCP Rule 4. Additionally, the court must
18 find that Christopher individually has sufficient minimum contacts with the Nevada.⁹¹

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21 Christopher was never personally served with a summons which is required to establish
22 personal jurisdiction. NRCP Rule 4 requires that the complaint and summons be personally
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26 ⁹¹ *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291-292, (U.S. 1980) stating, "a state court may
27 exercise personal jurisdiction over a nonresident defendant only so long as there exist "minimum contacts" between
28 the defendant and the forum State. The concept of minimum contacts, in turn, can be seen to perform two related,
but distinguishable, functions. It protects the defendant against the burdens of litigating in a distant or inconvenient
forum. And it acts to ensure that the States, through their courts, do not reach out beyond the limits imposed on
them by their status as coequal sovereigns in a federal system."

1 served on the defendant.⁹² Without such service personal jurisdiction is improper. Because
2 Christopher has never been personally served with the complaint or a summons, this court
3 cannot exercise personal jurisdiction over him as manager of the LLC.
4

5 Furthermore, Christopher does not have sufficient minimum contacts with Nevada to
6 justify personal jurisdiction. He is a Missouri resident. He did not choose Nevada as the situs
7 of the trust and, as a beneficiary, he did not unilateral power to make that decision. His
8 purported role as investment advisor was foisted upon him without the aid of independent legal
9 counsel.⁹³ Any connection between Christopher and Nevada through the LLC was apparently
10 made by Mr. Lehnardt. The decision to change the situs of the trust to Nevada was made by Mr.
11 Lehnardt. The initial decision to form the LLC appears to have been made prior to
12 Christopher's purported appointment as investment advisor as evidenced by the first
13 amendment.⁹⁴
14

15 Lastly, Caroline has cited a number of cases which attempt to justify jurisdiction over
16 Christopher as manager of the LLC. These cases essentially state that a trustee or fiduciary may
17 be called upon to account for the assets of the trust including a corporation which is wholly
18 owned by the trust. What Caroline fails to acknowledge is that Christopher is neither owner of
19 the LLC nor trustee of the FHT. At most, Christopher's fiduciary duty to the trust could only
20 extend to decisions made as investment advisor if there had been a proper change in situs. Any
21 attempt to take jurisdiction over Christopher as manager of the LLC must be done through
22 personal jurisdiction not *in rem* jurisdiction. Even if this court were to actually find a decision
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26 ⁹² Nevada Rules of Civil Procedure, Rule 4

27 ⁹³ See Declaration of Christopher D. Davis dated August 15, 2015 at Paragraph 5.

28 ⁹⁴ See Caroline's Petition dated 02/10/15 at Exhibit 5 re: Purported First amendment to the Beatrice B. Davis Family Heritage Trust, Page 2 (The Trust Protector nominates and appoints Christopher D. Davis either individually or in his legal capacity as manager of an LLC wholly owned by the trust to invest and holding [sic] certain trust assets, as investment trust advisor.)

1 Christopher made upon which it could assert *in rem* jurisdiction, jurisdiction does not extend to
2 any other role or any other capacity fulfilled by him unless the statutory requirements for
3 jurisdiction are established. Caroline's request to pierce the corporate veil must be denied and
4 the Court's requirement that Christopher turn over FHT Holdings, LLC documents must be
5 reconsidered.
6

7 **F. Ex-parte communications appear to have influenced the May 19, 2015 Order and**
8 **must be removed.**
9

10 In her initial petition, Caroline only sought information regarding loans made from an
11 Ashley Cooper Life Insurance Policy owned by the trust. The overwhelming majority of the
12 loans which Caroline sought information about were generated during the tenure of Alaska USA
13 Trust Company or Alaska Trust Company, the previous trustees of the trust. Caroline sought to
14 have this court order Christopher to:

15 disclose any and all documentation and information related to (a) the Policy Loans,
16 Including, but not limited to, the identity of any entity, trust or individual who has
17 received and or benefited from such loans, the purpose of such loans, the circumstances
18 surrounding the distribution and use of such loans, the repayment of such loans (if any),
19 the collateral for such loans, executed promissory notes, etc.; and (B) FHT holdings
20 LLC.⁹⁵

21 At the April 22, 2015 hearing or thereafter, the court did not find that personal service
22 had been effectuated to Christopher, it did not find that Christopher had established minimum
23 contacts, and it did not find that it took jurisdiction over Christopher as manager of the LLC or
24 in any other capacity other than allegedly as a trust advisor. This court also assumed
25 jurisdiction over the trust based on a theory of constructive trust.

26 On May 11, 2015, Caroline submitted a proposed order to the court. Caroline's proposed
27 order would have specifically ordered Christopher to produce:
28

1 Any and all information and documentation in his possession, custody or control related
2 to any and all loans taken from the trust, including but not limited to those showing or
relating to:

- 3 (a) The purpose of each loan;
4 (b) Who received the loan proceeds or the benefit of such loan proceeds;
5 (c) How the loan proceeds were used;
6 (d) The repayment terms for each loan and whether any repayment was made;
7 (e) Any and all collateral agreements related to any and all loans; and
8 (f) Any and all loan agreements and/or promissory notes for any and all loans.⁹⁶

9 After receipt of Caroline's proposed order Christopher submitted a competing order
10 signed by all other parties. Ultimately the court rejected Caroline's proposed order. After two
11 interlineations the court signed Christopher's proposed order.

12 Prior to the Court's interlineations, Mr. Solomon submitted an ex-parte communication
13 or ex-parte letter to the Court containing unnoticed arguments (which was later provided to
14 counsel) and new case law meant to justify Caroline's departure from the oral and written record
15 of the April 22, 2014 hearing.⁹⁷ Specifically Mr. Solomon argued in his ex-parte letter that
16 Christopher's proposed order should be rejected because it did not grant access to information in
17 Christopher's *custody or control*,⁹⁸ and it did not assume jurisdiction over Christopher *as*
18 *manager of FHT Holdings*.⁹⁹ Although Mr. Solomon argued at the hearing that the court could
19 assume jurisdiction over Christopher as manager of FHT Holdings LLC,¹⁰⁰ the transcript
20 indicates that the Court did not, in fact, take such jurisdiction at the hearing.¹⁰¹ In fact, the court
21 explicitly limited jurisdiction during its oral ruling to Christopher's role as Investment Trust
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25 ⁹⁶ See Caroline's Petition filed 02/10/15.

26 ⁹⁷ See Letter from Mark Solomon, Esq. to Judge Gloria Sturman dated May 11, 2015 with Proposed Order
submitted by Caroline Davis May 11, 2015.

27 ⁹⁸ See Letter from Mark Solomon, Esq. to Judge Gloria Sturman dated May 11, 2015.

28 ⁹⁹ *Id* at Page 2, Last Paragraph

¹⁰⁰ *Id* at Page 1, Last Paragraph.

¹⁰¹ See Transcript dated 4/27/15, Page 18:20-25.

¹⁰² *Id.* at Page 51: 4-16, see also Page 53:21-23.

1 Advisor.¹⁰² This is further evidenced by the numerous requests by Mr. Barney for the court to
2 clarify how it was taking jurisdiction and over what/whom and in what role.¹⁰³ Additionally, the
3 transcript indicates that the court when asked about the breadth of the required disclosure
4 specifically limited disclosure to those documents in Christopher's *possession* as investment
5 advisor.¹⁰⁴

7 Upon later receiving Mr. Solomon's ex-parte letter to the court, Mr. Barney immediately
8 sought clarification of Mr. Solomon's unnoticed submission to the court¹⁰⁵ requested then
9 requested an opportunity to brief the new arguments to understand the impositions on
10 Christopher based on Mr. Solomon's new arguments advanced in his May 11, 2015 letter.¹⁰⁶
11 Without providing any other party further opportunity to brief the arguments raised by Mr.
12 Solomon, the court signed Christopher's proposed order with two significant interlineations.
13 The order submitted by Christopher's counsel (and signed by all other parties except Caroline's
14 counsel) without the court's interlineations stated that Christopher must disclose information "in
15 his possession as Investment Trust Advisor," which was the exact wording reflected in the oral
16 and minute orders of the Court.

19 However, the two interlineations made by the court to the May 19, 2015 Order reflect,
20 nearly verbatim, the requests made by Mr. Solomon in his ex-parte letter to the Court.¹⁰⁷
21 Specifically the court added "custody or control" to the order which is precisely the request
22

24 ¹⁰² *Id.* at Page 54:23-24 Court stating: "It's what Mr. -- it's what he has in his role as Investment Trust Advisor.
That's it."

25 ¹⁰³ *Id.* at Pages 51-55

26 ¹⁰⁴ *Id.* at Page 54:14-25 and Page 55:1-4, specifically Page 55. 2-4 states: "If that's not -- you know, if that's not in
his possession, it's not in his possession. It's only what's -- what he's got in his possession."

27 ¹⁰⁵ See email from Anthony L. Barney, Esq. dated May 12, 2015 to all parties attached hereto and incorporated
herein as Exhibit C.

28 ¹⁰⁶ See E-Mail and Letter from Anthony L. Barney, Esq. to court and all parties dated May 12, 2015 attached hereto
and incorporated herein as Exhibit D.

¹⁰⁷ See Order signed May 19, 2015 (June 24, 2015) at Page 3:3-7, See also Exhibit B at Page 1, Last Paragraph and
Page 2, Last Paragraph.

1 made by Mr. Solomon.¹⁰⁸ Additionally Mr. Solomon argued that the order should require
2 information from Mr. Davis “in his individual capacity and as manager of FHT Holdings,
3 LLC”¹⁰⁹ and “As such, any information or documentation Mr. Davis has in his possession as
4 Manager of FHT Holding, LLC or individually, he also has in his possession as investment trust
5 advisor, and therefore he must be required to produce it.”¹¹⁰ After receipt of Caroline’s proposed
6 order and Mr. Solomon’s letter, this court signed the current order which provides production to
7 of information in Christopher’s “possession [,] custody or control, *in his role as Investment*
8 *Trust Advisor and [in] [or] his role as manager of FHT Holdings.*”¹¹¹ Caroline was able to
9 persuade the Court to adopt her arguments advanced in her May 11, 2015 letter outside of a
10 regularly noticed hearing, improperly denying all parties the ability to respond to the legal
11 authority provided Mr. Solomon to this Court in his May letter. Unfortunately, the actual
12 wording of the order appears to read one of several ways depending on the way in which one
13 interprets the interlineations set forth by the Court order. These are as follows:

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17 “IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
18 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
19 all information in his possession custody or control in his role as Investment Trust Advisor, and
20 [in] [or] his role as manager of the FHT Holdings.”

21
22 The other reading if one interprets the mark between “possession” and “in” is a comma
23 and not a “line” directing the reader to the above interlineation, the following interpretation is:

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27 ¹⁰⁸ See Exhibit B, Page 2, Last Paragraph (“As such this court should require Mr. Davis to disclose any and all
information and documentation in his possession, custody, or control.”)

28 ¹⁰⁹ *Id.* at Page 1, Last Paragraph

¹¹⁰ *Id.* at Page 2, First Paragraph.

¹¹¹ See Footnote 72.

1 "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition for
2 Immediate Disclosure of Documents and Information from Christopher D. Davis is granted as to
3 all information in his possession, custody or control in his role as Investment Trust Advisor, and
4 [in] [or] his role as manager of the FHT Holdings."

5
6 The greatest difficulty in interpretation arises with regard to whether the word "in" or
7 "or" is the actual word of the court between the words, "and," and "his role as manager of FHT
8 Holdings." The reader is simply left to guess at the actually import of the interlineations.
9 Furthermore, it is not clear whether information in Christopher's possession, custody, or control
10 applies to his role as manager of FHT Holdings, LLC.
11

12 Even with the addition of her requested interlineations or partial interlineations, Caroline
13 is apparently unhappy with the current order because it limits her attempts to force production
14 from Christopher, of information held in a fiduciary capacity by the Alaska trustees. In addition
15 to the Petition for Reconsideration, Caroline has filed her own motion to amend this court's
16 order.¹¹²
17

18 Because the requisite findings upon which to base jurisdiction have not been made by
19 this Court in this matter, and in light of the new arguments raised in ex-parte written
20 correspondence and apparently adopted by the Court,¹¹³ the Court's order must reconsider its
21 May 19, 2015 Order (June 24, 2015).
22

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¹¹² See Caroline's Motion to Amend or Modify Order Pursuant to NRCP 60(b)(3) dated August 6, 2015.

