

1 **NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are persons
3 and entities described in NRAP 26.1(a) and must be disclosed. These
4 representations are made in order that the Judges of this Court may evaluate
5 possible disqualification or recusal:
6
7

8 1) Beatrice B. Davis Family Heritage Trust

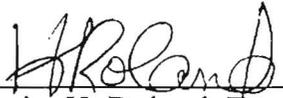
- 9
10 a. Trustees: Alaska Trust Company, Alaska USA Trust Company
11 b. Purported Trustee: Dunham Trust Company
12 c. Trust Protector: Stephen K. Lehnardt
13 d. Purported Investment Trust Advisor: Christopher D. Davis
14 e. Beneficiaries: Christopher D. Davis, Caroline Davis, Winfield Davis,
15 Ace Davis, Tarja Davis

16 2) FHT Holdings, LLC

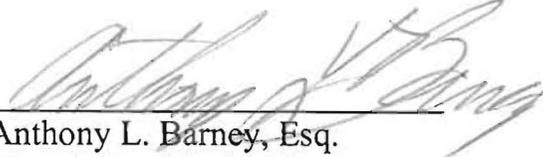
- 17 a. Managing Member: Beatrice B. Davis Family Heritage Trust
18 b. Registered Agent: Registered Agent Solutions, Inc.
19 c. Officer: Christopher D. Davis

20 Dated this 4th day of February, 2016.

21 Respectfully Submitted,
22 ROLAND LAW FIRM

23 
24 Harriet H. Roland, Esq.
25 Nevada Bar No. 5471
26 2470 E. St. Rose Pkwy, Ste. 105
27 Henderson, NV 89074
28 Telephone: (702) 452-1500
Facsimile: (702) 920-8903
hroland@rolandlawfirm.com
Attorney for Christopher D. Davis

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.


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

CERTIFICATE OF COMPLIANCE

1. We hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 pt. font.
2. We further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed thirty pages.
3. Finally, we hereby certify that we have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. We further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. We understand that we may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

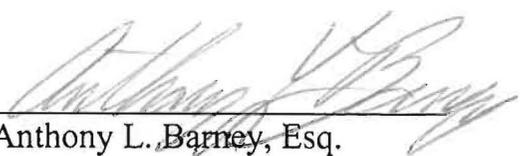
Dated this 4th day of February, 2016.

Respectfully Submitted,
ROLAND LAW FIRM



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

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.



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

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NRAP 26.1 DISCLOSURE.....ii

CERTIFICATE OF COMPLIANCEiii

ATTORNEY’S CERTIFICATE PURSUANT TO NRAP 28.2v

TABLE OF CONTENTSvi

TABLE OF AUTHORITIESviii

JURISDICTIONAL STATEMENTxi

APPLICABLE STANDARD OF REVIEW.....xii

STATEMENT OF THE ISSUExiii

STATEMENT OF THE CASE1

STATEMENT OF THE FACTS.....1

SUMMARY OF THE ARGUMENT6

ARGUMENT.....8

 I. *An amended order that does not mirror the certification of intent in the motion for remand should be void and without effect; herein, the January 5th Order does not mirror the certification, is prejudicial, violates due process and should be adjudicated void and without effect.....8*

 II. *If this Court deems the January 5th Order to be valid, in rem jurisdiction over this matter was not exercised until December 31, 2015; therefore, all prior orders are invalid.....13*

 III. *Even if this Court deems the January 5th Order to be valid, the new statutes do not allow for automatic personal jurisdiction over an IT Adviser; and, because Caroline failed to serve a citation upon Christopher, he should be dismissed as a party.....14*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV. *An IT Adviser is not a trustee because it does not hold all trust powers like a trustee*.....20

V. *An IT Adviser is not a trustee because it is not the legal owner of trust property*.....24

VI. *Where a court attempts to appoint the investment trust adviser similar to a trustee, an interlocutory appeal is warranted if there is a clearly erroneous and improper exercise of jurisdiction and it would materially advance the ultimate termination of litigation*..... 26

CONCLUSION.....30

CERTIFICATE OF SERVICE32

TABLE OF AUTHORITIES

CASES:

1		
2		
3		
4		
5	<i>Alpert v. Riley</i> 274 S.W.3D 277, 291 (Tex. App. 2008).....	24
6	<i>Am. Realty Investors, Inc. v. Prime Income Asset Mgmt., LLC</i> , 2013 U.S. Dist. LEXIS 159077, *17, 2013 WL 5947190 (D. Nev. Nov. 4, 2013)....	26
7	<i>Colorado Springs Cablevision, Inc., v. Lively</i> (579 F. Supp. 252, 254 (D. Colo. 1984).....	24
8	<i>Estate of Hughes v. First Nat'l Bank</i> , 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980).....	28
9	<i>Foster v. Dingwall</i> , 228 P.3d 453 (Nev. 2010).....	10, 11,
10		12
11	<i>Haw. ex rel. Louie v. JP Morgan Chase & Co.</i> , 921 F. Supp. 2d 1059, 1065, 2013 U.S. Dist. LEXIS 11977, *16, 2013 WL 391024 (D. Haw. 2013).....	27
12		
13	<i>Honeycutt v. Honeycutt</i> , 94 Nev. 79 (1978).....	10, 12
14	<i>In re Cement Antitrust Litigation</i> , 673 F.2d 1020, 1026 (9th Cir. Ariz. 1982).....	27
15	<i>In re Nat'l Student Mktg. Litig.</i> , 413 F. Supp. 1159, 1160 (D.D.C. 1976)	
16	<i>In re Schwartz</i> , 954 F.2d 569, 571 (9th Cir. 1992).....	11
17	<i>Long v. Long</i> , 252 S.W.2d 235, 247, 1952 Tex. App. LEXIS 1755, *31 (Tex. Civ. App. 1952).....	24
18	<i>Lorenz v. Beltio, Ltd.</i> , 114 Nev. 795, 806, 963 P.2d 488, 495, 1998 Nev. LEXIS 108, *20 (Nev. 1998).....	11
19	<i>Marquis & Aurbach v. Eighth Judicial Dist. Court</i> , 122 Nev. 1147, 146 P.3d 1130, 2006 Nev. LEXIS 126, 122 Nev. Adv. Rep. 97 (Nev. 2006)...	vii
20	<i>Matijkiw v. Strauss</i> , 2011 D.C. Super. LEXIS 13, 14-15 (2011).....	24
21	<i>N. Natural Gas Co. v. Hugoton Plans Gas & Oil Co.</i> , 187 A.2d 432, 435-36 (Del. Super. Ct. 1963).....	24
22		
23	<i>Nelson v. Las Vegas</i> , 99 Nev. 548, 556, 665 P.2d 1141, 1146, 1983 Nev. LEXIS 491, *12-13 (Nev. 1983).....	9
24	<i>Robbins Co. v. Lawrence Mfg. Co.</i> , 482 F.2d 426, 429 (9th Cir. 1973)...	26
25	<i>Robinson v. Kind</i> , 23 Nev. 330, 337, 47 P. 1, 3, 1896 Nev. LEXIS 1, *13 (Nev. 1897).....	25
26		
27	<i>Scott v. Department of Commerce</i> , 104 Nev. 1980 (1988).....	9
28	<i>Syufy Enters. v. Am. Multi-Cinema, Inc.</i> , 694 F. Supp. 725, 729 (N.D. Cal. 1988).....	26

