

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 11:47 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 II

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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.

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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 II 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 II to the following:

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

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/s/ Liz Dendary, CP

Liz Dendary, CP

Certified Paralegal

4185

IN THE SECOND JUDICIAL DISTRICT COURT

STATE OF NEVADA, COUNTY OF WASHOE

THE HONORABLE DAVID HARDY, DISTRICT JUDGE

In the Matter of the
Administration of the

Dept. No. 15

SSJ'S ISSUE TRUST.

Case No. PR17-00445

_____/

CONSOLIDATED

In the Matter of the
Administration of the

Case No. PR17-00446

SAMUEL K. JAKSICK, JR.
FAMILY TRUST.

_____/

Pages 1 to 71, inclusive.

TRANSCRIPT OF PROCEEDINGS

STATUS HEARING

Tuesday, January 26, 2021

REPORTED via Zoom BY: Christina Amundson, CCR #641
Litigation Services 323.3411

RA0214

A P P E A R A N C E S:

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1 RENO, NEVADA -- 1/26/21 -- 1:30 P.M.

2 -oOo-

3 THE COURT: This is consolidated cases
4 involving the SSJ Trust and the family trust. If
5 you'll just make your appearances, please.

6 MR. ROBISON: Kent Robison for Todd Jaksick
7 individually and as beneficiary.

8 MR. LATTIN: Don Lattin on behalf of Todd
9 Jaksick and Mike Kimmel as trustees of the family
10 trust and Todd Jaksick as trustee of the SSJ Issue
11 Trust.

12 MR. HOSMER-HENNER: Adam Hosmer-Henner with
13 McDonald Carano on behalf of Stanley Jaksick as
14 cotrustee of the family trust.

15 MR. CONNOT: Mark Connot, your Honor, on
16 behalf of Wendy Jaksick.

17 THE COURT: I acknowledge Ms. Fields, who
18 appears on her own behalf and, finally, Mr. Collier.

19 MR. COLLIER: John Collier on behalf of
20 Luke Jaksick.

21 THE COURT: Counsel, I have read all of the
22 papers filed in anticipation of the hearing today.
23 I have notes, I have inclinations. My custom is to
24 begin, and it appears that Mr. Spencer has just

1 called in. Hello, Mr. Spencer.

2 MR. SPENCER: Hello, your Honor.

3 THE COURT: My inclination is to begin with
4 comments, and I'm resisting that. I don't have any
5 dispositive inclinations at all. I do have thoughts
6 as I've read the moving papers. It won't bother me
7 at all if you just want to just launch into
8 arguments or whether you wish for me to speak at the
9 outset. I'm just going to identify people along my
10 gallery view.

11 Mr. Hosmer-Henner, we're set for several
12 hours. How would you like to spend the next several
13 hours and how would you like the court to begin?

14 MR. HOSMER-HENNER: Your Honor, we're
15 agnostic with respect to that, how you proceed. We
16 truly don't have much to say that's not already in
17 our briefing, so I don't think that long arguments
18 from our side, at least, are necessary.

19 THE COURT: Mr. Robison?

20 MR. ROBISON: Similarly, we've pretty much
21 said what we have to say to you, your Honor, in our
22 brief, so I'd like an opportunity to reply if
23 Wendy's attorneys argue otherwise.

24 THE COURT: Will it be Mr. Spencer or Mr.

1 Connot who speaks for Wendy?

2 MR. CONNOT: It'll be Mr. Spencer, your
3 Honor. Mr. Spencer will handle the argument, but I
4 actually ended up with a bankruptcy court hearing at
5 2:00, so if I could slip out at that point with the
6 Court's indulgence.

7 THE COURT: Mr. Spencer, how would you like
8 the court to begin and what do you anticipate
9 happening for the next several hours?

10 MR. SPENCER: Your Honor, I'm really
11 aligned with Mr. Robison and Mr. Hosmer-Henner so
12 far. We're going to stand on our submission that I
13 know in my experience with your Honor you -- knowing
14 you, you've read everything and so we're very
15 comfortable with that.

16 The only thing I'd add is we have -- and
17 your Honor saw that we've requested -- we filed an
18 objection but really it's a request to preserve
19 certain claims that I will want taken up and put
20 onto the record. But as far as the argument, it'll
21 be very brief, because we've already submitted them
22 in writing.

23 THE COURT: Thank you. Mr. Lattin?

24 MR. LATTIN: Thank you, your Honor. And I

1 agree with everybody else's assessment. I have a
2 few comments but not a lengthy argument and I will
3 leave it up to the Court on how you would like to
4 start.

5 THE COURT: All right. I'm not passing
6 over Ms. Fields. I acknowledge her presence and
7 I've read her written statement. I'm not
8 intentionally passing over Mr. Collier who is
9 capable of zealous advocacy. He's here on behalf of
10 Luke and I wish to focus initially on Todd, Stan,
11 and Wendy.

12 Forgive the informalities. Maybe I'll
13 begin with asking some targeted questions, then, as
14 opposed to just opening up for you to emphasize what
15 has already been written.

16 MR. SPENCER: Your Honor, that preservation
17 of claims, I think, procedurally should come first
18 and then after that we can take up your Honor's
19 interest.

20 THE COURT: Go ahead, Mr. Spencer.

21 MR. SPENCER: As we mentioned in our
22 filing, your Honor, this particular hearing is
23 really -- is the product of and comes from the
24 hearing we had in December where your Honor had

1 heard certain things that we believe caused you to
2 want to consider -- based upon what you had heard in
3 that hearing, want to consider removal of the
4 trustees, but we want to make sure that we preserve
5 all claims that we can make. Obviously, we want to
6 respond to your Honor's inquiry and your interest in
7 addressing this really as a sua sponte court
8 proceeding as opposed to affirmative moving papers
9 that Wendy may -- or might have filed or could file
10 in the future based upon actual claims for removal.

11 We understood this hearing to be more to
12 address your Honor's claims and your Honor wanting
13 to hear specifically the pros and cons of removing
14 the trustees as opposed to starting a new lawsuit
15 for removal and that sorta thing. So, we want to
16 make sure that there's no res judicata or waiver of
17 claims that Wendy might bring as a result of
18 participating in this particular proceeding that
19 your Honor called.

20 THE COURT: Mr. Spencer, I believe that's
21 an adequate preservation of your claims. I heard
22 you loud and clear and I've read what you have
23 written. I don't believe your participation will
24 constitute any form of waiver.

1 MR. SPENCER: Thank you, your Honor.

2 THE COURT: While I have you, Mr. Spencer,
3 how do you respond to the trustees's argument that a
4 change of trustees will create unnecessary expense?

5 MR. SPENCER: And so there's really -- as i
6 most cases, there's really the legal side of things
7 but then it often turns upon the practical side of
8 things. And, Mr. Hosmer-Henner, I think, presented
9 some practical issues that involve whether the trust
10 should be distributed, whether it should be
11 terminated and distributed and it really doesn't
12 matter who the trustees are that do that.

13 There is, I think, a genuine problem as
14 much as we want your Honor to remove the trustees
15 because -- and I'll reserve some of the substantive
16 stuff for later, but for purposes of changing the
17 status quo, that is definitely the relief that we
18 would ask your Honor to grant today. But the
19 practical side of that is, as your Honor indicated,
20 the opposing counsel has argued that it creates
21 added expense.

22 Another practical issue I see is that it
23 really creates a problem of who is going to accept.
24 We have kind of a pseudo-outside trustee who is now

1 involved, obviously, Mr. Kimmel, that took this on
2 as at the request of Todd knowing him through high
3 school. But if somebody just comes into this cold
4 and finds out all the litigation that's gone, I
5 think it may be very difficult to find someone to
6 act.

7 I don't think there's any way -- in direct
8 response to your Honor's question, I don't think
9 that there's any way to avoid added expense of a new
10 trustee, it's just going to happen. But I don't see
11 that being -- in sort of the comparative analysis
12 grand scheme of things, I don't think that expense
13 is going to be so high and so great that it would be
14 prohibitive, certainly considering the millions of
15 dollars that have been spent so far on litigation,
16 if, in fact, that successor trustee appointment
17 works towards an end to the litigation.

18 And so I think it's a -- there's no way to
19 avoid the expense, but I think that in the long run
20 changing the status quo we don't believe that the
21 current situation is workable. If changing the
22 status quo brings an end to the litigation, the
23 expense that would be involved with the successor
24 trustee would not be prohibitive.

1 THE COURT: I'd like to focus on what
2 you've said now twice, the work of ending the
3 litigation. As I've thought about whether I might
4 replace the trustees, I've worried that almost
5 unconsciously I've tilted in favor of removing the
6 trustees to sharpen the decisions, in some ways
7 influence settlement, maybe even coerce settlement.

8 As I think about it, it feels inappropriate
9 for me as the judge to be that engaged in this
10 settlement of the dispute, and so as I think about
11 removing trustees, I want to be careful that I don't
12 do that with the end-to-litigation objective. If
13 that happens, so be it, but that would be a
14 secondary purpose.

15 The primary purpose for replacing the
16 trustees is to effect an orderly wind-down
17 distribution and termination of the family trust,
18 which appears to be impaired by the trustees' own
19 personal interests.

20 So, with that preface, Mr. Spencer, do you
21 believe this family trust should be wound down and
22 distributed and terminated while the appeals are
23 pending, or may I rely upon Mr. Hosmer-Henner's
24 argument that there's really no harm, no foul in

1 keeping the family trust extant during the pendency
2 of this appeal?

3 MR. SPENCER: And, first of all, your
4 prefatory response is 100 percent accurate. I agree
5 with that. It's not just to end the litigation. It
6 would involve a continuing administration of the
7 trust and that would be the main reason -- one of
8 the main reasons for the continuing administration,
9 is a party to the litigation, which now is a party
10 to the appeal, cannot be eliminated before that is
11 ruled upon absent a settlement, I don't believe.

12 And so I don't think that it can be fully
13 wound down and terminated before there's a final --
14 really a final judgment in the entire action.
15 Whether something can be -- property could be
16 distributed as interim distributions, that's
17 something that I think could be done and the clarity
18 of a new trustee might expedite that but, no, I
19 don't believe there can be a termination until the
20 appeal is completed.

21 THE COURT: Makes me nervous when I hear
22 about interim distributions, because there's so many
23 uncertainties surrounding what little certainty we
24 know.

1 MR. SPENCER: I don't foresee that coming
2 up. It's a possibility, I guess, but if there's to
3 be any settlement -- anything that ends the matter
4 of the trust administration before the litigation,
5 if there's a settlement, that would have to be a
6 global deal. I don't know that anyone's going to
7 agree to a partial distribution because before
8 there's a full and final release.

9 THE COURT: I know that you have preserved
10 potential claims and are cautious about any waiver.
11 I won't tread on that when I ask -- when I tell you
12 that I am intrigued by your rendition of the
13 accountings since the order after equitable trial
14 was entered. You've suggested in your moving papers
15 that the accountings of the past have not been
16 modified into enhanced accountings but, instead,
17 remain as if the court didn't comment upon the
18 sufficiency of the accountings.

19 Just by way of some proffer and argument --
20 I understand this is not evidence -- it's very
21 intriguing to me because, if the past accountings
22 continue into the future, that would be unwise on
23 behalf of the trustees. Would you help me
24 understand what you know as I glean from your moving

1 paper?

2 MR. SPENCER: Yes, your Honor. So
3 harkening back to what everyone saw as part of the
4 trial, really, that started this entire matter when
5 the trustees asked to have their accountings
6 approved, that's the format that was presented then
7 and it was not anything that the Court could
8 approve. And then carrying it past the jury verdict
9 and in the equitable trial, the format has not
10 changed and the additional information that we were
11 promised has not been provided.

12 THE COURT: And when was that promise of
13 enhanced accountings? How long ago? Because you
14 wrote the word "crickets" in your moving paper, but
15 I want to frame it with actual chronological time.

16 MR. SPENCER: Yes, your Honor. So, Mr.
17 Johnson with my firm asked -- asked for additional
18 information, you know -- what I'm referencing is the
19 hyphens that we saw in valuations of entities and so
20 on and that was sent -- let's see. That was sent
21 April of 2020. And these are -- that was for the
22 2018 accounting and, I guess, the 2019 accounting.

23 And then we've gotten -- we have not gotten
24 any supplemental information that we were told we

1 would get from Mr. Riley since, really, April of
2 2020. And so the same format is being used with the
3 same missing information that could not be approved.

4 THE COURT: I'll follow up. You said that
5 you haven't received information since April of
6 2020. At some point Mr. Hosmer-Henner may reiterate
7 that he directed Mr. Riley to provide any
8 information about the golf entities to anybody who
9 could find that information useful or relevant. And
10 that direction was reportedly given in May and in an
11 email from Mr. Riley, I think, in November, Mr.
12 Riley essentially said, Yeah, my business is so busy
13 I haven't had a chance to do anything.

14 MR. SPENCER: Right.

15 THE COURT: Is that consistent with your
16 on-the-ground experience, that they haven't received
17 or viewed any information about these golf entities
18 that are partially owned by the family trust?

19 MR. SPENCER: Yes, your Honor. We asked
20 for all of that through the trustees and that has
21 been our experience as related in our pleading.
22 And, really, what -- the underscoring -- or the
23 underlying point there is that we've even had all
24 this time after the initial filing in December of

1 2018 to gather that information and we still don't
2 have it. And that doesn't appear to even be -- that
3 doesn't appear to be something that's even going to
4 change, and so the disclosure is still lacking,
5 which at common law that lack of disclosure is a
6 breach of fiduciary duty and statutorily failing to
7 account is as well.

8 And so if they can't -- if the trustees
9 can't swear to the contents of their accounting and
10 it's not in a form that provides enough information
11 that it can be approved, then all of those are
12 breaches, and so that brings us to the removal
13 issues.

14 THE COURT: I'm not done with you yet, Mr.
15 Spencer, but I want to pause and just acknowledge
16 the other attorneys that are not involved in this
17 colloquy. And what I thought I would do is ask
18 pointed questions of you and the attorneys would
19 take notes and then I'd give them an opportunity of
20 a narrative response as they've been able to discern
21 what some of the court's concerns are.

22 Mr. Spencer, if you'll turn to NRS 163.115,
23 on page seven of your hearing statement under three
24 subparagraphs A, B and C --

1 MR. SPENCER: Yes, I have, your Honor.

2 THE COURT: -- each of which would warrant
3 the court's discretionary decision to remove a
4 trustee. How do I find that a trustee commits or
5 threatens to commit a breach of trust without an
6 evidentiary hearing? My fear is that, if I were to
7 make that finding, it would establish some type of
8 preclusive or res judicata effect in subsequent
9 litigation that may be filed. That's the first
10 question. I'll go through all three and then ask
11 you to respond.

12 Under B I believe I could make a finding
13 now that there is a lack of cooperation between the
14 cotrustees that substantially impairs administration
15 of the trust. But I want to tease out what you
16 argued in support of B, which is the failure to
17 distribute is a reflection of the lack of
18 cooperation. And it is that lack of cooperation --
19 as you artfully excerpted Mr. Kimmel's testimony and
20 Mr. Riley's testimony, it's that lack of cooperation
21 that prevents the distribution. And then to C,
22 persistent failure of the trustee to administer the
23 trust effectively.

24 I want you to talk about all three of those

1 just in free form so I can better understand. Focus
2 on whether I would need an evidentiary hearing or
3 whether there's a preclusive effect upon a finding
4 under A. I'm concerned and wary of that. And then
5 I need you to also bring it into the reality that,
6 while the appeal is pending, distribution may not be
7 wise.

8 So, it's difficult for me to bang the
9 trustees, figuratively, for not distributing and
10 winding down and terminating, when distributing,
11 winding down, and terminating is really held in
12 abeyance while the appeal is pending. If you'll
13 talk for a couple minutes about that.

14 MR. SPENCER: I can address the last part
15 first. The one thing I want to point out there is
16 it's not just the windup in the termination. The
17 administration continues until the -- at least for
18 these trustees -- until they're removed and the
19 overall administration continues until the end. And
20 so it could be that the trust is terminated but it's
21 not wrapped up and all the duties of the trustee
22 continues. So, the statute NRS 115, Subsection B
23 really contemplates looking at the administration
24 itself.

1 So, in response to your question, I agree
2 that distribution probably -- final distribution is
3 probably not going to happen until there's a final
4 resolution, whether at the supreme court or if it
5 comes back down your court later. And so -- but I
6 think the focus there is on the administration part
7 and the administration contemplates more than just
8 winding up and terminating. I mean, until that
9 happens it's supposed to continue pursuant to its
10 terms, which calls for certain distributions for
11 health, education, maintenance and support, et
12 cetera.

13 THE COURT: Did you include accountings in
14 that orderly administration?

15 MR. SPENCER: 100 percent and disclosing
16 all information that materially affects the
17 beneficiaries' interest and not self-dealing and all
18 of those things that by common law and by statute
19 that would be a breach of fiduciary duty.

20 So, the accounting is the most obvious and
21 easy one, but if the accounting is examined, it
22 doesn't even meet the full disclosure requirement.
23 So, that is all part of the administration, and
24 whether there's a final distribution of principal

1 does not preclude distribution of income or
2 distributions that are made based upon the trustees
3 in their discretion for a beneficiary's health,
4 insurance, maintenance, and support. And that's not
5 just Wendy. It's any beneficiary. So, it could be
6 Luke or Todd or anyone else, so that's part of the
7 administration. So, I think that that one your
8 Honor can take up and rule on during the pendency of
9 the appeal because that is an ongoing, continuing
10 aspect of this entire matter, which is the
11 administration.

12 As your Honor mentioned, NRS 163.115A, the
13 trustee commits or threatens to commit a breach of
14 trust, certainly, your Honor, an evidentiary hearing
15 would be necessary to get some of that. But I think
16 your Honor can glean, really, to some degree from
17 the record that that is happening, and I point to
18 the dispute that was going on last fall and into the
19 end of the year last year between the trustees
20 themselves.

21 And so I think your Honor could really
22 almost -- I don't know about finding as a matter of
23 law -- but certainly examine the record and see
24 where the breach of trust has come to the floor even

1 without additional evidence. And so we've heard
2 also some testimony under oath that your Honor took
3 at the prior hearing of Mr. Kimmel and Mr. Riley
4 that indicated that the trust administration had
5 been neutered because of the inability of the
6 trustees to communicate and work well together.
7 Certainly that would be a breach or a threatened
8 breach or commission of a breach or a threatened
9 breach of trust.

10 Everyone is aware of the
11 elephant-in-the-room issue, which is the
12 indemnification agreement. We heard over and over
13 and over that no one's determined how that
14 indemnification is to be applied. We're relying on
15 Mr. Riley to tell us. He didn't testify at the
16 trial. We haven't heard since how it's to be
17 applied and I don't know that even the trustees know
18 how it's to be applied, which would amount to
19 evidence of the commission or threatened commission
20 of a breach of trust.

21 And then, of course, we have the biggest
22 problem with what's become the settlement
23 discussions -- without getting into those in
24 detail -- the funding issue. There was a funding --

1 a hearing that your Honor held related to funding
2 Todd and Stan's settlement agreement prior to its
3 approval. Mr. Hosmer-Henner has indicated that
4 those issues have been resolved. We as
5 beneficiaries don't have any idea about that. But
6 even assuming that those have been resolved, the
7 same issues still apply in relation to the trustees
8 not being able to work together. I think animosity
9 has turned to hate to some degree between them, and
10 whether they funded their own settlement, we can
11 certainly tell your Honor, and your Honor probably
12 can infer or know, that they have not funded any
13 sort of -- or come up with any way to fund any sort
14 of settlement for Wendy.

15 So, that would include, not just a
16 settlement. It would include funding other things
17 which have come up, such as the Jackrabbit capital
18 calls and all of that, so the inability to agree on
19 how things should be funded also would warrant
20 evidence.

21 Definitely your Honor could hear evidence.
22 I don't think that -- and, certainly, if more
23 evidence was presented, your Honor, your Honor's
24 decision might be easier. But I think your Honor

1 has enough before you to meet the standard that's
2 required by NRS 163.115.

3 THE COURT: Just pause for a moment and let
4 me think, please.

5 I'm interested to know what Wendy's
6 position is about -- what Wendy's position is
7 regarding the funding disagreement that's existed
8 between Todd and Stan. Please continue to wait for
9 me to formulate this.

10 I have not been as moved by the funding
11 problem as the parties have been, because over
12 argument and objection I found the absence of the
13 funding formula to be something I should take note
14 of. Whether it's embedded and implicit or not, I
15 don't want to trace the past, but I just wasn't as
16 moved by the funding problem. And if I'm being
17 honest, one of the reasons why I'm not moved by the
18 funding dilemma is that I'm looking at an estate in
19 its totality that is worth tens of millions of
20 dollars.

21 Now, I know the attorneys are going to push
22 back and say, Well, Judge, the only corpus in front
23 of you is the family trust and the issue trust.
24 That's the only corpus in front of me. That's the

1 only corpus over which I have authority. But I know
2 that I have \$20 million in Lake Tahoe. I know that
3 I have thousands of acres somewhere in beautiful
4 Nevada, and if the parties wanted to fund, they
5 would find a way to fund, and so I just haven't been
6 as moved by that.

7 Now, I'm going to ask a question but, Mr.
8 Spencer, I need you to be very, very careful in your
9 answer because I can hear Mr. Hosmer-Henner
10 screaming at me about the mediator's privilege. I
11 can also hear the Evidence Code screaming at me
12 about offers to compromise. I don't want to know
13 anything about the settlement conversations except
14 generally are they focusing on a lump-sum payment to
15 Wendy or are they formulaic depending upon a lot of
16 outcomes yet to be realized? Please don't go any
17 deeper than that.

18 MR. SPENCER: It's a mix, your Honor. It's
19 cash and other property. It's not all one lump-sum
20 cash payment. It's pieces of things plus cash.

21 THE COURT: Would you revisit for a moment
22 Todd's testimony before the jury that in the short
23 term he anticipates a distribution to Wendy in the
24 neighborhood of \$4 to \$4 and a half million dollars.

1 What information has changed since then? What
2 financial conditions have changed since then other
3 than my \$300,000 award to Wendy's counsel? What is
4 different today from what -- on the day he provided
5 that testimony?

6 MR. SPENCER: Your Honor, I don't believe
7 anything is different that we are aware of. The
8 trustees may know something but we've not heard
9 anything new on that, despite my office asking for
10 it.

11 What your Honor heard and what everyone
12 heard at the trial with that demonstrative exhibit
13 is what we understand is still the situation, but I
14 don't know if there's any update on how that gets
15 funded or anything like that, but that hasn't been
16 offered yet either. And so what he meant by, "We
17 would like to try to wrap the estate up as quickly
18 as we can, so it probably depends upon the outcome
19 of this. We are shooting for the end of the year to
20 be able to disburse all the assets," that, obviously
21 -- that was 2019 and so we all know that that never
22 happened. Here we are in 2021 and nothing has
23 changed in that regard.

24 THE COURT: If interim distributions are

1 difficult to contemplate and final distributions are
2 premature, what is really gained by moving -- by
3 replacing the trustees other than your negotiating
4 leverage for settlement, which I don't want to aid
5 and I don't want to impair. What benefit accrues
6 from removing these trustees?

7 MR. SPENCER: And I want to just say, your
8 Honor, that is not -- gaining leverage for the
9 settlement may have some effect, I don't know, but
10 that is not the main reason for removal.

11 To answer your question, the No. 1 reason
12 in my mind is that -- and this sounds a bit broad --
13 but it's really, one, to change the status quo. No.
14 2, to allow Wendy to get -- to gain, receive
15 information from a neutral that is gonna be
16 duty-bound to go out and find out information about
17 all the assets, where proceeds went, where they're
18 sitting and, you know, what trust and how everything
19 got transferred to formulate an updated accounting
20 that would provide all of that information, that
21 would make -- that would go a long way towards
22 quelling some concerns about all these things that
23 we have suspicions about.

24 And then, thirdly, the efficient and

1 economical administration of what property is left
2 is the -- really, the ultimate reason. Because what
3 we have right now is not working and more of the
4 same is just going to produce more of the same
5 result. And if we can get out of this sort of funk
6 that we're in now as far as not being able to get
7 information and have things administered efficiently
8 because the trustees don't get along, that is going
9 to -- generally going to help all the beneficiaries,
10 and, you know, the key there is the information that
11 we'll be able to gather that could aid in a
12 negotiation.

13 But we're not trying to gain leverage as
14 much as we're trying to gain information and to make
15 sure that the trusts are properly administered,
16 which we don't believe they've been since the
17 beginning.

18 THE COURT: Do you have evidence underlying
19 your current allegation that Todd is concealing and
20 withholding information about the ranches and Stan
21 is concealing and withholding information about the
22 golf courses? Because they're each playing a game
23 of Stare-Across-the-Rubicon of each afraid to go
24 first. Is that your current opinion and do you have

1 evidence underlying it?