1 G. All necessary and indispensable parties have not been joined in this matter; thus
2 this matter must be dismissed.

3 The Nevada Supreme Court has indicated that “this court has required all persons
4 materially interested in the subject matter of the suit be made parties so that there is a complete
5 decree to bind them all. If the interest of absent parties may be affected or bound by the decree,
6 they must be brought before the court or it will not proceed to decree.”¹¹⁴ It also concluded, that
7 “[f]ailure join an indispensable party is fatal to a judgment and may be raised by an appellate
8 court sua sponte.”¹¹⁵ Herein, the Alaskan Trustees are indispensable parties because of the
9 language of FHT and Caroline’s newly raised claim under Alaska law concerning the Alaskan
10 Trustees. The Alaskan Trustees (and the depending upon Caroline’s demands, the custodian of
11 the Ashley Cooper life insurance policy) must be brought before this court so that the
12 documentation and information requested and in their possession and control can be provided;
13 otherwise this matter must be dismissed pursuant to NRCP 19 if the Alaskan Trustees are not
14 joined.
15

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18 i. The language of FHT makes the Alaskan Trustees a necessary and indispensable
19 party.

20 Article Eleven, Section 7 of FHT states: “No successor Trustee shall be required to
21 examine the accounts, records, and acts of any previous Trustees.” In other words, a successor
22 trustee is not required to account for the acts of a prior trustee. If a successor trustee is relieved
23 of this duty, then, a later appointed trust investment advisor (appointed at the same time as the
24 successor trustee) cannot be required to provide the work of production that was the province of
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28 ¹¹³ NEVADA CODE OF JUDICIAL CONDUCT Rule 2.9. (A) A judge shall not initiate, permit, *or consider* ex
 parte communications, or consider other communications made to the judge outside the presence of the parties or
 their lawyers, concerning a pending or impending matter...

¹¹⁴ *Olsen Family Trust v. District Court*, 110 Nev. 548, 553 (1994).

1 the prior trustee.¹¹⁶ Herein, Dunham Trust Company was not required to examine the records,
2 accounts or acts of the Alaskan Trustees just as Christopher as alleged trust investment adviser
3 could not be required to do so, because such a requirement is contrary to the terms of FHT.
4

5 Caroline has argued that allegedly the Alaskan Trustees are not necessary, indispensable
6 parties because Christopher as an alleged trust investment advisor has all documents in his
7 possession from a prior trustee, thus, the joinder of prior trustees is allegedly unnecessary.
8 However, she ignores the limitations imposed by Article Eleven, Section 7 of FHT, which
9 provides evidence that the Alaskan Trustees are necessary and indispensable parties in this
10 matter, because Dunham Trust Company, the successor trustee, was not liable for the Alaskan
11 Trustee's prior trustee's acts, records, and accounts or to produce said accounts. Caroline's
12 requests for information and documents spans a time period in which two trustees acted;
13 therefore, it is highly relevant (not to mention good practice) to include both trustees in the
14 current action given the trust language of the FHT.
15

16
17 Therefore, to obtain the documentation and information she seeks, Caroline must not
18 only make requests upon Dunham Trust Company if they have trust information, but also upon
19 the Alaskan Trustees, because Dunham Trust Company (if they are determined to be the
20 successor trustee) and Christopher do not have a duty to examine the accounts or to account for
21 another trustee under the terms of FHT. Caroline admits that the Alaskan Trustees have the
22 information she seeks¹¹⁷; but she is wrongfully attempting to use Christopher as a means to
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25 ¹¹⁵ *Schwob v. Hemsath*, 98 Nev. 293, 294 (1982), citing *Provident Bank v. Patterson*, 390 U.S. 102 (1968) and
26 *Johnson v. Johnson*, 93 Nev. 655, 572 P.2d 925 (1977).

27 ¹¹⁶ See e.g., NRS 163.5557, which outlines when a trust adviser may be appointed and what his powers are. Herein,
28 even if the First Amendment is deemed valid, then the alleged trust adviser would have only had powers to direct
the successor trustee on or after February 24, 2014 when he was allegedly appointed, but not contrary to the terms
of FHT.

¹¹⁷ Caroline's Objection filed 7/31/15 at Page 16:3-5 (Caroline asserts "Christopher's argument regarding the
joinder of Alaska and Alaska USA may be more compelling if they were the only parties with such information.")

1 obtain the Alaskan Trustees' information when neither he nor Dunham Trust Company have the
2 duty to examine or furnish the information in a prior trustee's possession.

3 Interestingly, Caroline could have simply subpoenaed the information from the Trustees
4 if she wanted the documentation and information that she has alleged she wanted all along — but
5 instead she filed suit. Literally 99% of the documentation and information requested from the
6 policy loans is for the period in which the Alaskan Trustees acted as trustee of FHT and
7 Christopher was a fellow beneficiary.¹¹⁸ Caroline, however, has subpoenaed Christopher for
8 FHT's information and other information beyond the scope of FHT (although there is no
9 personal jurisdiction over him). Caroline is, in effect, forcing Christopher to examine the
10 accounts, records, and acts of the Alaskan Trustees, contrary to the terms of the FHT, and which
11 he was not required to do as a beneficiary and which a successor trustee (and trust investment
12 adviser) is not even required to do under the terms of the FHT.
13

14 Because 99% of Caroline's request for documents and information occur during the
15 period of the Alaskan Trustee's trusteeship of FHT, Caroline must either provide a subpoena or
16 bring an appropriate action in the appropriate forum against the Alaskan Trustees and/or have
17 this court establish jurisdiction over the Alaskan Trustees. Given the fact that the alleged
18 successor trustee, Dunham Trust Company (if deemed the successor trustee) is not required to
19 examine the accounts, records, and acts of the previous Alaskan Trustees pursuant to the terms
20 of FHT, Caroline must pursue an action against the Alaskan Trustees to obtain their information
21 — she cannot seek to obtain this information from Christopher or any of the parties over which
22 this Court has allegedly taken jurisdiction in the May 19, 2015 order being reconsidered herein.
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28 ¹¹⁸ Caroline requests information for Dunham Trust Company allegedly receiving a mere \$25,000 of the total
amount of policy loans (presumably for its fees and expenses) compared to the Alaskan Trustees allegedly
receiving and distributing \$2,164,744.68. \$25,000 of the sum of the amounts for which she is requesting

1 The Alaskan Trustees are necessary and indispensable parties and must be joined in this matter
2 or the matter dismissed, if they are incapable of being joined.

3 ii. Caroline's assertion that the Alaskan Trustees had duties as a resigned trustee
4 supports the contention that the Alaskan Trustees are necessary and
5 indispensable parties.

6 Additionally, Ms. Tempel's declaration and Caroline's invocation of AS 13.36.077
7 further support Christopher's original assertion in his Motion to Dismiss that the Alaskan
8 Trustees are indispensable parties to this action. As discussed above, Caroline invokes an
9 Alaska statute to assert that the Alaskan Trustees retained the power to authorize a change in
10 situs. Whether AS 13.36.077 includes the power to authorize a change in situs is a matter of law
11 that should be determined by an Alaska court, or in this Court, after the Alaskan Trustees have
12 been properly added as necessary parties.

13
14 If the Court adopts Caroline's narrative, then the Alaskan Trustees further become
15 indispensable parties to this litigation that must be joined, because the court must interpret
16 whether the Alaskan Trustees, in fact, had the power to transfer situs under Alaska Law as a
17 resigned trustee, and if so, why they did not provide notice to all of the beneficiaries of such a
18 situs change. The Alaskan Trustees must further defend its understanding of the statute, its
19 reasoning for drafting and signing an invalid and/or deceptive document of resignation, among
20 other legal issues before this Court. The Court then must force the Alaskan Trustees to comply
21 with Caroline's request for information and documents and account for the periods in which
22 they were acting as trustee and resigned trustee. Because the Alaskan Trustees have little or no
23 contacts with Nevada, the court would likely grant a motion to dismiss filed by the Alaskan
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28 information and documentation is a mere 1.1% of information that she is requesting from Dunham Trust Company.
The rest of the 98.9% of the information and documents is in the possession of the Alaskan Trustees.

1 Trustees in this regard and these issues would likely be disputed in Alaska, the appropriate
2 forum.

3 Caroline has produced sworn declarations from the Alaska Trustee, argued Alaska trust
4 law, and generally conducted discovery on Christopher for documents she knows are in the
5 possession of the Alaska Trustee, and yet she continues to argue that the Alaska Trustee is not a
6 necessary party to this action. It is obvious that the Alaskan Trustees are a necessary and
7 indispensable party for the precise periods in which Caroline has requested information and
8 documents as well as for the purpose of determining whether Nevada is the proper situs based
9 upon the Alaskan Trustees' prior actions. As argued in the Motion to Dismiss and Reply,
10 because the Alaskan Trustees are necessary and indispensable parties and without them, it
11 would expose Christopher and FHT to multiple liability. Therefore, the Alaskan Trustees must
12 be joined as indispensable parties, and, if it is not possible, the court must dismiss this action.
13

14
15 *iii. Caroline's other allegations (admissions) also show that the Alaskan Trustees*
16 *are indispensable parties*

17 Christopher has pointed out the incongruent and inconsistent statements made by
18 Caroline and her legal counsel throughout these proceedings, and further demonstrates these
19 inconsistencies through Caroline's earlier admissions.
20

21 Caroline alleges, "Christopher is the Investment Trust Advisor of the Trust, and the sole
22 Manager of the FHT Holdings, LLC, which is wholly owned by the Trust. Additionally, FHT
23 Holdings, LLC currently owns the Ashley Cooper Life Insurance Policy (the "Policy") with a
24 face value of \$35,000,000.00. Christopher is the only individual who possesses the information
25 or who has the authority to obtain the necessary information to comply with the Court Order.
26 As such, it cannot reasonably be argued that Christopher does not have the information
27 responsive to Ms. Davis' request within his possession, custody, or control. (Emphasis
28

1 added)"¹¹⁹ However, Christopher is clearly not the only individual who possesses the
2 information or is the only individual that has authority to obtain the necessary information to
3 comply with the Court order, and therefore isn't relegated to argue such a response.
4

5 Ironically, Caroline has already established this for Christopher through her own
6 admissions concerning yet unserved necessary and indispensable parties. Two weeks prior to
7 this allegation, Caroline argued that Christopher was not the only party that possessed
8 information that she seeks. Caroline stated, "Christopher's argument regarding the joinder of
9 Alaska and Alaska USA may be more compelling if they were the only parties with such
10 information. This, however, is not the case."¹²⁰ Christopher agrees with Caroline that Alaska
11 and Alaska USA are the parties holding the information she seeks. This information is also
12 likely held by the custodian of the Policy, which has also not been added as an indispensable
13 party to this action.
14

15 Caroline's attorney represents that, "While Ms. Davis' counsel understands that
16 retrieving the necessary documentation from the Policy's custodian could take several weeks to
17 obtain, if necessary,...."¹²¹ she seems to believe that because she doesn't want to name the
18 Policy's custodian as a proper and necessary party, she should be able to force Christopher to
19 provide the information or face contempt within that same several week period! It is clear that
20 Ms. Davis' counsel representations of "understanding" in the regard is simply a disguised
21 attempt to seem "reasonable" as they generate unnecessary and vexatious litigation in this
22 matter.
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27 ¹¹⁹ See Caroline's Motion to Hold Christopher D. Davis in Contempt and for Attorneys' Fees and Costs dated
August 12, 2015 and filed August 17, 2015 at Page 4:4-10.