1	<i>Szydel v. Markman</i> , 121 Nev. 453, 117 P.3d 200, 2005 Nev. LEXIS 62,	
2	121 Nev. Adv. Rep. 47 (Nev. 2005).....	vii
3	<i>United States ex rel F.T.C. v. Larkin, Hoffman, Daly & Lindgren, Ltd.</i> ,	
4	841 F. Supp. 899, 903 (D. Minn. 1993).....	24
5	<i>United States v. Woodbury</i> , 263 F.2d 784, 787, 1959 U.S. App. LEXIS	
6	4480, *5, 1 Fed. R. Serv. 2d (Callaghan) 603 (9th Cir. Or. 1959).....	27
7	<i>United States Rubber Co. v. Wright</i> , 359 F.2d 784, 785 (9th Cir. 1966)...	28
8	<i>Valley Bank v. Ginsburg</i> , 110 Nev. 440, 446, 874 P.2d 729, 734, 1994	
9	Nev. LEXIS 51, *10-11 (Nev. 1994).....	28
10	<i>Vredenburg v. Sedgwick CMS</i> , 124 Nev. 553, 188 P.3d 1084, 2008 Nev.	
11	LEXIS 65, 124 Nev. Adv. Rep. 53 (Nev. 2008).....	vii
12	<i>Wilmington Trust Co. v. Stuart</i> , 1983 Del. Ch. LEXIS 524, *25 (Del.	
13	Ch. July 19, 1983).....	20
14		
15	<u>STATUTES:</u>	
16	Fourteenth Amendment.....	12, 19
17	28 USCS § 1292.....	26
18	NRS 0.039.....	26
19	NRS 14.065.....	19
20	NRS 155.040.....	16, 17
21	NRS 155.050.....	16, 17,
22		18, 19
23	NRS 155.190(1)(h).....	xi, xii,
24		xiii, 3,
25		7, 27,
26		28, 29,
27		30
28	NRS 163.050(4).....	24
	NRS 163.023-163.110.....	21
	NRS 163.115.....	21
	NRS 163.5543.....	21
	NRS 163.5555.....	15, 16,
		18, 19,
		28
	NRS 163.5557.....	21
	NRS 164.010 (1).....	xi, 4, 5,
		8
	NRS 164.033(4)(b).....	16

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

OTHER AUTHORITIES:

12 Del. Code Ann. §3313..... 20
12 Del. Code Ann. §§ 3570(8)(c)..... 20
12 Del. Code Ann. §§ 3570(8)(c)(3)..... 20
Alaska Stat. § 13.36.375..... 20, 23,
24
Miss Code Ann § 91-8-1005..... 20
Miss Code Ann § 91-8-1204..... 20
NRAP 3(a)..... xi
NRAP 3A(a)..... 7, 27,
28
NRAP 21(a)..... xi
NRAP 26..... ii
NRAP 28..... Iii, v
NRAP 32..... iii, v
NRCP 4..... 18, 19
NRCP 11..... 3
NRCP 19..... 18
NRCP 54(b)..... 27
NRCP 60(b)(3)..... 3, 5, 8
RSA 564-B:12-1201..... 20
RSA 564-B:10-1005A..... 20
S.D. Codified Laws § 55-1B-1..... 20
S.D. Codified Laws § 55-1B-7..... 20
S.D. Codified Laws § 55-1B-10..... 20
Senate Bill 484..... 14, 15
Tenn. Code Ann. § 35-15-1201..... 20
Tenn. Code Ann. § 35-15-1205..... 20
Tenn Code Ann. § 35-15-1203..... 29
14A V.S.A. § 1101..... 20
14A V.S.A. § 1104..... 20

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURISDICTIONAL STATEMENT

This matter has been consolidated and has two bases for the appeal. First, the Supreme Court of Nevada has jurisdiction over the writ proceeding pursuant to NRAP 21(a).

Second, the Supreme Court of Nevada has jurisdiction over the appeal pursuant to NRAP 3(a) as this appeal is taken from the appointment of a trustee pursuant to NRS 155.190(1)(h), which is an appealable order. The order appointing the trustee was signed on May 19, 2015 and entered on July 1, 2015 under the prior NRS 164.010. The notice of appeal pertaining to this order was filed on July 30, 2015.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATEMENT OF THE ISSUES

Did the Eighth Judicial District Court (“DC”) err and violate established common law and a party’s right to due process when it filed a new order granting post-stay relief which was entirely different from its certification of intent attached to the motion for remand and did not allow the parties an opportunity to respond to the newly granted relief?

If a district court attempts to appoint a trust investment adviser pursuant to its *in rem* jurisdiction through mailed notice, can the trust investment advisor appeal pursuant to NRS 155.190(1)(h)?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

STATEMENT OF THE CASE

Christopher hereby incorporates the Statement of the Case included with Appellant’s Opening Brief as if set forth fully herein.

STATEMENT OF THE FACTS

The Statement of Facts raised in Appellant’s Opening Brief are incorporated herein as if set forth fully herein. The pertinent facts pertaining to this Supplemental Opening Brief are as follows.

The FHT was an express spendthrift trust settled by Beatrice B. Davis, a Missouri resident, in July 2000 under Alaska law with an Alaskan Trustee.² Caroline originally requested this court take jurisdiction over FHT, its trustee and purported investment trust adviser (“IT Adviser”) based upon a purported First Amendment to the FHT under a theory of constructive trust and then attempted to request the court take jurisdiction under a new order filed January 5th Order for the sole purpose of obtaining documents from various parties.³

Caroline has attempted to obtain information on policy loans borrowed by the FHT trustees and used for administrative expenses, and for loans to various parties and entities through mailed notice. 98.3% of these policy loans were

² Appendix I:13.

1 effectuated prior to Christopher’s alleged appointment as IT Adviser and were
2 made outside of Nevada with the approval of Alaska Trust Company and the
3 Alaska USA Trust Company (“Alaska Trustees”).⁴ The other 1.7% of the loan
4 amount was admittedly a fee paid to the Trust Protector and trust drafter, Stephen
5 K. Lehnardt by Dunham Trust Company, the purported Nevada trustee.⁵ The
6 Alaska Trustees and purported Nevada trustee, as borrowers, were the proper
7 parties for Caroline’s requests.
8
9
10

11 Christopher filed a motion to dismiss based upon Caroline’s failure to join
12 the Alaska Trustees who had the information she requested; for the Court’s lack of
13 jurisdiction over Christopher; for Caroline’s lack of service and service of process
14 upon Christopher personally, as purported investment trust advisor or as manager
15 of FHT Holdings, LLC; and the parties failure to follow the terms of the FHT in
16 order to change the situs, including the lack of consent by all beneficiaries and
17 failure of the Alaska Trustees to obtain an opinion of counsel regarding the change
18 in trust situs.⁶ In May 2015, the DC heard argument on the motion to dismiss and,
19 on July 1, 2015, the DC denied the motions to dismiss, and purportedly assumed
20
21
22
23
24
25

26 ³ Appendix I:2-10. Caroline failed to state a claim for relief anywhere in her
27 Original Petition filed in the DC.

28 ⁴ Appendix I:6-7.

⁵ Appendix IX:1418: lines 3-7.

