

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ADMINISTRATION OF THE SSJ'S ISSUE TRUST,	Case No. 85927 District Court Case No. PR17-00445	Electronically Filed Jun 22 2023 10:47 AM Elizabeth A. Brown
IN THE MATTER OF THE ADMINISTRATION OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST	PR17-00446	Clerk of Supreme Court
STANLEY JAKSICK, INDIVIDUALLY AND AS CO- TRUSTEE OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST, AND AS TRUSTEE OF THE SSJ'S ISSUE TRUST, Appellant, vs. JAMES S. PROCTOR, CPA, CFE, CVA, CFF, IN HIS CAPACITY AS THE APPOINTED TRUSTEE OF THE JAKSICK FAMILY TRUST; KEVIN RILEY, INDIVIDUALLY AND AS FORMER TRUSTEE OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST, AND AS TRUSTEE OF THE WENDY A. JAKSICK 2012 BHC FAMILY TRUST; MICHAEL S. KIMMEL, INDIVIDUALLY AND AS CO- TRUSTEE OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST; TODD B. JAKSICK, INDIVIDUALLY AND AS CO- TRUSTEE OF THE SAMUEL S. JAKSICK, JR. FAMILY TRUST,		

AND AS TRUSTEE OF THE SSJ'S ISSUE TRUST; AND WENDY JAKSICK, INDIVIDUALLY, Respondents.	
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RESPONDENT'S APPENDIX

VOLUME 1

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	Case Summary for Case: PR17-00445	V	RA0913 - RA1030
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2/10/2021	Order Finding Violation of NRS 163.115 and Ordering Additional Briefing to Determine Timing of the Removal of Trustees	II	RA0285 - RA0287
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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

Dated this 22nd day of June, 2023.

FLETCHER & LEE

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PROOF OF SERVICE

Pursuant to NRAP 25(d), I certify that I am an employee of Fletcher & Lee, 448 Ridge Street, Reno, Nevada 89501, and that on June 22, 2023, I served the Respondent's Appendix, Volume 1 via notice by electronic means to registered users of the court's electronic filing system consistent with NEFCR 9 as follows:

Carolyn Renner

Kent Robison

Zachary Johnson

R. Spencer

Cecilia Lee

Donald Lattin

Adam Hosmer-Henner

Elizabeth Fletcher

Mark Connot

I further state that I am familiar with the practice of Fletcher & Lee for service of documents via electronic email and that, in accordance with that standard practice, on June 22, 2023, I caused to be electronically mailed the Respondent's Appendix, Volume 1 to the following:

J. Douglas Clark, Esq. For Probate Estate For Wendy A. Jaksick –

Doug@Jdouglasclark.Com

Alexi Jaksick Fields – Alexifields@Yahoo.Com

John A. Collier, Esq. For Luke Jaksick – jac@kalickicollier.com

/s/ Liz Dendary, CP

Liz Dendary, CP

Certified Paralegal

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Administration of the
SSJ'S ISSUE TRUST.

Case No. PR17-00445

CONSOLIDATED

In the Matter of the Administration of the Case
SAMUEL S. JAKSICK, JR. FAMILY TRUST.

No. PR17-00446

Dept. No. 15

ORDER TO SET

Before this Court is Stanley Jaksick's motion to partially enforce the Settlement Agreement and Release (SAR) he and Todd Jaksick entered shortly before the jury trial began on February 14, 2020. Todd Jaksick filed an opposition as co-trustee of the Jaksick Family Trust and a separate response in his individual capacity. Although many arguments are presented, the core of this dispute is Stanley's contractual ability to purchase an interest in the entity owning the Lake Tahoe home.

Stanley asserts the question before this Court is "narrow and straightforward," i.e., is the settlement agreement now confirmed because the conditions and contingencies identified in paragraph III have been removed? Stanley further references the severability clause to argue that any uncertain provisions may be resolved without invalidating the entire agreement.

1 Stanley contends not confirming the settlement agreement would alter the factual
2 landscape presented to the jury and this Court during the respective trials. Specifically,
3 two legal antagonists resolved their dispute pre-trial and evidence relating to their dispute
4 was not presented to the factfinders. Though not argued specifically, Stanley implies the
5 jury verdict and equitable trial order could have been substantially different if evidence
6 underlying Stanley's pre-trial allegations of Todd's misconduct were admitted. Thus,
7 according to Stanley, Todd has received a significant benefit from the agreement that
8 cannot be undone now that the trials are complete. Stanley also references other
9 substantial benefits Todd has already received from the agreement, such as Stanley's
10 payment of \$325,000 and the \$220,000 payment to Todd's individual attorneys.

11 Todd opposes Stanley's motion on several grounds. As co-trustee, he argues the
12 mediation requirement has not been satisfied because it is vague and ambiguous; the
13 litigated result materially altered the agreement because the Family Trust was ordered to
14 pay \$300,000 to Wendy's attorneys and it is therefore unable to satisfy other financial
15 obligations; and the agreement has not been approved by this Court. Todd also argues
16 that several provisions need to be updated to reflect current circumstances. As co-trustee
17 represented by Maupin Cox & Legoy, Todd makes only brief references to Stanley's
18 control of other entities partially owned by the Family Trust and Stanley's failure to
19 provide information about the financial affairs of those entities.

20 As an individual represented by Robison, Sharp, Sullivan & Brust, Todd directly
21 complains that Stanley created problems rendering the agreement meaningless,
22 impracticable, impossible, and unenforceable. Among other things, Todd alleges Stanley
23 refuses to disclose critical information about assets owned by the Family Trust and
24 withholds millions of dollars owed to the Family Trust. Stanley has refused to cooperate,
25 concealed vital information, engaged in "self-serving machinations," deceived and
26 diverted funds owned by the Family Trust, financially drained the Family Trust, engaged
27 in self-dealing when he encumbered Family Trust property for his individual purchase of
28 a golf course, created trust tax liability through phantom income, rendered the Family

1 Trust insolvent and unable to pay its debts, and inexcusably breached his fiduciary duties
2 to the Family Trust.¹ For these reasons, Todd concludes Stanley's attempt to obtain an
3 ownership in Incline TSS (and the Lake Tahoe home) is unfair and Todd is "completely
4 deprived of the benefit of the bargain for which he negotiated." Todd suggests liquidation
5 and partition are appropriate remedies and necessary for distributions and termination of
6 the Family Trust.

7 Stanley replies by reminding this Court he only seeks an order acknowledging the
8 contingency period has expired and the trial outcomes did not materially alter any of the
9 substantive provisions in paragraph II. Stanley further argues the issues with Montreux
10 lots were well known before the agreement, so the disagreement was foreseeable and not a
11 condition precedent to contract performance. (Stanley foreshadows arguments to come in
12 the future, such as his payment of \$750,000 of Family Trust obligations with ALSB
13 proceeds, offsets against the \$300,000 payment to Wendy's attorneys, and Montreux's
14 ongoing efforts to obtain final maps, etc.) Finally, Stanley emphasizes the agreement is
15 silent about the Family Trust's ability to satisfy its debts as a condition precedent to
16 enforcement, but regardless, the Family Trust has sufficient resources through Buckhorn
17 Land & Livestock to pay its debts.

18 The Agreement

19 A settlement agreement is a contract to be construed and enforced according to
20 principles of contract law. May v. Anderson, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).
21 "A court should not interpret a contract so as to make meaningless its provisions." Bielar
22 v. Washoe Health Sys., Inc., 129 Nev. 459, 465, 306 P.3d 360, 364 (2013) (internal quotation
23 marks omitted). If the contract's language is clear and unambiguous, the contract is
24 enforced as written. Am. First Fed. Credit Union v. Soro, 131 Nev. 737, 739, 359 P.3d 105,

25
26 ¹ Todd contends there is insufficient money in the Family Trust to reimburse him for payments on the Ag
27 Credit loan, pay attorneys' fees, satisfy Luke's distribution, fund the grandchildren's trusts, or respond to a
28 Jackrabbit Properties capital call. According to Todd, the predicate facts for the Family Trust's inability to
meet its obligations is Stanley's withholding of proceeds from the sale of Montreux lots partially owned by
the Family Trust.

1 106 (2015). A contract is ambiguous when it is “obscure in meaning, through
2 indefiniteness of expression, or having double meaning,” and the terms may reasonably be
3 interpreted in more than one way, not simply because the parties disagree how to
4 interpret the contract. Galardi v. Naples Polaris, LLC, 129 Nev. 306, 310, 301 P.3d 364, 367
5 (2013) (quoting Hampton v. Ford Motor Co., 561 F.3d 709, 714 (7th Cir.2009)). Courts
6 discern the parties’ intent beginning with plain language and will consider surrounding
7 circumstances if the contract is not clear. MMAWC, LLC v. Zion Wood Obi Wan Trust,
8 135 Nev. 275, 279, 448 P.3d 568, 772 (2019) (“Generally, the parties’ intent must be
9 discerned from the four corners of the contract.”); Bielar at 465, 306 P.3d at 364 (“A basic
10 rule of contract interpretation is that every word must be given effect if at all possible.”);
11 Mendenhall v. Tassinari, 133 Nev. 614, 624, 403 P.3d 364, 373 (2017) (“In interpreting a
12 contract, the court shall effectuate the intent of the parties, which may be determined in
13 light of the surrounding circumstances if not clear from the contract itself.”).

14 The agreement begins with common factual recitals not in dispute. Todd and
15 Stanley both affirmed their intention to be legally bound to the agreement, which they
16 considered to be a “full and final settlement of all claims between the Parties.” SAR ¶ II.
17 Paragraph II identifies 10 substantive provisions, which are summarized as follows:

- 18 1. Todd and Stanley would withdraw their competing petitions against each
19 other. They also recited the three law firms that would represent Stanley as
20 co-trustee of the Family Trust.²
- 21 2. Todd and Stanley would exchange and transfer their interests in Bright-
22 Holland Corp. and the Jaksick Family, LLC.
- 23 3. Todd and Stanley would act as co-trustees with unanimity and mutual
24 approval.
- 25 4. Stanley could purchase an interest in Incline TSS, LLC upon specified terms.
26 Stanley’s interest would immediately vest, subject to future offsets if he

27
28 ² The purpose of this language is unclear and it is read differently by the respective attorneys now. Subject
to correction, this Court presumes the language is intended, at least in part, to ensure that Stanley’s fees
would be paid with Family Trust corpus.

1 failed to make full payment. Further, "[a] new operating agreement of
2 Incline TSS and other documents will be drafted and amended" to reflect
3 Stanley's interest and the parties' respective voting rights. SAR ¶ II(D)(ii).
4 Stanley also agreed to personally guarantee the mortgage on terms similar to
5 Todd's guarantee.

- 6 5. Todd would have an option (with nominal annual option fee) to purchase
7 Stanley's 20% interest in Buckhorn for a specified price.
- 8 6. The indemnification agreement benefiting Todd would not be terminated,
9 but instead, be limited to the Ag Credit loan #101 with other details
10 specified, such as use of the IRS refund, removal of Todd's home from the
11 indemnification agreement, and reimbursements for Jackrabbit capital calls.
- 12 7. The Family Trust would reimburse Todd and Stanley for individual
13 attorneys' fees for specified amounts.
- 14 8. Stanley would pay \$325,000 to the Family Trust, to be immediately used to
15 fund Grandchildren's' trusts. Upon a specific trial outcome or court order
16 relating to Wendy, Stanley could be responsible to reimburse an additional
17 \$75,000 to the Family Trust.
- 18 9. The parties agreed to "work in good faith to distribute the Family Trust as
19 soon as practicable and by December 31, 2019, if reasonably possible."
- 20 10. Upon distribution of the Family Trust, Todd and Stanley would provide for a
21 distribution to Luke Jaksick in an amount that is no less than the amounts
22 distributed to their own children.

23 Paragraph III provides the agreement is effective upon execution, but contingent
24 and conditional upon resolution of the two lawsuits through settlement or "litigated
25 resolution at trial . . . not including appeals, that does not alter the material terms of this
26 Agreement." Todd and Stanley agreed not to take any actions to thwart the terms during
27 the contingency period. They also agreed they would seek and mutually cooperate to
28 obtain court approval of the agreement "to the extent necessary." The attorneys' fees

1 provision was specifically identified as not a material term to the agreement and the
2 Family Trust's ability to satisfy all obligations was not set forth in the list of conditions and
3 contingencies.

4 Stanley argues each of the 10 provisions were unaffected by the jury verdict and
5 order after equitable trial. Thus, he asks this Court to confirm the contingency period has
6 expired and all conditions have been satisfied.

7 Todd presents two separate thematic arguments: 1) the trial outcomes materially
8 affected the provisions in paragraph II, and 2) some provisions are impossible and cannot
9 be performed because of Stanley's misconduct and the financial condition of the Family
10 Trust. Todd does not persuasively argue the trial outcomes affected the enumerated
11 provisions, except to contend the \$300,000 fee award to Wendy's attorneys affects the
12 Trust's financial circumstances. Todd presents numerous allegations of financial distress
13 in support of his second argument and includes other sundry arguments, such as the
14 unenforceability of his agreement to abrogate the trustees' duties by requiring unanimous
15 agreement to conduct any action, Stanley's vicious communications to Wendy fomenting
16 her litigation against him, and the absence of a new operating agreement for Incline TSS.

17 Analysis

18 This Court previously described the settlement between Todd and Stanley on the
19 eve of trial as "strategic and well-advised." The decision to withdraw their claims against
20 each other dramatically altered the dispute dynamic, which according to arguments
21 Wendy previously made, had a profound effect upon the way the jury analyzed her
22 claims. Instead of two siblings offering evidence against Todd, Wendy was the lone
23 sibling making allegations while Stanley was able to transcend the dispute and present in
24 a more neutral manner. It would be manifestly unjust to Wendy to now resuscitate the
25 claims Todd and Stanley had against each other, which were essentially omitted from the
26 jury's purview. This Court could not vitiate the agreement without also allowing the
27 withdrawn counterclaims to be tried at a new trial in which Wendy also participated.
28 Thus, this Court is inclined to take a dim view of either Todd or Stanley's attempt to be

1 relieved of the full, final, and binding agreement they reached before trial. This Court has
2 no inclination, however, that the parties have complied with the enumerated provisions in
3 all respects.

4 Court approval is not a mandatory predicate for the agreement to be effective. The
5 language relating to court approval contemplated Todd and Stanley would jointly and
6 cooperatively seek approval only if necessary. This Court is inclined to view its approval
7 of the agreement in its entirety a ministerial act to be granted with limited discretion.
8 Provided, however, that some provisions of the agreement may require judicial
9 intervention and resolution. The existence of any such disputed provisions does not
10 render the entire agreement ineffective.

11 The parties attempted to resolve this dispute by nonbinding mediation and the
12 contractual language requiring such attempts is not vague or unenforceable. Todd and
13 Stanley were simply unable to reach a mediated resolution through the efforts of Mr.
14 Enzenberger.

15 A notice of appeal typically divests the trial court of jurisdiction during appellate
16 review. Mack-Manley v. Manley, 122 Nev. 849, 855, 138 P.3d 525, 529 (2006). However,
17 trial courts retain jurisdiction over matters collateral to and independent from appealed
18 order. Crystal Bay Lending Partners, LLC, v. JMA Boulder Bay Holdings, LLC, ___ Nev.
19 ___, 403 P.3d 684 (2017). This Court concludes it has jurisdiction to resolve the present
20 motion because the enforceability of the agreement as a whole, given the conditions and
21 contingencies have been lifted, is collateral to the issues on appeal. Provided, however,
22 some provisions could be construed as nominally related to the appeal and enforcement of
23 those provisions could be held in abeyance.

24 There was a litigated resolution through the two trials. The jury trial verdict and
25 order after equitable trial did not materially alter any of the 10 provisions identified in
26 paragraph II of the agreement. Todd's grievances about Stanley's management of entities
27 in which the Family Trust has an interest were known and asserted before the agreement
28 was executed, and for whatever reason, Todd's disbursement of lot sale proceeds and the

1 Family Trust's ability to meet its financial obligations were excluded from the plain terms
2 of the agreement. Thus, the conditions and contingencies have been satisfied. This Court
3 is inclined to confirm the validity of the agreement as a whole and examine individual
4 provisions upon request.

5 Todd raises issues about Stanley's actions and this Court has several unresolved
6 questions about which provisions are enforceable now and which are susceptible to
7 deferment or litigation. First, although the agreement specifically excluded appeals from
8 the contingency period, there remains a possibility that Wendy could obtain appellate
9 relief. How to accommodate that unknown relief when the Family Trust corpus has been
10 distributed and the Trust is terminated is problematic.³ Second, based upon the content of
11 Todd's individual response, Todd may choose to initiate legal action against Stanley for
12 breach of fiduciary duties and other alleged misconduct relating to Stanley's co-
13 trusteeship of the Family Trust and management of entities in which the Family Trust has
14 an interest. This Court does not want to unintentionally aid or impair Todd's ability to
15 assert credible claims against Stanley or seek partition remedies. Third, the existence of
16 three separate attorneys for Stanley as co-trustee and Maupin Cox & LeGoy's dual
17 representation of Todd and Stanley should be addressed. Fourth, this Court is troubled by
18 Mr. Riley's email to co-trustee Michael Kimmell, which is attached as Exhibit 3 to Todd's
19 individual opposition. In summary, Mr. Riley suggests the best practice is full information
20 for everyone, yet he is precluded by Stanley from conveying information about assets the
21 Family Trust owns. Stanley's alleged reluctance to disclose vital information about Family
22 Trust interests could violate his contractual obligation to "work in good faith to distribute
23 the Family Trust as soon as practicable." This Court is not sure how the Family Trust can
24 be distributed as soon as practicable if it has known interests in entities with unknown

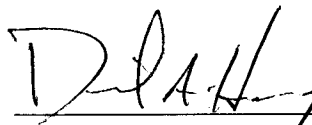
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26
27 ³ Todd notes that if Wendy is successful in her appeals, the transfer of 46% ownership of Incline TSS to
28 Todd's trusts would be modified. Therefore, "it is legally impossible to fully complete and enforce the
agreement without waiting until Wendy's appeal is fully and finally resolved."

1 values, transactions, and assets. It appears likely to this Court that full disclosure of
2 Family Trust affairs is a necessary predicate to distribution.

3 For these reasons, this Court directs the parties to set this matter for oral arguments,
4 not to exceed three hours, in which Todd and Stanley address each of the unresolved
5 questions in the preceding paragraph. Counsel for the parties shall contact the
6 Department 15 Administrative Assistant at shannon.parke@washoecourts.us to schedule
7 the setting. Wendy may participate through counsel if she is so inclined. The parties shall
8 file pre-hearing statements 24 hours before the hearing is scheduled to begin. No party
9 shall file a response to another party's statement.

10 **IT IS SO ORDERED.**

11 Dated: September 22, 2020.

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14 David A. Hardy
15 District Court Judge
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Reno, Nevada 89512
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6 THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
7 BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

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10 In the Matter of the :
: Case No. PR17-00445
11 SSJ's ISSUE TRUST, : Dept. No. 15
:

12 _____ :
In the Matter of the : Case No. PR17-00446
13 Administration of : Dept. No. 15
:
14 THE SAMUEL S. JAKSICK, :
JR., FAMILY TRUST

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18 TRANSCRIPT OF PROCEEDINGS
VIA AUDIO/VISUAL TRANSMISSION

19

ORAL ARGUMENTS

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WEDNESDAY, OCTOBER 14TH, 2020

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Washoe County, Nevada

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24 Job No. 674004
Reported By:

ERIN T. FERRETTO, CCR #281

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A P P E A R A N C E S

FOR PETITIONERS/CO-TRUSTEES TODD JAKSICK and SAMUEL S.
JAKSICK, JR., FAMILY TRUST:

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FOR TODD JAKSICK, INDIVIDUALLY, AND AS BENEFICIARY OF THE
SSJ'S ISSUE TRUST AND SAMUEL S. JAKSICK, JR., FAMILY
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Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503

1 -o0o-

2 WASHOE COUNTY, NEVADA

3 WEDNESDAY, OCTOBER 14TH, 2020, 8:30 A.M.

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7 THE COURT: Good morning, everyone.

8 Let me call the case. It's PR17-00445, to
9 summarize, counsel. We all know the case. It's the SSJ
10 and its related parties and entities.

11 I see Mr. Robison. I see Mr. Hosmer-Henner. I
12 believe I see Mr. Todd Jaksick. And do I have anybody
13 else who wishes to make an appearance?

14 MR. LATTIN: Yes, your Honor. Don Lattin
15 representing the trustees of the Family Trust and Todd
16 Jaksick in his capacity as the SSJ Issue Trust Trustee.

17 THE COURT: Thank you. And I see a banner of Stan
18 Jaksick's name. I do not see him visually, which is
19 fine.

20 Ms. Clerk, that appears to be everyone that I
21 have.

22 Mr. Lattin, I did not see a prehearing statement
23 from you.

24 MR. LATTIN: Yes, your Honor, that is correct.

1 I'm just resting on the previous pleadings that I have
2 filed in this matter.

3 THE COURT: Okay. Thank you. I just wanted to
4 make sure it wasn't en route and I missed it somewhere.

5 MR. LATTIN: No. Thank you.

6 THE COURT: As recently as two minutes ago, I was
7 still struggling with knowing how to begin this hearing,
8 because there are things that I thought to say and I
9 don't know whether I should say them at the outset or
10 just let the attorneys argue consistent with this court's
11 order, and then possibly be surprised by what I say at
12 the conclusion of the hearing.

13 I have reviewed this morning a hearing statement
14 filed by Ms. Wendy Jaksick's counsel. Have each of you
15 seen it, counsel?

16 MR. ROBISON: This is Kent Robison. We've seen it
17 and we're familiar with it, your Honor.

18 THE COURT: Okay.

19 MR. LATTIN: Your Honor, this is Don Lattin. I
20 have not seen it.

21 THE COURT: Sometimes there's a delay between
22 filing electronically and arrival in chambers and -- it
23 was filed late yesterday afternoon. And in that
24 statement counsel indicated that they did not intend to

1 participate but would observe, and so I'm just struck by
2 the absence of counsel or Wendy.

3 Ms. Clerk, we did change the start time. That
4 would have been in a filed order that Wendy's counsel had
5 notice of?

6 THE CLERK: Correct, your Honor.

7 Your Honor, and I do not see them in the queue as
8 well.

9 THE COURT: Yesterday I was reading the Colorado
10 Code of Judicial Conduct, which is like Nevada's code,
11 it's patterned after the ABA's model code. There's a
12 comment in the Colorado Code, too, that all lawyers and
13 litigants should expect good faith errors from judges,
14 and the failure to -- the failure to rule one way or
15 another is not a violation of a judge's ethical duties,
16 it's just part of our system. And as I reflected on that
17 yesterday, I thought about today.

18 To state that I had a reaction to this latest
19 round of filings would be an understatement. And I
20 drafted an order which -- I drafted the outlines of an
21 order that went a much different direction than the order
22 I entered. In fact, it's not even in the same universe,
23 the order that I entered, because I just thought I should
24 be deliberative and thoughtful, where I can pledge being

1 right or wrong is different than my process, and I needed
2 the time really to just let it percolate.

3 Counsel, I am deeply troubled by where we are.
4 Particularly because of Todd's -- the tone and content of
5 Todd's individual claims against Stan, and the likelihood
6 it appears that there is continuing and there will be
7 continuing litigation. And this idea of siblings and
8 beneficiaries each pursuing their own individual
9 interests, clothed with fiduciary responsibilities, is
10 becoming ever more troubling to me.

11 So I think I've said everything I want to say.
12 I've not said anything I'm prepared to say but I think
13 I'll stop and just hear from counsel.

14 So to Mr. Hosmer-Henner, you are the moving party.
15 I've read your Pre-Hearing Statement. I'll sit back and
16 enjoy anything you have to say, and then I'll go to
17 counsel for Mr. Todd Jaksick.

18 MR. HOSMER-HENNER: Thank you, your Honor. Good
19 morning. And I will say the situation troubles me as
20 well. I'm not sure that I'll be able to be as restrained
21 as you will but I trust, as always, that you will
22 restrain me should I ever cross any lines.

23 I wanted to start by saying that despite the
24 amount of papers and exhibits before you, including those

1 filed the afternoon before this hearing, Stan still
2 submits that the issue before the court now is only a
3 narrow and straightforward question, and that's whether
4 the litigated resolution at trial materially altered the
5 settlement agreement between Todd and Stan.

6 We've submitted consistently since the Order After
7 Equitable Trial that this court's decisions made with
8 awareness, if not an eye on, that settlement agreement,
9 did not materially alter the terms of the settlement
10 agreement. And this court already indicated that its
11 opinion in its order to set was that the arguments were
12 made by -- that were made by Todd were unpersuasive with
13 respect to that issue. We submit that more needs to be
14 said because of the tone and tenor of Todd's arguments
15 because he has radically shifted his tactics in this case
16 from the way he litigated the trial to after the Order
17 and Equitable Trial, launching both a full-scale assault
18 on Stan's credibility and character and on attacking this
19 court's order as unfair because it punished Todd rather
20 than Stan.

21 The arguments made in response to the Motion For
22 Preliminary -- for Partial Enforcement of the Settlement
23 Agreement are not just unpersuasive, they're not just
24 weak. The arguments are made in a combination of

1 irrelevant issues, half truths, and total fabrications.
2 The arguments that have been made, your Honor, are
3 difficult to even understand from, despite the length of
4 this case, how these arguments could have been made to
5 this court.

6 There is an argument that Stan failed to properly
7 mediate the dispute and so therefore we couldn't bring
8 the motion to enforce the Settlement Agreement, even
9 though Stan attended two mediation sessions and just
10 didn't eventually reach the same result that Todd wanted
11 out of those mediation sessions.

12 There is an argument that the Settlement Agreement
13 required McDonald Carano to withdraw as counsel even
14 although the explicit language of that Settlement
15 Agreement required McDonald Carano to substitute in as
16 counsel as Stan as co-trustee. Maupin Cox filed a Notice
17 of Association with counsel in February 2019 with
18 McDonald Carano. And, more to the point, your Honor,
19 we've been representing Stan in hundreds of filings since
20 February 2019, so to now claim that the Settlement
21 Agreement meant that this firm should have withdrawn for
22 Stan's counsel is beyond belief.

23 They've also argued that there are provisions in
24 the Settlement Agreement that required court approval

1 therefore it's premature to deem the Settlement Agreement
2 to be a valid and binding settlement agreement, and
3 that's despite a provision in the Settlement Agreement
4 saying that the parties will work together in good faith
5 to seek court approval. But yet, they challenge even the
6 basic fundamental validity of the Settlement Agreement
7 preventing us from getting to that point of even seeking
8 that court approval together.

9 THE COURT: I want to interrupt you on that,
10 because it is -- accepting your argument that Todd seeks
11 to invalidate the entire agreement, how do you then
12 respond to this court's concern that to invalidate the
13 agreement would essentially invalidate trial? And I
14 would be inclined to allow Wendy to resuscitate her
15 claims because of how dramatically different the party
16 posture is?

17 MR. HOSMER-HENNER: Your Honor, if that's the
18 court's argument, then I agree because I believe that was
19 also our argument in the moving papers. But that's the
20 reason this court could exert jurisdiction over that
21 particular argument, even though the case was on appeal,
22 because rather than alter the -- rather than present this
23 court with an issue that is currently pending on appeal,
24 this court's refusal to support -- this court's

1 invalidation of the settlement agreement would undercut
2 much of what happened at trial. In fact, Wendy has a
3 claim pending on appeal that Stan and Todd breached their
4 fiduciary duties by entering into the Settlement
5 Agreement. By Todd backing out of that Settlement
6 Agreement, he is effectively mooting the issue that Wendy
7 has raised on appeal. So we agree with that argument,
8 but if the Settlement Agreement is valid, it potentially
9 opens the door for a new trial because it changes
10 everything in the -- not only everything that happened at
11 trial but actually everything since.

12 If you look at the 2019 financials for the Family
13 Trust, I believe that's one of the exhibits we -- that
14 was submitted -- I'll give you the exhibit number in just
15 one second, your Honor.

16 THE COURT: Give me a moment, please. I need to
17 pull up the electronic exhibits on a different screen so
18 I'm going to turn away from all of you. Excuse me,
19 please.

20 MR. HOSMER-HENNER: I'm looking at page -- so I
21 have Exhibit 19 as the Family Trust financial statements,
22 your Honor, and in those financial statements there are
23 references to the Settlement Agreement. These were
24 distributed to the trustee, to all beneficiaries, and in

1 there they represented, for instance, that Todd's claim
2 to a mortgage was removed pursuant to the Settlement
3 Agreement. And there are references to the Settlement
4 Agreement throughout that.

5 That was done at a time when Todd could have made
6 the exact same arguments that he's making today, to
7 undermine and invalidate the Settlement Agreement, but
8 this was presented to the beneficiaries based on the
9 benefits that the Settlement Agreement provided, and
10 namely the removal of the -- this is on page 26, your
11 Honor -- the removal of the mortgage by Todd Jaksick in
12 favor of Bank of America. And it states that it's
13 removed pursuant to the Settlement and Release Agreement
14 dated January 31st, 2019.

15 THE COURT: Just getting to page 26. Okay.

16 MR. HOSMER-HENNER: Your Honor, the frustration
17 doesn't even begin to explain how often we tried to
18 communicate with Todd's counsel and ask them to confirm
19 or deny whether they believe the Settlement Agreement is
20 valid. We attached that correspondence to our papers and
21 the chain was Stan essentially asking Todd's counsel to
22 at least respond, to at least provide a position on
23 whether the litigation contingencies had been removed.

24 It took months for that to happen and only the

1 threat of court involvement ultimately got Todd to the
2 mediation room where we were unsuccessful and unable to
3 resolve that dispute. But it was in that context of
4 misstates, of non-responsiveness where we got to the
5 mediation room, couldn't resolve the differences, and are
6 now before you on an issue that to us seems
7 uncontroversial, which is the Settlement Agreement -- the
8 conditions and contingencies in the Settlement Agreement
9 had been satisfied and that Settlement Agreement is valid
10 and binding.

11 This court expressed concern over four different
12 issues in its order to set. And I owe somewhat of an
13 apology to my client, as there was a strategic decision
14 at that point because we were trying to keep the court --
15 the issues at hand focused on the conditions and
16 contingencies in the Settlement Agreement. And what I
17 have a real concern with are the types of issues raised
18 by Todd which require evidence, witnesses, experts to
19 determine whether or not there has been a breach and
20 introducing all of those in this context is just a
21 scattershot approach to bring up as many claims as
22 possible, most of which, as the court knew, had arisen
23 prior to the Settlement Agreement itself, and Todd was
24 fully aware of them, they've been cross-asserted in

1 litigation and then resolved via Settlement Agreement.

