

ACKNOWLEDGEMENT AND CONSENT OF BENEFICIARY

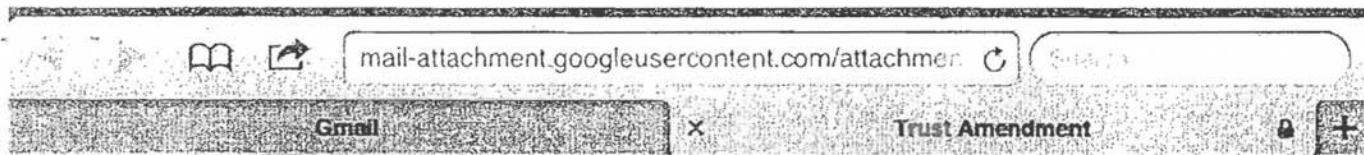
I, Winfield B. Davis, as a beneficiary entitled to net income of the trust, hereby acknowledge this Amendment and consent to its terms.

IN WITNESS WHEREOF, I have hereunto set my hand effective on the date written below.

Dated this _____ day of February, 2014

by: _____
Winfield B. Davis, Income Beneficiary

The First Amendment to the
Beatrice B. Davis Family Heritage Trust
Page 10



by:

Christopher D. Davis, Income Beneficiary

ACKNOWLEDGEMENT AND CONSENT OF BENEFICIARY

I, Caroline D. Davis, as a beneficiary entitled to net income of the trust, hereby acknowledge this Amendment and consent to its terms.

IN WITNESS WHEREOF, I have hereunto set my hand effective on the date written below.

Dated this ____ day of February, 2014

by:

Caroline D. Davis, Income Beneficiary

ACKNOWLEDGEMENT AND CONSENT OF BENEFICIARY

I, Winfield B. Davis, as a beneficiary entitled to net income of the trust, hereby acknowledge this Amendment and consent to its terms.

IN WITNESS WHEREOF, I have hereunto set my hand effective on the date written below.

Dated this ____ day of February, 2014

by:

Winfield B. Davis, Income Beneficiary

A handwritten signature in black ink, appearing to be 'W. B. Davis', written over a horizontal line.

The First Amendment to the
Beatrice B. Davis Family Heritage Trust

Exhibit 8

Exhibit 8

FHT HOLDINGS L.L.C.

Business Entity Information			
Status:	Active	File Date:	3/28/2014
Type:	Domestic Limited-Liability Company	Entity Number:	E0164672014-6
Qualifying State:	NV	List of Officers Due:	3/31/2016
Managed By:	Managers	Expiration Date:	
NV Business ID:	NV20141217326	Business License Exp:	3/31/2016

Additional Information	
Central Index Key:	

Registered Agent Information			
Name:	REGISTERED AGENT SOLUTIONS, INC.	Address 1:	4625 WEST NEVSO DR SUITE 2
Address 2:		City:	LAS VEGAS
State:	NV	Zip Code:	89103
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Commercial Registered Agent - Corporation		
Jurisdiction:	CALIFORNIA	Status:	Active

Financial Information			
No Par Share Count:	0	Capital Amount:	\$ 0
No stock records found for this company			

<input checked="" type="checkbox"/> Officers <input type="checkbox"/> Include Inactive Officers			
Manager - CHRISTOPHER D DAVIS			
Address 1:	241 RIDGE STREET SUITE 100	Address 2:	
City:	RENO	State:	NV
Zip Code:	89501	Country:	USA
Status:	Active	Email:	

<input checked="" type="checkbox"/> Actions\Amendments			
Action Type:	Articles of Organization		
Document Number:	20140227350-46	# of Pages:	1
File Date:	3/28/2014	Effective Date:	

(No notes for this action)			
Action Type:	Initial List		
Document Number:	20140310193-04	# of Pages:	1
File Date:	4/29/2014	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20150246973-99	# of Pages:	1
File Date:	5/15/2015	Effective Date:	
15-16			



EXHIBIT 40


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


SUPPLEMENT TO 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 Supplement to Opposition to


1 Caroline Davis' ("Caroline") Motion to Hold Christopher D. Davis in Contempt and for
2 Attorney's Fees and Costs ("Motion") This pleading is based on the Memorandum of Points and
3 Authorities attached hereto, any exhibits attached hereto, and any oral argument that will be
4 heard in this matter.
5

6 DATED this 20th day of August, 2015.

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

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

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

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

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

3
4 I. INTRODUCTION

5 Christopher D. Davis ("Christopher") hereby incorporates by reference the
6 memorandum of points and authorities including the Statement of Facts and the Legal Argument
7 contained in Christopher's Supplement to Opposition to Caroline Davis' ("Caroline") Motion to
8 Hold Christopher D. Davis in Contempt and for Attorney's Fees and Costs. In addition
9 Christopher further states the following:

10
11 A. STATEMENT OF FACTS

12 On September 2nd, 2015 a hearing was held on Christopher's motion for reconsideration.
13 During this hearing the Court stated that "in Nevada there is substantial case law that says you
14 can do discovery on jurisdictional issues."¹ In support of this position Judge Sturman cited
15 *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152, 1161, (Nev. 2014) and
16 *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 342 P.3d 997, 999, (Nev. 2015).
17 Specifically the Court stated, regarding opening limited discovery to determine jurisdiction,
18 "and that's the purpose and intent of taking jurisdiction initially was to figure out jurisdiction."²

19
20 Additionally, Christopher reiterates that he has never been personally served in the
21 underlying case with a summons or citation either personally, or in his capacity as manager of
22 FHT Holdings LLC. Christopher has also never been personally served with a citation or an
23 order to show cause for the contempt hearing.
24
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27
28 ¹ See Transcript of Proceedings for Hearing dated September 2, 2015 page 57 lines 4-6.

² Id at page 58 lines 17-19

1 B. CHRISTOPHER DAVIS REITERATES HIS OBJECTION PURSUANT TO
2 NRS § 22.030(3), AND REQUESTS THAT THE MOTION FOR CONTEMPT
3 BE HEARD BY A DIFFERENT JUDGE
4

5 NRS 22.030(3) states "if a contempt is not committed in the immediate view and
6 presence of the court, the judge of the court in whose contempt the person is alleged to be shall
7 not preside at the trial of the contempt over the objection of the person." The plain meaning of
8 this statute has been reaffirmed by the Nevada Supreme Court on multiple occasions.³
9

10 Christopher is alleged to be in contempt of an order issued by this Court. The alleged
11 contempt is outside the immediate view and presence of the court. Christopher objects to having
12 the contempt heard before the judge of the court in whose contempt Christopher is to be.
13 Therefore, NRS § 22.030(3) requires Judge Struman to recuse herself and refer the contempt
14 hearing to a different Judge.
15

16 C. LACK OF JURISDICTION

17 1. THE MAY 19, 2015 ORDER IS SUBJECT TO COLLATERAL ATTACK
18 BASED ON LACK OF PERSONAL JURISDICTION OVER
19 CHRISTOPHER D. DAVIS
20

21 The D.C. Circuit court of appeals articulated the understanding that an order lacking
22 jurisdiction may be attacked on those grounds, stating:

23 Undoubtedly the law is well settled, that the validity of judgments cannot be questioned
24 in any collateral proceeding for mere error or irregularity in their rendition. But it is
25 equally well settled that the invalidity of a judgment for the want of jurisdiction in the
26 court to render it, may be shown in any proceeding whatever in which it is sought to
27 enforce it. For a judgment invalid for the want of jurisdiction, is absolutely void; and the
28 person against whom it is rendered is under no obligation to take any direct steps for its
cancellation⁴

³ See *Awad v. Wright*, 106 Nev. 407, 410, (Nev. 1990)

⁴ *Tenney v. Taylor*, 1 App. D.C. 223, 227, (D.C. Cir. 1893)

1
2 The Restatement Second of Judgments states "a judgment that was "void" could be the
3 subject of a "collateral attack" through some procedure other than motions for new trial, post
4 judgment relief, appeal, or an independent action in equity, all of which were characterized as
5 "direct attacks" that were required when the judgment was merely "voidable."⁵ Additionally the
6 9th circuit has held "Because it is clear from the record that the District Court did not have
7 personal jurisdiction over the Consejo and the judgment was, therefore, void, the District Court
8 had a nondiscretionary duty to grant relief from the default judgment."⁶ An order entered
9 without proper jurisdiction is void and may be attacked in any proceeding relying on the order.
10 Additionally, where there is a lack of jurisdiction the district court has a non-discretionary duty
11 to grant relief from the order.
12

13
14 Here, Christopher was never served,⁷ the court made no findings of minimum contacts,
15 the court did not find that the cause of action arises out of Christopher's decision's made or
16 actions taken in the state, and the court did not address whether the assumption of jurisdiction
17 would offend notions of fair play and justice.⁸ Therefore, the court lacks personal jurisdiction
18 over Christopher Davis and must dismiss both the underlying action and the contempt charge.
19

20 21 2. NEITHER VIEGA NOR FULBRIGHT AUTHORIZES DISCOVERY TO 22 DETERMINE JURISDICTION.

23
24 There is no support for the proposition that the court can open discovery to establish
25 jurisdiction in either case cited by the Court. In *Viega* the court determined that the plaintiff had
26

27 ⁵ RESTATEMENT (SECOND) OF JUDGMENTS § 80, cmt. a.

28 ⁶ *Thos. P. Gonzalez Corp. v. Consejo Nacional De Produccion De Costa Rica*, 614 F.2d 1247, (9th Cir. Cal 1980)

⁷ See *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 342 P.3d 997, 999, (Nev. 2015). See also Nev. Rev. Stat. § 14.065.

⁸ See *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152, 1161, (Nev. 2014)

1 not presented a prima facie case sufficient to establish either general or specific personal
2 jurisdiction over to foreign corporations. The only reference to this Court's proposed "discovery
3 to establish jurisdiction" is a request by the plaintiff to allow discovery for the purpose of
4 determining jurisdiction. The court denied this request and quoted the second circuit court as
5 stating:

7 We recognize that without discovery it may be extremely difficult for plaintiffs ... to
8 make a prima facie showing of jurisdiction over a foreign corporation. . . . [But] [t]he
9 rules governing establishment of jurisdiction over such a foreign corporation are clear
10 and settled, and it would be inappropriate for us to deviate from them or to create an
11 exception to them because of the problems plaintiffs may have in meeting their
12 somewhat strict standards.⁹

13 *Viega* appears to contradict the theory that the Court can open discovery to establish
14 jurisdiction. The *Viega* court denied such a request and said that the rules for establishing
15 jurisdiction are clear and settled and that it would be inappropriate to deviate from them.