28 ¹²⁰ See Caroline's Objection dated 7/31/2015 at Page 16:3-5.

¹²¹ See Caroline's Motion to Hold Christopher D. Davis in Contempt and for Attorneys' Fees and Costs dated
August 12, 2015 and filed August 17, 2015 at Page 4:13-15.

1 Caroline then attempts to portray the documents provided under protest from
2 Christopher as "woefully insufficient."¹²² Unless Caroline has possession of all of the
3 information from the Alaskan Trustees, the Policy custodian, and Caroline herself, how could
4 this Court reasonably be expected to trust such an unverified and unsworn statement given the
5 history of this case?¹²³

7 Caroline had the ability to join the parties that she admits and believes have such
8 information, or at a minimum, issue a subpoena to such parties in possession of this information.
9 Instead, she has improperly sought information from Christopher all without ever obtaining
10 proper jurisdiction over him to do so.

12 After setting forth a litany of documents provided by Christopher under protest, Caroline
13 states that, "Neither Christopher nor his counsel have provided Ms. Davis the information as
14 required by the (May 19, 2015) June 24, 2015 Order. Specifically, Christopher has failed to
15 provide: (1) the identity of the entities or individuals who received loan proceeds; (2) the
16 disposition and use of such loan proceeds; (3) the purpose for such loans; (4) whether there has
17 been a default or repayment of the loans; (5) the current outstanding balance(s); (6) the
18 existence and status of any security; and (7) any other information that a beneficiary would
19 reasonably want to know about the loans."¹²⁴ Does Caroline really expect Christopher to
20 research the work of the Alaskan Trustees and Policy custodians for the last 14 years to answer
21 these questions, all while continuing to deny they are not necessary parties to action?
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26 ¹²² See Caroline's Motion to Hold Christopher D. Davis in Contempt and for Attorneys' Fees and Costs dated
27 August 12, 2015 and filed August 17, 2015 at Page 4:17.

28 ¹²³ See Letter from Anthony L. Barney, Esq. to Joshua Hood, Esq. dated August 21, 2015 regarding Rule 11
Sanctions attached hereto and incorporated herein as Exhibit E.

¹²⁴ See Caroline's Motion to Hold Christopher D. Davis in Contempt and for Attorneys' Fees and Costs dated
August 12, 2015 and filed August 17, 2015 at Page 3:13-18.

1 Caroline has already conceded that the information they seek in this regard is with the
2 Alaskan Trustees and/or the Policy custodian. In fact 99% of the loan proceeds were issued to
3 the Alaskan Trustees, with the remaining 1% apparently after Dunham Trust Company was
4 contacted by the Trust Protector. Caroline wants to know the identity of the entity or individual
5 who received the loan proceeds obtained by the Alaskan Trustee from the Policy custodian
6 while Christopher was merely a beneficiary. As set forth, this both a violation of the terms of
7 the Trust if Christopher is deemed a trustee, and/or a clear basis for requiring this Court to
8 dismiss this action for Caroline's failure to add the Alaskan Trustee that both secured the loan
9 and made distribution, if any, of those loan proceeds.
10

11
12 Caroline proceeds to demand the purpose of such loans from Christopher who was
13 merely a beneficiary like Caroline at the time the Alaskan Trustees secured the loan, and would
14 have been the party tasked with providing the purpose of such a loan to the Policy custodian.
15

16 Caroline then proceeds to request information regarding whether there had been a
17 default or repayment of the loans. This information would also be held by the Alaskan Trustees
18 and the Policy custodian. The remaining questions simply continue to demonstrate that
19 Caroline simply wants Christopher to provide what she admittedly knows is in the possession of
20 a party she has failed to properly join in this action. This is a proper basis to dismissing this
21 action for failing to join an indispensable party.
22

23 **H. Caroline concedes that jurisdiction based on a theory of constructive trust is a clear**
24 **error of law.**

25 Caroline has now petitioned this court to amend its order to reflect jurisdiction is under
26 NRS 164.010.¹²⁵ In her Objection, Caroline concedes the need for this Court to reconsider its
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¹²⁵ See Motion to Amend or Modify Order Pursuant to NRCp 60 (b)(3) dated August 6, 2014.

1 original order, and surprisingly asks for sanctions against Christopher for petitioning the court to
2 reconsider its order with her concession. She concedes that a constructive trust is not a method
3 for obtaining jurisdiction and that the court must first establish jurisdiction in order to create a
4 constructive trust. *In personam* jurisdiction is required prior to the establishment of a
5 constructive trust¹²⁶ and it has not been found herein.

7 Because personal jurisdiction over Christopher Davis is not present in this case as
8 Caroline has not served any party according to NRCP 4 and she has not claimed that
9 Christopher has minimum contacts sufficient to satisfy due process, jurisdiction under a theory
10 of constructive trust is clear error of law. Therefore, this Court must reconsider its May 19,
11 2015 order to which Caroline also concedes.

13
14 **MEMORANDUM OF POINTS AND AUTHORITIES**
15 **IN OPPOSITION TO COUNTERPETITION FOR SANCTIONS**

16 **I. FACTS PRESENTED**

17 Christopher has not been a vexatious litigant or improperly brought extraneous
18 arguments. Indeed, Christopher is simply ensuring that his due process rights are not infringed,
19 that this Court has proper jurisdiction, and that the terms of FHT are being observed properly.
20 Even Caroline and her counsel concede that this Court did not obtain proper jurisdiction as a
21 constructive trust over FHT. With this concession alone, it is obvious that Christopher's motion
22 has merit and is not vexatious. Therefore, her requests for attorney fees and costs should be
23 denied in their entirety.
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28 ¹²⁶ *Francis v. Pulley*, 2006 U.S. Dist. LEXIS 93792, (D.N.H. Dec. 28, 2006) See also, *Massie v. Watts*, 10 U.S.
148, 159, (1810); *Keller v. Millice*, 838 F. Supp. 1163, 1174 (S.D. Tex. 1993) ("Where an action seeks to impose a
constructive trust, rather than to act directly on the title to the property, jurisdiction is *in personam*")

1 More concerning is the various misrepresentations made by Caroline and her attorneys
2 in this matter and in her Objection filed on July 31, 2015. At the April 22, 2015 hearing and in
3 subsequent pleadings Caroline's counsel have made allegations that Tarja's status as a
4 beneficiary was first raised at the hearing. Caroline's counsel, Mark A. Solomon, Esq. ("Mr.
5 Solomon") asserted that he was not properly served and therefore he was unaware of the
6 arguments made in Christopher's reply filed April 20, 2015 ("April 20th Reply").¹²⁷
7 Additionally, Joshua M. Hood, Esq. ("Mr. Hood") has recently filed an affidavit accusing Mr.
8 Barney and Ms. Roland of failing to provide service of the Order Shortening Time.¹²⁸
9

10 Both Mr. Solomon and Mr. Hood are aware that the Nevada Electronic Filing and
11 Conversion Rules adopted by the Supreme Court of Nevada ("NEFCR") 9(b) states that:
12

13 When a document is electronically filed, the court or authorized electronic filing
14 service provider must provide notice to all registered users on the case that a
15 document has been filed and is available on the electronic service system document
16 repository. The notice must be sent by e-mail to the addresses furnished by the
17 registered users under Rule 13(c). *This notice shall be considered as valid and
18 effective service of the document on the registered users and shall have the same
19 legal effect as service of a paper document.* (Emphasis added)

20 Additionally, the NEFCR 9(c) provides that: except for a summons or subpoenas, a party
21 consents to electronic service when that party registers with the electronic filing system. Mr.
22 Solomon's office is registered with the electronic filing system and the e-service master list for
23 this case identifies not only Mr. Solomon and Mr. Hood but also a third employee of the firm as
24 recipients of electronic service in this case.¹²⁹
25

26
27 ¹²⁷ See Transcript of Hearing page 16, lines 8-4; page 24, lines 4-12; See also all subsequent pleadings filed by
28 Caroline's attorneys.

¹²⁸ See Affidavit of Joshua M. Hood, Esq. dated August 4, 2015 attached to Caroline's application for Order
Shortening Time.

¹²⁹ See e-service master list for case -- In the Matter of the Trust of: The Beatrice B. Davis Heritage Trust-Case No.
P-15-083867-T on wiznet (e-file service).

1 Furthermore, Caroline's counsel has electronically served pleadings in this matter,
2 besides the filed pleadings, making full use of the electronic filing system.¹³⁰ Particularly,
3 Caroline's counsel has electronically served documents through the electronic filing system,
4 including but not limited to, notices of subpoenas and a notice of deposition.¹³¹ In Caroline's
5 pleadings and notices, Caroline's counsel references Rule 9 of NEFCR as a basis for their
6 proper service.¹³² This is plain evidence that Caroline's counsel both make use of, are fully
7 aware of, and have a knowledgeable understanding of electronic service pursuant to NEFCR 9.
8

9 Although the April 20th Reply was served on Caroline's counsel well in advance of the
10 hearing, Caroline's counsel are surprisingly alleging they did not have this information in
11 advance of the April 22, 2015 hearing. Caroline's claims that Mr. Barney allegedly made
12 arguments regarding Tarja's interest as a beneficiary for the first time at the hearing are
13 verifiably false and frivolous as evidenced by the fact that these very arguments are clearly laid
14 out in the reply filed April 20, 2015¹³³ and the fact that Mr. Solomon and his law firm, as
15 registered users of the electronic filing system, had complete, valid and legal service a full day
16 and a half before the hearing. This false allegation cannot be and should not be a basis for
17 sanctions against Christopher and his attorneys. The more salient issue is that Caroline's
18 counsel made these misrepresentations about service, after having been afforded the opportunity
19 to read the pleadings, which, in all likelihood, they did
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23 Additionally, Caroline actually admits, contrary to the preceding six pages of her
24 Objection, that Mr. Barney's oral arguments were based upon his Motion to Dismiss and his
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26 ¹³⁰ See Mr. Solomon's current and previous filings in this case.

27 ¹³¹ See two Notices of Issuance of Subpoena Duces Tecum and one Notice of Deposition electronically served by
28 Caroline's counsel, which are attached hereto and incorporated herein as Exhibit F; See also, Mr. Solomon's current
and previous filings in this case.

¹³² *Id.*

1 Reply to Ms. Davis' Opposition to the Motion to Dismiss.¹³⁴ This clearly reflects the
2 disingenuousness of Caroline's counsel in casting aspersions upon Christopher's legal counsel
3 when they clearly were aware that Christopher's counsel was making arguments based upon
4 pleadings properly served upon Caroline's counsel.
5

6 As to the service of the Order Shortening Time, Mr. Hood's own affidavit acknowledges
7 that the order shortening time was filed on July 30, 2015 at 11:56:28 a.m. This pleading was
8 filed electronically; and, therefore, Caroline received service via electronic means on July 30,
9 2015 of the Order. The service of the Order Shortening Time was more than one day in advance
10 of the hearing and was prompt pursuant to EDCR 2.26.
11

12 Ironically, it was Caroline's counsel, Mr. Solomon, who introduced *for the first time*, at
13 the hearing the position that this court should take jurisdiction based on a theory of constructive
14 trust.¹³⁵ This position was not in any pleading prior to the hearing and the issue was not fairly
15 adjudicated. Neither the Court nor any party but Caroline's counsel had an opportunity to
16 research or brief the theory of jurisdiction based on a constructive trust. This court's ruling
17 based on such an unnoticed argument was clearly prejudicial to all parties except Caroline and
18 was her response to Christopher's Reply. Caroline is equitably estopped from arguing any
19 alternate theory of jurisdiction, because she had the opportunity to assert her theory of
20 jurisdiction, which the Court adopted.¹³⁶
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25 ¹³³ See Reply to Opposition Filed April 20, 2015

26 ¹³⁴ See Caroline's Objection filed 7/31/15 at Page 7:11-15 (Christopher has not presented any new facts that were
27 not presented in pleadings or falsely presented during Mr. Barney's oral arguments at the Hearing that may give
28 rise to this Court reconsidering its Order. Indeed, Christopher's Petition for Reconsideration is nothing more than a
reiteration of the facts submitted in his Motion to Dismiss and his Reply to Ms. Davis' Opposition to the Motion to
Dismiss."