2 So our primary concern going forward is it's clear
3 to us -- and if the court has any questions we will
4 happily respond to those, but it's clear to us that the
5 conditions and contingencies have been satisfied. The
6 next step is more troublesome. And the next step is
7 given the pattern of practice of Todd's resistance to
8 even enforce the validity of the Settlement Agreement, of
9 making claims such as the ones I previously discussed,
10 and making claims such as the \$300,000 payment to Wendy
11 materially altered the Settlement Agreement and meant
12 that none of its terms could be satisfied.

13 We're concerned that the order of this court,
14 hopefully, is that the Settlement Agreement is valid and
15 binding, and enforceable against the parties, the
16 conditions and contingency has been satisfied. But then
17 what? Then each of these 17 plus 4, 21 different
18 arguments raised by Todd's counsel that have to be
19 mediated in an exhaustive, foot-dragging type process,
20 and we'll be back in front of the court on these same
21 type of disputes, as Todd may or may not be willing to
22 draft an operating agreement, SSJ may or not may be
23 willing to interpret the Settlement Agreement in a way we
24 believe is possible. Unfortunately, we're not sure if

1 any of those should be resolved today, could be resolved
2 today, but that's our concern going forward is that it
3 now results -- the Settlement Agreement changes the scope
4 of trial that obviously withdrew claims that had been
5 asserted and the case is now itself going to be subject
6 to perpetual litigation. Not sure what to do about that,
7 your Honor, but that's where we stand today and that's
8 this is the process that we spent months trying to avoid,
9 simply by agreeing upon the basic precondition Settlement
10 Agreement, and couldn't even get there.

11 THE COURT: This is a hypothetical question
12 intended to inform the court. It is not a foreshadowing
13 in any way. But if I directed you to prepare the order
14 of your choice after this hearing today, understanding
15 the order that I entered setting this hearing, what do
16 you want the court to order after the hearing today.

17 MR. HOSMER-HENNER: Your Honor, our first proposed
18 order that we provided to the court was as simple as it
19 could be and stated essentially what I've rehashed here.

20 THE COURT: Excuse me. I'm sorry to interrupt.
21 This Zoom is horrible and I interrupted you. I just want
22 you to know I'm familiar with the proposed order. I
23 intentionally went in a different direction. So you
24 would have me entered an order consistent with what you

1 previously proposed?

2 MR. HOSMER-HENNER: Your Honor, that was my
3 initial position. I'm extremely loath to take the next
4 step but I'm not sure what else other than an award of
5 attorney's fees and costs and sanctions against Todd will
6 deter this sort of behavior in the future. And the
7 reason I say that is based on both the prehearing
8 statement and this argument about Kevin Riley and the
9 failure to disclose an email from April 2019 indicating
10 that Kevin Riley had received confirmation from Stan to
11 disclose that information, so to disclose the first part
12 of a chain and not the second part of the chain is
13 extremely, extremely concerning to me.

14 And I do want to -- I want to correct something.
15 It wasn't a consistent email chain but it was part of the
16 same common thread that the co-trustees were discussing.
17 So that's extremely concerning to me.

18 THE COURT: I want to focus on that for a minute,
19 Mr. Hosmer-Henner, because you know in the order I
20 entered I expressed concern about Stan Jaksick's
21 reluctance to provide full information, that concern was
22 countenanced by Mr. Riley. I might have even
23 excerpted -- I referenced it at least, might have
24 excerpted a small portion of that email, and you're

1 telling me that there is a more complete email thread
2 that was intentionally concealed from this court in
3 Todd's moving papers?

4 MR. HOSMER-HENNER: That's why I clarified my
5 statement. I don't believe it's an email thread, but
6 it's Exhibit 20 and it says -- I'll read it to you.

7 THE COURT: I have it in front of me.

8 MR. HOSMER-HENNER: And Kevin Riley says:

9 Stan had a chance to talk to his
10 attorneys and has agreed to provide the
11 information requested.

12 THE COURT: I'll allow counsel, whether Mr. --
13 well, one of the two attorneys to describe why that
14 particular information was omitted from the court.

15 Go ahead, Mr. Hosmer-Henner.

16 MR. HOSMER-HENNER: There are any number of rule
17 violations and issues that we could have brought up and
18 any number of these issues that we could have litigated
19 by referencing the hundreds of thousands of pages in this
20 case. And the question that we have is, at what point do
21 we have to litigate each and every -- re-litigate each
22 and every issue in this case from various disclosures and
23 financial statements to all the other underlying entities
24 before we can enforce -- before we can take the simple

1 action of enforcing the Settlement Agreement? The
2 violations of the settlement privilege and the mediation
3 privilege in this motion practice alone are egregious.

4 I want to talk about there was a reference to what
5 the parties agreed to in the Settlement Agreement, which
6 was not just at the mediation, it was not just
7 inaccurate, and if we could -- and we can't because he's
8 protected by the mediator privilege -- we would be happy
9 to bring in Mr. Enzenberger here to talk about exactly
10 which party was mediating in good faith and exactly what
11 the parties agreed to and exactly the petition -- the
12 position that Stan took at that mediation. We can't do
13 that because there's a mediation privilege, but that
14 doesn't stop both sets of Todd's counsel from flagrantly
15 violating that mediation privilege throughout their
16 moving papers.

17 In fact, the text messages that they relied on
18 between Wendy and Stan to show that there was some
19 vicious campaign by Stan to encourage Wendy to litigate
20 this case are themselves protected by the settlement
21 privilege and should have never been introduced in this
22 case. Wendy uses the word settle multiple times in that
23 text message exchange. It's clear in the context of
24 bargaining other than in mediation and ultimate

1 settlement in this case, and it's taken out of context.
2 And I can go into much more detail about why that
3 particular statement is irrelevant and it doesn't effect
4 anything, even if it were admissible, but it's not. And
5 there's no consideration to introducing those text
6 messages because the other side thinks it can make Stan
7 look poor -- to look in a poor light.

8 That violation of the mediation privilege, the
9 settlement privilege of Stan exists, and Wendy can't
10 unilaterally waive that. But then we have a whole chain
11 of other behavior where each time that there's an issue
12 it's presented in such a fashion that the court is not
13 apprised of the entire truth of the matter. And we have
14 that in whether it's ownership of Toiyabe and the
15 oppositions to our motion or any number of other issues,
16 that's -- your Honor, again, I'm struggling to be as
17 restrained as I can, but there are serious, serious
18 issues here and we presented them throughout our original
19 motion, our reply, and our preliminary statement. And so
20 the order that we drafted is the order that our motion
21 requests, and we again, as always, leave it to the court
22 to see fit how to guide this litigation forward.

23 THE COURT: I want to write that last sentence
24 down.

1 Counsel, I'm sure that you've done this countless
2 times. I'm so sorry, I left a pen. I knew I would have
3 a transcript of this proceeding and I just wanted to
4 focus on the words. If you'll all just stand down for a
5 second, I'm going to go grab a pen.

6 I believe your last words were you would leave it
7 to the court to guide this litigation as it sees fit. Is
8 that what you said?

9 MR. HOSMER-HENNER: Yes, your Honor. I believe
10 that's close enough.

11 THE COURT: Thank you. Anything else?

12 MR. HOSMER-HENNER: Not at this time, your Honor.
13 I'm happy to go through line by line each of the 21
14 arguments and your four points, but I think to the extent
15 that they've been raised I'd rather respond to those in
16 the rebuttal to see how many are actually made now.

17 THE COURT: It seems to me, Mr. Hosmer-Henner,
18 that you acknowledge that whether I enter that brief
19 proposed order or not that the individual provisions of
20 the Settlement Agreement are subject to additional
21 scrutiny and possibly litigation?

22 MR. HOSMER-HENNER: I would be -- I think I would
23 rephrase that slightly, your Honor, and I would say I'm
24 aware of the possibility that there may be future

1 litigation if the parties have differing interpretations
2 of those settlement provisions -- have intentionally
3 different interpretations of those settlement provisions
4 and, more importantly, if there's a rationale to try to
5 evade some of those settlement provisions on the part of
6 Todd. I think we will see an attempt by Todd to evade
7 part of those settlement provisions.

8 THE COURT: Mr. Lattin or Mr. Robison, whoever
9 wishes to go first.

10 MR. LATTIN: I can, if you would like, your Honor.

11 THE COURT: Thank you.

12 MR. LATTIN: We, too, as the trustees, that
13 includes all the trustees, Mr. Kimbell as well as Todd
14 and Stan, negotiated this settlement in good faith. We
15 negotiated it on the eve of the trial, and it took
16 Mr. Hosmer and I hours to negotiate it. It was always
17 anticipated because the court had taken jurisdiction of
18 both the SSJ Issue Trust and the Family Trust that it
19 would -- the Settlement Agreement would be presented to
20 the court as any other -- as in any other probate matter
21 when there is a settlement to be approved by the court.

22 The reason for that was because, from my
23 standpoint representing the trustees and the trust, all
24 of the beneficiaries both of the Family Trust, and there

1 are others aside from Wendy, and all of the beneficiaries
2 of the Issue Trust, needed to be apprised of the impact
3 of this settlement and given the opportunity to voice
4 their concerns, support, or comment on the Settlement
5 Agreement once they were given notice and the court had a
6 chance to address any concerns of the settlement. So it
7 was always anticipated that it would come before this
8 court for approval.

9 It was because of that, it was always referenced
10 in the settlement agreement that it would come before the
11 court. So on behalf of the trustees we believe this
12 agreement is only enforceable once the court approves it,
13 and I know that you commented in your previous order that
14 that was a ministerial act. While I agree that it is a
15 ministerial act, it's an important one because of the
16 implications to each of the beneficiaries. And a lot of
17 the beneficiaries, while they were minors before this
18 Settlement Agreement was entered into, they are now over
19 the age of 18 and would be entitled to come in and object
20 to this.

21 THE COURT: Mr. Lattin, I want to focus on this a
22 little bit -- because this is not a usual case. It is
23 unusual.

24 MR. LATTIN: I think we all know that, your Honor.

1 THE COURT: I'm thinking about the timing and
2 effect of the Settlement Agreement, because it seems to
3 me that -- that the jury trial reflected an approved
4 settlement, whether it came to me the first morning of
5 trial and the parties asked the court to approve it, it
6 doesn't make sense to remove from the jury all of the
7 claims that were withdrawn from the jury to then say the
8 agreement should not be approved because that -- that
9 leaves an imprint upon the jury trial that I don't think
10 can be remedied with anything less than a new trial.
11 That's how dramatic the settlement impact was upon the
12 trial.

13 So to say the court needs to still approve that,
14 and there's a possibility the court won't approve it, if
15 I don't approve that Settlement Agreement, what do I
16 about the fact that the case was tried with a de facto
17 approval in mind because the claims had been withdrawn?

18 MR. LATTIN: Perhaps, your Honor, that's the
19 answer. You -- I guess, once we got before the court on
20 that issue, you could have just said what you said now
21 and approved it. So that's all I'm talking about. But
22 it was, and I believe Todd testified at the time of trial
23 that it would need court approval, and I think those
24 transcripts have been provided. I understand the concern

1 and perhaps the court would have said, the jury approved
2 this and so therefore, as the judge in this matter, I'm
3 going to agree with what the jury said.

4 All I'm talking about is a venue for all of the
5 beneficiaries who are not involved in the trial to have
6 their participation, so that's my point on that.

7 THE COURT: Okay. I understand that point. I
8 understand that.

9 MR. LATTIN: From a trustee's standpoint, they
10 need the protection of the court approving the Settlement
11 Agreement as well just for formality reasons.

12 Now, with regard to the actual Settlement
13 Agreement, it was anticipated when that was entered into
14 that there would be funding available from the Family
15 Trust and the Issue Trust assets to pay all the
16 particular obligations that are set forth in the
17 Settlement Agreement.

18 THE COURT: Where does the agreement reflect in
19 writing that anticipation?

20 MR. LATTIN: Well, one example is on page 4 of 8
21 of the Settlement Agreement.

22 THE COURT: What exhibit is that in these
23 electronic --

24 MR. LATTIN: You know, I'm looking at paper

1 copies, so I'm sorry.

2 THE COURT: Excuse me.

3 MR. LATTIN: It might be 1.

4 THE COURT: I have it. So you're asking me to
5 turn to page four?

6 MR. LATTIN: Four of eight, yes.

7 THE COURT: Yes, sir.

8 MR. LATTIN: And it's at the top, little Roman
9 numeral No. 4, it talks about the Ag Credit and Rabobank
10 obligations, and it says, "will not delay distribution of
11 the Family Trust but that the Family Trust shall
12 distribute or set aside sufficient funds to satisfy the
13 agreed upon amounts as discussed herein." So there's one
14 example of a specific provision that provides for funds
15 to be provided for these obligations of the Family Trust.

16 And Rabo -- the Rabobank and Ag Credit are loans
17 that the Family Trust had that needed to be paid. So
18 that's just one example of how there was to be funding
19 set aside for this. So when the dispute arose, it was
20 over funding and how it would be funded, which is how we
21 got into the Family Trust assets and how it would be
22 funded.

23 So that's -- that's what led to a lot of this
24 dispute on behalf of the trustees, how do we fund these

1 things that are set forth in the Settlement Agreement.

2 And then it became apparent that there needed to be
3 additional discussions, which is why we went back to
4 mediation with Mr. Enzenberger.

5 It's my position that in the middle of the
6 mediation, the plug was pulled and so we were not able to
7 complete that. And I know the court has said we've
8 mediated it and we've tried but, in reality, it was in
9 the middle of mediation when the plug was pulled that we
10 were not able to complete that mediation, which revolved
11 around funding. And I won't get into the particular
12 issue because I believe that there -- as
13 Mr. Hosmer-Henner has indicated, there is a mediation
14 privilege. But suffice it to say, there were funding
15 issues which created a large part of the dispute.

16 So we continue to believe that before this could
17 be enforced, there needs to be a court approval. Now,
18 you may be saying today or you may issue an order saying,
19 "I approve it," which then it becomes enforceable and we
20 have other issues, but that was the position of the
21 Family Trust and the trustees at that point in time.

22 THE COURT: Why is Mr. Kimmel not participating?

23 MR. LATTIN: I have spoken with him. Why is he
24 not participating today?

1 THE COURT: Today, yes.

2 MR. LATTIN: He indicated that he had another -- I
3 don't know if it was a Zoom hearing but another court
4 matter and was not able to participate. He's aware of
5 the proceedings and aware of what is going on.

6 THE COURT: Mr. Lattin, you began by saying you
7 also represent Stan as a co-trustee.

8 MR. LATTIN: Not in regard to this matter. There
9 was a conflict waiver and in this issue Adam, of course,
10 was representing him on while we were negotiating this.
11 That was both at the time it was negotiated before trial,
12 on the eve of trial, and during the mediation process.

13 THE COURT: What about now as you speak this
14 morning, do you speak on behalf of two competing
15 co-trustees?

16 MR. LATTIN: No. And that's where I referred to,
17 there was a conflict waiver and it was agreed between
18 Adam and I that he would speak on behalf of that. And
19 with regard to the individual claims, Mr. Robison has
20 been involved for Todd in this whole process.

21 THE COURT: Could you just proffer for me -- I
22 know there's not an evidentiary basis for you to be the
23 witness, but I suspect you know the answer that competent
24 evidence would reveal -- just quickly, do you know how

1 Mr. Kimmel became involved as a trustee? Does he have a
2 long-term relationship with either Todd or Stan? Was he
3 a former attorney for one of them? Is he a tennis
4 partner for one of them? I'm trying to understand how he
5 was invited into the Jaksick --

6 MR. LATTIN: Under the provisions of the trust,
7 there is a provision for one of the trustees to make an
8 appointment of a new trustee should there be a necessity
9 for that. There was a former -- well, actually Mr. Riley
10 stepped down.

11 THE COURT: I understand the trust authority for
12 Mr. Kimmel's trustee -- co-trusteeship. I'm trying to
13 understand who invited him into the co-trusteeship and
14 what is the relationship.

15 MR. LATTIN: It was Todd. It was Todd, as he was
16 given authority under the trust. And, as I understand
17 it, Mr. Kimmel did not -- never represented any of the
18 trustees or the trust, but going back to I think the high
19 school days, he went to high school with some of the
20 trustees. But there had been a long period of time when
21 he had no communication with the Jaksick family during
22 his entire professional career, so it was kind of a shock
23 to him when he was asked to participate. And because he
24 knew the family and I think he grew up in the same area

1 of the family, he wanted to participate. He may have a
2 differing thought today, but at that point in time he did
3 want to help and believed that he could provide
4 assistance.

5 THE COURT: So if he were here and I followed this
6 thread too far, I'd probably have him sworn and just
7 answer the question, but he's not here. And, again, just
8 looking for proffer, understanding the limitations.

9 I just want to be clear. It is his relationship
10 with Todd that caused Todd to invite him into the
11 co-trusteeship, even though he had some familiarity with
12 the entirety family, he and Todd had a specific
13 relationship.

14 MR. LATTIN: During high school they did, but not
15 a recent relationship.

16 THE COURT: Okay. All right. Anything else, Mr.
17 Lattin, before I turn to Mr. Robison?

18 MR. LATTIN: No.

19 THE COURT: I'd like to ask the same question. If
20 I just gave you the blank check authority to draft the
21 order you wished, limited in scope to the moving papers
22 before me, what would you have me order today?

23 MR. LATTIN: I would request that we be allowed to
24 go through the process -- we do what you would do in a

1 normal situation where the court takes jurisdiction of
2 the trust, you provide notice to the beneficiaries that
3 there's going to be a hearing on the Settlement
4 Agreement, and the court listen to any objections that
5 any of the beneficiaries may have, and either approve it
6 or not approve it. And then we move forward on that
7 basis.

8 THE COURT: Let's -- let's -- so I understand that
9 process in which affected beneficiaries are given an
10 opportunity to be heard. I don't quarrel with that
11 suggestion at all. But let's say somebody -- that a
12 beneficiary appears and objects to this agreement and I
13 decide not to approve it, what happens next?

14 MR. LATTIN: Well, I guess it would be -- it would
15 not be a valid Settlement Agreement that they could go
16 forward with.

17 THE COURT: What effect, if any, would that have
18 on the underlying jury trial and equitable trial?

19 MR. LATTIN: Well, that is a subject of the
20 appeal, and Wendy's counsel in all of their papers so far
21 filed in the appeal have indicated that that's going to
22 be an issue. So I would assume that we would have to go
23 through the process of the appeal, which we are now in
24 the mandatory settlement phase, and we have a December 16

1 date when we are going to one more time attempt to settle
2 with the settlement judge. But the direct answer is, I
3 believe we would have to wait for the appeal to see where
4 we stand.

5 THE COURT: One time in the 16 years I've been a
6 judge have I had a 54(b) Huneycutt certification question
7 that I can remember, and I have a sense that I'm not
8 fresh on the current law. I would want to research it
9 and understand it better.

10 My vague familiarity is that the court can certify
11 some portion of a judgment before final judgment in the
12 form of an advisory notice to the Supreme Court, and the
13 court can choose whether to remand back for entry of that
14 advisory judgment. There's -- there's a procedure, when
15 I was in private practice, we referred to as the
16 Huneycutt procedure. Now, that is not this case because
17 there -- because there are not separate judgments
18 involving separate claims and parties. We have a final
19 judgment that is subject to appellate jurisdiction.

20 I'm saying all this because I'm thinking about if
21 I -- if you asked me to review the agreement and I
22 conclude the agreement is not enforceable, then the next
23 question is, what? And if the agreement is not
24 enforceable, that weaves its way into the appellate

1 litigation, and at what point should I enter some type of
2 advisory notice to the Supreme Court that I am inclined,
3 as the trial judge, to reconvene trial on all claims and
4 all parties?

5 I might be catching you off guard because you
6 haven't researched or prepared for that question, but
7 just off the top of my head if you have any thoughts.

8 MR. LATTIN: We've been through that process once
9 and that was years ago, and you are correct. I think my
10 knowledge is probably just about on a par with yours.
11 I'm not familiar with the most recent law. I just am
12 vaguely familiar that there is a process, so I would have
13 to look at that a little bit further. And I think it
14 would also depend on what the order of the court is
15 relative to this whole motion.

16 THE COURT: Because the purpose of reviewing the
17 agreement for enforceability or unenforceability is to
18 give all affected beneficiaries an opportunity to be
19 heard. Let's say hypothetically that I set that process
20 and I had grandchildren beneficiaries, or maybe even
21 siblings beneficiaries who oppose the enforceability of
22 the agreement, and they're persuasive and I agree, that
23 creates some very significant legal issues and
24 consequences.

1 MR. LATTIN: Yeah, I think -- as I think about it,
2 I think there would be an issue as to whether or not the
3 agreement became enforceable after the trial, and if
4 there were activity that occurred after the trial that
5 affected the enforceability of it. Then there would have
6 to be some findings relative to why it became
7 unenforceable and what these facts and circumstances were
8 regarding why it was or was not enforceable.

9 THE COURT: All right. I'm going to go to Mr.
10 Robison, but then after Mr. Robison I'm going to give you
11 each a chance to cycle through with comments. So if
12 you're done, I'll move to Mr. Robison. If not, I'll sit
13 back and await anything else you have to say.

14 MR. LATTIN: No, I am done, your Honor, and will
15 yield to Mr. Robison.

16 THE COURT: All right. Mr. Robison?

17 MR. ROBISON: Thank you, your Honor. Good
18 morning.

19 THE COURT: Good morning.

20 MR. ROBISON: I heard about the settlement a day
21 or two after it was executed. I was pleased, as Todd's
22 individual counsel preparing for jury trial, that that
23 had happened. We made a motion in limine to keep that
24 settlement agreement out of evidence and we asked you not

1 to allow the jury to know about it or for it to be in
2 evidence at all. And I believe that Stan and Todd took
3 that position.

4 The settlement was admitted in part during the
5 testimony. I think the court's ruling was it was
6 relevant to the credibility of Todd and/or Stan because
7 of the bias it might create to testify against
8 Wednesday -- Wendy -- excuse me -- and so bit by bit the
9 witnesses were examined about specific portions, and you
10 allowed Mr. Todd Jaksick to read section 3. And counsel
11 and I agreed that if it's going to be referred to, maybe
12 the jury should see the whole thing, and we stipulated it
13 into evidence. And the jury had the Settlement Agreement
14 when it deliberated.

15 The question is, did that benefit Todd as having
16 made peace with his brother and did it benefit Stan as
17 having made peace with his brother, but Stan gave up his
18 claims against Todd in exchange for that Settlement
19 Agreement, which clearly changed the landscape of the
20 jury trial. We know that.

21 The Settlement Agreement is a good one. The
22 Settlement Agreement is fair. The Settlement Agreement
23 helps Luke. The Settlement Agreement benefits Wendy.
24 The Settlement Agreement benefits Stan and it benefits

1 Todd. Although his indemnification agreement, we think,
2 was legitimized during the jury trial both on the legal
3 claims and the equitable claims. The Settlement
4 Agreement restricted the claims under the indemnification
5 agreement.

6 But in addition to the language to which Mr.
7 Lattin referred to about there being a recognition that
8 this trust had to be funded for that settlement to work,
9 I think, is undeniable. Going through the Settlement
10 Agreement, it clearly says, "the Family Trust will pay,"
11 "the Family Trust will do this," and "the Family Trust
12 will pay that."

13 Exhibit 19 referred by counsel also shows the
14 value of the Family Trust interest in the Montreux
15 project. It is \$2.5 million. That's the Family Trust
16 interest in Toiyabe as governed by Montreux Development.
17 That was recognized. That was a part of the deal. And
18 though that agreement does not specifically and expressly
19 say that these debts that are created by the Settlement
20 Agreement will be paid with Montreux money, your Honor,
21 the parties knew there wasn't any other money really at
22 hand.

23 The Exhibit 19 shows what the trust had.
24 \$2.5 million of money owed to it or at least the value of

1 its interest from the Montreux/Toiyabe project.
2 \$1.9 million it shows for Buckhorn. That is a 25 percent
3 interest in the Winnemucca Ranch, which has to get a
4 minority discount and other matters involved with it, my
5 point is that it's not liquid. There is no way that I
6 certainly can read that agreement without recognizing the
7 fact that this agreement doesn't work unless there's
8 money. And there are not that many sources of money to
9 which the Family Trust can tap into other than
10 Montreux/Toiyabe to make this work.

11 I've made that argument. I don't think I got very
12 much traction with this honorable court saying that
13 there's an impossibility, and the reason is that both the
14 court and Stan have indicated, look, Stan's refusal or
15 Stan's unwillingness to fund the Family Trust with
16 Toiyabe money was foreseeable. Okay.

17 So the settlement is made in February of 2019,
18 it's not until a year later, a year after the jury trial
19 that Stan authorizes the accountant to show the financial
20 condition of Toiyabe, but not one dime, to my knowledge,
21 has been distributed from Toiyabe to the Family Trust.
22 That is --

23 THE COURT: It was represented to me in argument
24 that this issue of Montreux/Toiyabe funding the Family

1 Trust has been known to the brothers for years, disputed
2 by the brothers for years, and it's now not a surprise.
3 So why is the agreement silent as to the funding concern.

4 MR. LATTIN: May I address that, your Honor?

5 THE COURT: I want, Mr. Robison -- do you want to
6 yield, Mr. Robison?

7 MR. ROBISON: No.

8 THE COURT: No. Go ahead. Hold your thoughts,
9 Mr. Lattin. Write it down.

10 MR. LATTIN: I'll yield back.

11 MR. ROBISON: Your Honor, I must tell you, and
12 like you in terms of seeing this settlement for the first
13 time after it was reached, and then trying the case for
14 four weeks in front of a jury and briefing to you, there
15 is no other money to fund this Settlement Agreement than
16 Toiyabe money and maybe liquidating Buckhorn. You just
17 can't read this, your Honor, without looking at the
18 assets of the Family Trust to fund the payments required
19 of the Settlement Agreement.

20 So you look at the Settlement Agreement that says,
21 "the Family Trust shall pay," "the Family Trust shall
22 pay," and then you have to look at the financials and
23 say, where is the money coming from to pay the debts
24 identified in the Settlement Agreement?

1 THE COURT: I understand your argument that one
2 implies the other, but I have specifically enumerated
3 conditions that compose a contingency category, and it's
4 just silent about that.

5 MR. ROBISON: It is silent. I'm not going to blue
6 pan the Settlement Agreement before you. But I think if
7 you -- if anyone ever got in downstream to whether or not
8 there was a covenant of good faith and fair dealing to
9 have Stan account for and distribute funds to the Family
10 Trust, I don't know whether that will ever be created as
11 an argument or not.

12 I see most of those individual provisions as
13 executor. If you validate this agreement for the reasons
14 you've stated in your order to set, both parties are
15 required to do things in the future to make it an
16 executive -- a completed contract. So your ruling today
17 sets the stage for what happens in the future.

18 I'm a little bit optimistic that if you validate
19 this agreement, it might work. There might be Toiyabe
20 money to fund the debt. There might be a liquidation of
21 assets to substantiate the debt articulated in the
22 Settlement Agreement. But that is -- those are future
23 events after the Settlement Agreement is validated.

24 And I agree that the foreseeability of Stan not

1 paying is the elephant in the room. Did we think he
2 wouldn't pay? Yes. Did we think he might withhold the
3 money a year after the settlement was reached? Yes.
4 Completely foreseeable. I know that blows my impossibly
5 argument, but it's the facts.

6 THE COURT: So, Mr. Robison, it sounds like you're
7 arguing that I should validate this agreement?

8 MR. ROBISON: Well, your Honor, I think -- you
9 asked both counsel what that order would look like --

10 THE COURT: I was going to ask you the same thing.

11 MR. ROBISON: Upon motion made and good cause
12 appearing, the court sets a hearing for approval of the
13 settlement agreement and notifies all parties. The
14 trustees are entitled to that order approving the
15 settlement, and the arguments to be made about the
16 validity of that agreement has to be aired out before the
17 Supreme Court hears it.

18 We are scheduled for a December 16 mediation
19 settlement with the Supreme Court mediator. We know that
20 Wendy is bringing this to the table. We know that we
21 have to address it. I'm not asking you to defer ruling
22 but I'm enlightening you to what we see coming down in
23 the future.

24 That said, your Honor, I'm not asking you to

1 validate the agreement. I'm telling you that if it's
2 validated, there are things to be done. And we both
3 know, your Honor, one of those things to be done is to
4 see if we can leverage some money out of Toiyabe to fund
5 the provisions of the Settlement Agreement, that's
6 something that we have to address, if it's validated.

7 THE COURT: Would you all pause for just a moment
8 and one of you quickly tell me the page and paragraph of
9 the language about approval? I cited it in my order,
10 I've read this agreement many times, but I just need to
11 be able to find it because the language is less artful in
12 the agreement than the arguments being made because it
13 seems to have a qualifier.

14 MR. ROBISON: To the extent necessary, the parties
15 will seek court approval.

16 THE COURT: Right, to the extent necessary.

17 MR. ROBISON: Right. Now I'm going to defer on
18 this one because I wasn't in the drafting exercise nor
19 the negotiations. But if you -- if you dilute the Issue
20 Trust interest in the \$20 million asset called the Lake
21 Tahoe house, I'm not quite sure how Todd, as the trustee,
22 as he testified in trial, can do that without your
23 approval.

24 THE COURT: I want to push you a little bit in the

1 same way I pushed Mr. Lattin.

2 MR. ROBISON: I'm going to defer now.

3 THE COURT: I'm not done with you yet.

4 Sometimes we should be careful about what we
5 request because we might actually receive it.

6 I've indicated my concern about how that agreement
7 changed the jury trial. You've acknowledged as much.
8 Everybody in good faith would acknowledge that the trial
9 changed because of the party positions. And if I choose
10 not to validate this Settlement Agreement, must I then
11 consider a new trial just as a matter of manifest
12 justice?