⁶ Appendix II:298:9-12 and Appendix III:350-375

1 jurisdiction over the FHT, Dunham Trust Company, and Christopher under a
2 theory of constructive trust, which was pled orally by counsel for Caroline.⁷
3

4 Christopher filed a petition for reconsideration of the DC’s June 24, 2015
5 Order (“Petition for Reconsideration”) because there was an improper assertion of
6 jurisdiction under the theory of constructive trust.⁸ Christopher also
7 simultaneously timely filed an appeal pursuant to NRS 155.190(1)(h), since the
8 motion for reconsideration would not toll the thirty-day appeal period.⁹
9
10

11 Caroline filed a motion to amend the June 24, 2015 Order (“Motion to
12 Amend”) because she also recognized the defect in the Court’s reasoning and
13 jurisdiction, however she based her arguments and requests upon alleged fraud
14 pursuant to NRCP 60(b)(3).¹⁰ Notably, Caroline withdrew her own
15 misrepresentations on the record upon notice from Christopher’s attorneys that
16 NRCP 11 sanctions would be sought.¹¹
17
18
19
20
21

22 ⁷ Appendix III:406:6 and Appendix III: 437:18-19.

23 ⁸ Appendix III:446-477.

24 ⁹ Appendix V:679-700

25 ¹⁰ Appendix V:795-836.

26 ¹¹ Appendix V:812: lines 12-15. Caroline wrongfully accused Christopher of
27 allegedly causing the Court to “mistakenly assume jurisdiction over the Trust
28 under the theory of ‘constructive trust’ and that ‘but for’ Christopher’s [alleged]
intentional misrepresentations, this Court would have properly assumed
jurisdiction over the Trust in its entirety as a proceeding in rem.” See also
Appendix III:1322-1357 where certain statements were withdrawn.

1 At the September 2, 2015 hearing on these pleadings, the DC openly
2 conceded that it was “wrong” to accept Caroline’s counsel’s theory of constructive
3 trust as “the FHT is not a constructive trust”¹² and acknowledged that FHT
4 Holdings, LLC, was not a party.¹³ The DC did not grant the Petition for
5 Reconsideration or Motion to Amend,¹⁴ and did not find any alleged fraud.¹⁵
6
7

8 In October 2015, after the Writ was filed and the Emergency Motion for
9 Stay was requested from this Court in the Appeal, the DC signed a two-page
10 Certification of Intent to Amend Order (“Certification”), submitted ex-parte to the
11 DC by Caroline’s counsel.¹⁶ Caroline attached this Certification upon a motion
12 for remand to this Court. On December 9, 2015, this Court issued an order
13 granting Caroline’s Motion to Remand based on its review of the two-page
14 Certification and ordered the DC to enter “its amended order pursuant to its
15 certification.”¹⁷
16
17
18

19 In December 2015, Christopher received a proposed order from Caroline’s
20 counsel for the DC to sign allegedly pursuant to this Court’s December 9, 2015
21
22

23
24 ¹² Appendix IX:1450: lines 23-25 and 1451: line 11.

25 ¹³ Appendix IX:1470: lines 9-14, 21-23, and 1472: lines 12-25

26 ¹⁴ Appendix IX:1391-1476, generally.

27 ¹⁵ Id.

28 ¹⁶ Supplemental Appendix XI: 1672-1742 and Appendix X: 1668-1670. The Certification simply stated the District Court’s intent to “enter an order to assume jurisdiction over the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000...de jure as a proceeding in rem pursuant to NRS 164.010...”

1 Order. Christopher’s counsel wrote a letter to the DC and Caroline’s counsel
2 requesting that the DC not sign Caroline’s Order, because the order had new and
3
4 erroneous findings of fact and conclusions of law and incorrectly and retroactively
5 granted Caroline’s Motion to Amend pursuant to NRCP 60(b)(3) based on alleged
6
7 fraud – a finding which had clearly not been made by the DC.¹⁸ Despite
8 Christopher’s letter, the DC signed this new and erroneous order and it was filed
9
10 in the DC on December 31, 2015 and filed with this Court on January 5, 2016
11 (“January 5th Order”).

12 Because the January 5th Order granted post-stay relief, did not indicate that
13
14 it was an “amended order” to relate back to the June 24, 2014 Order, added new
15 claims and damages to the case, and attempted to take advantage of two different
16
17 sets of trust statutes under NRS 164.010, among other issues, Christopher filed an
18 emergency motion with this Court to vacate the DC’s order and require the DC
19
20 sign another order that mirrored the Certification. This request was denied
21 without prejudice.

22
23
24
25
26
27
28 ¹⁷ See Page 4 of this Court’s December 9, 2015 Order.

¹⁸ Supplemental Appendix XI:1743-1798.

1 **SUMMARY OF THE ARGUMENT**

2 The salient issues for this supplement are whether the granting of a motion
3 to remand based on the attached certification of intent thereto allows a party to
4 create an entirely new order making new findings of fact and conclusions of law,
5 inserting new claims and new damages, and granting relief while an appellate
6 court stay is in place. Christopher argues that granting a motion for remand does
7 not give a party the ability to create such an order and that any amended order
8 should mirror the certification of intent attached to a motion for remand.
9 Otherwise, prejudice will result as well as a violation of due process because an
10 opposing party, or Christopher in this case, is unable to present his facts,
11 arguments or objections to retroactive findings of the court and the new post-stay
12 issues raised therein.
13

14
15
16
17
18 Second, an IT Adviser is not a trustee because it does not hold all powers of
19 the trustee, and it does not hold legal ownership of the Trust assets. The trust
20 instrument herein provides broad trust powers to a Trustee, not to an IT Adviser,
21 including the power to appoint and terminate its financial advisors, to invest, to
22 create financial accounts, and provides the trustee with discretion as to what
23 investments will be made and to whom the investment decisions may be
24 delegated. FHT, itself, waives the prudent investor rule, allowing the trustee or its
25 delegated financial advisor broad discretion in investing. The purported First
26
27
28

1 Amendment does not remove these powers allowing the Trustee to retain its
2 ability to choose whether it desires to follow an IT Adviser precisely because it
3 holds ownership of the trust assets and is obligated to the beneficiaries to account
4 for those trust assets.
5

6
7 Lastly, if an IT adviser or another person is being appointed pursuant to the
8 court's *in rem* jurisdiction to appoint a trustee, then an IT adviser or other
9 appointee should also be given authority to appeal the DC's jurisdiction similar to
10 a trustee pursuant to NRS 155.190(1)(h). In the federal context, interlocutory
11 appeals are allowed on controlling issues of law, which include jurisdictional
12 issues, because they would dispose of the matters of the case more expeditiously.
13
14 In addition, Christopher is an aggrieved party under NRAP 3A(a) because his
15 personal rights are being affected by the DC's orders and thus has standing to
16 appeal. Because NRS 155.190(1)(h) deals precisely with jurisdictional issues, if a
17 court has incorrectly assumed jurisdiction over an express trust or attempts to
18 appoint parties under its asserted jurisdiction then the aggrieved parties should be
19 given authority to appeal. Such an interlocutory appeal would dispose of the
20 controlling matters of law and possibly terminate the case.
21
22
23
24
25
26
27
28

ARGUMENT

1
2
3 I. *An amended order that does not mirror the certification of intent in the*
4 *motion for remand should be void and without effect; herein, the January*
5 *5th Order does not mirror the certification, is prejudicial, violates due*
6 *process and should be adjudicated void and without effect.*

7 The Certification of Intent to Amend Order (“Certification”) submitted by
8 Caroline in her Motion to Remand was a two page document indicating the DC’s
9 intent to “enter an order to assume jurisdiction over the Beatrice B. Davis Family
10 Heritage Trust, dated July 28, 2000...de jure as a proceeding in rem pursuant to
11 NRS 164.010...”.¹⁹ This Court granted Caroline’s Motion to Remand based on its
12 review of the two-page Certification and ordered the DC to enter “its amended
13 order pursuant to its certification.”²⁰

14
15
16 Over Christopher’s written objections,²¹ the DC signed the January 5th
17 Order submitted by Caroline’s counsel. The January 5th Order did not identify
18 itself as an “Amended Order” to relate back to the June 24, 2015 Order (“June 24th
19 Order”) and contained only a cursory reference to the June 24th Order.²²

20
21
22 The January 5th Order included new and erroneous findings of fact and
23 conclusions of law and incorrectly granted Caroline’s Motion to Amend pursuant
24 to NRCP 60(b)(3) based on alleged fraud – a finding which was clearly not made
25

26
27 _____
28 ¹⁹ Appendix X:1668-1670

²⁰ See Page 4 of this Court’s December 9, 2015 Order.