¹³⁵ See Transcript filed April 28, 2015, Page 30:6.

¹³⁶ See *Gardner v. Pierce*, 22 Nev. 146, 36 P. 782, 783 (Nev. 1894).

1 Caroline's counsel also falsely alleges that, "Mr. Barney also argued for the first time at
2 the Hearing that there was not "an acting Alaska Trustee at the point to consent to the transfer"
3 of the Trust situs."¹³⁷ Then, in an attempt to take his second bite at the apple, Caroline proceeds
4 to introduce new evidence in the form of billing statements and a sworn declaration from the
5 Alaskan Trustee,¹³⁸ because she failed to present any of this evidence at the prior hearing in her
6 bid to have jurisdiction declared under her theory of constructive trust.
7

8 Caroline then misrepresents that, "As Mr. Barney is aware, a trustee's duties as such do
9 not terminate upon the submission of a resignation when successor trustee has been appointed
10 and accepted."¹³⁹ However, as discussed above, this new evidence does nothing more than
11 demonstrate why the Alaskan Trustee is a necessary party to this action in light of their failure
12 to provide an existing legal opinion, or even to provide a sworn declaration that a legal opinion
13 was procured.
14

15 Furthermore, it is impossible for Caroline to represent what Mr. Barney was or wasn't
16 "aware" of in light of the conduct of the Alaskan Trustee. Caroline's counsel's
17 misrepresentations and lack of candor, while inappropriate, are a customary tactics to take
18 proper attention from the substantive matters that must be addressed by this court.
19

20 Despite the foregoing and Caroline's introduction of several new facts and exhibits,
21 Caroline declares that, "Christopher has not presented any new facts in his pleadings that may
22 give rise to this court's reconsideration its order."¹⁴⁰ However, this assertion is rebutted by the
23 sworn Declaration of Christopher Davis as well as all of their own exhibits attached to
24
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27 ¹³⁷ See Caroline's Objection filed 7/31/15 at Page 3:3-4.

28 ¹³⁸ See Caroline's Objection filed 7/31/15 at Exhibits 7 and 4.

¹³⁹ See Caroline's Objection filed 7/31/15 at Page 3:4-6.

¹⁴⁰ See Caroline's Objection filed 7/31/15 at Page 7:11-13.

1 Caroline's Objection, including, but not limited to, the Declaration of Tarja Davis, the
2 Declaration of Janet K. Tempel, and other exhibits attached to Caroline's Objection.

3 Specifically, at the April 22, 2015 hearing, Caroline's counsel stated that there was no
4 affidavit proving that Tarja was married to Christopher Davis.¹⁴¹ However, what is clear is that
5 Caroline was mailing Tarja notice to the address she resides at with her husband, Christopher.¹⁴²
6 The Court also lamented that it did not have such an affidavit.¹⁴³ However, the rights of a
7 beneficiary under the terms of the FHT do not require that a beneficiary go to expense of filing
8 an affidavit to protect their rights. The Court is not empowered to alter the terms of the FHT in
9 order to take jurisdiction with or without an affidavit from the beneficiary unless such a term of
10 trust would violate public policy. This is clearly not the case under these circumstances.
11 Notwithstanding the foregoing, the lack of such an affidavit appears to be a factor in this court's
12 prior decision to assume jurisdiction based on a theory of constructive trust.¹⁴⁴

13 Tarja has now filed an affidavit in proper person establishing the fact that she is and was
14 Christopher's wife at the time of the February 24, 2014 amendment, and that she has lived with
15 Christopher since the beginning of their marriage. This is the very definition of new evidence
16 and was specifically requested by both Caroline's counsel and this Court. Ironically, while
17 Caroline is attempting to prove there is no basis upon which reconsideration is proper, she has
18 proved that there is additional evidence for which reconsideration would be proper, including
19 but not limited to, Tarja's declaration and the additional information attached to her Objection.
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26 ¹⁴¹ See the Transcript of the April 22, 2015 hearing, Page 16:23-25 and Page 17:1-3.

27 ¹⁴² See Supplemental Certificates of Mailing filed April 8, 2015.

28 ¹⁴³ See Transcript filed April 28, 2015, page 43 lines 5-7,

¹⁴⁴ See Transcript filed April 28, 2015 hearing, page 55 lines 2-25 and page 56 lines 1-6, See also Order dated May 19, 2015, page 2 lines 16-17 stating: "IT IS FURTHER FOUND that the Court has no affidavit that another beneficiary existed at the time the first amendment was signed."

1 As discussed above, Caroline has now requested relief from this court to alter its order
2 based upon an alternate theory of jurisdiction different from the one proffered by them and
3 adopted by this Court while, at the same time, seeking sanctions from Christopher for allegedly
4 increasing the litigation.¹⁴⁵ Caroline's request for sanctions is entirely without merit and must
5 be denied.
6

7 II. LEGAL AUTHORITY AND ARGUMENT

8 The sole authority under which Caroline requests sanctions and attorney fees is pursuant
9 to EDCR 7.60(b), and none of the subparts apply herein to warrant sanctions. Caroline only
10 references EDCR 7.60(b)(1) and (b)(3) as grounds for her requests which are addressed herein.
11

12 First, Christopher has not presented "to the court a motion or an opposition to a motion
13 which is obviously frivolous, unnecessary or unwarranted."¹⁴⁶ To the contrary, Caroline has
14 requested relief in her Objection and Motion to Amend based on her own change of course and
15 argument, because she, too believes, the court incorrectly took jurisdiction as a constructive
16 trust. In effect, Caroline is requesting this Court reconsider the May 19, 2015 Order (June 24,
17 2015 Order) in this matter, which is evidence that Christopher's motion has merit. Thus, he is
18 not a vexatious litigant and his motion was not frivolous, unnecessary or unwarranted.
19 Christopher is simply assuring that the terms of the FHT be honored by this Court.
20

21 Second, Christopher has not so multiplied "the proceedings in a case as to increase costs
22 unreasonably and vexatiously".¹⁴⁷ Christopher has merely asserted his due process rights and
23 argued appropriately concerning the jurisdictional basis that a court of competent jurisdiction
24 must base its authority so that it may make orders and judgments against properly noticed
25
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28 ¹⁴⁵ See Caroline's Objection (and Counterpetition) filed 7/31/15, See also Caroline's Amendment and Supplement
to Counter Petition for Sanctions.

¹⁴⁶ EDCR 7.60(b)(1).

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

3 CHRISTOPHER D. DAVIS,

4
5 Petitioner

6 vs.

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

12 Respondent

13 and

14 CAROLINE DAVIS,

15 Real Party in Interest

Case No.: P-15-083867-1
Electronically Filed
Oct 08 2015 03:30 p.m.
Tracie K. Lindeman
District Court Case No.
Clerk of Supreme Court

16 **PETITIONER'S APPENDIX**
17 **VOLUME VII**

18
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II	4	Opposition to 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, and Limited Joinder to Christopher D. Davis's Motion to Dismiss Pursuant to NRCP 12(b) and NRCP 19	000322-000325
II	5	Reply to Opposition to 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	000326-000349

1			Christopher D. Davis and Limited Joinder to	
2			Christopher D. Davis's Motion to Dismiss	
3			Pursuant to NRCP12(b) and NRCP 19	
4	III	6	Christopher D. Davis' Reply to Caroline Davis' Opposition to his Motion to Dismiss Pursuant to NRCP (12)(b) and NRCP 19	000350-000375
5	III	7	Transcript of Proceedings 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 April 22, 2015	000376-000434
13	III	8	Order	000435-000439
15	III	9	Notice of Entry of Order	000440-000445
16	IV	10	Notice of Petition and Petition for Reconsideration of the Order Dated May 19, 2015 Re: 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, 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	000446-000477
24	V	11	Declaration of Tarja Davis	000478-000483
25	V	12	Response to Petition for Reconsideration	000484-000678
26	V	13	Notice of Appeal	000679-000683
27	V	14	Case Appeal Statement	000684-

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2	V	15	Objection to Petition for Reconsideration of the	000701-
3			Order Dated May 19, 2015 Re: Petition to Assume	000779
4			Jurisdiction Over the Beatrice B. Davis Family	
5			Heritage Trust Dated July 28, 2000, as Amended	
6			on February 24, 2014, to Assume Jurisdiction	
7			Over Christopher D. Davis an Investment Trust	
8			Advisor, Stephen K. Lehnardt as Distribution	
9			Trust Advisor to Confirm Dunham Trust Company	
10	V	16	as Directed Trustee and for Immediate Disclosure	
11			of Documents and Information from Christopher	
12			D. Davis; AND Counter Petition for Sanctions	
13	V	17	Amendment and Supplement to Counter Petition	000780-
14			for Sanctions	000794
15	V	18	Motion to Amend or Modify Order Pursuant to	000795-
16			NRCP 60(b)(3)	000836
17	V	19	Notice of Petition and Petition to Stay Discovery	000837-
18			until the August 19, 2015 Hearing on Motion for	000870
19			Reconsideration	
20	VI	20	Motion to Hold Christopher D. Davis in Contempt	000871-
21			and for Attorneys' Fees and Costs	000896
22	VI	21	Motion to Compel Harriet Roland, Esq., to	000897-
23			Produce Documents Responsive to Subpoena	000976
24			Duces Tecum; and for Attorneys' Fees and Costs	
25	VI	22	Declaration Of Christopher D. Davis	000977-
26				000979
27	VI	23	Errata To Petition For Reconsideration Of The	000980-
28			Order Dated May 19, 2015 To Assume	000986
			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, 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	
	VII	23	Christopher D. Davis' Reply to Caroline Davis'	000987-
			Objection to Petition for Reconsideration of the	001118

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2			Jurisdiction over the Beatrice B. Davis Family	
3			Heritage Trust Dated July 28, 2000, as Amended	
4			on February 24	
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10			Pursuant to NRCP 60(b)(3)	
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12			and to Modify or Quash the Subpoena	001221
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20			Motion to Quash	
21	VIII	29	Opposition to Christopher D. Davis' Motion for a	001286-
22			Protective Order and to Quash or Modify	001299
23			Subpoena	
24	VIII	30	Motion to Strike Christopher D Davis' Arguments	001300-
25			and Requests for Relief in his Reply to Caroline D	001306
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27			Excess of Thirty (30) Pages as the Reply Violates	
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			July 28, 2000 as Amended on February 24, 2014	
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			as investment trust advisor, Stephen K. Lehnardt	
			as Distribution Trust Advisor to Confirm Dunham	

1			Trust Company as Directed Trustee, and for	
2			Immediate Disclosure of Documents and	
3			Information from Christopher D. Davis and	
4	VIII	33	Counter Petition for Sanctions	
5			Addendum to and Withdrawal of Certain	001322-
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8			May 19, 2015 Re: Petition to Assume Jurisdiction	
9			Over the Beatrice B. Davis Family Heritage Trust	
10			dated July 28, 2000, as Amended on February 24,	
11			2014, to Assume Jurisdiction Over Christopher D.	
12			Davis as Investment Trust Advisor, Stephen K.	
13			Lehnardt as Distribution Trust Advisor, to	
14			Confirm Dunham Trust Company as Directed	
15			Trustee, and for Immediate Disclosure of	
16			Documents and Information from Christopher D.	
17			Davis; and Counterpetition for Sanctions;	
18			(2)Amendment and Supplement to Counterpetition	
19			for Sanctions; and (3)Motion to Amend or Modify	
20			Order Pursuant to NRCP 60(b)(3)	
21	VIII	34	Notice of Non-Appearance of Christopher D.	001358-
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23	VIII	35	Notice of Partial Withdrawal of Petition and	001364-
24			Partial Withdrawal of Petition to Stay Discovery	001367
25			until the August 19th, 2015 Hearing on Motion for	
26			Reconsideration or in the Alternative, Petition for	
27			Protective Order from Discovery by Subpoena	
28	VIII	36	Errata to Christopher D. Davis' Petition to Stay	001368-
			Discovery Until the August 19, 2015 Hearing on	001372
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			Subpoena	
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			Caroline D. Davis' Objection to Petition for	
			Reconsideration in Excess of Thirty (30) Pages as	
			the Reply Violates EDCR 2.20 and Countermotion	
			for Leave to File a Reply in Excess of Thirty (30)	
			Pages	