13 MR. ROBISON: Your Honor, the Supreme Court is
14 going to be inundated with new trial requests, whether
15 this Settlement Agreement is validated or not by Wendy's
16 counsel. Your Honor, the benefit conferred by the
17 Settlement Agreement was that Mr. Hosmer-Henner sat on my
18 right as opposed to my left, which was valuable, there's
19 no question about that. And Stan's participation in the
20 trial was Switzerland. I'm a supporter of Wendy and I
21 love my family. I'm very sorry all this dispute is
22 happening. And strategical decisions were made not to
23 bring up Montreux in that trial. Yes, they were. But
24 Todd did not get the benefit of Stan not going after

1 Todd.

2 You will recall that Wendy's lawyers, your Honor,
3 went after Stan pretty good on what he said in his
4 petition, that was verified under penalty of perjury,
5 that Todd was a liar, conspired, aided and abetted,
6 committed fraud. And, in addition to that, they put in
7 his testimony from his deposition. So, yes, we got
8 benefit with regard to the alignment of the parties, but
9 Stan's testimony concerning his petition and his
10 deposition testimony was devastating to Todd.

11 In fact, I think the last question Mr. Spencer
12 asked of Stan Jaksick was, So isn't it true that Todd is
13 a liar? Answer: Yes. That was without reference to
14 depositions, that's my recollection. But we got hammered
15 by Stan's testimony, despite the settlement. It's not
16 like we were holding hands and doing the same thing for
17 the same reasons in front of that jury, because it was
18 very clear to that jury that Stan made some very serious
19 accusations against Todd, and the jury knew that.

20 THE COURT: So what order -- I think you've
21 already answered -- the order you would have this court
22 enter is cause appearing, this matter is set -- cause
23 appearing, all interested parties are invited to comment
24 on the enforceability/unenforceability of the agreement

1 and the court sets a hearing on that issue, you know what
2 will happen with Wendy's counsel.

3 MR. ROBISON: Oh, I think so. I think so. I'm
4 speculating but I have a pretty good idea what they're
5 going to say.

6 THE COURT: I wish they were participating so they
7 could hear me say this in their presence but I'm going to
8 get a 108-page motion on why the agreement is
9 unenforceable.

10 MR. ROBISON: And likewise, regardless of what you
11 do, the Nevada Supreme Court is going to get the same 108
12 pages that she's entitled to a new trial whether the
13 Settlement Agreement is approved or not. But certainly
14 it's an argument that we cannot avoid whether at this
15 level or that level.

16 THE COURT: Right. And I'm not saying that, by
17 the way -- I wish counsel was here to hear my tone and
18 see my face. I'm not saying that critically. I'm
19 describing the past as a predictor of the future. I'm
20 opening up a complete arena of new litigation.

21 And it appears to me that the court clerk just
22 said Wendy and her counsel are now observing, so I'm
23 happy to hear about that. I didn't see them in the
24 queue. Okay.

1 So what about the Huneycutt procedure,
2 Mr. Robison? If I invalidate this agreement, do I send
3 up an advisory order to the Supreme Court that I'm
4 inclined to grant a new trial?

5 MR. ROBISON: Your Honor, with all due candor,
6 without a little research I'm hesitant to speculate. But
7 I think the notice of appeals filed by all three -- Stan,
8 filed a notice of appeal, Wendy filed a notice of appeal,
9 Todd filed a notice of appeal -- I'm not sure whether or
10 not there is a jurisdictional basis to now supplement an
11 appeal, even if it's from a court order. I don't know.
12 I would love the opportunity to give 24 hours a day to
13 brief that.

14 THE COURT: Mr. Hosmer-Henner gently expressed his
15 dissatisfaction with your performance -- with your
16 advocacy, Mr. Robison. He said that you selectively
17 concealed from this court vital information, that you
18 excluded a rehabilitative email and focused on a damaging
19 email, and you should be given a chance to respond.

20 MR. ROBISON: Your Honor, until I saw the exhibits
21 yesterday, I had no idea that Stan had authorized Kevin
22 Riley to disclose the information. None. I wish I had.
23 There would be arguments I made that I would not have
24 made.

1 THE COURT: That's fine. Thank you.

2 Could we all just pause for a moment? I'm going
3 to cycle through again with Mr. Hosmer-Henner.

4 I think at this point, I'm going to add a little
5 more detail about my reaction to reading this newest
6 round of moving papers so that you can comment in your
7 next opportunity to argue.

8 In my most reactive moment, grounded in
9 frustration, I thought I would enter an order directing
10 Wendy's counsel to file points and authorities examining
11 this court's ability under the probate code -- because I
12 have continuing jurisdictional oversight of the trust, to
13 examine this court's ability under the probate court
14 rules of appellate procedure and any other decisional
15 authorities, this court's ability to enter an order
16 directing the trustees to show cause why they should not
17 be removed from their trusteeship. And if and how this
18 court could broaden this order to all entities in which
19 Todd and Stan had management or trustee authority,
20 because it appears to me that the fiduciary
21 responsibilities are entangled with personal interests,
22 and that is a very nuclear option. But given the tone of
23 Todd's individual response, projecting litigation years
24 into the future against Stan regarding fiduciary duties,

1 virtually the same as what Wendy's counsel filed
2 yesterday, virtually the same claims against Todd, Todd
3 is now threatening -- I'm going to use the word vicious
4 but it is not a criticism, it is an acknowledgment of the
5 spirited advocacy -- there was a vicious tone in Todd's
6 individual response. And I thought, How can I preempt
7 the next chapter having lived the last chapter? That was
8 my reaction when I first read these moving papers, and
9 I'm grateful that I didn't. I'm grateful for time to
10 deliberate and be thoughtful. But, counsel, that is on
11 my table when I think about how much future litigation we
12 have between siblings who are clothed with fiduciary
13 responsibilities.

14 Having said that, I'll invite Mr. Hosmer-Henner to
15 say anything he wants in response to what the attorneys
16 have argued and anything he wishes in response to what I
17 have said.

18 MR. HOSMER-HENNER: Your Honor, let me start with
19 what you said, and that was that you invited an order to
20 show cause why the trustee should be removed. I'll
21 respond on behalf of Stan because this round of motion
22 practice reflects one thing. Stan seeking to enforce the
23 validity of the Settlement Agreement that was already
24 presented to the jury and this court, and to which this

1 court nor the jury found that Stan should be removed as a
2 basis of that settlement agreement.

3 THE COURT: I understand the past but,
4 Mr. Hosmer-Henner, I'm going to stop you here for a
5 moment because I'm not reacting to the past decisions
6 that have been made. I know what the jury said. I know
7 what I said. But what Todd has alleged is that your
8 client, Stan, is not the Switzerland in front of the jury
9 but instead is personally withholding Family Trust money
10 to pursue his own interests -- these are allegations.
11 I'm not making any findings -- to include purchasing a
12 golf course that he is strangling the Family Trust, that
13 he is holding it hostage to his own fiduciary
14 decisions -- allegations -- but that's -- that is
15 entirely separate from the past and I think I have the
16 ability to entertain and respond to new allegations.

17 Excuse me for interrupting, but I want to be very
18 clear. Go ahead.

19 MR. HOSMER-HENNER: Your Honor, Mr. Robison didn't
20 provide you an answer when you asked, Was this known
21 prior to the Settlement Agreement? He did not answer
22 your question. So to describe this about the sale of
23 Montreux lots as a new allegation is simply false.

24 We've presented evidence from the deposition

1 testimony -- or citations to the deposition testimony, to
2 the case management conferences where Mr. Robison
3 commented on this exact issue, all prior to both trials,
4 to even Mr. Lattin's response where he talks about
5 publically available record of lot sales dating back to
6 2014. This is not something that was unknown to Todd
7 prior to January of 2019. It simply wasn't.

8 And they didn't answer your question, your Honor,
9 because there's no way that they can maintain credibility
10 by responding to you that they were unaware that Toiyabe
11 had not -- was not distributing money that it otherwise
12 should have to the Family Trust. They will not be able
13 to do that and they cannot even do that today at the risk
14 of harming what credibility Todd has remaining.

15 That's the issue here, your Honor, is permitting
16 those allegations against Stan without an opportunity to
17 actually have those litigated, let alone waived and
18 released by the Settlement Agreement is exactly why that
19 type of tactic by Todd shouldn't be condoned. To make
20 those allegations in response to the simple question of
21 enforcing the validity of the Settlement Agreement is
22 drastically unfair to Stan when those issues were
23 partially, if not fully, the subject of discovery in this
24 case.

1 Montreux Development and Toiyabe was subpoenaed by
2 Todd and Mr. Robison. Those documents, as you recall
3 from one of your pre-trial orders, were produced and
4 disclosed prior to trial. They were produced and
5 disclosed to Mr. Robison well before trial, and were
6 produced to all parties as a result of one of your
7 discovery orders.

8 So this concept that by seeking to enforce the
9 Settlement Agreement and then being retaliated against
10 with all these allegations, many of which claims had been
11 asserted prior to -- or at least discussed prior to the
12 Settlement Agreement, and many of which are simply untrue
13 such as Kevin Riley's email, I think takes us down a very
14 unfortunate path.

15 I want to respond -- so certainly we would not --
16 we're pleased that the court is taking some time to
17 reconsider that order and is not -- has not already
18 entered an order to show cause as to why Stan should not
19 be removed as trustee. But that order to show cause
20 would essentially be telling Stan that by being the
21 subject of these allegations, which we've already
22 responded to in part and certainly with full documentary
23 evidence, we're already doing a mini trial to see whether
24 Stan should stay as trustee.

1 THE COURT: Mr. Hosmer-Henner, I want to kind of
2 reduce this one issue to its core. The Family Trust has
3 an interest in an entity that owns vacant lots that Stan
4 manages; is that correct?

5 MR. HOSMER-HENNER: It's not, your Honor, and
6 that's -- it is not. Those were the misstatements that
7 were made in the moving papers by Todd. The Family Trust
8 has a 50-percent interest in Toiyabe Investment --
9 Toiyabe Holding -- the names get a little confusing even
10 for me after all this time -- but 50-percent interest in
11 Toiyabe. Stan holds the other 50 percent of Toiyabe and
12 is the manager of Toiyabe. Toiyabe is a holding company
13 of a separate entity, Montreux Development Group, and it
14 owns approximately 96 percent of Montreux Development
15 Group, while Stan individually holds the other four
16 percent. Then that entity holds the real estate.
17 Montreux Development Group isn't sitting on \$2.5 million
18 dollars in cash. It is sitting on real estate and it is
19 in the process of obtaining a final map on additional
20 lots of subdivisions in the Montreux area. It's an
21 active company. And there are no -- to my knowledge,
22 your Honor, there are no distributions from Montreux
23 Development Group to Toiyabe that were then distributed
24 out to Stan and not the Family Trust. So this idea --

1 THE COURT: Forgive me. You've taken me to the
2 complexities and I began my question by focusing on the
3 core. Does the Family Trust have an interest in an
4 entity that Stan manages or otherwise controls?

5 MR. HOSMER-HENNER: Yes, the Family Trust is an
6 entity in multiple entities that Stan manages or
7 controls, as well as that Todd manages and controls.

8 THE COURT: This is an allegation, I understand,
9 but Stan can make management or control decisions that
10 either open the portal of money to the Family Trust or
11 closes the portal of money to the Family Trust; is that
12 right?

13 MR. HOSMER-HENNER: Not of Toiyabe, because those
14 decisions are made down below at the Montreux Development
15 Group level.

16 THE COURT: Which is why I included in my late
17 night reactive outlined order that I would want points
18 and authorities not just to remove the trustees of the
19 subject entities but how I could lawfully broaden my
20 order to include every single entity in which Todd and
21 Stan had management or trustee authority.

22 MR. HOSMER-HENNER: Your Honor, I'll clarify that
23 then with respect to Toiyabe. The Family Trust, to my
24 knowledge, doesn't have the ability to appoint the

1 manager of Toiyabe. That's controlled by Stan's separate
2 50 percent. So to the extent the Family Trust has
3 control over that, I think that is -- it's not correct to
4 call that a Family Trust entity.

5 THE COURT: I'll step back -- sit back and listen
6 to anything else. I thank you for allowing me to
7 interrupt, Mr. Hosmer-Henner.

8 MR. HOSMER-HENNER: Your Honor --

9 MR. ROBISON: Excuse me, your Honor. I've been
10 accused of concealing evidence and lying to the court and
11 I want to respond.

12 We are the ones that submitted the organizational
13 chart to this court showing Stan's total exclusive
14 control of money that is -- should be paid and should
15 have been paid to the Family Trust. ALSB owned lots in
16 the Montreux area, 100-percent owned by the Family Trust.
17 It paid down some -- a line of credit at Wells Fargo, but
18 no money has been directly distributed from ALSB to the
19 Family Trust.

20 THE COURT: I don't want to interrupt
21 Mr. Hosmer-Henner for too long because I'm going to give
22 each of you a chance to respond. My preference is that
23 you take notes and remember to come back to this;
24 otherwise, I'm going to have a free-for-all here. Go

1 ahead, Mr. Robison. But after you say this last thing, I
2 want to go back to Mr. Hosmer-Henner.

3 MR. ROBISON: All right. Now, you recall the
4 testimony, Sam owned Toiyabe Investment Company, LLC.
5 That's the name of the company. It is the primary mover
6 out in Montreux. There's also a company called Montreux
7 Development Group, LLC. Stan manages Montreux Group --
8 Montreux Development Group, LLC. He manages it. He
9 manages the 95-percent owner Toiyabe Investment Company,
10 which is a corporation. That -- that is a 95-percent
11 owner, 50 percent of which is owned by the Family Trust,
12 your Honor, since Sam's death has not distributed money
13 to the Family Trust because Stan says, "I have
14 operational expenses and I have a subdivision to
15 develop." But why -- he carries this on the books. He's
16 told Ken Riley the Family Trust interest has a value in
17 2018 of 2.7 million, in 2019 2.5 million. My angst, and
18 perhaps I've overstated it too aggressive, where is the
19 money?

20 THE COURT: I need to go back to Mr.
21 Hosmer-Henner. I'll give you another word, Mr. Robison.
22 Mr. Hosmer-Henner?

23 MR. HOSMER-HENNER: Your Honor, if you go through
24 this litigation, Todd owns 46 percent of Incline TSS,

1 Todd or Todd's trusts. He owns a percentage of Buckhorn,
2 or his trust. He owns a percentage of Duck Flat Ranch or
3 Duck Lake Ranch. All these entities that are listed in
4 the financial trust disclosures, and there were claims
5 between the parties and concerns and squabbles about each
6 and every one of those entities, so we are playing
7 defense here only on one entity, Toiyabe, and not
8 focusing on the matter at hand, which is the Settlement
9 Agreement. And I'm extremely concerned that we're now
10 taking these allegations to the point of accepting them
11 as true when they haven't been made in a pleading. They
12 could have made been in a pleading. And when what you
13 just heard from Mr. Robison is that they were aware that
14 none of -- that the statements by Stan to Kevin Riley
15 were made about a valuation in 2018, yet a Settlement
16 Agreement was still signed. If we're allowed to open up
17 each and every entity, we can discuss Jackrabbit and the
18 fact that that was distributed to the trust. We can
19 discuss the change in Buckhorn, certain option agreements
20 there. But there was a settlement agreement reached and
21 if we end up in litigation with ALSB, which the Family
22 Trust financials indicate the Family Trust owes money to
23 ALSB because ALSB satisfied a note on behalf of the
24 Family Trust, that is in the financials, so these

1 speculations about where the money are something that
2 were explored during discovery and could have been
3 explored during discovery. But Montreux Development
4 Group is an ongoing entity. It is publically recorded
5 that it is in the process of obtaining a final map. It
6 may have value, but it doesn't have liquid value and it's
7 real estate value because the money has been reinvested
8 in the company, then it doesn't need to distribute those
9 funds to the Family Trust at this point in time. But it
10 still absolutely retains some value and the Family Trust
11 still has a 50-percent share in a valuable company that
12 controls real estate. But to say that a holding company
13 should be partitioned makes no corporate sense. And to
14 say that there's some entitlement to liquidate two levels
15 down these lots to then provide them to the Family Trust,
16 which again at this point, may have nothing left given
17 the other litigation involved in the case, which means
18 that Todd's indemnification claims against the trust
19 still number in the millions, that the assets of the
20 Family Trust would eventually be reduced to being able to
21 pay Todd's debts and claims against the Family Trust with
22 zero dollars provided to Wendy and zero dollars provided
23 to Stan and zero dollars provided to Todd, zero dollars
24 provided to grandchildren. That's that course we're

1 headed down and that's why we filed this motion to
2 enforce the Settlement Agreement because at least it
3 prevents mutually assured destruction by litigation of
4 all these entities. And we still believe, like Mr.
5 Robison said, it's a good, valid and fair settlement
6 agreement that should be enforced.

7 I want to start the individual responses with
8 Mr. Lattin's statement, the Settlement Agreement needs to
9 be presented to the court.

10 THE COURT: I think that you just created a good
11 gap for our court break. I've enjoyed this conversation
12 but our reporter has been writing now for an hour and
13 20 minutes almost non-stop. There's this pace in
14 arguments that's different than the pace of the witness
15 colloquy.

16 Please mute yourselves, counsel. Please hit your
17 Mute buttons. I don't want to unintentionally hear what
18 you say. It is 9:49. Let's return in six minutes and to
19 you, Mr. Hosmer-Henner. I'm going to mute myself and I'm
20 going to deactivate my video.

21 (Off the record.)

22 THE COURT: And Mr. Hosmer-Henner?

23 MR. HOSMER-HENNER: Your Honor, before we left
24 off, I was going through the arguments presented by

1 Mr. Lattin, and I wanted to start with the argument about
2 the Settlement Agreement being presented to the court.
3 And I think the question that immediately came to my mind
4 was, if that's their position, why didn't they move in
5 response to one of our numerous e-mails or calls for
6 court approval of the Settlement Agreement rather than
7 dispute its validity for multiple months?

8 THE COURT: Logistically I understand the
9 beneficiaries affected by the Settlement Agreement should
10 be given a right to comment on the Settlement Agreement.
11 How could that have happened before trial in that very
12 few days between settlement and when we picked the jury?

13 MR. HOSMER-HENNER: I don't think it could have
14 happened before trial, your Honor, but it could have
15 happened after, least after the March 2020 order, after
16 the equitable trial. And after that, it could have been
17 presented to you by Mr. Lattin if they actually thought
18 the Settlement Agreement was valid.

19 Instead, they took the position it wasn't valid
20 because the Settlement Agreement was materially altered
21 by the verdict at trial. And that's the concern I have
22 now, your Honor, is that it sounds like they are setting
23 up an argument the court shouldn't approve this or can't
24 approve this, or they want to engage in a proxy battle to

1 not have it approved. If they actually wanted it to be
2 approved by the court, they wouldn't raise issues about
3 whether it could have been approved by the court or
4 whether it needs be approved by the court, they can
5 cooperate in good faith to have the court approve it.

6 As you point out, I don't believe it's our
7 purpose, to say to the extent necessary in the Settlement
8 Agreement because some of the trust provisions -- some of
9 the Settlement Agreement provisions relate to no trust.
10 There are exchanges and swaps of certain interests in
11 order to disentangle and disaggregate Stan and Todd from
12 the management of the same entity, and those interests
13 are not held by either trust, by either the Issue Trust
14 or the Family Trust.

15 Mr. Robison brought up the issue of the Issue
16 Trust -- the dilution of the Issue Trust's interest in
17 Incline TSS but they argued repeatedly the jury trial
18 confirmed the ACPAs. And if that's true, one of those
19 ACPAs was Stan's buy-in to Incline TSS under the same
20 terms as was considered in the Settlement Agreement, so
21 if that's the case and they've held that the jury verdict
22 ratified and made those ACPAs set in stone, there's no
23 need for further court approval because both the court
24 and the jury have already confirmed that portion of the

1 Settlement Agreement.

2 There's a severability argument here that each
3 provision stands separable and not specifically inserted
4 into the Settlement Agreement so only those provisions to
5 which the beneficiaries may be affected should
6 have require court approval -- or could possibly require
7 court approval, and those are ones that we could bring to
8 the court in whatever fashion it seems necessary. But
9 we're not at that stage because we didn't -- we couldn't
10 come to the court and seek approval of the Settlement
11 Agreement that the other side wasn't -- wasn't valid. At
12 a minimum, we needed to cooperate in good faith to seek
13 approval rather than litigate that on top of whether the
14 Settlement Agreement is valid at all.

15 There were two brief argument. First that the
16 Family Trust doesn't have any funds so the Settlement
17 Agreement can't function. I think that's rejected
18 thoroughly in our moving papers. There are assets and
19 the only change would be the \$300,000 payment which would
20 then be reduced by Todd's disgorgement of trustee fees.
21 And there's a claim on the Family Trust financials for
22 223,000 to Mr. Robison's firm. Surely he'd be willing to
23 waive that if he thought the Settlement Agreement was
24 still valid in order to allow the -- to balance out

1 whatever payment was made to Wendy's attorneys. But I

2 didn't want to -- I just -- I don't think that the

3 funding issue is factually an issue anymore.

4 So the mediation comment by Mr. Lattin that the

5 plug was pulled, Exhibit 18 -- the hearing Exhibit 18 was

6 exactly what we sent to Mr. Lattin, and in that hearing

7 exhibit we clearly explained our position, that was

8 exactly what was conveyed to Mr. Enzenberger, that we

9 were happy to continue mediating and discussing any of

10 these provisions if they confirm -- but only if they

11 confirmed the validity of the Settlement Agreement so we

12 weren't spinning our wheels.

13 The last argument was an issue you raised about

14 the Huneycutt procedure. Your Honor, my understanding of

15 that procedure is that it was codified essentially in

16 NRAP 12A and it's used only if this court lacks

17 jurisdiction to make a ruling that would otherwise be

18 able to assist upon appeal. So to the extent that this

19 court actually rules and as it found in its order to set,

20 it could issue a ruling and it had jurisdiction to do so,

21 it need not go through the NRAP 12A procedure because its

22 order -- it's a published order -- or it's a filed order,

23 excuse me, would then be able to be presented to the

24 Supreme Court.

1 But, more importantly, your Honor, even if this
2 court does nothing, then it still affects the appeal.
3 Because if it does nothing and it doesn't enforce the
4 Settlement Agreement, then the facts on the grounds for
5 which the Supreme Court will be considering, both what
6 happened at trial and Wendy's specific claim that the
7 trustees breached their fiduciary duty by entering into
8 this Settlement Agreement, would be affected and
9 potentially mooted even if the court does nothing.

10 Moving on to Mr. Robison's arguments. He stated
11 that the Settlement Agreement is good and fair.
12 Refreshing to hear that, but that's not what he said in
13 his opposition to our motion for enforcement of the
14 Settlement Agreement. There wasn't praise of the
15 Settlement Agreement. There was a claim that it was
16 impossible.

17 And while he said he's optimistic today, on page
18 10 of his opposition he said that, given the parties'
19 positions, any agreement on the new operating agreement
20 for Incline TSS is more than unlikely, it's essentially
21 impossible. And that reveals the approach that we're
22 worried about in the next phase of this case, where
23 each -- where the parties fail to agree on each of these
24 executory terms.

1 I think it is critical, your Honor, that Mr.
2 Robison didn't answer your question about whether Todd
3 was aware that there was an issue with Toiyabe
4 distributing funds prior to the Settlement Agreement. I
5 would ask that question to be answered by Mr. Robison and
6 Mr. Lattin. I would encourage this court to ask it
7 again, because that question is key.

8 There is no doubt that the record supports that
9 Todd was both aware that there was an issue with Toiyabe
10 funding the Family -- with his claim that Toiyabe should
11 be funding the Family Trust and that he had raised that
12 dispute with Stan on many occasions and had been given
13 similar answers. But the question isn't whether just
14 Toiyabe should be funding the Family Trust. Those were
15 provisions that were not included in the Settlement
16 Agreement. And the idea that Toiyabe is the only entity
17 that should be funding the Family Trust is simply wrong.

18 The Family Trust has many assets, some of which
19 have already been distributed, and many claims related to
20 some of those other entities, but Buckhorn is an entity
21 that could be sold to fund the Family Trust. There are
22 other real estate entities that could be sold. There are
23 claims paid and receivables from White Pine. The point
24 is, we're not here to divvy up and assign blame to these

1 individual entities. We're just here to discuss the
2 Settlement Agreement. But the problem, your Honor, is
3 that Todd has consistently tried to get Toiyabe to fund
4 the Family Trust, which is why that is the focus of their
5 entire argument at every stage. The point is that
6 because Todd believes that Toiyabe should be contributing
7 more to the Family Trust and that that's one of Stan's
8 entities, and that Toiyabe should be funding the debts of
9 the Family Trust Todd claims owes him, that's the central
10 point of dispute between those two brothers. It was
11 attempted to be resolved on multiple occasions and it
12 wasn't in the Settlement Agreement, so to insert it now
13 as a hidden term in the Settlement Agreement is
14 completely outside the course of the parties'
15 negotiations and dealing.

16 THE COURT: Let me not then focus on the hidden
17 term but a disclosed term. Todd and Stan agreed in the
18 Settlement Agreement that they would wrap up the affairs
19 of the trust as soon as practicable but they also
20 identified what could be practicable as an end-of-year
21 date. I think it was December 31st.

22 Counsel, I'm close enough so you know what I'm
23 referring to, I hope.

24 How could this Family Trust ever wrap up its

1 affairs and terminate when it owned an interest in some
2 manner in an entity that Stan managed? How did Stan
3 contemplate the Family Trust would be wrapped up while he
4 continued to manage property partially owned?

5 MR. HOSMER-HENNER: Your Honor, the Family Trust
6 already distributed Jackrabbit. Rather than liquidate
7 Jackrabbit and distribute to the trust, it distributed
8 out the shares individually to Todd -- or not the shares,
9 the interest to Todd, Wendy and Stan. That's one option.
10 And it's already been pursued by Todd with respect to one
11 of the entities in which he had the most -- he had a
12 plurality interest on the siblings.

13 THE COURT: So you could contemplate distribution
14 and termination without liquidation, but instead a
15 division of ownership in that other entity?

16 MR. HOSMER-HENNER: It's absolutely possible, your
17 Honor. I would also say that marketing some of these
18 assets to the extent that they do need to be liquidated
19 is an option. But that is an ongoing entity, so what
20 you'd be selling, at most, is a 50-percent minority
21 interest in Toiyabe, which is then a minority holder of
22 Montreux Development Group. There's a significant --
23 regardless of the book value that was put on the Family
24 Trust, there's a significant discount for that minority

1 interest. But, sure, if the co-trustees agreed to sell
2 off each and every one of the privately held interests,
3 all the privately held companies, each one of those
4 entities could conceivably be marketed, sold, and then
5 the remaining cash distributed to the three siblings.

6 But that same problem exists for Buckhorn your
7 Honor, in which the Family Trust has a 25-percent
8 interest. The same problem exists for Duck Flat Ranch.

9 THE COURT: Wasn't liquidation contemplated
10 when -- when the jury heard evidence that Wendy would
11 soon be receiving a cash distribution of \$4 million?

12 MR. HOSMER-HENNER: That wasn't my evidence, your
13 Honor.

14 THE COURT: I know, but you're in front of me
15 right now. That was the -- that was an argument
16 presented to the jury that if everyone would just calm
17 down, Wendy was about to receive \$4 million. I'm not
18 validating that argument, I'm just observing that it was
19 made, and it seems to contemplate some liquidation and
20 distribution of cash as opposed to portions of entities.

21 MR. HOSMER-HENNER: So that's possible, your
22 Honor. I do believe that would be -- for certain
23 entities, I do believe that would be doing them a
24 disservice -- the beneficiaries a disservice to liquidate

1 some of those entities rather than distributing shares.
2 Others, it might be extremely beneficial. But that's a
3 decision that is made in the winding up of a trust. And
4 I don't think -- I don't believe it's a requirement to
5 liquidate every closely held company prior to
6 distributing the trust.

7 THE COURT: I'm getting a background voice from
8 somebody.

9 MR. ROBISON: My bad, your Honor. I'm sorry.

10 THE COURT: That's fine. I want to be sure none
11 of us hears something that's unintentionally.

12 MR. HOSMER-HENNER: So there's no rhyme that
13 everything be liquidated, whether under the Family Trust
14 or under the Settlement Agreement. The trust can be
15 distributed. The Settlement Agreement does not say it
16 has to be distributed by December 2019. That was an
17 aggressive, aspirational goal because this Family Trust
18 should have been distributed a long time ago rather than
19 slowly bleed to death in the course of this litigation.

20 But what we're looking at here, your Honor, is a
21 set of appeals, potentially another trial if someone is
22 successful on appeal, potentially another trial even if
23 they aren't, and with attorneys' fees already in the \$3
24 to 4 million the question is whether anything could ever

1 be distributed at all. This Settlement Agreement goes
2 some way to assisting with that, and that decision should
3 be validated and ratified by this court and at least the
4 hope the Family Trust is distributed. Whether it can be
5 distributed while the appeals are pending is an issue
6 that the co-trustees, together with counsel, will have to
7 resolve and decide. But that seems unlikely to me at
8 this point.

9 I think the key statement that was made by
10 Mr. Robison was that during trial there were strategic
11 decisions that were made not to bring up Montreux, and I
12 think that reveals everything about Todd's knowledge of
13 Montreux because they didn't learn about Montreux
14 suddenly in the space of a few days between settlement
15 agreement and trial. That was something that was an
16 ongoing decision. And if they made that decision not to
17 bring it up during trial, surely that's something that
18 they were aware of before. So that's what I mean, your
19 Honor, by how important that question is whether Todd
20 knew about these issues prior to signing the Settlement
21 Agreement.

22 The last -- the last question -- or the last point
23 I wanted to make, your Honor, before my conclusion was
24 from Kevin Riley's dispute and Stan's alleged but

1 incorrect reluctance to provide that information, Mr.
2 Robison's response is entirely -- is likely entirely
3 accurate that he said he was unaware of that exhibit.
4 But, your Honor, Todd knew about that exhibit. Todd was
5 the one who received that email directly from Michael
6 Kimmel and from Kevin Riley so he was aware of that
7 exhibit. And that argument was made even though his
8 client -- Mr. Robison's client was aware that it was
9 false at the time that that paper -- those pleadings were
10 made.

11 So, your Honor, I'd like to conclude with just the
12 core question, which is what your order should look like.
13 And we think that, in the first place, the proposed order
14 that we sent should stand, the Settlement Agreement
15 should be deemed valid and binding and enforceable, and
16 the litigation contingencies and conditions satisfied.

17 In the second, to the extent possible, to the
18 extent the court deems fit, this could be an appropriate
19 time to either deem the Settlement Agreement as court
20 approved or, at a minimum, set a hearing at a later date
21 for people to comment and provide input on the provisions
22 of the Settlement Agreement which the court deems need
23 court approval.