2 MR. SPENCER: Yes, your Honor, and, yes, we
3 do. We've alluded to some of that in our moving
4 papers, but if we had an evidentiary hearing, I
5 think we'd have additional evidence. But as the
6 record stands currently, there's a preponderance, so
7 we're happy to even corroborate it more.

8 But we do have evidence that we've asked
9 for information over and over and over and not
10 received it, which we're entitled to get as a
11 beneficiary, and the trustees both acknowledge we're
12 entitled to it and they both refuse to provide it.

13 In addition, we've asked for appraisals.
14 Your Honor may remember in the last hearing we heard
15 that some appraisals had been done. And we got page
16 one of an appraisal and we asked for all the
17 supporting documentation that would -- that is
18 always attached in support of an appraisal number
19 and we were told that they don't have it. I don't
20 know if it doesn't exist or not, but the response is
21 they don't have it.

22 And I've never seen an appraisal that's
23 ever been issued that has a first page that says
24 it's worth X and no supporting documentation. Maybe

1 this is a first, but every appraisal I've seen has
2 it, and despite our asking for it, it's not been
3 delivered.

4 THE COURT: Return to the accountings.

5 Is it your opinion that the modified,
6 enhanced accountings are overdue and, if so, by how
7 long?

8 MR. SPENCER: Yes, your Honor, they're
9 overdue. I believe they were due within -- is it --
10 is that 90 days? 90 days of the first of the year.
11 And we're still waiting for, really, any of the
12 prior ones plus last year as far as the enhanced,
13 what you mentioned, the enhanced version that has
14 the extra information.

15 THE COURT: When I prepared for the
16 hearing, I focused on something that Mr. Lattin
17 argued, which is that I should strive for a narrower
18 remedy before removal. And I thought a possible
19 narrower remedy was to order and supervise the wind
20 down and distribution of the family trust, that I
21 could order a wind-down distribution plan to be
22 submitted to the court within 30 days, which
23 includes timing benchmarks. I would hold periodic
24 hearings to measure the performance.

1 As I thought about it more and I heard your
2 comments, I don't think that's the right thing for
3 me to do and so I've begun wondering what other
4 narrower remedies are appropriate. And one of the
5 things that I'm struggling with is my inability to
6 speak sophisticated accounting and accountant
7 language. There is no doubt that I expect every
8 accounting after the equitable order to be almost in
9 brail form so the most sight-impaired person can
10 still figure out what these trusts own -- I hope
11 that sounded politically acceptable. I don't mean
12 it to be -- I mean it to be illustrative. I'll have
13 to wonder if I'm insensitive when I reference brail.
14 I want it to be obvious to the common 10th grader
15 who is walking around or community, frankly, as I
16 think about Wendy -- I'm not calling her a 10th
17 grader, but I'm thinking about her level of
18 understanding as portrayed in the trial.

19 And so I believe the law allows me to
20 appoint a special master who will rise above the
21 advocacy, who will entertain the concerns about the
22 accounting and who will advise me as a neutral, whom
23 I appointed, to tell me if my intuition is right and
24 if my expectation as set forth in the equitable

1 order should be enforced. I would select a CPA-type
2 deeply experienced in trust accountings to be the
3 court special master.

4 And I just want you to reflect upon what
5 I've said as a possible narrower remedy to remove
6 this question of the sufficiency of future
7 accountings from the advocacies that's borne of each
8 preferential interest.

9 MR. SPENCER: And I think that is an
10 excellent idea as to one aspect of this. And so in
11 relation to going back to what I said, in relation
12 to the parties abiding by your Honor's rulings and
13 orders in relation to the equitable trial in
14 providing the information that we believe an
15 accounting should contain and to satisfy the
16 obligation of full disclosure, I think your Honor's
17 suggestion is excellent.

18 That does not solve the business part of
19 things, which is the control of the assets and who
20 is going to pay what or who is going to make the
21 decisions about what. Getting those accountings
22 clean and up to date and sufficient, I think, is
23 something we all need, and that's a good idea, to do
24 it, but I --

1 THE COURT: How can you -- the "you" is a
2 pronoun for everybody on my speaker gallery. How
3 could anybody assess their settlement value unless
4 it's just a lump-sum check that is a penny more than
5 somebody's willing to take. How could anybody
6 assess their settlement position without the
7 underlying information of what the family trust
8 value is?

9 MR. SPENCER: I don't -- to know
10 specifically it's not possible. It requires -- to
11 settle under these circumstances requires a party to
12 succumb to the lack of information, acquiesce to a
13 settlement that may not be totally accurate in the
14 spirit of getting something done.

15 But if you're talking about how can we
16 possibly compute our one-third and know whether the
17 settlement is good value or not good value, it's not
18 possible. It's impossible.

19 THE COURT: I really want to hear from the
20 other attorneys to create balance in this
21 proceeding. This will be my final question.

22 Can I know your -- I know you're appearing
23 from a remote location. I trust you have some
24 experience with Northern Nevada costs of

1 professionals.

2 If I were to appoint a special master who
3 is deeply experienced in trust administration and
4 trust accounting, if you think about the hourly
5 value of that professional multiplied by the scope
6 of work in the future, can you ballpark within a
7 couple hundred thousand -- with a couple of zeroes,
8 how much you think that would cost the family trust?

9 MR. SPENCER: Realistically, depending on
10 how broad your Honor's scope may be as far as what
11 they're entitled to look at or what they need to, I
12 think it's probably in the range of \$50,000 --
13 \$30,000 to \$50,000.

14 THE COURT: Okay. When I hear from each of
15 the attorneys, please consider commenting on -- when
16 I hear from the trustee's attorneys -- specifically
17 Mr. Lattin -- please comment on the status of the
18 accountings, both the timing of the delivery and the
19 content of the accountings. That's something that's
20 very intriguing to me because it's post-trial
21 activity.

22 I hope that you're all ready to speak for a
23 long time to create balance. I'll yield to whoever
24 wishes to go first, otherwise I'll just pick on

1 counsel as they appear in my gallery.

2 MR. ROBISON: Your Honor, I'll be shortest.
3 It's not as though we didn't see special master
4 consideration coming. It's a worthwhile idea. I
5 hope, if that's the decision, it's \$50,000. I could
6 see that almost being tenfold.

7 But more importantly is the scope, because
8 the testimony to which you refer on Todd -- I have
9 the exhibit in front of me. Your Honor, that \$4
10 million was made up of six different components,
11 only one of which was the family trust.

12 That dialogue included an estimate of \$1
13 million coming out of the family trust for Wendy,
14 about \$550,000 coming out of the BHC trust for
15 Wendy. It contemplated about an \$800,000 value for
16 interest in Jackrabbit. It contemplated and listed
17 specifically the \$650,000 that she had already been
18 paid by Stan and Todd, and it put a value on her use
19 of the issue trust that is the Lake Tahoe house and
20 the ranches.

21 It was never stated that there would be \$4
22 million distributed to Wendy from the family trust
23 during that year, that those components were spread
24 across. And these components, your Honor, without

1 getting into detail, are wrapped up and were wrapped
2 up in settlement discussions, so it's a bigger
3 picture than just the family trust.

4 But if the special master is focused just
5 on the family trust, it's doable. But that's one
6 component of several moving assets that result in an
7 overall analysis of the benefit Wendy, Stan, and
8 Todd get under these assets that Sam left behind.

9 THE COURT: Mr. Robison, without disclosing
10 any names, are you aware of any professionals in
11 Northern Nevada who would be capable of really being
12 the court's expert witness? Essentially, I'd call
13 him or her a special master, but who would be
14 capable with time and money to evaluate the
15 accountings and to inform the court about the
16 sufficiency of the notice provided.

17 MR. ROBISON: The answer's yes. We are
18 working with auditors in litigation now that I have
19 high regard for that are local. You can draw any
20 one of the accountants -- forensic accountants that
21 frequently appear in family court. You're as aware
22 of them as we are, and I think there's pretty
23 reputable people that can do that, but we can also
24 stay with one of the big firms to do this. Of

1 course, the bigger the firm, the bigger the bill.

2 THE COURT: Well, I hope that that's not
3 all you're going to say, Mr. Robison. You said you
4 would be short.

5 MR. ROBISON: No. Your Honor, we're at the
6 25th mile in a marathon. We may not resolve. We
7 may have to go to the supreme court and express our
8 arguments to the supreme court about various issues
9 that are on appeal.

10 But we're the 25th mile on this wind down
11 and Stan and Todd have been talking about Montreux,
12 the ranches. And we have talked at length with
13 Wendy and Wendy is talking to Stan and Wendy is
14 talking to Todd. And the house is not really on
15 fire. There are concrete, constructive discussions
16 going on. Are they doable? I don't know. But
17 there are discussions and they're constructive and I
18 believe they're in good faith.

19 THE COURT: I'll hear next from Mr.
20 Hosmer-Henner and then Mr. Lattin.

21 MR. HOSMER-HENNER: Thank you, your Honor.
22 We don't have too much to say from our perspective
23 either. So, if you have specific questions that you
24 want us to address, I'm happy to comment on those.

1 I guess the only thing I would say is I'm
2 not sure at this stage after the family trust has
3 been in existence since 2013 if it provides that
4 much benefit to anyone to go through the accountings
5 and through the process of a special master to
6 update the Court on all the beneficiaries about the
7 value of these entities, when the value may well be
8 determined by the open market when we think that
9 these -- as Mr. Robison said in his papers as well,
10 these entities should be liquidated and added to the
11 corpus of the family trust in a liquid format.

12 If that's done and that can be done by us,
13 by a receiver at some point, I'm not sure if it
14 needs to wait until the appeal, but perhaps it does.
15 If that's done, it's done and it's sold to either a
16 third party or to whomever. That's it. So, to
17 incur the expenses of doing the full accounting and
18 supervised in that fashion seems, certainly not
19 wasteful, certainly not unfair, certainly not wrong,
20 but simply the wrong direction. Because what really
21 needs to be done still from our perspective is
22 distributing this trust and closing it out rather
23 than treating it like an ongoing entity that needs
24 to -- it doesn't need to manage any entities or

1 manage ranch land. The family trust is not hiring
2 people to go out and work at a golf course, it's not
3 hiring people to go and work at a ranch. It's
4 simply the repository of this estate-planning
5 technique that needs to be distributed out at some
6 point. And our hope, and as we negotiated in the
7 settlement agreement, is to do that sooner rather
8 than later.

9 THE COURT: I want to drill down a little
10 into what you just said. I heard from Mr. Spencer
11 that interim distributions were highly improbable
12 and final distributions were unwise while the appeal
13 is pending. You've heard from me that I'm looking
14 for narrower remedies.

15 Should I consider -- instead of ordering
16 distribution and supervising distribution, should I
17 order and supervise liquidation with the proceeds
18 being held in trust pending appeal?

19 MR. HOSMER-HENNER: Your Honor, that's an
20 option that my client and I have considered, almost
21 a constructive trust within a trust, to freeze the
22 assets of the trust in liquid form while the appeal
23 is pending. I think that's within your authority.
24 I can't speak to the -- I don't think I can speak

1 necessarily in favor of that, because I think that
2 would be the Court's superseding the authority of
3 the trustees and our position, on paper certainly,
4 is that the trustees are continuing to administer
5 the trust appropriately and in accordance with the
6 terms of the trust.

7 But if that is something that, I would say,
8 if all parties are in favor of, including the people
9 who are in this litigation and the liquidation of
10 the trust could potentially affect them and their
11 claims that are on appeal, then I think that could
12 potentially be an option for this court. So, I've
13 talked around that a little bit and I'll simply say,
14 you know, I think the trust has an obligation to be
15 distributed. The settlement agreement obligates the
16 trustee to distribute it and wind it down as soon as
17 possible.

18 And if the way to do that is to liquidate
19 it as Mr. Kimmel, one of the cotrustees has
20 recommended -- and that was his testimony at the
21 last proceeding, was let's liquidate it and close it
22 out -- perhaps we don't distribute those funds until
23 the pendency of the appeal. But that's certainly an
24 option for the Court to simply freeze it until we

1 see what happens upon appeal.

2 THE COURT: Practically what does
3 liquidation look like? It is the liquidation of
4 minority shares which always result in a discount
5 and liquidation would require a buyer who is willing
6 to join this dynamic. So, help me understand what
7 you mean by "liquidation" as it specifically
8 relates, for example, to the golf properties.

9 MR. HOSMER-HENNER: So, I do -- your Honor,
10 has told me multiple times that you want to stay
11 away from the weeds and so I'm trying not to get
12 into the specifics of these entities. But there's
13 one entity that I believe you're referring to and
14 that's Toiyabe, which is a holding company that
15 holds a portion of another entity which then
16 operates another real estate entity.

17 With respect to liquidation, there is a
18 potential buyer who would be interested in -- who is
19 a third party who would be interested in purchasing
20 that 50 percent of Toiyabe. And I believe I
21 understand that and I don't want to make a
22 representation that any offer's been made, because I
23 don't believe it has been. But with respect to that
24 entity, I think it's possible to find a buyer that

1 would exchange cash for that minority interest of
2 Toiyabe holdings. And, again, I don't want to speak
3 for Todd or his counsel, but my understanding is
4 that there also have been other buyers at various
5 points in times for pieces of the ranch land and the
6 other properties.

7 So, with that said, I think it is
8 conceivable that liquidation can happen in a
9 relatively short time frame when these properties
10 and interests are marketed.

11 THE COURT: Do you have the same confidence
12 that ranch properties are interesting to third-party
13 purchasers?

14 MR. HOSMER-HENNER: Is your question
15 directed to me, your Honor?

16 THE COURT: Yes.

17 MR. HOSMER-HENNER: As I just said, I'm
18 aware that at various points in times actual offers
19 have been made on those properties.

20 THE COURT: Well, I didn't know if you were
21 talking about golf properties or ranch properties.

22 MR. HOSMER-HENNER: The ranch properties.
23 So, I said I don't want to speak for Todd or his
24 counsel, but with respect to those properties I'm

1 aware of other offers being made.

2 THE COURT: Do you have any comments
3 regarding the allegedly late accountings and the
4 sufficiency of the accountings in light of the
5 court's order after equitable trial?

6 MR. HOSMER-HENNER: Your Honor, we have
7 clearly communicated to the other cotrustees and to
8 their counsel that we would support the inclusion of
9 enhanced information in those accountings and we
10 believe it was required by this court's order.

11 We have shown you evidence in
12 communications where Kevin Riley indicated that he
13 spoke to Stan and Stan agreed to provide information
14 about those entities -- without going to the weeds,
15 the entities in the family trust -- in order to
16 prepare those enhanced accountings. I have a piece
17 of correspondence from Kevin -- Mr. Riley where we
18 indicated that he simply has not had time to prepare
19 those.

20 So, from our standpoint we're not aware of
21 any requests from the professional adviser that the
22 family trust has employed, Mr. Riley, to Stan that
23 he is not complied with or that remains outstanding
24 or that he's contested. So, with that said, I would

1 defer mostly to Mr. Lattin, simply because there
2 have been many communications between himself, Todd
3 and Kevin Riley that Stan was not included on. So,
4 I would say that the accountings have generally been
5 handled by others and so I think Mr. Lattin should
6 speak to that.

7 But at least from my understanding, Mr.
8 Riley has been tasked with preparing that enhanced
9 accounting. There are no obstacles that have been
10 given to him by the cotrustees and it's a function,
11 as he indicated, of his schedule with respect to the
12 provision of the enhanced accounting.

13 THE COURT: So, on behalf of your client
14 are you satisfied that we're on track, the time he's
15 taken is appropriate in light of the industry and
16 expectations?

17 MR. HOSMER-HENNER: Most of the -- those
18 explanations have been provided to others, but I
19 have not had that direct correspondence with Mr.
20 Riley. But at least in the documentation I've
21 reviewed and seeing him as a person who, even this
22 court has recognized seems to be extremely
23 forthright, I take him at face value that he has not
24 had the opportunity to prepare those accountings.

1 THE COURT: Let me ask you a little more
2 directly, then, so I can get an answer from you in
3 response to my question.

4 Is eight months okay to you, Mr.
5 Hosmer-Henner, that he hasn't provided the
6 information to the other trustees and beneficiaries,
7 since you directed him to do so in May -- or
8 authorized him to do so in May?

9 MR. HOSMER-HENNER: Why -- to be clear, I
10 don't think he's sitting on information. I think it
11 requires the application of his professional
12 expertise to actually put that in a format to go
13 into the accountings.

14 So, I would say we would absolutely prefer
15 the accountings to be done on a faster basis, but at
16 this point in terms of the trustee's obligations and
17 duties, I don't think that hiring another accountant
18 without the familiarity of the family trust would at
19 all speed up this process.

20 THE COURT: Mr. Hosmer-Henner, I know
21 you're being very careful because you represent one
22 of the trustees and I understand you don't want your
23 answer to somehow implicate him.

24 I'm looking at an email from Kevin Riley on

1 November 17th. You provided it as an exhibit to
2 your hearing statement. He essentially says, "Stan,
3 I'm just not in a position to spend the required
4 amount of time to prepare the financials with the
5 associated disclosures."

6 How long do we wait before the trustees
7 insist that he do so? If you made the authorization
8 in May and he's telling you November, I just don't
9 have time, when should the trustees light a fire
10 underneath him to get it done?

11 MR. HOSMER-HENNER: That's a very difficult
12 question for me to answer because I can't tell you
13 they haven't lit that fire underneath him. There's
14 been multiple communications to Mr. Riley. So, in
15 terms of whether they are actively managing their
16 outside adviser, that's the framework I'm looking
17 into and I'm not sure how much can be done short of
18 replacing him, which I don't think would expedite
19 anything. That's just a question I can't answer in
20 terms of the predicate that you've presented to me,
21 which is they haven't done enough already.

22 THE COURT: Without naming names, Mr.
23 Hosmer-Henner, are you aware of professionals in
24 Northern Nevada who would be qualified to provide

1 the services I may request of a special master?

2 MR. HOSMER-HENNER: I am both in terms of
3 people who could serve as a special master for just
4 the provision of the accountings and for people who
5 could assist in the dissolution or liquidation of
6 the family trust.

7 THE COURT: Mr. Hosmer-Henner, if we go
8 back to the fall when Todd and Stan were sharpening
9 their spears against each other in a way that
10 surprised me and disappointed me, if I bookend that
11 information to the moving papers filed in the fall
12 and then compare it to the status right now where
13 you've suggested in your moving paper that, now that
14 I've entered the order on January 8th, all of the
15 disagreements between Todd and Stan have diminished
16 or evaporated. Would you talk about that for a
17 moment, please.

18 MR. HOSMER-HENNER: Well, first, your
19 Honor, I think Mr. Spencer said my representation
20 was that the funding issues have been resolved
21 entirely. And I certainly didn't mean to imply that
22 and I don't think I said that and I don't think I
23 made the same representation to you that all the
24 issues have dissipated or resolved or disappeared.

1 What I believe I represented -- and I hope
2 I said this accurately enough -- was that there's a
3 drastic difference between the situation between
4 Todd and Stan when they -- at least from Stan's
5 perspective -- when he thought he settled and
6 resolved his claims to become in an amicable
7 position with Todd and Todd taking action in terms
8 of a response to a motion to enforce settlement and
9 a refusal to abide by that settlement agreement,
10 returning the parties to a state of active
11 litigation as if they had never settled in January
12 of 2019.

13 The difference between then and now where
14 the parties were treating each other as if they were
15 on a litigation footing again, as if that settlement
16 agreement had never happened, and now is
17 significantly different. So, is it challenging for
18 them to work together after everything that's
19 happened? There's no doubt that there's still some
20 challenges and a rebuilding of trust, but it's
21 simply a difference in kind between the attitudes
22 and interactions with each other when they are
23 negotiating over whether they even settled this very
24 important settlement agreement versus when they are

1 now administering the family trust together.

2 THE COURT: Anything else, Mr.
3 Hosmer-Henner?

4 MR. HOSMER-HENNER: Not at this time, your
5 Honor.

6 THE COURT: It's 2:35. We started at 1:30
7 and I usually take a break every 90 minutes, but
8 we're about to hear from Mr. Lattin and I think it's
9 better to break now as opposed to midstream. Let's
10 be in recess for nine minutes. I've got 2:36. If
11 we back in at 2:45, I'll turn to Mr. Lattin.

12 Please remember to mute yourself if you're
13 going to talk about the court. You're free to
14 deactivate your videos.

15 (Recess taken.)

16 THE COURT: Mr. Lattin, have the 2019
17 accountings been produced? If so, have they been
18 produced in a format that reflects improvement in
19 light of the court's order after equitable trial;
20 and, number two, if Stan authorized Mr. Riley to
21 prepare financials with associated disclosures on
22 April 8th and on November 17th Mr. Riley's not
23 been able to do it because he's not in a position to
24 spend the required amount of time, is that

1 acceptable or unacceptable to the trustees?

2 MR. LATTIN: Thank you, your Honor. I will
3 endeavor to answer those questions.

4 First of all, the 2019 accounting has been
5 provided and we were cognizant of the Court's
6 equitable order and your requirements that there be
7 an enhanced accounting. And those were discussed
8 specifically with Mr. Riley and he was directed to
9 go forward and do that.

10 Mr. Riley is -- I spoke with him in
11 preparation for this hearing. He is working on the
12 enhanced 2019 accounting. He does express concern
13 about the detail that is going to be required given
14 the number of entities, the different ownership
15 interests in the various entities, and the
16 information that's going to be required, given also
17 that it's been requested in the COVID-19 environment
18 and also now starting a new tax season.

19 But I can assure you that he is working on
20 it. It is not acceptable that it hasn't been done
21 yet, but I will say of all the cogs in this wheel
22 that we are discussing, Mr. Riley's knowledge of
23 this estate, the various entities, the various
24 ownership interests is very important going forward.

1 There have been discussions about special
2 masters, bringing CPAs in, and while that would all
3 be good, I don't think anybody approaches it with
4 the knowledge that Mr. Riley does. So, in all
5 honesty, we have given him some leeway to do what is
6 necessary to get it done and I can assure the Court
7 that it's being worked on.

8 THE COURT: The problem with that, Mr.
9 Lattin, is that as I forecast the future, I
10 anticipate that at some point Wendy's going to file
11 a separate action and she's going to say, Judge,
12 exact same accountings. The pattern of accountings
13 in the past is unchanged. They're late, they're
14 missing, and when they're produced they don't give
15 me enough information about what the trust owns.

16 The reason I focused so much on the
17 accountings today is I'm trying to preempt that
18 litigation, because my order after equitable trial
19 creates a pretty easy pathway for Wendy. And I
20 wouldn't have expected when I signed that order that
21 on January 26th, 2021, we were talking about the
22 2019 accountings in a form that provides accessible
23 information and notice about what this trust owns.
24 I can't have the asterisks in the future that I've

1 had in the past because they just don't work.

2 That's why I'm emphasizing it, Mr. Lattin.

3 So, when you say it's unacceptable to the
4 trustees and we get it, be careful, because you know
5 when this next round of litigation comes it won't be
6 in front of a jury. It will be in front of me. And
7 I've teed my hand in my order after equitable trial.
8 Wendy has to know what this trust owns.

9 MR. LATTIN: Well, she knows what's owned
10 because it's all in the 2019 trust, but I understand
11 your concerns. I can also tell you that we are now
12 talking about a trust that has \$80,000 in its bank
13 account to pay just the ongoing obligations -- and
14 I'm not talking about professionals. I'm talking
15 about the ag credit loan, the day-to-day expenses is
16 going to take care of that in short order.

17 But, nevertheless, Mr. Riley is working on
18 it. We understand your concern. I will say that,
19 if he were to be replaced, there's not enough money
20 in the account to replace him and have somebody else
21 do it. So, when I say we'll give him some leeway,
22 we're strongly encouraging him and he understands to
23 be forthright with everybody about his time and what
24 this takes and the magnitude of it and he's working

1 on it.

2 And I understand what you're saying and we
3 certainly -- we would not want more litigation and,
4 quite frankly, this family trust cannot afford any
5 more litigation. Also, to put this in perspective,
6 I think we need to also understand that at Sam's
7 death there was about \$32 million worth of debt and
8 the trustees have been heavily criticized but they
9 have worked together well enough to reduce that debt
10 down to just a few million dollars. So, they have
11 worked together and they have worked together to
12 significantly reduce and manage the debt of the
13 family trust.

14 So, to suggest that it hasn't been
15 administered properly, I think, forgets the things
16 that I've heard in the past and the efforts that the
17 trustees have jointly gone to to reduce the debt.

18 Also, with respect to Mr. Riley and the
19 enhanced accounting, in order to discuss and
20 effectively determine how to wind this estate down
21 to enter into meaningful settlement conversations
22 with Wendy, there have been at least twenty
23 telephonic meetings between the trustees and Mr.
24 Riley in order to discuss how you take these assets,

1 how you sell them, and how you bring money into the
2 estate so there could be a payment of all the
3 obligations and distributions. So, there has been a
4 significant amount of time put forward in
5 administering this, coming up with funding
6 mechanisms and discussing how to wind down the
7 estate and move forward. I would also say that just
8 -- have I answered your questions about the enhanced
9 accounting, how we're working on it, and the efforts
10 that we have gone to to try to get that
11 accomplished?