²¹ Supplemental Appendix XI:1743-1798.

1 by the DC.²³ In her Motion to Amend, Caroline wrongfully accused Christopher
2 of allegedly causing the Court to “mistakenly assume jurisdiction over the Trust
3 under the theory of ‘constructive trust’ and that ‘but for’ Christopher’s [alleged]
4 intentional misrepresentations, this Court would have properly assumed
5 jurisdiction over the Trust in its entirety as a proceeding in rem.”²⁴ Caroline was
6 forced to acknowledge that this was not correct (her own counsel had suggested
7 the constructive trust theory) and she withdrew her statements accordingly.²⁵
8
9
10

11 This Court has stated in the context of amending pleadings, that

12 [W]here an amendment states a new cause of action that describes a new
13 and entirely different source of damages, the amendment does not relate
14 back, as the opposing party has not been put on notice concerning the facts
15 in issue.²⁶

16 Herein, the alleged “amended” order (the January 5th Order) contains a new cause
17 of action and source of damages as well as new findings of fact and conclusions of
18 law. It grants Caroline’s Motion to Amend based on alleged fraud against
19 Christopher and his attorneys although the DC did not make a finding of fraud at
20 the September 2, 2015 hearing or any hearing thereafter. The January 5th Order
21
22
23

24 ²² Supplemental Appendix XI:1799-1807.

25 ²³ Supplemental Appendix XI:1743-1798, Appendix IX:1391-1476.

26 ²⁴ Appendix V:812: lines 12-15.

27 ²⁵ Appendix III, 1322-1357.

28 ²⁶ *Scott v. Department of Commerce*, 104 Nev. 1980 (1988), *Nelson v. Las Vegas*,
99 Nev. 548, 556, 665 P.2d 1141, 1146, 1983 Nev. LEXIS 491, *12-13 (Nev.
1983).

1 appears to be concerted effort to expose Christopher to a “new and an entirely
2 different source of damages” and an apparent attempt to gain advantage of the
3
4 new trust statutes that became effective on October 1, 2015.

5 Additionally, the January 5th Order is arguably a “new” order raising
6 additional argument, findings of facts and conclusions of law in violation of
7 *Honeycutt v. Honeycutt*, 94 Nev. 79 (1978) (“hereinafter “Honeycutt”) and *Foster*
8 *v. Dingwall*, 228 P.3d 453 (Nev. 2010) (hereinafter “Foster”). These cases
9 disallow the granting of relief regarding issues on appeal; they only allow a “party
10 to alter, vacate, or otherwise change or modify an order or judgment challenged on
11 appeal” by having a court certify its intent and then filing a motion to remand with
12 this Court.²⁷ At that time, this Court is then able to review the DC’s intent with
13 the motion to remand to which the opposing party can respond, and, after review
14 of the opposing party’s response or opposition, this Court can then allow or
15 disallow an amended order.
16
17
18
19
20

21 *Honeycutt* and *Foster* do not, however, stand for the proposition that new
22 causes of action, issues, or sources of damages relating to the issues on appeal can
23 be injected into the proceeding. Unfortunately, the January 5th Order has this
24 effect. Even if Caroline argues that the issues in the January 5th Order are
25
26
27

28 ²⁷ *Foster*, 228 P. 3d at 455.

1 “collateral to or independent from the appealed order”²⁸ under *Foster*, this Court’s
2 stay disallows any collateral or independent relief to be granted.
3

4 In the bankruptcy context, this Court has noted that “Any action taken in
5 violation of the automatic stay is rendered void and without effect.”²⁹ Although
6 this case does not have an automatic stay, the stay imposed herein is analogous to
7 the stay in bankruptcy court, because it prevents any further granting of relief or
8 resultant harm by proceeding against a party.
9
10

11 Herein, this Court ordered a stay so there would be no further proceedings
12 or granting of relief (other than what this Court might authorize) until the Writ and
13 Appeal would be decided. Although the DC and Caroline did not procedurally
14 violate the stay because this Court authorized an amended order to be filed, the
15 DC and Caroline substantively violated the stay because the amended order did
16 not mirror the Certification of Intent and wrongfully granted post-stay relief,
17 incorporated new findings of fact, conclusions of law, claims, sources of damages,
18 in their attempt to apply of a new set of trust statutes (that took effect in October
19 of 2015) into the Writ and Appeal. Therefore, Caroline and the DC have
20 substantively violated the stay in this matter by submitting and entering the
21
22
23
24
25

26
27 ²⁸ *Foster v. Dingwall*, 228 P.3d 453, 455, 2010 Nev. LEXIS 16, *5, 126 Nev. Adv.
Rep. 5 (Nev. 2010)

28 ²⁹ *Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 806, 963 P.2d 488, 495, 1998 Nev. LEXIS
108, *20 (Nev. 1998), citing *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992).

1 January 5th Order, respectively. Because of this violation, the January 5th order
2 should be rendered void and without effect.
3

4 Lastly, the January 5th Order is another violation of Christopher's due
5 process or his opportunity to be heard before relief is granted against him in a
6 foreign jurisdiction.³⁰ Christopher only had the opportunity to respond to the two-
7 page Certification attached to the Motion for Remand. The two-page Certification
8 certainly did not put Christopher on notice that, in the January 5th Order, he would
9 be exposed to eight pages of new argument, findings of fact, conclusions of law, a
10 new cause of action, a new source of damages, the grant of post-stay relief, and
11 exposure to two different sets of trust statutes.
12
13
14

15 Because *Honeycutt* and *Foster* and the court rules do not provide guidance
16 as to how an amended order should be structured when granted upon a motion to
17 remand, Christopher believes that an amended order should mirror, as closely as
18 possible, the certified intent of the court contained in the motion for remand
19 because the opposing party has the opportunity to respond to the issues raised in
20 the motion for remand. Otherwise, an order, such as the new January 5th Order
21 filed herein, which departs substantially from the certified intent in the motion for
22
23
24
25

26
27 ³⁰ See Fourteenth Amendment (A state shall not deprive any person of life, liberty,
28 or property, without due process of law). Caroline is now attempting to insert a
claim of fraud into the proceedings in a further attempt to obtain Christopher's
property – his personal documents.