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IX	39	Motion to Compel Attendance at Deposition and Motion for Sanctions	001477-001520
IX	40	Supplement to Opposition to Caroline Davis' Motion to Hold Christopher D. Davis in Contempt and for Attorney's Fees and Costs	001521-001532
IX	41	Reply to Christopher D. Davis Opposition to Caroline Davis' Motion to Hold Christopher D. Davis in Contempt and for Attorneys' Fees and Costs	001533-001538
IX	42	Court Minutes dated September 16, 2015	001539-001541
IX	43	Court Minutes dated September 30, 2015	001542-001543
IX	44	Proposed Order Regarding September 30, 2015 Hearing	001544-001548
IX	45	Email from Anthony L. Barney, Esq. dated October 7, 2015	0001549-0001551

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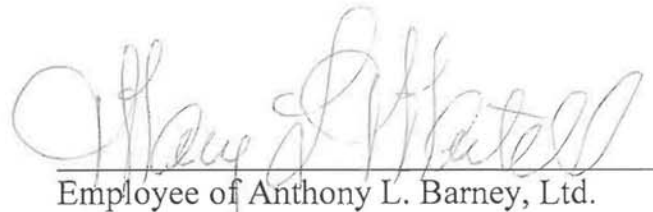
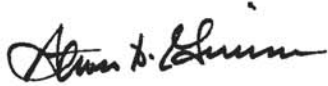

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EXHIBIT 23



CLERK OF THE COURT

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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.

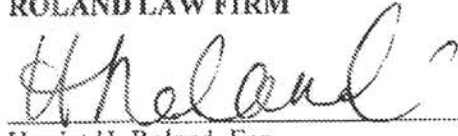
Dept. No.: 26

CHRISTOPHER D. DAVIS' REPLY TO CAROLINE DAVIS' OBJECTION TO
PETITION FOR RECONSIDERATION OF THE ORDER DATED MAY 19, 2015 RE:
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, STEPHEN K. LEHNRD AS DISTRIBUTION TRUST ADVISOR,
TO CONFIRM DUNHAM TRUST COMPANY AS DIRECTED TRUSTEE, AND FOR
IMMEDIATE DISCLOSURE OF DOCUMENTS AND INFORMATION FROM
CHRISTOPHER D. DAVIS; AND OBJECTION TO CAROLINE DAVIS'
COUNTERPETITION FOR SANCTIONS

1 CHRISTOPHER D. DAVIS, by and through his attorneys HARRIET H. ROLAND,
2 Esq., of the ROLAND LAW FIRM and ANTHONY L. BARNEY, Esq., of the law office of
3 ANTHONY L. BARNEY, LTD., and hereby submits his reply to Caroline Davis' ("Caroline")
4 objection to petition for reconsideration of the order dated May 19, 2015 re: petition to assume
5 jurisdiction over the Beatrice B. Davis Family Heritage Trust dated July 28, 2000, as amended
6 on February 24, 2014, to assume jurisdiction over Christopher D. Davis as investment trust
7 advisor, Stephen K. Lehnardt as distribution trust advisor, to confirm Dunham Trust Company
8 as directed trustee, and for immediate disclosure of documents and information from
9 Christopher D. Davis ("Reply"); and objection to counterpetition (and as amended) for
10 sanctions. ("Objection") This pleading is based on the Memorandum of Points and Authorities
11 attached hereto, any exhibits attached hereto, and any oral argument that will be heard in this
12 matter.
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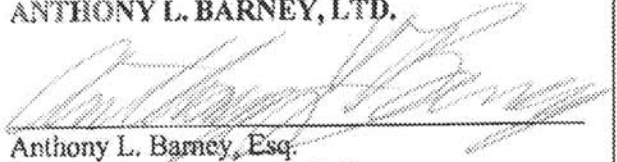
16 DATED this 26th day of August, 2015.

17 Respectfully Submitted,
18 ROLAND LAW FIRM

19 

20 Harriet H. Roland, Esq.
21 Attorney for Christopher D. Davis

22 Respectfully Submitted,
23 ANTHONY L. BARNEY, LTD.

24 

25 Anthony L. Barney, Esq.
26 Attorney for Christopher D. Davis

27 ///

MEMORANDUM OF POINTS AND AUTHORITIES
IN REPLY TO CAROLINE'S OBJECTION

I. FACTS PRESENTED

Christopher D. Davis ("Christopher") seeks reconsideration of this Court's order, because jurisdiction was improperly taken by this Court over the Beatrice B. Davis Family Heritage Trust dated July 28, 2000 (hereinafter "FHT"), and there are indispensable parties that have not been joined by Caroline, and the order upon which consideration is sought was changed after submission by the parties. Christopher filed his Petition for Reconsideration of the Order Dated May 19, 2015 re: 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, 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 ("Petition for Reconsideration"). All facts presented in his Petition for Reconsideration are incorporated herein as if set forth fully herein.

First and foremost, the entire crux of Caroline's legal arguments hinge on the argument that the change of trust situs is allegedly valid. Caroline carries this assumption and narrative throughout her entire argument and it is the basis for her requests for relief. However, the Court must understand that the change of situs of the Trust was invalid because the terms of the Trust were not followed and the conditions precedent to change the situs were not met. Therefore, there is no change in trust situs, and this court does not have proper jurisdiction over FHT. As such, all of Caroline's arguments are rendered moot.

Second, This Court will recall that Caroline D. Davis' legal counsel, Mark Solomon, Esq. ("Mr. Solomon") initially argued that this Court should take jurisdiction over the FHT,

1 because "there would be a constructive trust here."¹ The Court adopted Mr. Solomon's
2 argument as part of its order.² Mr. Solomon's lack of candor in this regard is evident by his
3 concession and that a constructive trust is not the proper basis for jurisdiction, instead citing to
4 the requirements of NRS 164.010 to take jurisdiction as a preceding in rem.³ However, even
5 with Mr. Solomon's concessions in this regard upon which he must be equitably estopped from
6 making, the court remains without a proper basis upon which to take jurisdiction under NRS
7 164.010, because there was a lack of proper legal opinion acquired by the Alaskan Trustees, a
8 lack of consent to the purported change in situs from Alaska as set forth in Christopher's Motion
9 to Dismiss and Reply thereto, and the indispensable Alaskan Trustees have not been joined.
10

11
12 Notably, in Mr. Solomon and Mr. Hood's haste to criticize and misrepresent the
13 advocacy of Christopher's legal counsel regarding the fact that Tarja Davis ("Tarja") was not
14 presented with proper notice regarding the current proceedings, they purposefully fail to
15 acknowledge before this court that they began to send notice to Tarja Davis, knowing that she,
16 in fact, is and was a beneficiary of the FHT.⁴ Why would Mr. Solomon and Mr. Hood send
17 mailed notice to Tarja, if they truly believed, as they have argued, that she is not a beneficiary
18 under the terms of the FHT? She would have no right to notice of these proceedings if
19 Caroline's arguments are to be given any consideration by this Court. Their own actions
20
21

22
23 ¹ See Transcript filed 4/28/2015, Page 30:6.

24 ² See May 19, 2015 Order filed June 24, 2015.

25 ³ See Objection to Petition For Reconsideration of the Order Dated May 19, 2015 Re: Petition to Assume
26 Jurisdiction Over The Beatrice B. Davis Family Heritage Trust Dated July 28, 2000, as amended on February 24,
27 2014, To Assume Jurisdiction Over Christopher Davis D. Davis as Investment Advisor, Stephen K. Lenhardt as
28 Distribution Trust Advisor, To Confirm Dunham Trust Company as Directed Trustee, and For Immediate
Disclosure of Documents and Information From Christopher D. Davis; and Counterpetition For Sanctions filed July
31, 2015 ("Caroline's Objection") at Paragraph H, Page 22 of 24. See also Motion to Amend or Modify Order
Pursuant to NRCF 60(b)(3) filed August 6, 2015 by Caroline Davis.

⁴ See Supplemental Certificate of Service attached Re: 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 Davis D. Davis as Investment Advisor, Stephen K. Lenhardt as

1 bespeak the fact that Tarja was, in fact, a beneficiary and should have been provided notice to
2 these proceedings. Because they know that Tarja is a beneficiary of the FHT entitled to
3 distributions, her consent was necessary in order to change the situs of the FHT from any place
4 other than Alaska. Among other issues that will be discussed further, her lack of consent creates
5 potential liability for, at a minimum, the ATC Trust Company, formally known as Alaska USA
6 Trust Company ("Alaskan Trustees"), the FHT trust protector, and Caroline Davis in failing to
7 properly add them as indispensable parties.
8

9 Third, Caroline misrepresented to this Court that all she was seeking was information
10 from the various entities, because it is clear that she has and continues to raise claims over and
11 above requests simply for information. In her Objection alone, she raises claims of equitable
12 estoppel, alleged breaches of fiduciary duty, alleged improper transfers, and alter ego theories of
13 liability.⁵ Clearly, Caroline is raising claims for this court to adjudicate although this court has
14 not yet properly obtained jurisdiction of the FHT, its beneficiaries, or other entities. Most
15 importantly, Caroline does not request *in personam* jurisdiction over the beneficiaries for this
16 Court to grant the relief she seeks against Christopher.⁶ She now seeks the Court merely take *in*
17 *rem* jurisdiction over FHT, which, for reasons stated below, is improper.
18
19

20 Initially, Christopher's petition for reconsideration sought to bring to light the fact that
21 the court's decision to assume jurisdiction was a clear error of law. All legal authority and
22 argument addressed in his motion to dismiss and subsequent reply thereto are incorporated
23 herein as if set forth fully herein.
24
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27 Distribution Trust Advisor, To Confirm Dunham Trust Company as Directed Trustee, and For Immediate
28 Disclosure of Documents and Information From Christopher D. Davis dated April 8, 2015.

⁵See Caroline's Objection filed 7/31/15 at Paragraph E., Paragraph G.

⁶See Caroline's Objection filed 7/31/15, Page 17:15-17 (Ms. Davis, however, has not, requested this Court to assume jurisdiction over Christopher, individually, or as Trustee of the Revocable Trust.)

1 According to case law discussed further, a constructive trust may only be established
2 after the court has *in personam* jurisdiction. Therefore, this court could not have taken
3 jurisdiction based on a theory of constructive trust argued by Caroline's attorneys. However,
4 Caroline's new allegations in her Objection require Christopher to address the additional
5 substantive issues in this case which revolve around the validity of the change in situs sought by
6 Stephen K. Lehnardt and the Alaskan Trustees, and the jurisdictional limitations of NRS
7 164.010 and NRS 163.5555, which this Court appears to have recognized, in part, regarding its
8 decision not to assume jurisdiction over the trust protector, Stephen K. Lehnardt ("Mr.
9 Lehnardt")
10

11
12 Additionally, if the Court maintains that the change in situs is valid, the information
13 Caroline seeks regarding actions and decisions prior to February 24, 2014 must be obtained by
14 joining the Alaskan Trustees as they are the accountable parties holding a fiduciary duty to
15 disclose such information during periods in which Caroline desires information. Notably,
16 Christopher would not be required to account to another beneficiary as a beneficiary or to
17 account for another trustee's acts pursuant to the terms of the FHT even if this Court were to
18 properly assume *in rem* jurisdiction over the FHT.
19

20 NRS 164.010 and NRS 163.5555 grant this Court *in rem* jurisdiction if there is a proper
21 basis upon which to obtain jurisdiction, and NRS 163.5555 only grants jurisdiction based on
22 actions or decisions made by a trust protector or trust advisor. Under *in rem* jurisdiction, this
23 court is without the power or authority to require the disclosure of information or documentation
24 which is based on actions or decisions before Christopher was allegedly appointed as the
25 purported trust advisor, because this court does not have *in personam* jurisdiction over
26 Christopher. Even if the Trust did not prohibit such an informational inquiry, which it clearly
27
28

1 does, such information and documentation could only be obtained through personal jurisdiction
2 subject to the general requirements of due process and the statutory requirements under NRCP 4
3 and NRS 14.065, which this Court clearly has not obtained over Christopher and which Caroline
4 admits that she is not seeking.⁷

5
6 The Court must reconsider its findings and order. Again, Christopher respectfully
7 requests that this court do so.