12 THE COURT: You've answered the question
13 very candidly. Thank you. I'm not satisfied with
14 the answer but I think you've answered it.

15 MR. LATTIN: I really -- I don't think
16 anybody is satisfied sitting here with what's
17 occurred. You know, it's not easy to be in a
18 position where the trustees are being discussed as
19 being removed.

20 But, regardless, let me move to another
21 area and the area involves your suggestion of a
22 special master, which I think is a good suggestion.
23 I think it may solve some of the accounting issues
24 and what's been done and what hasn't been done. The

1 problem with this whole estate is a very practical
2 problem. It is now past 4:00, and when I hear Mr.
3 Spencer talk about it being \$50,000 for a special
4 master, I think that's only about a third of what it
5 would cost. You have to remember there are multiple
6 entities, multiple pieces of real estate, multiple
7 different percentages of ownership interest in all
8 of the various entities.

9 So, that's one side of the equation. A
10 special master is going to cost \$100,000 to \$125,000
11 just on his side, but you need to double that
12 expense because it's going to require Mr. Riley's
13 involvement to discuss with the special master what
14 he has done by way of accounting, why he has done it
15 the way he has and to just explain the entities and
16 the interest.

17 So, whatever figure you put on a special
18 master, I think you need to double it because the
19 cost that was thrown out takes into account only the
20 special master equation and not the cost of the
21 family trust both by way of Mr. Riley, both of
22 which, I think, would have to be borne by the family
23 trust, so double the expense whatever you think it
24 will be.

1 There are also some very practical concerns
2 on a daily basis about removing the trustees. No.
3 1, there's an IRS obligation that is currently being
4 worked on that needs to be paid. There are ongoing
5 expenses that need to be taken care of on a monthly
6 basis. The two signatories on the bank accounts are
7 Todd and Stan.

8 And then also we are about 50 days away
9 from filing a brief in the supreme court. If you
10 were to remove the trustees, I think it puts the
11 appeal into jeopardy because a receiver, a new
12 trustee, whatever the court would envision, would
13 require that new person to, perhaps, seek his own
14 counsel, which there's no money to pay for that. It
15 may require him to seek his own financial adviser,
16 which is also costs, and it may also mean that Mr.
17 Riley would not move forward as a CPA for the family
18 trust.

19 So, there are significant practical issues
20 that arise if the trustees are to be removed at this
21 point in time. This was an estate that Sam Jaksick
22 set up and he set it up, and the real true value to
23 it was the tax implications upon his death, but what
24 he did not think about was how you liquidate these

1 interests in the real world. Because as the Court
2 perceived earlier, these are minority interests in
3 either entities that are controlled or owned by
4 family members that are litigating. It's going to
5 be a rare investor, unless he can get a real good
6 deal, to step into ongoing litigation knowing that
7 there's an appeal, knowing that there's the
8 potential for the case to come back and have to be
9 retried.

10 So, it's going to be very difficult with
11 both the minority interests, the number of entities
12 we have, and the stigma of litigation among family
13 members to sell any of these properties and make
14 distributions. Nevertheless, the trustees are
15 developing a plan in connection with Mr. Riley in
16 order to liquidate and fund and move forward with an
17 effective distribution and paying off all the
18 obligations.

19 So, I guess, that's a long-winded way of
20 saying they are, despite their differences -- and I
21 would be the first one to say that there are
22 differences -- I will say that, since the approval
23 by the Court of the settlement agreement, I think
24 those differences have been reduced and I think

1 they're all prepared to move forward, set up a plan,
2 and get enough money to pay off the obligations and
3 make distributions of this.

4 So, with that, I would be glad to answer
5 any questions that the Court may have.

6 THE COURT: I invite Mr. Collier and
7 Ms. Fields to say anything they want.

8 Ms. Fields, I have read your entire
9 statement and disinvite you from repeating what's
10 already been written and reviewed by the court.

11 Let's first begin with Mr. Collier on
12 behalf of Luke and anything that Ms. Fields would
13 say in response to the information that's being
14 presented in court today. You don't have to speak.
15 I just want to make sure you feel part of the
16 conversation.

17 MR. COLLIER: Thank you, your Honor. I
18 appreciate that. John Collier on behalf of Luke
19 Jaksick.

20 As I've indicated previously at the prior
21 hearings, Luke was a minor at the time that these
22 proceedings commenced. He did not have a guardian
23 ad litem appointed. He was virtually unrepresented
24 until I made an appearance on his behalf.

1 What we're hopeful for is to avoid another
2 litigation in which Luke is a petitioner and so
3 we're hopeful. I hear things, excuses on
4 accountings and why they're not done. I don't hear
5 what's been done to try to get it done quickly and
6 get the information to the beneficiaries. So, all
7 of these things are -- I'm here as an observer today
8 on Luke's behalf and we're hopeful that we don't
9 have to commence another litigation.

10 But we want all of the trustees to know
11 Luke is here and he wants to be heard by you and
12 hopes that full disclosure will be forthcoming so
13 that he can evaluate where he stands on this matter.
14 That's all I have, your Honor.

15 THE COURT: Thank you. Ms. Fields.

16 MS. FIELDS: Thank you, your Honor.

17 Without doing any repetition of what you
18 have already previously read, I think everything
19 that's been discussed, for the most part, the ideas
20 that have been brought forward seem to be moving,
21 like he said, in the hopeful direction.

22 I think the main thing that has stuck with
23 me today is having brought someone, whether it's a
24 master, or whatever ends up possibly being decided,

1 that the ability of having a neutral party with no
2 personal agenda other than to just distribute is
3 something that seems extremely hopeful. That's all.

4 THE COURT: Thank you, everybody. I'll
5 just have a couple minutes to write some notes down.

6 The transcript will be marked "Oral
7 Pronouncement" at this point and reflects the
8 court's pronouncement.

9 ORAL PRONOUNCEMENT

10 THE COURT: Mr. Spencer will prepare the
11 order after hearing. I invite Mr. Spencer to
12 narrowly draft the order to reflect what I say and
13 not use the drafter's prerogative of including
14 additional findings of facts or conclusions I don't
15 contemplate.

16 Mr. Spencer, you're from out of state, you
17 should know that I provide that guidance to most
18 attorneys who prepare orders after hearing.

19 MR. SPENCER: No problem, your Honor. I
20 understand.

21 THE COURT: Under NRS 163.115 this court
22 does make a finding under Subsection B that there is
23 a lack of cooperation between the cotrustees that
24 substantially impairs the administration of the

1 trust. I make that finding based upon the sworn
2 testimony of Mr. Kimmel and of Mr. Riley and based
3 upon my longitudinal relationship with this file in
4 its totality.

5 Both Todd and Stan have approached the
6 trusteeship with intent to vindicate the office of
7 trustee but also with their own interests in mind.
8 I am specifically not finding that either trustee
9 has committed or threatened to commit a breach of
10 trust or a breach of fiduciary duties. I don't want
11 to create a litigation advantage for any party in
12 the future or disadvantage for any party in the
13 future by my narrow finding under NRS 163.115(b).

14 This court is prepared to conduct an
15 evidentiary hearing on subparagraph A, if requested.
16 Now, that will not be a trial on fiduciary duties
17 but, instead, would be an evidentiary hearing on a
18 breach of trust as set forth in the statute. With
19 evidence it's possible the court could conclude that
20 there has been an unwillingness or persistent
21 failure to administer the trust effectively, but I'm
22 unwilling to make that finding today because I don't
23 have a level of evidence on subparagraph B that came
24 through Mr. Riley and Mr. Kimmel's testimony.

1 But if requested, I would conduct an
2 evidentiary hearing on subparagraph C. I'm not
3 going to say anything else about the statute. If
4 somebody files a motion putting the trustee on
5 notice and sets it for evidentiary hearing, I'll
6 conduct an evidentiary hearing. I'll do so in an
7 abbreviated fashion without additional discovery
8 rights. I'll just set it and everyone can come in
9 for a day, but I believe with my finding under
10 subparagraph B it's unnecessary.

11 So, I've made the requisite finding to
12 exercise my discretion to remove the trustees. The
13 question is whether I should remove the trustees
14 today because the finding is made or whether I
15 should cautiously consider a narrower remedy. I'm
16 not burdened by the costs of a new trustee because
17 of the history of costs in this case and the risks
18 that those costs will continue without court
19 intervention. I wish it were not so, counsel, that
20 there will be future costs, but there simply will
21 be. That's the course of this case.

22 I am persuaded by Mr. Lattin that a removal
23 of trustee now could be disruptive to the party
24 posture in the appeal, but I still hold hope for a

1 resolution. I've heard for some time now that
2 you're close and then I've heard you're not close
3 and then I've heard your close and then I've heard
4 you're not close.

5 My order is not intended to influence
6 settlement. It's to ensure a future administration
7 of this trust different from the past, but if
8 through my order there is additional conversations
9 about resolving the case, so be it.

10 Because I'm searching for a narrower
11 remedy, the parties will each file paper in response
12 to the court's order. The filing will be by
13 Tuesday, February 16th. The paper will examine a
14 few things. What is the appropriate narrow remedy
15 before removal. I want everyone to have a chance to
16 think about it for a day or two before you start
17 writing. What is the intermediate step this court
18 can take before removal. That's the first question.

19 The second question that I asked you to
20 write about is this court's authority under NRCP 53
21 and Nevada's decisional authorities, what is this
22 court's authority to appoint a special master. And
23 if you conclude what I have concluded, that I have
24 authority to appoint a special master, what is the

1 appropriate scope of the appointment. Does it
2 include supervision over an immediate orderly
3 liquidation of trust corpus without interim or final
4 distributions? If the master's authority includes
5 -- not authority -- if the master's scope includes
6 the supervision of an immediate orderly
7 distribution, what does the liquidation plan look
8 like?

9 I'm looking for something in writing as a
10 template for the next special master to begin his or
11 her work. Is it a written proposal and status every
12 three weeks? Are there other benchmarks? I just
13 don't know, but I'm interested to know what the
14 parties think.

15 Under NRCP 53 you'll find that the court
16 can impose upon the special master limitations on ex
17 parte communication and it can declare the absence
18 of any limitation on ex parte communication. I want
19 to know what you think about how you communicate
20 with the special master. My thought is that each of
21 you should have the right to independent and
22 separate communications with the special master, but
23 I want to be advised about that protocol.

24 Does the scope include a review of the

1 timing and content of accountings in light of the
2 court's order after equitable trial?

3 I invite the parties, and Mr. Spencer,
4 particularly, to include in the responsive paper
5 this court's authority to enter an order prohibiting
6 trust counsel from being compensated from trust
7 corpus. I note that the trustees are serving
8 without compensation, but if the trustees' conduct
9 rises to 163.115, at what point shall they be
10 personally liable for the fees they have incurred,
11 particularly if in some measure their attorneys have
12 been assisting their own personal interests in the
13 administration of this trust? I'm not making any
14 findings. I'm just reflecting upon the allegations
15 made about concealing and withholding information or
16 assets.

17 At some point I'm going to have to decide
18 how the beneficiaries who did not make litigation
19 choices suffered decreased distributive shares
20 because the beneficiaries who made litigation
21 choices have depleted the entire trust. I have to
22 start thinking about what that remedy is, because
23 these grandchildren should not bear the cost of Todd
24 and Stan and Wendy's litigation. That concludes the

1 oral pronouncement for the court's order.

2 A few more housekeeping matters before we
3 end. If those papers are going to be filed by
4 Tuesday, the 16th, they should all be filed on
5 Tuesday the 16th so none of them are in response to
6 what others have filed.

7 I'll need a hearing sometime, Ms. Clerk,
8 beginning about two days after the 16th. I just
9 need time to read what is filed. And the hearing
10 will not exceed one hour in length. We'll need to
11 find that date, Ms. Clerk, before we hang up on
12 everyone.

13 Second, Counsel, do you want to submit the
14 names of proposed special masters simultaneously or
15 in camera? My thought is that each of you will
16 submit no fewer than two names and no more than four
17 names. I want to see if there's any overlap in your
18 recommendations. And you should know I'm not
19 burdened at all about the expense of this special
20 master. If the special master costs \$50,000 or
21 \$150,000, or \$300,000, it doesn't matter to me if
22 this case can be dislodged from its current status.

23 So, let's focus first on that. Mr.
24 Hosmer-Henner and Mr. Robison and Mr. Lattin and Mr.

1 Spencer, simultaneous finding or in-camera
2 submission?

3 MR. ROBISON: I'd like to see the filing be
4 public, your Honor, so that, perhaps, we would
5 agree. We might have common nominations and we
6 wouldn't know that if it was in-camera submissions.
7 I'm going to nominate one person. I know that.

8 THE COURT: Mr. Hosmer-Henner?

9 MR. HOSMER-HENNER: No preference, your
10 Honor.

11 THE COURT: Mr. Lattin?

12 MR. LATTIN: I think it should all be
13 public.

14 THE COURT: And I should say I would intend
15 to take in-camera submissions, put a cover sheet on
16 them and make them part of the court's record,
17 because I don't want to do anything off record. I
18 just didn't want to influence, and so either way
19 they will be part of the court's record.

20 MR. SPENCER: I have no objection, your
21 Honor, to filing them.

22 THE COURT: Okay.

23 MR. ROBISON: I have a question. The
24 person or people that we nominate, should, I guess,

1 we contact them first to see if they're available
2 and willing?

3 THE COURT: No.

4 MR. ROBISON: No? All right.

5 THE COURT: After appointment I anticipate
6 that you'll all advocate for the special master but
7 I want that -- by separate communications, but I
8 want that to happen after the appointment. So, if
9 there's one or two or three common names, I'll
10 figure out a way to determine their willingness and
11 availability. As I've done this in the past, I've
12 actually invited them into a court hearing with all
13 the attorneys present.

14 In fact, the last one I did I had three
15 set, I think, once every 20 minutes where I
16 introduced the concept, told them their name had
17 been proposed and got a sense for their availability
18 and willingness. I don't want to do that -- I will
19 not do that by telephone in chambers. Somehow you
20 will be involved, but I will not make an appointment
21 until I confirm the availability and willingness.
22 I'd like to lead the conversation with them
23 initially before I step back.

24 All right. So, in each of your responses--

1 MR. CONNOT: If I may, just a suggestion,
2 because I've had this come up before with special
3 masters -- and maybe the Court would intend to do
4 this, for lack of a better term, maybe an interview
5 process or at least a colloquy with the proposed
6 candidates -- that the proposed candidates also
7 disclose potential conflicts somewhat similar to
8 what an arbitrator might do.

9 Because I've had these where it became
10 apparent months into the situation after the
11 appointment of the special master that the special
12 master would have had potential conflicts that might
13 have disqualified them, had they been disclosed at
14 the outset.

15 THE COURT: Yeah. That's a good
16 suggestion. Okay.

17 So, include in your responsive papers the
18 name -- I'm going to change what I said. If Mr.
19 Robison will just nominate one, he nominates one. I
20 just don't want more than four from each person.
21 And, frankly, they don't have to be in Northern
22 Nevada. It's helpful, but I know that Mr. Boone
23 regularly appears in forensic work, complex
24 high-value work in the family division. He's out of

1 Sacramento. I see Mr. Riley is in Sacramento.

2 There may be someone whose value exceeds his or her
3 inconvenience in being from another jurisdiction. I
4 would want -- so, I'll just leave it at that.

5 And then, finally -- so I have three
6 housekeeping matters. Setting the hearing, I've now
7 decided that there will be a submission of names in
8 the public record initially, and, third, I want to
9 follow up with something that Mr. Spencer said.

10 He said he received an appraisal. It was a
11 single-page summary without any of the supporting
12 documents. If that's accurate, that needs to be
13 fixed right away. That format is inconsistent with
14 this court's experience and there should be some
15 satisfactory explanation for why the underlying
16 comps, essentially, have not been disclosed.

17 MR. LATTIN: Your Honor, they've been
18 disclosed. If they're -- what I did is I sent a
19 hard copy of Mr. Lee's appraisal of all the ranches
20 and I sent Dan Lex appraisals by way of a share
21 file, and if for some reason they didn't get all of
22 that, they did not notify me. But I will make sure
23 that they have all the appraisals. There's no
24 intent for them not to.

1 THE COURT: Okay. That's a great
2 explanation. I hope that we can get to that level
3 of detail in the appraisals.

4 MR. SPENCER: Just to the extent that that
5 may make what I said a misrepresentation, I don't
6 believe we have that. But it sounds like we'll be
7 able to work together to get it. Whether we just
8 missed or it didn't come or we'll get it later
9 pursuant to your Honor's order, I hope that we can
10 work to get it all.

11 THE COURT: Okay.

12 MR. SPENCER: I don't think we got it all,
13 is what I'm getting at, but we'll be happy to
14 receive it.

15 THE COURT: I'm about to close this
16 hearing. Am I missing anything? Do counsel want to
17 advise me to improve what I've said?

18 THE CLERK: Your Honor, would you like me
19 to set a hearing now?

20 THE COURT: Yes, please.

21 THE CLERK: Counsel, would February 18th in
22 the afternoon work for everyone?

23 MR. HOSMER-HENNER: That works for Sam.

24 MR. SPENCER: One moment, your Honor.

1 Afternoon of the 18th is open, your Honor, for me.

2 MR. ROBISON: Likewise, your Honor.

3 MR. LATTIN: That would work for me as
4 well.

5 THE CLERK: Wonderful, Counsel. That's
6 everyone. Does 2:00 work?

7 MR. LATTIN: Yes.

8 MR. HOSMER-HENNER: Yes.

9 MR. SPENCER: Yes.

10 MR. ROBISON: Yes.

11 THE CLERK: Great. Thank you, your Honor.
12 I think that's everyone. So, February 18th at 2:00
13 p.m. for an hour hearing.

14 Do you want to call it a status hearing?

15 THE COURT: Yes, please. Thank you for
16 your assistance, everybody. Well done. Court will
17 be in recess.

18 (End of proceedings at 3:35
19 p.m.)
20
21
22
23
24

1 STATE OF NEVADA)
) SS.
2 COUNTY OF WASHOE)

3 I, CHRISTINA MARIE AMUNDSON, official reporter
4 of the Second Judicial District Court of the State
5 of Nevada, in and for the County of Washoe, do
6 hereby certify:

7 That as such reporter, I was present via Zoom
8 audio-visual in Department No. 15 of the above court
9 on Tuesday, January 26, 2021, at the hour of 1:30
10 p.m. of said day, and I then and there took verbatim
11 stenotype notes of the proceedings had and testimony
12 given therein in the matter of the SSJ Issue Trust,
13 Case No. PR17-00445, PR17-00446.

14 That the foregoing transcript is a true and
15 correct transcript of my said stenotype notes so
16 taken as aforesaid, and is a true and correct
17 statement of the proceedings had and testimony given
18 in the above-entitled action to the best of my
19 knowledge, skill and ability.

20 DATED: At Reno, Nevada, on 12th day of February
21 2021.

22
23 /S/ Christina Marie Amundson, CCR #641

24 -----
 Christina Marie Amundson, CCR #641

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY, NEVADA

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

CASE NO.: PR17-00445
DEPT. NO. 15

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

CASE NO.: PR17-00446
DEPT. NO. 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, INDIVIDUALLY, AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
SSJ'S ISSUE TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; AND STANLEY S. JAKSICK,
INDIVIDUALLY AND AS CO-TRUSTEE OF
THE SAMUEL S. JAKSICK, JR. FAMILY
TRUST; KEVIN RILEY, INDIVIDUALLY AND
AS FORMER TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST AND TRUSTEE
OF THE WENDY A. JAKSICK 2012 BHC
FAMILY TRUST,

Petitioners and Counter-Respondents.

**ORDER FINDING VIOLATION OF
NRS 163.115 AND ORDERING
ADDITIONAL BRIEFING TO
DETERMINE TIMING OF THE
REMOVAL OF TRUSTEES**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

On January 26, 2021, this Court set, *sua sponte*, and considered the issue of whether the
Todd B. Jaksick ("**Todd**"), Stanley Jaksick ("**Stan**") and Michael Kimmel ("**Kimmel**"), as Co-
Trustees of the Samuel S. Jaksick Family Trust (the "Family Trust"), should be removed from office

1 and replaced with an independent successor trustee or trustees. Prior to the January 26, 2021
2 hearing, the Court invited interested Parties to file moving papers in support of or against the Court's
3 prior stated inclination to remove the Co-Trustees.

4 The Court having reviewed the pleadings and motions on file, considered the sworn
5 testimony of Kimmel and Kevin Riley, heard the arguments of the Parties and based on the Court's
6 long-standing relationship with the file, finds as follows:

7 1) the existence of a lack of cooperation between the Co-Trustees has and continues to
8 substantially impair the administration of the Samuel S. Jaksick, Jr. Family Trust
9 (the "Family Trust"); and

10 2) the Co-Trustees are susceptible to removal as Co-Trustees of the Family Trust.

11 **IT IS THEREFORE ORDERED** that, by Wendy Jaksick participating in this removal
12 proceeding solely requested, to date, by the Court, she has not waived or in any way prejudiced any
13 cause or claim related to her substantively and formally requesting removal of the Co-Trustees from
14 the Family Trust or any other cause or claim she may have regarding any of the Trusts before this
15 Court, all of which is hereby specifically and expressly preserved, such that res judicata shall not
16 and does not attach.

17 **IT IS FURTHER ORDERED** that the actions and positions taken by the Co-Trustees and
18 the discord and conflict of personalities between the Co-Trustees have and continue to result in a
19 lack of cooperation between the Co-Trustees that has and continues to substantially impair the
20 administration of the Family Trust, in violation of NRS 163.115(b), warranting possible removal of
21 the Co-Trustees.

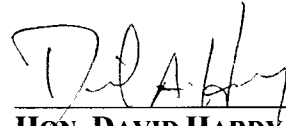
22 **IT IS FURTHER ORDERED** that the issue of whether removal should occur must be
23 considered in light of other, less drastic remedies. Accordingly, the remedy of removal (or other
24 remedies) shall be heard on **THURSDAY, FEBRUARY 18, 2021 at 2:00 P.M. (P.S.T.)** via reported
25 video conference, before the Hon. David A. Hardy, in and for Dept. 15 of the Nevada 2nd Judicial
26 District. All Parties shall file hearing statements no later than February 16, 2021, which should
27 address or include the following:

28 1) appropriate immediate steps the Court can take before removing the Co-Trustees;

- 1 2) the Court's authority to appoint a special master in this matter and:
- 2 a. the appropriate scope of the special master's appointment,
- 3 b. would the scope of appointment include the immediate and orderly
- 4 liquidation of the trust corpus, and
- 5 c. would the scope of appointment include the review of the timing and content
- 6 of the accountings, in light of the Court's Order After Equitable Trial;
- 7 3) the Court's authority to prohibit trust counsel from being compensated by the trust
- 8 corpus; and
- 9 4) the names of not more than four (4) people recommended to be appointed as a
- 10 special master.

11 **IT IS SO ORDERED.**

12 DATED this 10 day of February, 2021.



HON. DAVID HARDY, JUDGE
IN AND FOR DEPARTMENT 15 OF THE
NEVADA 2ND JUDICIAL DISTRICT

16 Respectfully Submitted by:

17 **FOX ROTHSCHILD LLP**

18 /s/ Mark J. Connot

19 Mark J. Connot (10010)
20 1980 Festival Plaza Drive, #700
21 Las Vegas, NV 89135
 mconnot@foxrothschild.com

22 **SPENCER & JOHNSON, PLLC**

23 /s/ R. Kevin Spencer

24 R. Kevin Spencer (*Admitted PHV*)
25 Texas Bar Card No. 00786254
 kevin@dallasprobate.com
26 Zachary E. Johnson (*Admitted PHV*)
27 Texas Bar Card No. 24063978
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Donald A. Lattin, Esq.
Nevada State Bar No. 693
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Nevada State Bar No. 9164
Kristen D. Matteoni, Esq.
Nevada State Bar No. 14581
MAUPIN, COX & LeGoy
4785 Caughlin Parkway
Reno, Nevada 89519
Telephone: (775) 827-2000
Facsimile: (775) 827-2185
Attorneys for Petitioners/Co-Trustees

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

In the Matter of the

SSJ'S ISSUE TRUST.

Case No. PR17-0445

Dept. No. 15

consolidated with

In the Matter of the Administration of

THE SAMUEL S. JAKSICK, JR., FAMILY TRUST.