24 THE COURT: I want to focus on that, because I'm

1 considering creating an opportunity for all beneficiaries
2 to be heard on the Settlement Agreement because there is
3 language -- it's not great language -- it's not a
4 criticism to those who drafted it. I think
5 Mr. Hosmer-Henner and Mr. Lattin were involved in
6 drafting that. I can remember how short those days were
7 and how long the tasks were -- but it does contemplate
8 court approval to the extent necessary. How -- how do
9 you construct the clause to the extent necessary? What
10 would have triggered the need for court approval?

11 MR. HOSMER-HENNER: My construction placed upon
12 that is as there are some provisions that are not related
13 to the trust ownership of entities or payment of anything
14 from the trust, if there's some provisions that are, to
15 the extent necessary refers to those provisions that
16 implicate the interests or affected beneficiaries of the
17 Family Trust or Issue Trust.

18 THE COURT: Okay. Thank you.

19 Mr. Lattin?

20 MR. LATTIN: Thank you, your Honor.

21 The language that you just referred to, to the
22 extent necessary, was put in there just for the very
23 reasons that Mr. Hosmer-Henner outlined, and those are
24 there were individual responsibilities of Stan and Todd

1 which did not need -- under the Settlement Agreement
2 which did not need court approval, but there were also
3 provisions that affected both the Family Trust and the
4 Issue Trust which did need approval by this court.
5 Hence, the language to the extent necessary.

6 Now, could it have been more artful? Yes. Had we
7 had a couple more hours, we probably could have. But
8 that, again, supports the argument that court approval
9 would be necessary on the issues in that Settlement
10 Agreement that affect both the Family Trust and the Issue
11 Trust.

12 The question was asked earlier why was there not a
13 funding mechanism put into the Settlement Agreement? And
14 I asked Mr. Robison to yield to me; he did not, which was
15 his right. So I will take my opportunity now to discuss
16 that.

17 It was -- we're talking about the Family Trust and
18 the Issue Trust. The only way to fund any of the
19 monetary provisions in this would be a sale of assets.
20 It was anticipated that both Todd and Stan, as managing
21 members of particular entities, would do what was
22 necessary to get the cash available so that the
23 obligations could be paid. There can be no distribution
24 of any interests to any beneficiaries until all the

1 monetary obligations of the Family Trust and Issue Trust
2 were paid.

3 It is in the agreement that there will be trust
4 assets set aside for distribution. In discovery, when it
5 was -- when the subpoenas were sent out by Mr. Robison to
6 Stan for all of these entities, there were financial
7 statements that came back that showed in Stan's financial
8 statements that there were -- there were monies due from
9 sales to the -- of the lots to the Family Trust. We
10 anticipated that those monies would come to the Family
11 Trust.

12 Additionally, after the fact, there was a phantom
13 tax bill sent to the Family Trust based upon sales of
14 lots in Montreux. We anticipated that those monies would
15 come into the Family Trust. Now, should we have set that
16 forth? I don't know. I think it was anticipated and in
17 good faith that all of the trustees would liquidate so
18 that money could come into the trust both for payment of
19 obligations and for distribution to all of the
20 beneficiaries.

21 So I do believe in the Settlement Agreement it is
22 outlined and it was anticipated that assets would be sold
23 or obligations that were shown on financial statements
24 would be paid to the Family Trust so that these

1 obligations could be paid.

2 Now, the evidence in the trial showed that when
3 Sam Jaksick set up these entities, his concept was -- is
4 that Todd, as trustee of certain entities or operator of
5 certain entities, would own or control the ranches.
6 Stan, on the other hand, was given the ability to own or
7 control the golf side of things and the residential
8 development side of things. When we entered into the
9 Settlement Agreement, it was obvious to everyone that
10 most liquid assets were the lots in Montreux that were
11 being sold. That was the only way that these were going
12 to be funded. So that's why funding became an issue when
13 that money was not forthcoming.

14 So that is the background and answer to the
15 question about why it was not set forth in the Settlement
16 Agreement. It was. And it was anticipated that all
17 trustees that had an interest in these would do what was
18 necessary to get the cash into the Family Trust to pay
19 all of the obligations.

20 With regard to why we did not come to the court
21 and seek approval right after the trial. As you will
22 recall, there was the equitable portion of the trial and
23 we did that. We did a series of briefings and the court
24 considered all of that, which was very complex, and made

1 its decision. But there was a period of time between the
2 trial and equitable decision, and we could not do
3 anything to bring that to the court while that was
4 pending because, if you will recall, Wendy's counsel
5 again sought removal of the trustees. So if the trustees
6 were going to be removed, that left everything in
7 jeopardy so it could not, at that period of time, been
8 brought to the court for approval.

9 So from the Family Trust and Issue Trust
10 standpoint, because beneficiaries are involved, we
11 continue to believe and would request that the court
12 allow it to be brought -- the Settlement Agreement to be
13 brought to the court for comment by all the beneficiaries
14 and then the court make a decision. And that's what we
15 would request comes out of this hearing. And then if
16 that process is followed, I assume there will be
17 arguments and briefing on the funding issues.

18 So that will be our position and I would -- if you
19 have any questions, I'd be glad to answer them.
20 Otherwise, I will yield to Mr. Robison.

21 THE COURT: I'm just thinking for a moment about
22 the relationship between the contingency and -- the
23 contingency period, which Mr. Hosmer-Henner asks me to
24 confirm is closed, the conditions were not altered. I

1 indicated my inclination that the verdict itself and the
2 court's equitable order did not affect those. I'm trying
3 to put that in one category while thinking about the
4 court's approval of the entire agreement and how I -- how
5 I reconcile my continuing inclination that the verdict
6 didn't disrupt those specific conditions, while giving
7 all beneficiaries a chance to be fully heard on the
8 validity of the agreement.

9 Mr. Robison?

10 MR. ROBISON: Your Honor, I don't know what I
11 argued to create the impression that counsel articulates
12 that we were not aware that Montreux was not being funded
13 before the trial. I think in my statement I argued and
14 stated, of course, we were aware and I even stated in my
15 argument that that would be counterproductive to my
16 impossibility argument. I said that. And there's no
17 question that the trustees were very concerned about not
18 getting financial information about Montreux Development
19 2018, 2019, and certainly through the trial and ever
20 since. So if I said something to suggest that we didn't
21 know that we weren't getting money or financials from
22 Montreux, I apologize. That's conceded. We absolutely
23 did know. And, yes, there was a strategical decision not
24 to go after Stan in front of the jury for that.

1 But the fact remains this, in 2018, your Honor,
2 Kevin Riley gives a value for the Family Trust interest
3 in Montreux, \$2.7 million according to the 2018
4 financials. In 2019, we get financials that show that,
5 according to Kevin Riley, the value of the Family Trust
6 interest in Montreux is 2.5 million, so it's going down.
7 It's not going up. And we don't know to this day, how
8 many lots have been sold, we don't know how much money
9 has been generated by the sale of lots, and we don't know
10 where the money went and what expenses were paid with
11 that money. We just don't know, as we sit here right
12 now.

13 Now, when that Settlement Agreement was executed,
14 here's the status of the Family Trust. It had two
15 primary ownerships in closely held corporations, Toiyabe
16 and Buckhorn. And the rest of the holdings, your Honor,
17 in the closely held corporations are not de minimis but
18 they total \$300,000. So the big ticket items of the
19 trust, in terms of its assets, is Toiyabe, valued by
20 evidently Kevin Riley at that time at \$2.7 million. And
21 it's impossible for anybody to think that that Settlement
22 Agreement was not signed with some recognition that money
23 was there.

24 Despite the April letter -- I believe that's

1 Exhibit 19, the email that I told the court, quite
2 candidly, I was unaware of -- in April, Stan Jaksick
3 finally, after -- a year after the Settlement Agreement
4 was signed -- finally gave Kevin Riley authority to
5 disclose the financials. Kevin Riley says in that
6 exhibit that he's busy with tax yearend, says he's
7 working on PPP loans, and that he'll get to everybody
8 when he can. Despite the April letter, Exhibit 19,
9 there's still been no money. There's still been no
10 effort by Stan to say, "I want to honor the Settlement
11 Agreement. I want it to be valid and effective and
12 binding, and I want to distribute the assets of the trust
13 to the beneficiaries, and I want to pay its debts." But
14 there's still hasn't been one dollar paid.

15 To me, your Honor, that is the underlying motive
16 of why I write a brief saying, Where is the money? If
17 you're going to distribute this trust in a timely
18 fashion, where is the money? Why isn't money going in
19 from this asset into the Family Trust?

20 So, your Honor, with regard to Huneycutt, the
21 party can ask that this collateral issue that the court
22 is now considering be certified for an appeal, and that's
23 basically a Huneycutt proceeding that takes this up to
24 the Supreme Court and you certify it based on a party's

1 request. That's articulated -- your Honor, we can give
2 you the authority for how that's explained by the Supreme
3 Court in Huneycutt vs. Huneycutt, the March 2nd, 1978,
4 decision. But I don't know if that helps us or hurts us
5 in this particular case, your Honor.

6 Finally, I still go back to the fact that the
7 underlying theory in this case, no matter what we talk
8 about, is that that settlement helped everybody, helped
9 beneficiaries, helped Luke, was good for Stan, was good
10 for Todd, but it's good for nobody unless it's funded.

11 THE COURT: I'm pausing because I'm thinking.
12 Thank you all.

13 Counsel, who is the December 16 Supreme Court
14 settlement judge?

15 MR. ROBISON: David, starts with a W. Help me,
16 guys.

17 THE COURT: Watts-Vial.

18 MR. ROBISON: Yes, sir.

19 THE COURT: Not Watts-Vial.

20 MR. LATTIN: Wasick.

21 THE COURT: Wasick, that's correct. David
22 Watts-Vial is an Assistant District Attorney here. David
23 Wasick was a central staff attorney about 20 years ago.
24 He's a larger gentleman who has some athletic history,

1 played in the NFL maybe.

2 MR. ROBISON: Our settlement conference mediation
3 briefs have already been submitted back, I think, in
4 August or September.

5 THE COURT: Is that settlement conference by Zoom
6 or will David Wasick accommodate in person for
7 participation?

8 MR. LATTIN: It's in person, as they've set it
9 for -- they've actually designated a room in the Supreme
10 Court building, I believe, where we're going to hold it.

11 THE COURT: Ms. Reporter, I'll have a transcript
12 of this proceeding, please, at the trust's expense.

13 I want to change a word I used when I described
14 Mr. Robison's advocacy. I used the word vicious and I
15 don't like that word because it implies something
16 pejorative. I don't mean vicious. That was a word used
17 when describing -- I'm only putting words to allegations,
18 I'm not finding facts -- but describing Stan's efforts to
19 foment Wendy's litigation the word vicious was used.

20 I think a different word that I would use to
21 describe Todd's individual advocacy is fierce. It's just
22 fierce advocacy, and I hope that does not imply any
23 negative tone. But when I read about the conflicts
24 between Todd and Stan, both serving as co-trustees of the

1 Family Trust, I immediately thought, I needed to remove
2 both of them, not in reaction to the jury's verdict.
3 Counsel, I know that you'll argue that the finding was
4 de minimis but the jury did find that Todd breached his
5 fiduciary duties, and I declined Wendy's invitation to
6 remove him. I set forth the reasons why.

7 I'm not revisiting any of the past. I'm looking
8 at this round of moving papers into the future. And when
9 I hear about you haven't disclosed, I don't have to
10 disclose, you breached, I'm trying to be gentle in
11 response to your allegations I've breached but you're
12 horrible, too, when I hear all that about co-trustees and
13 I've learn from the past, not the jury's findings, I'm
14 not revisiting mine, but I know the scope of this
15 dispute. You should know I'm still thinking that if this
16 continues, I'm going to remove Todd and Stan. I'm going
17 to bring in somebody neutral who doesn't have a personal
18 interest.

19 That is -- that is a continuing inclination of the
20 court. I'm not going to make that order now. I'm not
21 even going to set a place to create that order, but you
22 should know that, because I dropped a footnote one time
23 in an order, I said, counsel, either settle the case or
24 proceed to appellate litigation because we're somewhere

1 between \$3 and 4 million -- can you tell me where we were
2 in total fees in this case, excluding Wendy who is just
3 in trustee fees, do you know about where we are right now
4 between the three of you?

5 MR. HOSMER-HENNER: Fees owed or paid?

6 THE COURT: Incurred, including Mr. Kreitlein,
7 what is the total amount?

8 MR. LATTIN: Well, I'm not -- I'm not totally up
9 to speed on everybody's fees currently, but I would say
10 it's somewhere between two-and-a-half and
11 three-and-a-half million dollars.

12 THE COURT: So when Mr. Hosmer-Henner argues that
13 with a mutually assured destruction the one thing that we
14 can know is that nothing will be distributed. And so I
15 just want you to know, I'm thinking about all that as I
16 continue a new round of litigation, how I can alter or
17 preempt the future in ways I failed to do in the past.

18 I still continue to have the inclination that the
19 jury verdict and the order after equitable trial did not
20 alter the enumerated conditions of the Settlement
21 Agreement. I think that's a separate question from
22 whether every beneficiary should have an opportunity to
23 comment and the court should have invited to make a
24 formal declarative statement as to whether it is valid or

1 invalid.

2 So I am relying upon to the extent necessary in
3 concluding that it is necessary for the court to give
4 every beneficiary an opportunity to be heard. I do that
5 knowing that I'm inviting a lot of moving papers. That's
6 okay.

7 So, Mr. Lattin, if you'll submit a proposed order
8 that sets in place that process, if you'll identify what
9 the scheduling order looks like. I haven't done this
10 before, but it seems to me that we should have a date by
11 which every interested party beneficiary must write what
12 he or she wishes, and that's probably 30 days out. If
13 you want to assert the validity of the agreement, do so.
14 If you want to assert the invalidity of the agreement, do
15 so. If you remain silent, the court will infer the
16 validity of the agreement from that beneficiary. For
17 example, if Luke doesn't write anything, I'm just going
18 to infer that he consents to the validity of the
19 agreement. I'm going to limit all moving papers to 20
20 pages.

21 MR. LATTIN: Your Honor, I believe that under the
22 process it would be a petition that would be filed on
23 behalf of the trustees to invite comment on the
24 Settlement Agreement. And then I believe there's a time

1 frame for serving and response, and I will set that forth
2 in the order.

3 THE COURT: Is that -- is that a petition for
4 instructions that you're contemplating?

5 MR. LATTIN: I think it's a petition for approval
6 of the Settlement Agreement, is what I believe. But I
7 haven't looked at it in that kind of detail yet.

8 THE COURT: Okay. I have this -- I have this
9 voice in the back of my head saying that if I invalidate
10 the Settlement Agreement, I'm going to certify a new
11 trial because it is so different than what the jury
12 considered.

13 So I'm inclined to remove Todd and Stan and bring
14 in neutral trustees to simply orderly liquidate the
15 affairs of these two trusts. I'm inclined to grant a new
16 trial if I find the Settlement Agreement is unapproved.

17 If the Settlement Agreement is approved, I'm
18 inclined to find that all conditions have been met and
19 Stan may buy the lake home under the terms prescribed.

20 And I'm inclined to research and find some way to
21 communicate with the Supreme Court that my supervision
22 jurisdiction continues and that I'm entering an order
23 that may affect the appeal and they might want to accept
24 my inclinations or send it back down to me for other

1 purposes.

2 So we're at the beginning, I guess, of Chapter 2,
3 counsel, and Mr. and Mr. Jaksick -- and I think Ms.
4 Jaksick.

5 Can you get an order to me, Mr. -- I'd like a very
6 brief order that memorializes what I've said, even if the
7 order includes the direction for you to file your
8 petition, but let's have something, Mr. Lattin.

9 MR. LATTIN: Okay. I will get it to you. I have
10 another matter tomorrow and Friday. I'll try to get it
11 to you -- do you want me to submit it to other counsel
12 before?

13 THE COURT: I want you to submit it to me and, at
14 the same time, submit it to other counsel. Typically,
15 you would submit it to them first, wait, I think, five
16 days and then submit it to me.

17 MR. LATTIN: Right.

18 THE COURT: Submit it to me, and then I'll invite
19 them to respond if they wish. I hope they don't respond
20 to the content of the order. I intend for your order to
21 be neutral.

22 MR. LATTIN: Very straightforward and brief.

23 THE COURT: You do not have to include any of the
24 inclinations I just expressed. I said those because I

1 know I'll be reading this transcript and I just wanted to
2 put a placeholder for the thoughts right now, but you
3 don't have to include any of those inclinations.

4 MR. LATTIN: Okay. I will get it to you Monday
5 before close of business.

6 THE COURT: It is important to me that you include
7 a page limitation.

8 MR. LATTIN: A page limit -- I'm sorry, a page
9 limit on what?

10 THE COURT: Twenty pages.

11 MR. LATTIN: Connected to what the objections
12 would be?

13 THE COURT: Yes. You're going to file a petition
14 for this court, I believe, approve -- I don't know what
15 your client's position actually is going to be, Mr.
16 Lattin, in terms of approval or disapproval of this
17 Settlement Agreement, but anybody who objects -- anybody
18 who wishes be to be heard on the approval or disapproval,
19 I need them to write it in 20 pages or less.

20 MR. LATTIN: Okay. Thank you. I will -- I will
21 put that in the order.

22 THE COURT: Okay. Now, to Mr. Hosmer-Henner and
23 Mr. Robison, can you improve my oral pronouncement in
24 Mr. Lattin's order in any way, not substantively but

1 procedurally?

2 MR. ROBISON: Your Honor, I have nothing to add.

3 THE COURT: Mr. Hosmer-Henner?

4 MR. HOSMER-HENNER: Your Honor, I believe I
5 understand that you are considering setting that approval
6 hearing separately from the motion that is currently at
7 issue with respect to the validity of settlement?

8 THE COURT: That's a good suggestion. Why don't
9 you in the order identify the approval hearing date now,
10 Ms. Clerk, after we go off record, if sometime in the
11 next couple of days you can organize an email
12 communication to include Wendy's counsel so that there is
13 a three-hour block of time set aside for a hearing on
14 whatever is filed.

15 MR. HOSMER-HENNER: Then, your Honor, I have two
16 additional thoughts or suggestions. The first is if you
17 are inclined to preliminarily approve the Settlement
18 Agreement, then the next question becomes not a petition
19 from the trustees' position or objection and then a
20 continued motion practice, but just like in a class
21 action settlement, a preliminarily approval and then all
22 interested parties could object by a certain date, I
23 think that will be our preference with respect to
24 procedure.

1 The other option would be rather than have all
2 interested parties file their support in favor of the
3 approval or disapproval by a certain date, that it might
4 be preferable just to have Todd and Stan's willingness in
5 briefs in support of the Settlement Agreement filed after
6 the objections; otherwise, there's a significant amount
7 of motion practice that will become due all at one time
8 and I don't think it would be responsive to one another.

9 THE COURT: You're right. I don't want
10 oppositions and replies in the same way I didn't allow
11 them last time. What I anticipated doing -- but your
12 comments, sir, are well taken -- I want everybody's
13 initial papers seeking approval or disapproval, but then
14 we should also give everybody an opportunity for a
15 pre-hearing statement, 48 hours before the hearing, so
16 you can comment upon what you read. I don't want to go
17 into normal motion practice, oppositions and replies.

18 MR. LATTIN: Your Honor, may I inquire, do you
19 want that comment that you just referenced regarding
20 pre-hearing statement in the order?

21 THE COURT: Yes, sir.

22 MR. LATTIN: Okay. I will put that in. Thank
23 you.

24 THE COURT: Yes, sir. And, counsel, I kind of

1 want to see what Todd and Stan file, to be honest with
2 you, because if they file competing positions, then it
3 helps me understand whether they should continue their
4 services as trustees if they're litigating against each
5 other.

6 And I don't want to do Mr. Hosmer-Henner's analogy
7 of class action procedure of tentative approval. I think
8 we're -- I'll stick with what I ordered.

9 Should I set a time by which Todd decides whether
10 he files claims against Stan, breach of fiduciary duty
11 being the primary claim that was raised in his individual
12 moving papers?

13 MR. ROBISON: I would ask that you not, your
14 Honor. If the agreement is valid and it's performed, it
15 worked. We don't know whether it's going to be
16 performed.

17 THE COURT: Okay. I certainly don't want to
18 invite that litigation but I also don't want it to be
19 a -- I just don't want it to be an influence hovering
20 above us in the cosmos. Your moving papers were pretty
21 strong, Mr. Robison.

22 MR. ROBISON: Your Honor, if everybody complies
23 with the spirit and intent of that agreement and it's
24 funded, and Stan gives his interests, we're done. Unless

1 Wendy's lawyer is upset. It has to be funded.

2 THE COURT: Okay. Thank you, everybody.

3 MR. ROBISON: Thank you, your Honor.

4 THE COURT: Nice to see you.

5 MR. LATTIN: Thank you, your Honor.

6 THE COURT: Leave the session and that will end --

7 THE CLERK: Your Honor, do the exhibits need to be
8 admitted?

9 THE COURT: Thank you, Ms. Clerk.

10 You reference them a few times, Mr. Hosmer-Henner.
11 I'd be happy to just admit them as electronically
12 submitted, unless there's any objection.

13 MR. HOSMER-HENNER: Your Honor, we do have
14 objections to certain of the exhibits, evidentiary
15 objections, such as the text messages that we think were
16 in violation of the settlement privilege.

17 Our preference is that we submit it -- it was kind
18 of an awkward procedural situation because we included
19 the exhibits for your reference with regard to this
20 limited motion. My preference is not to seek admission
21 of these exhibits at this time.

22 THE COURT: So let me acknowledge that the process
23 was influenced by our Zoom and our COVID pandemic;
24 otherwise, we wouldn't have this question. I'm not going

1 to admit any of them. Frankly, I didn't read anything
2 this morning that I hadn't previously read -- well,
3 excuse me. There was an email subsequent to Mr. Riley.
4 If you want to individually admit any document, file a
5 quick motion and we'll see if there's an opposition. You
6 probably, Mr. Hosmer-Henner, want to admit the email.

7 MR. HOSMER-HENNER: Your Honor, we included a
8 declaration from Stan with respect to that email. If
9 this were decided to the motion papers without a hearing,
10 we wouldn't go through the process of admitting these
11 exhibits. So my question is just whether in order for
12 you to consider them as part of this motion practice we
13 need to formally admit them as evidence in the case.

14 THE COURT: They are not admitted, Ms. Clerk.

15 MR. ROBISON: Your Honor, with regard to the
16 procedure, we attached exhibits to our moving papers in
17 our oppositions and they're addressed by various parties
18 in the briefing. And then we have a list of exhibits
19 which includes the same things. Is your order excluding
20 admissibility of the exhibit list, how does that affect
21 what we've attached to our briefs?

22 THE COURT: Not at all.

23 MR. ROBISON: Thank you.

24 THE COURT: Not at all. I just have 22 exhibits

1 that were submitted in advance of this hearing. They're
2 part of the court record but I'm just not going to
3 formally admit them. I am not excluding in any way the
4 exhibits that were attached to the moving papers which,
5 counsel, you know I read. I referenced them in my order.
6 I just don't know what they are.

7 MR. ROBISON: Thank you.

8 THE COURT: All right. Anything else?

9 MR. ROBISON: Nothing.

10 MR. LATTIN: Nothing, your Honor.

11 THE COURT: The court will leave the session.

12 Good day to all of you.

13 (At 10:50 a.m., court adjourned.)

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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4

5 I, ERIN T. FERRETTO, an Official Reporter
6 of the Second Judicial District Court of the State of
7 Nevada, in and for the County of Washoe, DO HEREBY
8 CERTIFY:

9 That I was present in Department No. 15 of
10 the above-entitled Court on WEDNESDAY, OCTOBER 14TH,
11 2020, and took verbatim stenotype notes of the
12 proceedings had upon the matter captioned within, and
13 thereafter transcribed them into typewriting as herein
14 appears;

15 That the foregoing transcript is a full,
16 true and correct transcription of my stenotype notes of
17 said proceedings.

18 That I am not related to or employed by any
19 parties or attorneys herein, nor financially interested
20 in the outcome of these proceedings.

21 DATED: This 2nd day of November, 2020.
22

23 /s/ Erin T. Ferretto

24 ERIN T. FERRETTO, CCR #281

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2 151 County Estates Circle
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF WASHOE

7 HONORABLE DAVID A. HARDY, DISTRICT JUDGE

8 -o0o-

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10 In the Matter of the Case No. PR17-00445
Administration of the
11 SSJ's ISSUE TRUST Dept No. 15

12 _____/
13 In the Matter of the Case No. PR17-00446
administration of the
14 SAMUEL S. JAKSICK, JR., Dept No. 15
FAMILY TRUST
15 _____/

16

17

18 TRANSCRIPT OF PROCEEDINGS

19 PETITION FOR INSTRUCTIONS REGARDING SETTLEMENT AGREEMENT

20 NOVEMBER 19, 2020

21 RENO, NEVADA

22

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24 REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP

25 JOB NO. 690103

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A P P E A R A N C E S

FOR TODD B. JAKSICK,
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TSS, LTD., AND DUCK LAKE
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FOR TODD B. JAKSICK AS
CO-TRUSTEE OF THE SAMUEL
S. JAKSICK, JR. FAMILY
TRUST AND AS TRUSTEE OF
THE SSJ'S ISSUE TRUST,
AND STANLEY JAKSICK AS
CO-TRUSTEE OF THE FAMILY
TRUST:

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A P P E A R A N C E S
(CONTINUED)

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ALSO PRESENT:

TODD JAKSICK
STANLEY JAKSICK
WENDY JAKSICK
ALEXI JAKSICK FIELDS
LUKE JAKSICK
MICHAEL KIMMEL
KEVIN RILEY

1 RENO, NEVADA, THURSDAY, NOVEMBER 19, 2020, 9:00 A.M.

2 -o0o-

3 THE COURT: Good afternoon. This is PR17-00445.
4 I'm Judge David Hardy. We are conducting this proceeding
5 through our Zoom technology in light of our COVID pandemic.

6 The issue before the Court is a Petition for
7 Instructions filed on November 3rd, 2020, by Mr. Lattin and
8 others. There have been various responses.

9 I have read my order of September 22nd setting the
10 hearing that occurred in October, I have read the entire
11 transcript of the hearing from October, and I have read all
12 subsequent filed papers. I have a list of questions, but I
13 have decided to begin with the attorneys.

14 Mr. Lattin, do you wish to be heard on your
15 petition? Let's for our reporter, excuse me, Mr. Lattin,
16 would all attorneys who intend to speak please make their
17 appearances.

18 MR. LATTIN: Good morning, Your Honor. Don Lattin
19 on behalf of the Petitioners.

20 MR. ROBISON: Kent Robison on behalf of Todd
21 Jaksick individually and as a beneficiary, Your Honor. Good
22 morning.

23 THE COURT: Good morning.

24 MR. HOSMER-HENNER: Adam Hosmer-Henner on behalf
25 of Stanley Jaksick.

1 MR. JOHNSON: Zach Johnson and Kevin Spencer on
2 behalf of Wendy Jaksick.

3 THE COURT: Thank you, Counsel. I do note that I
4 also see Co-Trustee Michael Kimmel and CPA, I don't mean
5 this disrespectfully, but bookkeeper or CPA Kevin Riley. In
6 an e-mail, he seemed to disclaim his CPA status on behalf of
7 the Trust because he was not preparing audited, because
8 there was a limitation on the work that he was doing.

9 And so I just want to acknowledge Mr. Kimmel and
10 Mr. Riley. I'm very delighted to see that they are
11 participating. I have scripted questions for them and
12 anticipate calling an evidentiary hearing in which they
13 appear as witnesses on the continuation of the Trustees'
14 service.

15 So I ask that Mr. Riley and Mr. Kimmel remain
16 present to observe, but I want to get to the Petition for
17 Instructions, which is the only issue before me this
18 morning. Mr. Lattin, to you.

19 MR. LATTIN: Thank you, Your Honor. As a result
20 of our October hearing and the order that you issued
21 relative to this matter, I filed a Petition for Instructions
22 which was executed and verified by Mr. Kimmel and
23 Mr. Jaksick as Co-Trustees. Mr. Stan Jaksick chose not to
24 execute the document.

25 The petition I believe is self-explanatory. It

1 asks for instructions relative to the Settlement Agreement,
2 and we are requesting that the Settlement Agreement be
3 approved subject to the funding conditions that are in the
4 petition.

5 Again, I believe it's self-explanatory and there
6 have been numerous objections and documents that have been
7 filed, and I think I will defer to the Court and would
8 reserve any time that I have to respond to the various
9 arguments that are made by the Court, or made by other
10 counsel. Thank you, Your Honor.

11 THE COURT: Is it your expectation, Mr. Lattin,
12 that if I enforce this Settlement Agreement that that would
13 then bar any beneficiaries' challenge to that Settlement
14 Agreement as a breach of fiduciary duties?

15 MR. LATTIN: I'm sorry, I didn't catch, and it may
16 be my microphone, but I didn't catch your last --

17 THE COURT: Sure. Let me lean forward. Is it
18 your understanding and expectation as counsel for the
19 Trustees that if this Agreement is enforced by the Court, it
20 would then create a bar for any beneficiary to challenge the
21 Agreement as a breach of fiduciary duties?

22 MR. LATTIN: I believe that as a result of the
23 trial, excuse me, the breach of fiduciary claims were
24 brought and heard before the Court, at least as they applied
25 to Wendy and the other participants in the trial. So to the

1 extent that it was heard at the time of trial, yes, I do
2 believe those breach of fiduciary claims would be barred by
3 an approval by this Court.

4 THE COURT: I just want to summarize what I think
5 you have said. It's what I expected you to say, but I want
6 to understand the boundaries of your position. There were
7 pleadings and moving papers in discovery, extensive
8 expensive discovery, that was all conducted pretrial.

9 And the purpose for pleadings, the purpose for
10 motions that narrow evidence, that narrow claims is to
11 prepare for trial, and it's your position that an Agreement
12 reached just days before trial after all pleadings and
13 discovery have been completed folds into the jury's verdict
14 even though it was not part of the initial statement of
15 claims, because it was addressed in front of the jury. Is
16 that your position?

17 MR. LATTIN: It is my position, Your Honor, that
18 the Settlement Agreement was an issue at the time of trial.
19 There were both, evidentiary issues related to it. It was
20 ultimately admitted into trial. There was an extensive
21 chance for all counsel to examine and cross-examine the
22 participants to the Settlement Agreement and --

23 THE COURT: Was Wendy's counsel given a copy of
24 the Settlement Agreement before their last deposition of
25 Todd Jaksick?