8 **II. LEGAL AUTHORITY AND ARGUMENT**

9
10 A. The language of the trust controls and, because it was not adhered to, the trust
11 situs remains in Alaska and this Court lacks jurisdiction.

12 The change in situs is invalid if any one of the following statements are true: 1) Alaskan
13 Trustees were not provided with independent advice and an opinion of counsel regarding the
14 effects of the change in situs contrary to the terms of FHT; 2) Alaskan Trustees did not have the
15 power to evaluate and authorize a change in situs according to the terms of the FHT; or 3) Tarja
16 Davis was a discretionary beneficiary at the time of the purported change in situs. Because all
17 of these statements are true, the trust situs remains in Alaska and this court lacks jurisdiction.

18
19 1. The Alaskan Trustees did not follow the terms of the FHT when the alleged
20 change in situs was made; therefore, the change in trust situs is invalid.

21 A trust may only be modified in accordance with its specific terms.⁸ Where a trust
22 instrument requires the consent of specific parties in order for an amendment to be valid, the
23 lack of consent will invalidate a purported amendment.⁹ Herein, the change of situs was
24

25
26 ⁷ See Caroline's Objection filed 7/31/15, Page 17:15-17 ("Ms. Davis, however, has not, requested this Court to
assume jurisdiction over Christopher, individually, or as Trustee of the Revocable Trust.")

27 ⁸ *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
28 described in the trust instrument, the power can be asserted only in that manner.)

⁹ *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

1 purportedly accomplished through a purported First Amendment to the FHT on or around
2 February 24, 2014. However, certain requirements were needed to change the trust situs from
3 Alaska to Nevada. In Article Fourteen Section 6, Paragraph 1, of the FHT, the requirements for
4 a change of situs are provided:

5
6 Except as expressly provided herein, the situs of this agreement or any subtrust
7 established hereunder may be changed by the unanimous consent of all of the
8 beneficiaries then eligible to receive mandatory or discretionary distributions of net
9 income under this agreement or such subtrust, with the consent of any then-acting
10 Protector and the Trustee thereof, which shall be given only after Trustee has obtained
11 advice from counsel as to the tax and other consequences of a change in situs. (Emphasis
12 added).

13 Again, as noted in Christopher's prior Reply, this Court was made aware that Tarja Davis, a
14 beneficiary of FHT, had not consented to the change in situs. New evidence attached to
15 Caroline's Objection shows that Tarja Davis did not consent to move the situs of FHT to
16 Nevada.¹⁰

17 Furthermore, new evidence demonstrates that Christopher Davis did not have
18 independent counsel during the time of the purported change in situs.¹¹ He was not provided
19 with an opinion of counsel as to the tax and other consequences of a change of situs.¹² He
20 appears to have been merely aware that Mr. Lehnardt intended to change the situs of the FHT.

21 There was neither unanimous consent of all the beneficiaries nor advice from Trustee's
22 counsel as to the tax and other consequences of a change in situs. Interestingly, Caroline uses
23
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25 by only one settlor, after the other had died, was invalid.); See also Restatement (Second) of Trusts § 331,
26 Explanatory Notes, comment c, at 144 (1959) ("If the settlor reserves a power to modify the trust only with the
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.").

¹⁰ See Caroline's Objection filed 7/31/15 at Exhibit 3.

¹¹ See Declaration of Christopher Davis dated August 15, 2015 and filed 8/27/15 ("Declaration of Christopher Davis"), Paragraph 4.

¹² See Declaration of Christopher Davis, Paragraph 6.

1 an e-mail¹³ from her counsel as alleged evidence that an opinion of counsel was allegedly
2 provided to satisfy this trust provision. Notably, this e-mail is from counsel for the Trust
3 Protector Stephen K. Lehnardt, which states that an opinion of counsel was provided *solely to*
4 *support the Trust Protector Lehnardt's actions.*¹⁴ The opinion referred to in the e-mail is not
5 provided so it is unclear if tax or other consequences were discussed or included regarding any
6 intended change in situs. Even so, the Trust Protector is distinct and different from the Trustee
7 who was required to obtain advice from counsel as to the tax and other consequences of a
8 change in situs under the terms of the FHT.
9

10
11 More importantly, the Alaskan Trustees do not state or indicate that they obtained advice
12 from counsel as to the tax and other consequences of a change in situs required by Article
13 Fourteen, Section 6, Paragraph 1 of the FHT.¹⁵ New evidence provided by Caroline shows that
14 the Senior Trust Officer for the Alaskan Trustees ("Ms. Tempel") makes no mention of such an
15 opinion in her sworn declaration or that the Alaskan Trustees even sought advice for the tax and
16 other consequences that would result in a change of situs.¹⁶ In the absence of the Alaskan
17 Trustees not obtaining the advice from legal counsel as to the tax and other consequences of a
18 change in situs, thus the FHT requirement in Article Fourteen, Section 6, Paragraph 1 cannot be
19 satisfied.
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24 ¹³ See Caroline's Objection filed 7/31/15 at Exhibit 6.

25 ¹⁴ See Caroline's Objection filed 7/31/15 at Exhibit 6 which states "provided an opinion of counsel with
26 documentation supporting trust protector action"

27 ¹⁵ See Response of Dunham Trust Company filed 7/29/2015 at Exhibit 1 (which will hereafter be referred to as
28 "Trust") re: Trust, Article Fourteen, Section 6, Paragraph 1 (Except as expressly provided herein, the situs of this
agreement or any subtrust established hereunder may be changed by the unanimous consent of all of the
beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement or
such subtrust, with the consent of any then-acting 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. (Emphasis
added).

¹⁶ See Caroline's Objection filed 7/31/15 at Exhibit 4.

1 Notably, the Alaskan Trustees represented in their resignation that they were no longer
2 serving as trustee of the FHT after December 5, 2015. Although the Alaskan Trustees now
3 claim to have retained some of the powers of a trustee, they had already resigned and therefore
4 cannot be considered the trustee after December 5, 2015. Assuming *arguendo* that the Alaskan
5 Trustees could evaluate and authorize a change in situs as they now claim, the FHT still requires
6 that the Trustee, not the trust protector, receive advice from counsel prior to authorizing a
7 change in situs. The FHT provides the trust protector with certain powers regarding the
8 trustee.¹⁷ None of these powers include the power to provide legal advice to the trustee.
9 Therefore, the Alaskan Trustees is not authorized to rely on the advice of counsel for the trust
10 protector.
11

12
13 The FHT requires the trustee to obtain an opinion from counsel independent of the
14 protector, prior to authorizing a change in situs. As Caroline knows, the FHT relieves the trust
15 protector of all fiduciary responsibility regarding other roles the trust protector fills and in
16 connection with his role as trust protector.¹⁸ There would be no reason to include the provision
17 requiring the trustee to obtain advice from counsel if the trust protector could simply provide
18 this opinion, while being absolutely free of any fiduciary duty to the FHT or its beneficiaries. In
19 other words, the purpose of the trustee obtaining the advice of counsel is to protect the
20 beneficiaries of the FHT; and this purpose is not fulfilled by obtaining an opinion from one who
21 is relieved of all fiduciary duty toward the FHT and beneficiaries. The FHT required more than
22 the protector or the protector's attorney to provide advice regarding the change in situs to
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27 ¹⁷ Trust, Article Eleven, Section 8, Paragraphs a-d, providing that the trust protector may: appoint or remove
28 trustees; advise the trustee regarding distributions; add beneficiaries; and allow beneficiaries to purchase trust
 property on favorable terms.

¹⁸ Trust, Article Eleven, Section 8, Page 11-5, Last Paragraph, stating "Some of the persons selected as Trust
 Protector or successor Trust Protector may have other personal or professional relationships which may impose or

1 protect the beneficiaries; the FHT requires an opinion or advice from an *independent attorney*
2 *of the trustee.*

3 Here, despite obtaining an affidavit from the Alaskan Trustees, Caroline has only
4 provided an e-mail and billing statements as evidence purporting that the Alaskan Trustees were
5 provided an opinion of counsel. However, the e-mail and billing statements, at best, indicate
6 that Mr. Lehnardt, as trust protector, may have discussed legal matters with Mr. Brislawn. In
7 Mr. Brislawn's e-mail he explicitly states that he was retained by Mr. Lehnardt.¹⁹ The billing
8 statements, if and to the extent they can be relied upon, only indicate that Mr. Lehnardt received
9 and conveyed information from *his attorney* to the Alaskan Trustees and Dunham Trust
10 Company.²⁰

13 It should be noted that the FHT clearly states that the trustee can provide its consent
14 "only after Trustee has obtained advice from counsel as to the tax and other consequences of a
15 change in situs."²¹ At the April 22, 2015 hearing, Caroline, through Mr. Solomon, represented
16 to this court that the consent of the trustee was signed by the Alaskan Trustees, Dunham Trust
17 Company, Caroline, Christopher and Winfield. He then stated "and after this document was
18 signed, then Mr. Lehnardt went out and got his advice of counsel, got a written opinion, and
19 prepared the first amendment."²² According to Mr. Solomon's representations to the court, any
20 alleged opinion of counsel was provided after the trustee had already provided consent. If the
21 court does not require an independent opinion of counsel as required by the trust and assuming
22 there was an alleged opinion of counsel provided to the trustee through Mr. Lehnardt, this
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26 imply fiduciary or other duties to me. I hereby fully relieve such Trust Protector from any such duties to the extent
27 the Trust Protector is acting as Trust Protector."

28 ¹⁹ See Caroline's Objection dated 7/31/15 at Exhibit 6 re: email from Dennis Brislawn.

²⁰ See Caroline's Objection dated 7/31/15 at Exhibit 7 re: billing statements from Stephen Lehnardt.

²¹ See Article Fourteen, Section 6 Paragraph 1.

²² See Transcript dated 4/28/2015, Page 22:12-23

1 opinion would still have been deficient as it was apparently provided after the trustee allegedly
2 consented to the change in situs, and "not before" as required by the terms of the FHT.
3 Therefore, the legal opinion provided to the trust protector was improperly obtained or contrary
4 to the terms of the FHT for purposes of providing a change in situs.
5

6 As stated above, however, Caroline has no evidence that the Alaskan Trustees ever
7 received advice or an opinion independent of Mr. Lehnardt, as trust protector. In the only sworn
8 document on this issue, the Alaskan Trustees senior trust officer makes no mention of an
9 independent opinion of counsel or even any opinion or advice of counsel being provided by Mr.
10 Lehnardt. This glaring omission in Ms. Tempel's declaration seems to suggest that Ms. Tempel
11 was unwilling or unable to acknowledge receipt of an independent opinion of counsel or
12 Caroline failed to obtain a sworn statement that Alaskan Trustees had in fact received such an
13 independent opinion from counsel prior to the change in situs as required by the terms of the
14 FHT. Again, Christopher has repeatedly stated that the Alaskan Trustees are an indispensable
15 party to this action for purposes of determining whether there was an appropriate change in situs
16 according to the terms of the trust, which is further evidence that the Court must reconsider its
17 prior order and declare that the Alaskan Trustees are an indispensable party to this action, which
18 is discussed further below.
19
20

21 Because the conditions under the terms of the FHT were not fulfilled, there can be no
22 change in situs. The situs of the FHT remains in Alaska. Thus, this Court is without a basis
23 upon which to obtain *in rem* jurisdiction over the FHT.
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1 ii. Alaskan Trustees did not retain or have the power to authorize a change in situs
2 for FHT, because they no longer had the authority to make the change in situs.