Case No. PR17-0446

Dept. No. 15

PETITIONERS' POINTS AND AUTHORITIES
PURSUANT TO ORDER FILED ON FEBRUARY 10, 2021

TODD JAKSICK ("Todd"), as sole Trustee of the SSJ's Issue Trust ("Issue Trust") and as Co-Trustee of the Samuel S. Jaksick, Jr. Family Trust (the "Family Trust"), hereby files his Points and Authorities pursuant to this Court's order filed on February 10, 2021. Michael Kimmel has resigned as Co-Trustee of the Family Trust. *See* Ex. 1, resignation letter of Michael Kimmel.

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I.
INTRODUCTION

This Court addressed the issue of the removal of the Trustees and declined to do so as part of the Equitable Trial through its order filed on March 12, 2020. Subsequent to this Court's judgment in the Equitable Trial, a number of issues were appealed, including an appeal brought on behalf of the Co-Trustees. Removal of the Co-Trustees at this point in the litigation would substantially affect the appeal rights of the Co-Trustees.

II.
ARGUMENT

A. The Court may not remove the Co-Trustees prior to making factual findings.

The district court's jurisdiction for removal of Trustees is provided in NRS 163.115, which states that "[a] settlor, cotrustee or beneficiary of the trust may request the court to remove a trustee, or a trustee may be removed by the court *on its own motion* pursuant to subsection 2" (emphasis added). Thus, the Court has the ability to remove the Co-Trustees on its own motion. The statute further provides in subsection (5) that the "provisions of subsections 2 and 3 do not preclude resort to any other appropriate ground or remedy provided by statute or common law." As such, the Court is able to craft an appropriate remedy, so long as it is supported by statute or common law.

Prior to removal of a trustee, however, the Court must make factual findings, which has not occurred in this case. *See* 90 C.J.S. Trusts § 315 ("The person seeking the removal of a trustee must clearly and definitely establish the existence of the facts relied on for such removal On a trial for removal of a trustee, it is the duty of the court to make findings of fact and conclusions of law, adequately disposing of the question raised"); and NRCP 52(a) ("In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon . . ."). Thus, if the Court is inclined to remove the Co-Trustees, it must make specific factual findings supporting the decision to do so. Additionally, any remedy crafted by the Court must be grounded in statute or common law.

1 **B. This Court has ongoing jurisdiction over the Trusts pursuant to NRS 164.015**
2 **& NRS 153.031.**

3 The district court initially took jurisdiction of this case under NRS 164.015 and NRS
4 153.031. NRS 164.015 provides the courts with exclusive jurisdiction of proceedings initiated
5 by the petition of an interested person concerning the internal affairs of a non-testamentary trust.
6 Proceedings which may be maintained under this section are those concerning the administration
7 and distribution of trusts, the declaration of rights, and the determination of other matters
8 involving trustees and beneficiaries of trusts, including petitions with respect to a non-
9 testamentary trust for any appropriate relief provided with respect to a testamentary trust. *See*
10 NRS 164.015.

11 Under section 164.010(1), upon petition of a trustee, the settlor, or a beneficiary, “the
12 district court of the county in which the trustee resides or conducts business, or in which the trust
13 has been domiciled, shall . . . [have] jurisdiction of the trust as a proceeding in rem.” This
14 distinction is interesting because not only does the Court have jurisdiction over the trust itself
15 (i.e., the *res in rem*), the Court also has jurisdiction over the trustee through *in personam*
16 jurisdiction, as well as jurisdiction over any agent to which management or investment duties are
17 delegated. NRS 164.670(4).

18 The Nevada Supreme Court opined on these jurisdictional principles in *Diotallevi v.*
19 *Sierra Dev. Co.*, 95 Nev. 164, 591 P.2d 270 (1979), whereby the Court stated that:

20 Since its adoption in 1941, NRS Ch. 153 has permitted probate courts to retain
21 jurisdiction over testamentary trusts “for the purpose of the settlement of accounts
22 . . . and for the distribution of the residue to those entitled to it.” By amendment
23 in 1947, the statute also permits a trustee to “petition the court, from time to time,
24 for instructions as to the administration of the trust.”

25 *Id.* at 166 (internal citations omitted). Accordingly, the district court has ongoing and continuing
26 jurisdiction of the Trusts in this case. However, as explained more fully in sections C. and D.
below, the Court’s removal authority is limited to (1) actions taken since the March 12, 2020,

1 Order After Equitable Trial and (2) “collateral matters,” i.e., matters that in no way affect the
2 appeal’s merits.

3 **C. The Court’s ability to remove the Co-Trustees is limited by *res judicata*.**

4 While removal may be permissible by the district court, *res judicata* also limits the Court’s
5 ability to consider matters since issuing the March 12, 2020, Order After Equitable Trial. The
6 modern trend among courts, including the United States Supreme Court, separates the doctrine
7 of *res judicata* into two concepts: claim preclusion and issue preclusion. *See Migra v. Warren*
8 *City Sch. Dist. Bd. of Ed.*, 465 U.S. 75, 77 n.1 (1984). Issue preclusion refers to the effect of a
9 judgment in foreclosing re-litigation of a matter that has been litigated and decided. *Id.* Claim
10 preclusion refers to the effect of a judgment in foreclosing litigation of a matter that was not
11 litigated because of a determination that it should have been advanced in an earlier suit. *Id.*

12 The four-factor test for issue preclusion in Nevada is as follows: (1) the issue decided in
13 the prior litigation must be identical to the issue presented in the current action; (2) the initial
14 ruling must have been on the merits and have become final; (3) the party against whom the
15 judgment is asserted must have been a party or in privity with a party to the prior litigation; and
16 (4) the issue decided in the prior litigation must have been actually and necessarily litigated. *Five*
17 *Star Cap. Corp. v. Ruby*, 124 Nev. 1048, 1055, 194 P.3d 709, 713 (2008). The three-factor test
18 for claim preclusion in Nevada is: (1) the parties or their privies are the same; (2) the final
19 judgment is valid; and (3) the subsequent action is based on the same claims or any part of them
20 that were or could have been brought in the first case. *Id.* In this matter, both issue and claim
21 preclusion would arguably limit the district court’s ability to utilize issues/conduct/evidence from
22 the jury and equitable claims trial as a basis for removing the Trustees now, especially given the
23 Court’s express ruling that the Co-Trustees not be removed.

24 ///

25 ///

1 **D. The pending appeal of this case impacts the Court’s authority to remove.**

2 It is well established that “[u]pon the filing of a timely notice of appeal, the district court
3 is divested of jurisdiction and jurisdiction vests in [the Supreme] court.” *Smith v. Emery*, 109
4 Nev. 737, 740, 856 P.2d 1386, 1388 (1993); *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 688,
5 747 P.2d 1380, 1382 (1987). However, “the district court retains jurisdiction to enter orders on
6 matters that are collateral to and independent from the appealed order, i.e., matters that in no way
7 affect the appeal’s merits.” *Crystal Bay Lending Partners, LLC v. JMA Boulder Bay Holdings,*
8 *LLC*, 133 Nev. 998, 403 P.3d 684 (2017) (unpublished disposition) (internal quotation marks
9 omitted).

10 “Applying these basic jurisdiction premises to the child custody context, the district court
11 has no authority to rule on a post-judgment motion to modify a child custody arrangement while
12 an appeal is pending and the custody issue is squarely before this court.” *Mack-Manley v.*
13 *Manley*, 122 Nev. 849, 855, 138 P.3d 525, 530 (2006). Interestingly in that case, even though
14 NRS 125.510(1)(b) “authorizes the district court to change a child custody arrangement ‘at any
15 time,’ the district court may only modify child custody when it has jurisdiction to do so, i.e.,
16 when no perfected appeal pertaining to the child custody arrangement is pending.” *Id.* Likewise,
17 in this case, just because the Court has ongoing jurisdiction of the trusts, it does not necessarily
18 follow that the Court has jurisdiction to remove the Co-Trustees when an appeal made by the Co-
19 Trustees is currently pending. *See, e.g., In re Pedrolis*, 44 Nev. 258, 193 P. 852 (1920). Further,
20 removal of the Co-Trustees is an issue on appeal and, as such, “impacts the merits” of the appeal
21 and cannot be done at this time.

22 **E. Status of Accountings.**

23 Financials for both the SSJs Issue Trust and the Family Trust for calendar year 2020 have
24 been completed and are being circulated to all parties. All other financials have already been
25 provided.
26

1 **F. Immediate steps to be taken before removing Co-Trustees.**

2 Todd's position is that the Court should allow the parties to fully brief their respective
3 cases on appeal and allow the Nevada Supreme Court to dispose of the issues on appeal prior to
4 making any decision regarding removing the trustees or appointing a special master.

5 **G. Appointment of a special master.**

6 As set forth above, the Court may craft an appropriate remedy, so long as it is supported
7 by statute or common law.

8 There is limited authority under Rule 53 in the Nevada Rules of Civil Procedure for the
9 appointment of Masters. The Rule expressly provides that the scope of the master's duties must
10 be consented to by the parties, unless this is considered a post-trial matter that cannot be
11 effectively and timely addressed by an available judge. *See* NRCP 53(a)(2). If a master is
12 appointed, the order appointing the master must set forth the mandatory provisions enumerated
13 under NRCP 53(c)(1).

14 From Todd's perspective, the appropriate scope of the special master's appointment
15 would include (1) taking inventory of the assets of the trusts and reporting to the Court; and (2)
16 reviewing any accountings provided after March 12, 2020, to determine the sufficiency and
17 timeliness of the same, and reporting any findings back to the Court.

18 Todd does not agree that the scope of the appointment should include immediate and
19 orderly liquidation of the trust corpus. There is no authority for such action by a special master.

20 **H. Court's authority to prohibit trust counsel from being compensated by the**
21 **trust corpus.**

22 Counsel for the Co-Trustees has a conflict of interest with respect to setting forth
23 argument on this issue and respectfully declines to do so. Counsel for the Co-Trustees will state
24 only that there is a valid and enforceable written fee agreement with respect to payment of fees
25 in this matter and any and all payments to Maupin, Cox & LeGoy have been made pursuant to
26 the written fee agreement.

1 **I. Names to be considered for special master.**

2 **1. Randy Kuckenmeister**

3 Mr. Kuckenmeister is a Certified Public Accountant, and an owner of KBCA, LLC in
4 Carson City, Nevada. He has a bachelor's degree in accounting and a master's degree in taxation.

5 **2. Greg Gough**

6 Mr. Gough is a Certified Public Accountant and President at Gough & Associates, Ltd.
7 in Reno, Nevada. He has a bachelor's degree in accounting and a master's degree in taxation.

8 **AFFIRMATION**
9 **Pursuant to NRS 239B.030**

10 The undersigned hereby affirms that this document does not contain the Social Security
11 Number of any person.

12 DATED this 16th day of February, 2021.

13 MAUPIN, COX & LeGOY

14
15 By: 

Donald A. Latin, Esq.

Nevada State Bar No. 693

Carolyn K. Renner, Esq.

Nevada State Bar No. 9164

Kristen D. Matteoni, Esq.

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Reno, Nevada 89519

Telephone: (775) 827-2000

Facsimile: (775) 827-2185

Attorneys for Petitioners/Co-Trustees

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of MAUPIN, COX & LeGOY, and that on this day, I served, or caused to be served, a true and correct copy of the foregoing document as follows

[X] By ELECTRONIC NOTIFICATION through the Court's E-flex system:

Philip L. Kreitlein, Esq.
Stephen C. Moss, Esq.
Kreitlein Leeder Moss, Ltd.
1575 Delucchi Lane, Suite 101
Reno, Nevada 89502

philip@klmlawfirm.com
*Attorneys for Stan Jaksick as Co-Trustee of
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Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
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as beneficiary, SSJ's Issue Trust and Samuel S.
Jaksick, Jr., Family Trust*

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and

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*Attorneys for Stan Jaksick, individually, and
as beneficiary of the Samuel S. Jaksick, Jr.
Family Trust and SSJ's Issue Trust*

John A. Collier, Esq.
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401 Ryland Street, Suite 200
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jac@kalickicollier.com
Attorney for Luke Jaksick

///

///


1 [X] By U.S. POSTAL SERVICE, by placing an original or true copy thereof in a sealed
2 envelope with sufficient postage affixed thereto, in the United States mail at Reno,
Nevada, addressed to:

3 Regan Jaksick
4 Sydney Jaksick
5 Sawyer Jaksick
6 c/o Lisa Jaksick
7 5235 Bellazza Court
8 Reno, Nevada 89519

Benjamin Jaksick
Amanda Jaksick
c/o Dawn E. Jaksick
6220 Rouge Drive
Reno, Nevada 89511

6 Alexi Smrt
7 3713 Wrexham Street
8 St. Frisco, Texas 75034

9 DATED this 16th day of February, 2021.

10 
11 _____
12 Employee of Maupin, Cox & LeGoy
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EXHIBIT INDEX

<u>Exhibit</u>	<u>Description</u>	<u>Pages</u>
1.	Resignation letter of Michael Kimmel	8

EXHIBIT 1

EXHIBIT 1

February 16, 2021

Via Electronic Mail Only

Todd Jaksick
Email: tjaksick@gmail.com

Stan Jaksick
Email: ssj3232@aol.com

Re: Formal Resignation from position as Co-Trustee of the Samuel S. Jaksick Family Trust

Dear Todd and Stan,

I write to formally resign from my position as a Co-Trustee of the Samuel S. Jaksick Family Trust ("Family Trust"). I have, in good faith, tried to help you manage the Family Trust, find creative solutions to complex problems, and work through any familial disputes with an eye towards paying creditors, winding up the Family Trust, and distributing what is left over to the Beneficiaries pursuant to Sam Jaksick's written wishes. For a variety of reasons discussed below, I am no longer willing to serve as a Co-Trustee.

Summary of some of my attempts to get additional information

On March 4, 2019, the Jury entered its Verdict ("Verdict") in which it specifically exonerated me, individually and as a Co-Trustee of the Family Trust, from any and all claims asserted by Wendy Jaksick. Those claims included claims that the accountings prepared prior to my tenure as a Co-Trustee were somehow deficient. The collective cost of litigating this matter to the Verdict was profound, and I believe it was obvious to all Co-Trustees that the Family Trust, despite its partial ownership in entities that owned valuable property, was cash poor. From my perspective, the Family Trust only had two choices: (1) settle all disputes to prevent incurring additional fees and costs; or (2) completely liquidate all assets to facilitate payment of all liabilities and subsequent distribution of net proceeds to beneficiaries.

By separate letters dated June 18, 2019, I, as a Co-Trustee of the Family Trust and on behalf of the Family Trust, demanded the right to review the financial records of Toiyabe Investment Co. ("Toiyabe") and Montreux Development Group, LLC ("Montreux") as permitted by NRS 78.257 and NRS 86.241, respectively. Todd and I, as Co-Trustees of the Family Trust, approved the drafting and delivery of both letters.

The first two paragraphs of each letter were, respectively, as follows:

Dear Stan:

As you know, The Samuel S. Jaksick, Jr. Family Trust's ("Family Trust") owns 50% of Toiyabe Investment Co. ("Toiyabe"). As you also know, the Family Trust is currently defending itself in litigation and is actively pursuing resolution of that dispute through structured settlement with several of the beneficiaries. The Family Trust needs to evaluate its assets, liabilities, and liquidity to determine what settlement, if any, can be obtained. In the absence of settlement, it is likely that Family Trust may be forced to liquidate assets to facilitate distribution to beneficiaries.

Accordingly, this letter shall serve as the Family Trust's written demand for records pursuant to NRS 78.257.¹ The purpose of this demand is directly related to the Family Trust's interest in Toiyabe, and the records are necessary to facilitate the Family Trust's review of its assets, liabilities, and liquidity.

Dear Stan:

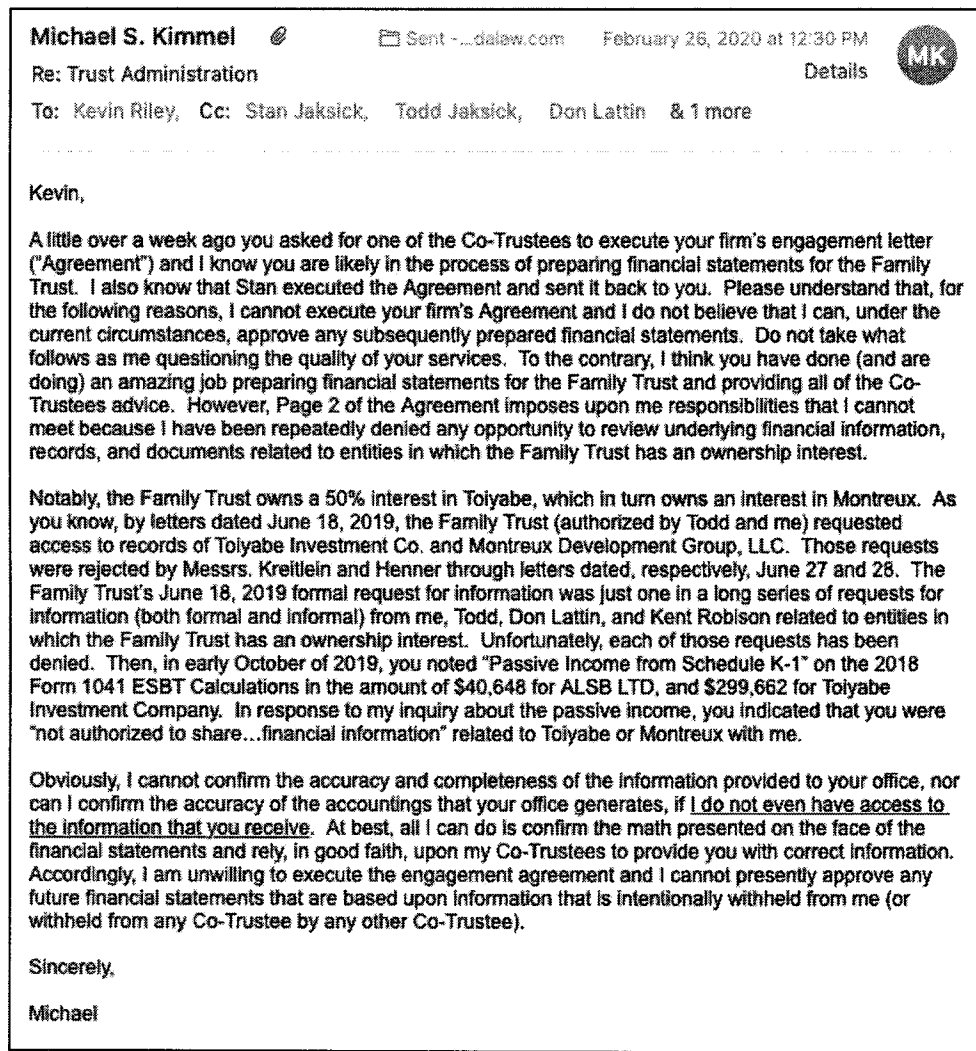
As you know, The Samuel S. Jaksick, Jr. Family Trust's ("Family Trust") owns 50% of Toiyabe Investment Co. ("Toiyabe"). Toiyabe is a member of Montreux Development Group, LLC ("Montreux"). As you also know, the Family Trust is currently defending itself in litigation and is actively pursuing resolution of that dispute through structured settlement with several of the beneficiaries. The Family Trust needs to evaluate its assets, liabilities, and liquidity to determine what settlement, if any, can be obtained. In the absence of settlement, it is likely that Family Trust may be forced to liquidate assets to facilitate distribution to beneficiaries.

Accordingly, this letter shall serve as the Family Trust's written demand for records pursuant to NRS 86.241.¹ The purpose of this demand is reasonably related to the Family Trust's interest in Montreux (through Toiyabe), and the records are necessary to facilitate the Family Trust's review of its assets, liabilities, and liquidity.

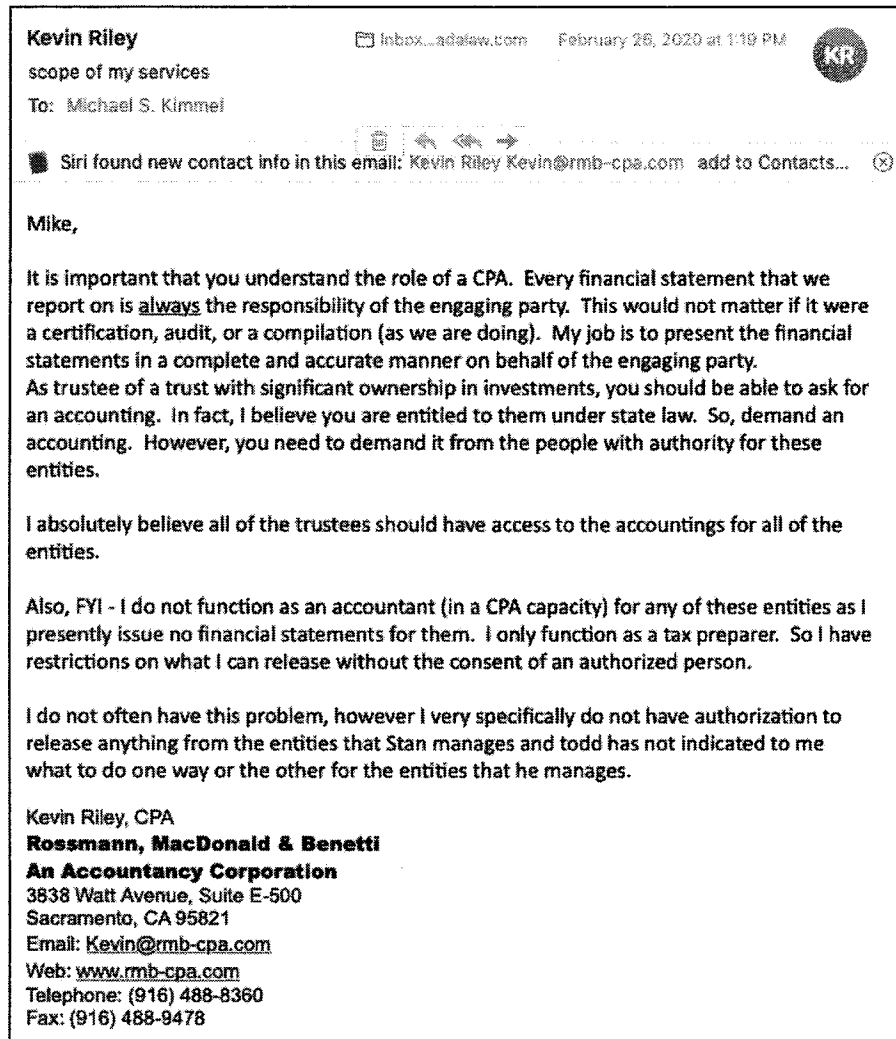
By letter dated June 27, 2019, Philip Kreitlein, Esq., as counsel for Montreux, denied the Family Trust's request on the purported basis that it did not contain an affidavit confirming that the review was "not for a purpose which is in the interest of a business or object other than Montreux Development Group, LLC." The next day, Adam Hosmer-Henner, Esq. also responded on behalf of Montreux. Mr. Hosmer-Henner rejected the request on the basis that (1) an affidavit wasn't provided indicating the request was related to the "business of the company"; (2) the demand, even if approved by Todd Jaksick, "would not comport with the current litigation or settlement obligations of either Todd or Stan"; and, (3) the Family Trust had no right to request records from a company in which the Family Trust did not have a direct ownership interest. Notably, Toiyabe has never responded to the request. However, based on the foregoing, it was clear to me that Stan had no intention of permitting the review of the records of the two companies that he controls.

A few months later, in October of 2019, the Co-Trustees received for review the Family Trust tax documents for 2018. Upon reviewing those documents, I became aware for the first time that the Family Trust was incurring a tax liability of more than \$340,000 in passive income related to ALSB Ltd and Toiyabe. Upon further inquiry, I was informed by Kevin Riley that there was actually \$299,662 of operating income, and \$53,680 of interest income, passed through to the Family Trust from Toiyabe despite the fact that no distributions (declared, paid, or payable) had been made from Toiyabe to the Family Trust. I was also told, unequivocally so, that Stan had specifically directed Mr. Riley to NOT provide me with the 2018 tax work papers for Toiyabe, Montreux, or ALSB.