1 remand, is highly prejudicial because, as occurred here, relief is granted in the DC
2 without the opportunity to be heard or to oppose it. Thus, an order that
3 significantly departs from the certified intent in a motion for remand should be
4 rendered void and without effect.
5

6
7 In summary, this Court should decline to recognize the January 5th Order as
8 valid because of its significant departure from the Certification. If this new order
9 is rendered void and without effect, then the DC took improper jurisdiction over
10 an express trust under a theory of constructive trust and the DC would not have *in*
11 *rem* jurisdiction over FHT, its Trustee or any other parties associated with FHT.
12 Likewise, it would not have *in personam* jurisdiction over these same parties as
13 discussed in Christopher’s Opening Brief and Writ.³¹ All prior orders and requests
14 for sanctions in the DC should then be vacated.
15
16
17

18 **II. *If this Court deems the January 5th Order to be valid, in rem jurisdiction***
19 ***over this matter was not exercised until December 31, 2015; therefore, all***
20 ***prior orders are invalid.***

21 If this Court does not invalidate the prejudicial January 5th Order, then this
22 Court must recognize that, until December 31, 2015, the DC did not have
23 jurisdiction over this matter under a theory of constructive trust or under a “de
24 facto trust”, which is unrecognized in Nevada. Therefore, the DC could not have
25
26
27
28

1 ordered sanctions against Christopher or required him to participate in discovery
2 under these defective theories.
3

4 Therefore, the court’s prior orders, including, but not limited to, orders for
5 sanctions, for him to appear for a deposition, and for him to participate in
6 discovery should be vacated. Christopher respectfully requests that this Court
7 invalidate and vacate all prior orders in the DC.
8

9
10 **III. *Even if this Court deems the January 5th Order to be valid, the new***
11 ***statutes do not allow for automatic personal jurisdiction over an IT***
12 ***Adviser; and, because Caroline failed to serve a citation upon***
Christopher, he should be dismissed as a party.

13 Even if this Court does not invalidate the prejudicial January 5th Order, the
14 prior trust statutes should apply (those prior to October of 2015). However, if the
15 new trust statutes are applied herein, the post-October 2015 trust statutes would
16 not automatically create *in personam* jurisdiction over Christopher because, as
17 argued below, he is not a trustee. The new trust statutes in Senate Bill 484 (“SB
18 484”) effective October 1, 2015, state the following:
19
20

21
22 Sec. 63. NRS 164.010 is hereby amended to read as follows:
23 164.010 1. Upon petition of any person appointed as trustee of an express
24 trust by any written instrument other than a will, or upon petition of a settlor
25 or beneficiary of the trust, the district court of the county in which the
26 trustee resides or conducts business, or in which the trust has been

27 ³¹ Christopher hereby incorporates his argument from his Opening Brief and Writ
28 regarding the invalidity of jurisdiction under a constructive trust as if set forth
fully herein.

1 domiciled, shall consider the application to assume jurisdiction of the trust
2 as a proceeding in rem.

- 3 2. If the court grants the petition the court:
4 (a) Has jurisdiction of the trust as a proceeding in rem;
5 (b) Shall be deemed to have personal jurisdiction over any person pursuant
6 to section 59 of this act...

7 Section 59 of SB 484 only references trustees and co-trustees; and Christopher is
8 neither a trustee or co-trustee of the FHT. Notably, in the same bill, Section 42
9 defined a directing trust adviser, including both a trust adviser and trust protector
10 in this definition; and Section 67 of SB 484 added references of “trust adviser”
11 and “trust protector” when notices of proposed actions are given. However, in
12 Section 59, only trustee or co-trustees were referenced – Section 59 did not
13 include references to trust adviser or trust protector despite the previous changes
14 in Section 42 and Section 67 of SB 484. Therefore, Christopher argues that the
15 Nevada Legislature did not intend personal jurisdiction to be automatic over an IT
16 Adviser or over him in any capacity under the new trust statutes.
17
18
19

20 Under the old and new trust statutes, NRS 163.5555 could only provide *in*
21 *rem* jurisdiction over the role of the IT Adviser or the trust property under a
22 court’s limited *in rem* power, because the exercise of *in personam* jurisdiction by a
23 court could only be effectuated if decisions or acts were properly pled and the IT
24
25
26
27
28

1 Adviser was properly made a party to the action.³² NRS 163.5555 does not
2 provide direction as to how notice will be given when a purported trust protector
3 or trust adviser is made a party to an action if the requisite decisions or acts or
4 pled. However, NRS 155.040, which is also used in a non-testamentary trust
5 context (see NRS 164.033(4)(b)), states that if personal service is required to be
6 given to any person in the matter of an estate or testamentary trust, and no other
7 mode of giving notice is prescribed, then it must be given by citation.³³ The
8 citation must be served in the same manner as the personal service of a summons
9 pursuant to NRS 155.050.³⁴ The new trust statutes do not modify NRS 155.040 or
10 155.050 and do not provide further guidance as to required service under NRS
11 163.5555 to assert *in personam* jurisdiction over an IT Adviser or trust protector;
12 therefore, it can only be assumed that general jurisdictional principles apply.
13
14
15
16
17
18

19
20 ³² NRS 163.5555 “...A trust protector or a trust adviser may be made a party to an
21 action or proceeding arising out of a decision or action of the trust protector or
22 trust adviser.” Even the DC recognized jurisdictional limitations of NRS
23 163.5555 when, at the April 22, 2015 hearing, it explained it could not
24 automatically take jurisdiction over the trust protector Stephen Lenhardt until a
25 more definite statement was provided, which showed actions taken by Mr.
26 Lenhardt which would justify the exercise of jurisdiction. See Appendix III,
27 403:15-18; 408:10-12,15-16; 410:13-25, 411:1-19, 424:20-25; 425:1-11.

28 ³³ NRS 155.040 states: “If personal notice is required by this title...and no other
mode of giving notice is prescribed, it must be given by citation...The nature or
character of the proceedings must be briefly stated in the citation, and a copy of
the petition, if any, must be attached.”

³⁴ NRS 155.050 requires the “citation described in NRS 155.040 to be served in the
same manner as the personal service of summons...”

1 In order for the DC to properly assert *in personam* jurisdiction over
2 Christopher, Caroline would be required to personally serve a citation upon
3 Christopher to put him on notice that she would be seeking personal, financial or
4 business documents outside of any purported role he held related to the FHT or on
5 behalf of a non-party.³⁵ She failed to serve such a citation. Christopher simply
6 received a mailed petition which did not plead acts or decisions by Christopher to
7 alert him of any claims against him; therefore, Caroline's mailed notice was
8 insufficient to make Christopher a party to the action or subject to *in personam*
9 jurisdiction. Even if this Court's limited *in rem* jurisdiction exists pursuant to the
10 January 5th Order, without *in personam* jurisdiction over Christopher, the DC
11 cannot require Christopher to provide documents on behalf of FHT Holdings,
12 LLC, a non-party, and for documents he obtained while a beneficiary or on behalf
13 of FHT Holdings, LLC, until and unless proper service was effectuated to
14 personally cite him and the proper parties into the DC. The January 5th Order
15 continues to propagate the defects in the June 24th Order in this regard.³⁶

25 ³⁵ See NRS 155.040 and 155.050.

26 ³⁶ See Appendix VIII:1266-1272 (Subpoena showing extensive documents
27 requested as a result of prior June 24, 2015 Order) and Supplemental Appendix
28 XI: 1807:lines 10-13 in which it orders Christopher to produce all information in
his possession, custody or control as purported IT Adviser and as manager of FHT
Holdings, LLC, a non-party to this case.