3 Caroline claims that, Alaska USA ("AUTC") did not effectively resign as Trustee of the
4 trust until February 24, 2014²³. This is contrary to the resignation of AUTC which states that the
5 "resignation as Trustee is effective as of December 5, 2013 or upon the acceptance of
6 trusteeship by a successor trustee, *whichever occurs earlier.*"²⁴ It is clear from the Ms.
7 Tempel's declaration that the language contained in the resignation is that the Alaskan Trustees
8 resigned effective December 5, 2013, and therefore were not then serving as trustee of the FHT.
9 Under the terms of the FHT and as a resigned trustee, the Alaskan Trustees were unable to
10 authorize a change in situs.
11

12 Additionally, Caroline, through Ms. Tempel, alleges that Alaskan Trustees retained trust
13 duties and powers after the December 5th date identified in the Alaskan Trustees' resignation.
14 Ms. Tempel claims that the Alaskan Trustees retention of trust duties and powers is pursuant to
15 Alaska law. Ms. Tempel and Caroline further allege that Alaska law dictates that a trustee must
16 retain its duties and powers until a new trustee is appointed. However, there is a distinction
17 between a trustee having "full" powers and "necessary" powers as designated in the statute,
18 which they fail to address.
19
20

21 Alaska Statutes, section 13.36.077(1) ("AS 13.36.077") provides that "until the trust
22 property is delivered to a successor trustee or another qualified person entitled to the trust
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24
25 ²³ See Caroline's Objection dated 7/31/15, Page 10: 2-10. See also See Caroline's Objection dated 7/31/15 at
Exhibit 6 re: Affidavit of Janet Tempel.

26 ²⁴ See Caroline's 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
27 Adviser and Stephen K. Lehnardt as Distribution Trust Advisor; To Confirm Dunham Trust Company as Directed
28 Trustee; and for Immediate Disclosure of Documents and Information from Christopher D. Davis ("Caroline's
Petition") at Exhibit 4 re: Resignation of Trustee dated October 30, 2013.

1 property, a trustee who has resigned or been removed has the duties of a trustee and *the powers*
2 *necessary to protect trust property.*" The statute clearly provides that a resigned trustee has
3 something *less* than the full powers available to a currently serving trustee with its qualification
4 of "necessary powers" in its statutory language. If the Alaska statute intended that the trustee
5 would retain all or full powers it would have simply stated that the trustee retains all the duties
6 and powers of a trustee. However, the statute makes a distinction and provides that the trustee
7 retains duties but *only those powers necessary* to protect trust property.
8

9
10 Is a necessary power of a Trustee one that would allow the trust situs to be moved from
11 one state to another after the Alaskan Trustee's resignation? No, the power to consent to a
12 change in situs or even the power to evaluate such a decision is not necessary to protect trust
13 property under the legislative history of Alaska Statute 13.36.077, which states that the purpose
14 of this statute was simply to encourage a resigned trustee to promptly deliver trust assets to a
15 new trustee.²⁵ Accordingly, the powers provided to a resigned trustee by AS 13.36.077 are
16 limited to only those powers required to protect trust assets and to transfer assets. This would
17 include the power to prevent distributions or the power to sign transfer of ownership documents.
18 However, the statute does not provide a resigned trustee with the power to evaluate and
19 authorize a change in situs, a condition precedent to transferring assets to any new trustee in a
20 new situs.
21

22
23 Furthermore, there is no evidence to suggest that a change of situs was necessary.
24 Surely, Caroline will argue that the new trustee was a Nevada trustee to whom the transfer
25 would be made; therefore, a change in situs was necessary; however, we do not have an opinion
26 of counsel for the Trustee to determine whether a change in situs was "necessary" or whether
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1 another Alaska trustee was unavailable. We, likewise, do not have the opinion of counsel of the
2 trust protector regarding these issues. The alleged change in situs was, at most, voluntary,
3 because it is clear that trust property could have been transferred to another Alaskan trustee. It
4 was also allegedly done without adhering to the requirements of FHT in obtaining the requisite
5 documentation and/or consent; and by a Trustee that allegedly had limited powers, if any, at the
6 time the alleged change of situs was effectuated.
7

8 Further evidence of the limitations of the power of the Alaskan Trustees is evidenced by
9 the resignation document itself. Since Ms. Tempel indicates that the Alaskan Trustees knew
10 they retained some duties, then their resignation on December 5, 2014 (before the acceptance of
11 trusteeship by a successor trustee) was executed to limit their powers and their exposure to
12 liability for any possible breaches in their fiduciary duties toward the beneficiaries of FHT. If
13 their resignation was to be totally ineffective until the acceptance of a successor trustee (thus
14 forcing the Alaskan Trustees to retain all powers of a trustee and, in effect, continue serving as a
15 trustee), then the language of the resignation document would have read that the "resignation
16 was effective on December 5, 2013 or upon the acceptance of a successor trustee, *whichever*
17 *occurs later*,"
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20 More simply, the Alaska Trustee could have made the resignation effective upon the
21 acceptance of a successor trustee, if they intended to retain all powers associated with being
22 FHT's Trustee. However, it is clear that the Alaskan Trustees intended their resignation to be
23 effective at the latest on December 5, 2013. Ms. Tempel and Alaskan Trustees were thus
24 aware that they had limited powers of a resigned trustee to only those necessary to protect trust
25 property pursuant to the Alaska statute, which was to protect them from further liability. They
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²⁵ The Alaska State Legislature, 25th legislature Committee Minutes, Senate Judiciary February 15, 2008, 1:35 P.M.

1 intended not to have the full powers associated with being a trustee; otherwise, they have
2 effectively misrepresented their resignation to the beneficiaries, this Court, and those involved
3 with FHT.
4

5 Assuming *arguendo* that this court interprets the retention of some powers of an Alaskan
6 trustee to qualify a resigned trustee as the then serving trustee under the terms of the FHT, the
7 question still remains as to whether the Alaskan Trustees, after their resignation, retained the
8 power to authorize the change in situs and whether it was necessary. If this Court is
9 comfortable in interpreting the law of Alaska, the statute can only be read as providing only the
10 powers necessary to protect the assets of the FHT. This interpretation lends support that such
11 retained powers would not include a change of situs, leaving the situs of the FHT in Alaska. If
12 this Court believes that the Alaskan Trustees were allowed to change the situs, then they are a
13 necessary and indispensable party as argued further below.
14

15
16 iii. Tarja Davis was a discretionary beneficiary entitled to distributions at the time
17 of the purported change in situs and did not provide her consent to the situs
change; therefore, the change in situs is invalid.

18 When an interpretation would result in the terms of a trust being deemed repugnant, the
19 general rule for handling repugnant provisions in a trust is summarized in Corpus Juris
20 Secundum which provides in pertinent part:
21

22 If possible, a trust instrument should be construed by reconciling apparently repugnant
23 provisions. A trust instrument must be so construed as to avoid, if possible, all
24 repugnancy. If reconciliation of inconsistencies is possible, a construction that produces
25 that result will be adopted. Thus, conflicting provisions should be read in such a manner
26 as to give effect to both or fulfill the settlor's intent. Parts inconsistent with the settlor's
27 intent may be rejected. A construction of a provision in a trust deed will not be adopted
28 that holds that provision repugnant to the grant so as to defeat the grantor's manifest
intention.²⁶

1 In the Nevada case, *Hunter v. Manhan*,²⁷ the court reconciled a conflict between two
2 provisions of the trust under a decedent's will that controlled the distribution of the trust benefits
3 to the sole beneficiary, the decedent's daughter, Dorothy. A district court had not made
4 deductions to the value of a beneficiary's interest, despite the fact that she had received monthly
5 distributions until the trust's termination (which diminished the trust's value), and based their
6 decision on the reading of the word, "absolutely".²⁸ The Nevada Supreme Court disagreed and
7 reconciled the use of the term "absolutely" so that it made sense with the purposes, meaning,
8 and objectives of the trust.²⁹

9
10 In a Texas case, *Shearrer v. Holley*,³⁰ involved a dispute over real property that had been
11 transferred to a trust.³¹ The Trustee was to hold the property for the benefit of the grantors and
12 their three children with the trust terminating on the death of the surviving grantor, and the
13 property being distributed to the three children. The trust provided that full ownership in
14 various tracts, as opposed to undivided interests, was to pass outright to each of the three
15 children.³² When one of the children died leaving the property to his wife, litigation ensued as
16 to the interpretation of the trust concerning whether the beneficial interest was a vested or
17 contingent remainder to enable the child to devise his interest to a spouse. The lower court
18 found that the interest was contingent and reverted back to the grantor's estate; the appeals
19 court, however, found that the language of the trust meant that at the time of the trust's
20 termination, the legal title held by the trustee would vest in the beneficiaries so as to merge with
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25 ²⁶ 90 C.J.S. Trusts § 217 (Westlaw database updated June 2015) ("Repugnant provisions").

26 ²⁷ *Hunter v. Manhan*, 94 Nev. 380, 580 P.2d 474 (1978)

27 ²⁸ *Id.* at 382 n.2, 580 P.2d at 476 n.2 (quoting trust).

28 ²⁹ *Id.* at 382-83, 580 P.2d at 476 (The Nevada Supreme Court held that "the word "absolutely" as used in that paragraph means only that upon termination of the trust Dorothy was to receive the trust corpus free of trust in sole ownership")

³⁰ *Shearrer v. Holley*, 952 S.W.2d 74 (Tex. App. 1997)

³¹ *Id.* at 75-79

1 the beneficiaries' equitable title that had been vested in them since the creation of the trust.³³ In
2 other words, the court construed the term "vest" to relate only to the time for the beneficiary's
3 right to possess the property represented by that interest and not to the time at which the interest
4 legally vested so as to preclude any requirement for the beneficiary to survive to a later time in
5 order to retain his right of possession once the time came for distribution of the trust assets.

7 Thus, in both *Hunter* and *Shearrer*, the court resolved a conflict by interpreting a term so
8 as to eliminate the incompatibility that would otherwise exist. Courts have typically resolved
9 and should resolve conflicts of terms to avoid a repugnancy in the interpretation of a trust
10 agreement.

12 Herein, Caroline has alleged that Tarja Davis was not a beneficiary of the trust entitled
13 to discretionary distributions. The analysis of Tarja's status as a beneficiary requires more than
14 the one paragraph simplistic discussion that Caroline devotes to addressing the issue. While the
15 FHT is a document of more than one hundred pages, it is important that the terms of the FHT be
16 interpreted in conjunction with the entirety of all one hundred plus pages in order to avoid an
17 absurd result in its interpretation.

19 In the FHT, there are clearly three operational definitions for the term "spouse" as it
20 applies to a beneficiaries rights under the terms of the FHT. Two of these definitions refer to
21 the process by which a spouse may become a qualified primary beneficiary, while the third
22 spousal definition refers to the spousal ability to receive current discretionary distributions of a
23 limited nature (i.e. for health education, maintenance and support) until that spouse as a
24 secondary or other beneficiary later qualifies as a vested primary beneficiary (hereinafter
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³³ *Id.* at 76-77

1 "primary beneficiary"). The first definition of a spouse is one that exists at the time of the
2 signing of the FHT.³⁴ This definition applies to Christopher's first spouse, Cheryl Davis
3 ("Cheryl"). The next definition is one that applies to a spouse that marries after the signing of
4 the FHT, and who may become a primary beneficiary after ten years or sooner upon involuntary
5 separation. This definition applies to Christopher's current spouse, Tarja. The third definition
6 refers to a spouse that is in the process of qualifying as a primary beneficiary, but who lives with
7 the primary beneficiary and is entitled to discretionary distributions solely from the share of the
8 primary beneficiary for health, education, maintenance, and support only after the trustee meets
9 the needs of the primary beneficiary. This definition also applies to Tarja. It is clear from
10 Beatrice's own intent as set forth in the FHT that her children's spouses are all intended primary
11 beneficiaries,³⁵ and therefore provisions were made to care for her children's spouses until they
12 qualified as a primary beneficiaries.