1 MR. LATTIN: No, and I don't believe that the
2 Settlement Agreement had been entered into as of that time.

3 THE COURT: I'm not trying to foreshadow,
4 Mr. Lattin. I'm trying to understand, because I have read a
5 lot and I see a lot of people here, and what I don't want to
6 do is create unintended consequences.

7 I have a Settlement Agreement that may, may be
8 enforceable between its signatories, but it was impossible
9 for Wendy to identify, discover, and prepare claims, breach
10 of fiduciary claims related to that Settlement Agreement
11 because of its timing.

12 And you are asking because there was some
13 discussion, in fact, it was read into the record, it wasn't
14 given to the jury for deliberations, for their review during
15 deliberations, but it's your position because it was
16 referenced, witnesses were examined on it, that that folds
17 into the predicate fiduciary, breach of fiduciary claims?

18 MR. LATTIN: Yes. And in addition to what you
19 just stated, it was also argued by counsel for Wendy Jaksick
20 in the closing argument that the entry of the Settlement
21 Agreement was a breach of fiduciary duty, so I believe that
22 is also something that the jury had in front of it for
23 consideration of all of the claims against the Trustees
24 relative to breach of fiduciary duties.

25 THE COURT: And, Mr. Lattin, I don't disagree with

1 that. I understand and I remember, and I thank you for
2 helping me remember, but I'm just trying to construct the
3 due process that we typically see where there is notice and
4 an opportunity. So if I could construct a hypothetical just
5 to see where the boundaries are of your position.

6 Let's say that, let's say that an Agreement was
7 not reached four days before trial, but was reached during
8 the fourth day of trial. The breach of fiduciary claims
9 that existed before trial then fold over those new Trustee
10 actions that occurred in the middle of trial?

11 MR. LATTIN: If the opportunity was given to all
12 counsel at the time of trial to argue the terms of the
13 Settlement Agreement and to engage all of the witnesses with
14 regard to the Settlement Agreement and make arguments during
15 closing arguments, then, yes, I do believe that it would
16 fold into any settlement reached during the trial.

17 THE COURT: I never read appellate briefs. I
18 never read the appellate proceedings, but I have read in
19 your moving papers before me that Wendy has put the
20 Settlement Agreement in front of the Supreme Court as a
21 breach of fiduciary duties. Is that accurate, Mr. Lattin?

22 MR. LATTIN: Well, I have not -- we haven't
23 briefed yet. We are in the stage of the appellate process
24 where we have been directed to the Supreme Court settlement
25 program, and we currently have scheduled in the mid-December

1 time frame for a settlement conference, so there has not
2 been any briefing. There has been a case appeal statement
3 filed by everything -- by everybody where that has been
4 identified as an issue, yes.

5 THE COURT: Okay. All right. So because I want
6 to, I want to make sure that I have the context, because I
7 will soon hear from Mr. Spencer who he is going to tell me
8 that he never had a chance to examine, discover, and
9 challenge the execution of the Settlement Agreement as a, as
10 a standalone breach of fiduciary duties.

11 But I did read, and you are confirming, that the
12 Settlement Agreement, whether the Settlement Agreement is a
13 breach of fiduciary duties will be tendered to the Supreme
14 Court based upon the trial proceedings. That's your
15 understanding; is that right?

16 MR. LATTIN: Yes, Your Honor, it has been raised
17 as an issue. To the extent that it is briefed, I'm not able
18 to say yet and maybe other counsel would be better able to
19 address that, but, yes, it has been raised as an issue in
20 the appellate process.

21 THE COURT: Okay. Thank you for answering those
22 questions.

23 Who wishes to go next, Mr. Robison or
24 Mr. Hosmer-Henner?

25 MR. ROBISON: Your Honor, I just want to comment

1 on a procedure before trial, if I may.

2 THE COURT: Yes.

3 MR. ROBISON: I wasn't involved in negotiations,
4 but Stanley and Todd entered into the Settlement Agreement
5 shortly before trial. It was disclosed and Wendy's counsel
6 were notified, and then we agreed to, I think, another day
7 of deposition for Todd and he was examined about the
8 Settlement Agreement at that pretrial deposition.

9 And then we made a Motion in Limine that the
10 Settlement Agreement not be admitted in evidence or referred
11 to, because of the applicable evidence code. Evidence of a
12 compromise is inadmissible to prove liability. The Court,
13 as you know, said that may be, but it is relevant to bias.

14 And we had some examination, short examination by
15 Wendy's counsel of Stanley concerning the Settlement
16 Agreement, but by the time we got back to Todd Jaksick in
17 the jury trial where he was called back to the stand, we
18 pretty much pulled our horns in on the admissibility of the
19 settlement because there were kind of snippets and partial
20 references to it, and we said read it in, go for it.

21 And Mr. Johnson cross-examined Todd Jaksick
22 extensively about the attorney's fees provision, the
23 RaboBank provision, the Lake Tahoe house, so, yes, there was
24 notice and confrontation and then the appeal.

25 Notice of appeal, Your Honor, as I recall, is a

1 general notice reserving the right on behalf of Wendy to
2 appeal on anything that happened in that trial, and I'm not
3 sure what the docketing statement says in that regard.

4 THE COURT: I want to follow up with you, too.
5 Thank you, Counsel, for that. I'm thinking about a typical
6 lawsuit, acknowledging that this is atypical.

7 In a typical lawsuit a plaintiff perceives a
8 grievance based upon events or facts that predate that
9 perception. There is a car accident first, for example, and
10 then the plaintiff thinks, wow, I just experienced a car
11 accident.

12 And then having received facts or events
13 possessing the perception, the plaintiff makes the decision
14 to file a lawsuit. And the lawsuit says to the defendant,
15 you have done A, B, and C and you were wrong.

16 The defendant receives that lawsuit and says, wow,
17 I didn't do A, B, or C, so it files an answer denying that
18 it did A, B, or C, and then the attorneys go into discovery
19 and it takes a long time and it's expensive and they examine
20 whether A, B, or C had happened.

21 And then at some point before trial all discovery
22 ends, and then the attorneys approach the Court and say,
23 well, let him talk about B, but not A, because A's expert
24 isn't supported by C.

25 We have this Agreement, or not Agreement, we have

1 this process so that as we go into the first day of trial,
2 we harken back to the petition that established the claims
3 for relief, the underlying facts. And I should add in that
4 sequence that for very good civil attorneys, I get Motions
5 to Dismiss after every service of complaint before
6 preparation of the answer where they say, no, I want to test
7 the sufficiency of this pleading.

8 I have just set up a very generalized statement of
9 process that occurs in our lives in contrast to what I'm
10 seeing here, which is we have a, we have an event. We have
11 a perception, consultation with counsel, the decision to
12 file a claim, identifying the claim, litigating the scopes
13 of the claim and going into discovery.

14 And then four days before trial after all of that
15 has happened there is an event, which you are telling me is
16 kind of subsumed by the trial verdict because it was
17 mentioned, and more than mentioned to be fair to Mr. Robison
18 and others, it was more than mentioned. It was vigorously
19 argued and examined. I acknowledge that.

20 But it just seems atypical, that's why I'm pausing
21 on all of this, and now I'm going to invite you to respond
22 in any way you wish, Mr. Robison, and then invite you to any
23 other comments you might have about the Petition for
24 Instructions.

25 MR. ROBISON: Thank you, Your Honor. It's evident

1 obviously where the Court is coming from and that is whether
2 or not there was adequate notice for Counter Petitioner
3 Wendy Jaksick to confront the implications and effect of the
4 Settlement Agreement.

5 We are encouraged by the Nevada Supreme Court and
6 our District bench to pursue settlement, and we made all of
7 these arguments at the trial, that we tried very hard and
8 very long to settle all of the cases, all of the claims, and
9 we went to a settlement conference with Wendy's counsel and
10 spent I think more than one day at least trying to settle.

11 Settlement is good. We have been told that by our
12 judicial officers. And when Todd and Stanley settled, the
13 issue then is whether or not Wendy had adequate opportunity
14 to challenge that settlement and they had it and they
15 presented argument about it.

16 But, more importantly, Your Honor, recall the
17 procedure that any party can seek to amend their pleadings
18 during trial to conform to the evidence. Although Wendy did
19 not do that, that whole trial proceeded as though she had.

20 So I don't want to say no harm, no foul, but they
21 had notice, they had an opportunity to challenge, and they
22 did, and it was as though we proceeded on a stipulated basis
23 that she admitted in her counter petition to include a
24 breach of fiduciary duty on the Settlement Agreement itself.

25 THE COURT: What about, you mentioned Wendy as a,

1 as a proper noun and then you used them as a pronoun and I'm
2 thinking we were focusing on Wendy, but I have now heard
3 from Luke Jaksick through counsel. I have heard from
4 Alexi Smrt Fields, no disrespect, you know, I'm conflating
5 her names a little bit with all respect to her, but I have
6 heard through her pro se.

7 Did Luke have an opportunity as a beneficiary of
8 this Trust to present his challenge to the Agreement as a
9 breach of fiduciary duties?

10 MR. ROBISON: Not to my knowledge, and I would say
11 as far as I know the answer is no, except for the fact that
12 my client testified to the jury that, yes, there was a
13 Settlement Agreement, but it was subject to Court approval.

14 And as Mr. Hosmer-Henner has pointed out, there
15 were conditions precedent and, first of all, did the jury
16 trial essentially vitiate or change the material terms of
17 the Settlement Agreement. Secondly, whether your order on
18 the equitable claims changed the landscape of the Settlement
19 Agreement to such an extent that it materially changed the
20 terms of the settlement.

21 That process went on for over a year and we didn't
22 hear from Luke. We didn't hear from Wendy or Wendy's
23 counsel about whether or not conditions precedent affected
24 them.

25 And we had some disagreement about the effect of

1 any, or whether Court approval was necessary, but the
2 mediation, the Settlement Agreement required mediation. I
3 wasn't involved, but my understanding is that Stanley and
4 Todd did pursue mediation on the Settlement Agreement
5 itself. It didn't work and here we are.

6 But we believed, I did and my client did, that
7 when we testified about that Settlement Agreement, it was
8 designated as a matter that would be taken up in the future
9 and you would be asked to approve that settlement.

10 Was Luke and Alexi involved in that, no, but now
11 that they are beneficiaries, the difference, Your Honor, is
12 that they were not parties to the litigation. But you --

13 THE COURT: I am so embarrassed, but welcome to
14 our Zoom pandemic. Just at the time we start court, I have
15 a lawn service who is running a blower and a trimmer right
16 behind me and I can barely -- I'm going to ask them to go to
17 the backyard, if you will just please be at ease.

18 (Whereupon a recess was taken from 9:22 a.m. to 9:23 a.m.)

19 THE COURT: Please continue.

20 MR. ROBISON: My point is, Your Honor, that the
21 parties had lined up before we started the jury trial,
22 Stanley and Wendy and Todd, but our most recent hearing is
23 when the Court said I want a briefing, and I want a hearing,
24 and I want that to be an opportunity for the beneficiaries
25 to be heard.

1 In effect, this is the first time that the
2 beneficiaries have then said come on in and give us your
3 arguments about whether it should be enforced, approved or
4 not.

5 But the conditions as you pointed out, first of
6 all, could not have been fulfilled until your order, your
7 decision on equitable claims was presented in this case, and
8 then there was a mandatory requirement in the Settlement
9 Agreement to mediate.

10 So did they have an opportunity to appear at
11 trial, I don't know, Your Honor. By they, I mean Luke and
12 Alexi. I don't know. But things have changed over the year
13 and a half from the time we entered into the Settlement
14 Agreement and got a jury verdict.

15 The dynamics have changed with regard to who the
16 direct beneficiaries are. It's always been my position that
17 Alexi was paid, that she got her disbursement, but I'm not
18 going to go there, because I lack sufficient knowledge to
19 really comment on that. But I hope I have answered the
20 Court's questions with that long-winded explanation.

21 THE COURT: It's not long-winded and I appreciate
22 it. I'm going to continue to push a little bit, always
23 mindful that I do not want to advocate. Whenever I
24 intervene in this way, it's because I'm searching and
25 struggling and wrestling with the concepts.

1 I'm going to hear soon that the Settlement
2 Agreement between Todd and Stan was a breach of fiduciary
3 duties for a variety of reasons. One such reason is that
4 they agreed amongst themselves that their individual
5 attorney's fees would be paid in some measure by Family
6 Trust corpus.

7 And now I have Luke whose image is before me who
8 didn't have an opportunity to confront that fact, that
9 provision within the Agreement. And it appears now that
10 whatever share Luke is entitled to of his mother's interest
11 is unfunded and may not become funded.

12 He has the right I would think to say, to at least
13 allege when Todd and Stan decided to pay their individual
14 attorneys, not their Trustee attorneys, they used my money
15 to do so, that affects me, and I have a right to claim that
16 is error and maybe even a breach.

17 That's what I'm wrestling with, is I can see this
18 Agreement being enforceable by and between Todd and Stan,
19 but I'm not sure whether I'm prepared today to issue a
20 preclusive order that prevents anyone else from challenging
21 the Agreement. That's why I started with the question I did
22 with Mr. Lattin. That's really the heart of one of my
23 concerns today.

24 So I'm happy to have you respond, Mr. Robison, or
25 I will turn next to Adam Hosmer-Henner.

1 MR. ROBISON: I will defer to Mr. Hosmer-Henner.

2 Thank you, Your Honor.

3 THE COURT: Would you walk through, before I lose
4 you, Mr. Robison, would you walk through, your response
5 included several e-mails where you resuscitated this idea
6 that Stan is not, is still not being as cooperative with the
7 disclosure of information that he should be.

8 Do you want to emphasize or provide any argument
9 on that, because I have read these e-mails and it seems that
10 it's still unclear to me about whether Stan is doing
11 everything he can through Mr. Riley to produce information
12 necessary to close down the Family Trust.

13 MR. ROBISON: Well, Your Honor, I left the
14 October 14th hearing with my tail between my legs and
15 somewhat chagrined and I was very concerned as an officer of
16 the Court about what had happened that day.

17 I have been around a little bit and those kind of
18 accusations have never been made about me in almost five
19 decades of practice, so I wanted to know what actually
20 really happened, and rather than have Mr. Riley invoke some
21 kind of accountant privilege and not talk to me, I asked
22 Todd to clarify that immediately.

23 And my interpretation of the clarification that
24 Mr. Riley has provided is twofold. One, when we have wanted
25 to see the financial statements of Montreux Development,

1 Toiyabe, and ALSB, we know lots have been sold and money has
2 been generated and expenses have been paid, but we have not
3 seen that.

4 What we have seen instead is that there is a
5 valuation in the Trust's financial statement of Toiyabe.
6 The 50 percent owned by the Family Trust has a value of
7 \$2.5 million according to the 2019 financial statements.

8 That's good. That's an important asset. That's
9 one that can be used to hopefully be liquidated and
10 distributed to the beneficiaries or fund this Settlement
11 Agreement, but, more importantly, how was the \$2.5 million
12 derived? What sales occurred? What lots are still for sale
13 and what is the plan?

14 We don't know and, as far as I know, Mr. Riley has
15 confirmed that he has not been given permission yet to
16 disclose the financial affairs of a company 50 percent owned
17 by the Family Trust.

18 And so that's why we have taken the position,
19 Your Honor, yeah, please approve the Settlement Agreement,
20 but exercise your jurisdiction and discretion to make it
21 happen and benefit the parties to whom, or parties to the
22 contract at least, but the Family Trust also has a vital
23 stake in what these disclosures are, I think.

24 You would think that if you own 50 percent of a
25 company that's involved in selling lots at Montreux you

1 might get the opportunity to know what's going on on a
2 day-to-day basis operational.

3 Where did the \$2.5 million come from? We don't
4 know and we just need clarity on that so this all can go
5 forward, both on the distribution side and on the Settlement
6 Agreement side.

7 So all I know is what was exchanged between Todd
8 and Kevin Riley from October 14th through November 3rd, and
9 I remain as confused as the Court, Your Honor.

10 THE COURT: Well, that really taps into some
11 language I included in my September 22nd order. How does
12 this Family Trust wind up if it doesn't have access to its
13 ownership interests?

14 And Mr. Hosmer-Henner did a good job during the
15 hearing saying we don't have to liquidate and give
16 distributions in cash. We can carve up entity interests,
17 but I'm still really concerned about how this Family Trust
18 winds up its affairs if it owns something it doesn't know
19 about.

20 All right. Mr. Hosmer-Henner.

21 MR. HOSMER-HENNER: Your Honor, this case is
22 obviously atypical because last hearing I was arguing
23 against Todd and Don, excuse me, Mr. Robison and Mr. Lattin.
24 Now it seems I'm arguing against the other side of the
25 counsel, and I was agreeing with Mr. Robison until we went

1 back to that issue that was resuscitated from the last
2 hearing.

3 I want to be clear about those e-mails, which I do
4 believe are hearsay, and Mr. Riley is here. I have my own
5 hearsay e-mail from Mr. Riley, if we are going to introduce
6 these type of manufactured one sided type depositions of an
7 accountant, where Mr. Riley says that he hasn't prepared or
8 asked anyone to prepare anything since April because he has
9 been busy on other matters.

10 And so this idea that Stan has refused to share
11 information, Mr. Robison's statement by Todd from the
12 petition talks about those e-mails from Kevin Riley,
13 remember that predated the subsequent e-mail in which
14 Mr. Riley clarified to Todd that Stan actually has agreed to
15 release that information.

16 And in the document that was submitted to you,
17 Your Honor, it says the e-mails, and this is on page 3, they
18 confirm, the e-mails confirm that Stan has instructed
19 Mr. Riley, the accountant for the Family Trust, not to share
20 financial records of MDG with the Co-Trustees of the Family
21 Trust.

22 And one Co-Trustee of the Family Trust is
23 instructing the accountant for MDG in the Family Trust to
24 withhold crucial financial information about the assets of
25 the Family Trust from the other Co-Trustees. This kind of

1 concealment is irresponsible.

2 What Mr. Riley confirmed subsequently is that Stan
3 authorized the release of any information to the Family
4 Trust about Family Trust entities that Todd authorized for
5 his entities. So his position was as long as it's the same,
6 I'm willing to release it, and Mr. Riley confirmed that.
7 And then Mr. Riley confirmed in his e-mails that Mr. Robison
8 attached to the subsequent message that he hadn't requested
9 and been denied anything.

10 The one issue, Your Honor, is granular and
11 Mr. Robison again misstates when he says that, and it's just
12 another error that was repeated in the previous briefing by
13 both him and Mr. Lattin that the Family Trust owns
14 50 percent of Montreux Development Group. It does not.

15 The Family Trust owns 50 percent of Toiyabe, which
16 then in turn owns Montreux Development Group and that's a
17 significant difference. That would otherwise ignore this
18 ownership structure and say that the Family Trust has the
19 ability to know the day-to-day operations of the actual
20 entity that's selling lots, Montreux Development Group.

21 We don't agree with that, but Toiyabe is an asset
22 50 percent owned by the Family Trust, and Stan has
23 authorized the release of that information to the Family
24 Trust on the terms Mr. Riley presented.

25 Again, we think that issue is dead and buried.

1 Mr. Riley's e-mails, which should not be considered, are
2 basically Interrogatories presented by Todd, which are
3 questionable just from the beginning that he didn't include
4 Stan in those e-mails, that he was trying to confirm a
5 conversation that he had.

6 There is hearsay within hearsay and it just, it
7 invites, it invites much more confusion than it actually
8 answers. And until there is an actual piece of evidence
9 from Mr. Riley saying I have requested this from this Family
10 Trust entity from Stan, I think that we need to put that
11 issue to bed for the present.

12 And the last granular clarification I need to make
13 is that Mr. Riley also serves as the accountant for some of
14 these non Family Trust entities or entities that Stan holds
15 personally or that show up on Stan's tax returns.

16 So there is a significant difference between
17 requesting something of Mr. Riley about an entity that's
18 either outside the Family Trust or that's controlled by,
19 that Mr. Riley doesn't serve in a Family Trust capacity.

20 It's basically asking someone else's accountant to
21 provide you that information. And without getting into
22 those granular details, you know, several of those requests
23 were extremely objectionable.

24 But I want to talk about the procedure and why we
25 are here, and the question that you asked Mr. Lattin is

1 extremely significant, and it really is what happens to the
2 claims of the beneficiaries if this Court approves the
3 Settlement Agreement.

4 I have been thinking a lot about this, Your Honor,
5 and I don't want to go too academic at this point, but I
6 want to talk a little bit about kind of the actual procedure
7 and then about the Trust law and procedure.

8 The first is, I think it's important to remind the
9 Court and all parties that this settlement was not reached
10 in a smoke-filled room, so to speak. The Court reserved I
11 believe the first week of trial for settlement discussions
12 and then stated that it didn't, it wasn't ordering the
13 parties to go to a settlement conference, but would
14 encourage the parties to continue settlement discussions up
15 until the eve of trial.

16 And without breaching any of the settlement
17 privilege, Your Honor, Mr. Robison undercounted by several
18 days I think in an effort to be conservative how many days
19 we actually spent trying to settle this case with all of the
20 attorneys in this case. It was multiple days on multiple
21 occasions and multiple conversations outside of the formal
22 mediation process.

23 So while settlement was reached on the eve of
24 trial between two of the parties, a global settlement was
25 potentially being negotiated up until the eve of trial as

1 well.

2 I think that's important because it shows that the
3 Settlement Agreement was, this particular, the terms of this
4 particular Settlement Agreement weren't available to Wendy
5 and her counsel. Excuse me for the lack of, for the
6 familiarity with first names, but I will follow this Court's
7 procedure.

8 And then once that Settlement Agreement was
9 presented to Wendy's counsel, it did absolutely become part
10 of the jury trial, and I will certainly be happy to be
11 corrected, but I don't remember a Rule 15 motion asking to
12 conform the case to the evidence, but it certainly was
13 presented that way.

14 And I also don't remember a request for a
15 continuance of trial or further discovery on the Settlement
16 Agreement in terms of whether they can prove their breach of
17 fiduciary duty claims based on that Settlement Agreement.

18 There is a real important reason, Your Honor, why
19 that actually matters, and that's the Settlement Agreement
20 isn't an abstract Settlement Agreement that's entered about
21 issues that are not presented to the other parties. The
22 Settlement Agreement addresses the indemnification claims,
23 the Lake Tahoe house, the other issues that have been
24 extensively litigated over in the case and that on which an
25 unimaginable amount of discovery was conducted.

1 If there was something in there that actually
2 presented an issue that was new or novel a discovery request
3 could have been made at that point or that the parties
4 could, Wendy's counsel could have requested to be better
5 informed on that issue, but they didn't, because those
6 issues have been involved in this discovery process all
7 along.

8 And I do want to note specifically on the
9 attorney's fees that you raised about the payment of
10 individual attorney's fees. In the initial petitions where
11 they, where they showed the financial statements as part of
12 those petitions way back in 2017, and certainly if not then,
13 certainly in the 2000, it's not in the 2016 financial,
14 excuse me. Certainly in the 2017 financials there were
15 claims by Todd Jaksick for his individual attorney's fees
16 under his indemnification claims, under his Indemnification
17 Agreement as far back as 2017.

18 So the payment of individual attorney's fees by
19 the Trustees related to this litigation were at issue from
20 the very, very first moment of this case.

21 Moving on to my last point about this procedure,
22 because these claims were presented to the jury in terms of
23 a breach of fiduciary duty claim and there was no objection
24 or argument from our side that there shouldn't have been a
25 breach of fiduciary claim based on the Settlement Agreement

1 for any number of reasons, such as it hadn't been approved
2 by the Court yet.

3 And then there were another few months where
4 Wendy's attorneys then included the entering of the
5 Settlement Agreement and the terms of that Settlement
6 Agreement as a portion of their claims in the equitable
7 trial, and they did not argue at that point that the jury
8 verdict was rendered infirm as a result of a failure to
9 obtain discovery or other information about the Settlement
10 Agreement prior to the jury trial.

11 There was also a motion to alter or amend, and I
12 don't believe that there was an argument there that the jury
13 verdict was infirm because of a failure to conduct full
14 discovery.

15 And that leaves us with what we are actually doing
16 today, and Your Honor's question to Mr. Lattin going back
17 full circle was does this prevent the beneficiaries from
18 bringing a lawsuit about the terms of the Settlement
19 Agreement, and our position is that they already have and
20 that specifically Wendy Jaksick already has, and both of the
21 statements by her two, her son and daughter, indicated that
22 they were well apprised of the case throughout.

23 That claim is now at the Supreme Court. And if
24 the Supreme Court decides that the breach of fiduciary duty
25 claim, the Supreme Court can decide, one, that the breach of

1 fiduciary duty claim should not have been denied or
2 rejected, or there wasn't a basis to reject it by the jury
3 and so that should be reinstated and it was a breach of
4 fiduciary duty to enter into the Settlement Agreement, or
5 the Supreme Court can decide that pursuant to one of her
6 requests that Wendy is entitled to a new trial because she
7 didn't have the opportunity to conduct discovery on the
8 Settlement Agreement even though we believe that issue has
9 been waived on no less than six occasions.

10 But if they decided that, that's an issue for the
11 Supreme Court, and that's why we have some issue with this
12 procedure for this hearing, because we filed on behalf of
13 Stan a Motion to Enforce the Settlement Agreement between
14 Todd and Stan, just like Your Honor said.

15 How can this Court approve that Settlement
16 Agreement and prevent Wendy from bringing a breach of
17 fiduciary duty claim on that Settlement Agreement when she
18 has already brought that breach of fiduciary duty claim and
19 that's already pending before the Supreme Court?

20 So we don't have an exact meeting of the minds
21 with Mr. Lattin about what is necessary for the Settlement
22 Agreement, but at a minimum our position would be that the
23 Settlement Agreement is valid, it's enforceable, and Todd
24 and Stan can continue to work on it.

25 But whether that bars Wendy from asserting the

1 claims that are already before the Supreme Court or any
2 other beneficiary from suing Todd or Stan for a breach of
3 fiduciary duty for that Settlement Agreement is perhaps an
4 issue for another day.

5 But what's not really at issue is whether this
6 Settlement Agreement has been approved or constructively
7 approved by both the jury and the equitable trial.
8 Certainly, this Court could have ruled upon the Settlement
9 Agreement at the time that it decided the equitable verdict
10 or made a decision on its final order concerning the
11 Settlement Agreement. It didn't and that issue is now
12 pending before the Supreme Court.

13 So with those comments, I think that's the
14 approach to procedure that I would like to offer to the
15 Court for the moment.

16 MR. ROBISON: Your Honor, may I just respond on
17 one element of that argument?

18 THE COURT: Yes.

19 MR. ROBISON: Thank you, Your Honor. This is the
20 second time that we have been accused of trying to mislead
21 the Court by suggesting that Montreux is owned 50 percent by
22 the Family Trust.

23 In our first filing, Your Honor, Exhibit 1 to our
24 Response to the Motion to Enforce is an organizational chart
25 that we submitted to the Court, and that organizational

1 chart that we submitted to the Court shows that Montreux
2 Development Company, the one dealing with all of these lots,
3 is owned 96 percent by Toiyabe.

4 So I take umbrage to the fact that, once again, I
5 have been accused of misleading the Court. It is clear
6 beyond any question that Montreux Development Group is owned
7 96 percent by Toiyabe, and Toiyabe is owned 50 percent by
8 the Family Trust.

9 And after all of this, what we have are financial
10 statements that show that the Family Trust's interest in
11 Toiyabe is \$2.5 million, but where is the income?

12 And the Settlement Agreement should be approved
13 and it should be funded and everybody should work together
14 in good faith and get it done.

15 And as Mr. Hosmer-Henner says, if there is
16 litigation, if there is challenges, we can raise
17 res judicata claim preclusion and see where the chips fall,
18 but I wanted to clarify that comment, Your Honor. Thank
19 you.

20 THE COURT: Mr. Hosmer-Henner, I want to follow up
21 with something that you said. You ended with essentially
22 this Court's jurisdiction to entertain an issue that is
23 presently before the Supreme Court.

24 And when this began, when the efforts for Court
25 enforcement and approval of the Settlement Agreement began,

1 there was argument and Points and Authorities about this
2 Court's jurisdiction, and I concluded that I had
3 jurisdiction to enforce if it was collateral to the appeal.

4 And I just must say I'm a little uncomfortable
5 right now considering issues that the Supreme Court may also
6 be considering. Do you have any thoughts about that?

7 MR. HOSMER-HENNER: Well, we filed a Motion to
8 Enforce and we believe that is collateral. If that Motion
9 to Enforce, and we believe that has been granted or
10 constructively granted at this point, if that's approved
11 then the Supreme Court carries on doing exactly what they
12 are doing now, which is a review of the record.

13 THE COURT: Yeah, but your Motion to Enforce is
14 more than pursuing your client's interests in the Agreement.
15 The underlying, the concomitant effect, is it not just as it
16 enforces your client's rights, but it prevents other
17 beneficiaries from asserting a breach of fiduciary duties
18 related to that Settlement Agreement?

19 MR. HOSMER-HENNER: Your Honor, I don't agree with
20 that. We actually had a very limited Motion to Enforce for
21 that reason, because how could I -- let me step back with
22 kind of a hypothetical of one of the ones that you raised.

23 One of the grounds that Wendy's attorneys are
24 challenging this Settlement Agreement is that the
25 Indemnification Agreements are a product of fraud. That

1 issue was tried to the jury and to the Court at the
2 equitable trial.

3 How can we then have a separate proceeding about
4 whether the Settlement Agreement is a product of fraud
5 because it relies on, or the Indemnification Agreements are
6 fraud without adjusting what the jury and this Court already
7 found and which are already at the Supreme Court?

8 To the contrary, if this Settlement Agreement is
9 enforced as bilateral between Todd and Stan and the parties
10 are going forward, and the terms of which we believe have
11 been constructively approved through that verdict, then the
12 Supreme Court can analyze that in terms of whether the jury
13 and this Court were correct or incorrect.

14 On the other hand, if the Settlement Agreement is
15 delayed, postponed, judgment is reserved upon it, then the
16 Supreme Court is going to be issuing an affirmance of
17 something that we believe has already been decided and then
18 this Court's decision should naturally follow.

19 But if it refuses to enforce the Settlement
20 Agreement, that's when the Supreme Court's jurisdiction
21 actually is in play, because we think that would be
22 undermining an issue that's on appeal.

23 So if this Court were to reject the Settlement
24 Agreement, then that -- And the reason, it's kind of part
25 and parcel, the reason we believe it can't is because Wendy

1 has a claim for breach of fiduciary duty that's pending at
2 the Supreme Court.