In mid-January of 2020, Kevin Riley provided his professional services agreement to the Co-Trustees for review (for the preparation of financial statements related to the 2019 calendar year). After reviewing that PSA, I sent the following email to Mr. Riley:

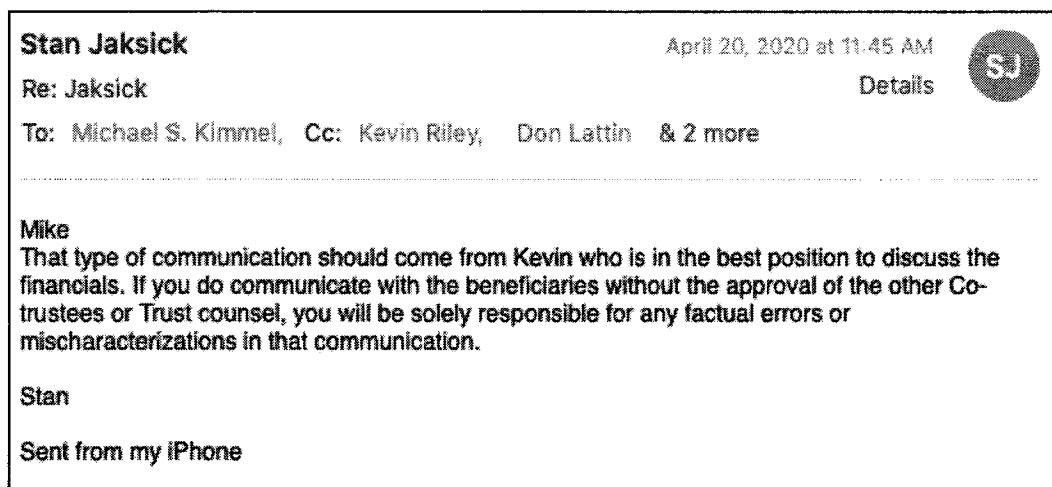


Mr. Riley, as always, immediately responded to my concerns. However, it was clear from his response that he “very specifically do [did] not have authorization to release anything from the entities that Stan manages....”

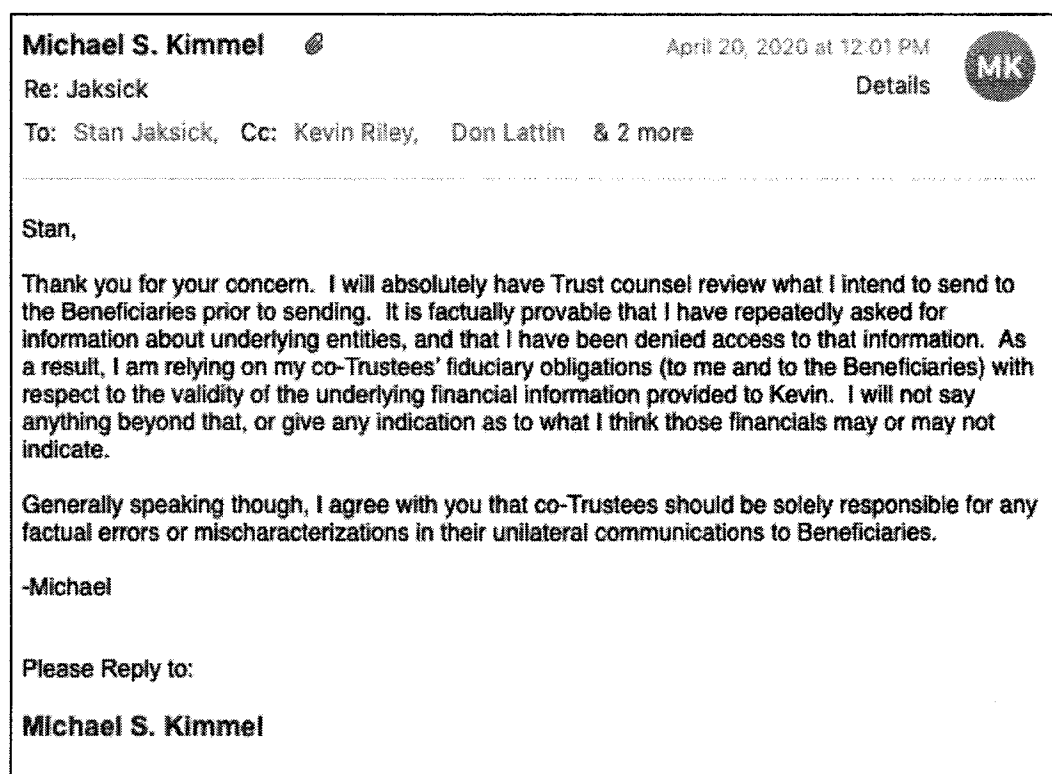


The Court entered its Order After Equitable Trial (“March Order”) on March 12, 2020. In that March Order, the Court made it clear that it would “not provide equitable relief regarding the accountings, which were constructively approved and confirmed by the jury’s verdict.” Order; p. 14:1-3. Nonetheless, the Court also made it clear that it might grant future objections to future accountings and award beneficiaries attorney’s fees for raising such objections. Order; p. 14, FN 3. That very same day, Mr. Riley emailed the Co-Trustees indicating that, “in light of the recently issued order from the judge, we should probably have a discussion about accountings for all of the business entities and the trusts.” Ultimately, the Co-Trustees (through counsel) agreed that standard 2019 accountings would be provided, to be followed by enhanced accountings once they could be prepared.

On April 16, 2020, Mr. Riley provided the Co-Trustees with a draft of the 2019 financials. I specifically noted that the math seemed correct, but that I have been denied the opportunity to review some of the accounting information of the underlying entities. I also stated my desire to inform the beneficiaries of that fact. In response, Stan warned me about communicating directly with the beneficiaries.



In response, I reminded Stan, again, that I was being denied access to information.

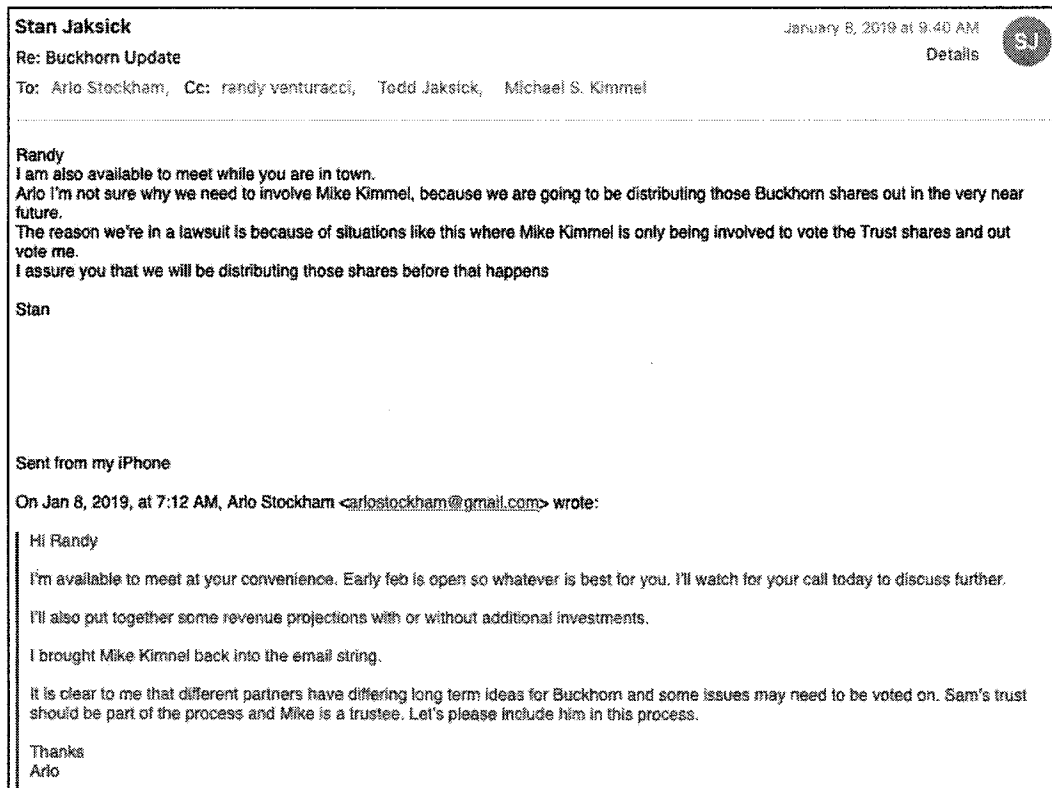


To date, I have never been provided the underlying information from which I can determine why the Family Trust has received pass through tax liability without receiving distributions, whether the operating expenses of entities in which the Family Trust has an ownership entity are reasonable, or the likely value and timing of future distributions (if any). As a Co-Trustee of the Family Trust, I should not have to fight to get that kind of information from another Co-Trustee; nor should I have to spend Family Trust money to engage counsel to advance that fight.

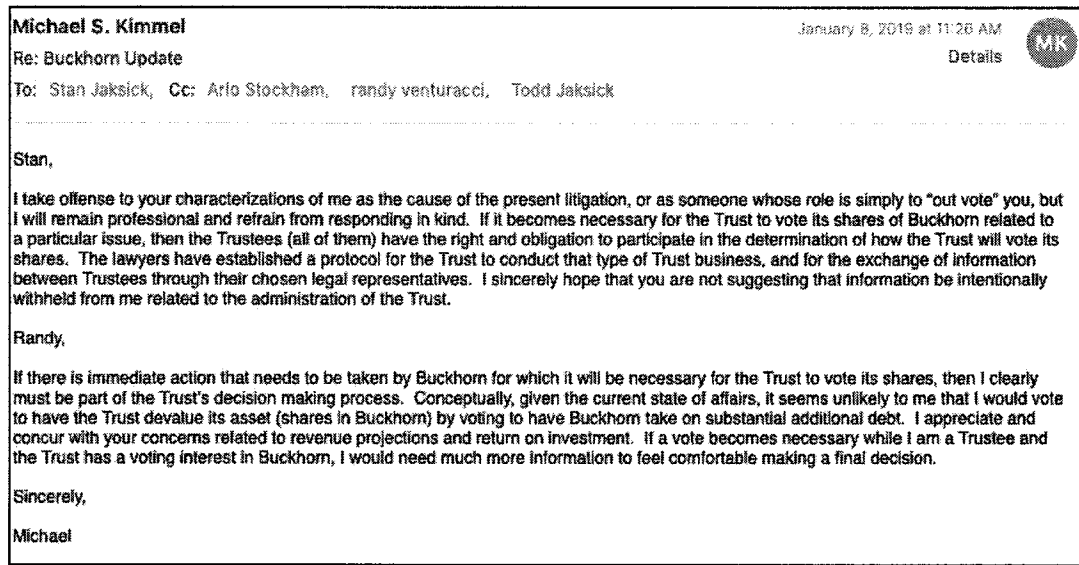
Current status leading to my resignation

As you both know, I am neither a manager of, nor do I have a pecuniary interest in, any of the entities in which the Family Trust has an ownership interest. I cannot sign checks on behalf of the Family Trust, or on behalf of any entity in which the family trust has an interest. Now, with the Court's approval of the settlement your agreement (and by implication, approval of the provision therein that requires unanimity of your votes for the Family Trust to take any action), I see no benefit to the Beneficiaries of my continued tenure as a Co-Trustee. Honestly, I sincerely believe that Stan has always regarded my involvement as a Co-Trustee as an intrusion on family business, and that I was an intermeddler and not an asset.

Even before the jury trial, Stan did not want me involved in the decisions that were being made by entities in which the Family Trust had an ownership interest. The email string below is indicative of Stan's perspective on my involvement:



I responded as follows:



Time and time again, Stan has made it clear that he only wants me to have an incomplete understanding of the entities he controls in which the Family Trust has an interest, and that he does not want me to be a part of the discussions seeking resolution of the variety of disputes related to the Family Trust.

Undeniably, the Family Trust is faced with a situation where there is an absence of cash necessary to satisfy existing debt obligations and there is no expected source of incoming cash in the foreseeable future. For more than a year, I have advocated for the liquidation of Family Trust assets to facilitate payment of debt and, hopefully, distribution to Beneficiaries. In my opinion, there is no other option. I welcome the Court's apparent desire to appoint a Special Master to effectuate liquidation and distribution, and firmly believe that you both should remain as Co-Trustees of the Family Trust (given the crossover with your respective management/ownership roles in the entities which you both control).

Given the foregoing, the reality that several of the Beneficiaries continue to be unreasonable in their settlement demands and expectations, and the fact that the Court has clearly indicated its willingness to potentially hold the Co-Trustees personally liable for claimed additional deficiencies in Family Trust Accounting (accountings over which I have zero control), I resign, effective immediately, as a Co-Trustee of the Family Trust.

Sincerely,



Michael S. Kimmel

cc: Via Email Only

Kevin Riley
Don Lattin

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Dallas, Texas 75201
kevin@dallasprobate.com
zach@dallasprobate.com
Attorneys for Respondent/Counter-Petitioner
Wendy A. Jaksick

SECOND JUDICIAL DISTRICT COURT

WASHOE COUNTY, NEVADA

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

CASE NO.: PR17-00445
DEPT. NO. 15

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

CASE NO.: PR17-00446
DEPT. NO. 15

WENDY JAKSICK,

Respondent and Counter-Petitioner,

v.

TODD B. JAKSICK, INDIVIDUALLY, AS CO-
TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST, AND AS TRUSTEE OF THE
SSJ'S ISSUE TRUST; MICHAEL S. KIMMEL,
INDIVIDUALLY AND AS CO-TRUSTEE OF THE
SAMUEL S. JAKSICK, JR. FAMILY TRUST; AND
STANLEY S. JAKSICK, INDIVIDUALLY AND AS
CO-TRUSTEE OF THE SAMUEL S. JAKSICK, JR.
FAMILY TRUST; KEVIN RILEY, INDIVIDUALLY
AND AS FORMER TRUSTEE OF THE SAMUEL S.
JAKSICK, JR. FAMILY TRUST AND TRUSTEE
OF THE WENDY A. JAKSICK 2012 BHC FAMILY
TRUST,

Petitioners and Counter-Respondents.

**SUBJECT TO OBJECTION AND
PRESERVATION OF CLAIMS -
WENDY A. JAKSICK'S BRIEF IN
SUPPORT OF IMMEDIATE REMOVAL
OF TRUSTEES**

Wendy A. Jaksick (“Wendy”) files this *Subject to Objection and Preservation of Claims - Wendy A. Jaksick’s Brief in Support of Immediate Removal of Trustees* (the “Brief in Support of Removal”) and respectfully shows the Court as follows:

I. OBJECTION AND PRESERVATION OF CLAIMS

Wendy, as a beneficiary of the Samuel S. Jaksick, Jr. Family Trust (the “Family Trust”) and the SSJ’s Issue Trust (the “Issue Trust”), has a right to due process and a trial on any claims she may have against the Trustees of the Family Trust and Issue Trust (collectively, the “Trustees”) that were not pleaded and tried in the 2019 jury and equitable trials. Wendy is not aware of all of the Trustees’ actions that were not the subject of the 2019 jury and equitable trials and has not had the opportunity to conduct discovery concerning such actions. Accordingly, Wendy objects to proceeding with the February 18, 2021 hearing and requests a continuance to the extent that proceeding with and participating in the hearing would waive, foreclose or otherwise prejudice any rights Wendy has or may have to pursue and recover on claims against the Trustees not pleaded and tried in the 2019 jury and equitable trials.

II. POINTS AND AUTHORITIES

Subject to the Objection and Preservation of Claims above:

Removal. After multiple hearings over the past five (5) months regarding the Co-Trustees’ fights concerning their settlement agreement, the funding of the settlement agreement and the funding of the Family Trust, the lack of cooperation and communication between the Co-Trustees and the ongoing dysfunction of the Family Trust Administration, Your Honor set a hearing on January 26, 2021 on the question of removing the Trustees.¹ During each of the hearings leading up to January 26, 2021, Your Honor discussed the possibility of removing the Co-Trustees. Despite the repeated threats of removal, the Co-Trustees’ failure to cooperate continued.

At the January 26, 2021 hearing, Your Honor found and ordered that the actions and positions taken by the Co-Trustees and the discord and conflict of personalities between the Co-

¹ 11/19/2020 Transcript, p. 105, lines 6-7.

1 Trustees have and continue to result in a lack of cooperation between the Co-Trustees that has
2 and continues to substantially impair the administration of the Family Trust, in violation of NRS
3 163.115(2)(b).

4 Based on the evidence, arguments and briefing submitted at the hearings preceding the
5 January 26, 2021 hearing², immediate removal is warranted and is the best and only way to (i)
6 eliminate the conflict between the Co-Trustees tainting the trust administration, (ii) confirm the
7 Family Trust will be administered properly going forward and (iii) confirm that all beneficiaries
8 will be protected and prioritized over the personal interests of the Co-Trustees. The appointment
9 of a Special Master will not resolve the significant issues that have and continue to plague the
10 administration of the Trust.

11 The accountings are uninformative and are such a joke, a Co-Trustee (Stan) disagreed
12 with them so much he would not agree to them or vouch for their contents because he knew they
13 were wrong. And, the Co-Trustees that did agree (Todd and Michael Kimmel) cannot even swear
14 to their contents.

15 It cannot be forgotten or denied that Stan never even bothered to file an accounting. He
16 disagreed with the ones that were filed, but did not file one fully informing Wendy, Todd,
17 Individually, and this Honorable Court of the truth, i.e. a true reporting of the assets and value
18 of the property in the Family Trust. He is as big a culprit in this fiduciary disaster as Todd and
19 Mr. Kimmel. The Court cannot allow him to get away with his charade of supposed honesty and
20 cooperation because even his advocating that is a lie. The Court cannot be complicit in these
21 fiduciary breaches and fraudulent conduct – a change must be made immediately.

22 Special Master. If the Court appoints a Special Master, the scope of the Special Master's
23 authority should be as broad as possible so the Special Master may, at a minimum:

- 24 1) obtain any and all information necessary for the Special Master to fully understand
25 the assets, debts and transactions of the Family Trust since Sam's date of death;

26
27 ² Including *Wendy's Subject to Objection and Preservation of Claims - Motion in Support of*
28 *Removal of Trustees* filed on January 15, 2021, which Wendy incorporates as if fully set forth
herein.

- 2) prepare enhanced accountings for all current and prior years, so that all beneficiaries, regardless of financial and trust sophistication, can understand the assets, debts and transactions of the Family Trust since Sam's date of death;
 - a) including a detailed accounting of the fees paid to any attorneys and the source and timing of such payments;
 - b) including a detailed accounting of any funds paid to or on behalf of any of Co-Trustees and beneficiaries in any capacities; and
 - c) including detailed accounting of the loans payable to the Family Trust by Todd, in any capacity, Stan, in any capacity and/or any of their associated entities or trusts, the timing and amount of the payments made and still owed on the loans.
- 3) prepare and submit a detailed plan or plans to the Court outlining: (i) any debts owed or payments proposed to be made on behalf of Todd and/or Stan in any capacity, including but not limited pursuant to any indemnification agreement of Todd and/or Stan, (ii) the priority of such payments in comparison to other trust debts and obligations and (iii) the source and timing of any such payments;
- 4) prepare and submit a detailed plan or plans to the Court outlining any debts owed or payments proposed to be made pursuant to any indemnification agreement of Todd and/or Stan, the priority of such payments in comparison to other trust debts and obligations and the source and timing of any such payments;
- 5) prepare and submit a detailed plan or plans to the Court outlining any funding requirements or other obligations of the Family Trust resulting from or associated with the Settlement Agreement entered between Todd and Stan that was the subject of the *Order Granting Petition for Instruction and Motion to Partially Enforce Settlement Agreement* dated January 8, 2021; and
- 6) immediately and orderly liquidate the trust corpus.

Compensation of Co-Trustees' Counsel from Family Trust Should be Denied. "The fiduciary obligations of a trustee are great."³ "Perhaps the most fundamental duty of a trustee is

³ *Riley v. Rockwell*, 103 Nev. 698, 701, 747 P.2d 903, 905 (1987).

1 that he must display throughout the administration of the trust complete loyalty to the interests
2 of the beneficiary and must exclude all selfish interest and all consideration of the interests of
3 third persons.”⁴ In Nevada a “trustee is a fiduciary who must act in good faith and with
4 fidelity to the beneficiary of the trust. He should not place himself in a position where it
5 would be for his own benefit to violate his duty to the beneficiary.”⁵ Said fiduciary duties,
6 include, but are not limited to, the duty of full disclosure,⁶ fidelity,⁷ fairness, loyalty,
7 avoidance of self-dealing and utmost good faith.

8 NRS 163.115(1) provides the Court authority to remove a trustee for any of the following
9 reasons:

- 10 (a) The trustee commits or threatens to commit a breach of trust;
11 (b) Lack of cooperation between cotrustees substantially impairs the
12 administration of the trust; or
13 (c) Because unfitness, unwillingness or persistent failure of the trustee
14 to administer the trust effectively, the court determines that removal
15 of the trustee best serves the interests of the settlor or beneficiaries.⁸

16 At the January 26, 2021 hearing, Your Honor found and ordered that the actions and

17 ⁴ BOGERT, TRUSTS AND TRUSTEES § 543 (2d ed. 1992); *see also* 76 AM. JUR. 2D
18 TRUSTS § 349 (2010) (“A trustee is a fiduciary of the highest order and is required to exercise
19 a high standard of conduct and loyalty in the administration of the trust.”).

20 ⁵ *Bank of Nevada v. Speirs*, 95 Nev. 870, 874, 603 P.2d 1074, 1077 (1979).

21 ⁶ *See, e.g., Blue Chip Emerald LLC*, 299 A.D.2d 278, 279 (N.Y. 2005) (“[W]hen a fiduciary,
22 in furtherance of its individual interests, deals with the beneficiary of the duty in a matter
23 relating to the fiduciary relationship, the fiduciary is strictly obligated to make 'full
24 disclosure' of all material facts.”). *See also Zastrow v. Journal Communications, Inc.*, 718
25 N.W.2d 51, 61 (Wis. 2006) (“[I]f a trustee does not make a full disclosure of material facts
to a beneficiary, that conduct is a breach of the trustee's duty of loyalty. . . The law concludes
this breach is intentional.”); *Flippo v. CSC Associates III, L.L.C.*, 547 S.E.2d 216, 222 (Va.
2001) (Even if a fiduciary's actions are legal, he is in breach when his legal actions are for
his own benefit and not for the beneficiary); *Taylor v. Nationsbank Corp.*, 481 S.E.2d 358,
361 (N.C. Ct. App. 1997) (Found many courts “have determined that a trustee has a duty of
full disclosure of all material facts for the protection of a beneficiary's present and future
interests in the trust.”) (citations omitted); *Huie v. DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996)
(Trustees owe beneficiaries “a fiduciary duty of full disclosure of all material facts known to
them that might affect [the beneficiaries'] rights.”) (citations omitted); *Lind v. Webber*, 134
P. 461, 466 (Nev. 1913).

26 ⁷ *Bank of Nevada*, 95 Nev. at 873, 603 P.2d at 1076 (“A testamentary trustee is a fiduciary
27 who must act in good faith and with fidelity to the beneficiary of the trust. He should not
place himself in a position where it would be for his own benefit to violate his duty to the
beneficiary”).

28 ⁸ NRS 163.115(2).

positions taken by the Co-Trustees and the discord and conflict of personalities between the Co-Trustees have and continue to result in a lack of cooperation between the Co-Trustees that has and continues to substantially impair the administration of the Family Trust, in violation of NRS 163.115(2)(b). The Court reached this conclusion after hearing sworn testimony by one of the Co-Trustees, including that the trust administration had been completely neutered and dysfunctional since trial, as follows:

Judge Hardy: So regardless of whether it's a pecuniary interest or a sibling dynamic, regardless do you think there has been something between Todd and Stan that has prevented an efficient, expeditious administration of this Trust, the Family Trust?

Mr. Kimmel: Yes, Your Honor. I think that since the trial, the Family Trust as a whole has been largely, forgive the word, I'm struggling for a better word, but largely neutered. In other words, we haven't been able to do much of anything.⁹

Judge Hardy: That's my observation.

NRS 163.115(3) provides various remedies for breach of trust or threat to breach trust. NRS 163.115(5) also confirms that NRS 163.115(2) and (3) do not preclude resort to any other appropriate ground or remedy provided by statute or common law.

"Under Nevada law, a violation of NRS 163.010 to 163.200 by a trustee may be treated as a breach of trust. NRS 163.190 ('If a trustee violates any of the provisions of NRS 163.010 to 163.200, inclusive, * * * any beneficiary, cotrustee or successor trustee may treat the violation as a breach of trust.')."¹⁰ "With respect to testamentary trusts, the probate court may compel 'redress of a breach of trust,' NRS 153.031(I)(m), using its 'full equitable powers,' *Diotalle v. Sierra Dev. Co.*, 95 Nev. 164, 591 P.2d 270, 272 (1979) (probate court's 'full equitable powers' include the power to apply a 'practical and fair method' for protecting the interests of the trust beneficiaries))."¹¹

Further guidance on the issue is provided by Restatement (Third) of Trusts §243 and the comments thereto, which state:

⁹ Exhibit 8, 11/19/2020 Transcript, p. 69, line 21 – p. 71, line 8. (emphasis added).

¹⁰ *Matter of Testamentary Tr. Created Under Will of King*, 295 Or. App. 176, 190, 434 P.3d 502, 510 (2018).

¹¹ *Id.*

If the trustee commits a breach of trust, the court may in its discretion deny him all compensation or allow him a reduced compensation or allow him full compensation.

Comment a.) When the compensation of the trustee is reduced or denied, the reduction or denial is not in the nature of an additional penalty for the breach of trust but is based upon the fact that the trustee has not rendered or has not properly rendered the services for which compensation is given.

