

In the Supreme Court of the State of Nevada

IN THE MATTER OF THE CHRISTIAN)
 FAMILY TRUST u.a.d. 10/11/16)
 ~~~~~ )  
 SUSAN CHRISTIAN-PAYNE, )  
 ROSEMARY KEACH AND )  
 RAYMOND CHRISTIAN, JR. )

Appellants, )

-vs- )

ANTHONY L. BARNEY, LTD. and )  
 JACQUELINE UTKIN, )  
 Respondents. )

~~~~~ )  
 ANTHONY L. BARNEY, LTD.,)
 Cross-Appellant,)

-vs-)

SUSAN CHRISTIAN-PAYNE,)
 ROSEMARY KEACH AND)
 RAYMOND CHRISTIAN, JR.)
 Cross-Respondents,)

and)
 JACQUELINE UTKIN,)
 Respondent.)

~~~~~ )

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Case No.: 75750

## APPELLANT/CROSS-RESPONDENTS' APPENDIX - VOLUME 13c

*Filed by:*

*/s/ Cary Colt Payne, Esq.*

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| <i><b>DATE</b></i>               | <i><b>DOCUMENT</b></i>                                                                                                                                                          | <i><b>NUMBERED</b></i> |
|----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <i><b>APPENDIX VOLUME 1:</b></i> |                                                                                                                                                                                 |                        |
| 7/13/17                          | Petition to Assume Jurisdiction of Trust;<br>Confirm Trustees; Instructions, etc.                                                                                               | APP-ROA--001-72        |
| 8/17/17                          | Notice of Motion and Motion to Dismiss<br>Pursuant to NRCP 12(b)(1) and NRCP 12 (b)(5)                                                                                          | APP-ROA—73-97          |
| 8/22/17                          | Errata to Notice of Motion and Motion to<br>Dismiss Pursuant to NRCP 12(b)(1) and<br>NRCP 12(b)(5)                                                                              | APP-ROA—98-101         |
| 9/15/17                          | Supplement and Addendum to Petition to Assume<br>Jurisdiction of Trust; confirm Trustees'<br>Instructions, etc. Alternatively to Reform<br>Trust Agreement                      | APP-ROA--102-105       |
| 9/15/17                          | Petitioner's Opposition to Motion to Dismiss                                                                                                                                    | APP-ROA--106-115       |
| <i><b>APPENDIX VOLUME 2:</b></i> |                                                                                                                                                                                 |                        |
| 10/4/17                          | Reply to Petitioner's Opposition to Motion<br>to Dismiss                                                                                                                        | APP-ROA--116-156       |
| 10/13/17                         | Response to Petition to Assume Jurisdiction<br>of Trust; Confirm Trustees; Instrutions, Etc.<br>and Joinder in Motion to Dismiss Pursuant<br>to NRCP 12(b)(1) and NRCP 12(b)(5) | APP-ROA--157-165       |
| 10/25/17                         | Accounting                                                                                                                                                                      | APP-ROA--166-173       |
| 10/25/17                         | Inventory and Record of Value                                                                                                                                                   | APP-ROA--174-184       |
| 10/31/17                         | Notice of Entry of Order                                                                                                                                                        | APP-ROA--185-193       |

| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                                           | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 3:</b></i>  |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 11/3/17                           | Joint Petition for Review of Former Trustees<br>Refusal to Provide a Proper Accounting<br>Pursuant to NRS 165.143                                                                                                                                                                                                                                | APP-ROA--194-222       |
| <i><b>APPENDIX VOLUME 4a:</b></i> |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 11/13/17                          | Joint Objection to Petition Jurisdiction Etc.<br>Part 1                                                                                                                                                                                                                                                                                          | APP-ROA--223-298       |
| <i><b>APPENDIX VOLUME 4b:</b></i> |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 11/13/17                          | Joint Objection to Petition Jurisdiction Etc.<br>Part 2                                                                                                                                                                                                                                                                                          | APP-ROA--299-373       |
| <i><b>APPENDIX VOLUME 5:</b></i>  |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 12/4/17                           | Petitioner's Opposition to Motion for<br>Review/Proper Accounting                                                                                                                                                                                                                                                                                | APP-ROA--374-413       |
| 12/14/17                          | Petitioner's Opposition to Joint Counterpetition<br>to Confirm/Breach of Fiduciary Duty, Etc.<br>Request for Discovery                                                                                                                                                                                                                           | APP-ROA--414-428       |
| <i><b>APPENDIX VOLUME 6:</b></i>  |                                                                                                                                                                                                                                                                                                                                                  |                        |
| 12/12/17                          | Motion for Compliance with and Enforcement<br>of Court Order, and for Sanctions Relating<br>Thereto, for Order to show cause why Former<br>Trustees should not be held in Contempt,<br>for Order Compelling Former Trustees to<br>Account, and for Access to and Investment<br>Control of Trust Funds Belonging to the<br>Christian Family Trust | APP-ROA--429-452       |

| <b><i>DATE</i></b> | <b><i>DOCUMENT</i></b>                                                                                                                                                      | <b><i>NUMBERED</i></b> |
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| 1/4/18             | Notice of Suggestion of Death                                                                                                                                               | APP-ROA--453-454       |
| 1/11/18            | Opposition to Motion for Compliance, Enforcement Sanctions, Contempt, Etc.; Counterpetition for Distribution and Vacating all Pending Matters and Dismiss Trust Proceedings | APP-ROA--455-508       |

***APPENDIX VOLUME 7a:***

|         |                                                 |                  |