16 *Fulbright* also does not authorize discovery to establish jurisdiction. In *Fulbright* the
17 Supreme Court of Nevada found that the plaintiff failed to make a prima facie showing that the
18 court had jurisdiction over an out of state law firm. The *Fulbright* court does provide that the
19 plaintiffs may use the information acquired through discovery between the incorrect finding of
20 jurisdiction and the reversal of the finding.¹⁰ However, this is significantly different than
21 authorizing discovery for the purpose of determining jurisdiction. The plaintiff's use of
22 information obtained based on the court's mistaken grant of jurisdiction means that the court
23 treated the discovery as harmless error. However, nowhere in the *Fulbright* decision does the
24 court authorize the court to open discovery for the purpose of establishing jurisdiction. In other
25

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28 ⁹ *Viega GmbH v. Eighth Judicial Dist. Court of the State*, 328 P.3d 1152, 1161, (Nev. 2014) quoting *Jazini v.*
Nissan Motor Co., Ltd., 148 F.3d 181, 186 (2d Cir. 1998)

¹⁰ *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 342 P.3d 997, 999, (Nev. 2015)

1 words the Fulbright court's allowance here does not justify an exception that would deviate
2 from the clear and settled rules governing establishment of jurisdiction.¹¹

3 The court cannot open discovery without jurisdiction. This Court's proposed principle of
4 discovery to determine jurisdiction is not compatible with established principles of jurisdiction.
5 It is well established that an order entered without personal jurisdiction is void ab initio. This
6 Court's proposed jurisdictional discovery would create a paradox. The court could not authorize
7 discovery without first assuming jurisdiction because such an order would be void and
8 unenforceable.¹² But if the court can take jurisdiction prior to authorizing discovery there is no
9 need for the limited jurisdictional discovery. This is why the *Viega* court denied the plaintiff's
10 request for jurisdictional discovery as "inappropriate."

11 Alternatively, if the court is authorized to open this type of limited discovery, this Court
12 has articulated that the May 19, 2015 order did just that. In other words the May 19, 2015 order
13 authorized limited discovery to determine jurisdiction. If this is indeed the case then there is no
14 basis for contempt where Christopher failed to provide information which is unrelated to
15 establishing jurisdiction.

16 Caroline's request for information through subpoena had nothing to do with establishing
17 jurisdiction but were strictly substantive in nature. Information regarding loans made prior to
18 alleged change in situs to persons or entities which are not Nevada residents exceeds the scope
19 of the proposed jurisdictional discovery. The only relevant issues for jurisdictional discovery
20 would be: whether the change in situs was valid; whether Christopher received personal
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28 ¹¹ See footnote 9

¹² *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, (U.S. 1980) ("A judgment rendered in violation of due process is void in the rendering State and is not entitled to full faith and credit elsewhere.")

1 service;¹³ whether he had sufficient minimum contacts with the state of Nevada; whether the
2 cause of action arises out of his contacts with the state; and whether the assumption of
3 jurisdiction would offend traditional notions for fair play and substantial justice.¹⁴

4
5 Additionally, if as this Court stated at the September 2, 2015 hearing, the May 19, 2015
6 order opened discovery to determine jurisdiction, then jurisdiction had not yet been established
7 at that point. Therefore this court could not authorize discovery for any other purpose including
8 discovery of substantive issues. If it lacked jurisdiction then it could not require disclosure of
9 any substantive information from Christopher. Therefore, Christopher cannot be held in
10 contempt because the underlying order which allegedly required disclosure was made without
11 jurisdiction and is therefore void.
12

13 **D. THE UNDERLYING ACTION MUST BE DISMISSED AS TO**
14 **CHRISTOPHER D. DAVIS PURSUANT TO NRCP RULE 4(i)**

15
16 NRS § 14.065 (2) states "Personal service of summons upon a party outside this state is
17 sufficient to confer upon a court of this state jurisdiction over the party so served if the service is
18 made by delivering a copy of the summons, together with a copy of the complaint, to the party
19 served in the manner provided by statute or rule of court for service upon a person of like kind
20 within this state." NRCP rule 4 (d) requires the delivery of personal service. NRCP rule 4 (i)
21 provides that "If a service of the summons and complaint is not made upon a defendant within
22

23
24 ¹³ *Fulbright & Jaworski LLP v. Eighth Judicial Dist. Court*, 342 P.3d 997, 1001, (Nev. 2015) (stating "When a
25 nonresident defendant challenges personal jurisdiction, the plaintiff bears the burden of showing that jurisdiction
26 exists. In so doing, the plaintiff must satisfy the requirements of Nevada's long-arm statute and show that
27 jurisdiction does not offend principles of due process.) See also Nev. Rev. Stat §14.065 (2) (Personal service of
28 summons upon a party outside this state is sufficient to confer upon a court of this state jurisdiction over the party
so served if the service is made by delivering a copy of the summons, together with a copy of the complaint, to the
party served in the manner provided by statute or rule of court for service upon a person of like kind within this
state.)

¹⁴ See *Id.*, at 1002. (stating "Under the Fourteenth Amendment's Due Process Clause, a nonresident defendant must
have sufficient "minimum contacts" with the forum state so that subjecting the defendant to the state's jurisdiction
will not "offend traditional notions of fair play and substantial justice.")

1 120 days after the filing of the complaint, the action shall be dismissed as to that defendant
2 without prejudice upon the court's own initiative with notice to such party or upon motion."

3 In the underlying action Caroline has not affected service upon Christopher. The initial
4 pleading was filed February 10, 2015 and it is now well beyond the 120 day time limit provided
5 by NRCF rule 4 (i). Therefore the underlying action must be dismissed as to Christopher in any
6 capacity he may be found to be fulfilling. Without the underlying action this motion for
7 contempt is without merit. Therefore, this action must be dismissed as well.
8

9 E. CONCLUSION

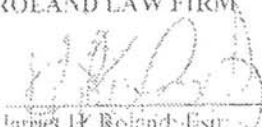
10 Wherefore, Christopher D. Davis respectfully requests that this Court:

- 11
- 12 1. Find that the May 19, 2015 order is void for lack of jurisdiction
 - 13 2. Assign this matter to another District Court Judge pursuant to NRS §22.030(3)
 - 14 3. Deny Caroline's Motion to Hold Christopher in Contempt and For Attorneys' Fees and
15 Costs in its entirety, and that Caroline take nothing thereby.
 - 16 4. Dismiss the underlying action based on Caroline's failure to personally serve
17 Christopher with 120 day pursuant to NRCF rule 4(i).
- 18

19 Dated Sept 23, 2015

Respectfully Submitted,

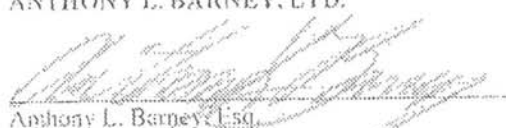
20 ROLAND LAW FIRM

21 
22 Harriet L. Roland, Esq.

23 Attorney for Christopher D. Davis

24 Respectfully Submitted,

25 ANTHONY L. BARNEY, LTD.

26 
27 Anthony L. Barney, Esq.

28 Attorney for Christopher D. Davis

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to this action.

3 I further certify that except as otherwise noted on September 22, 2015, I served the foregoing

4 SUPPLEMENT TO OPPOSITION TO CAROLINE DAVIS' MOTION TO HOLD

5 CRISTOPHER D. DAVIS IN CONTEMPT AND FOR ATTORNEY'S FEES AND

6 COSTS by first class US mail, postage prepaid, upon the following persons or entities:

7
8 Cheryl Davis
9 5403 West 134 Terrace, Unit 1525
10 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
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Kansas City, Missouri 64108

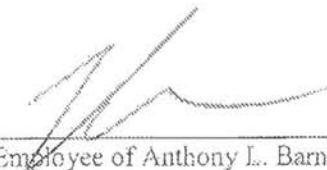
Registered Agent Solutions, Inc.
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Mark Solomon, Esq.
Joshua Hood, Esq.
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Attorney for Petitioner Caroline Davis

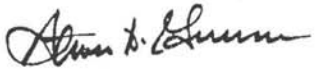
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Employee of Anthony L. Barney, Ltd.



EXHIBIT 41



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4 Las Vegas, Nevada 89129
Telephone: 702.853.5483
5 Facsimile: 702.853.5485

6 *Attorneys for Caroline Davis, Petitioner*

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 In the Matter of:

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

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

Hearing Date: September 30, 2015
Hearing Time: 9:00 A.M.

12
13 **REPLY TO CHRISTOPHER D. DAVIS' OPPOSITION TO CAROLINE DAVIS'**
14 **MOTION TO HOLD CHRISTOPHER D. DAVIS IN CONTEMPT AND FOR**
15 **ATTORNEYS' FEES AND COSTS**

16 Caroline D. Davis, as beneficiary of the Beatrice B. Davis Family Heritage Trust, dated
17 July 28, 2000, as amended February 24, 2014, by and through her counsel, the law firm of
18 Solomon Dwiggins & Freer, Ltd., hereby files her Reply To Christopher D. Davis' Opposition To
19 Caroline Davis' Motion To Hold Christopher D. Davis In Contempt And For Attorneys' Fees
20 And Costs (the "Reply"). This Reply is made and based on the pleadings and papers on file in
21 this action, the attached Memorandum Of Points And Authorities to the Motion To Hold
22 Christopher D. Davis In Contempt And For Attorneys' Fees And Costs, all attached exhibits, and
any oral argument that this honorable Court may entertain at the time of hearing.

23 Attached to this Reply as **Exhibit 6** is a true and correct copy of the Affidavit of Joshua
24 M. Hood, Esq. In Support Of Motion To Hold Christopher D. Davis In Contempt And For
25 Attorneys' Fees And Costs.

26 Noticeably, Christopher D. Davis ("Christopher") Opposition To Caroline Davis' Motion
27 To Hold Christopher D. Davis In Contempt And For Attorneys' Fees And Costs, filed on August
28 27, 2015 (the "Opposition") focuses primarily on Christopher's misinterpretation of the Court's

1 June 24, 2015 Order. Indeed, Christopher hinges his Opposition on whether the June 24, 2015
2 Order uses the words “in” or “or” within this Court’s interlineations, and whether or not this
3 Court has jurisdiction to enter the June 24, 2015 Order.

4 Notwithstanding, as it currently stands, there exists a valid and enforceable order – the
5 June 24, 2015 Order – which expressly provides that this Court has jurisdiction over the Trust,
6 and which further directs Christopher to produce information in his possession, custody, or
7 control in his possession as Investment Trust Advisor and as Manager of FHT Holdings, LLC.
8 For all intents and purposes, Christopher’s Opposition admits that he has not complied with the
9 June 24, 2015 Order.