Regardless of whether Co-Trustees' violation of NRS 163.115(2)(b) qualifies as a breach of trust, the same principal enumerated in Restatement (Third) of Trusts §243 applies. Denial of the payment of Co-Trustees' attorneys' fees from the corpus of the Family Trust would not be in the nature of a penalty, instead it would be based upon the fact that the Co-Trustees did not properly administer the trust and spent nearly two years since trial attempting to out maneuver each other for greater personal benefit at the expense of the Family Trust and its other beneficiaries. Compensation of the Co-Trustees attorneys in relation to same should not have been and should not be paid by the Family Trust. The Court is absolutely entitled to and should exercise its equitable powers to deny the payment of the Co-Trustees' attorneys' fees from the corpus of the Family Trust.

Proposed Special Masters. If the Court decides to appoint a Special Master, Wendy proposes the following qualified individuals:

- 1) Fredrick P. Waide
HUTCHISON & STEFFEN
Peccole Profession Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145
(702) 385-2500
fwaid@hutchlegal.com
- 2) Don L. Ross
WOODBURN AND WEDGE
Sierra Plaza
6100 Neil Road, Suite 500
Reno, Nevada 89511-1159
(775) 688-3000

dross@woodburnandwedge.com

3) Mark D. Rich
RICH, WIGHTMAN & COMPANY
1301 S. Jones Blvd
Las Vegas, NV 89146
(702) 878-0959

4) Michael I. King
KLING LAW OFFICES
8906 Spanish Ridge Avenue
Suite 100
Las Vegas, Nevada 89148
(702) 304-1561

III. CONCLUSION

Subject to Wendy's objection, Wendy respectfully requests the court consider this *Brief in Support of Removal*, immediately remove the Co-Trustees of the Family Trust and appoint neutral trustees to administer the Trusts; deny Co-Trustees authority to pay their attorneys' fees from the Family Trust; and grant general relief.

AFFIRMATION STATEMENT

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this ***SUBJECT TO OBJECTION AND PRESERVATION OF CLAIMS - WENDY A. JAKSICK'S BRIEF IN SUPPORT OF IMMEDIATE REMOVAL OF TRUSTEES*** filed by Wendy A. Jaksick in the above-captioned matter does not contain the social security number of any person.

DATED this 16th day of February, 2021.

FOX ROTHSCHILD LLP

/s/ Mark J. Connot

Mark J. Connot (10010)
1980 Festival Plaza Drive, #700
Las Vegas, NV 89135

SPENCER & JOHNSON, PLLC

/s/ R. Kevin Spencer

R. Kevin Spencer (*Admitted PHV*)
Zachary E. Johnson (*Admitted PHV*)
500 N. Akard Street, Suite 2150
Dallas, Texas 75201
Attorneys for Respondent Wendy A. Jaksick

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of FOX ROTHSCHILD LLP and that on this 16th day of February, 2021, I served a true and correct copy of ***SUBJECT TO OBJECTION AND PRESERVATION OF CLAIMS - WENDY A. JAKSICK'S BRIEF IN SUPPORT OF IMMEDIATE REMOVAL OF TRUSTEES*** by the Court's electronic file and serve system addressed to the following:

Kent Robison, Esq.
Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, NV 89503
*Attorneys for Todd B. Jaksick,
Beneficiary
SSJ's Issue Trust and Samuel S. Jaksick,
Jr., Family Trust*

Donald A. Lattin, Esq.
L. Robert LeGoy, Jr., Esq.
Brian C. McQuaid, Esq.
Carolyn K. Renner, Esq.
Maupin, Cox & LeGoy
4785 Caughlin Parkway
Reno, NV 89519
*Attorneys for Petitioners/Co-Trustees
Todd B. Jaksick and Michael S.
Kimmel of the SSJ's Issue Trust and
Samuel S. Jaksick, Jr., Family Trust*

Phil Kreitlein, Esq.
Kreitlein Law Group
1575 Delucchi Lane, Ste. 101
Reno, NV 89502
*Attorneys for Stanley S. Jaksick, Co-
Trustee
Samuel S. Jaksick, Jr. Family Trust*

Adam Hosmer-Henner, Esq.
McDonald Carano
100 West Liberty Street, 10th Fl.
P.O. Box 2670
Reno, NV 89505
Attorneys for Stanley S. Jaksick

DATED this 16th day of February, 2021.

/s/ Doreen Loffredo
An Employee of Fox Rothschild

CODE: 3835
FLETCHER & LEE
Elizabeth Fletcher, Esq.
Nevada Bar No. 10082
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Attorneys for Temporary Trustee James S. Proctor, CPA, CFE, CVA, CFF

IN 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

Dept. No. 15

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

CONSOLIDATED

Case No. PR17-00446

Dept No. 15

TRUSTEE'S STATUS REPORT

James S. Proctor, CPA, CFE, CVA, CFF, in his capacity as the duly appointed Temporary Trustee of the Jaksick Family Trust, by and through his attorneys of record, Cecilia Lee, Esq. and Elizabeth Fletcher, Esq., Fletcher & Lee, hereby submits his Status Report.

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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 28th day of July, 2021.

FLETCHER & LEE

/s/ Cecilia Lee, Esq.
CECILIA LEE, ESQ.

Pursuant to this Court's Order for Appointment of Temporary Trustee filed February 25, 2021 (Order) In the Matter of the Administration of the Samuel S. Jaksick, Jr Family Trust (Trust), Case No. PR17-00445 Dept. No. 15, the Temporary Trustee, James S. Proctor, hereby submits his first Status Report.

OVERVIEW

I, as Temporary Trustee, have operated the Trusteeship following appointment by the Court entered on February 25, 2021, upon the direction of the Court as documented in the Court's Order Finding Violation of NRS 163.115 and Ordering Additional Briefing to Determine Timing of the Removal of Trustees dated February 10, 2021. As the Court is well aware of the facts, circumstances and history of the case, this Report will not further enumerate on such.

I have reviewed the pleadings in this case and certain appraisals produced thus far. The review of the pleadings and appraisals has assisted me in determining and developing the procedures necessary to discharge my duties. Upon being informed of my appointment I immediately began contacting legal counsel for the parties to obtain necessary background, facts, and opinions. That information has been invaluable in understanding the rather long history of this matter. However, as I was not involved in any of the trials or other matters in this case, I am unaware of what has and what hasn't been presented either as exhibits or analyses. Further, I am not aware nor have I reviewed any of the briefs or other pleadings pertaining to the Appeal(s). I am not aware of anything in the Appeals that might affect my duties and responsibilities, but if there is, legal counsel for the parties needs to so inform me as to such. Currently, the matters pertaining to the Appeal(s) are outside of the scope of duties of the Temporary Trustee.

My staff and I have spent time in obtaining an understanding, studying, analyzing and evaluating the information presented by the Court, the prior Trustees, the CPA, and attorneys representing the litigants in prior proceedings. My staff and I have also physically viewed the Montreux properties. I am still in the process of obtaining additional information from Kevin Riley, CPA.

For brevity, references to Stan Jaksick, Todd Jaksick, and Wendy Jaksick are listed as Stan, Todd, and Wendy, and are not meant to imply any type of familiarity or relationship with such. I will also reference myself as Trustee in this report. As analyses and research continue, I will file additional Status Reports.

This First Status Report was within a week of being completed when I unexpectedly was hospitalized for seven days, and hence the period of recuperation. My apologies to the Court that this Report was delayed in its completion and that the First Status Hearing had to be rescheduled.

TRUST CASH

Currently, the Trust has \$147,482.35 cash on hand in an interest-bearing checking account at RBC Wealth Management (**Exhibit 1**). The Trustee is the signatory on the account. There are no sources of income expected in the immediate future. The Trust has received \$108,457 from two property sales that were consummated or in progress prior to the appointment of the Temporary Trustee. The Trust has also received some type of dividend, rebate from American Ag Credit in the amount of \$5,052.

TRUST CHALLENGES

As the Court is aware there are a number of challenges facing the Trust, its administration, and its eventual distributions and liquidation. As outlined above, the Trust has very little cash, and no readily liquid assets. The Trust assets consist mainly in ownership interests in separate legal entities, and some real property. Some of those assets in which the Trust has a partial ownership interest are an indirect interest. The partial ownership interests in entities are both majority and some minority interests. There are a large amount of liabilities and ongoing obligations, and they continue to increase.

De minimus liabilities approximate \$921 and will be paid concurrently with this Status Report. The Trustee's fees paid to date total \$13,568.

There are two professional fees owed - accounting fees of \$8,950 and appraisal fees of \$7,500 for a total of \$16,450. I propose paying those fees in full. Both of those fees were incurred, in good faith, to prepare their respective reports that have resulted in the Trust being at the current point: of having financial statements as of February 2021, and an appraisal dated December 10, 2020 of certain real property holdings of the Trust. If neither had been prepared, and the fees incurred, less information regarding the Trust's financial condition would be presently known. I realize that there is a difference of opinion on payment of the liabilities/obligations, some wanting older amounts paid before more recent amounts. However, as outlined the more recent professional fees were vital in ascertaining a better understanding of the financial condition of the Trust and I propose more of administrative priority allocation, i.e., paying those professional fees before making payment on other liabilities, including legal fees, and certain claims. In addition, those type of legal and claims would not be able to be paid currently, nor pro rata until the Trust is in a position to make a final distribution.

TRUST UNPAID CLAIMS AND TRUST LIABILITIES AND OBLIGATIONS

The analysis of the information provided on the Trust Compiled Financial Statements disclose \$3,729,325 in Unpaid Claims and Trust Debts, as of February 26, 2021. Of this amount \$2,152,972 have not been recorded into the Trust's general Ledger. In addition, \$2,845,886 in claims have not been corroborated by substantive evidence. We also noted several other differences that have not been fully analyzed.

Additional information has been provided by legal counsel, but as of yet has not been fully analyzed. However, we did note differences between what was presented in the Financial Statements dated February 26, 2021, provided to the Court and the subsequent information received by the Trustee. It is believed that some of these claims and debts are forecasted future costs and estimates that have not actually been incurred and it is uncertain as to whether they include legal fees already separately recorded. In addition, some items may have been paid and that payment not recognized in the financial statements.

FINANCIAL STATEMENTS

The Trustee and his staff have studied and evaluated the Trust's Financial Statements (Financial Statements), as of February 26, 2021, prepared by the Trust's CPA firm Rossmann MacDonald & Benetti, and its Partner, Kevin Riley, CPA. The Trustee notes the following items pertaining to the Financial Statements:

- The Financial statements issued by the CPA firm Rossmann MacDonald & Benetti are issued as compiled financial statements under the guidance of the American Institute of Certified Public Accountants' Statements of Standards for Accounting and Review Services. The Standards governing compiled financial statements are SSARS No. 21 and No. 23.
 - Under section **The Compilation Engagement .02** : "... compilation engagement is not an assurance engagement; a compilation engagement does not require the accountant to verify the accuracy or completeness of the information provided by management or otherwise gather evidence to express an opinion or a conclusion on the financial statement."
- Simply put, a compilation is the presentation of financial information provided by **management** into the format of a set of financial statements. All of the information can be based on the representation of management. The accountant has no obligation to verify the accuracy, audit, or tie to substantive evidence supporting any of the data presented by management. As to the Trust, management is considered the prior Trustees; Stan and Todd.
- Compiled financial statements can be prepared with disclosures (footnotes) or without. Either are acceptable, and again are management's representations. The most recent February 2021 financial statements include disclosures. Prior financial statements prepared for the Trust did not include disclosures.
- The CPA firm did disclose in their Compilation Report (as required by these standards) a statement that the accountant did not audit or review the financial statements nor was the accountant required to perform any procedures to verify the accuracy or completeness of the information provided by management and does not express an opinion, a conclusion, nor provide any assurance on the financial statements. Indeed, reviewed or audited (examined) financial statements could not be prepared without the substantiation of the values of the various assets, including the separate entities which would have incurred a significant amount of fees, estimated to be in excess of \$100,000.
- The CPA Firm also noted in its Compilation Report that it was not independent with regards to the Trust.

SCHEDULE OF CLOSELY HELD BUSINESSES

These Financial Statement footnotes and supporting schedules detail the closely held businesses in which the Trust has equity. The information presented in the February 26, 2021 Trust Financial Statements was not current for all entities. The following details the information and lack of timely supporting information to substantiate the underlying values of the reported closely held businesses:

<p align="center">Exhibit # Samuel S. Jaksick, Jr. Family Trust Schedule of Closely Held Businesses - Valuation 2/26/2021</p>
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Entity	Trust Interest	Date of Financial Information	Fiduciary Acquisition Value 2/26/2021	Property/Items
Toiyabe Investment Co	50.00%	12/31/19	\$ 939,678	95.6% Interest in Montreux Development Group (MXDG) With 33 high end home sites. Valuation provided by Stanley Jaksick
Buckhorn Land and Livestock, LLC (formerly Winnemucca Ranch, LLC)	25.00%	12/31/20	329,615	7000 acres in Northern Washoe County noted two 2020 appraisals. One at \$3,500,000 and one at \$1,720,000. Valuation by Todd Jaksick
Duck Flat Ranch, LLC	49.00%	12/31/20	109,756	120 acres of ranch property on two parcels plus 50% of 120 acres of ranch property on one parcel in Northern Washoe County. Valuation by Todd Jaksick
Basecamp, LLC	18.75%	12/31/20	36,084	Storey County residence - Liquidation value by Todd Jaksick
Montreux Golf Holding Company LLC	1.98%	12/31/19	35,411	Golf Club Membership Interests - Valuation by Stanley Jaksick
Samuel S Jaksick Jr IV LLC	100.00%	NA	20,000	80 acres ranch property in two parcels in Northern Nevada. Valuation based on an unclosed sale contract
BBB Investments, LLC	49.00%	NA	49,531	160 acres in Northern Washoe County - Liquidation value - appraisals
Gerlach Green Energy LLC	45.00%	NA	3,158	Valued @ cash at 2-26-21. GGE owns 44.286% interest in GGE Development Company, LLC which was abandoned.
SJ Ranch LLC	100.00%	NA	347,979	155 acre ranch property in Northern Nevada. Partially security for AgCredit Loan. Valuation based on pending sale
White Pine Lumber Co	100.00%	8/31/20		- 3400 acres ranch property in Washoe County plus equipment Valued in property appraisals at \$330,000 to \$800,000. Equipment at \$157,800. Appraisals show value of \$330,000 to \$800,000 but valued at \$0.

It is noted that several entities with significant assets and liabilities do not include a fiduciary acquisition value. As Trustee, the need to have the current financial information as well as independent third-party substantiation of valuations is paramount to administering and distributing the Trust.

INTERCOMPANY RELATED PARTY TRANSACTIONS

Analysis of the financial statements presented disclosed significant intercompany, related party transactions (**Exhibit 2**). Since the financial statements presented do not present current information for all the separate entities in which the Trust has an equity interest, there is no assurance that all related party transactions have been completely and properly recorded, presented, and disclosed. The related party balances presented do not agree among the entities.

It should be noted that additional time is needed for analysis of the related party transactions to ensure that they have been adequately recorded on both parties' general ledgers. Of note is the presence of significant liabilities owed by entities that the trust has total equity interest and that the related liabilities to those entities drive valuations lower when in fact the Trust would simply be paying itself. It is believed that some of those liabilities should be eliminated in order to obtain a more relevant valuation.

NORTHERN WASHOE COUNTY INVESTMENTS:

As outlined above there are other entities, primarily located in northern Washoe County that are reported as Trust assets. Among them are Buckhorn Land & Livestock, Duck Flat Ranch, LLC, Basecamp, LLC, Gerlach Green Energy LLC, SJ Ranch LLC, BBB Investments, LLC, and possible others. I refer to these as Northern Washoe County Investments. As outlined, the Trust's ownership interests in some entities are partial interests. Some of the entities have outstanding capital calls that need to be analyzed further. The underlying real property assets have been appraised, but any mineral rights, easements and water rights have not been considered. To do so could be significantly expensive. I haven't researched the costs of water rights valuation work, but based upon past experience it has been expensive and the results in a report can take months to complete, and sometimes depends upon the cooperation of the State's Water Commissioner's Office. The value may be in those types of intangible assets rather than just the underlying land values. There has been limited analysis, and additional analysis is necessary. However, regardless of the analyses, it may be that the parties, and or the Court needs to decide whether to continue with additional analysis and incurring high professional fees to value the intangible assets in those entities.

I understand the Trust is a Co-Borrower on American Ag Credit debt. Other Co-Borrowers are some of the aforementioned entities. An approximate \$126,000 payment is due in September 2021. The 2020 payment was not paid. The Trust is exploring options to either pay the obligation, partially pay the obligation or not pay the obligation. This is continuing.

PURCHASE OFFER

In May 2021, the Trustee received an offer to purchase a 50% interest in the Toiyabe Investment Co. (Toiyabe) for \$2,038,000. This entity, in turn, owns 95.6% of Montreux Development Group (MXDG) which in turn owns approximately 32 or 33 developable custom, high-end residential lots in Montreux, a private golf course community, located between Reno and Lake Tahoe.

Stan has estimated the value of Toiyabe at \$2.5 million while Todd has estimated the value at \$3.5 million. An independent appraisal performed by Daniel Leck, MAI, appraises the lot values owned by MXDG as of October 28, 2020, at \$7.22 Million.

Some of the law firms involved in this matter represent developers or those in the industry. It would be appropriate for the firms to contact potential purchasers and refer them to the Trustee.

This Status Report is not intended to discuss the Purchase Offer, which has been provided to all parties via dropbox and the Trustee's Petition for Instructions; only to further inform the parties to the existence of such. After a hearing on the Trustee's Petition for Instructions, and the Court determines as to how the Trustee is to proceed, further information on the Purchase Offer, and any

others will be forthcoming, including, but not limited to solicitations, marketing, discounts, overbid process and qualified buyers.

It should be reiterated that the value of a 50% ownership interest in Toiyabe is not as a controlling interest; a 50% interest lacks certain control prerogatives, including **(Appendix A)**:

- Election of officers and directors
- Policy and strategy changes.
- Management compensation decisions.
- Disposition/acquisition of assets.
- Capital structure actions.
- Dividend/ distribution policy.
- Operating Agreement or Bylaw or Partnership (LLC) Agreement revisions.

Consequently, any valuation of Toiyabe needs be as a minority interest, based upon lack of control. A willing buyer contemplating the purchase of a minority interest investment from a willing seller would consider these disadvantages arising from a lack of control. Therefore, regardless of a company's entity value on a control basis, one would not expect a willing buyer to purchase a minority interest investment except at a discount from its pro-rata share of the company's overall entity value.

The same willing buyer of a minority interest would also give consideration to the distribution of the company's remaining ownership interest. An investor would be expected to place a relatively higher value on a minority interest in a company that has no single controlling shareholder, and a relatively lower value on the identical minority interest in a company with a single shareholder who controls a voting majority of the company's shares. Toiyabe's other owner is Stan.

Therefore, a minority discount needs to be considered when valuing the Toiyabe purchase offer.

In addition to lack of control there is also a distinct lack of marketability **(Appendix B)**. The concept of marketability deals with the liquidity of an asset; in other words, how quickly and with what certainty the asset can be converted into cash at the owner's discretion. Investors prefer liquidity. An investment is worth more if it is readily marketable.

A discount for lack of marketability is distinct and separate from a minority interest discount. A minority interest discount is measured in terms of the relative degree of control a minority owner has over the operation of the company, whereas marketability deals with the liquidity of an ownership interest, or how quickly and easily it can be converted to cash. Control and marketability concepts are related in a way. After discounting a minority interest for its lack of control, it is still usually much harder to sell a minority interest than to sell a controlling interest in a closely held business.

Consequently, in addition to the lack of control discount, there should be the additional discount for lack of marketability when evaluating the value of the 50% interest in Toiyabe.

CONCLUSION

Because of the short time period of the Trusteeship thus far, this Report is preliminary and in accordance with the Order, subsequent reports will be filed with the Court to further inform it of the progress and status. The Trustee may seek additional direction from the Court when a more accurate and relevant valuation of the Trust's ownership interests has been determined. The Trustee is continuing to identify questions and areas of concern, and perform analysis.

This report is limited due to the financial condition of the Trust. A decision needs be made as to whether the parties want to incur the additional fees and costs for additional analyses and to consider the length of time to complete such.

In order to limit the costs and fees of the Trusteeship this First Status Report is abridged and abbreviated, but the Trustee is available to the Court for any additional questions or comments. The Trustee will continue to inform the Court as to the progress and status of the Trusteeship.

Respectfully Submitted,
MERIDIAN ADVANTAGE



James S. Proctor, CPA, CFE, CVA, CFF
As Temporary Trustee for the Samuel S. Jaksick, Jr Family Trust

July 28, 2021

JAMES S. PROCTOR, CPA, CFE, CVA, CFF
MERIDIAN ADVANTAGE

EDUCATION & CERTIFICATIONS

BS, University of Nevada, Reno
CPA, Certified Public Accountant in Nevada
CFE, Certified Fraud Examiner
CVA, Certified Valuation Analyst
CFF, Certified in Financial Forensics

EXPERIENCE

Mr. Proctor has over 30 years of business consulting and litigation related experience. He is the former managing partner of a long-time Reno, Nevada Certified Public Accounting firm where, in addition to business consulting, tax and financial statement related services, he performed many litigation support services. These services included forensic accounting investigations, divorce analysis, expert witness testimony, court appointed examiner, court appointed receiver, and business valuation assignments. Mr. Proctor also served as a United States Bankruptcy Trustee where he administered bankruptcy cases under Chapter 11 and Chapter 7. He has operated businesses in financial distress as a trustee, searched for hidden assets, investigated fraudulent transfers, preferential transfers, and testified accordingly when called upon. He also has directed and conducted debtor examinations. Jim has worked in the gaming industry and has in depth knowledge of gaming operations. Early in his career he worked with the international accounting firm of Grant Thornton. Jim has also been active in the Nevada Society of CPAs, has served as the Chairman of the Professional Ethics Committee, and has received the Outstanding Community Service Award.

In addition to his **CPA** certification, Mr. Proctor is a Certified Fraud Examiner (**CFE**), Certified Valuation Analyst (**CVA**) and Certified in Financial Forensics (**CFF**).

PROFESSIONAL ASSOCIATIONS

American Institute of Certified Public Accountants
Nevada Society of Certified Public Accountants
Association of Certified Fraud Examiners, lifetime member
National Association of Certified Valuation Analysts
Northern Nevada Chapter of the ACFE
Washoe County Bar Association

OTHER ASSOCIATIONS

Vets with a Mission, Secretary
Chamber of Commerce, Leadership Reno
Washoe Legal Services, Treasurer
Northern Nevada International Center, Treasurer
City of Reno Financial Advisory Board

APPENDIX A

A more detailed explanation of discounts and premiums is presented below to assist the reader. Revenue Rulings, Court Decisions (primarily through the US Tax Court and the Chancery Court of Delaware), and professional standards require valuations of ownership interests in business enterprises consider three approaches, the asset approach, the income approach, and the market approach. Discounts and premiums must also be considered.

Minority Discount

A minority interest (or Discount for Lack of Control) discount reflects a minority investor's lack of certain control prerogatives, including:

- Election of officers and directors.
- Policy and strategy changes.
- Management compensation decisions.
- Disposition/acquisition of assets.
- Capital structure actions.
- Distribution policy.
- Corporate charter/bylaw or Partnership Agreement revisions.

Lack of control is one of the factors that must be addressed. Even if a public market existed for closely held company interests, the inability to control the underlying assets will depress the value of the minority interest. This is because the amount an investor would willingly pay for a minority interest is related to the expected control of the investment. This control factor can be demonstrated as follows: a 55%, 45% distribution of stock between two shareholders implies no control for the shareholder of the 45% interest. However, a 48%, 48%, 4% distribution among three shareholders implies no control for the 4% shareholder but does imply extra value associated with a swing vote power. Similarly, if two shareholders own 50% each, no one shareholder has complete control.

A willing buyer contemplating the purchase of a minority interest investment from a willing seller would consider these disadvantages arising from a lack of control. Therefore, regardless of a company's entity value on a control basis, one would not expect a willing buyer to purchase a minority interest investment except at a discount from its pro-rata share of the company's overall entity value.

The same willing buyer of a minority interest would also give consideration to the distribution of the company's remaining stock. An investor would be expected to place a relatively higher value on a minority interest in a company that has no single controlling shareholder, and a relatively lower value on the identical minority interest in a company with a single shareholder who controls a voting majority of the company's shares.

The most widely recognized and accepted approach to the quantification of discounts for lack of control (a minority interest) is to examine empirical evidence of control price premiums paid in public market transactions. Mathematically, a price premium (control premium) can be converted to a discount for a lack of control using the following formula:

$$\text{Discount for lack of control} = 1 - \left[\frac{1}{1 + \text{premium}} \right]$$

Following is a description of three widely followed services that publish data on control premiums.