|---------|-------------------------------------------------|------------------|
| 1/26/18 | Petition to Confirm Successor Trustee<br>Part 1 | APP-ROA--509-539 |
|---------|-------------------------------------------------|------------------|

***APPENDIX VOLUME 7b:***

|         |                                                 |                  |
|---------|-------------------------------------------------|------------------|
| 1/26/18 | Petition to Confirm Successor Trustee<br>Part 2 | APP-ROA--540-569 |
|---------|-------------------------------------------------|------------------|

***APPENDIX VOLUME 8:***

|         |                                                                                                            |                  |
|---------|------------------------------------------------------------------------------------------------------------|------------------|
| 2/6/18  | Amended Notice of Entry-Omnibus Order                                                                      | APP-ROA--570-576 |
| 2/8/18  | Petition for Fees and Costs                                                                                | APP-ROA--577-659 |
| 2/23/18 | Notice of Non-Opposition and Limited Joinder to the Petition for Fees and Costs for Anthony L. Barney, LTD | APP-ROA--660-663 |
| 2/23/18 | Opposition to Petition to Confirm Successor Trustee; Counterpetition for Reinstatement of Petitioners      | APP-ROA--664-735 |
| 3/8/18  | Monte Reason's Application for Reimbursement of Administrative Expenses                                    | APP-ROA--736-741 |

| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                    | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 9:</b></i>  |                                                                                                                                           |                        |
| 3/9/18                            | Petitioners Combined Opposition to (1) Barney Firm Petition For Fees, Etc. (2) Monte Reason's Application for Reimbursement               | APP-ROA--742-840       |
| <i><b>APPENDIX VOLUME 10:</b></i> |                                                                                                                                           |                        |
| 3/12/18                           | Reply to Opposition to Petition to Confirm Successor Trustee; and Opposition to Counter-Petition for Reinstatement of Petitioners         | APP-ROA--841-848       |
| 3/13/18                           | Response to Opposition to Monte Reason's Application for Reimbursement of Administrative Expenses                                         | APP-ROA--849-863       |
| 3/13/18                           | Reply to Petitioner's Combined Opposition to (1) Barney Firm Petition for Fees, Etc., (2) Monte Reason's Application for Reimbursement    | APP-ROA--864-894       |
| 3/15/18                           | Minutes of Hearing – 4/4/18                                                                                                               | APP-ROA--895-898       |
| 3/29/18                           | Motion (1) to Expunge Lis Pendens and/or Strike Pleading; and (2) for Preliminary Injunction                                              | APP-ROA--899-921       |
| <i><b>APPENDIX VOLUME 11:</b></i> |                                                                                                                                           |                        |
| 3/30/18                           | Petitioner's Supplemental Response to Opposition to Petition for Fees (Barney Firm); Request for Evidentiary Hearing, Reopening Discovery | APP-ROA--922-960       |

| <i><b>DATE</b></i>                 | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                               | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 12:</b></i>  |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/2/18                             | Motion for Turnover of Assets and to Dissolve the Injunction Over Christian Family Trust Assets                                                                                                                                                                                                                      | APP-ROA--961-998       |
| 4/3/18                             | Countermotion 1) to Strike Petitioner's Supplemental Response to Opposition to Petition for Fees (Barney Firm); request for Evidentiary Hearing, and Reopening Discovery; 2) To Find the Former Trustees to be Vexatious Litigants, and 3) For sanctions Against Cary Colt Payne Pursuant to NRS 7.085 and EDCR 7.60 | APP-ROA--999-1036      |
| <i><b>APPENDIX VOLUME 13a:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 1                                                                                                                                                                                                                                                                                            | APP-ROA-1037-1061      |
| <i><b>APPENDIX VOLUME 13b:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 2                                                                                                                                                                                                                                                                                            | APP-ROA-1062-1186      |
| <i><b>APPENDIX VOLUME 13c:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 3                                                                                                                                                                                                                                                                                            | APP-ROA-1087-1111      |
| <i><b>APPENDIX VOLUME 13d:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 4                                                                                                                                                                                                                                                                                            | APP-ROA-1112-1134      |

| <i><b>DATE</b></i>                 | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                   | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 14a:</b></i> |                                                                                                                                                                                                                                                                                                                          |                        |
| 4/10/18                            | Motion for (1) Fees Pursuant to NRS 165.148<br>(2) Compliance with and Enforcement of<br>Court Order and Sanctions; (3) for Order<br>to Show Cause Why Former Trustees<br>Should Not be Held in Contempt, and<br>(4) for Extension of Discovery<br>Part 1                                                                | APP-ROA-1135-1279      |
| <i><b>APPENDIX VOLUME 14b:</b></i> |                                                                                                                                                                                                                                                                                                                          |                        |
| 4/10/18                            | Motion for (1) Fees Pursuant to NRS 165.148<br>(2) Compliance with and Enforcement of<br>Court Order and Sanctions; (3) for Order<br>to Show Cause Why Former Trustees<br>Should Not be Held in Contempt, and<br>(4) for Extension of Discovery<br>Part 2                                                                | APP-ROA-1180-1224      |