1 It should be noted that the January 5th Order now seems to attempt to create
2 general “acts” of the IT Adviser under NRS 163.5555, which when reviewed
3 closely are merely allegations without supporting facts.³⁷ Like the Original
4 Petition, the January 5th Order does not reference an act or decision by Christopher
5 to qualify the DC to assert *in personam* jurisdiction over Christopher, especially
6 over admitted non-parties (i.e. FHT Holdings, LLC) or parties who were never
7 personally served pursuant to NRCP 4 or NRS 155.050 – it merely regurgitates
8 Caroline’s request for documents.³⁸ Caroline’s document request is nothing more
9 than a discovery request that should be directed toward the proper parties – the
10 Alaska Trustees (who are not a party to this action for which Christopher raised
11 his NRCP 19 argument in his motion to dismiss) and the purported Nevada
12 Trustee who would be in possession of the documents she seeks.

13
14
15
16
17
18 As a matter of public policy, Caroline’s positions in the DC would have a
19 negative impact or chilling effect on trust creation in Nevada if a person or entity
20 discovered that by simply being named in a trust document, his/her/its personal
21 affairs could be exposed through an automatic exercise of personal jurisdiction
22
23

24 _____
25 ³⁷ The January 5th Order generally alleges: “Christopher D. Davis has been acting
26 as Investment Trust Advisor since his acceptance of such position” and
27 “Christopher D. Davis has been acting as sole Manager of FHT Holdings, LLC
28 since his appointment of such position”. See Supplemental Appendix XI:1802:
lines 26-27 and 1803:lines 1-2.

³⁸ Supplemental Appendix XI:1807:lines 10-13.

1 over them. The new trust statutes seem to encourage this chilling effect and there
2 should be some clarity as to whether a constitutional analysis and jurisdictional
3 analysis under the Fourteenth Amendment, NRS 14.065 and common law are still
4 warranted before a person or entity is subject to personal jurisdiction in Nevada.
5

6
7 Since Caroline failed to plead the requisite decisions, acts, or claims under
8 NRS 163.5555; failed to effectuate personal service of process pursuant to NRCP
9 4 (or possibly NRS 155.050); and failed to provide a jurisdictional analysis under
10 NRS 14.065 and Nevada case law, NRS 163.5555 could only presumably grant *in*
11 *rem* jurisdiction over the IT Adviser's role (e.g. to appoint/remove the IT Adviser)
12 and not the person. Any other reading would violate Christopher's right to due
13 process under the Fourteenth Amendment. Accordingly, the DC's orders for
14 Christopher to produce documents relating to his personal and financial affairs for
15 seven plus years, clearly unrelated to his purported role as IT Adviser as well as
16 the accompanying threats of sanctions for alleged noncompliance with the DC's
17 orders are improper. Lastly, because personal service was not effectuated with the
18 120 day time period under NRCP 4(i), the DC does not have *in personam*
19 jurisdiction over Christopher in any role. Christopher renews his prior request for
20 affirmative relief with this Court to dismiss him as a party for lack of proper
21 service.
22
23
24
25
26
27
28

1 IV. *An IT Adviser is not a trustee because it does not hold all trust powers like*
2 *a trustee.*

3 As stated in the Writ, other jurisdictions have viewed a trust advisor as less
4 than a trustee or a quasi-trustee.³⁹ Most states differentiate between a trustee, a
5 trust protector and a trust advisor. Delaware, for example, indicates that a
6 qualified trustee does not include an adviser, although a qualified trustee may
7 appoint advisers.⁴⁰ In Delaware, the term “adviser” includes a trust protector or
8 any other person who, in addition to a qualified trustee, holds one or more trust
9 powers. Although the advisers may hold a trust power, they are not considered
10 trustees.⁴¹ In Alaska, the advisor is “not liable as or considered to be a trustee of
11 the trust or a fiduciary when acting as an advisor to the trust.”⁴² Other states refer
12 to the trust advisor as “any person other than a trustee” who might have one or
13 more powers and refer to a trust advisor as a separate entity from the trustee.⁴³
14
15
16
17
18
19
20

21
22 ³⁹ *Wilmington Trust Co. v. Stuart*, 1983 Del. Ch. LEXIS 524, *25 (Del. Ch. July
23 19, 1983), describing a trust advisor as a “quasi-trustee”.

24 ⁴⁰ See 12 Del. Code Ann. §§ 3570(8)(c) and 3313.

25 ⁴¹ 12 Del. Code Ann. § 3570(8)(c)(3).

26 ⁴² Alaska Stat. § 13.36.375(b).

27 ⁴³ Representative examples: RSA 564-B:12-1201, RSA 564-B:10-1005A,14A
28 V.S.A. § 1101, 14A V.S.A. § 1104, Tenn. Code Ann. § 35-15-1201, Tenn. Code
Ann. § 35-15-1205, Miss Code Ann § 91-8-1005, Miss Code Ann § 91-8-1204;
South Dakota’s statutes mirror Nevada’s statute when defining an IT adviser, its
powers and a court’s possible jurisdiction over it (See S.D. Codified Laws §§ 55-
1B-1, 55-1B-7 and 55-1B-10).

1 In Nevada, an investment trust adviser is defined as “a fiduciary given
2 authority by the [trust] instrument to exercise any or all of the powers and
3 discretion set forth in NRS § 163.5557.”⁴⁴ NRS § 163.5557(2) limits an
4 investment trust adviser’s powers to the following:
5

6
7 (a) Direct the trustee with respect to the retention, purchase, sale or
8 encumbrance of trust property and the investment and reinvestment of
9 principal and income of the trust.

10 (b) Vote proxies for securities held in trust.

11 (c) Select one or more investment advisers, managers or counselors,
12 including the trustee, and delegate to such persons any of the powers of the
13 investment trust adviser.

14 In summary, the investment trust adviser (hereinafter “IT Adviser”) advises the
15 trustee on matters pertaining to the trust property, voting or selecting other agents
16 or advisers. The IT Adviser is an agent on behalf of the trustee to whom is
17 delegated one or more of the powers above with trustee oversight.

18 In contrast to the IT Adviser, the trustee has **all** powers given in a trust
19 instrument as well as those powers enumerated in NRS §§ 163.023-163.110 and
20 are subject to liability for any breaches of those duties or for torts committed as
21 outlined in NRS § 163.115, et. seq. In Article 13 of the FHT, there are numerous
22 powers given to the trustee including investment powers.⁴⁵ The trustee also
23 retains discretion pursuant to Section 1, Article 13 (which was not deleted by the
24
25
26

27
28 ⁴⁴ NRS § 163.5543.

⁴⁵ See Appendix 1:78-103.

1 purported First Amendment) to employ and terminate “attorneys, accountants,
2 agents, auditors, trust departments, and officers and other financial advisors” and
3
4 “is authorized without approval from [the] Trust Protector to invest trust assets or
5 incur liabilities on account of the Trust, for the purpose of acquiring any
6 asset...”⁴⁶
7

8 Specifically, the FHT contains provisions that the trustee, the legal owner of
9 the trust assets, retains discretion to invest trust assets, incur liabilities on account
10 of the trust, and establish bank accounts, despite the fact that the trust protector
11 may delegate the investment powers with regard to the assets of the trust.⁴⁷ The
12 FHT also indicates that the Trustee is authorized and not directed to acquire and
13 retain investment not regarded as traditional for trusts and the FHT expressly
14 waives the prudent investor rule.⁴⁸ The FHT further indicates that
15
16
17

18 [E]very act done, power exercised or obligation assumed by a Trustee
19 pursuant to the provisions of this Agreement shall be held to be done,
20 exercised or assumed, as the case may be, by the Trustee acting in a
21 fiduciary capacity and not otherwise...”⁴⁹
22
23
24
25

26
27 ⁴⁶ See Appendix I: 78, Paragraphs 2 and 3.