10 Indeed, “courts have inherent equitable powers to dismiss actions or enter default
11 judgments for abusive litigation practices. Litigants and attorneys alike should be aware that
12 these powers *may permit sanctions* for discovery and other litigation abuses not specifically
13 proscribed by statute.” Behana v. Goodyear Tire & Rubber Co., – Nev. –, 235 P.3d 592, 598
14 (2010) (emphasis added), citing Young v. Johnny Ribiero Bldg., Inc. 106 Nev. 88, 92, 787 P.2d
15 777, 779 (1990). NRCP 37(b)(2)(C) provides that if a party fails to obey an order of the Court,
16 the Court may enter an “order treating as a contempt of court the failure to obey any orders except
17 an order to submit to a physical or mental examination.” The Court expressly ordered
18 Christopher to disclose certain information, and Christopher has willfully and intentionally failed
19 to abide by such order. As such, Caroline D. Davis respectfully requests that this Court grant her
20 Motion To Hold Christopher D. Davis In Contempt And For Attorneys’ Fees And Costs in its
21 entirety.

22 Dated this 29th day of September, 2015.

23 SOLOMON DWIGGINS & FREER, LTD

24 

25 Mark A. Solomon, Esq. (Bar No. 418)
26 Joshua M. Hood, Esq. (Bar No. 12777)
27 9060 Cheyenne Avenue
28 Las Vegas, Nevada
Telephone: (702) 853-5483
Facsimile: (702) 853-5485
Attorneys for Caroline D. Davis

Exhibit 6

Exhibit 6

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Nevada Bar No. 12777
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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:
Hearing Time:

AFFIDAVIT OF JOSHUA M. HOOD, ESQ. IN SUPPORT OF MOTION TO HOLD
CHRISTOPHER D. DAVIS IN CONTEMPT
AND FOR ATTORNEYS' FEES AND COSTS

I, Joshua M. Hood, Esq., being fully sworn upon oath depose and say as follows:

1. This affidavit and the assertions contained therein are based upon my personal knowledge, except that which is stated on information and belief.

2. I am an associate at the law firm of Solomon Dwiggins & Freer, Ltd., and am one of the attorneys for Caroline D. Davis in the above-entitled action.

3. On May 19, 2015, this Court executed the Order, filed on June 24, 2015 (the "June 24, 2015 Order"). The Notice of Entry of Order was subsequently filed on July 1, 2015. *See*, Motion To Hold Christopher D. Davis In Contempt And For Attorneys' Fees And Costs, filed on August 17, 2015 (the "Motion"), at Ex. 1.


4. The Order, in pertinent part, provides as follows:

"WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition To Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is granted without prejudice." *See*, Motion, at Ex. 1, p.2:22-24.


1 "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petition
2 For Immediate Disclosure of Documents and Information from Christopher D.
3 Davis is granted as to all information in his possession, custody or control in his
4 role as Investment Trust Advisor, and his role as Manager of FHT Holdings." *Id.*,
5 at p. 3:3-6.

6 5. To date, Christopher D. Davis has not produced any documents pursuant to the
7 June 24, 2015 Order.

8 6. Further Affiant Sayeth Naught.

9 
10 Joshua M. Hood, Esq.

11
12 Subscribed and Sworn to before me
13 this 29th day of September, 2015.

14 
15 Notary Public

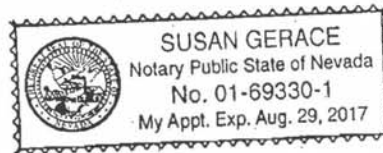




EXHIBIT 42

REGISTER OF ACTIONS

CASE No. P-15-083867-T

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

§
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§

Case Type: **Probate - Trust/Conservatorships**

Subtype: **Individual Trustee**

Date Filed: **02/11/2015**

Location:

Cross-Reference Case **P083867**

Number:

Supreme Court No.: **68542**

PARTY INFORMATION

Petitioner **Davis, Caroline** Female
2501 Nob Hill PL N
Seattle, WA 98109

Lead Attorneys
Mark Alan Solomon
Retained
7028535483(W)

Trust **The Beatrice Davis Heritage Trust**

EVENTS & ORDERS OF THE COURT

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

Minutes

09/16/2015 9:00 AM

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

PETAPP001540

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

Parties Present

Return to Register of Actions



EXHIBIT 43

REGISTER OF ACTIONS

CASE NO. P-15-083867-T

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

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§
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§

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

PARTY INFORMATION

Petitioner	Davis, Caroline 2501 Nob Hill PL N Seattle, WA 98109	Female	Lead Attorneys Mark Alan Solomon <i>Retained</i> 7028535483(W)
-------------------	---	---------------	---

Trust **The Beatrice Davis Heritage Trust**

EVENTS & ORDERS OF THE COURT

09/30/2015 **All Pending Motions** (9:00 AM) (Judicial Officer Sturman, Gloria)

Minutes

09/30/2015 9:00 AM

- CAROLINE D. DAVIS' MOTION TO COMPEL HARRIET ROLAND, ESQ. TO PRODUCE DOCUMENTS RESPONSIVE TO SUBPOENA DUCES TECUM; FOR ATTORNEY'S FEES AND COSTS . . . Counsel reached an agreement to continue this matter to the 10/28 hearing stating that sufficient progress has been made in producing documents. COURT SO ORDERED. CAROLINE D. DAVIS' MOTION TO HOLD CHRISTOPHER D. DAVIS IN CONTEMPT AND FOR ATTORNEY'S FEES AND COSTS . . . Counsel argued whether Chris Davis was required to obey the Court's prior Order since they question whether the Court has jurisdiction over him and whether he was properly served. Court stated the Court has already taken in personam jurisdiction over him as the Investments Trust Advisor and as the managing director of a Nevada corporation. Court stated the Motion to Hold in Contempt was a very serious step and should not be undertaken first. The Court also stated Rule 37 should be followed and deadlines set before any other sanctions are requested. COURT ORDERED initial disclosures deadline SET for October 23, 2015 and progress will be reported at the 28th hearing. CONTINUED TO 10/28/2015 AT 9:00AM STATUS CHECK: PRODUCTION OF DOCUMENTS

[Parties Present](#)

[Return to Register of Actions](#)

PETAPP001543



EXHIBIT 44

ORDR

Mark A. Solomon, Esq.
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msolomon@sdfnlaw.com
Dana A. Dwiggins, Esq.
Nevada Bar No. 07049
ddwiggins@sdfnlaw.com
Joshua M. Hood, Esq.
Nevada Bar No. 12777
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SOLOMON DWIGGINS & FREER, LTD.
9060 West Cheyenne Avenue
Las Vegas, Nevada 89129
Telephone: 702.853.5483
Facsimile: 702.853.5485

Attorneys for Caroline D. Davis

**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)

Hearing Date: September 30, 2015
Hearing Time: 9:00 A.M.

ORDER REGARDING SEPTEMBER 30, 2015 HEARING

This matter came on for hearing on September 30, 2015 on Caroline D. Davis' (1) Motion To Compel Harriet Roland, Esq. To Produce Documents Responsive To Subpoena Duces Tecum; For Attorneys' Fees And Costs (the "Motion To Compel") and (2) Motion To Hold Christopher D. Davis In Contempt And For Attorneys' Fees And Costs (the "Contempt Motion"). Counsel for Caroline D. Davis, Dana A. Dwiggins, Esq. and Joshua M. Hood, Esq., and counsel for Christopher D. Davis, Anthony L. Barney, Esq. and Harriet H. Roland, 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. Counsel for Caroline D. Davis ("Ms. Davis") and counsel for Christopher D. Davis ("Christopher") agreed to postpone the Motion To Compel as a Status Check to be held on Wednesday, October 28, 2015, as Harriet H. Roland, Esq. ("Ms. Roland") has made good faith progress with respect to the disclosure of documents pursuant to the Subpoena Duces Tecum, dated June 25, 2015.

3. Notwithstanding Christopher's jurisdictional arguments as set forth in his prior pleadings, the June 24, 2015 Order, as it currently stands, is a valid order of this Court.

4. Christopher has failed to immediately produce documents within his possession, custody or control in his role as Investment Trust Advisor and as sole Manager of FHT Holdings, LLC, as required by the June 24, 2015 Order.

5. The Court, viewing the Contempt Motion as a Nevada Rule of Civil Procedure 37 discovery sanctions issue rather than a contempt issue, will not hold Christopher in contempt pursuant to Nevada Revised Statute 22.010. Notwithstanding, any contempt proceedings under NRS 22.010 shall be heard by a District Court Judge other than the Honorable Judge Gloria J. Sturman.

6. A scheduling order needs to be implemented to put the parties on notice of firm deadlines for the production of documents and proceeding with discovery pursuant to the Nevada Rules of Civil Procedure.

7. The parties' respective attorneys are to create a scheduling order that the parties are required to abide by.

8. Any issues with respect to any parties' failure to abide by such or scheduling order or participation in other discovery or litigation abuses can then be evaluated pursuant to Nevada Rule of Civil Procedure 37 or other applicable discovery statutes or local court rules.

9. The parties are to provide their Initial Disclosure no later than Friday, October 23, 2015.

10. The Contempt Motion, viewed by the Court has a Nevada Rule of Civil Procedure 37 discovery sanctions issue, is to be continued to a Status Check on Wednesday, October 28,



1 2015, with any issues relating to the failure of the parties to provide their initial disclosures to be
2 heard as a Nevada Rule of Civil Procedure 37 discovery sanctions issue.

3 **ORDER**

4 **IT IS HEREBY ORDERED** Ms. Davis' Motion To Compel is continued to Wednesday,
5 October 28, 2015 as a Status Check on Ms. Roland's disclosure of documents pursuant to the
6 Subpoena Duces Tecum, dated June 25, 2015.

7 **IT IS HEREBY FURTHER ORDERED** that the parties are required to produce their
8 Initial Disclosures no later than Friday, October 23, 2015.

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SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



1 IT IS HEREBY FURTHER ORDERED that the Contempt Motion, viewed by the Court
2 as a Nevada Rule of Civil Procedure 37 discovery sanctions issue, is continued to Wednesday,
3 October 28, 2015 as a Status Check regarding the parties' compliance with the Court's order to
4 produce their respective Initial Disclosures no later than Friday, October 23, 2015.