Mergerstat Review: The thousands of daily transactions on the stock exchanges are minority interest transactions. Each year, a controlling interest in a few hundred of these public companies is purchased. In approximately 85% of the cases, the prices paid for the stock of these companies represent a premium over the market price at which the stock previously traded as a minority interest. *Mergerstat Review* is published annually by FactSet Mergerstat, LLC, which summarizes overall control premium/minority discount data for transactions from 1980 through present. It indicates that the median control premium paid has averaged approximately 33%, and the implied median minority interest discount has averaged approximately 24%. However, the premiums paid are, in reality, acquisition premiums paid for control, synergy, overpayment, and other factors. Therefore, a typical control premium is usually less than the acquisition premium reflected in the Mergerstat data.

Mergerstat/BVR Control Premium Study: This study also annually publishes control premiums. Unlike most published materials on control premiums, this study includes in its data the public company takeover transactions that occur at a discount (rather than a premium) from their previously traded prices. In fact, over 15% of takeovers occur at a discount. Inclusion of these transactions yields results that more accurately reflect the spectrum of reality and tend to lower both mean and median computations of premiums. Between 1998 and present, this study found implied discounts due to lack of control fell between 14% and 25%.

Mergerstat/BVR Control Premium Study Advanced Search Results: This service is a web-based tool used to quantify minority discounts and control premiums by SIC code. The searchable database contains over 5,000 transactions dating back to 1998.

APPENDIX B

Marketability Discount

The concept of marketability deals with the liquidity of an asset; in other words, how quickly and with what certainty the asset can be converted into cash at the owner's discretion. Investors prefer liquidity. An investment is worth more if it is readily marketable.

A discount for lack of marketability is distinct and separate from a minority interest discount. A minority interest discount is measured in terms of the relative degree of control a minority owner has over the operation of the company, whereas marketability deals with the liquidity of an ownership interest, or how quickly and easily it can be converted to cash. Control and marketability concepts are related in a way. After discounting a minority interest for its lack of control, it is still usually much harder to sell a minority interest than to sell a controlling interest in a closely held business. A 1982 estate tax decision, *Estate of Woodbury G. Andrews*, 79 TC 938 (1982), discussed the distinction as follows:

...two conceptually distinct discounts are involved here, one for lack of marketability and the other for lack of control. The minority shareholder discount is designed to reflect the decreased value of shares that do not convey control of a closely held corporation. The lack of marketability discount, on the other hand, is designed to reflect the fact that there is no ready market for shares in a closely held corporation. Although there may be some overlap between these two discounts in that lack of control may reduce marketability, it should be borne in mind that even controlling shares in a nonpublic corporation suffer from lack of marketability because of the absence of a ready private placement market and the fact that flotation costs would have to be incurred if the corporation were to publicly offer its stock.

Therefore, it is not uncommon to find it necessary to apply both a minority interest discount and a discount for lack of marketability to the same business enterprise.

There is a valid, conceptual basis for applying a discount for lack of marketability to a controlling interest in a private, closely held company – the market for entire companies is less liquid than the public stock markets. In the appraisal process, consideration must also be given to the specific facts and circumstances of the case. However, some transactional discount is usually appropriate when valuing a controlling, non-marketable interest in a hypothetical transaction, including consideration of broker fees and legal fees that may enter into the final discount percentage.

A number of studies in the last 35 years have attempted to determine average levels of discounts for lack of marketability, including restricted stock studies and initial public offerings (IPO) studies.

Restricted stocks are identical in all respects to the freely traded stocks of public companies except that they are restricted from trading on the open market for a certain time period. Marketability is the only difference between a restricted stock and its freely traded counterpart. Several studies have therefore attempted to find differences in the price at which restricted stock transactions take place compared with open market transactions in the same stock on the same date. Over the years during the various studies, the Securities and Exchange Commission (SEC) has eased its restrictions on the length of time such stocks must be held, the way in which they are sold, and the amount that can be sold at any one time. These changes have tended to increase the liquidity of restricted stocks and lower the observed marketability discounts. Other changes in the limited

market for restricted stocks have had similar effects, including a reduction of the maximum settlement period from five days to three days, an increase of puts, calls, and other derivative securities on many more stocks, a reduction of commissions due to the introduction of discount brokers, and a reduction of the average spreads between the bid and asked prices due to the replacement of the fractional quotation system with the decimal quotation system. Average discounts on sales of restricted stock relative to their public market trading price have been trending down from as high as 45% in the late 70s and early 80s to the low 20 and mid-teen percentages in the late 1990s. The studies indicate that marketability discounts on restricted stocks can be used to estimate a marketability discount for a closely held company. However, restricted stocks are only restricted from public trading for a limited period of time. Therefore, discounts for lack of marketability for closely held stocks, for which no public market is established, would be greater than discounts for lack of marketability for restricted stocks. The results of restricted stock studies are shown below:

Restricted Stock Studies	Average Marketability Discount
SEC Institutional Investor Study	26%
SEC Non-reporting OTC	33%
Milton Gelman	33%
Robert Trout	34%
Robert Moroney	36%
J. Michael Maher	35%
Standard Research Consultants	45%
Willamette Management	31%
William Silber	34%
FMV Opinions	23%
FMV Restricted Stock Study	22%
Management Planning, Inc.	27%
Bruce Johnson	20%
Columbia Financial Advisors	21%
Columbia Financial Advisors	13%

IPO studies are based on transactions in closely held stocks compared to subsequent transactions in the same stocks in IPOs. Three independent but similar studies are those of John Emory, Willamette Management Associates, and Valuation Advisors, the results of which are shown below.

IPO Studies	Average Marketability Discount
Emory (formerly with Robert W. Baird & Company)	46%
Willamette Management	39%
Valuation Advisors	25% - 66%

The Emory studies included comparisons of prices of IPO transactions and transactions occurring within five months earlier on common stock and stock options. Insider transactions were not eliminated. If more than one transaction occurred during the five-month period, only the initial transaction was included in the study. In comparing the transaction prices at IPO versus pre-IPO, no adjustments were made for changes in earnings or price indexes that may have occurred during the five-month period. The average marketability discount was 46%.

The Willamette studies include transactions in common stock, excluding stock options, which occurred during the three-year period prior to the IPO and excluded any insider transactions, leaving only arm's length transactions. Discounts were adjusted for changes in the company's earnings and industry price/earnings multiples between the private stock transaction and the IPO. The average marketability discount was 39%.

The Valuation Advisors studies include all transactions within two years of the IPO, including transactions in common stock, convertible preferred stock, and stock options. The database includes data on over 3,000 transactions, with 15 data points for each transaction, such as company sales and operating profit. The study also breaks down the number of transactions by length of time that the private transaction occurred prior to the IPO as follows:

90 days	25%
180 days	36%
270 days	50%
1 year	61%
2 years	66%

The studies suggest that substantial discounts for lack of marketability are often required when valuing a closely held company, and that the discount may average between 35% and 45%, in the absence of special circumstances that would reduce the discount. It is generally understood that discounts for lack of marketability for closely held stock should be greater than discounts for restricted stock since closely held stock have no established market. Therefore, the IPO studies provide a better benchmark or baseline in the quantification of a marketability discount for a private closely-held company.

Both the IRS and the courts have been receptive to the restricted stock and IPO studies in quantifying discounts for lack of marketability as average starting bases from which to adjust upward or downward for company specific factors in determining an appropriate discount for lack of marketability. In *Mandelbaum v. Commissioner*, TC Memo 1995-255 (1995), the court cited the following factors that might cause a marketability discount to be higher or lower than benchmark averages:

1. Financial statement analysis.
2. Dividend policy.
3. Nature of the company, its history, its position in the industry, and its economic outlook.
4. The company's management.
5. Amount of control in the transferred shares.
6. Restrictions on transferability of the stock.
7. Holding period for the stock.
8. Company's redemption policy.
9. Costs associated with a public offering.

Courts are increasingly persuaded that data from databases on companies that have characteristics similar to the subject company are appropriate in quantifying marketability discounts. For example, size and profitability are factors proven to impact the magnitude of the discount, while industry does not have much effect.

The Company is a non-public entity with no established trading market that bears a resemblance to the pre-IPO studies. The studies above, both for restricted stock and pre-IPO, would suggest consideration be given to a marketability discount in the 35% to 45% range. However, the discount may be adjusted to consider the following factors that a prospective hypothetical buyer would consider when establishing a purchase price.

- Most of non-traded businesses are small family-owned and run operations.
- Small businesses run greater risks of failure.
- Small businesses are affected more often with poor liquidity.
- There is a greatly reduced pool of potential buyers for these business interests.
- It is difficult and time consuming to liquidate such a business interest.
- Compared to a publicly traded business interest, a discount must be offered to attract buyers.

Another source to consider is the body of Tax Court decisions related to marketability discounts. These decisions are based on disputes between the Internal Revenue Service and the owner of the stock in question. Overall, the discount for lack of marketability coming from the Tax Courts falls in the range of 10% to 40%, with an average of 28%. However, in a benchmark case (*Mandelbaum v. Commissioner*), Judge David Laro determined that the discount should fall in the 30% to 45% range with adjustments above or below these amounts based on individual company circumstances. These cases are subject to the specific facts set forth therein. However, they do provide some guidance to appraisers. A number of cases that suggest amounts of appropriate marketability discounts are:

Saltzman v. Commissioner	24%
Lauder v. Commissioner	40%
Mandelbaum v. Commissioner	30%
Frank v. Commissioner	30%
Trenchard v. Commissioner	40%
Thompson v. Commissioner	35%
Barudin v. Commissioner	26%
Kosman v. Commissioner	15%
Barge v. Commissioner	10%
Davis v. Commissioner	35%
Weinberg v. Commissioner	20%
Janda v. Commissioner	40%
Magnin v. Commissioner	35%
Bailey v. Commissioner	27%
Heck v. Commissioner	25%
Mitchell v. Commissioner	35%
Green v. Commissioner	35%
Hess v. Commissioner	25%
Lappo v. Commissioner	24%
McCord v. Commissioner	20%
Peracchio v. Commissioner	25%

Thompson v. Commissioner	30%
Jelke v. Commissioner	15%
Huber v. Commissioner	50%
Robertson v. U.S.	13%
Litchfield v. Commissioner	25%
Litchfield v. Commissioner	20%

The discounts in these cases are unique to the particular set of facts under consideration and are not a form of market evidence. Court decisions are generally subjective decisions of a specific court in a specific case. It is the appraiser's responsibility to apply correct methodology, whether supported by court decisions or not. However, court cases provide guidance to appraisers because they indicate when an appraisal result may bear a heavier burden of proof because the position is outside the range of prior court decisions.

It is also important to consider company specific factors that might cause a marketability discount to be higher or lower than benchmark averages. The factors to consider are outlined above.

Although lack of control is an analysis unto itself, the ownership block must be considered when assessing a marketability discount. It is more difficult to market a small block of stock in a closely held corporation versus a control interest. Hypothetical buyers are more willing to acquire a business for the ability to control outcomes.

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify under penalty of perjury that I am an employee of Fletcher
3 & Lee, 448 Ridge Street, Reno, Nevada 89501, and that on 28th day of July 2021, I served a true
4 and correct copy of the **TRUSTEE'S STATUS REPORT** on the parties set forth below by:

5 X Service by eFlex:

6 DONALD ALBERT LATTIN, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY,
7 TODD B. JAKSICK
8 KENT RICHARD ROBISON, ESQ. for SAMMY SUPERCUB, LLC, SERIES A,
9 DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
10 THERESE M. SHANKS, ESQ. for SAMMY SUPERCUB, LLC, SERIES A,
11 DUCK LAKE RANCH LLC, TODD B. JAKSICK, INCLINE TSS, LTD.
12 MARK J. CONNOT, ESQ, for WENDY A. JAKSICK
13 JAMES PROCTOR
14 ADAM HOSMER-HENNER, ESQ. for STANLEY JAKSICK
15 PHILIP L. KREITLEIN, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK,
16 JR. FAMILY TRUST
17 JOHN A. COLLIER, ESQ. for LUKE JAKSICK
18 CAROLYN K. RENNER, ESQ. for MICHAEL S. KIMMEL, KEVIN RILEY,
19 TODD B. JAKSICK
20 STEPHEN C. MOSS, ESQ. for STANLEY JAKSICK, SAMUEL S. JAKSICK,
21 JR. FAMILY TRUST
22 SARAH FERGUSON, ESQ. for STANLEY JAKSICK, SSJ'S ISSUE TRUST,
23 SAMUEL S. JAKSICK, JR. FAMILY TRUST

24 X Service by electronic mail:

25 ZACHARY JOHNSON, ESQ. for WENDY A. JAKSICK –
26 zach@dallasprobate.com
27 R. KEVIN SPENCER, ESQ. for WENDY A. JAKSICK –
28 kevin@dallasprobate.com
ALEXI JAKSICK FIELDS – alexijaksickfields@yahoo.com

29 A copy of this Certificate of Service has been electronically served to all parties or their
30 lawyer. This document does not contain the personal information of any person as defined by
31 NRS 603A.040.

32 DATED this 28th day of July, 2021.

33 /s/ Elizabeth Dendary, CP
34 ELIZABETH DENDARY, CP
35 Certified Paralegal

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INDEX OF EXHIBITS

Exhibit	Description	Number of Pages
1	Samuel S. Jaksick Family Trust Account at RBC Wealth Management	1 page
2	Samuel S. Jaksick, Jr. Family Trust Schedule of Closely Held Businesses – Related Party Receivable & Payable	1 page

EXHIBIT 1

Exhibit 1
Samuel S. Jaksick Family Trust
Trust Cash
RBC Wealth Management - AC ###-#
July 16, 2021

Item	Type	Date	In	Out	Ending Balance
Beginning Balance		3/31/2021	\$ -	\$ -	\$ 47,621.54
Property Sales	Check	4/13/2021	108,457.31	-	156,078.85
Monthly Interest	Interest	4/26/2021	3.65	-	156,082.50
Dr FM BCBS Health HPS	ACH	4/30/2021	-	32.57	156,049.93
AgCredit Dividend	Deposit	5/6/2021	5,052.32	-	161,102.25
Meridian Advantage - Fees	Check	5/7/2021	-	7,909.00	153,193.25
Monthly Interest	Interest	5/26/2021	6.33	-	153,199.58
Dr FM BCBS Health HPS	ACH	6/1/2021	-	32.57	153,167.01
Monthly Interest	Interest	6/28/2021	6.91	-	153,173.92
Dr FM BCBS Health HPS	ACH	6/30/2021	-	32.57	153,141.35
Meridian Advantage - Fees	Check	7/6/2021	-	5,659.00	\$ 147,482.35
			<u>\$ 113,526.52</u>	<u>\$ 13,665.71</u>	

EXHIBIT 2

Exhibit 2
Samuel S. Jaksick, Jr. Family Trust
Schedule of Closely Held Businesses - Related Party Receivable & Payable
2/26/2021

Entity	Trust Interest	Valuation Date	Fiduciary Acquisition Value 2/26/2021	Related Party Receivables	Related Party Payables
Toiyabe Investment Co	50.00%	12/31/19	\$ 939,678	\$ 1,882,816	\$ 350,531
Buckhorn Land and Livestock, LLC (formerly Winnemucca Ranch, LLC)	25.00%	12/31/20	329,615	3,585	35,215
Duck Flat Ranch, LLC	49.00%	12/31/20	109,756	105,219	1,611
Basecamp, LLC	18.75%	12/31/20	36,084	-	17,481
Montreux Golf Holding Company LLC	1.98%	12/31/19	35,411	979,831	2,500
Samuel S Jaksick Jr IV LLC	100.00%	NA	20,000	-	-
BBB Investments, LLC	49.00%	NA	49,531	-	-
Gerlach Green Energy LLC	45.00%	NA	3,158	-	-
SJ Ranch LLC	100.00%	NA	347,979	-	-
White Pine Lumber Co	100.00%	8/31/20	-	17,791	825,566
ALSB, LTD	100.00%	12/31/19	-	8,584	1,053,300
Bent Arrow LLC	100.00%	NA	-	-	-
Lake-Ridge Corporation	100.00%	NA	-	-	-
Spring Mountain Development Co., Inc	25.00%	NA	-	-	-
			<u>\$ 1,871,212</u>	<u>\$ 2,997,826</u>	<u>\$ 2,286,204</u>

✓ Agrees to "Schedule of Closely Held Businesses, End of Year" as presented in the

RA0340

1 CODE: 4185
NICOLE J. HANSEN, CCR 446
2 Sunshine Litigation Services
151 Country Estates Circle
3 Reno, Nevada 89511
(775) 323-3411
4 Court Reporter

5

6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE DAVID HARDY, DISTRICT JUDGE
--oOo--

9

10 In the Matter of the Administration	Case No. PR17-00445
of the SSJ'S ISSUE TRUST,	Dept. No. 15
11	CONSOLIDATED
	Case No. PR17-00446
12 In the Matter of the Administration	Dept. No. 15
of the SAMUEL S. JAKSICK, JR. FAMILY	
13 TRUST.	

14

TRANSCRIPT OF PROCEEDINGS VIA ZOOM
15 STATUS HEARING
THURSDAY, AUGUST 5, 2021

16

APPEARANCES:

17

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	Fletcher & Lee
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19	Reno, NV 89501
	Clee@fletcherlawgroup.com

20

21

For Todd Jaksick, in a	DON LATTIN, ESQ.
22 Co-trustee capacity, and	Maupin Cox & LeGoy
Co-trustees Michael Kimmel	4785 Caughlin Parkway
23 & Kevin Riley:	Reno, Nevada 89519

24

1

For Todd Jaksick,
Individually & in beneficiary
Capacity

KENT ROBISON, ESQ.
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& Brust
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3

4

5

6 For Stanley Jaksick:

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7

8

9

10

11

For Wendy Jaksick:

ZACHARY JOHNSON, ESQ.

12

13

14 For Luke Jaksick:

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Kalicki Collier, LLP
401 Ryland Street,
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Reno, NV 89502
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Also Present:

19

20 TODD JAKSICK

21 STANLEY JAKSICK

22 WENDY JAKSICK

23 LUKE JAKSICK

24

1 MR. JOHNSON: Zack Johnson, representing
2 Wendy Jackson.

3 MR. HOSMER-HENNER: Adam Hosmer-Henner,
4 representing Stan Jaksick. I don't know if Mr. Robison
5 misspoke, but I don't believe he's representing Stan in
6 this hearing.

7 MR. LATTIN: I was just talking generally in
8 the case.

9 MS. LEE: Good afternoon, Your Honor. Celia
10 Lee, on behalf of the trustee, James Proctor, who I
11 believe is also on the Zoom.

12 THE COURT: And, Mr. Collier, you're speaking
13 to a muted --

14 MR. COLLIER: Thank you, Your Honor. John
15 Collier, on behalf of Luke Jaksick.

16 THE COURT: Thank you. Hello, everyone. We
17 are here on Mr. Proctor's petition for instructions
18 regarding the sale of trust asset. I have read that
19 document including the proposed order. I have also read
20 Mr. Proctor's trustee status report that was filed on
21 July 28th, in which some information is provided and a
22 few questions are asked. And I have read Mr. Todd
23 Jaksick's response. It's not yet filed. It may be in
24 our cue, but I have read it. It includes both a few

1 pages and then a series of email exhibits.

2 I don't know where to begin. I think
3 Mr. Proctor, through counsel, has spoken as to what his
4 positions are. Other than have him emphasize what is
5 already presented to the Court, let me just begin with a
6 roundtable from counsel to better understand their
7 positions.

8 Mr. Robison, I've read your response. I do
9 want to give you a chance to speak, but let's hear from
10 Mr. Lattin, Mr. Hosmer-Henner, Mr. Johnson, and
11 Mr. Collier, if he wishes to be heard before turning to
12 Mr. Robison.

13 Mr. Lattin?

14 MR. LATTIN: Are you asking for comments on
15 the petition for instructions?

16 THE COURT: Yes.

17 MR. LATTIN: Okay. I think I would defer
18 until after Mr. Robison speaks. I do have a few comments
19 when you get to the status report that was filed by
20 Mr. Proctor.

21 THE COURT: Okay. Mr. Hosmer-Henner, I
22 presume I know your petition on the petition for
23 instructions. It was through you that an offer was made.
24 I've read that written offer you presented, but anything

1 that you want to add relating to the petition for
2 instructions?

3 MR. HOSMER-HENNER: So, Your Honor, I would
4 just say that our position is more or less neutral on
5 this petition in the sense that we received an offer for
6 a family trust asset and passed that onto the temporary
7 trustee.

8 And so from there, we have no objection to
9 the petition which seems to lay out exactly what the
10 trustees have -- the former trustees had discussed doing
11 for quite some time, which is liquidating the assets of
12 the family trust and turning it into cash.

13 I think we have it on record the statements
14 of Mr. Riley, Mr. Kimmel, and I believe Mr. Todd Jaksick
15 as well saying that the only way to generate revenue and
16 pay off the debts of this trust was to sell assets. We
17 received an offer and afforded a temporary trustee, and
18 so with respect to how it goes forward, we would then
19 turn it over to the trustee and the judge and the
20 temporary trustee.

21 THE COURT: Mr. Johnson?

22 MR. JOHNSON: Yes, Your Honor. We just share
23 Todd Jaksick's concerns that he expressed in his response
24 to the petition for instructions in that at this point,

1 we just would like to have more information and the
2 ability to kind of analyze that information. Prior to
3 the filing of this petition for instructions, really we
4 had not heard anything at all from Mr. Proctor about his
5 administration of the trust.

6 I believe he did respond at some point and
7 said that the court was delayed, and that's kind of about
8 it. And so we've been requesting information and not
9 really receiving information until the report was issued.
10 And at this point, we just need more time to evaluate it.

11 THE COURT: Mr. Collier, do you have anything
12 to say on this issue?

13 MR. COLLIER: Thank you, Your Honor. We
14 would join Mr. Johnson in his comments and request some
15 time to review the information.

16 THE COURT: Okay. Before I hear from
17 Mr. Robison and Ms. Lee, I'll just share with you that
18 the Court is not troubled by the process, by the concept
19 of valuation and liquidation through sale. I am a little
20 concerned about the marketing of this property.
21 Mr. Proctor, through counsel, talked about a marketing
22 timeframe in the trustee status report, but the proposed
23 order doesn't contain any marketing plan.

24 The trustee status report indicates that

1 counsel of record may have other clients in the industry
2 and they should share it with as many people as they
3 know. I think that that might be one ingredient in the
4 recipe, but I want to be a little bit more satisfied
5 about the marketing efforts. I do understand the
6 marketing discount that's been presented separate from
7 the minority discount, but that's really where the Court
8 is.

9 And so embedded in the Court's concerns may
10 be an enlarged amount of time to accommodate a marketing
11 plan which may then satisfy some of Mr. Robison's
12 concerns. I might -- Well, I would certainly entertain
13 comments about how to accommodate those concerns, and I
14 might order something in response to what I hear. And
15 with that, let me hear from Mr. Robison.

16 MR. ROBISON: Thank you, Your Honor. I
17 apologize for the technical glitch.

18 THE COURT: That's fine. It happens every
19 day, it seems, doesn't it?

20 MR. ROBISON: I hear you. So we have
21 basically a \$2 million-dollar offer. And, Your Honor, if
22 this is the best we can do, if this is the highest and
23 best value for that entity's interest, do it. But we
24 don't know whether it is.

1 And some of the salient factors that raise
2 questions are we have real estate valued at \$7.4 million
3 dollars. We still don't have any reliable records about
4 the sales activities and the profits generated for the
5 past years.

6 We just got a February 1, 2020 through
7 February 26th, 2021, accounting for Mr. Riley. And in
8 it, he says I'm just repeating what I said for 2019
9 because I don't have any updated information. And then
10 when he says that, he's talking about Toiyabe Investment
11 Company and its relationship with Montreux Development.
12 So we have \$7.4 million dollars of real estate for which
13 this proposal suggests only \$2 million dollars finds its
14 way to the family trust. And I just respectfully
15 suggest, Your Honor, we should be given the opportunity
16 somehow some way to look into this.

17 We represent developers. I know Blake Smith
18 would love to get his hands on this property. But that
19 is real value property, real value to this family trust
20 that we might want to consider not just sell the asset or
21 the interest that Toiyabe has in Montreux Development,
22 but there might be much more lucrative alternatives if
23 we're given a chance to look into this.

24 Most important, if there's a valuation of

1 Toiyabe based upon present financial information, we have
2 a much better look at what that value might really be.
3 And so I think we need to look under those rocks, Your
4 Honor, before we go forward with this sale. And I know
5 time might be sensitive.