| <i><b>APPENDIX VOLUME 15:</b></i>  |                                                                                                                                                                                                                                                                                                                          |                        |
| 4/12/18                            | Notice of Entry of Order (Barney Petition Fees)                                                                                                                                                                                                                                                                          | APP-ROA-1225-1232      |
| 4/19/18                            | Petitioner's Combined Opposition to (1) Motion<br>to Turnover Assets and Dissolve Injunction over<br>Trust Assets; (2) Motion to 1. Expunge Lis<br>Pendens and 2. Preliminary Injunction and<br>Countermotion for Distribution/ Termination of Trust;<br>Alternatively for Stay/ Set Bond and Set Evidentiary<br>Hearing | APP-ROA-1233-1254      |
| 4/19/18                            | Opposition to Motion for (1) fees, (2) compliance,<br>(3) for Order to Show Cause and (4) Extension<br>of Discovery, countermotion to Distribute Trust<br>Property (2nd request)                                                                                                                                         | APP-ROA-1255-1292      |

| <i><b>DATE</b></i>                | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                          | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 16:</b></i> |                                                                                                                                                                                                                                                                                                                                 |                        |
| 5/8/18                            | Response to Combined Opposition to (1) Motion to Turnover Assets and Dissolve Injunction Over Trust Assets; (2) Motion to 1. Expunge Lis Pendens and 2. Preliminary Injunction and Opposition to Countermotion or Distribution/Termination of Trust; Alternatively for Stay, Set Bond and Set Evidentiary Hearing               | APP-ROA-1293-1333      |
| 5/11/18                           | Supplement to response to Combined Opposition to (1) Motion to Turnover Assets and Dissolve Injunction Over Trust Assets; (2) Motion to 1. Expunge Lis Pendens and 2. Preliminary Injunction and Opposition to Countermotion for Distribution/Termination of Trust; Alternatively for Stay/Set Bond and Set Evidentiary Hearing | APP-ROA-1334-1337      |
| 5/16/18                           | Hearing Transcript                                                                                                                                                                                                                                                                                                              | APP-ROA-1338-1390      |
| <i><b>APPENDIX VOLUME 17:</b></i> |                                                                                                                                                                                                                                                                                                                                 |                        |
| 6/1/18                            | Notice of Entry of Order (Utkin suspension)                                                                                                                                                                                                                                                                                     | APP-ROA-1391-1401      |
| 10/8/18                           | Notice of Entry – Probate Commissioner R&R (Hearing re Utkin removal)                                                                                                                                                                                                                                                           | APP-ROA-1402-1408      |
| 11/13/18                          | Notice of Entry – Order Affirming Probate Commissioner R&R (Utkin removal)                                                                                                                                                                                                                                                      | APP-ROA-1409-1414      |



1 may not be an ultimate asset of the trust.

2 Well, we have subsequently found out that Voya is  
3 now treating the three of them as the beneficiary. In fact,  
4 they distributed one of the -- the third of the -- of the  
5 beneficial amount just recently.

6 So that's the only quote/unquote mystery out here,  
7 but we fully disclosed it. We -- just because we didn't  
8 marshal it in the beginning and we updated our inventory and  
9 we -- we did the inventory all the way from October 16th to  
10 February 28th, 2018 because we didn't know where to start or  
11 stop based upon each time we were in front of you.

12 So we have an accounting that has been filed. Your  
13 Honor sat here and -- and said -- he's -- he's making the  
14 exact same things he says. We need -- we need these -- this  
15 backup. Here's what Your Honor said at the last hearing.  
16 Well, you will write a letter explaining what you need, Mr.  
17 Kirschner. This has been written to them as of October and  
18 September of this year. I will renew the letter to them  
19 today. They didn't renew any letter.

20 We still filed the inventory, we filed the  
21 accounting. What -- and what -- we had deductions of \$36,000  
22 in in -- in income of -- of 15 grand. Here's the accounting.  
23 It's -- it's been filed. Now if they want to object to the  
24 accounting and do this alternate method that you're talking

1 about, so be it.

2 But Your Honor, this thing went astray at the last  
3 hearing. We brought a petition to reappoint these people.  
4 And I said -- and your client -- Your Honor has figured it  
5 out. The trust, it needs to be -- it's -- it's disbursed and  
6 terminated. The only issue is the \$19,000 that's going to be  
7 held for Monte. What is that going to do? That can be held  
8 pending the Court's further -- further resolution.  
9 Furthermore, if you think Mr. Barney is entitled to some fees,  
10 we'll hold back \$60,000 and if -- if Mr. Joey Powell's client  
11 thinks he's entitled to 37, we can hold back a hundred  
12 thousand dollars. We'll distribute this trust to the -- to  
13 the ultimate beneficiaries and we're done. We don't need to  
14 listen to Mrs. Utkin go over and reconstitute everything that  
15 Mr. Barney has already previously done because she has some  
16 hidden agenda that she doesn't like these children and she  
17 wants to get back at the way Nancy was treated.

18 Now Your Honor, as to the timing, Nancy never made a  
19 demand to their -- to the children about payment of anything  
20 until right shortly before she removed them. You -- you  
21 picked up on this fact. Mr. Raymond Christiansen died January  
22 31st and she made this nomination June 12th. And she made  
23 that nomination of -- of appointing Monte within weeks after  
24 they said Mom, what do you need the \$5,000 for. That's what

1 happened. So if there was ever any damages as it relates to  
2 this thing, it would be from the time that obviously the --  
3 the mon -- the -- the demand was made for the 5,000 which was  
4 in the middle of June or right around June. So this 13 months  
5 of being entitled to 15,000 -- or \$5,000 is absurd. Absurd.