28 ⁴⁷ See Appendix I:78, Paragraph 4.

⁴⁸ See Appendix I: 79-80.

⁴⁹ See Appendix I: 81, Section 2(c).

1 In Alaska (the laws under which the FHT was created) unless the trust says
2 otherwise, all powers and discretionary acts remain vested in the trustee as fully
3 and effectively as if an advisor were not appointed.⁵⁰

4
5 Notably, the purported First Amendment (“Purported Amendment”), which
6 was allegedly dated February 2014, does not remove or modify these provisions of
7 the FHT. In this Purported Amendment, Stephen K. Lehnardt, the Trust Protector,
8 purportedly created the position of IT Adviser and delegated the management of
9 investments of the trust to the IT Adviser. Although the purported First
10 Amendment allows the IT Adviser to direct the trustee and absolves the trustee of
11 any liability from following the IT Adviser’s advice, the trustee still retains
12 discretion or power over its agents to employ or otherwise terminate its advisers
13 pursuant to Article 13 of the FHT. The trustee also has the ability to resign if it
14 does not believe that it retains such discretion and/or feels that its role is being
15 compromised.

16
17 In summary, an IT Adviser is not a trustee. The trustee retains the powers
18 given to it by the trust and/or statute, while an IT Adviser may only be delegated a
19
20
21
22
23
24

25
26 ⁵⁰ Alaska Stat. § 13.36.375(b) “Unless the terms of the trust instrument provide
27 otherwise...the property and management of the trust and the exercise of all
28 powers and discretionary acts exercisable by the trustee remain vested in the
trustee as fully and effectively as if an advisor were not appointed, the trustee is
not required to follow the advice of the advisor, and the advisor is not liable as or

1 trustee’s power, if at all. Under the terms of the FHT, the trustee can terminate the
2 IT Advisor, and resign, if its termination power is abridged.
3

4 **V. *An IT Adviser is not a trustee because it is not the legal owner of trust***
5 ***property.***

6 The IT Adviser is not and does not become the legal owner of trust
7 property. In other words, the IT Advisor is not a trustee under NRS 163.020(4),
8 which states that a “Trustee means the *person holding property in trust* and
9 includes trustees, a corporate as well as a natural person and a successor or
10 substitute trustee.”⁵¹ Other jurisdictions explain that the legal title and right of
11 possession of property are vested in the trustee of a trust and explain, “a trust is
12 merely the description of a relationship between the legal and equitable owners of
13 property...the trustee has legal title to the trust property.”⁵² Early in Nevada
14 history, the Nevada Supreme Court also stated that, “The trustees have the legal
15
16
17
18
19
20

21 considered to be a trustee of the trust or a fiduciary when acting as an advisor to
22 the trust.

23 ⁵¹ Emphasis added.

24 ⁵² *Matijkiw v. Strauss*, 2011 D.C. Super. LEXIS 13, 14-15 (2011), citing *Colorado*
25 *Springs Cablevision, Inc., v. Lively* (579 F. Supp. 252, 254 (D. Colo. 1984); *Alpert*
26 *v. Riley* 274 S.W.3D 277, 291 (Tex. App. 2008); *United States ex rel F.T.C. v.*
27 *Larkin, Hoffman, Daly & Lindgren, Ltd.*, 841 F. Supp. 899, 903 (D. Minn. 1993);
28 *N. Natural Gas Co. v. Hugoton Plans Gas & Oil Co.*, 187 A.2d 432, 435-36 (Del.
Super. Ct. 1963); *In re Nat’l Student Mktg. Litig.*, 413 F. Supp. 1159, 1160
(D.D.C. 1976); *Long v. Long*, 252 S.W.2d 235, 247, 1952 Tex. App. LEXIS 1755,
*31 (Tex. Civ. App. 1952)(In any active trust the legal title and right of possession
are vested in the trustee); See Alaska Stat. § 13.36.375(b) in prior footnote.

1 interest, and, therefore, they are necessary parties.”⁵³ In Nevada, the trust or the
2 trustee are the proper parties to be sued regarding the trust property.⁵⁴
3

4 Herein, there are no provisions in the FHT or Purported First Amendment
5 that give legal ownership of the trust assets to the IT Adviser. The FHT and/or its
6 trustee still retain legal ownership over the trust assets.
7

8 Not only do the FHT and/or its trustees have the information that Caroline
9 seeks in her documents requests, but the FHT and/or its trustees are the proper
10 legal parties to this action. As a non-trustee, who does not hold legal title to the
11 FHT assets, Christopher is not the proper party to this action. The FHT and FHT
12 trustee are the only parties over which the DC could properly assume *in rem*
13 jurisdiction when dealing with the trust property such as the documents relating
14 thereto (e.g. the documents which Caroline seeks in her Original Petition), because
15 they are the legal title owner of the trust assets. If the trustee was not in
16 possession of the trust documents, then it could make its necessary requests to the
17 financial institutions, business entities, or its delegated agents for these
18 documents.
19
20
21
22
23

24 The current and prior trustees would be in possession of the trust property
25 or the documents that Caroline seeks. Since no claims have been raised against
26

27
28 ⁵³ *Robinson v. Kind*, 23 Nev. 330, 337, 47 P. 1, 3, 1896 Nev. LEXIS 1, *13 (Nev. 1897)

1 Christopher, and he has not been cited into these proceedings, he should be
2 dismissed as a party. He renews his request for affirmative relief sought before
3 this Court.
4

5 VI. *Where a court attempts to appoint the investment trust adviser similar to a*
6 *trustee, an interlocutory appeal is warranted if there is a clearly*
7 *erroneous and improper exercise of jurisdiction and it would materially*
8 *advance the ultimate termination of litigation.*

9 Although in the federal context, the Nevada federal district and Ninth
10 Circuit courts have allowed interlocutory appeals or approved certification of an
11 appeal when there is a "controlling question of law as to which there is substantial
12 ground for difference of opinion" or the immediate appeal would "materially
13 advance the ultimate termination of the litigation" or "avoid protracted and
14 expensive litigation."⁵⁵ The Ninth Circuit has indicated that

17 [Interlocutory appeals under 28 USCS] Section 1292(b) was intended
18 primarily as a means of expediting litigation by permitting appellate
19 consideration during the early stages of litigation of legal questions which,
20 if decided in favor of the appellant, would end the lawsuit. **Examples of**
21 **such questions are those relating to jurisdiction or a statute of**
22 **limitations which the district court has decided in a manner which**

24 ⁵⁴ NRS 0.039 ("Person" means a ...trust....)

25 ⁵⁵ *Am. Realty Investors, Inc. v. Prime Income Asset Mgmt., LLC*, 2013 U.S. Dist.
26 LEXIS 159077, *17, 2013 WL 5947190 (D. Nev. Nov. 4, 2013), citing 28 USCS
27 § 1292, *Syufy Enters. v. Am. Multi-Cinema, Inc.*, 694 F. Supp. 725, 729 (N.D. Cal.
28 1988) and *Robbins Co. v. Lawrence Mfg. Co.*, 482 F.2d 426, 429 (9th Cir. 1973)
("The Court of Appeals will grant such interlocutory review only in extraordinary
cases where decision might avoid protracted and expensive litigation.").