3 And so this Settlement Agreement, I think it's
4 very important, Your Honor, and I don't want to go too deep
5 at this point, but, you know, there are terms in the
6 Settlement Agreement such as the payment of those, the
7 Jackrabbit capital calls.

8 We believe that's a limitation on the Jackrabbit
9 capital calls, but for this Settlement Agreement. Well,
10 even before the Settlement Agreement those Jackrabbit
11 capital calls were being paid and were part of the
12 litigation. That was done without Court approval.

13 So it seems very strange to now require Court
14 approval for paying fewer of those capital calls that were
15 then, that were both, one, done without Court approval prior
16 to litigation, two, were presented to the Court and jury and
17 ratified, and now just simply paying fewer of them.

18 So that's the jurisdictional procedural conundrum
19 we are in, but we think that the solution that this Court
20 already reached in its order, its preliminary order on the
21 Motion to Enforce Settlement Agreement is the right one,
22 which is to say that the Settlement Agreement is valid and
23 enforceable as between Todd and Stan and that the ability of
24 the beneficiaries to challenge it is no more foreclosed as a
25 result of this Court's order than it was by the, by the

1 trial, the jury trial and the equitable trial.

2 THE COURT: I keep hitting your mute and unmute
3 button, Mr. Hosmer-Henner, thinking that it's my button, I'm
4 sorry. So if you are getting messages for me to mute or
5 unmute, they are not intended. Let me just focus on what
6 you said for a moment.

7 I believe you just said that you are asking the
8 Court to order that the Settlement Agreement by and between
9 Todd and Stan is enforceable and not a preclusive bar
10 against the beneficiaries' challenge to the Settlement
11 Agreement. That would be different than what you previously
12 argued, and I just want to pause on that, because I'm pretty
13 sure that's what you said.

14 MR. HOSMER-HENNER: Your Honor, I don't believe
15 that's different from what I argued, but I apologize if
16 there was confusion.

17 THE COURT: No, please don't apologize.

18 MR. HOSMER-HENNER: I'm saying that what we decide
19 today isn't an approval of a Settlement Agreement that bars
20 any challenges to the Settlement Agreement. That Settlement
21 Agreement was entered into as part of the trial, the jury
22 trial and the equitable trial, and was considered by both
23 the jury and this Court.

24 So I'm not asking for any more preclusive effect
25 as a result against third parties to the Settlement

1 Agreement, any more preclusive effect as a result of the
2 Settlement Agreement than was already established at the
3 time of the jury trial and equitable trial.

4 MR. ROBISON: Your Honor, may I add --

5 THE COURT: Hold on. I'm thinking and I'm going
6 to ask one more question and then I will come back.

7 Would you agree, Mr. Hosmer-Henner, that there is
8 a difference between enforceable and enforced, such that I
9 could enter an order that says the Agreement is enforceable,
10 but it will not be enforced until the appellate proceedings
11 are concluded?

12 MR. HOSMER-HENNER: Can you enter that order, of
13 course, Your Honor. Once this Agreement is deemed
14 enforceable, I'm not sure what the basis would be to hold
15 off on the enforcement of this Settlement Agreement until
16 after the appellate court ruled.

17 THE COURT: Well, one of the reasons I identified
18 in my September 22nd order, which is that if Wendy obtains
19 some relief, despite the language in the Agreement that
20 carves out the appellate outcome, the reality is if Wendy
21 obtains appellate relief, it disrupts Todd and Stan's
22 ability to comply with the Settlement Agreement.

23 We just have to wait to see what the Supreme Court
24 does, but there is a whole range of things the Court could
25 do that would resuscitate Wendy's position.

1 MR. HOSMER-HENNER: So, Your Honor, I would
2 counsel against that from the perspective of my client,
3 because this was a, this is a Trust that should have been
4 distributed from our perspective and it's a Trust that
5 essentially became distributable but for debts and other
6 obligations in 2013 and we are now in 2020 without the
7 beneficiaries receiving anything.

8 And there is a potential under that procedure,
9 Your Honor, for the appeal to go up to the Supreme Court,
10 the Supreme Court to grant one of her aspects of relief,
11 which is for a new trial, that new trial to be carried out
12 at some point in the future.

13 And so 2023 or 2024, 10 years after the passing of
14 Mr. Jaksick, we are still in litigation over this Trust, and
15 that means that Stan and Todd are not able to effectuate the
16 terms of their Settlement Agreement or they be potentially
17 adverse during that entire period.

18 The beneficiaries still have the ability to
19 continue their claims as adjudicated by the Supreme Court,
20 but to the extent that, there is no reason to prevent the
21 enforcement of the Settlement Agreement other than those
22 claims that are already pending on appeal.

23 So one example, Your Honor, is Stan's purchase of
24 the -- Well, one, I need to point out that many of these
25 terms of the Settlement Agreement have already been complied

1 with, so Stan and Todd withdrew their counter petitions.

2 Stan transferred \$325,000 to the Family Trust.

3 So pausing the operation of the Settlement
4 Agreement at this point would mean that certain obligations
5 have been enacted and carried through with, but not others,
6 which would leave one or both of the parties in an unfair
7 and unfortunate position.

8 But there are also other things that can be done
9 that would never be affected and each term is severable, so
10 there is the potential for each one of these terms to be
11 carried out without the Supreme Court affecting the
12 modification of the Agreement as a whole.

13 So while certain of these issues are presented by
14 the Court, just like a judgment can be effectuated while
15 it's on appeal, we think the Settlement Agreement, which is
16 on appeal right now, should be able to be both enforceable
17 and enforced during this interim period or else risk years
18 of tension, both tension between Todd and Stan as well as I
19 think an uncertainty that's harmful to all parties.

20 THE COURT: Mr. Robison.

21 MR. ROBISON: Your Honor, as you pointed out, we
22 are here on a collateral matter to the amended judgment over
23 which this Court has jurisdiction and asserted jurisdiction,
24 and the order we believe, and we looked at this very
25 briefly, you make on this case regarding approval is an

1 appealable order even if it's not already in the appeal.

2 THE COURT: That's a good point.

3 It's 9:55. Our reporter has been writing and we
4 have been talking fast. What I don't want to do is
5 interrupt the next attorney.

6 Mr. Collier, you are next on my screen and so I
7 was going to turn to you, but maybe I should not. I think I
8 should hear from Wendy's counsel before I hear from
9 grandchildren and their attorneys.

10 Mr. Spencer, will you be the one who addresses the
11 Court or will it be Mr. Johnson?

12 MR. SPENCER: Your Honor, I request permission to
13 split our time. I'm covering certain issues and then
14 Mr. Johnson will cover other issues, if that's okay with the
15 Court.

16 THE COURT: Yes.

17 MR. SPENCER: Okay.

18 THE COURT: If you are next, we are going to take
19 a seven minute break.

20 MR. SPENCER: Perfect.

21 THE COURT: In fact, we are going to take a nine
22 minute break. My computer says 9:56. Let's reconvene at
23 10:05. That way we can all stand, and particularly the
24 reporter, she can shake it out.

25 So I'm going to mute myself and I'm going to close

1 my video. Counsel, please mute yourselves and others so I
2 don't hear any unintended comments. 10:05.

3

4 (Whereupon a break was taken from 9:56 a.m. to 10:06 a.m.)

5

6 THE COURT: I share Mr. Hosmer-Henner's respectful
7 reference to first names. It's not meant to imply
8 familiarity. It's just easy with so many people.

9 Turning to Wendy's counsel, you may begin.

10 MR. SPENCER: Thank you, Your Honor. I want to
11 touch first on what Your Honor raised a moment ago regarding
12 due process, because I think that really underlies this
13 whole thing.

14 As cliché as it sounds, this Settlement Agreement
15 was really a Perry Mason type moment and we all know what
16 that means. It means a trial by ambush or by surprise.

17 And so harkening back, Commissioner Ayres heard
18 numerous hearings leading up to the trial and ordered many
19 documents to be produced. From December 14th, 2018, through
20 the trial documents started coming in to the tune of over
21 18,000 pages in the month leading up to trial and Your Honor
22 granted a short continuance to allow some more time to get
23 through those.

24 And then we find out about this Settlement
25 Agreement, and contrary to what I heard earlier, Todd was

1 not offered up for his deposition. I think, if I remember
2 right, Your Honor ordered that we had the opportunity to
3 depose him about the Settlement Agreement.

4 And during that deposition, we did not once, not
5 for a single second have a copy of the Agreement, and so we
6 were asking questions of Todd about the Agreement and really
7 it boiled down to, well, was it beneficial to Wendy and the
8 beneficiaries or was it not. Tell us what was beneficial
9 and what wasn't, et cetera, et cetera.

10 And then we get to the trial and we are looking
11 at, we are trying to find it in the transcript, but
12 Mr. Connot is confident and I am, too, that we raised this
13 as part of a request for a continuance, a motion for a
14 continuance. We heard earlier that we apparently didn't and
15 I can't even fathom that we wouldn't have raised that at
16 that time.

17 But, in any event, the trial went forward and
18 Your Honor was, had decided that the jury would not see the
19 contract, but that we could ask Stan about it primarily to
20 test his bias, and Your Honor mentioned that a moment ago.

21 And so we didn't have a chance to examine the
22 pleading before trial to change our pleadings to add it as a
23 cause of action and really we didn't get to challenge its
24 validity or even present whether it was a breach of
25 fiduciary duty at all in lieu of using it to respond to how

1 the Settlement Agreement changed the face of the trial.

2 We are going into the trial, leading up to it. We
3 are preparing for the trial and all the while Stan Jaksick
4 individually as a beneficiary of the Trust and as Co-Trustee
5 of the Family Trust is sitting on our side of the well of
6 the court.

7 Days, just days before the trial he switches over
8 and joins in with Todd as Co-Trustee and is against Wendy
9 and that completely changed the preparation. It was a
10 surprise. It deprived Wendy of due process.

11 And when we get down to the Agreement itself, we
12 are looking at what it did to the trial. It was manifestly
13 unjust and prejudicial to Wendy to have that happen on the
14 eve of trial.

15 But, in any event, we go forward and now what we
16 have is a hindsight analysis, which is, well, gosh, now we
17 know what the jury did, and I'm talking about the
18 Co-Trustees' side of the equation, and we like the jury's
19 verdict and now we want to capture everything we can
20 possibly capture and bring it within the confines of what
21 the jury decided.

22 But there was never any trial over the substance
23 of that Agreement, I don't disagree, and notwithstanding
24 that the jury heard some of the Agreement verbally, it never
25 had that Agreement in the jury room or the opportunity to

1 examine it or to analyze the effect, its effect on the Trust
2 and its beneficiaries.

3 And so fundamentally it seems certain that a
4 Settlement Agreement between fiduciaries that would be the
5 result of which would be a breach of fiduciary duty would
6 certainly be voidable, if not void, but it was presented to
7 the jury from the standpoint of Stan jumping sides. This is
8 his, this is why he is now biased. He was suing Todd and
9 now he is not because he has this Agreement. Just a few
10 examples of some of the things we didn't know.

11 And in presenting that and to show his bias
12 obviously that would be part of this trial and that would
13 be, on appeal that would be part of the due process
14 argument. But as far as trying the substantive issues of
15 the contract, its application, its effectiveness, et cetera,
16 that was not tried to the jury and they want it to be,
17 because they had this jury verdict, but it was just not.

18 We had accountings, two accountings were presented
19 to the Court through the end of 2017, and Your Honor will
20 recall we were requesting production of the 2018 accounting
21 and then later the 2019 accounting, although in February
22 of '19 that probably wasn't ready yet.

23 And Your Honor ruled that that's something for
24 another day because it was not something that had been teed
25 up properly at the time the trial was set to start in

1 February.

2 And so just like those issues that came after what
3 started this, the accountings through 2017 are held for a
4 later date, the validity and enforcement of the contract as
5 far as it being a breach of fiduciary duty or should I say
6 the claims for breach of fiduciary duty in relation to
7 entering the Settlement Agreement is something that could be
8 brought up later.

9 But the effect of Your Honor saying that it's
10 approved is going to essentially create a res judicata
11 argument relating to those claims, because we will hear at
12 every chance or every opportunity that the Honorable Judge
13 Hardy reviewed this Agreement and approved it and that will
14 even be heard or asserted at the appellate level and so
15 that's going to be the effect of finding that this Agreement
16 is approved.

17 But as far as it being tried by consent, there was
18 just no way for us to do that. For one, Your Honor has seen
19 the Petition for Instructions, which Mr. Hosmer-Henner
20 raised earlier requests that Your Honor approve it, but only
21 if there, if you also order a funding mechanism that would
22 allow the contract to become essentially effective or
23 performed.

24 Well, that's not an approval. That's a
25 conditional approval, just like the Agreement itself was

1 conditional on settling with Wendy that materially didn't
2 affect it or getting a jury, an equitable trial verdict that
3 didn't affect it.

4 This contract was conditional from the outset.
5 These two Co-Trustees knew when they entered into it that
6 these funding issues existed and they didn't have a path for
7 getting this thing funded. It was, in my view, it was an
8 Agreement to agree pending or depending upon what the jury
9 might do.

10 And here we are after the jury verdict and they
11 are asking Your Honor -- And prior to today Your Honor is
12 well aware they had, the Co-Trustees sued each other over
13 whether it was enforceable and there is assertions I think
14 that are still alive that part of the Agreement is not
15 enforceable, but part of it may be, and so that would
16 indicate that the Agreement itself in its whole would not be
17 approvable, but we didn't have the funding mechanism.

18 The other thing that we heard is, well, this
19 benefits Wendy or the beneficiaries, because it removes, for
20 instance, it removes Todd's homestead from the Indemnity
21 Agreement.

22 Well, the homestead shouldn't have been in the
23 Indemnity Agreement at all and that's something we contended
24 from the outset that that is not a protection that he was
25 entitled to based upon the guarantees that he did, and

1 certainly the indemnity does not kick in, in our opinion,
2 until there is a problem or someone trying to collect.

3 But we heard throughout the trial that the
4 Indemnity Agreement and its application, primarily its
5 application would have to be decided later by the Court.
6 And whether or not the jury decided that the Indemnity
7 Agreements were not a breach of fiduciary duty doesn't
8 really matter in the context of whether and how it should be
9 applied.

10 And we still don't know that and yet they are
11 making this, entering into this Settlement Agreement that
12 supposedly alters that indemnity and they call that a
13 benefit to Wendy. It just isn't. It's, in our opinion,
14 it's a breach of fiduciary duty.

15 But we were allowed to ask questions of Stan
16 regarding the Settlement Agreement in relation to his bias,
17 and as far as I'm concerned, at least the way I approached
18 the trial and understood that it would be presented, that
19 was all that we did.

20 And so whether it should be set aside as invalid
21 or is enforceable or not, the jury wasn't asked that and
22 that would have been something that would have been a
23 specific question to the jury and that certainly wasn't
24 presented.

25 But with that, Your Honor, I really wanted to

1 address the due process part of it, and I will pass the
2 baton now to Mr. Johnson to address a few more things
3 relating to the Agreement itself. We know Your Honor has
4 read all of the documents, so we won't belabor it. Thank
5 you.

6 THE COURT: I would like just everyone to pause
7 before I hear from Mr. Johnson. I want to find something in
8 the record here.

9 I'm looking at the Settlement Agreement, page 4,
10 paragraph III, you will all be familiar enough if I just
11 quickly recite it and you will know what I'm talking about.
12 It's the condition provision.

13 And toward the bottom of the page right above the
14 language about, "To the extent necessary, the parties will
15 seek and mutually cooperate," it provides, whether it's
16 contingency or condition I'm not sure, but it says this
17 Agreement is effective upon execution, but contingent and
18 conditioned upon resolution of the two cases through a
19 settlement that does not materially alter the terms or a
20 litigated resolution at trial in the lawsuit, and then here
21 is the clause, "not including appeals."

22 I wonder if you want to argue about what that
23 should mean to me in this decision. It appears that the
24 settling parties have indicated that their settlement is
25 effective upon the jury verdict and Court's decision on

1 equity, inequity, and it is enforceable regardless of the
2 appeal outcomes.

3 MR. SPENCER: That's right, Your Honor. And so we
4 know the first condition hasn't been met. No agreement with
5 Wendy has been reached as of today. And then addressing
6 that issue, we have this litigated resolution, which we
7 believe materially alters the terms of the Settlement
8 Agreement, which would destroy that condition completely.

9 But the not including appeals part sort of
10 addresses what you were talking about earlier is, you know,
11 if it goes up and Wendy is granted by the appellate court or
12 the Supreme Court a new trial or some part of it is
13 reversed, well, none of that according to this contract
14 matters.

15 But I think the fact that the, I guess there may
16 be some difference of opinion, but, in my opinion, that does
17 not alter the material terms of this Agreement, that has not
18 happened. The jury verdict and the equitable ruling has
19 materially altered the terms of this Agreement as indicated
20 in the Petition for Instructions itself.

21 So if we set aside the appeal and whatever the
22 result may be favorable to Wendy or favorable to the
23 Co-Trustees or not, it doesn't matter. What we look at now
24 according to its terms, Your Honor can make a decision about
25 whether those conditions are met and we don't have to wait

1 for the Nevada Supreme Court to make a ruling.

2 And so did the litigated result materially alter
3 the terms of the Agreement? According to the Petition for
4 Instructions, it says that they did not expect that that
5 would be something that would be ordered and it does change
6 the Agreement and so neither of those conditions are met,
7 which destroys the contract.

8 THE COURT: Well, I don't understand --

9 MR. SPENCER: I mean, the conditions or
10 contingencies that had to be met in order for it to be
11 binding were never met.

12 THE COURT: Twice you said that the Petition for
13 Instructions concedes that the verdict and equitable order
14 materially alter.

15 MR. SPENCER: Yes.

16 THE COURT: I'm sure Mr. Lattin will disagree as
17 the author of that Petition for Instructions, but I want you
18 to drill into that a little bit more for me, because I'm not
19 tracking your argument.

20 MR. SPENCER: Okay. It's located at page 4, line,
21 it starts at line 18, which would be paragraph 6 of the
22 Petition for Instructions.

23 THE COURT: Let me just get there.

24 MR. SPENCER: Sure.

25 THE COURT: Page 4, beginning at line --

1 MR. SPENCER: Line, it would be 17, paragraph 6, I
2 guess, and then really 18. "It was always anticipated that
3 the Family Trust would fund the obligations as set forth in
4 the Agreement. The Trustees did not contemplate the
5 financial obligations which resulted from the trial,
6 including the payment of \$300,000 in attorney's fees."

7 That to me is an assertion certainly, if not an
8 admission, that that materially changed the Agreement. They
9 did not anticipate that and that's a substantial, it's not
10 de minimis, a substantial problem that the Trust now has,
11 which is paying \$300,000 in fees it didn't think, they
12 didn't think they would owe at the time of the contract.

13 THE COURT: Thank you. Mr. Johnson.

14 MR. JOHNSON: Can you hear me, Your Honor?

15 THE COURT: Yes, sir.

16 MR. JOHNSON: Okay. Because of this concern
17 about, you know, the implications of the Court approving the
18 Agreement and what that will do and our position that, you
19 know, this was never presented and a part of the trial, it
20 was a part to test Stan's bias, you know, we can't, we can't
21 let this be approved.

22 And, Your Honor, our main issue as set forth in
23 our position is these aren't just normal parties and some of
24 the moving papers, you know, they cite law that allows
25 parties and certain, just certain parties of a litigation to

1 settle litigation at any time, which is fine.

2 These aren't just any parties. These are
3 fiduciaries, and what they are settling affects the other
4 beneficiaries, and because of that, Your Honor, they have
5 the burden to come establish that this is fair and
6 beneficial to the Trust and the beneficiaries.

7 If this were two parties in a car accident that
8 wouldn't be the case, but that's not what we have here. And
9 so what you have is, you know, these fiduciaries entered
10 this Agreement, and I'm not going to go through all of the
11 opposition of how we believe that that affected the
12 beneficiaries' interests and adversely affected the
13 beneficiaries' interest.

14 They entered into this Agreement and we think it's
15 clear based on the timing, how it was done, how it affects
16 all of the other beneficiaries' interests, and how it
17 benefits the Trustees that the sole reason to do this was
18 for self preservation and to get past this trial.

19 As has been discussed and has been admitted by
20 Todd and Stan and their counsel, none of the terms of the
21 Settlement Agreement really have been carried out. I guess,
22 you know, recently maybe Stan transferred \$300,000 back to
23 the Trust, but my understanding is that only happened
24 recently.

25 So they enter into this Agreement. It changes

1 trial. They preserve their positions as Trustees and they
2 move on. And many, if not most, of the disputes that
3 existed prior to the litigation even starting, because you
4 have these two brothers that control different entities and
5 neither of them want to contribute assets from these
6 entities to the Trust, because they know if they contribute
7 the assets to the Trust, it's just going to be used to pay
8 Todd's indemnification.

9 So you have that dispute before the litigation
10 started, you have that dispute after they filed claims
11 against each other, and then they get up to trial and they
12 say, hey, let's not worry about those. Let's preserve our
13 positions here, protect ourselves, and get what we can out
14 of this deal and move on, and that's what they did.

15 And those disputes that existed then still exist
16 now and you saw that. The knives came out when Stan filed
17 his Motion to Enforce, and you saw the Trustees' true
18 concerns there and they will reveal whatever they need to
19 reveal that's not being revealed to everybody else about the
20 issues, the problems, the breach of fiduciary duty that are
21 really going on here that weren't disclosed to the Court or
22 the jury or even the beneficiaries.

23 And so because of these issues, because of the
24 negative effects on the beneficiaries, because this was done
25 just to benefit the Trustees and because it didn't resolve

1 any of the problems, you know, this Agreement should be,
2 should not be approved.

3 Additionally, Your Honor heard from the parties'
4 counsel that if this is approved that's going to be the
5 beginning of the litigation, because Stan and Todd are both
6 going to then fight about the interpretation of the
7 provisions and how it's funded.

8 And, you know, so approving this Agreement isn't
9 a, hey, let's approve this, we all move on and we avoid
10 another trial, this gets wrapped up and everybody benefits.
11 That's just going to be the beginning.

12 And, you know, again that's set forth in the
13 opposition. I believe we addressed each of the reasons why
14 we don't believe that it benefits the beneficiaries in the
15 Trust. It didn't resolve all of the issues.

16 They admitted during testimony, one, that I think
17 both counsel for Todd and Stan admitted that they foresaw
18 the other party not complying with the Agreement, so I don't
19 know how, that's evidence right there that they knew all
20 this was going to do is just kick the can down the road and
21 preserve their positions.

22 And so, Your Honor, based on, based on that, we
23 don't think it should be approved and we know Your Honor has
24 reviewed our opposition and we stand on that.

25 THE COURT: Thank you.

1 Mr. Collier, do you wish to be heard?

2 MR. COLLIER: Yes, Your Honor, if I could. I
3 don't think I made my appearance on the record, so I will do
4 it now. My name is John Collier of Kalicki Collier. I'm
5 here representing Luke Jaksick, who is a beneficiary of the
6 Family Trust.

7 Your Honor, just to refresh everyone's memory,
8 when this action commenced, Luke Jaksick was a minor and
9 this Settlement Agreement that's at issue now, he was barely
10 18 years old when it was negotiated.

11 Luke was not served with the motion to partially
12 enforce the Settlement Agreement, nor was he initially
13 served with this Court's order setting the hearing on that
14 motion. He was made aware of the Petition for Instructions
15 and retained counsel to respond to it.

16 The terms of the Settlement Agreement as reviewed
17 from Luke's perspective create breaches of fiduciary duty on
18 several levels. Luke has concerns regarding the payment of
19 the personal attorney's fees from the Trust.

20 The Indemnification Agreement appears to pay
21 Todd Jaksick's personal debts, and then there is payment of
22 Jackrabbit capital calls, which appear to be payments of
23 personal obligations of the, of some of the beneficiaries
24 and not others.

25 So the Court is aware, Luke is a beneficiary of

1 another Trust that owns an interest in Jackrabbit and has
2 been told there is capital calls coming his way, but his
3 capital calls aren't being paid by the Family Trust, only
4 those that negotiated the Agreement are getting paid.

5 Luke believes that if this Settlement Agreement is
6 approved that it will be a breach of the fiduciary duty by
7 the Co-Trustees of the Trust that execute and for that
8 reason he objects to the Court's approval or even partial
9 approval of the Settlement Agreement.

10 THE COURT: Thank you. Ms. Alexi, Alexi Fields,
11 do you wish to say anything on your own behalf?

12 MS. FIELDS: Yes, Your Honor. I object to this
13 Settlement Agreement and mainly because I feel like it
14 completely disregards my grandpa's intent of everything he
15 ever put forth for his future generations.

16 And I think that I put everything in my objection
17 that I know that you have read, and I just still don't
18 really understand how we are still here still going through
19 the motions, and I feel like most of that is due to the fact
20 that we have two Trustees that are not upholding their
21 fiduciary responsibilities and, again, they are not, they
22 are not doing what was intended by my grandpa in upholding
23 their responsibility.

24 THE COURT: Okay. Counsel, you will each get
25 another round of comments, but I'm going to pause here at

1 the intermission and just think about what direction I want
2 to go.

3 What I'm about to do will undoubtedly upset Todd
4 and Stan and their attorneys. I do not believe I'm going
5 rogue. I am responding to paper that is before me,
6 specifically Ms. Alexi Fields' request that I remove the
7 Trustees. I have not made that decision, but I'm not a
8 Judge who wants to continually bark without ultimately
9 biting.

10 I made the decision not to remove the Trustees in
11 my order after equitable trial, and I supported that
12 decision with some of my analysis that despite the jury's
13 finding Todd had breached fiduciary duties, I thought there
14 was a greater benefit to Todd's continuing service.

15 At the time I drafted, signed, and entered that
16 order, I thought that the Settlement Agreement was the end
17 of their war. Then when I received the competing papers
18 about enforceability of this Agreement, I realized Todd and
19 Stan actually didn't end their war. They signed a temporary
20 cease fire, but their war against each other continues.

21 Should I choose to remove the Trustees, it would
22 not be in response to the jury's verdict, but it would be in
23 contemplation of the post verdict problems that continue.
24 So I continue to think about whether I should remove these
25 Trustees. And, counsel, you know that in the last hearing,

1 October 14th, I told you I was considering it.

2 And at midnight last night when I finished reading
3 all of the paperwork, to include the entire transcript of
4 October 14th, I thought to myself how can I get Mr., what is
5 the process for me to remove the Trustees so that it's
6 thoughtful, it's deliberate, and it's possibly correct?

7 I thought, well, I probably ought to have some
8 Points and Authorities. There should be some statutory
9 analysis, some analysis of decisional authorities that
10 allows me on my own initiative or in response to at least
11 what has been requested since the order after equitable
12 trial, that there had been a request to remove Trustees, I
13 ought to have notice and opportunity.

14 I have removed Trustees in other cases during the
15 interim and I think I have a pretty good idea of my broad
16 discretion to do so, particularly when there are conflicts
17 between Trustees and beneficiaries when there are Trustees
18 who are confused about their trusteeship as opposed to their
19 own beneficial interests.

20 If I remove Todd and Stan, it would not be because
21 I am making a finding of breach. The jury has spoken. It
22 would be a proactive move to change the future to make it
23 distinct from the past.

24 So as I was thinking about it, I wondered who
25 among the attorneys has the closest relationship with Kimmel

1 and Riley so that I can have them appear on an evidentiary
2 hearing, because I have some questions for them. Remember
3 as part of that deliberative thoughtful process, I don't
4 want to just summarily react. I would want Points and
5 Authorities, but I think I also need some evidence.

6 Because depending upon what I hear from Kimmel and
7 Riley, I might not replace the Trustees, but I don't think I
8 should until at least I've heard from Kimmel and Riley.

9 What I would like to do is have them both sworn
10 and answer some questions. That goes far afield of what
11 this was set for; however, counsel, you were on notice based
12 upon at least Alexi's paperwork that I should remove them.
13 You knew that in advance of this hearing.

14 And I'm being asked to create a preclusive bar
15 against any beneficiaries' attack upon this Agreement as a
16 breach of fiduciary duties. I will say one more thing and
17 then I will let counsel preserve their record before I call
18 Mr. Kimmel and Mr. Riley.

19 We are now at about seven years of Trust
20 administration post Mr. Sam Jaksick's death, seven years. I
21 heard from Mr. Hosmer-Henner earlier today that depending
22 upon what I do and maybe regardless of what I do there will
23 be litigation for the next 4 to 10 years.

24 And as I have noted in footnote, as I inquired
25 during the last hearing, how many millions of dollars have

1 we spent, approaching four, at least on the Trustees' side
2 alone between their individual and Trustee counsel. I
3 haven't included in that four I don't believe Wendy's fees.

4 A fundamental question I have is whether neutral
5 Trustees without beneficial interests would administer this
6 Trust differently, whether the trusteeship is being used to
7 advance personal interests. I'm talking about moving
8 forward, not reacting to the verdict.

9 And as I read all of the e-mails, when you file
10 moving papers, counsel, I read them and I read your
11 exhibits, so I have seen e-mails that Mr. Kimmel has drafted
12 searching for information. I have seen e-mails Mr. Riley
13 has drafted responding to searches for information.

14 I have seen Riley react to his interactions with
15 Stan. I have read Riley's opinion all set forth in e-mail,
16 and I want to know a little bit about these Trustees,
17 Kimmel's observation and former Trustee Riley still serving
18 as a financial professional, I want to know to the extent to
19 which they observe personal tensions motivated by beneficial
20 interests and whether that affects the trusteeship.

21 Counsel, you may make your objections on the
22 record and then I'm going to call Mr. Kimmel and Mr. Riley.

23 Let's start with Mr. Lattin.

24 MR. LATTIN: Thank you, Your Honor. Just a couple
25 of observations. First of all, with regard to Alexi Fields,

1 under the terms of the Family Trust she was to get some
2 specific payments, all of which have been paid to her.

3 So there may be a question, a legal question as to
4 whether or not she has standing to request removal of the
5 Trustees, and I have not had the opportunity to look into
6 that, but that's an observation that I would present to the
7 Court that there may be, if you are inclined to address the
8 removal based upon her papers, there is going to be an
9 issue, I believe, over standing that probably needs to be
10 briefed.

11 The other thing that I would say with regard to
12 this Settlement Agreement, if you look at the actual terms
13 of the written Settlement Agreement, most, if not all, of
14 the provisions have been dealt with with the ACPA's which
15 were the subject of a lot of contentious argument during the
16 time of trial.