6 Now about these other claims that they want to file  
7 or them anticipating file. They -- they have -- they have  
8 every right to do that. They have every right to bring those  
9 claims. And in fact, part of the opposition to the --  
10 Barney's petition will outline why this process is set up.  
11 There is a claim process that is under 163, 164, that they  
12 have to file a claim. Mr. Barney has a claim. He files the  
13 claim against the trustee. The trustee either accepts the  
14 claim or rejects the claim and then a lawsuit is filed.

15 We don't have all the indispensable and right  
16 parties here. Monte is kind of playing a game over there  
17 because he is not the executor. These are -- these are  
18 Nancy's claims. And if Nancy was -- had a probate opened and  
19 somebody was the fiduciary of that estate, they would come and  
20 bring this claim to this probate proceedings.

21 Your Honor, this is a really odd thing. It's like a  
22 divorce -- it's a divorce proceeding between a husband and a  
23 wife. Would you allow a creditor of the wife to show up and  
24 say I want to be paid? Your Honor would say you're not a

1 party to these proceedings. So this thing has gone far astray  
2 and I don't want to go too far into that argument.

3 To your -- to your answer about was some -- was --  
4 we were in there for seven hours yesterday? Seven hours. We  
5 did -- we did make some -- some headway. We thought some of  
6 the demands were -- were pretty far -- far affront.

7 I would like to take the deposition. I think what  
8 Your Honor ought to do -- and Your Honor has previously said  
9 I'm not awarding any fees until we get to -- and your analogy  
10 was perfect, the first base, second base, third base, because  
11 at the last hearing they were jumping up in joy that they got  
12 Mrs. Utkin in as trustee and they figured this thing was over  
13 and you said no. We missed the -- the throw from home plate  
14 to first base. We still haven't litigated that.

15 I'd like to take the deposition of Mr. -- Mr. David  
16 Grant. Now they're going to oppose that and they're going to  
17 oppose it vigorously. In fact, they've already done that by  
18 -- by starting a State Bar action, threatening him with all  
19 kinds of things. But if I can get the authority to take Mr.  
20 Grant's deposition and Mr. Grant confirms what Your Honor was  
21 -- was concerned about, and we can bring this to the Court's  
22 attention, I think this can get resolved rather quickly.

23 THE COURT: Well, file your motion for his depo and  
24 they can file their opposition. And we need to make -- get a

1 ruling on that now, not at the day of trial.

2 MR. PAYNE: Right. I agree.

3 THE COURT: And then this may resolve or I hope --

4 MR. PAYNE: Well --

5 THE COURT: -- resolve.

6 MR. PAYNE: -- I'll notice the deposition. And if

7 they want to bring them a -- a protective --

8 THE COURT: I need some --

9 MR. PAYNE: -- order --

10 THE COURT: I need some pleadings --

11 MR. PAYNE: I understand.

12 THE COURT: -- some law.

13 MR. KIRSCHNER: Your Honor, would it be well for the

14 Court to treat this more like a traditional civil discovery

15 and bring that in the form of a motion in limine or for us to

16 bring that up so that this Court has some case law regarding

17 the privilege, who it works for?

18 THE COURT: That's --

19 MR. KIRSCHNER: And --

20 THE COURT: That's what I'm asking for, whatever

21 vehicle you want to use, but, you know, I need the law.

22 They're going to want to bring an -- an attorney. You're

23 going to say he's protected by attorney/client privilege and

24 it's --

1 MR. KIRSCHNER: But to be clear, Your Honor --

2 THE COURT: -- parole evidence.

3 MR. KIRSCHNER: -- I don't have the privilege. The  
4 trust doesn't have the privilege. The estate has the  
5 privilege, so --

6 MR. HOLYOAK: The estate would have the privilege.

7 MR. KIRSCHNER: So I -- I don't even have the  
8 ability to invoke. So it's not something I'm -- I'm looking  
9 for purposes of just trying to get this procedurally moved  
10 forward.

11 THE COURT: So let's get to why we're really here  
12 today.

13 MR. KIRSCHNER: Okay.

14 MR. BARNEY: My petition.

15 THE COURT: Now your fees are kind of high.

16 MR. BARNEY: Let -- can I -- can I -- Your Honor,  
17 I'd like to -- I'd like to clarify some of the record though.  
18 Even --

19 THE COURT: Do you want to talk about your fees or  
20 do you want to talk -- you were -- I -- you're -- you're going  
21 to be out of the case, so --

22 MR. BARNEY: I -- I know, but --

23 THE COURT: You're lucky -- you're the lucky one.  
24 You should take --