1 keeps the litigation alive but which, if answered differently on appeal,
2 would terminate the case.⁵⁶

3 Citing the Ninth Circuit, a federal district court also stated:

4 To meet the requirement that the proposed interlocutory appeal raises a
5 controlling question of law, the moving party must show "that resolution of
6 the issue on appeal could materially affect the outcome of litigation in the
7 district court." *In re Cement Antitrust Litigation*, 673 F.2d 1020, 1026 (9th
8 Cir. Ariz. 1982) (citing *United States Rubber Co. v. Wright*, 359 F.2d 784,
9 785 (9th Cir. 1966), Controlling questions of law include "determination[s]
10 of **who are necessary and proper parties, whether a court to which a**
11 **cause has been transferred has jurisdiction**, or whether state or federal
12 law should be applied." *Id.*⁵⁷

13 While it is true that this appeal was not certified by the DC through a NRCP 54(b)
14 motion, Nevada statute allows for an interlocutory appeal when a trustee has been
15 instructed or appointed pursuant to NRS 155.190(1)(h), because a court is
16 exercising jurisdiction. As noted above, jurisdiction is a controlling question of
17 law, which would materially affect the outcome of litigation in the DC and
18 terminate the case as to Christopher.

19 NRAP 3A(a) provides standing to appeal for "parties aggrieved" by a
20 district court's decision. This Court has held that a party is "aggrieved within the
21 meaning of NRAP 3A(a) 'when either a personal right or right of property is
22
23
24

25
26 ⁵⁶ *United States v. Woodbury*, 263 F.2d 784, 787, 1959 U.S. App. LEXIS 4480,
27 *5, 1 Fed. R. Serv. 2d (Callaghan) 603 (9th Cir. Or. 1959)(Emphasis Added).

28 ⁵⁷ *Haw. ex rel. Louie v. JP Morgan Chase & Co.*, 921 F. Supp. 2d 1059, 1065,
2013 U.S. Dist. LEXIS 11977, *16, 2013 WL 391024 (D. Haw. 2013) (Emphasis
Added).

1 adversely and substantially affected' by a district court's ruling."⁵⁸ Herein,
2 Christopher is aggrieved because his fundamental right to due process under the
3 Fourteenth Amendment and his fundamental liberty interests are being infringed
4 upon by the DC's improper exercise of jurisdiction and through its orders
5 requiring him to provide his personal financial documents for the past seven plus
6 years and to provide documents from a non-party (FHT Holdings, LLC).
7

8
9 Jurisdiction is the main issue on Appeal and in the Writ, and includes
10 Christopher's assertion that the necessary parties have not been joined to provide
11 Caroline's requested documents. This issue is ripe for an interlocutory appeal,
12 because it involves controlling questions of law – namely, jurisdiction – which
13 would materially affect the outcome of litigation and terminate the case as to
14 Christopher and is brought by an aggrieved party who has standing within the
15 meaning of NRAP 3(A)(a) (a personal and property right is being affected).
16
17

18
19 Christopher is well aware that NRS 155.190(1)(h) applies to appealable
20 orders when there is an appointment of a trustee of a trust and that this statute may
21 not apply to him, forming the basis of his Writ. In Tennessee, another jurisdiction
22 with a statute similar to NRS 163.5555, the legislature noted that "a trust advisor
23 or trust protector has the same rights as does a trustee relative to accepting or
24
25
26

27
28 ⁵⁸ *Valley Bank v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734, 1994 Nev. LEXIS 51, *10-11 (Nev. 1994), citing *Estate of Hughes v. First Nat'l Bank*, 96

1 rejecting appointment...”⁵⁹ Herein, the DC is attempting to assume *in rem*
2 jurisdiction over Christopher and appoint him, although he is not a trustee and
3 does not hold legal title to the trust assets or property. The DC is, in effect,
4 treating Christopher as a trustee with standing to appeal by attempting to appoint
5 him as it would a trustee. Therefore, Christopher should have the same rights as
6 does a trustee “relative to accepting or rejecting an appointment.”
7
8

9
10 In other words, if the DC can assume *in rem* jurisdiction or appoint an IT
11 adviser under its *in rem* jurisdiction through mailed notice, which it has attempted
12 to do (and is attempting to do through the June 24th Order on appeal and the new
13 January 5th Order), then the IT Adviser must have the same right to appeal under
14 NRS 155.190(1)(h) as a trustee, because the DC is treating the IT Adviser like a
15 trustee or an individual with standing to appeal. Because there was an improper
16 assertion of jurisdiction under a theory of constructive trust and this defect may
17 continue to exist based upon this Court’s treatment of the January 5th Order,
18 Christopher is an aggrieved party who should have standing to appeal the DC’s
19 orders. Where Christopher’s rights and/or interests are affected because the DC is
20 treating him as it would a trustee (despite his position that he is not a trustee),
21
22
23
24
25
26
27

28 Nev. 178, 180, 605 P.2d 1149, 1150 (1980).

⁵⁹ See Section Comment to Tenn Code Ann. § 35-15-1203.

1 Christopher should have the same rights as a trustee regarding the interlocutory
2 appeal procedure pursuant to NRS 155.190(1)(h).
3

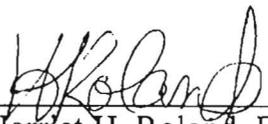
4 CONCLUSION

5 For the foregoing reasons, Christopher respectfully requests this Court find
6 the January 5th Order void and without effect for substantively violating this
7 Court's stay and find that Christopher is not a trustee because he does not hold
8 trustee powers and does not hold legal title to trust assets. He further requests that
9 this Court hold that where a DC is attempting to assert *in rem* jurisdiction over a
10 party to a trust, a party has standing to appeal under NRS 155.190(1)(h) if it is
11 being appointed or confirmed like a trustee in the DC and it is an aggrieved party
12 pursuant to NRAP 3A(a). Finally, Christopher requests that this Court find that
13 the DC's actions and orders are improper, that all prior orders in the DC be
14 vacated, that Christopher be dismissed as a party from the underlying action; the
15 Court grant the affirmative relief requested in his prior motion; the Court grant all
16 relief requested in the Appeal and Writ; and the Court grant any further relief as
17 deemed proper.
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

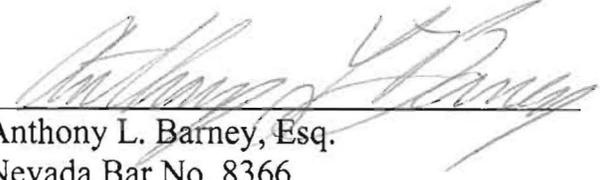
DATED this 4th day of February, 2016.

Respectfully Submitted,
ROLAND LAW FIRM



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

Respectfully Submitted,
ANTHONY L. BARNEY, LTD.



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

1 514 West 26th Street, #3E
2 Kansas City, Missouri 64108

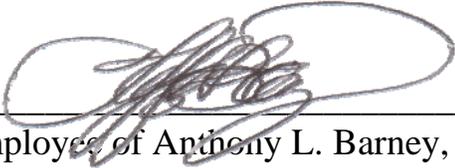
3 Registered Agent Solutions, Inc.
4 Registered Agent for FHT Holdings, LLC, a Nevada Limited Liability
5 Company
6 4625 West Nevso Drive, Suite 2
7 Las Vegas, Nevada 89103

8 JONATHAN W. BARLOW, ESQ.
9 CLEAR COUNSEL LAW GROUP
10 50 Stephanie Street, Suite 101
11 Henderson, Nevada 89012
12 Jonathan@clearcounsel.com
13 Attorneys for Stephen K. Lenhardt

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

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

26 Honorable Judge Sturman
27 Dept. 26, Eighth Judicial Dist. Court
28 Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89101



Employee of Anthony L. Barney, Ltd.