5 Dated this ____ day of October, 2015.

6
7 DISTRICT COURT JUDGE

8
9 Prepared and submitted by:

10 SOLOMON DWIGGINS & FREER, LTD.



11 Mark A. Solomon, Esq. (Bar No. 0418)
12 Dana A. Dwiggins, Esq. (Bar No. 07049)
13 Joshua M. Hood, Esq. (Bar No. 12777)
14 9060 West Cheyenne Avenue
15 Las Vegas, Nevada 89129
16 Telephone: (702) 853-5483
Facsimile: (702) 853-5485

17 Attorneys for Caroline D. Davis

Approved as to Form and Content:

Harriet H. Roland, Esq. (Bar No. 5471)
ROLAND LAW FIRM
2470 East Saint Rose Parkway, Ste. 105
Henderson, Nevada 89074
Telephone: (702) 452-1500
Facsimile: (702) 920-8903

AND

ANTHONY L. BARNEY, LTD.

Anthony L. Barney, Esq. (Bar No. 8366)
Tiffany S. Barney, Esq. (Bar No. 9754)
3317 West Charleston Boulevard, Ste. B
Las Vegas, Nevada 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116

Attorneys for Christopher D. Davis



EXHIBIT 45

Tiffany Barney

From: Anthony L. Barney <anthony@anthonybarney.com>
Sent: Wednesday, October 7, 2015 2:32 PM
To: 'Dana Dwiggins'; jhood@sdfnvlaw.com; msolomon@sdfnvlaw.com
Cc: 'Renee Guastaferro'; hroland@rolandlawfirm.com; secretary@anthonybarney.com; 'Tiffany Barney'
Subject: RE: Davis

Dear Dana/Mark/Joshua –

Please be on notice that we will be filing requests for emergency relief to stay the matter as well as a Writ of Prohibition and/or Mandamus. We will hand deliver these documents to you once they are filed.

Sincerely,

Anthony L. Barney, Esq.

ANTHONY L. BARNEY, LTD.

3317 W. Charleston Boulevard, Suite B

Las Vegas, Nevada 89102-1835

Telephone: (702) 438-7878

Facsimile: (702) 259-1116

E-Mail: office@anthonybarney.com

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From: Dana Dwiggins [<mailto:ddwiggins@sdfnvlaw.com>]
Sent: Monday, October 5, 2015 10:59 AM
To: anthony@anthonybarney.com
Cc: Renee Guastaferro <RGuastaferro@sdfnvlaw.com>; Joshua M. Hood <jhood@sdfnvlaw.com>; Mark Solomon <msolomon@sdfnvlaw.com>
Subject: Davis

Anthony,

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

Dana A. Dwiggins

SOLOMON DWIGGINS & FREER, LTD.

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

Direct: 702.589.3505 | Office: 702.853.5483 |

Direct Facsimile: 702.473.2834 | Facsimile: 702.853.5485

Email: ddwiggins@sdfnvlaw.com | Website: www.sdfnvlaw.com

 www.facebook.com/sdfnvlaw



 *Please consider the environment before printing this email.*

This message contains confidential information and may also contain information subject to the attorney client privilege or the attorney work product rules. If you are not the intended recipient, please delete the message and contact Solomon Dwiggins & Freer, Ltd. at 702-853-5483. Any disclosure, copying, distribution, reliance on or use of the contents of this message by anyone other than the intended recipient is prohibited.

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:

11
12
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.

15
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
19 IT IS FURTHER FOUND that the Court has jurisdiction as a constructive trust because
20 action on behalf of the trust has been taken in Nevada.

21
22 IT IS SO FOUND.

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

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

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 ^{custody or control} in his role as Investment Trust Advisor, ^{and on his}
6 ^{role as manager of FHR Holdings}

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 IT IS SO ORDERED, ADJUDGED AND DECREED.

12 DATED this 19th day of May, 2015.

13
14
15
16 
17 DISTRICT COURT JUDGE

18 Respectfully Submitted by the Following:

Approved as to Form and Content:

19
20 
21 HARRIET H. ROLAND, ESQ.
22 NV Bar No. 5471
23 **ROLAND LAW FIRM**
24 2470 E. St. Rose Pkwy, Ste. 105
25 Henderson, NV 89074
26 Telephone: (702) 452-1500
27 Facsimile: (702) 920-8903
28 *Attorney for Christopher D. Davis*


JONATHAN W. BARLOW, ESQ.
NV Bar No. 9964
CLEAR COUNSEL LAW GROUP
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Telephone: (702) 476-5900
Facsimile: (702) 924-0709
Attorney for Stephen K. Lehnardt

Approved as to Form and Content:

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Nevada Bar No. 8366

TIFFANY S. BARNEY, ESQ.

Nevada Bar No. 9754

ANTHONY L. BARNEY, LTD.

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Attorneys for Christopher D. Davis

CHARLENE RENWICK, ESQ.

LEE, HERNANDEZ, LANDRUM,

GARFOPALO, ATTORNEYS AT LAW

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Facsimile: (702) 314-1210

Attorneys for Dunham Trust Company

Approved as to Form and Content:

MARK A. SOLOMON, ESQ.

NV Bar No. 0418

JOSHUA M. HOOD, ESQ.

NV Bar No. 12777

SOLOMON DWIGGINS & FREER, LTD.

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: (702) 853-5483

Facsimile: (702) 853-5485

Attorneys for Caroline D. Davis

Exhibit 2

Exhibit 2

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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TELEPHONE (702) 853-5483
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SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS



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.

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
19 Facsimile: 702.853.5485

20 *Attorneys for Caroline Davis, Petitioner*

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SOLOMON
DWIGGINS & FREER
TRUST AND ESTATE ATTORNEYS

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:

Harriet Roland, Esq.
ROLAND LAW FIRM
2470 E. St. Rose Parkway, #105
Henderson, NV 89052
hroland@rolandlawfirm.com
Attorneys for Christopher D. Davis

Anthony L. Barney, Esq.
ANTHONY L. BARNEY, LTD.
3317 West Charleston Boulevard, Suite B
Las Vegas Nevada 89102
abarney@anthonybarney.com
Attorneys for Christopher D. Davis

Jonathan W. Barlow, Esq.
CLEAR COUNSEL LAW GROUP
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jonathan@clearcounsel.com
Attorneys for Stephen Lenhardt

Charlene Renwick, Esq.
LEE HERNANDEZ LANDRUM &
GAROFALO
7575 Vegas Drive #150
Las Vegas, Nevada 89128
crenwick@lee-lawfirm.com
Attorneys for Dunham Trust


An employee of Solomon Dwiggin & Freer, Ltd.

Exhibit 3

Exhibit 3

REGISTER OF ACTIONS

CASE NO. P-15-083867-T

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

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

PARTY INFORMATION

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

EVENTS & ORDERS OF THE COURT

09/02/2015 All Pending Motions (9:00 AM) (Judicial Officer Sturman, Gloria)

Minutes

09/02/2015 9:00 AM

- CHRISTOPHER D. DAVIS' PETITION FOR RECONSIDERATION OF THE ORDER DATED MAY 19, 2015 REGARDING 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 . . . OBJECTION TO PETITION FOR RECONSIDERATION BY CAROLINE DAVIS, PETITIONER AND COUNTER-PETITION FOR SANCTIONS . . . CAROLINE DAVIS' MOTION TO AMEND OR MODIFY ORDER PURSUANT TO NRCP 60(b)(3) . . . CHRISTOPHER DAVIS' MOTION FOR PROTECTIVE ORDER AND TO QUASH OR MODIFY THE SUBPOENA As to the Motion for Reconsideration, counsel argued whether the Court erred in the law by not having affirmed the first amendment to the revocable trust was valid. Counsel also argued whether a new affidavit submitted by Taria Davis confirmed her status as a beneficiary and entitled her to notice and consent before a change in situs. Dunham Trust took no position on the Petition for Reconsideration but only sought clarification of their role. As to these arguments, COURT FINDS Taria Davis does not meet the definition of a spouse under the terms of the trust. FURTHER, COURT FINDS the first amendment VALID. The Court did not rule on the Counter-Petition for sanctions. As to the Motion to Amend or Modify, counsel argued over the type of limited jurisdiction taken by the Court. COURT FINDS Nevada law allows discovery to satisfy jurisdictional disputes regardless of whether assumption was by constructive trust or defacto trust. COURT STATED ITS INTENTION that if the matter is remanded, the Court would indicate its intention to assume jurisdiction over this Trust. As to the Motion for Protective Order and to Quash or Modify the Subpoena, COURT FINDS there is no basis for a protective order or to quash the subpoena as the Court has jurisdiction over Christopher. As to modifying the subpoena given Mr. Barney s concerns regarding proper service, Court directed the parties to address the matter with the Discovery Commissioner.

Exhibit 4

Exhibit 4

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

ANTHONY L. BARNEY, LTD.
A Nevada Professional Law
Corporation

3317 W. Charleston Boulevard, Suite B
Las Vegas, Nevada 89102-1835
Receptionist: 702-438-7878
Fax: 702-259-1116

Zachary D. Holvank
Law Clerk

Neva Liebg
Administrative Assistant

Website Address
www.anthonylbarney.com

E-mail Address
office@anthonylbarney.com

September 2, 2015

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

SENT VIA FACSIMILE AND US MAIL

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

Dear Mr. Hood and Mr. Solomon,

Considering the court's lack of clarification on the jurisdictional issue at today's hearings, the original May 19, 2015 Order is the current order of this court. Not only is this order under appeal, but the only "jurisdiction" currently in this case is under a "constructive trust," which requires in personam jurisdiction over the person against which a constructive trust remedy is being imposed.¹ Caroline does not have *in personam* jurisdiction over Christopher D. Davis in any capacity for a constructive trust to be imposed against him.

As such, we are informing you that Mr. Christopher D. Davis will not be appearing for his deposition tomorrow based upon this jurisdictional defect. The Court cannot take jurisdiction over Mr. Davis personally or as a trust investment adviser under a theory of constructive trust. Because there is no personal jurisdiction over Mr. Davis, Mr. Davis is not obligated to appear.

Furthermore, as a non-party, you have not complied with NRCP 45, because Mr. Davis lives more than 100 miles from Clark County and reasonable accommodations have not been made for his expenses or time. Therefore, without such an accommodation, he has no obligation to appear.

¹ *Baker v. Eighth Judicial Dist. Court*, 116 Nev. 527, 531, (2000) ("A constructive trust is a remedial device by which the holder of legal title to property is held to be a trustee of that property for the benefit of another who in good conscience is entitled to it.")