1 MR. BARNEY: I --  
2 THE COURT: -- advantage of that.  
3 MR. BARNEY: I know.  
4 THE COURT: And don't -- don't stir the pot anymore.  
5 MR. BARNEY: No, I -- I just -- I just want you to  
6 know -- and -- and I -- and I've heard it. You know, there's  
7 part of me -- I -- I don't know. It's -- it's probably the  
8 teacher in me, but it drives me crazy when I hear like the  
9 misquotation of the law. Nevada law is that when you assume  
10 the duties of a trustee, that's when your inventory and  
11 accounting period begins. It's not -- you don't wait around  
12 and say well, somebody might die here or somebody might die  
13 there. Your duty comes when you assume the duties. And  
14 that's --  
15 MR. PAYNE: Your Honor --  
16 MR. BARNEY: -- why --  
17 MR. PAYNE: -- why is --  
18 THE COURT: And -- and --  
19 MR. PAYNE: -- he arguing --  
20 THE COURT: I -- I don't know, really.  
21 MR. BARNEY: And it's --  
22 THE COURT: I don't know, because --  
23 MR. BARNEY: And --  
24 THE COURT: And you're here for one thing, your --

1 MR. BARNEY: I -- I --  
2 THE COURT: -- your fees --  
3 MR. BARNEY: I understand.  
4 THE COURT: And your representation is done, right?  
5 MR. BARNEY: Yeah, I -- I understand.  
6 MR. PAYNE: Well, but -- but for the record, he's  
7 now got Mr. Payne -- he's preparing affidavits for Mr. Payne  
8 to -- to submit them to those proceedings. So I don't know  
9 what he's doing --  
10 MR. BARNEY: No.  
11 MR. PAYNE: -- Your Honor.  
12 MR. BARNEY: Let me -- let me explain that, Your  
13 Honor, because that -- that's perfect. I would like to  
14 respond to that. Karen Connolly represents Mr. Payne in his  
15 divorce action. She spoke with our office.  
16 THE COURT: Don't we have enough going on?  
17 MR. BARNEY: I know. I know. She spoke with our  
18 office. She was like --  
19 THE COURT: You're going to run out of room for  
20 attorneys.  
21 MR. BARNEY: Yeah. My -- my client's got all this  
22 information. We understand that you're a party to the trust.  
23 We said well, we're a creditor right now of -- of the trust.  
24 We're just waiting for the release of funds. She -- she



1 apparently talked with him, had him come over. We said wow,  
2 this is a lot of information. This is not even the  
3 information that -- this is more information than we even  
4 requested in discovery that we're getting.

5           And we thought the Court ought to at least know  
6 about it, you know, because he wanted us to represent his son,  
7 Miles (ph), who is another potential bene -- we said no.  
8 We're -- we're not representing another person in this. And  
9 that's -- that's the way the story goes on that. But we said  
10 you know what, we've -- we've had a bunch of defamatory  
11 material that's been filed against us by Mr. Payne. This has  
12 been a regular issue. We want the Court to know that we in  
13 good faith always represented Nancy's interest with regard to  
14 her assets. If these assets belong to Nancy, the trust should  
15 know about it.

16           And so as a -- as an -- as an issue of full  
17 disclosure -- I didn't have to, Your Honor. I could have let  
18 everybody just kind of weed through the weeds, but the reality  
19 is Your Honor I think that having knowledge is a better  
20 resolution for you.

21           If you can see these documents, after our retaining  
22 lien is lifted, we think a lot will be clarified.

23           THE COURT: I -- I understand your offer and where  
24 you're at, but just dropping it on me like this without any

1 pleading is not fair to everyone here and it's not fair to me  
2 -- I'm -- I'm eager to look at those documents. But let's  
3 give everyone a chance to weigh in on their opinion and -- and  
4 why it should not come in.

5 MR. BARNEY: I -- I agree. And -- and to the extent  
6 you're not going to hear his surreply which was kind of  
7 fashioned as an opposition, I'm fine with that. I will need  
8 though to file a motion to strike, unless we can get a  
9 stipulation today, because we're going to get it stricken.

10 THE COURT: You know, for someone who is going to  
11 get some money, you know, I would kind of get to the point.

12 MR. BARNEY: Well, we have always represented  
13 Nancy's interest.

14 THE COURT: Because I think every time -- every --  
15 every 10 minutes I'm going to reduce your fee by --

16 MR. BARNEY: Well, I would hope that would not be  
17 the case, Your Honor. But we've always represented Nancy's  
18 interest.

19 THE COURT: My question is if -- if someone comes to  
20 see you and they are the settlor of a trust and they want to  
21 make an argument and that's what happened --

22 MR. BARNEY: Yeah.

23 THE COURT: -- in this case, and you made the  
24 argument and you -- you started this situation here through

1 her, shouldn't we know whether you prevail at the end?

2 MR. BARNEY: The --

3 THE COURT: And -- and considering what your fees  
4 should be? Or is yours just a straight contract between --

5 MR. BARNEY: It --

6 THE COURT: -- between you and the --

7 MR. BARNEY: It -- it is. It's not a prevailing  
8 party fee. That -- that's -- that's what -- the trust is very  
9 clear. And -- and we can set -- we can set it out. The trust  
10 is very clear, Section 11.1. It says that her decision, as  
11 Mr. Powell has stated, is conclusive and binding upon all the  
12 parties and interest. Okay.

13 Once she makes that determination or her -- her  
14 agent makes that determination, there -- there's really not --  
15 there's really not a situation where we even analyze --

16 THE COURT: I -- I would --

17 MR. BARNEY: -- this big --

18 THE COURT: -- accept that --

19 MR. BARNEY: What's that?

20 THE COURT: -- if there was a -- at -- at arm's  
21 length because you -- your -- your client is saying my son  
22 approved it. Well, not necessarily my son, but the person my  
23 son picked. Now everybody is in agreement. So pay -- pay the  
24 attorney.

1           MR. BARNEY: And that's -- that's all we're here to  
2 say is pay the --

3           THE COURT: But -- but they're all related.

4           MR. BARNEY: It -- it doesn't -- it doesn't matter.  
5 It -- it could actually as Mr. Powell said it's -- she could  
6 have elected the milkman. She could have elected, you know --

7           THE COURT: Let me -- let me hear the opposition to  
8 your fees, if there's an opposition.