17 As a result of the decisions by both the jury and
18 the equitable decision that you issued, all of the ACPA's
19 were deemed to be valid. So every action taken in this
20 Settlement Agreement is the subject of an ACPA, which has
21 been approved by the Court.

22 Now, just another side issue that I have not had
23 the opportunity to speak with Mr. Riley about, and he is my
24 client, but --

25 THE COURT: Mr. Riley is your client?

1 MR. LATTIN: Yes, he is. He is my client. He was
2 named as a defendant in the case. He was determined to be
3 completely free of liability.

4 If you will recall, he was a Trustee of the Family
5 Trust for a very short period of time and then additionally
6 he was named individually by Wendy, and I represented him
7 individually, and then he was also named as Trustee of the
8 BHC Trust during the time of the trial and I represented him
9 in that capacity, also.

10 Now, he was determined to be free of liability,
11 but there is another concern that I need to put on the
12 record, because this may impact Mr. Riley and he needs to be
13 able to make a decision about this.

14 If there are going to be questions regarding
15 things that he did financially or direction that he was
16 given, he may want to have the opportunity to seek his own
17 independent counsel based upon his professional obligations
18 as a CPA that are --

19 THE COURT: I do not intend to ask any types of
20 questions in that regard.

21 MR. LATTIN: Okay. So I just make that
22 observation that I think Mr. -- I do not represent Mr. Riley
23 in his capacity as a CPA and his individual
24 responsibilities. I represented him related to the various
25 Trusts and his activities as a Trustee, so that would be a

1 concern as well.

2 So I don't know if you want me to address
3 everything else that counsel made at this point in time.

4 THE COURT: No.

5 MR. LATTIN: But I would have that objection on
6 behalf of Mr. Riley that perhaps he should be entitled to
7 seek his own independent counsel relative to his financial
8 and CPA obligations.

9 THE COURT: My intention was to call them and just
10 get a little bit of information before I do the whole round
11 robin again with counsel so you will have additional
12 information that you may want to comment about. I want you
13 to hold your comments on what you heard from other
14 attorneys.

15 MR. LATTIN: I will do so. So those would be my
16 concerns and objections to any sort of questioning that the
17 Court may have, but I don't, again, I don't know what
18 questions you intend to ask, but I guess what we would do is
19 preserve our right to raise any objection at that time.

20 THE COURT: So the evidence code contemplates that
21 the Court may call and examine witnesses subject to
22 counsel's objections to the Court's questions. It's always
23 a little prickly for counsel to object to the Court's own
24 form of questioning. I invite you to do so. I have no
25 problem with it whatsoever.

1 I think you will all be surprised by how shallow I
2 go on this. I'm not going to go deep. In fact, I asked
3 some of the questions of you on October 14th, Mr. Lattin, in
4 which I asked you to make some proffer for what you thought
5 there may be some evidence relating to the relationship
6 between Mr. Kimmel and Todd.

7 And I'm going to ask Mr. Riley, I have a sense
8 that he is a professional who holds an opinion about the way
9 the Trustees are interacting with each other and I want to
10 know what that opinion is.

11 MR. LATTIN: I understand that, Your Honor, and I
12 put my concerns and objections on the record. Thank you.

13 THE COURT: Mr. Robison, your objection is on the
14 record, if you wish.

15 MR. ROBISON: No objection per se, Your Honor. I
16 would just like to say that we might be closer to a global
17 deal than it appears in the paperwork that's been presented
18 to the Court, and I'm hopeful that December 16th results in
19 a wiping of the grease board clear. I don't know if the
20 substitute Trustee or Trustees would impair that
21 opportunity, Your Honor.

22 THE COURT: So I trust that the Court's Justices
23 and staff will read all of these transcripts at some point
24 and I hope they read them --

25 MR. ROBISON: This is a Supreme Court mediation,

1 Your Honor.

2 THE COURT: I understand, but I'm saying something
3 different. I trust and hope that the Justices, their
4 clerks, and their internal staff will read everything as
5 they analyze appeals, and so I sometimes say things not for
6 you as the audience, but for the reviewing Court.

7 MR. ROBISON: Understood.

8 THE COURT: I think it's highly atypical for me to
9 do what I'm about to do, but I also believe this case is
10 highly atypical. Extraordinary disputes require
11 extraordinary measures. And so what I'm about to do is not
12 something I would do really in any other case that I can
13 imagine.

14 And, Mr. Robison, I have already decided before
15 this hearing began that if I were to remove or preserve the
16 Trustees, I would make that decision before December 16th,
17 but I would not effectuate it until after the end of
18 December 31st.

19 But I thought you are going to go in front of
20 Mr. Wasick on a settlement conference on the 16th, I thought
21 you should know on the 16th what your future is in
22 Department 15.

23 MR. ROBISON: Well, obviously, I thought beyond
24 this one. Thank you, Your Honor.

25 THE COURT: Mr. Hosmer-Henner, do you want to

1 preserve any objections?

2 MR. HOSMER-HENNER: Your Honor, I would just
3 object to any testimony that's covered by any applicable
4 privilege without knowing what the questions or answers will
5 be.

6 I do want to take a swing at doing, at persuading
7 you not to do the thing that you are just about to do, not
8 out of any fear of the result or concern about the result or
9 concern about the testimony, but on a practical level only.

10 If the testimony will elicit evidence from
11 Mr. Kimmel and Mr. Riley that the relationship between Todd
12 and Stan is tense, I think that could be clear. I think
13 that's clear from some of the motion papers.

14 But Your Honor's previous bark has already paid
15 dividends. Rather than what we got last time, we had a
16 pleading, a brief from Todd Jaksick. Point one was the
17 Settlement Agreement and Release should be approved and,
18 two, should be approved and it's just and fair.

19 I also want to add to what Mr. Robison said that
20 as a result of what you said in the last hearing, Todd,
21 Stan, and I believe Mr. Riley, if not also Mr. Kimmel, have
22 been engaged in multiple meetings in the past couple weeks
23 to resolve any and all issues, resolve funding disputes, and
24 talk about the distribution of the Trusts and those
25 conversations have lasted well over 10 hours according to my

1 client and that progress has already been made and that
2 train has left the station. The parties are working
3 together.

4 The reason that I think that this action, not in
5 terms of, again, any substance is significant, but in terms
6 of how this case eventually resolves without years, more
7 years of litigation, is that we do have a settlement
8 conference coming up, but in addition to that the parties
9 are all continuing to talk about a global resolution.

10 And on top of that, the tension between Todd and
11 Stan has been driven in large part because of the
12 uncertainty over whether the Settlement Agreement is
13 enforceable. As this Court has indicated I think on three
14 occasions, if not formally entered a written order, once
15 that Settlement Agreement is enforceable, there was an
16 uncertainty and dispute about when and if that was going to
17 be done.

18 Now that that's done, at least some runway should
19 be provided to the Trustees to determine if they can work
20 together to administer the Trust in a cooperative fashion
21 once that Settlement Agreement has been found to be
22 enforceable or if they will agree that the situation is too
23 tenuous or too fraught with tension and would agree to
24 resign, because on various occasions I'm aware of almost
25 every Co-Trustee being willing to resign at one point or

1 another and substitute a corporate Trustee.

2 But Mr. Robison's point is extremely well taken.
3 Bringing in a corporate Trustee at this point when
4 settlement is potentially on the horizon, we have a
5 settlement conference scheduled, could set those settlement
6 discussions back significantly and take away the ability of
7 the parties to resolve this dispute or the settlement.

8 So it's not even a question of whether the
9 settlement process will be kept in place by the addition of
10 a new Trustee or the removal of Trustees, but just the bare
11 minimum of an opportunity for Todd and Stan to administer
12 the Family Trust and work towards its resolution.

13 Once they know that their differences actually
14 have been settled is an important one, and judging them
15 prior to the enforcement of that Settlement Agreement is, I
16 think, inappropriate and premature given that we need to
17 provide them the opportunity to administer the Trust as no
18 longer litigants, but as people who have entered into a
19 Settlement Agreement.

20 THE COURT: Thank you. Mr. Spencer, I don't
21 anticipate you are going to object to the proposed Court's
22 inquiry?

23 MR. SPENCER: I would have lots to say about what
24 Mr. Hosmer-Henner said, but, no, I do not object to
25 Your Honor asking questions.

1 THE COURT: Thank you. Mr. Riley, if you will
2 activate your video, please. I sure hope he is still there.
3 There he is.

4 Hello, Mr. Riley. I know that you did not
5 anticipate being seen. So anything you are wearing,
6 anyplace you are is of no difference to the Court.

7 Mr. Kimmel and Mr. Riley, please face my clerk,
8 raise your right hands and be sworn.

9 (Whereupon both witnesses were sworn.)

10 THE COURT: Mr. Kimmel, I'm going to start with
11 you. To Mr. Kimmel and Mr. Riley, I do not intend to trick.
12 I have no conclusion I'm trying to lead you to. I'm just
13 gathering information here.

14 And beginning with Mr. Kimmel, you are an
15 attorney. I presume you are familiar with and sophisticated
16 in Trustee duties and in contrast to beneficial interests.
17 I just need to close this loop about your relationship with
18 Todd Jaksick, because Stan has expressed some concerns about
19 why you are there and who you are aligned with.

20 And would you, would you walk me through your
21 relationship with the Jaksick family beginning in high
22 school? And just do it briefly, not a whole lot of detail,
23 but give me an idea, please.

24 MR. KIMMEL: Absolutely. I grew up in the house
25 that my great grandfather built on Marsh Avenue. My great

1 grandparents knew Todd and Stan's grandparents. My father
2 knew Sam. My oldest brother went to school and graduated in
3 the same class as Wendy.

4 Todd and I graduated high school in the same
5 class. I have had no professional relationship with Todd
6 since high school in any fashion. I haven't done work as
7 counsel for him or for his family in any respect.

8 I would like to think that the reason that Todd
9 came to me is because he viewed me as somebody who would do
10 what I believed is right.

11 As Your Honor pointed out, I am a lawyer. My
12 undergraduate degrees are in accounting and finance, so I
13 have a pretty good understanding of business, and I believe
14 that Todd came and sought me out because he felt that I was
15 a third person to step into a situation where the two
16 brothers were kind of at odds and not always coming to the
17 same conclusion and not being able to move things forward,
18 and I provide an independent separate voice and that's why I
19 believe that Todd came to me, and I take that role
20 seriously.

21 THE COURT: I want to invite you to push back
22 against my observation, Mr. Kimmel. If it's erroneous, be
23 at ease. Tell me.

24 My observation has been for some time that Todd
25 and Stan are clothed with Trustee authority, but each

1 pursuing their own individual interests. That the lens they
2 look through is their interest and they have subordinated
3 the larger interests of the Trust and all beneficiaries.
4 I'm speaking to the post verdict equitable trial events. Do
5 you agree or disagree with this Court's observation?

6 MR. KIMMEL: It's a little of both, Your Honor. I
7 think that it's impossible to separate personal
8 relationships and personal animosities, and so whereas
9 Your Honor might characterize everything as one side or the
10 other trying to advance their own pecuniary interest, I
11 think there may be some of that, but I also think it's just
12 the nature of the personal dispute between them.

13 THE COURT: So you are talking about a sibling
14 dynamic?

15 MR. KIMMEL: I am, Your Honor. So if you have two
16 people who are distrustful of each other who don't
17 necessarily get along, then each of those might be a little
18 bit of a roadblock to the other.

19 That may have the same affect as appearing like
20 the person who is the roadblock is trying to advance their
21 own pecuniary interest, but I can't say that that's the
22 motivation is to a pecuniary interest.

23 THE COURT: So regardless of whether it's a
24 pecuniary interest or a sibling dynamic, regardless do you
25 think there has been something between Todd and Stan that

1 has prevented an efficient, expeditious administration of
2 this Trust, the Family Trust?

3 MR. KIMMEL: Yes, Your Honor. I think that since
4 the trial, the Family Trust as a whole has been largely,
5 forgive the word, I'm struggling for a better word, but
6 largely neutered. In other words, we haven't been able to
7 do much of anything.

8 THE COURT: That's my observation. Can you,
9 without putting any detail on your conclusion, can you
10 conclude that the Trust would be administered differently if
11 there was not either the pecuniary personal interest or
12 sibling dynamic?

13 If I just had somebody following the four corners
14 of the Trust document, the accountings, the corpus without
15 any of the personal pecuniary overtones, do you think this
16 Trust would be administered differently?

17 MR. KIMMEL: In the abstract, in the abstract
18 solely at the highest level of the Trust absolutely, but
19 that we can't look at it just in the abstract, because the
20 interests, the assets frankly that the Trust has, whether
21 it's the ranch assets on Todd's side or the Montreux assets
22 on Stan's side, those two individuals are still going to be
23 and need to be running those particular assets.

24 So I'm not sure. If His Honor were to just
25 appoint an institutional Trustee right now, that addresses

1 the Trust level, but that institutional Trustee is still
2 going to be dealing with Todd on the ranch side and Stan on
3 the Montreux side with respect to the management of the
4 underlying assets and obtaining information related to the
5 management of those underlying assets.

6 THE COURT: So I understand those underlying
7 assets. It's what makes this whole experience really
8 complicated, but it seems to me that if I had a neutral
9 Trustee who made a demand upon Stan as a manager of whatever
10 entities, Toiyabe or Montreux, for an accounting and
11 production of documents and if Stan chooses not to give it
12 to the Trustee's satisfaction, the Trustee can cite Stan in
13 and then I all of a sudden have authority over Stan. It
14 just seems that I can have a peripheral reach into those
15 other entities through that front level Trustee.

16 MR. KIMMEL: Agreed. I think Your Honor could
17 have that same peripheral reach right now.

18 THE COURT: Except I have Stan and Todd as the
19 Trustees protecting their own sibling perception or
20 pecuniary interest.

21 MR. KIMMEL: With respect to disclosure of
22 information, I think Your Honor could clearly order that
23 disclosure by the Co-Trustees and if they failed to so
24 disclose they would be in violation of a Court order.

25 Now, with respect to how they manage the

1 underlying assets and how that trickles upwards to the
2 Trust, that then in my opinion becomes a little bit of an
3 asset-by-asset analysis, because remember for most of these
4 assets while Todd may have a pecuniary interest and Stan may
5 have a pecuniary interest and then the Trust also has a
6 pecuniary interest, it's, at least it should be, in the
7 interest of everyone to make the value of those assets go up
8 and when we can liquidate them to liquidate them at the
9 highest value that we possibly can.

10 If Stan, if Stan has just a lot, I'm just being
11 simple here, if Stan has a lot and he has 50 percent
12 ownership and the Trust has 50 percent ownership, well, it's
13 in Stan's interest to get the highest sales price that he
14 can for that lot, which at the same time benefits the Trust.

15 The same goes true for, holds true for the ranch
16 properties. If Todd were to sell the ranch or a ranch, take
17 any one of them, he wants to sell it for the highest
18 interest that he can that nets him the biggest gain that he
19 can, which should then also net the Family Trust the biggest
20 gain.

21 The problem becomes if one of them steps in and
22 tries to buy the interest at a discount, because then they
23 end up owning more and the Trust only realizes a smaller
24 gain because somebody paid a discount. Am I being --

25 THE COURT: Yes, but also it seems that there is

1 this reluctance for each of them to tender to the Family
2 Trust what the Family Trust owns for fear that that amount
3 will be used.

4 MR. KIMMEL: I agree, Your Honor. First, from my
5 perspective the assets that the Family Trust own have
6 different liquidities. It's not very easy to sell ranches
7 all the time. Sometimes it is. Sometimes it's not.

8 Montreux just happens to be in my opinion more
9 liquid. It's easier to sell a lot for somebody to build a
10 house on often than it is to sell, you know, a 50,000 acre
11 ranch.

12 So there is a little bit of a liquidity difference
13 between the assets from my perspective, so I understand and
14 appreciate Your Honor's point that it seems like neither
15 side wants to put all of their assets in the pot and then
16 just sell them all.

17 I can't tell Your Honor that I believe that that's
18 driven by a desire of one side to do better than the other
19 or whether it's driven by -- I mean, let's call it what it
20 is. This is a real estate investment family. The way you
21 make money in real estate is you try and hold onto it until
22 you can sell it at its highest point.

23 So if you get forced into a situation of
24 liquidation, you often are not selling things at what you
25 internally perceive to be the highest point that you think

1 you might down the road.

2 In a perfect world, this Trust would be able to
3 hold onto all of these assets and sell them off a little bit
4 at a time to pay Trust debts and do distributions and do all
5 of that. Unfortunately, we don't live in that world.

6 THE COURT: Well, Todd individually has asked this
7 Court to order partition and liquidation.

8 MR. KIMMEL: From my perspective as a Co-Trustee,
9 Your Honor, I believe that this Family Trust should be
10 liquidated. I believe that the continuing litigation is
11 bleeding this Trust clearly and that's what I would like to
12 see and that's what I have wanted to see since the end of
13 the trial is that we figure out what all of these assets are
14 worth. We get appraised values for them and we start
15 selling them so we can start getting money to the actual
16 beneficiaries.

17 THE COURT: But I feel a little, well, uncertain
18 about Todd and Stan's cooperation and willingness to do
19 those neutral events you just described, disclose
20 information, get appraisals, seek fair prices. That the
21 course of conduct I have observed certainly since trial is
22 that there is some protective approach to what is owned by
23 each side.

24 MR. KIMMEL: I think, well, I can say this for
25 sure. We have engaged two separate appraisers already.

1 That was a little bit of a fight and that's why we have two
2 separate appraisers, because there couldn't be unanimous
3 agreement on one.

4 But we have, we already have an appraisal that's
5 getting reviewed related to all of the ranch property. We
6 are in the process of getting appraisals related to the
7 Montreux lots and the intent there from my perspective
8 certainly is to start liquidating this stuff and putting it
9 up for sale.

10 THE COURT: So Todd and Stan included in their
11 Settlement Agreement some unanimity language that I think
12 neuters your involvement. Tell me what you think about
13 that.

14 MR. KIMMEL: I don't like it, Your Honor. From my
15 perspective the -- And, first off, let me back up just so
16 the Court understands the context. I was not part of that
17 Agreement. I was not part of the negotiations of the
18 Agreement and Your Honor can see from the document itself I
19 did not execute the Agreement.

20 My issue with it is the flip of what unanimity
21 means. It gives an absolute power veto. So if you require
22 a unanimous vote, the corollary of that is that no actions
23 can ever be taken unless there is one, right? Which means
24 that one person will always have absolute veto authority
25 over any action that the Trust may take and I don't like

1 that.

2 THE COURT: Will I advance Trust administration,
3 advance Trust termination, and regulate downward the fees
4 and costs if I change Trustees or will I exacerbate
5 termination, efficiency, and fees? Well, I know I'm going
6 to exacerbate fees. You don't have to answer that. I know
7 that replacing the Trustees will be extraordinarily
8 expensive. I know that.

9 MR. KIMMEL: Well, that will be a very big issue,
10 Your Honor. I do not believe that Todd or Stan have taken
11 any Trustees' fees at least since the date of trial and off
12 the top of my head I'm not sure if they have taken any
13 before that.

14 I can tell Your Honor that I have not taken a
15 Trustee fee in over 13 months and all I have requested for
16 the last 13 months is about \$9,100. So I'm not being paid
17 some exorbitant like normal typical Trustee fee here.
18 That's not what's going on.

19 So on the point of will an institutional Trustee
20 add to the financial concerns of the Trust, absolutely,
21 Your Honor, because right now the Trust --

22 THE COURT: But the context is we have spent
23 \$4 million just in litigation that I'm aware of and how many
24 more dollars in Trust administration, and from the tone of
25 the moving papers beginning in September, we are still off

1 to the races. I mean, there is no, from this Court's
2 perspective from the bench, there is no regulation,
3 self-imposed regulation on what these expenses are.

4 And so I will accept the expenses of the Trustees
5 if I can move this Trust administration along and remove the
6 pecuniary influences or the sibling dynamic. So should I or
7 should I not?

8 By the way, you don't get to answer. I'm going to
9 make the final answer, but I want to know what your opinion
10 is.

11 MR. KIMMEL: Your Honor, I am in favor of the
12 Court doing whatever the Court could do to wind up this
13 Trust. I believe that that is what's in the best interests
14 of the Trust. I believe that that is what's in the best
15 interests of the beneficiaries and, quite frankly, I hope
16 this doesn't overstep my bounds, but I believe that that's
17 what's in the best interests of these family members.

18 There are some incredibly rough feelings, I think,
19 and I'm not sure how you begin to get past those when there
20 is still this proverbial pot somewhere.

21 THE COURT: If I removed Stan and Todd and
22 replaced them with somebody or some entity unknown, but then
23 directed you to remain as the Trustee to preserve that
24 institutional knowledge and recalibrating your compensation
25 to be commensurate with the services rendered, would you

1 accept that continuing service or do you feel conflicted by
2 a relationship either aligned with one or the other side?

3 MR. KIMMEL: I don't feel conflicted, Your Honor,
4 but this has been tough on me, too. You know, this is
5 getting sued. I have never been sued before.

6 You know, this has impacted, just having a lawsuit
7 against me, even though the jury found that I did nothing
8 wrong, has impacted my ability to refinance my house, my
9 personal home, for example. So it's been tough.

10 And I was sued personally in this case, not just
11 as a Co-Trustee, and I was sued for actions that took place
12 before I even became a Co-Trustee. So it's tough for me,
13 Your Honor, to say that I would be willing to take on that
14 role and, frankly, I think for one person to take that on,
15 it would take a lot of time.

16 Your Honor mentioned my institutional knowledge.
17 My institutional knowledge only goes back so far and so
18 deep. I do not have the institutional knowledge related to
19 the underlying entities to be able to -- For example, if
20 Your Honor referenced a particular lot at Montreux, I'm not
21 going to know what that is. Stan is going to be able to
22 tell Your Honor exactly what that is.

23 If Your Honor referenced a particular ranch or
24 portion of a ranch, Todd is going to be able to tell
25 Your Honor exactly what that is, where it is, how it may or

1 may not be encumbered by some, some federal easement.

2 I don't have that kind of institutional knowledge
3 or depth on either side, Your Honor, and I also don't have
4 the institutional knowledge and depth as to what the Trust
5 did before I became a Co-Trustee.

6 And finally, Your Honor, I'm sorry, I would just
7 note that there is two trusts here. I am only a Co-Trustee
8 of one of them.

9 THE COURT: Right. Right. Would you be quietly
10 relieved if I thanked and excused you from the trusteeship?

11 MR. KIMMEL: I would be vocally relieved,
12 Your Honor.

13 THE COURT: So I think our evidence code allows
14 attorneys to ask questions on my questions, but I'm going to
15 disallow that at the moment.

16 Turning now to Mr. Riley. Mr. Riley, would you
17 describe just your very quick elevator description of what
18 you do. You are a CPA. Tell me about your practice, where
19 you are, how long you have been in practice, typical clients
20 or expertise. Give me just a sense of you, please. You are
21 muted. It happens to all of us all the time.

22 MR. RILEY: I apologize for that. I'm a CPA here
23 in California. I'm also licensed in the State of Nevada.
24 The bulk of my practice is a tax practice, although I do
25 some accounting and audit work, some bookkeeping for

1 clients, so I have what we would refer to as a general CPA
2 practice.

3 THE COURT: I told Mr. Lattin I was not going to
4 ask any questions, dangerous questions, and so, Mr. Lattin,
5 I want you to listen carefully and object if appropriate,
6 because I think I'm violating my intention right now.

7 I'm not sure why you were a Trustee for a short
8 time and then why you left. I'm not looking for any --
9 Generally, without any criticism of others or disclosure of
10 information you may think is important to conceal at the
11 moment, just can you give me a sense of why you left the
12 trusteeship?

13 MR. RILEY: The answer is pretty simple, actually.
14 At the time the Trust had an ownership interest in a casino
15 in Colorado, and the Trust hired an attorney to represent
16 the Trustees, which I was a Trustee at the time, to get
17 licensed in the State of Colorado for the casino.

18 And they indicated, the attorney, excuse me,
19 indicated to the Trustees that they all had to be licensed.
20 And Roger Morris called me up one afternoon and said you are
21 going to have to get licensed. I said, well, who, you know,
22 who is responsible for paying the fees to get licensed?

23 And, you know, I didn't think it was necessary for
24 the Trust to have three separate Trustees to get licensed.
25 It certainly wasn't necessary, and I said, well, if I don't

1 what happens, and he said, well, you are going to have to
2 resign, so I resigned.

3 THE COURT: All right.

4 MR. RILEY: It was a fairly simple thing. I
5 didn't think it was necessary to require me to get licensed,
6 so I resigned.

7 THE COURT: So you would have continued without
8 that Colorado gaming license issue?

9 MR. RILEY: I think I probably would have,
10 although in retrospect I'm glad that came up and I resigned.

11 THE COURT: Okay. So as I read your e-mails, I
12 sense, I infer some frustration. And you are diplomatic in
13 the way you write, but I read things, these are my words, I
14 read things like let me explain to you what my role is, let
15 me explain to you how entities disclose information and who
16 gets to ask for them.

17 There is this undertone that I have discerned. Am
18 I right or wrong as I make that inference? Have you been
19 frustrated interacting with these Trustees?

20 MR. RILEY: I have a sense that the parties are
21 using me as a go-between to gain information. I prefer that
22 they just get the information. If Todd wants information
23 from Stan, he can ask Stan. If Stan wants information from
24 Todd, he can ask Todd for that information.

25 THE COURT: Mr. Kimmel observed that there is some

1 tension between Todd and Stan, whether it's a sibling
2 dynamic or pecuniary interest. Have you observed that same
3 tension and has it disrupted the orderly administration of
4 this Trust, the Trust since trial?

5 MR. RILEY: So clearly there has been
6 disagreements, and I would say that there has been some
7 level of tension up through after the date of trial.

8 However, in the last month we have had several
9 meetings which we have made really excellent progress
10 towards coming up with a framework to come up with a
11 settlement offer to Wendy and I'm actually quite amazed at
12 the progress.

13 Mike Kimmel has not been involved in those
14 conversations at all; however, between Todd and Stan and I,
15 we have been focusing on primarily a settlement offer to
16 Wendy and how to fund that offer, because there is a funding
17 issue.

18 THE COURT: Would it be counterproductive then for
19 me to remove these Trustees at the moment?

20 MR. RILEY: I think if you remove, my take on this
21 is if you remove the Trustee, you are still placing the
22 Trustee into a negotiation with Todd and Stan. From Todd's
23 perspective, he is a creditor of the Trust and, you know, he
24 wants to be paid for the items that he is requesting.

25 From Stan's perspective, he has a slightly larger

1 than 50 percent interest in Montreux Development Group, so
2 he has an interest to obtain an appropriate value for the
3 sale of Montreux Development Group's interest, which is
4 Toiyabe. Toiyabe owns 50 percent. Toiyabe owns 100
5 percent, 96 percent of Montreux Development Group, but it's
6 owned 50 percent by the Trust.

7 So if a separate Trustee came in and separately
8 negotiated with a third party without Stan being involved,
9 because he is no longer a Trustee, I don't know if the
10 beneficial interest of the Trust would be best served there,
11 so I have, I'm struggling --

12 THE COURT: I want to agree with that. It seems
13 unhelpful for me to remove Todd and Stan as Trustees if they
14 are working on a short-time horizon to resolve all of the
15 disputes, but it seems ever more important to remove them as
16 Trustees if they are unable to resolve their disputes and
17 I'm projecting another 4 to 10 years of litigation.

18 I don't know if you read what Todd individually
19 wrote about Stan, but I have got all of the same allegations
20 that were not part of the trial that Todd wants to
21 resuscitate against Stan and I have got more litigation from
22 Wendy and other beneficiaries, and so I'm just thinking
23 about the Trustees continuing service if the Trust is not
24 resolved by settlement, global settlement.

25 I think there is a question there, probably not.

1 I just want to acknowledge in a short term it doesn't make
2 sense, but in the long term I think it does make sense if
3 they are going to choose to spend another \$4 million on
4 litigation. Do you agree or disagree with that?

5 MR. RILEY: Your Honor, I can't tell you the level
6 of progress that has been made in the last few meetings
7 between Todd and Stan.

8 THE COURT: Okay.

9 MR. RILEY: I have not had them on the phone at
10 all up until about a month ago and suddenly we are very
11 motivated in all appearances to have something put together
12 and get a deal together.

13 THE COURT: Is there anything that I asked
14 Mr. Kimmel that you would want to answer, any additional
15 information that you think will be helpful for me?

16 MR. RILEY: Excuse me, I have lost my train of
17 thought. Could you ask the question again?

18 THE COURT: Sure. I asked a lot of questions of
19 Mr. Kimmel and I'm wondering if you have anything to say in
20 response to my questions to Mr. Kimmel just as I'm searching
21 for helpful information about how to move forward. I just
22 want to give you a chance to provide an open statement to me
23 of anything.

24 MR. RILEY: So in our conversations with
25 Mike Kimmel involved, I thought Mike asked excellent

1 questions. He inquired. He was thoughtful. I thought he
2 was a good Trustee.

3 However, there is a, there is a disagreement
4 between Stan and Mike, and I sense that Stan has a level of
5 distrust over Mike's intentions. Whether that is good or
6 false or invalid, you know, I can't say.

7 THE COURT: And you have not personally observed
8 that?

9 MR. RILEY: I thought Mike did a good job at
10 trying to mediate the parties and occasionally he would come
11 down on Todd's side and occasionally he didn't, so I'm not
12 seeing the perceived bias per se, but that's just my
13 impression.

14 THE COURT: This is going to seem a little
15 strange, because it's an isolated event, but it's from
16 single events that we extrapolate into larger conclusions.
17 There is this issue about the Ferrari and it just seemed to
18 take a lot of time just to get this Ferrari title signed and
19 sold.

20 I think it was Mr. Lattin who was involved with
21 the e-mails there, but that's one example of how I just felt
22 the Trustees were just kind of grinding each other as
23 opposed to working together. Do you agree or disagree with
24 that observation I just shared?

25 MR. RILEY: My recollection is Stan did not want

1 to sign the Certificate of Trust. You would have to ask
2 Stan why he didn't want to sign the Certificate of Trust.

3 I was told that the Certificate of Trust was
4 needed to prove that the Trustees had authority to sell the
5 vehicle. So I wasn't really involved in those discussions,
6 but that's my understanding.

7 THE COURT: Okay. It is 11:26. We are going to
8 take another break. This is going to be a slightly longer
9 break. Again, I'm mindful of the reporter and I intend to
10 go through the noon hour, because I want all of the
11 attorneys to have a final opportunity to address the Court.