Letter to Joshua M. Hood and Mark A. Solomon, Esq.
September 2, 2015

Page 2 of 3

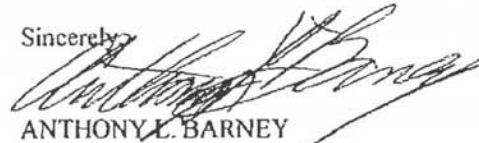
Under the cases cited by the judge at today's hearing, a court can open up limited discovery to determine whether it has jurisdiction or not;² but this is not what the court has done in this instance. The Court did not open limited discovery for the purpose of determining whether this Court had proper jurisdiction. For example, she did not grant limited discovery on the inquiry as to the validity of the purported first amendment and purported change in trust situs, which would allow this court to obtain jurisdiction of the Trust and would warrant the propounding of discovery requests regarding the circumstances surrounding the purported first amendment especially upon the Alaskan Trustees. Even if she had opened up limited discovery in this way (which she did not), you failed to comply with NRCP 45 to provide reasonable accommodations if you wanted to depose Mr. Davis, a non-party in this jurisdiction, regarding the circumstances surrounding the purported first amendment.

Instead, this court opened up "limited" discovery by assuming jurisdiction under a constructive trust theory to compel the deposition of a non-party for requested information pursuant to the very petition for which jurisdiction is being disputed. Therefore, this is not the limited discovery that is contemplated in the cases cited by the judge, which will be raised and zealously disputed in any further or amended motions you may file.

We will have counsel present tomorrow at the deposition to note the jurisdictional defect, the lack of personal jurisdiction over Mr. Davis, and your firm's lack of compliance with NRCP 45 for Mr. Davis as a non-party witness. However, again please be on notice that Mr. Davis will not be appearing tomorrow, and under the court's current order, there is no requirement for him to do so. We are simply providing this professional courtesy to you so you may plan accordingly.

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

Sincerely,



ANTHONY L. BARNEY

Attorney at Law

anthony@anthonybarney.com

² The court must enter into many different inquiries into whether the exercise of jurisdiction satisfies the requirements of Nevada's long-arm statute and does not offend principles of due process, e.g. there were minimum contacts with the State of Nevada, defendant could reasonably anticipate being haled into court, compliance with traditional notions of fair play and substantial justice, etc. *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)

Letter to Joshua M. Hood and Mark A. Solomon, Esq.

September 2, 2015

Page 3 of 3

A handwritten signature in black ink, appearing to read "Harriett Roland", with a large, stylized flourish extending from the end of the signature.

HARRIETT ROLAND

Attorney at Law

ROLAND LAW FIRM

cc: Via U.S. Mail:

Client

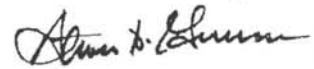
Harriet Roland, Esq.

Charlene Renwick, Esq.

Jonathan Barlow, Esq.

Exhibit 5

Exhibit 5



CLERK OF THE COURT

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

6 ANTHONY L. BARNEY, ESQ.
Nevada Bar No. 8366
7 TIFFANY S. BARNEY, ESQ.
Nevada Bar No. 9754
8 ANTHONY L. BARNEY, LTD.
3317 W. Charleston Blvd., Suite B
9 Las Vegas, NV 89102
Telephone: (702) 438-7878
10 Facsimile: (702) 259-1116
11 office@anthonybarney.com
12 Attorneys for Christopher D. Davis

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
20 February 24, 2014.

Dept. No.: 26

21
22
23 NOTICE OF NON-APPEARANCE OF CHRISTOPHER D. DAVIS

24 TO: CAROLINE DAVIS, Petitioner, by and through her attorneys, MARK SOLOMON,
25 ESQ., and JOSHUA HOOD, ESQ., of SOLOMON DWIGGINS & FREER, LTD.
26
27 TO: DUNHAM TRUST, by and through its attorney, CHARLENE RENWICK, ESQ., of
28 LEE HERNANDEZ LANDRUM & GAROFALO

1 Davis does not concede to the jurisdiction of this court, and he will not so concede by appearing
2 for a deposition.

3 To mitigate the unnecessary accrual of attorney fees and costs and court reporter fees
4 and costs, Christopher D. Davis provided written correspondence to the law office of Solomon,
5 Dwiggins and Freer on September 2, 2015 and provided notice that he would not be appearing
6 for the deposition based upon these jurisdictional defects. The law office of Anthony L. Barney,
7 Ltd., verified that this correspondence was received on September 2, 2015 with the law office of
8 Solomon, Dwiggins and Freer by facsimile transmission and telephone correspondence.
9 Furthermore, neither the Roland Law Firm nor Anthony L. Barney, Ltd. will be appearing on
10 behalf of CHRISTOPHER B. DAVIS for the scheduled deposition on September 3, 2015.

11 Dated this 3rd day of September.

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

14 
15 Harriet H. Roland, Esq.
16 Nevada Bar No. 5471
17 2470 E. St. Rose Pkwy, Ste. 105
18 Henderson, NV 89074
19 Telephone: (702) 452-1500
20 Facsimile: (702) 920-8903
21 hroland@rolandlawfirm.com

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

24 
25 Anthony L. Barney, Esq.
26 Nevada Bar No. 8366
27 3317 W. Charleston Blvd., Suite B
28 Las Vegas, NV 89102
Telephone: (702) 438-7878
Facsimile: (702) 259-1116
office@anthonybarney.com
Attorney for Christopher D. Davis

1 Attorneys for Stephen K. Lenhardt

2 Mark Solomon, Esq.

3 Joshua Hood, Esq.

4 SOLOMON DWIGGINS & FREER, LTD.

9060 W. Cheyenne Ave.

Las Vegas, NV 89129

5 *Attorney for Petitioner Caroline Davis*

6 DUNHAM TRUST COMPANY

7 SHANNA CORESSAL, CTFA.

c/o Charlene Renwick, Esq.

8 Lee, Hernandez, Landrum & Garofalo

7575 Vegas Drive, #150

Las Vegas, Nevada 89128

11
12 Nancy L. Barney
13 Employee of Anthony L. Barney, Ltd.

Exhibit 6

Exhibit 6

DECL

Dana A. Dwiggins, Esq., Bar No. 07049

ddwiggins@sdfnlaw.com

Joshua M. Hood, Esq. Bar No. 12777

jhood@sdfnlaw.com

SOLOMON DWIGGINS & FREER, LTD.

9060 West Cheyenne Avenue

Las Vegas, Nevada 89129

Telephone: 702.853.5483

Facsimile: 702.853.5485

Attorneys for Nicole Cocuzza

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of:

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

THE TOTAL AMENDMENT AND
RESTATEMENT OF THE ROBERT M.
ZWECK LIVING TRUST, dated June 1, 2012,
as Amended on May 23, 2013, and as
Amended on February 25, 2014.

Hearing Date:
Hearing Time:

DECLARATION OF JOSHUA M. HOOD, ESQ.

I, Joshua M. Hood, Esq., declare as follows:

1. I am an associate at the law firm of Solomon Dwiggins & Freer, Ltd. ("SDF"), and counsel for Caroline D. Davis ("Ms. Davis").

2. I have actual knowledge as to the matter stated herein, except for those matters stated on information and belief, and as to those matter, I believe them to be true.

3. On September 3, 2015, at approximately 9:40 a.m. (PST), I held an EDCR 2.34 conference with Anthony L. Barney, Esq. ("Mr. Barney"), counsel for Christopher D. Davis.

4. In light of the Court's denial of Christopher's Motion For Protective Order, I inquired whether or not Christopher intended to appear for his deposition.

5. In response, Mr. Barney stated that "based upon the Court's Order [referencing the June 24, 2015 Order], Christopher would not appear for his deposition because the Court does not have *in personam* jurisdiction over Christopher."

1 6. Mr. Barney further stated that he was unable to identify any provisions within the
2 June 24, 2015 Order regarding *in personam* jurisdiction as it relates to Christopher.

3 7. Mr. Barney stated that he showed the June 24, 2015 Order to Christopher, wherein
4 Christopher asked: "How does that [the June 24, 2015 Order] make him a party?"

5 8. As such, it was concluded that Christopher would not appear for his deposition.

6 9. Mr. Hood and Mr. Barney were not able to reach a resolution regarding the
7 attendance of Christopher at his deposition.

8 10. This Declaration is made under penalty of perjury in the State of Nevada.

9 Dated this 22nd day of September, 2015.


10
11 
12 Joshua M. Hood, Esq.

Exhibit 7

Exhibit 7

First Amendment to the Beatrice B. Davis Family Heritage Trust

On July 28, 2000 Beatrice B. Davis, signed the Beatrice B. Davis Family Heritage Trust ("my trust"), more formally known prior to amendment as:

Alaska USA Trust Company, Trustee of the Beatrice B. Davis Family Heritage Trust dated July 28, 2000.

Article Fourteen of the trust permits the Trust Protector to amend the trust in writing as set forth in the "Memorandum of Action by Trust Protector" integrated and incorporated herein by this reference as if set out here in full. This Amendment represents the First Amendment to the trust and is made in order to effectuate a change in situs, applicable state law, trustee, capital and surplus requirements, and trust administration necessary to accomplish the foregoing.

Section 1.01 Amendment

The Trust Protector hereby amends the trust as follows:

FIRST: SITUS AND APPLICABLE STATE LAW. Article One, Section 2 is hereby amended in its entirety to read as follows:

Article One, Section 2. Application of Nevada Trust Law

I intend that this trust and the trusts created under this Agreement are trusts described in Nev. Rev. Stat. §§ 166.010-166.170 and any other relevant Nevada Statutes as amended from time to time. Accordingly, unless the Trustee moves the situs of this trust or any trust created hereunder to another jurisdiction, I direct that

At all times at least one trustee of each trust shall be a "qualified person" under Nevada law; and

The duties of that trustee shall include the duty and responsibility to maintain books and records of the trust in Nevada and to prepare or to arrange for the preparation of the tax returns of the trust; and

At least some assets of the trust shall be deposited in or subject to the laws of Nevada as and if required by Nevada law; and

At least part of the administration of the trust shall occur in Nevada as required by law and in accordance with Nevada law.

SECOND: TRUSTEE

Alaska USA Trust Company is removed and replaced as trustee by Dunham Trust Company. The trust is now formally known as:

Dunham Trust Company, Trustee of the Beatrice B. Davis Family
Heritage Trust dated July 28, 2000.

THIRD: CAPITAL AND SURPLUS REQUIREMENTS. The capital and surplus requirements in Article Eleven, Section 6.a. shall be amended in its entirety to read as follows:

ARTICLE ELEVEN, SECTION 6.a. CORPORATE FIDUCIARIES

- a. have a combined capital and surplus of at least 1 million dollars; or...

FOURTH, TRUST ADMINISTRATION. New Section 2.d. shall be added to Article Thirteen to read as follows:

Article Thirteen, Section 2.d. Directed Trust

Notwithstanding anything in my trust to the contrary, my trust shall be administered as a "directed trust" unless changed in accordance with law and this agreement. The following shall control so long as my trust is administered as a directed trust under applicable state law. Any provision to the contrary in my trust shall be interpreted to carry out my intent as expressed in this Section, or, in the exercise of its discretion and to carry out my intent, shall be superseded by the following if in irreconcilable conflict.