13
14
15
16 **a. Article Fourteen, Section 1, Paragraph (j) created a primary beneficiary
for a spouse married at the time the trust was created.**

17 Pursuant to Article Three of the FHT, the primary beneficiaries of the FHT are
18 Christopher D. Davis, Caroline D. Davis, their spouses, their children, and any other natural
19 person added as a beneficiary pursuant to other provisions of the FHT agreement which permits
20 such persons to be added as beneficiaries.³⁶ It is not surprising that Caroline would fail to
21 represent to the court the identities of the spousal beneficiaries in light of matters that will be
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26 ³³ *Id.* at 77 (The Court of Appeals of Texas stated that "[w]hile the trust deeds provide that title would vest in Troy
27 upon the death of his parents; the courts have interpreted similar language to delay only the time of enjoyment or
possession, not the time of vestment")

28 ³⁴ Trust, Article Fourteen, Section 1, paragraph (j), stating "An individual is a "spouse" if such individual is the then
current spouse of a child of mine on the signing date of this trust".

³⁵ Trust, Article Three, Section 1.

³⁶ Trust, Article Three, Section 1

1 discussed further.³⁷ However, it is clear that if there are "primary beneficiaries" and there are
2 "secondary or other beneficiaries" of the FHT. In fact, the FHT defines the provisions of which
3 permit a secondary or other beneficiary to be added as an intended primary beneficiary under
4 Article Fourteen.³⁸

5
6 Beatrice created the FHT on July 28, 2000, naming Alaska Trust Company ("Alaska") as
7 the initial trustee and Mr. Lehnardt as trust protector. When the FHT was signed, Christopher
8 D. Davis was married to Cheryl. Cheryl was a primary beneficiary under the terms of the FHT,
9 because she qualified as a "spouse."³⁹

10
11 Article Fourteen, Section 1, Paragraph (j), first sentence states, "An individual is a
12 "spouse" if such individual is the then current spouse of a child of mine on the signing date of
13 this trust." Furthermore, the life insurance policy that funds the FHT insures the life of
14 Cheryl,⁴⁰ the spouse of Christopher at the time the Trust was signed.⁴¹

15
16 But why insure the life of Christopher's wife and not the life of Christopher or Caroline?
17 Because both Beatrice and Christopher had an insurable interest in Cheryl's life as a primary
18 beneficiary under the terms of the FHT.⁴² The same argument would be equally applicable to
19 any spouse of Caroline had she been married and had Beatrice insured the life of Caroline's
20 spouse.

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24 ³⁷ See Caroline's Objection filed 7/31/15 at Page 4:17-18.

25 ³⁸ Trust, Article Three, Section 1. See also Trust, Article Fourteen, Section 1, Paragraph (j)

26 ³⁹ See Footnote 34.

27 ⁴⁰ See Caroline's Petition dated 02/10/15 at Exhibit 6 re: Ashley Cooper Life International Insurer, SPC life insurance policy.

28 ⁴¹ Trust, Article Fourteen, Section 1, Paragraph j., Page 14-4 (An individual is a "spouse" if such individual is then current spouse of a child of mine [Beatrice B. Davis] on the signing date of this trust.)

⁴² Trust, Article Four, Section 1, Page 4-1 ("My Trustee may purchase and hold as trust property a policy or policies of insurance on my life, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurance interest.")

1 The terms of the FHT dictate that upon termination of the trust, the trustee is required to
2 make every effort to transfer any policy insuring a beneficiary's life to that beneficiary as part of
3 that beneficiary's distributive share.⁴³ It is clear that the policy insures Cheryl's life, who was
4 named as a primary beneficiary by Beatrice herself, and was the spouse of Christopher (also a
5 primary beneficiary) at the time Beatrice signed the FHT.⁴⁴ Therefore, Cheryl became both a
6 spouse and primary beneficiary of, at a minimum, the distributive share of the policy on her life
7 upon termination of the trust.
8

9 Based upon the foregoing distributive requirement to the insured beneficiary, if it was
10 argued that Cheryl was only a lifetime beneficiary during Beatrice's life,⁴⁵ then unless Cheryl's
11 beneficial interest was terminated at the termination of the lifetime trust or later divorce from
12 Christopher, she would have continue to have a right to her distributive share upon termination
13 of the FHT.⁴⁶
14

15 If Cheryl's beneficial rights were not terminated at the death of Beatrice or at her divorce
16 from Christopher, then she arguably retained her beneficial status, because she already qualified
17 as the current spouse of Christopher at the time of the signing of the Trust,⁴⁷ and she is the
18 actual insured under the terms of the life insurance policy held by the FHT currently being
19 disputed by the parties.⁴⁸
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23 ⁴³ Trust, Article Four, Section 1, Paragraph i. ("Upon termination of the trust, my Trustee shall have power to
24 transfer and assign the policies held by the trust as a distribution of trust property. My Trustee shall make every
25 effort to transfer any policy insuring a beneficiary's life to that beneficiary as part of that beneficiary's distributive
26 share.")

25 ⁴⁴ See Journal Entry and Decree of Divorce dated August 15, 2011 attached hereto and incorporated as Exhibit A.

26 ⁴⁵ Trust, Article Three, Section 11 ("This lifetime trust shall terminate upon the death of the Trustmaker, and the
27 principal and accrued and undistributed net income shall be distributed under the Articles that follow."); See also
28 Article Four, Section 1, Paragraph i.

27 ⁴⁶ See Footnote 43.

28 ⁴⁷ Trust, Article Fourteen, Section 1, Paragraph j., Page 14-4 (An individual is a "spouse" if such individual is then
current spouse of a child of mine on the signing date of this trust.)

⁴⁸ Trust, Article Fourteen, Section 1, Paragraph j., Page 14-4 (An individual is a "spouse" if such individual is then
current spouse of a child of mine on the signing date of this trust.)

1 Assuming *arguendo* that Cheryl's beneficial status was not terminated, she would
2 arguably continue to retain her beneficial rights even if the FHT was later divided.⁴⁹ She would
3 also require notice as to the current petition; however, she was not noticed on Caroline's
4 Petition despite Caroline's care to notice Tarja, and was not a party to the change in situs
5 effectuated by Mr. Lehnardt. Whether or not she is entitled to notice regarding whether or not
6 she remains a primary beneficiary for distributions was a question for the Alaskan Trustee and
7 Mr. Lehnardt to address prior to the change in situs, and more likely the Alaska court.

8
9
10 **b. Article Fourteen, Section 1, paragraph (j) creates a qualifying period for**
11 **a spouse married after the creation of the FHT in order to be added as a**
12 **primary beneficiary, under which Tarja qualifies.**

13 Tarja is a secondary or other beneficiary currently entitled to discretionary distributions
14 for health, education, maintenance and support, who will become a primary beneficiary after ten
15 years of marriage or sooner if there happens to be an involuntary separation from Christopher
16 due to death or other circumstances. In order to more fully understand the nature of Tarja's
17 interest, the Court must look to the beneficiary definition set forth in Article Fourteen, Section
18 1, paragraph (a), which is referred to by paragraph (j) of the same article which states in
19 pertinent part that:

20 "No adopted or after-born person shall be accepted as descendant of mine unless that
21 person is the product of a valid marital union in existence prior to the birth or adopted as
22 such person and continuously for at least ten years thereafter. A valid marital union
23 exists if the husband and wife are legally married and actually reside with each other in
24 the same principal residence. The burden shall be on the person to establish that a
25 particular marital union satisfies the requirements of this paragraph....Any involuntary
26 separation during the ten year period due to circumstances beyond the control of the
spouses, including death of one of the spouses, shall not indicate dissolution of the
marital union. During the ten year qualification period, my Trustee shall hold such

27 ⁴⁹ Trust. Article Twelve, Paragraphs b. and c. (If a trust under this agreement, whether created under the Section or
28 not, is entirely exempt or nonexempt from generation-skipping tax and adding property to it would partially subject
the trust to generation-skipping tax, my Trustee may hold that property in a separate trust in lieu of making the
addition. If my Trustee divides a trust into two separate trust shares or creates a separate trust for additions, the
trusts or trust shares that result shall have the same terms and conditions as the original trust.")

1 beneficiary's trust share, if any, and shall not make any distributions for the benefit of
2 such beneficiary....Nothing in this paragraph shall operate to deny any current
3 beneficiary from receiving benefits from his or her trust share, nor in limiting the
discretion of my Trustee in determining those benefits."

4 It is clear from the definition of a marital union that is incorporated into Article
5 Fourteen, Section 1, Paragraph (j) that an adopted or after born person shall be accepted if he or
6 she is the offspring of a ten year marital union unless one of the spouses in the marital union
7 dies before the 10 year qualification period or is involuntarily separated.⁵⁰ Under the marital
8 union definition, ten years could be shortened to three years if the trustee found that an
9 involuntary separation occurred.⁵¹ Therefore, ten years is not really ten years even for a person
10 qualifying to become a primary beneficiary if there is an involuntary separation in the marital
11 union.
12

13
14 In short, a non-primary spouse in the marital union must actively choose separation in
15 order for the ten year requirement to become operative for purposes of disqualifying them as a
16 qualifying primary beneficiary. Clearly the "ten year requirement is modified under Article
17 Fourteen, Section 1, Paragraph (j), because it references directly to Article Fourteen, Section 1,
18 Paragraph (a). Paragraph (a) further provides that any current beneficiary cannot be denied
19 from receiving benefits from his or her trust share, nor in limiting the discretion of the Trustee
20 in determining those benefits. In fact, the Trust must hold the qualifying beneficiary's trust
21 share in trust during the period in which the child is maturing into adulthood and into the status
22 of a primary beneficiary.
23

24
25 Even if the Court adopts Caroline's argument that Tarja is not a qualified spouse as a
26 primary beneficiary, the Trustee still has discretion in determining the benefits of a current
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⁵⁰ Trust, Article Fourteen, Section 1, Paragraph a.

⁵¹ *Id.*

1 secondary spousal beneficiary (who is in the process of qualifying or being added as vested
2 primary beneficiary) living with a primary beneficiary, and may continue with their current
3 discretionary distribution to a current secondary or other beneficiary spousal beneficiary.⁵²
4

5 c. Article Eight, Section 3 of FHT provides for current discretionary
6 distributions for a current spouse living with a primary beneficiary,
7 which includes Tarja.

8 Caroline attempts to explain away Tarja's rights as a current secondary or other
9 beneficiary entitled to current discretionary distributions under Article Eight, Section 3,
10 Paragraph (d) by only citing to half of the paragraph, which fails to disclose the definitional
11 requirement which permits Tarja to receive current discretionary distributions as a secondary
12 beneficiary or other beneficiary living with her husband Christopher (who is a primary
13 beneficiary). The full sentence of Article Eight, Section 3(d) reads, "My Trustee may make
14 distributions from the trust share of a Primary Beneficiary to or for the health, education,
15 maintenance and support of the spouse of the Primary Beneficiary if the spouse is living with
16 the Primary Beneficiary. (Emphasis added).
17

18 The immediate question then becomes, does Tarja qualify as a current secondary or
19 other beneficiary entitled to current discretionary distributions for health, education,
20 maintenance, and support if she is a spouse living with the primary beneficiary. The answer is
21 clearly, "Yes." The FHT provides that if Tarja is living with the primary beneficiary (i.e.
22 Christopher), she is entitled to discretionary distributions for health, education, maintenance,
23
24
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27

28 ⁵² Trust, Article Fourteen, Section 1, Paragraph a. as referred to by Paragraph j.; See also Trust, Article 8, Section 3,
Paragraph d. ("Distributions shall only be made by my Trustee to a spouse or a descendant of the Primary
Beneficiary after considering the needs of the Primary Beneficiary of the trust share.")