9           MR. BARNEY: Well, I -- I wanted to go ahead and --  
10 and argue my fees. So my -- my fees are such Your Honor that  
11 it is binding upon the trust under 11.1. It's been approved.  
12 It's been approved by Mr. Reason and Mrs. Utkin. Under NRS  
13 132.390(c)(8), we have standing as a creditor to bring this.  
14 We are not subject to -- there -- there was an illusion that  
15 we had to come in as a creditor. That is -- notice to  
16 creditors has to be sent out.

17           The Court can already acknowledge, and that's why  
18 this Court does on a -- on a daily basis take into account the  
19 fees that are granted by trustees. In fact, it doesn't even  
20 need to be granted by the trustee. The only -- the -- by the  
21 Court. It's only because of the fact that the funds are  
22 frozen. Normally this would just be paid.

23           The issues that were raised with regard to the --  
24 the existence of what -- what they term is a spendthrift

1 provision doesn't apply into the terms of this trust. At --  
2 because if you look at 4.4 --  
3 THE COURT: I read your pleadings.  
4 MR. BARNEY: Okay. Excellent. If you've read the  
5 pleadings, Your Honor, I don't want to --  
6 THE COURT: I did read your --  
7 MR. BARNEY: -- belabor the point. Yeah.  
8 THE COURT: -- pleadings, yes.  
9 MR. BARNEY: Okay. If you have no further  
10 questions, I would just like to reserve rebuttal. Thank you.  
11 THE COURT: And I read your pleadings and what he's  
12 replying. I think a reply brief he's upset with.  
13 MR. PAYNE: He's -- he's always upset. I don't  
14 know, Your Honor.  
15 MR. BARNEY: No, I'm -- I'm not always upset.  
16 MR. KIRSCHNER: I --  
17 MR. BARNEY: I --  
18 MR. KIRSCHNER: No insults, guys.  
19 MR. HOLYOAK: It was titled a --  
20 THE COURT: Okay.  
21 MR. HOLYOAK: -- supplement --  
22 THE COURT: Calm down.  
23 MR. HOLYOAK: -- but it really --  
24 THE COURT: Let's calm down.

1 MR. HOLYOAK: -- is surreply.

2 THE COURT: So what -- he -- he wants \$62,000, a  
3 hundred and five?

4 MR. BARNEY: AT this point, Your Honor, because of  
5 Mr. Payne's actions, it's up to \$70,099.44. And I would like  
6 to be out of this so that it doesn't go higher. I really  
7 would.

8 THE COURT: I agree with you.

9 MR. PAYNE: Your Honor, first of all, they filed an  
10 unverified petition. It's not verified. There is no fee  
11 agreement. Maybe he was representing her for free, pro bono,  
12 because he thought he was going to do something else. He just  
13 can't come on up here and show up and say I'm -- that I'm  
14 entitled to payments. The purpose of this trust was to  
15 protect Nancy from her creditors because she was subject to  
16 undue influence and other claims.

17 It -- it -- Mr. Christiansen set this trust up and  
18 made them the gatekeepers for this exact reason, because she  
19 was subject to being manipulated by her son and making bad  
20 decisions. And one of those bad decisions was hiring this  
21 firm in -- in appointing Monte. And -- and Your Honor has  
22 already picked up on that.

23 I mean, she sat at the table. She negotiated this  
24 -- and -- and he likes to call it a contract and I think his

1 students ought to ask for their money back because it's not a  
2 contract. It's an agreement.

3 THE COURT: No insults, please.

4 MR. PAYNE: Okay. She sat at the table and they  
5 like to say that she contributed property. That was the  
6 problem. She didn't contribute anything. Remember, they were  
7 only married in 2009.

8 THE COURT: I don't want to hear the trust. I want  
9 to hear about his fees. Did he earn them? Did he go to  
10 different courts and do something for him?

11 MR. PAYNE: I have no idea, Your Honor. All that I  
12 can say is that -- that the issue of standing doesn't permit a  
13 creditor to come in to these proceedings and make these  
14 claims. And the trust law is very clear that Mr. -- Utkin and  
15 Mr. -- Mr. Kirschner here has an obligation to object to  
16 those. We've put him on notice that he should be objecting to  
17 that. There's no reason not to object to that.

18 THE COURT: His -- his client already approved them  
19 according --

20 MR. PAYNE: I -- I know that.

21 THE COURT: -- to what I read.

22 MR. PAYNE: And -- and I think that's a breach of  
23 her fiduciary duty --

24 THE COURT: And --

1 MR. PAYNE: -- because --  
2 THE COURT: -- it may well be.  
3 MR. PAYNE: Because -- because the --  
4 THE COURT: I don't know.  
5 MR. PAYNE: -- the beneficiary is the ultimate  
6 beneficiaries of this thing are going to be at -- at a loss of  
7 their principal if this fee is -- is granted. Furthermore, we  
8 should be able to do discovery. In other words, if -- if this  
9 petition --  
10 THE COURT: That's going to reduce the fees?  
11 MR. PAYNE: But we're entitled to discovery. How --  
12 you -- you know, these -- the -- the bills that they submitted  
13 Your Honor don't show the -- the credits that Nancy apparently  
14 paid. They want the entire 62,000 paid but -- but apparently  
15 Nancy paid some of the bill. So the bills themselves are  
16 incorrect. So there's a lot of problems with this thing.  