FIRST: Appointment of Directed Trustee.

The Trust Protector nominates and appoints Dunham Trust Company ("Trust Company"), as trustee of any trusts created hereunder (hereinafter referred to in its capacity as trustee as the "Directed Trustee"). Trust Protector intends that the trusts created hereunder shall be Nevada Directed Trusts created pursuant to Nevada Revised Statutes ("NRS") 163.553 et. seq., as amended from time to time.

SECOND: Appointment of Investment Trust Adviser; Duties of Investment Trust Adviser.

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 certain trust assets, as investment trust adviser (the "Investment Trust Adviser"). Christopher D. Davis, either individually or in his managerial capacity, shall be treated as an

"Investment Trust Adviser" under NRS 163.5543 and as a "Fiduciary" under NRS 163.554.

The Investment Trust Adviser shall have the full power to manage the investments and reinvestments of the trust, including power to purchase, sell, encumber and retain all of the trust assets, power to select one or more investment advisers or managers, including the Directed Trustee, and delegate to such parties any of the powers of the Investment Trust Adviser, and power to exercise voting, subscription, conversion, option and similar rights with respect to such property and to participate in corporate actions including, reorganization, merger dissolution or other action affecting any such property ("Investment Trust Adviser Authority"). Trust Company, as the Directed Trustee, shall act solely on the direction of the Investment Trust Adviser with respect to all matters relating to the management and investment of trust assets and shall have no obligation to investigate or confirm the authenticity of investment directions it receives or the authority of the person or persons conveying them.

The Directed Trustee shall have no authority and shall not interfere with any actions of the Investment Trust Adviser which is within the scope of the Investment Trust Adviser's Authority. With regard to any assets over which the Investment Trust Adviser has investment responsibility and in addition to the Investment Trust Adviser's duties herein, the Investment Trust Adviser shall have the duty (a) to confirm to the Directed Trustee, in writing, the value of such assets at least annually and upon request by the Directed Trustee, (b) to manage or participate in the management of any entity owned by the trust, to the extent such entity's governing instruments or applicable law require the owners to manage the same, (c) to direct the Directed Trustee with respect to making any representation, warranty or covenant required to be made in order to maintain any investment and (d) to direct and instruct the Directed Trustee on the future actions, if any, to be taken with respect to such representations, warranties and covenants. The powers exercised by the Investment Trust Adviser shall be at the sole discretion of the Investment Trust Adviser, and the Investment Trust Adviser decisions shall be binding on all persons.

THIRD: Appointment of Distribution Trust Adviser; Duties of Distribution Trust Adviser.

The other provisions of my agreement shall control appointment of a Distribution Trust Adviser (the "Distribution Trust Adviser"). My Trust Protector, absent some other appointment, shall be treated as the "Distribution Trust Adviser" under NRS 163.5537 and as a "Fiduciary" under NRS 163.554.

The Distribution Trust Adviser shall exercise all discretion related to all income and principal distributions to or for the benefit of any beneficiaries

of such trust or trusts established hereunder. If the Distribution Trust Adviser determines that such a discretionary distribution of income and/or principal is warranted, the Distribution Trust Adviser shall notify the Directed Trustee in writing and the Directed Trustee shall comply with all such written directions. The Directed Trustee shall have no duty to see to the application of any distributions so directed. The powers exercised by the Distribution Trust Adviser shall be at the sole discretion of the Distribution Trust Adviser, and the Distribution Trust Adviser decisions shall be binding on all persons.

FOURTH: Limitation of Liability of Trust Company, as Directed Trustee; Indemnification of Directed Trustee.

Dunham Trust Company, as the Directed Trustee, shall be treated as an "Excluded Fiduciary" as defined in NRS Section 163.5539. Trust Company, as the Directed Trustee, shall not be liable to any beneficiary of the trust, the Investment Trust Adviser, Distribution Trust Adviser or to any other person including such parties' successors, heirs or assigns, for any act or failure to act by the Investment Trust Adviser and/or the Distribution Trust Adviser, or for acting on a direction of such Trust Advisers or their employees or agents with respect to implementing any such direction or investment, and it shall not be liable for any loss resulting from any action or omission taken by such Trust Advisers, or taken by it in accordance with a direction of the Trust Advisers or their employees or agents. Moreover, the Directed Trustee shall be fully indemnified, including without limitation reasonable attorney's fees and costs, by the trust estate against any claim or demand by any trust beneficiary or trust creditor, the Investment Trust Adviser or Distribution Trust Adviser or such parties' heirs, successors or assigns except for any claim or demand based on the Directed Trustee's own willful misconduct or gross negligence.

FIFTH: Authority to Hire Agents.

The Directed Trustee and the Investment Trust Adviser and Distribution Trust Adviser are authorized to employ such accountants, advisors and other counsel, including but not limited to entities affiliated with the Directed Trustee or such Trust Adviser, and to pay out of income or principal or both the reasonable charges and fees of such agents, advisors and counsel, as it shall in its sole discretion determine.

SIXTH: Power to Employ Custodian; Custodian to Follow Directions Regarding Purchases and Sales.

The Directed Trustee or the Investment Trust Adviser, as the case may be, may employ a custodian to hold the assets of the trust for safekeeping. The Directed Trustee or the Investment Trust Adviser employing such custodian may designate from time to time any person or firm to direct the

custodian as to purchases and sales of trust assets held by the custodian and the custodian shall not be liable for following any such directions. The custodian shall receive reasonable compensation for custodial services performed.

SEVENTH: Successor Directed Trustee.

The above provisions shall apply to any and all successors, assigns, employees, agents, subsidiaries and affiliates of Trust Company. The above provisions also shall apply during such time as any affiliate or subsidiary of The Trust Company is acting as successor Directed Trustee in the same manner as if such successor Directed Trustee were specifically named herein.

EIGHTH: Resignation, Removal, and Replacement.

The other provisions of my agreement with respect to resignation, removal and replacement of trustees shall control the resignation, removal and replacement of a Directed Trustee, Investment Trust Adviser or the Distribution Trust Adviser.

Section 1.02 Contest Provision

This Section of this Amendment applies to the above-named trust and to this Amendment. If any provision of this Section conflicts with any provision of the trust, the provision of this Section will prevail.

If any person attempts to contest or oppose the validity of this trust or any amendment to this trust, or commences, continues, or prosecutes any legal proceedings to set this trust aside, then that person will forfeit his or her share, cease to have any right or interest in the trust property, and will be considered to have predeceased me for purposes of this instrument.

Section 1.03 Effective Date

The provisions of this Amendment are effective immediately after execution with written consent of all beneficiaries then-entitled to receive mandatory or discretionary distributions of net income under the trust.

Section 1.04 Ratification and Confirmation

The Trust Protector confirms all provisions of the trust that are not modified by this Amendment. The Trust Protector certifies that he has read this Amendment to trust, and that it correctly states the changes the Trust Protector desires to make to the trust, and that all required notices and consents have been made and received in writing. The Trust Protector approves this Amendment to the Beatrice B. Davis Family Heritage Trust in all particulars, and requests the Trustee to execute it.

The Trust Protector executed this Amendment on February 24, 2014.

Stephen K. Lennhardt, Trust Protector

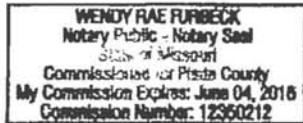
STATE OF MISSOURI

) ss.

COUNTY OF CLAY

On February 24, 2014, before me personally appeared Stephen K. Lehnardt, as Trust Protector, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same as his voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County and State on the date first written above.



Wendy Rae Jurecek
Notary Public In and For the State of Missouri
My commission expires: June 04, 2016

Dunham Trust Company, Trustee

by: Shanna Coressel
Shanna Coressel, Trust Officer/Trustee

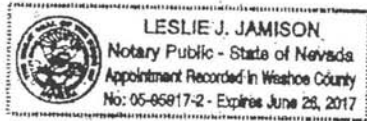
STATE OF NEVADA

)
) ss.
)

COUNTY OF WASHOE

On March 19, 2014 before me personally appeared Shanna Coressel, as Trust Officer/Trustee for Dunham Trust Company, Trustee, to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same as her voluntary act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said County and State on the date first written above.



Leslie J. Jamison
Notary Public in and For the State of Nevada
My commission expires: 6/28/17

ACKNOWLEDGEMENT AND CONSENT OF BENEFICIARY

I, Christopher D. Davis, as a beneficiary entitled to net income of the trust, hereby acknowledge this Amendment and consent to its terms.

IN WITNESS WHEREOF, I have hereunto set my hand effective on the date written below.

Dated this 27 day of February, 2014

by: 

Christopher D. Davis, Income Beneficiary

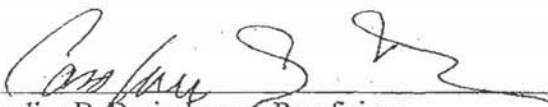
ACKNOWLEDGEMENT AND CONSENT OF BENEFICIARY

I, Caroline D. Davis, as a beneficiary entitled to net income of the trust, hereby acknowledge this Amendment and consent to its terms.

IN WITNESS WHEREOF, I have hereunto set my hand effective on the date written below.

Dated this 28 day of February, 2014

by:


Caroline D. Davis, Income Beneficiary

1 that -- that it would be that simple.

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

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

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

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

18 THE COURT: -- [indiscernible].

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

22 THE COURT: Okay. Okay.

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

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

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

9 THE COURT: Right.

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

11 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 otherwise denied.

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

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

8 And in his capacity as manager of FHT Holdings.

9 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

9 MR. SOLOMON: No.

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

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

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

10 THE COURT: Where is that order?

11 [Colloquy between the Court and staff]

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

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

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

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

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

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

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

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

6 MR. BARNEY: Okay.

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

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

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

13 THE COURT: Yeah.

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

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

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

1 THE COURT: Absolutely.

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

4 MR. SOLOMON: Okay.

5 MS. ROLAND: Are we --

6 THE COURT: The information --

7 MS. ROLAND: Are we pulling in the past
8 transactions from Alaska Trust Company that then forwarded
9 over to Dunham Trust Company and the loans no matter if --
10 because some of those loans from -- were to Beatrice
11 herself. So, when -- I think we need some guidance to try
12 to limit this or to let us know where we are going with it.