12 And so what I'm essentially doing is taking a noon
13 recess now, but it's a short noon recess. It's going to
14 be -- Does anybody have a problem if it's only 20 minutes?
15 We can go longer than 20 minutes if we need to.

16 MR. HOSMER-HENNER: Your Honor, I have no problem
17 with the break now of any duration. I do have an arbitral
18 hearing between 1:00 and 2:00. It could go shorter than
19 that, but I didn't have this calendered for the entire day.

20 THE COURT: Neither did I, and I probably like
21 many of us have things scheduled in the afternoon. So are
22 you going to be able to do it from where you are so there is
23 not transportation delays?

24 MR. HOSMER-HENNER: I do everything from where I
25 am, Your Honor.

1 THE COURT: So if we got off this phone call no
2 later than 12:45 you would be okay?

3 MR. HOSMER-HENNER: Yeah. 1:59 would be fine, or
4 12:59.

5 THE COURT: So it's 11:27. Let's reconvene at
6 exactly 11:50. That gives us one full hour for the
7 attorneys to make any additional arguments they want and
8 then we will be done. Okay. I'm going to mute myself.
9 Please all of you remain muted and deactivate your videos.
10 I will see you at 11:50.

11

12 (Whereupon a break was taken from 11:27 a.m. to 11:56 a.m.)

13

14 THE COURT: I'm going to offer a few thoughts to
15 streamline your final comments. I changed my opinion after
16 listening to Mr. Riley and Mr. Kimmel. I do not intend to
17 make any Trustee change between now and December 16th and I
18 do not intend to announce a Trustee change between now and
19 December 16th.

20 What I'm going to do is set a three hour hearing
21 in January and then I will have you each file Points and
22 Authorities whether how and why or why not I should formally
23 remove the Trustees. I will make that decision in January,
24 but you will be on notice and you will have an opportunity
25 to be fully heard.

1 As to the enforceability, I'm tilting toward
2 Mr. Hosmer-Henner's suggestion that I enter a brief order
3 finding that the Agreement is enforceable between Todd and
4 Stan, that it is not preclusive to third parties to
5 challenge. My finding of enforceability does not preclude
6 third parties from challenging.

7 I am inclined to extract the clause regarding the
8 appeal. I invite your comments in this final round, but I'm
9 not sure I'm going to enforce this Agreement during the
10 pendency of the appeal, but I can find that it's enforceable
11 while the appeal proceeds. That's what I'm inclined to do.
12 Now, having said all of that, Mr. Lattin, let's start with
13 you.

14 MR. LATTIN: Thank you, Your Honor. I don't have
15 a lot more than I have already said. Once again, just
16 briefly, I do believe the Settlement Agreement and the terms
17 of it were addressed by the Court with the ACPA's. I have
18 already talked about that.

19 The only thing that I really want to address is
20 counsel's assertion that somehow the Trustees are agreeing
21 that there was a material alteration of the Agreement by
22 virtue of the \$300,000 award and that somehow the petition I
23 filed agreed with that.

24 I disagree with that. What I outlined were the
25 funding issues that the Family Trust has, and the Family

1 Trust, as Mr. Kimmel testified to, is basically a real
2 estate venture.

3 And in order to fund all of the obligations, not
4 just the obligations in this Settlement Agreement, but all
5 obligations, including the Ag Credit Loan and there were
6 some other obligations that are unrelated to attorney's fees
7 and they all relate to cash flow. So in order to fund all
8 obligations, not just what are set forth in the Settlement
9 Agreement, there needs to be the acknowledgment that assets
10 need to be sold and the money put into the Family Trust so
11 these obligations can be paid, and those would include cash
12 distributions to beneficiaries once all of the obligations
13 are paid.

14 And Mr. Kimmel did a good job of outlining what
15 has occurred. There are appraisals being done so that that
16 can commence forward. So that reference in my petition was
17 not any sort of acknowledgment that somehow the Settlement
18 Agreement is void because of something that happened. It's
19 just an acknowledgment and, again, a request that we need to
20 fund this.

21 And if you do approve it, it needs to be funded.
22 I think everybody acknowledges that and all of the Trustees
23 understand that, so that would be the only thing that I have
24 to add to this.

25 I do think that we do need to have all of the

1 Trustees available on December 16th in order to, if we have
2 any chance of getting this resolved, and I think the Court
3 acknowledges that, so with that I will let other people
4 comment. Thank you.

5 THE COURT: So you just, you commented upon this
6 funding mechanism that was really part of the last hearing
7 and part of the prehearing statements for this hearing.

8 MR. LATTIN: Yes.

9 THE COURT: And share with me, I'm a little
10 concerned -- I'm uncertain, because the funding questions
11 existed before the Settlement Agreement. The Settlement
12 Agreement was silent as to the funding mechanism.

13 You are asking that I find the Agreement be
14 enforceable with the additional judicial insertion of a
15 funding mechanism? My thought is that the Trustees have a
16 duty to follow the terms of the Trust and the Settlement
17 Agreement and between them they liquidate, they sell, they
18 transfer, they figure it out.

19 This Family Trust still has assets. I don't want
20 to prescribe the way it's funded and I think the inability
21 of the Trustees to arrive at their own funding decisions
22 illustrates how they are protecting themselves as opposed to
23 acting as Trustees.

24 And so I have kind of intended just to be silent
25 as it relates to the funding mechanism; acknowledging the

1 need for it, but withholding my own involvement. That's
2 kind of been my thought. Go ahead, Mr. Lattin, if you want
3 to say anything in response.

4 MR. LATTIN: And I don't disagree with that, and I
5 think it was anticipated when the Settlement Agreement was
6 negotiated that it would be funded. Everybody thought it
7 would be funded.

8 So it was only after that that there was certain
9 resistance to funding things, but with everybody's comments
10 and the testimony that we have heard today, and I always
11 hate to comment on settlement discussions, but listening to
12 Mr. Riley and his, and he being encouraged by their
13 meetings, I'm certain with Mr. Riley involved that they are
14 discussing a funding mechanism, so I'm comfortable that
15 throughout this process everything will be funded. Thank
16 you.

17 THE COURT: Thank you, Counsel. Mr. Robison.

18 MR. ROBISON: Thank you, Your Honor. In your
19 Order to Set of September 22nd, you indicated that some
20 provisions of the Agreement may require judicial
21 intervention and resolution. That caused me to get somewhat
22 optimistic that not only approval, but performance would be
23 something that you might intervene about or resolve for us.
24 I don't mean to put that all on the Court. I think it's
25 going to be able to work out.

1 The only question I have is in your present
2 decision, is approval synonymous with enforceability or does
3 it get approved and then enforceability is an issue that is
4 between Todd and Stan?

5 THE COURT: The latter is what I'm contemplating,
6 that I approve it as an enforceable document, but I might, I
7 might prevent the enforcement of some provisions or all
8 provisions. I need to go back and unpack it again.

9 I know some provisions have already been complied
10 with. Other provisions may be affected by the appeal
11 outcome. I'm troubled by that. Implementation design while
12 the appeal is pending, I'm not sure about that.

13 So my thought is to put an imprimatur on the
14 enforceability, but then analyze what should be enforced at
15 the moment versus not enforced.

16 MR. ROBISON: Excellent. I can't imagine a
17 settlement conference on December 16th not addressing these
18 issues, but thank you.

19 THE COURT: So what am I to infer from what you
20 just said? Do you want me to remain silent or do you want
21 me to speak before December 16th?

22 MR. ROBISON: Well, I would like you to allow us
23 to work this out on December, on or before December 16th.
24 If it doesn't work out, you got to, you got to make the
25 calls as you see them.

1 THE COURT: Sometimes uncertainty is a great
2 influence in settlement conversations. Is that what you are
3 saying?

4 MR. ROBISON: That's exactly what I'm saying.
5 Listen, the cannonball has gone across the deck. We, Todd,
6 Stan, we get it, and that's why I think you have heard from
7 Mr. Riley that there has been a lot more progress made in
8 the last couple weeks than there was the summer of 2020 and
9 it's because of the judicial reaction that we witnessed come
10 from you.

11 THE COURT: That's a suggestion I want to really
12 think about. I want to hear from all of the attorneys, but
13 I might come back to that.

14 One way I can accommodate that request is to
15 schedule a reported telephone call with counsel December
16 17th, 18th, 19th, something like that, and just remain
17 silent until then, but I don't want to lose the momentum of
18 what direction I'm going, because I'm not going to preside
19 over the next four years what I presided over the past four
20 years. It's just not going to happen.

21 MR. ROBISON: Thank you.

22 THE COURT: All right. So let me see,
23 Mr. Hosmer-Henner.

24 MR. HOSMER-HENNER: Your Honor, I think the way
25 you described the way you were leaning is exactly what we

1 would support. I'm sorry, can you hear me?

2 THE COURT: Yes.

3 MR. HOSMER-HENNER: Your Honor, the way you
4 described the decision is exactly what we would support. I
5 do want to add a few clarifications and I want to comment on
6 uncertainty. Uncertainty can drive settlement, but I think
7 as you heard there is also a significant obstacle posed by
8 the uncertainty between Todd and Stan as to whether this
9 Settlement Agreement is enforceable.

10 Without knowing that their rights as opposed to
11 one another have been resolved, that leaves them in
12 permanent limbo that obstructs both the upcoming settlement
13 conference as well as Trust administration. So we hope that
14 in your comments in the past couple of rounds of
15 conversation aren't intending to delay a decision about the
16 Settlement Agreement as between Todd and Stan, because we
17 think that actually would impede settlement if we are still
18 waiting to see whether the Settlement Agreement is
19 enforceable.

20 I don't believe that's the case and I believe that
21 you have indicated the Settlement Agreement is enforceable
22 or your decision may be the Settlement Agreement is
23 enforceable but that certain, the implementation of certain
24 of those provisions should be held off until after the
25 appeal. And I think that that is a reasonable wait and see

1 approach so long as it doesn't mean that the parties are
2 still waiting until the next moment at which they know where
3 they stand vis-a-vis Todd and Stan.

4 And looking through the Settlement Agreement, and
5 we can unpack it or we can assist this Court in explaining
6 what the settlement provisions are, but many of these are
7 not affected at all on appeal. And the others, for example,
8 I think the only one that may be of, may be the most
9 difficult to unwind is the personal attorney's fees
10 provision, and many of those individual attorney's fees have
11 already been paid out by the Trust to Todd's side, but not
12 to our side.

13 So freezing it in place in one way or the other is
14 more or less unfair to the other side, but I don't, I don't
15 really mind pausing the implementation of certain of these
16 provisions so long as there is a pause and not an absolute
17 delay contingent upon some other event.

18 And so to put a point on that, if we are waiting
19 still for your decision about the Trustees to determine
20 whether portions of this Agreement are enforceable or not, I
21 think that would have a deleterious effect. If your
22 decision is limited to post verdict conduct that wouldn't
23 affect the materiality or the contingency of the Settlement
24 Agreement, then, as I believe you have indicated, then there
25 is not a significant problem.

1 I do want to specifically point out why the
2 Settlement Agreement matters and it should matter to the
3 beneficiaries. Mr. Collier joined this case and it is, it
4 is not a case I would want to jump into at this moment, so I
5 think he did an admirable job trying, you know, appearing,
6 but it's really a be careful what you wish for situation and
7 that opposing a request or a Settlement Agreement isn't
8 necessarily the right move just because you are on the other
9 side.

10 What was very important to us was to make sure
11 that Luke Jaksick was protected on the same terms as the
12 other grandchildren, the G3 members of this Trust, and the
13 provision provide -- And Luke's position, and this is
14 important to discuss, Your Honor, is he gets 20 percent of
15 Wendy's share, whereas all of the other grandchildren get
16 \$100,000 as a set fee taken out of their respective G2
17 generation share.

18 Absent this provision, if Wendy's share drops to
19 zero, then Luke, I believe, who has only received about
20 \$4,000 in a sub trust would get nothing. What this
21 provision ensures is that Luke is entitled to the greater of
22 20 percent of Wendy's share or an amount no less than the
23 other grandchildren.

24 So it's this provision that I would ask, I would
25 encourage counsel not to object to and certainly because

1 it's several, we can take it out if they want, but this is a
2 pure protection for Luke. So I would like to keep this in
3 because that's my client's wish.

4 But, again, these are the issues and the reason we
5 think the Settlement Agreement should be really enforceable,
6 because as a result of the jury verdict and as a result of
7 the equitable trial, the Settlement Agreement actually
8 preserves and limits the liabilities of the Family Trust to a
9 significant extent.

10 And absent that Settlement Agreement, the claims
11 that were originally brought by Wendy and others would
12 basically have been rejected and the entirety of the
13 indemnification, the entirety of the Jackrabbit capital
14 calls at this point would be able to be paid.

15 So from our perspective, we don't think that a
16 delay of the Settlement Agreement benefits truly anyone in
17 this case and enforcing it allows the parties to know where
18 they stand, but, Your Honor, we have no objection to the
19 delay of implementation of certain provisions to the extent
20 that you think that more time should pass to allow notice or
21 due process or a result on appeal.

22 THE COURT: Well, it seems to me that some of
23 those provisions that have not yet been implemented can be
24 affected dramatically by the appeal. If Wendy runs the
25 table, for example, and the Lake Tahoe home is returned to

1 the conversation, your client has contracted to buy into the
2 Tahoe home, a percentage of it.

3 I'm not sure why, why we do that now as opposed to
4 await the outcome of the appeal, as long as I, as long as I
5 indicate that it is enforceable between Todd and Stan, but I
6 remove that pre-appeal clause, pre-appeal resolution clause.

7 MR. HOSMER-HENNER: So the two clarifications is I
8 don't think that it would be appropriate to judicially
9 remove that at this point only to reserve the decision on
10 whether that clause, whether the appeal has an effect that
11 would prevent some of these clauses from being interpreted
12 and enforced as a result of the appeal.

13 So delaying the implementation as a result of the
14 appeal makes sense according to judicial economy, and so if
15 these are done and potentially would have to be unwound by
16 the appeal delaying implementation is acceptable.

17 But the second important piece, Your Honor, is
18 that one of the things that you said was that there is no
19 preclusive effect of your decision of the enforceability of
20 the Settlement Agreement.

21 THE COURT: No, I don't think that's what I meant.
22 What I meant to say is that my conclusion of the appeal is
23 enforceable between Todd and Stan. I don't want to create a
24 bar to Luke suing somebody for breach of fiduciary duties,
25 I'm not trying to plant ideas, or Wendy suing separately

1 with a specific claim for relief.

2 You know, we will argue about what was in front of
3 the jury and what may be barred, but I just don't want to
4 preclude anybody from attacking the Agreement as a breach of
5 fiduciary duties if that time arrives.

6 MR. HOSMER-HENNER: Your Honor, I actually agree
7 with that and I just want to make sure the language doesn't
8 undue any preclusive effect that the trial would have.

9 THE COURT: I agree with that.

10 MR. HOSMER-HENNER: And my position is that this
11 ruling doesn't add any preclusive affect or remove any
12 preclusive effect that existed prior to your decision on
13 this Settlement Agreement.

14 THE COURT: Well, the good news,
15 Mr. Hosmer-Henner, is that long before this conversation I
16 intended to direct you to prepare and submit a proposed
17 order, because Mr. Lattin did it last time.

18 I would want it in Word so I can modify it and I
19 would want it less than two pages, two pages or less. But
20 you can start thinking about that order.

21 I'm not going to enter that order until after
22 December 16th, but I'm happy to review it and to compare it
23 against the transcript and the moving papers to make sure
24 that it represents my decision, but I would like that
25 template order from you and what you prefer along the lines

1 that we talked about just now.

2 MR. HOSMER-HENNER: Okay.

3 THE COURT: Anything else before I turn to
4 Mr. Spencer?

5 MR. HOSMER-HENNER: No, Your Honor.

6 THE COURT: Mr. Spencer.

7 MR. SPENCER: Thank you, Your Honor. I hope the
8 parties will pardon me if they, if I'm skeptical that all of
9 this optimism is just talk and I hope it's not. I hope that
10 the optimism is real.

11 But as Your Honor has indicated numerous times, we
12 have been doing this for three plus years and there has been
13 plenty of time, first of all, to make an offer to Wendy that
14 was reasonable.

15 Secondly, for Todd and Stan to get together and
16 figure out how to administer this Trust, and certainly
17 figure out how to perform and fund their Settlement
18 Agreement that I don't think has even happened yet even with
19 the first dollar, but I'm very hopeful that all of that is
20 true.

21 We are just hearing for the first time today,
22 which has been consistent throughout this entire matter,
23 that those types of negotiations are going on and it would
24 be nice to have more disclosure about that, even to have
25 Wendy participate, but I suppose they have to strategize

1 about how they fund the settlement with Wendy if we are
2 going to get there.

3 But to address -- I'm going to postpone all of my
4 arguments regarding removal until your January hearing.

5 THE COURT: Thank you.

6 MR. SPENCER: And so I will address this and then
7 I will close. In relation to the November -- sorry, strike
8 that. In relation to the December 16th mediation or
9 settlement conference, there has been discussion about
10 uncertainty drives mediation and drives settlement and
11 certainly I'm in agreement with that generally.

12 But driving it and incentivizing a settlement are
13 two different things, and what I would like to see happen,
14 Your Honor, and I think Your Honor has enough before the
15 Court to do this, is to either rule or decide or indicate
16 that the Trustees are going to be removed if we don't work
17 out some resolution.

18 I don't know if you are comfortable doing that,
19 but, obviously, that removal would be postponed until
20 sometime after the settlement conference, but one side
21 saying you are going to get removed and the other side
22 saying that's not going to happen is not going to help the
23 mediation or the settlement conference one bit, but if we
24 know that if we don't reach a deal on December 16th removal
25 is imminent, I think that would change the dynamic of the

1 negotiation.

2 THE COURT: I want to respond. The problem I have
3 with that, Mr. Spencer, is it changes the dynamic too much
4 in your client's favor. And I have been frustrated. Some
5 of that frustration has spilled into my words. I think the
6 parties can understand where I'm going, but it's vital for
7 me to arrive at a conclusion with the right process.

8 And so for me just to say it now so that there is
9 a greater hammer at the settlement conference feels wrong to
10 me, because I haven't heard from Todd and Stan on this very
11 question. I think they should have their right to address
12 the Court either personally or through counsel.

13 I want to read something that's in the record
14 about my authority. I believe it's there, but I want that
15 record to be clear, and I want it to be a reasoned and not
16 reactionary decision.

17 You all know that that's what I'm thinking about
18 doing and I'm probably 65/35 percent in favor of doing it.
19 There is no question that I'm setting this hearing in
20 January for the sole purpose of satisfying myself that
21 that's the right move to make.

22 Take that with that what you want, but I'm not
23 going to formally declare anything, because there is a
24 possibility I don't. Hypothetically, let's say that I get
25 some new information in January that there is not talk about

1 settlement, but we are 80 yards -- here comes a football
2 metaphor, isn't that interesting -- we are 80 yards down
3 field legitimately, and we all agree we are 80 yards down
4 the field and we know how we are going to cover the red
5 zone, I might put off that decision for another six weeks.

6 But I'm not going to sit back and let litigation
7 unfold in the future as it has in the past. That's the most
8 I can say. So go ahead. I interrupted you, but I wanted to
9 respond as I was listening.

10 MR. SPENCER: Well, I appreciate that and that
11 certainly makes sense. I will just add that I did not
12 intend to have that as a hammer, although I guess it would
13 be somewhat of a hammer, but more just as an incentive that
14 people would know what is going to happen if we don't
15 resolve it. But I totally understand what you said and it
16 makes sense and with that I will end my argument. Thank
17 you.

18 THE COURT: All right. Ms. Clerk, will you start
19 looking at January? We need three hours in January, please.
20 Everyone pull up your calendars, if you would.

21 THE CLERK: Counsel, I'm looking at Tuesday,
22 January 26th at 1:00 p.m.

23 MR. HOSMER-HENNER: That's good for Stan.

24 MR. SPENCER: And for us, Your Honor, for Wendy.

25 MR. ROBISON: January 26th?

1 THE CLERK: Yes. That's a Tuesday.

2 MR. LATTIN: That would work for me, Your Honor.

3 MR. ROBISON: And it works for me, Your Honor, and
4 Todd.

5 THE COURT: Mr. Hosmer-Henner, if you will include
6 in the order you submit that there will be a hearing on the
7 question of removing the Trustees on January 26th. All
8 parties are invited, but not required to file Points and
9 Authorities no later than Friday, January 15th.

10 Points and Authorities of your discretion, the
11 authority I have to do it, the factual basis that might
12 exist, the wisdom of retaining the Trustees or removing
13 them. I want everybody to have an opportunity to be heard.
14 Each hearing statement not to exceed 20 pages.

15 MR. HOSMER-HENNER: And what time is that? I
16 apologize, Amanda.

17 THE CLERK: At 1:00 p.m.

18 MR. HOSMER-HENNER: 1:00 to 4:00, just to
19 calendar?

20 THE COURT: Let's go, Ms. Clerk, I'm not looking
21 at the calendar, so tell me if I can't, but I prefer to go
22 1:30 to the end of the day.

23 THE CLERK: That's perfect.

24 THE COURT: Okay. I think I saw Ms. Fields
25 raising her hand. Did you want to say something, ma'am?

1 MS. FIELDS: Yes, Your Honor. I was wondering if
2 I had the ability to respond just to one thing. I won't
3 take a lot of time.

4 THE COURT: Go ahead, please.

5 MS. FIELDS: I wanted to respond to Mr. Lattin
6 just by saying that he is inaccurate. My Trust has not yet
7 fully been funded.

8 And then, also, if it wasn't for my mom, I would
9 not have been here today or been able to object to the
10 settlement or discuss any of my concerns stating or, I'm
11 sorry, about the Trustees, because I did not get the
12 Petition for Instruction in an adequate amount of time to
13 respond, and there is nothing on the document that tells me
14 how to object, when this hearing was or any other important
15 information.

16 And then, also, just with the moving forward with
17 the Trustees, I do have an e-mail from Kevin Riley to me and
18 my mom dated from June 2015 stating that we were exploring
19 possibilities of equalizing shares of the Trust as well as
20 figuring out how to fund the grandchildren's Trust.

21 Which it just makes me continue to question that
22 since we have been hearing this for over five years it's
23 more of a strategic tactic to keep Todd and Stan in order to
24 benefit themselves more than this Trust and I just wanted to
25 add that in there.

1 THE COURT: Thank you.

2 Mr. Collier, I overlooked you. I didn't mean to.

3 Briefly anything you want to say on behalf of Luke?

4 MR. COLLIER: Thank you, Your Honor. No, we will
5 go ahead and just submit it based upon the objection. The
6 only thing is Luke is relying upon the three Trustees of the
7 Family Trust to live up to their fiduciary duties and look
8 out for his best interests and we hope that that will
9 happen.

10 THE COURT: Ms. Clerk, if you will find 30 minutes
11 sometime, let me just find the date with you, December 16th.
12 So 30 minutes on Thursday, December 17th, with just counsel
13 on a reported telephone call.

14 In fact, I don't mind if we do it by Zoom, but it
15 has to be 30 minutes. It's a status hearing just where you
16 tell me where you are so I can enter an order immediately
17 after the 16th. I don't anticipate arguments.

18 THE CLERK: Did you want me to announce a time,
19 Your Honor?

20 THE COURT: Please. Let's check with counsel to
21 make sure it's okay with their calendars.

22 THE CLERK: Counsel, how is 3:00 p.m. on Thursday,
23 December 17th, for your calendars?

24 MR. LATTIN: That works. Thank you.

25 MR. SPENCER: That's good for Wendy. We are open

1 that day.

2 MR. HOSMER-HENNER: That works for Stan as well.

3 MR. ROBISON: Works for me, Your Honor.

4 THE COURT: All right. I am going to end this
5 hearing. Gratitude for all who have participated, for the
6 way in which you participated. It's informative for me.
7 Thank you. Yes, Mr. Johnson.

8 MR. JOHNSON: After the last hearing, you ordered
9 that the Trust pay for the transcript so that everybody
10 could have it and use it. Could we do that again?

11 THE COURT: Yes, sir.

12 MR. JOHNSON: Thank you.

13 MR. ROBISON: Your Honor, on the briefs or the
14 prehearing statements that precede the January 26 hearing,
15 when are they due?

16 THE COURT: It was, let me pull it up, it was the
17 Friday 10 days before.

18 MR. ROBISON: 10 days?

19 THE COURT: Yeah. Could be 9, could be 11. It
20 was the Friday --

21 THE CLERK: January 15th, counsel.

22 MR. ROBISON: 13th?

23 THE CLERK: 15th, 1-5.

24 MR. ROBISON: Thank you.

25 THE COURT: Ms. Clerk, can you quickly set up a

1 telephone conversation in which Mr. Lattin, all attorneys
2 join in, not Trustees, not CPA's, not parties, and not a
3 court reporter.

4 Counsel, you will understand why I'm going to talk
5 to you off the record. Anything I say, there is no prior
6 restraint. You may share it with your clients. I give you
7 full authority to do so, but there is something I'm going to
8 say that's not on the record and it relates to your December
9 16th settlement conference.

10 So, Ms. Clerk, can you send an e-mail and let's
11 talk to all of the attorneys in about five minutes? Do you
12 know how to set that up with a host number and a call-in
13 number?

14 THE CLERK: I actually have that locked in my
15 office in the courthouse.

16 THE COURT: Okay. Let's do this.

17 THE CLERK: Well, what we could do is we could
18 excuse everyone with just counsel remaining.

19 THE COURT: So I would like everyone who is not an
20 attorney to go ahead and deactivate their Zoom
21 participation. Thank you, counsel. And that includes the
22 court reporter. Counsel, if you will stay. And good day to
23 everybody.

24 (Whereupon the proceedings concluded at 12:28 p.m.)

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2 STATE OF NEVADA)
3 WASHOE COUNTY) ss.

4 I, CORRIE L. WOLDEN, an Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in
6 and for Washoe County, DO HEREBY CERTIFY;

7 That I am not a relative, employee or independent
8 contractor of counsel to any of the parties; or a relative,
9 employee or independent contractor of the parties involved
10 in the proceeding, or a person financially interested in the
11 proceeding;

12 That I was present in Department No. 15 of the
13 above-entitled Court on November 19, 2020, and took verbatim
14 stenotype notes of the proceedings had upon the matter
15 captioned within, and thereafter transcribed them into
16 typewriting as herein appears;

17 That the foregoing transcript, consisting of pages 1
18 through 110, is a full, true and correct transcription of my
19 stenotype notes of said proceedings.

20 DATED: At Reno, Nevada, this 4th day of December,
21 2020.

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/s/Corrie L. Wolden

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CORRIE L. WOLDEN
CSR #194, RPR, CP

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 * * * * *

9 In the Matter of the Administration of the
10 SSJ ISSUE TRUST,

CASE NO.: PR17-00445

DEPT. NO.: 15

CASE NO.: PR17-00446

DEPT. NO.: 15

12 In the Matter of the Administration of the
13 SAMUEL S. JAKSICK, JR. FAMILY TRUST,
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16 **ORDER GRANTING PETITION FOR INSTRUCTIONS AND MOTION TO**
17 **PARTIALLY ENFORCE SETTLEMENT AGREEMENT**

18 The Court, having considered the Petition for Instructions filed by Todd Jaksick and
19 Michael Kimmel on November 3, 2020 ("Petition") and Stanley Jaksick's Motion to Partially
20 Enforce Settlement Agreement filed on August 13, 2020 ("Motion") along with all oppositions,
21 replies, and other submissions, and having heard the parties' arguments at a hearing on
22 November 19, 2020, grants the Petition and Motion as follows.

23 The Court finds that the contingencies and conditions in Paragraph III of the Settlement
24 Agreement between Todd and Stanley ("Settlement Agreement"), have been met, satisfied,
25 resolved, and/or removed. The resolution of the jury trial and the equitable trial, and subsequent
26 judgments, did not alter the material terms of the Settlement Agreement. Accordingly, the
27 Settlement Agreement is a valid, binding, and enforceable agreement between Todd and Stanley.
28 The Court further finds that the Settlement Agreement between Todd Jaksick and Stanley
Jaksick ("Settlement Agreement") does not violate a material purpose of the Samuel S. Jaksick,

1 Jr. Family Trust or the SSJ's Issue Trust and is approved in accordance with NRS 164.940 and
2 164.942. The Court further finds that the Settlement Agreement was silent as to the funding
3 mechanism for the Settlement Agreement and the Court declines to impose any funding
4 condition as discussed in the Petition. While the Settlement Agreement is approved and
5 enforceable, this Order is not intended to resolve or preclude claims against Todd or Stanley for
6 breach of their fiduciary duties based on entry into the Settlement Agreement. This Order neither
7 creates additional preclusive effect than was created already in this litigation and the jury and
8 equitable trials and judgments, nor lessens any preclusive effect of this litigation and the jury and
9 equitable trials and judgments.

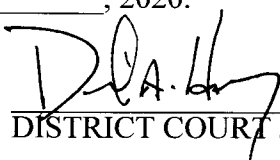
10 As a separate matter, the Court sets a hearing for January 26, 2021 between 1:30 p.m. and
11 5:00 p.m. on the question of removing the trustees of the trusts. All parties are invited, but are
12 not required, to file hearing statements (not to exceed ¹⁵~~20~~ pages) no later than January 15, 2021.
13 As the Court and jury have already rendered a verdict after trial, this hearing will not relate to the
14 prior conduct of the trustees, but to proactive administration of the trusts. The Court's findings
15 herein concerning the Settlement Agreement are not dependent on and will not be affected by the
16 outcome of this separate matter and hearing.

17 The Court schedules a status hearing, with counsel only, on December 17, 2020 between
18 3:00 -3:30 p.m. via a reported videoconference.

19 Accordingly, the Court after careful review of the matter and for other good cause shown,
20 GRANTS the Petition for Instructions, without conditions, and GRANTS the Motion to Partially
21 Enforce Settlement Agreement and ORDERS that the Settlement Agreement is approved and is
22 valid and enforceable as between Todd Jaksick and Stanley Jaksick.

23 **IT IS SO ORDERED.**

24 DATED this 9th day of January, 2020.

25 
26 DISTRICT COURT JUDGE
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1 Respectfully submitted by:

2 McDONALD CARANO

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4 By /s/ Adam Hosmer-Henner
5 Adam Hosmer-Henner, Esq. (NSBN 12779)
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7 Reno, Nevada 89501
8 *Attorneys for Stanley Jaksick,*
9 *Co-Trustee of the Family Trust*
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