17 But primarily, Your Honor, and let me just focus on  
18 -- on 160 -- 164.025, the -- the prop -- the proper process.  
19 And they admit that they're a creditor. Okay. 164.02 --  
20 THE COURT: I don't know if they did or not.  
21 MR. PAYNE: Sure, they did. It's the first thing in  
22 their pleading. It says we're a creditor of Nancy. 164.025  
23 is notice of death of settlor, filing of claim against the  
24 trust estate. Number three, a person having a claim due or --



1 or to become due against the settlor or the trust must file  
2 the claim with the trustee. Within 90 days after their  
3 mailing, those required to be mailed, blah, blah, blah.

4 THE COURT: I think they -- they know about the --  
5 the claim. They already --

6 MR. PAYNE: But Your Honor --

7 THE COURT: -- approved it.

8 MR. PAYNE: -- there is a process that is laid out  
9 in the NRS.

10 THE COURT: I don't know who was playing trustee  
11 that day, but they approved it.

12 MR. PAYNE: Your Honor, but they haven't filed a  
13 claim. The -- the -- again, it's like a divorce. You've got  
14 a husband and wife before you and a -- and a creditor of the  
15 wife shows up and she says --

16 THE COURT: Well, let me -- okay. This is the  
17 Trustor's attorney. You want a claim?

18 MR. KIRSCHNER: Your Honor, I think that there's a  
19 multi-part (indiscernible). I filed a nonopposition on this,  
20 but there was some additional facts that had been added in  
21 very recently.

22 Regarding the increase in fees, so we --

23 THE COURT: I'm not going to -- I'm not going to  
24 consider that at all.

1           MR. KIRSCHNER: So -- so what I'm -- what I'm going  
2 to say is this.

3           THE COURT: Sorry.

4           MR. KIRSCHNER: Ultimately, the trust is the one who  
5 is carrying the back to pay for any of these fees for a fight  
6 between the two of them. They go into the discovery.  
7 Ultimately, it's going to be the trust that they're seeking to  
8 seek -- to collect these fees from.

9           So as this fight goes on and --

10          THE COURT: I'm not going to go into discovery. I'm  
11 asking you as the attorney for the trustee if you approve his  
12 claim for fees.

13          MR. KIRSCHNER: Yes. And it has been --

14          THE COURT: And you have already said --

15          MR. KIRSCHNER: It's been approved by --

16          THE COURT: It's already -- already in a written  
17 form.

18          MR. KIRSCHNER: It's already been approved by a  
19 prior trustee before we were in and it was confirmed and  
20 ratified by my trustee once we came in.

21          THE COURT: And you --

22          MR. KIRSCHNER: Yes, sir.

23          THE COURT: -- still live by that, right?

24          MR. KIRSCHNER: Yes, Your Honor. We do.

1 THE COURT: Okay.

2 MR. KIRSCHNER: And we also believe that we'll go  
3 through the formal notice process, issue a notice to them, and  
4 that's fine. We only got the order confirming us as the  
5 trustee today. So now we'll do the -- the notice to the  
6 creditors to get it started. If we're going to incur  
7 additional fees and do this fight and go back the route and  
8 have another challenge that comes up, the fees are going --  
9 between the parties are just going up. The Trust wants to  
10 settle this out. It's already been confirmed. It's already  
11 been approved. Let's get this done with. Let's get Mr.  
12 Barney's firm out of this case.

13 So that's what the Trust is trying to do. We  
14 recognize that there's a practical solution to avoid the  
15 ongoing fighting between everybody.

16 MR. BARNEY: And I'm in favor of that practical  
17 solution, Your Honor. I just need to know with regard to this  
18 last pleading if the Court is inclined to strike the material  
19 or if I need to bring another -- another --

20 THE COURT: What --

21 MR. BARNEY: -- month --

22 THE COURT: -- material are you specifically -- what  
23 did --

24 MR. BARNEY: He -- he --

1 THE COURT: What did he say that got you so upset?

2 MR. BARNEY: He -- he's taken an order that was  
3 issued sua sponte from the bench with -- without a notice or  
4 hearing by -- by Judge Potter. And he's -- he's placed it on  
5 the record. It's from another --

6 THE COURT: Well, that's --

7 MR. BARNEY: -- case.

8 THE COURT: -- stricken. That's stricken.

9 MR. BARNEY: Thank you. I -- I just wanted to know  
10 that that was stricken and -- and part of the court order. I  
11 just -- I -- I've got no use for this citing to other stuff.  
12 I -- I don't think it --

13 THE COURT: Okay.

14 MR. BARNEY: -- it serves anybody's time.

15 THE COURT: Well, you're the one talking about it  
16 more than I am.

17 MR. BARNEY: Okay.

18 THE COURT: It's stricken.

19 MR. BARNEY: Thank you. Thank you.

20 THE COURT: Now I want you out of the case.

21 MR. BARNEY: I want to be out of the case, Your  
22 Honor.

23 THE COURT: You're a nice guy and everything, but  
24 the fees are kind of high.

1 MR. BARNEY: Well, Your Honor, I -- I would be  
2 willing to split the difference with -- with them. I mean, I  
3 -- I haven't billed anything for -- for this ongoing -- but  
4 you've saved me some fees today with a motion to -- with the  
5 granting of a strike. So I would be willing Your Honor to --

6 THE COURT: And we don't even know whether your work  
7 is going to receive any fruit at the end.