13 THE COURT: Okay.

14 MR. BARNEY: I'd like my protective order heard
15 though first if we could.

16 THE COURT: Okay. All right. The protective
17 order is denied. Okay. So, yeah. I mean, I'm -- he --

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

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

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

22 MR. BARNEY: May I argue my motion or does -- is
23 it just a response?

24 MR. SOLOMON: I don't know where we are
25 procedurally. I just heard Harriet Roland get up and make

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

2 THE COURT: Correct.

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

4 THE COURT: Okay.

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

7 THE COURT: All right.

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

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

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

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

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

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

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

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

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

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

20 THE COURT: Okay.

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

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

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

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

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

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

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

1 MR. BARNEY: Thank you, Your Honor.

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

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

14 MR. BARNEY: What I need to --

15 THE COURT: So, --

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

18 THE COURT: -- it's --

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

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

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

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

8 THE COURT: Right. Correct.

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

15 THE COURT: Okay.

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

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

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

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

1 manager --

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

3 THE COURT: -- of the Nevada --

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

6 THE COURT: Of a Nevada corporation.

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

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

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

20 MR. BARNEY: That's correct.

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

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

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

11 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

1 investment trust advisor.

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

5 THE COURT: Okay. Thanks.

6 MR. BARNEY: Thank you.

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

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

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

19 MR. SOLOMON: Thank you for your patience.

20 THE CLERK: [Indiscernible]?

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

24 MS. RENWICK: Thank you, Your Honor.

25 MR. HOOD: Thank you.

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MR. BARNEY: Thank you, Your Honor.

PROCEEDING CONCLUDED AT 12:04 P.M.

* * * * *

1 **CERTIFICATION**

2

3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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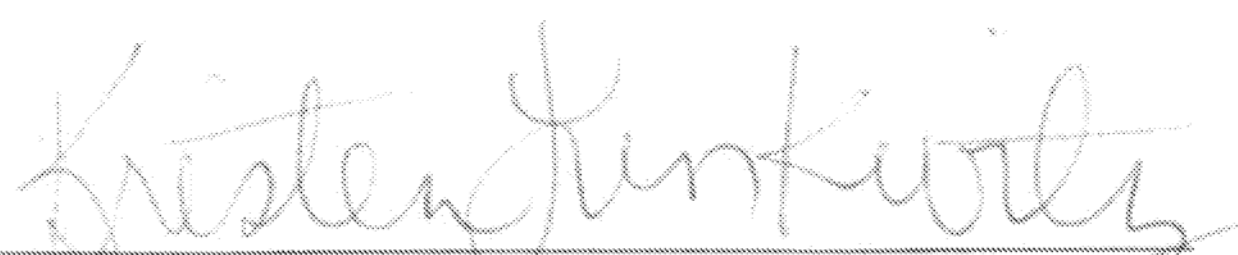
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22 A handwritten signature in cursive script, appearing to read 'Kristen Lunkwitz', is written over a horizontal dotted line.

23 KRISTEN LUNKWITZ

24 INDEPENDENT TRANSCRIBER

25



EXHIBIT 39



CLERK OF THE COURT

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6 *Attorneys for Caroline Davis, Petitioner*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 In the Matter of:

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

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

Hearing Date:
Hearing Time:

13 **MOTION TO COMPEL ATTENDANCE AT DEPOSITION AND MOTION FOR**
14 **SANCTIONS**

15 Caroline D. Davis, as beneficiary of the Beatrice B. Davis Family Heritage Trust, dated
16 July 28, 2000, as amended February 24, 2014, by and through her counsel, the law firm of
17 Solomon Dwiggins & Freer, Ltd., hereby files her Motion To Compel Attendance At Deposition
18 And Motion For Sanctions (the "Motion"). This Motion is made and based on the pleadings and
19 papers on file in this action, the attached Memorandum Of Points And Authorities, all attached
20 exhibits, and any oral argument that this honorable Court may entertain at the time of hearing.

21 **MEMORANDUM OF POINTS AND AUTHORITIES**

22 **I. Statement of Facts**

23 This matter was initiated by Caroline D. Davis ("Ms. Davis") on February 10, 2015, when
24 Ms. Davis filed her Petition To Assume Jurisdiction Over The Beatrice B. Davis Family Heritage
25 Trust, dated July 28, 2000, as amended on February 24, 2014; To Assume Jurisdiction Over
26 Christopher D. Davis as Investment Trust Advisor and Stephen K. Lehnardt as Distribution Trust
27 Advisor; To Confirm Dunham Trust Company As Directed Trustee; and For Immediate
28 Disclosure of Documents and Information From Christopher D. Davis (the "Petition"). On April

22, 2015, this Court heard oral arguments on Ms. Davis' Petition and Christopher D. Davis' Motion To Dismiss Pursuant To NRCP (12)(b) And NRCP 19, which was filed on March 3, 2015 (the "Motion To Dismiss").

The Order¹ entered as a result of the April 22, 2015, in relevant part, provides as follows:

"WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Petition To Assume Jurisdiction over Christopher D. Davis as Investment Trust Advisor is granted without prejudice."²

The Order further provides that:

"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 his role as Manager of FHT Holdings."³

Although Christopher's counsel, Harriet H. Roland, Esq. ("Ms. Roland"), has produced limited documents pursuant to the Subpoena Duces Tecum served upon her office, to date, Christopher has not produced or disclosed any documents in his capacity as Investment Trust Advisor or sole Manager of FHT Holdings, LLC.

Based upon Christopher's failure to abide by this Court's June 24, 2015 Order, on August 6, 2015, Ms. Davis' counsel electronically served a Notice Of Deposition⁴ on Christopher D. Davis ("Christopher") for his deposition to be taken on September 3, 2015, at 10:00 a.m. On August 28, 2015, Christopher filed his Motion For Protective Order.⁵ On September 2, 2015, a hearing was held on Christopher's Motion For Protective Order, wherein the Court declined to

¹ See, Order, filed on June 24, 2015, a true and correct copy of which is attached hereto as **Exhibit 1**.

² *Id.*, at p. 2:22-24.

³ *Id.*, at p. 2:3-6.

⁴ See, Notice Of Taking Deposition Of Christopher D. Davis, electronically served on August 6, 2015 (the "Notice Of Deposition"), a true and correct copy of which is attached hereto as **Exhibit 2**.

⁵ See, Christopher D. Davis' Motion For Protective Order And To Quash Or Modify The Subpoena, previously filed with this Court on August 28, 2015 (the "Motion For Protective Order").

1 grant Christopher's request for the protective order, stating that "there is no basis for a protective
2 order...as this Court has jurisdiction over Christopher."⁶

3 Notwithstanding the Court's denial of Christopher's Motion For Protective Order,
4 Christopher's counsel, Anthony L. Barney, Esq. ("Mr. Barney") and Ms. Roland, sent a letter to
5 Ms. Davis' counsel, Joshua M. Hood, Esq. ("Mr. Hood") and Mark A. Solomon, Esq. ("Mr.
6 Solomon"), stating that "[Christopher] will not be appearing for his deposition tomorrow"⁷,
7 contending that the "Court cannot take jurisdiction over [Christopher] personally or as a trust
8 investment advisor under a theory of constructive trust."⁸ Christopher's counsel also stated that
9 Christopher, "as a non-party...has no obligation to appear [for his deposition]."⁹ On September
10 3, 2015, Christopher also filed a Notice Of Non-Appearance, alleging, *inter alia*, that "the court
11 has not obtained *in personam* jurisdiction over [Christopher] individually."¹⁰

12 It is important to note again that Christopher, upon accepting his position and tenure as
13 Investment Trust Advisor pursuant to NRS 163.5543, submitted to the "jurisdiction of the courts
14 of this State."¹¹ Additionally, it is undisputed that Christopher is currently serving as the sole
15 Manager of FHT Holdings, LLC, a Nevada limited liability company wholly owned by the Trust,
16 which currently holds the Trust's primary asset (the Ashley Cooper Policy with a face cover value
17 of \$35,000,000.00).

18 On September 3, 2015, in an attempt to resolve the dispute concerning Christopher's non-
19 appearance at the scheduled deposition, Mr. Hood held an EDCR 2.34 telephone conference call
20

21 ⁶ See, Minutes from September 2, 2015 Hearing, a true and correct copy of which is attached hereto as
22 **Exhibit 3.**

23 ⁷ See, September 2, 2015 Letter from Mr. Barney to Mr. Hood and Mr. Solomon, a true and correct copy of
24 which is attached hereto as **Exhibit 4.**

25 ⁸ *Id.*

26 ⁹ *Id.*

27 ¹⁰ See, Notice Of Non-Appearance Of Christopher D. Davis, filed on September 3, 2015 (the "Notice Of Non-
28 Appearance"), a true and correct copy of which is attached hereto as **Exhibit 5.**

¹¹ See, NRS 163.5555 (providing, in relevant part, that "[i]f a person accepts an appointment to serve as...trust
advisor of a trust subject to the laws of this State, the person submits to the jurisdiction of the courts of this State...").
(Emphasis added).

1 with Mr. Barney.¹² Mr. Barney, referencing the June 24, 2015 Order, stated that “Christopher
2 would not appear for his deposition because the Court does not have *in personam* jurisdiction
3 over Christopher.”¹³ Mr. Hood and Mr. Barney were ultimately unable to reach a resolution
4 regarding Christopher’s attendance at his deposition.¹⁴ As such, Ms. Davis has been forced to file
5 the instant Motion to compel Christopher’s attendance at a deposition, and respectfully requests
6 that this Court compel his attendance at a future deposition, as well as issue an order sanctioning
7 Christopher for his failure to appear at his September 3, 2015 deposition.

8 II. LEGAL ARGUMENT

9 A. Motion To Compel Christopher’s Attendance At Deposition.

10 Christopher’s contention that this Court lacks *in personam* jurisdiction over him is
11 misplaced. The First Amendment to the Trust, which Christopher expressly consented to,
12 provides that Christopher “shall be treated as an ‘Investment Trust Advisor’ under NRS 163.5543
13 and as a ‘Fiduciary’ under NRS 163.554.”¹⁵ NRS 163.5555, in relevant part, provides as follows:
14 “If a person accepts an appointment to serve as a trust protector or a **trust adviser** of a trust
15 subject to the laws of this State, **the person submits to the jurisdiction of the courts of this**
16 **State**, regardless of any term to the contrary in an agreement or instrument.” (Emphasis added).

17 Indeed, Ms. Davis’ request for this Court to assume jurisdiction over Christopher as
18 Investment Trust Advisor was granted,¹⁶ thereby making Christopher a proper party to this action
19 and subjecting him to the jurisdiction of this Court. Additionally, as stated above, Christopher is
20 currently serving as the sole Manager of FHT Holdings, LLC, a Nevada limited liability
21 company wholly owned by the Trust. Indeed, it was acknowledged that “since the first
22

23
24 ¹² See, Declaration of Joshua M. Hood, Esq., a true and correct copy of which is attached hereto as **Exhibit 6**.

25 ¹³ *Id.*, at ¶ 5.

26 ¹⁴ *Id.*, at ¶ 9.

27 ¹⁵ See, First Amendment to the Beatrice B. Davis Family Heritage Trust, dated February 24, 2014, a true and
correct copy of which is attached hereto as **Exhibit 7**, at Article Thirteen, Section 2.d, subsection Second.

28 ¹⁶ See, Ex. 1, at p. 2:22-24.

1 amendment, Christopher has been directing the trust in Nevada.”¹⁷ As such, this Court has
2 jurisdiction over Christopher as Investment Trust Advisor pursuant to NRS 163.5555, and as sole
3 Manager of FHT Holdings, LLC, which is doing business in Nevada and whose registered agent
4 is located in Las Vegas, Nevada.¹⁸

5 Ms. Davis properly noticed Christopher’s September 3, 2015 deposition on August 6,
6 2015, pursuant to NRCP 30(b)(1).¹⁹ Notwithstanding the fact that: (1) this Court previously
7 assumed jurisdiction over Christopher as Investment Trust Advisor;²⁰ (2) found that it has
8 jurisdiction over Christopher;²¹ and (3) declined to grant Christopher’s Motion For Protective
9 Order prohibiting Ms. Davis’ counsel from deposing Christopher, Christopher intentionally
10 disregarded the Nevada Rules of Civil Procedure and failed to attend his properly noticed
11 deposition on September 3, 2015. As such, Ms. Davis respectfully requests that this Court issue
12 an order compelling Christopher’s attendance at his deposition, which will be timely and
13 properly noticed upon this Court granting Ms. Davis’ request.

14 **B. Motion For Sanctions Against Christopher D. Davis.**

15 NRCP 30(d)(2) provides that “[t]he court may impose an appropriate sanction – including
16 the reasonable expenses and attorney’s fees incurred by any party – on a person who impedes,
17 delays, or frustrates the fair examination of the deponent.” Christopher is a proper party to this
18 action in his role as Investment Trust Advisor and sole Manager of FHT Holdings, LLC. As
19 such, his intentional disregard of the Nevada Rules of Civil procedure and blatant failure to
20

21 ¹⁷ *Id.*, at p. 2: 13-14.

22 ¹⁸ *See*, Nevada Secretary Of State printout, identifying Registered Agent Solutions, Inc., located at 4625 West
23 Nevso Drive, Suite 2, Las Vegas, Nevada 89103, as the registered agent for FHT Holdings, LLC, a true and correct
copy of which is attached hereto as **Exhibit 8**.

24 ¹⁹ *See*, NRCP 30(b)(1) (“A party desiring to take the deposition of any person upon oral examination shall give
25 reasonable notice, not less than 15 days, in writing to every other party to the action. The notice shall state the time
26 and place for taking the deposition and the name and address of each person to be examined, if known, and, if the
name is not known, a general description sufficient to identify the person or the particular class or group to which the
person belongs. If a subpoena duces tecum is to be served on the person to be examined, the designation of the
materials to be produced as set forth in the subpoena shall be attached to or included in the notice.”).

27 ²⁰ *See*, Ex. 1.

28 ²¹ *See*, Ex. 3.



1 attend his properly noticed deposition impeded, delayed and frustrated Ms. Davis fair
2 examination of him at his deposition. Therefore, Christopher should be sanctioned and Ms.
3 Davis awarded her attorneys' fees and costs for being forced to file the instant Motion.

4 **WHEREFORE**, Caroline D. Davis respectfully request that this Court:

5 (1) Issue an Order compelling Christopher D. Davis' attendance at a deposition to be
6 noticed;

7 (2) Sanction Christopher D. Davis for failing to attend his deposition on September 3,
8 2015; and

9 (3) For such other and further relief as this Court deems proper.

10 Dated this 22nd day of September, 2015.

11 SOLOMON DWIGGINS & FREER, LTD

12 
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19 Attorneys for Caroline D. Davis
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Exhibit 1

Exhibit 1


CLERK OF THE COURT

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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

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

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

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

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

6 THE COURT: Okay.

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

9 THE COURT: Thank you.

10 MR. BARNEY: Thank you, Your Honor.

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

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

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

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

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

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

13 THE COURT: Okay.

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

19 THE COURT: Okay. Thanks.

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

24 THE COURT: Exactly.

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

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

11 THE COURT: Right.

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

13 THE COURT: understood.

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

16 THE COURT: Mr. Solomon.

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

19 THE COURT: Yes.

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

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

23 MR. SOLOMON: -- thing?

24 THE COURT: Yeah.

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

1 that. I appreciate it.

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

5 THE COURT: He made a good record.

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

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

9 THE COURT: Correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 THE COURT: -- pretty clear.

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

13 THE COURT: Yeah.

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

18 THE COURT: Sure.

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

21 THE COURT: I do.

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

24 THE COURT: Yes.

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

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

3 THE COURT: Correct.

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

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

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

19 THE COURT: Correct.

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

22 THE COURT: Correct.

23 MR. SOLOMON: -- 3-10.

24 THE COURT: Right.

25 MR. SOLOMON: There --

1 THE COURT: Because mom dies.

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

4 THE COURT: Exactly.

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

8 THE COURT: Yeah.

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

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

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

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

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

1 share.

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

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

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

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

15 THE COURT: Correct.

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

19 THE COURT: Yes.

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

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

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

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

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

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

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

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

14 THE COURT: No.

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

17 THE COURT: Right.

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

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

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

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

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

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

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

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

25 THE COURT: To prove.

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

3 THE COURT: Okay.

4 MR. SOLOMON: -- number one.

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

7 MR. SOLOMON: Yes.

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

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

15 THE COURT: In February.

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

21 THE COURT: The resignation?

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

24 THE COURT: Oh.

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

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

3 THE COURT: Right.

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

6 THE COURT: Yeah.

7 MR. SOLOMON: Okay?

8 THE COURT: I've got that.

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

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

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

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

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

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

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

11 And then he says it concluded.

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

16 Your Honor, may I approach?

17 THE COURT: Okay.

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

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

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

23 MR. BARNEY: And --

24 MR. SOLOMON: -- electronically.

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

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

4 MR. SOLOMON: Your Honor, --

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

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

9 THE COURT: Okay.

10 MR. SOLOMON: I didn't --

11 THE COURT: Okay.

12 MR. SOLOMON: -- interrupt him.

13 THE COURT: Okay. Thank you.

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

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

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

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

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

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

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

7 MR. SOLOMON: Well, --

8 THE COURT: To his law firm.

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

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

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

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

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

4 THE COURT: Right.

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

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

13 MR. SOLOMON: Yeah.

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

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

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

21 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

16 MR. BARNEY: Okay.

17 THE COURT: You'll get a chance.

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

20 THE COURT: Okay.

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

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

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

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

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

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

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

17 THE COURT: Thank you.

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

20 THE COURT: Yeah.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 MR. BARNEY: No, she was not.

9 THE COURT: So, --

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

11 THE COURT: So she --

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

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

16 MR. BARNEY: And --

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

24 MR. BARNEY: Are you --

25 THE COURT: Interesting.

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

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

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

7 THE COURT: Correct.

8 MR. BARNEY: He --

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

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

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

17 MR. BARNEY: Thank you, Your Honor.

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

23 MR. BARNEY: Well --

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

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

2 MR. BARNEY: No, --

3 THE COURT: It helps. It actually helps because -
4 -

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

9 THE COURT: And do you --

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

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

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

1 MR. BARNEY: Your Honor, please --

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

3 MR. BARNEY: -- understand --

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

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

19 THE COURT: Okay. All right.

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

1 were because they were withdrawn.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 So, --

12 MR. BARNEY: Your Honor, --

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

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

25 THE COURT: No. You have a preliminary

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

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

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

13 MR. BARNEY: Well, --

14 THE COURT: I'm done.

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

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

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

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

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

11 THE COURT: Okay.

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

14 THE COURT: It --

15 MR. BARNEY: -- of the trust.

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

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

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

25 MR. BARNEY: Yeah.

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

3 MR. BARNEY: Okay. Well, --

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

6 THE COURT: Okay.

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

9 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

1
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
12 GLORIA J. STURMAN,

13 Respondent

14 and

15 CAROLINE DAVIS,

16 Real Party in Interest

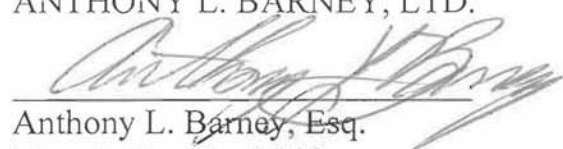
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Clerk of Supreme Court
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P-15-083867-1

17 **PETITIONER'S APPENDIX**
18 **VOLUME IX**

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ALPHABETICAL
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Employee of Anthony L. Barney, Ltd.



EXHIBIT 38


CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

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

BEFORE THE HONORABLE GLORIA J. STURMAN, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

WEDNESDAY, SEPTEMBER 2, 2015

APPEARANCES:

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

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

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

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

2

3 THE COURT: P083867.

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

6 THE COURT: Okay.

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

9 THE COURT: Okay.

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

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

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

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

1 MR. BARNEY: Okay.

2 THE COURT: All right.

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

5 THE COURT: I'm sure.

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

8 THE COURT: Okay.

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

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

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

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

25 Number one is whether the Alaskan trustees if they

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that qualifies under the terms of the trust.

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

8 THE COURT: Right.

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

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

1 because the condition precedent was not met.

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

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

22 THE COURT: But is a spouse --

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

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

1 MR. BARNEY: They absolutely are.

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

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

6 MR. BARNEY: And who is that?

7 THE COURT: -- and --

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

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

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

17 THE COURT: May.

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

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

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

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

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

3 What would she be qualifying for?

4 THE COURT: Under D.

5 MR. BARNEY: No.

6 THE COURT: 8D

7 MR. BARNEY: No.

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

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

18 THE COURT: Right.

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

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

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

19 MR. BARNEY: It would be --

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

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

24 THE COURT: Well what are you asking for?

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

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

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

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

17 MR. BARNEY: Yes.

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

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

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

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

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

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

17 MR. BARNEY: They can file suit here.

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

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

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

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

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

2 THE COURT: Okay.

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

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

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

1 an important point.

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

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

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

17 MR. BARNEY: I'd be --

18 THE COURT: -- corporations, --

19 MR. BARNEY: -- to address that.

20 THE COURT: -- everything else.

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

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

1 MR. BARNEY: One last thing.

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

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

5 THE COURT: -- good.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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