8 MR. BARNEY: Actually, Your Honor, it's --

9 THE COURT: I know you had some -- you prevailed I  
10 think in Justice Court and some -- something to do with --

11 MR. BARNEY: We've -- we've actually -- we've  
12 actually prevailed all the way around. The -- the reality of  
13 this though, it's not a prevailing party fee. When you  
14 represent someone who is --

15 THE COURT: Are you -- I -- do I have any of this  
16 question in -- in set -- in awarding fees or is -- or -- or --  
17 because you've kind of argued both sides of it.

18 MR. BARNEY: Your -- Your Honor, with all due  
19 respect, I don't think you do, but I'm willing -- I'm -- I'm  
20 willing as a good faith gesture to reduce my -- my fees to  
21 just as a -- as a matter of good faith. But in reality I  
22 really don't think that there is --

23 THE COURT: I'm going to award you your cost plus  
24 \$50,000 to be released within the next week from the -- and

1 the account will be unfrozen and you will -- should receive  
2 your 50,000 from the trust. That's -- that's assets.

3 MR. KIRSCHNER: Unfrozen, Your Honor. Will we give  
4 my client custody and control of that account?

5 THE COURT: No.

6 MR. KIRSCHNER: So the account is currently in their  
7 three names.

8 THE COURT: They're going to release a check to pay  
9 the attorney 50,000 plus the cost, 100 percent of the cost,  
10 which I think is very minimal. I don't recall what the costs  
11 were, but they were less than a thousand I thought or is it --

12 MR. HOLYOAK: I don't recall. I can -- I might be  
13 able to look.

14 (COUNSEL CONFER BRIEFLY)

15 THE COURT: And then you will be out of the case.  
16 You won't be representing any husbands or children or anybody  
17 else?

18 MR. BARNEY: Your Honor, I don't plan to. No.

19 THE COURT: Thank you.

20 MR. BARNEY: I've actually already turned down as --  
21 as you know --

22 THE COURT: So --

23 MR. BARNEY: -- one --

24 THE COURT: -- that --

1 MR. BARNEY: -- one request.

2

3 THE COURT: -- that would eliminate at least two --  
4 two bodies in the courtroom and we still need for your big  
5 surprise package to come if it's going to come. So other --  
6 otherwise, we won't be able to settle the case.

7 MR. POWELL: I mean --

8 THE COURT: You better tell --

9 MR. POWELL: -- Your Honor, we --

10 THE COURT: -- Mr. Monte Reason to be very, very  
11 reasonable.

12 MR. POWELL: Understand, but -- but again, Your  
13 Honor, who -- who's -- who took control of this when Mr.  
14 Reason was trustee and then took the assets out of the trust  
15 account -- account?

16 THE COURT: We're going to get all the assets that  
17 belong in the estate back in the estate --

18 MR. POWELL: All right.

19 THE COURT: -- as -- as much as we can all work  
20 together to do that and then we are going to try to settle the  
21 case and -- or go forward the way Nancy and Raymond wanted it  
22 to go forward. And --

23 MR. POWELL: Well --

24 THE COURT: -- maybe that -- if your client thinks

1 there was some damage done to Nancy, we can consider that,  
2 but --

3

4 MR. POWELL: Well, I -- let me just ask you right  
5 now. Would -- would -- is it reasonable that for 14 months  
6 a --

7 THE COURT: No. No.

8 MR. POWELL: Okay.

9 THE COURT: 14 months is not reasonable. That's --

10 MR. POWELL: Okay.

11 THE COURT: -- the wrong number. There may be some  
12 months after she asked them for the money. That's when she  
13 made the demand --

14 MR. POWELL: Can I --

15 THE COURT: But we're talking like, you know, we're  
16 -- we're in the middle of a trial and we're not --

17 MR. POWELL: A formal demand, Your Honor, after she  
18 had to retain Counsel. Well, you -- you and I both know Your  
19 Honor these are trustees. It's not as --

20 THE COURT: I'm not --

21 MR. POWELL: -- though you have to make --

22 THE COURT: I'm not --

23 MR. POWELL: -- a written (indiscernible).

24 THE COURT: -- going to negotiate you --



1 MR. POWELL: No, I know.

2 THE COURT: -- right now, but --

3 MR. POWELL: I --

4 THE COURT: -- you know --

5 MR. POWELL: I understand.

6 THE COURT: -- you can -- you can use the date that  
7 she went to see the attorney if you want -- if that's a  
8 different date, but I'm just saying be reasonable, that's  
9 all --

10 MR. POWELL: I understand.

11 THE COURT: -- because these -- I think this party  
12 over here can settle the case but we need to know what your  
13 client's going to want.

14 MR. POWELL: Sure, Your Honor.

15 THE COURT: And -- and more than he was he -- what  
16 he was entitled to. And we're not making changes to the trust  
17 until we get this resolved, right? I don't want the wording  
18 to the trust to change because he was supposed to get -- Mr.  
19 Reason was supposed to get some money under the trust but I  
20 thought it was supposed to go to a separate trust, not  
21 directly to Mr. Reason.

22 MR. KIRSCHNER: My client --

23 MR. POWELL: And --

24 MR. KIRSCHNER: -- doesn't have the authority to