6 THE COURT: How do you propose looking under
7 those rocks? What is the briefing plan or scheduling
8 plan?

9 MR. ROBISON: You know, I knew you were going
10 to ask that question, and I knew I didn't have a good
11 answer. I can go interview Ms. Lee and Mr. Proctor with
12 an expert with us. We can devise something to get into
13 this. But the first thing we need is really current
14 financials, real financials of Montreux Development to
15 see what the sales activity has been, what income has
16 been generated because I think that's a huge factor, Your
17 Honor, in determining whether or not these values are
18 appropriate with these discounts applied. But we look at
19 the real estate and we say that is a great deal we need
20 to happen. The real estate.

21 We have five improved lots out there that
22 probably \$700,000 dollars a lot, and that alone is \$3.5
23 million dollars, we think, for those five improved lots.
24 Then there's another 30 lots on top of that. If you look

1 at this thing from a real estate value standpoint, Your
2 Honor, we get a completely different picture. I know
3 it's going to be slower, but there is a way to get this
4 done at the higher value.

5 THE COURT: And if this slows down, what is
6 your proposal for the ag credit payment that's due next
7 month?

8 MR. ROBISON: I think Don will answer that.

9 THE COURT: Did you say Don Lattin?

10 MR. ROBISON: Yes. Your Honor, that credit,
11 we know that money is owed. We know it's due. I don't
12 think they really rattled any savers quite yet. They
13 know that we've got this settlement agreement. We know
14 that they know that we've got the temporary trustee. I
15 respectfully submit that they can work with us and we can
16 do a little bit further with their permission so there's
17 not a notice of default or an attempt to collect on
18 guarantees.

19 THE COURT: So to the other attorneys, I want
20 you to start thinking about how the process leading to
21 answering Mr. Robison's concerns would look like. What
22 is that process? He said: I'm not sure. Maybe I
23 interview Mr. Proctor. Maybe we get information about
24 recent sales, but I do want to have a collective

1 participation in what that process looks like.

2 Now, Mr. Proctor and Ms. Lee, I'm going to
3 both welcome Ms. Lee to the case. Of course all of us
4 together, counsel and the Court, know you and know of
5 you, and I don't mean to diminish your role when I
6 periodically refer to Mr. Proctor.

7 He also is known to the Court and other
8 counsel, and so there may be times when you might just
9 wish for him to speak directly, and I want to authorize
10 that in advance. I'm going to ask a question. I'm going
11 to make an observation before I hear from either
12 Mr. Proctor or Ms. Lee. So it's slightly uncomfortable
13 for me, but my charge is to have no friends and no
14 enemies.

15 I want to know, Mr. Proctor, if you have any
16 response to the Manna offer similar to the Court's
17 response. When I read it, I immediately began thinking
18 about Stan's neutrality, potential unknown relationships,
19 related party transactions. I had learned that while I
20 can trust each attorney, their candor, their
21 professionalism, they are also zealously representing
22 competing interests. And so when this offer comes
23 through Mr. Hosmer-Henner, who represents Stan, it
24 doesn't feel as objective and distant from Stan that it

1 might feel if I didn't have four years in this case. Did
2 you have any similar response?

3 One more thing. Because the analytics of
4 minority and marketing discounts, they certainly apply.
5 There's no question about that, but it's just the inner
6 related party feel that I have. Mr. Proctor? You're
7 still muted. There you go.

8 MR. PROCTOR: Absolutely. I also looked at
9 the real estate appraisal, considered that along with the
10 two-step process, if you will, of the two different
11 entities. And while you can make the numbers justify for
12 the amount of the offer, obviously real estate prices are
13 continuing to increase as well as construction costs.

14 I have some concerns with that. I always
15 viewed this from day one as a multi-step process. In
16 other words, we get out this offer whether we decide to
17 do anything with it or not at the direction of the Court,
18 so inform me. I don't want to lose an active offer if
19 that's going to be the only one that starts a process of
20 overbidding.

21 It's been my experience either in
22 receiverships or examiners or bankruptcy trustees that
23 somebody has to come out of the box first, and that
24 starts an overbid process. One of the reasons I was

1 proposing maybe a longer period of time for some due
2 diligence and marketing is that we want to keep the
3 potential purchaser interested and active, but at the
4 same time, let's explore this. Let's explore what is out
5 there.

6 This is not an unusual type of setup in the
7 development world. It's not as straightforward as any of
8 us would want, but I believe we at least need to get it
9 before the Court and say: Yes, Mr. Proctor, you have the
10 ability to go out and market, do your due diligence in a
11 parallel course, determine whether or not this is a
12 reasonable offer, how those numbers may have been arrived
13 at, at the same time, marketing and getting further
14 interest in that as well as working through some types of
15 inclusions because if we don't have the ability to move
16 forward on this offer, then we have a real problem with
17 yes, there could be some negotiation and time extension,
18 but we only have \$143,000 which to work with which while
19 initially sounds halfway decent, where are we going to go
20 with researching further and analyzing further the
21 Northern Washoe Investment properties and some of those
22 properties that may be not quite as liquid that no assets
23 are liquid.

24 So I've always viewed these as a multi-step

1 process. The petition for instructions was the first
2 process. Unfortunately, that had to come out prior to my
3 status because of the timing and my health issues which I
4 apologize to the Court for. But that's how I have always
5 viewed this, Your Honor. And obviously, I have an
6 incentive to get as much as we can. I'd love nothing
7 better than to come out as the hero and we find a buyer
8 at for \$4 to \$5 million dollars for this property.

9 THE COURT: Do you share any of Mr. Robison's
10 concerns shared by others that there is missing
11 information about the -- just the transaction history
12 within these other entities during the past two years
13 essentially? Do you share those same concerns?

14 MR. PROCTOR: Yes, Your Honor. And there's
15 some information we need from Mr. Riley on those, and
16 then we'll need to talk to Mr. Stan Jaksick a little
17 further.

18 I'm aware that there was at least one lot
19 sold prior to my involvement. I want to insure that
20 those proceeds are either sitting in Montreux Development
21 or what's been done with those proceeds. I'm not sure
22 how long ago those were -- that lot was sold. So yes, I
23 mean, there's still some further analysis on this. This
24 was again both my report and the petition for instruction

1 was to let's move quickly on this. Let's fill in the
2 gaps as we move along, and let's keep this process moving
3 forward.

4 THE COURT: Again, there are other issues in
5 the trustee status report that we'll come to. I'm
6 focusing solely on this offer and the petition for
7 instructions.

8 I want to go round robin again with
9 suggestions about how to accommodate some of the
10 questions, but I also want to begin with
11 Mr. Hosmer-Henner, whose client is now feeling the
12 Court's microscope about the true neutrality or related
13 party nature of this offer.

14 So let's begin with you. You may respond any
15 way you want, Mr. Hosmer-Henner, but then please conclude
16 your remarks with the marketing plan and how we get to
17 the information of past transactions within this entity.

18 MR. HOSMER-HENNER: Your Honor, I don't
19 believe that we're feeling the microscope. And we
20 welcome that inquiry, and we're cooperating with
21 Mr. Proctor and the Court to make sure this is an
22 above-board transparent transaction. And I do recognize
23 you've been involved in this case for three years, and
24 some tarnish has been applied to all parties.

1 I do object to the kind of characterization
2 that Stan is at the same level as prior transactions.
3 And I would compare and contrast this a little bit with
4 the most recent sales of ranchland that were accomplished
5 immediately prior to the appointment of the temporary
6 trustee where the offer was not presented to the Court,
7 and I don't believe that those documents were presented
8 for Court approval. It was something where the trustees
9 were authorized to make that transaction without this
10 process.

11 I truly did not expect the letter that I sent
12 to Mr. Proctor to appear as an exhibit in this particular
13 petition. I have no objection to it. But I did go back
14 and wanted to advise the Court that we transmit -- we
15 received an offer and transmitted it to Mr. Proctor. We
16 had a call about it, and there was a discussion about
17 what could actually be done.

18 Going back through, again, I am proud of what
19 we wrote was that while we said it would be possible for
20 you to accept Manna's offer without Court approval, as we
21 discussed, this would not be our recommendation given the
22 size and nature of this particular family asset. But we
23 would ask and request for approval be as expedient as
24 possible.

1 With respect to the plan for petition for
2 instructions, we specifically wrote to Mr. Proctor with
3 our suggestion that the petition include room for
4 negotiations so that you, Mr. Proctor, have the ability
5 to negotiate on price or terms of Manna. The petition
6 could also authorize you to build in competitive bidding
7 for the Toiyabe interest which may or may not be
8 advisable depending upon the likelihood of other bidders.

9 I absolutely understand the Court's concern.
10 I'm not sure what else we can do to address that other
11 than to do this in the most transparent and open way
12 possible. And I think that the general procedure that
13 Mr. Proctor has laid out, which is to open the process up
14 to bidding and to try to maximize the value of this Manna
15 Trust interest is the right way to proceed.

16 I will say that I think the suggestion that
17 what we need to look at is the real property owned by
18 this company continues to be inappropriate, and there are
19 certain inaccuracies provided by Todd Jaksick. And this
20 is still a company. We've not pierced the corporate veil
21 here. This is a minority interest in a holding company
22 and another company.

23 So with that in mind, the family trust cannot
24 on its own authorize the sale of this real property.

1 Cannot. And it cannot file an action for partition of
2 that real property. But what it can do is sell its 50
3 percent interest in Toiyabe, and that's an offer that we
4 received. And if there's that offer for \$5 million, we
5 would support that more than we would support this offer
6 to Manna.

7 So that said, I think there's nothing -- I
8 think that the trustee should pursue the sale of every
9 asset of the family trust and to wind down and finally
10 close out this trust. So whatever process we establish
11 here should be the right one not just for this asset, but
12 for all of the assets.

13 THE COURT: What about the request for
14 detailed financial information during the past two years
15 from Toiyabe?

16 MR. HOSMER-HENNER: Your Honor, I believe
17 that that information has been -- is with Mr. Riley, who
18 has been authorized to share that with Mr. Proctor. I
19 cannot confirm that definitively simply because of my
20 memory, but that is absolutely my recollection. And so
21 if that's the case and all we are waiting on is Mr. Riley
22 to provide that information to Proctor, then we are
23 there.

24 I do have the issue as I always have with the

1 difference between Toiyabe and Montreux Development
2 Group. Certainly, there's no issue with sharing the
3 information about Toiyabe. But sharing some of the
4 information with respect to Montreux Development Group
5 may or may not be an issue for my client, but I don't
6 want to speak at this point. But I have to say my
7 understanding was that Mr. Riley was authorized. And
8 maybe Mr. Proctor can correct me on that, but I thought
9 that's where the situation was left that Mr. Riley's
10 authorized to provide all of that information to
11 Mr. Proctor.

12 MS. LEE: Can I address that, Your Honor?

13 THE COURT: In just a minute. I have one
14 more followup and then yes, I'd like to hear from Ms.
15 Lee.

16 Before I leave you, Mr. Hosmer-Henner, what
17 marketing timeframe or details do you think are
18 appropriate for this Court to include in its order?

19 MR. HOSMER-HENNER: Well, certainly not
20 depositions as Mr. Robison appeared to suggest. We are
21 not litigating the value of this asset. We are not going
22 to have this to be a contentious issue. This is exactly
23 why this Court appointed a temporary trustee to trust his
24 judgment in terms of what's an accurate price for this

1 asset. All parties are invited to weigh in and submit
2 their briefs, and then this Court can adopt the
3 recommendation of Mr. Proctor or not.

4 But in terms of marketing and bidding, I
5 represent developers, but I'm not a developer, Your
6 Honor. So I would say what the maximum amount of effort
7 and marketing that would build a reward, an actual reward
8 should be pursued. But at the same time, I can't imagine
9 Mr. Smith is willing to purchase a Jaksick family
10 interest, a minority interest in a Jaksick family entity
11 right now. I can't imagine many other developers would
12 be.

13 So with that said, I think it's a
14 cost/benefit analysis to be undertaken by someone who has
15 more experience in the real estate world than I do.

16 THE COURT: Thank you.

17 Ms. Lee?

18 MS. LEE: Thank you, Your Honor. Just a
19 couple of things directly in response to what
20 Mr. Hosmer-Henner just said regarding information from
21 Kevin Riley. Mr. Riley was unwilling to provide the
22 trustee with financial statements or tax returns relating
23 to any of the entities in which the trust is a member or
24 shareholder, has some type of interest. I went to the

1 member's/shareholders and those entities --

2 THE COURT: Hold on. We just had an
3 explosion of sound, but I think it's over. Go ahead.

4 MS. LEE: Okay. So we went to the two
5 individuals who we believed were the controlling member
6 and/or shareholder of all of those entities and asked for
7 them to convey their information to Mr. Riley, and he was
8 to give the information either directly to them and they
9 would relay it onto us or to give that information
10 directly to us.

11 With the exception of what I just heard from
12 Mr. Hosmer-Henner that the information had been requested
13 and sent, we have not received that information from
14 either Mr. Stan Jaksick or from Mr. Riley.

15 In addition, in Mr. Todd Jaksick's response,
16 there's a sentence or so regarding the same thing that
17 Mr. Jaksick had already made that request of Mr. Riley.
18 That was news to us as well, and I have not received
19 anything in connection with the financials or tax returns
20 from the entities which Mr. Todd Jaksick controls.

21 As we were getting on this Zoom hearing, Your
22 Honor, I believe I got a message or I mean -- excuse me
23 -- an email from Mr. Robison, but I haven't had a chance
24 to review it yet. So basically, where that puts us is we

1 really don't have the necessary information on the
2 financials or tax returns on any of these entities
3 including Toiyabe. And that should be something that
4 reasonable minds can come to a very, very quick
5 resolution of that. That should not be an issue. And
6 hopefully, it won't.

7 But I think that the other point that I'd
8 like to just raise at this stage in your proceedings
9 today, Your Honor, and that is that Mr. Proctor is not
10 the stakeholder here. He's a temporary trustee. He was
11 brought in under circumstances the parties know far
12 better than I do.

13 So having said that, there's no -- we don't
14 have any stake in what happens from here going forward.
15 But certainly, based on the experience both Mr. Proctor
16 and I have in selling assets of various forms in various
17 courts, the one kind of overarching difficulty or issue
18 to be addressed is exactly what the quote unquote
19 "marketing" looks like and what role all of the parties
20 have in connection with that.

21 And what I've heard so far with all due
22 respect to everyone involved in this process, is that it
23 seems a little vague. And I think that it's possible to
24 put some more precision to it so that everybody has a

1 much clearer understanding of what should happen.
2 I'm going to dovetail a little bit on what
3 Mr. Hosmer-Henner said, and that is, we are not selling
4 real property here. If we were, this would be a
5 completely different proceeding. But we are not. We are
6 selling a minority interest. What the trust owns is
7 personal property. The membership interest in Toiyabe,
8 whatever that consists of, is a personal property
9 interest. Whatever the entity owns is not property of
10 the member.

11 The entity in this case owns a membership
12 interest in another entity, and it is only through that
13 indirect relationship that there's any connection to the
14 real property at all. So this is not a typical marketing
15 scenario that probably everybody involved in this case
16 has seen before which is you hire a broker, the broker
17 goes out and markets the property and then you can sell
18 it. It's a fairly straightforward process. That's not
19 what's happening here.

20 So what Mr. Proctor and I have discussed as
21 we've gone through these last several months since the
22 offer was received, is something that's more along the
23 lines of taking advantage of relationships that could be
24 with people, developers, other interested business people

1 who might be interested in buying this minority interest
2 and seeing if there is some -- there could be some legs
3 to something like that.

4 We talked about doing things like
5 non-disclosure agreements so that parties' information,
6 the information about the trust might be held in some way
7 or another closer to the vest and to do so in such a
8 manner so as to attempt to take advantage of two things.
9 One: To test whether or not this really is the
10 highest-and-best offer that could be could be obtained.
11 And then secondly also, to keep in mind the
12 bird-in-the-hand concept which I think several counsel
13 have mentioned. We don't want to turn down something
14 just simply because we think something else better may be
15 out there. So those to me seem like two competing
16 interests.

17 We believe, Your Honor, that 60 days or so
18 would probably be an appropriate period of time. But
19 that is -- we'll live with whatever it is that the Court
20 decides in terms of an appropriate period of time. But
21 part of our idea in terms of the process so that everyone
22 again has an understanding of what it is that -- who the
23 potential interested parties are would be to require
24 proof of financial wherewithal to be able to consummate a

1 transaction and various things like that.

2 Now, the one thing that we have not gone over
3 yet at all is whether or not there would need to be an
4 additional period in the event that a perspective
5 purchaser requires a negotiation of a more in-depth
6 purchase and sale agreement. So that will be something
7 that we're going to have to deal with. But from the
8 trustee's perspective, getting the financial information,
9 particularly on Toiyabe, but the other entities as well,
10 too, and keeping in mind the competing interests of this
11 is an unusual situation in the sense that it does not
12 lend itself to just simply going out and hiring the real
13 estate broker to sell the six lots, and keeping that in
14 connection with the bird-in-the-hand concept that I
15 coined, I think that can help guide where it is that all
16 that the timing with respect to all of this comes down.

17 There's one other point, too. And maybe I
18 just simply misunderstood what counsel said, but there
19 are 30 approximate lots that are at issue here. To my
20 understanding, it is the Montreux Development Group owns
21 six that are at issue here in this particular -- the
22 ultimate asset that everyone is talking about not 30.

23 THE COURT: I believe you wrote an email.
24 I'm trying to remember -- I read a lot of emails -- when

1 you began by saying our goal is to minimize the expense
2 to the trust. We therefore don't want to issue
3 subpoenas. Can you please make it happen.

4 MS. LEE: Uh-huh.

5 THE COURT: I want to respond to that email.
6 You are authorized by this Court to spend the money
7 necessary to accomplish your objective. I've been
8 hearing about accountings and information has been
9 produced, and it hasn't been produced, and we've
10 authorized and haven't authorized. I've been hearing
11 about that for years.

12 If you need information about Toiyabe, get it
13 through the legal process. And the recipient of such
14 process can seek protection or the consequences of
15 non-compliance. I agree with you. Reasonable minds
16 should make this goal, this absent information become
17 present immediately, but there have not been reasonable
18 minds in this case that have come together. And so just
19 spend what you need to spend to get to the result your
20 client believes is necessary.

21 MS. LEE: I appreciate that, Your Honor. I
22 want to also make sure that the Court and the parties
23 understand that I am loathe to employ a knee-jerk
24 reaction to something when I feel that a few phone calls

1 or a few emails will suffice, but I appreciate Your
2 Honor's comments. If we don't make any progress in terms
3 of these additional financials and tax returns, that is
4 certainly something that we will do.

5 THE COURT: So that's a fair response. I'm
6 not directing you --

7 MS. LEE: I understand.

8 THE COURT: -- to go the nuclear option, but
9 I'm authorizing you to do it.

10 MS. LEE: I understand, Your Honor. I'm not
11 taking that to the mat. I appreciate that.

12 THE COURT: I want to think for a moment
13 before I turn to other counsel.

14 All right. Mr. Lattin, anything now based
15 upon what you've heard so far?

16 MR. LATTIN: Yes. Thank you, Your Honor. I
17 was reviewing your order that you entered when you
18 appointed Mr. Proctor as interim trustee, and you
19 indicated that there should be, first of all, an
20 assessment of what the debt is of the family trust;
21 secondly, an assessment of what the assets were, and then
22 a recommendation for distributions be made once the
23 assets are sold. I take a more global look at this and
24 then maybe we're just selling property.

1 It's like anything. If you're establishing a
2 budget for your home or whatever it is, you have to know
3 what the debt is. And I know Mr. Proctor's been sick,
4 but I do think we need to have an assessment of the debt.
5 I do know that in the discussion of the trustees, as this
6 case has been going on for the last three years, there
7 have been assessments made of assets and one of the most
8 liquid assets that would provide the most financial
9 benefit for the family trust is are the Montreux lots.
10 So I think we're dealing with one of the biggest assets.

11 And I think we need to be careful to make
12 sure that we maximize the benefit that we can obtain from
13 this to make sure that we get all things sold or paid
14 off. So I do hope that the debt is being determined and
15 that we have a global look at the assets and a plan to
16 get them marketed so that we can pay off these things.
17 And what I feel by this offer is we're kind of doing a
18 piecemeal approach.

19 With regard to the marketing, if I may, I'm
20 assuming that Stan Jaksick has a marketing plan for the
21 current lots. And it might be beneficial if he does have
22 a marketing plan for him to provide that plan to the
23 interim trustee so that he can look at what's being done
24 up there right now. And there may be something from that

1 marketing plan if he has one that the interim trustee
2 could use in marketing this property.

3 I also echo what other counsel have said. We
4 lack information. And I think we need to fill in some of
5 the information gaps in a 60-to-a-90-day period, I think
6 would allow us to get that information. Thank you.

7 THE COURT: I want to pause for a moment,
8 please. Thank you, Mr. Lattin. While I'm focusing on
9 what the attorney is saying in the moment, I find that my
10 mind is also wandering to something Mr. Hosmer-Henner
11 said, and so I just want to close that loop so I cannot
12 have divided attention.

13 Mr. Hosmer-Henner, on those two cell
14 transactions that occurred immediately before
15 Mr. Proctor's involvement, was your client a necessary
16 signatory for those sales?

17 MR. HOSMER-HENNER: Your Honor, my -- Well,
18 that was the dispute what happened last time between Mr.
19 Lattin and myself was why is the trust now being -- I
20 think it was around the time of opposing the temporary
21 trustee by Mr. Lattin because there were immediate things
22 that needed to be done. And so in that context, my
23 question was -- if I'm remembering correctly, Your Honor,
24 was why is it now necessary for the trustees to approve

1 this when the trustees themselves weren't the ones who've
2 signed off on the actual offer and acceptance.

3 THE COURT: And I'm just trying to get to the
4 answer. Did your client consent to those two cell
5 transactions?

6 MR. HOSMER-HENNER: Ultimately, yes, Your
7 Honor. I believe so.

8 THE COURT: Okay. And were the purchasers of
9 those interests related parties to Todd Jaksick or are
10 they independent?

11 MR. HOSMER-HENNER: Your Honor, our consent
12 was based -- again, if I recall correctly from that
13 record, on the idea that these were arm's length
14 third-party sales and all of the assets would go to
15 benefit the family trust.

16 And my understanding is that one of the
17 proceeds of one of those sales actually did go into the
18 trust, and that's reflected in Mr. Proctor's report. The
19 other sale of the proceeds were solely used to pay down
20 of the ag credit loan which arguably indirectly
21 benefitted the family trust, least 51 percent -- 49
22 percent of it.

23 THE COURT: All right. I want to turn toward
24 the trustee's report, so I'm going to --

1 MR. ROBISON: Your Honor, may I respond?
2 Because I was confused yesterday, and I'm really confused
3 right now after the dialogue. And I respectfully request
4 clarification.

5 THE COURT: Would you respond after I share
6 my inclination? It's not a dispositive inclination.
7 It's a procedural inclination.

8 MR. ROBISON: Understood, Your Honor.

9 THE COURT: My inclination on the petition
10 for instructions is to give all attorneys a specified
11 amount of time, probably until the front part of next
12 week, Tuesday or Wednesday, to submit to Ms. Lee
13 suggestions for inclusion in a modified order and that
14 Ms. Lee would take all of those suggestions and try and
15 create that precision that she seeks and acknowledges
16 does not exist.

17 And then she would submit a modified proposed
18 order, and everybody would have five days to object to it
19 if they wished. That was my procedural idea for how to
20 extend the time, maintain those competing interests that
21 we've got one in the hand with a possibility of some
22 proscribed marketing efforts and timelines and so forth.
23 That's how I thought I'd get to it.

24 Now with that, go, ahead, Mr. Robison. But I

1 just wanted to express that while it was fresh.

2 MR. ROBISON: Thank you, Your Honor. We've
3 been on the record more than once in December and January
4 telling this Honorable Court as officers of the court
5 Todd Jaksick had authorized Kevin Riley to disclose all
6 financials concerning any entity that Todd controlled.
7 We have done that, we did that, and Mr. Riley has been
8 authorized by Todd Jaksick to disclose any and all
9 information concerning those entities.

10 So in the meantime, we get the accounting
11 such as it is for 2020. And it starts off, Your Honor,
12 saying that there are 33 lots in Montreux Development and
13 that there has been a substantial development of 736
14 acres. All agreed to. But if Montreux's interest is
15 sold -- excuse me -- Toiyabe's interest is sold, doesn't
16 that sell any right Toiyabe has to any proceeds derived
17 from the sale of the 33 lots.

18 Now I'm really confused that this is only a
19 six-lot offer. If it's an offer for six lots at \$2
20 million dollars, I'll have to tell Your Honor, I'm going
21 to be pulling back a lot of what I said here today. But
22 my understanding is you sell Toiyabe's interest in
23 Montreux, you're selling everything Toiyabe has to the
24 Montreux Development project which is 33 lots.

1 In addition, Your Honor, the valuation of the
2 entity apparently has little to do with all of the
3 assets. And the accounting we've just been given,
4 Mr. Riley says information for 2020 is not yet available,
5 and Toiyabe has one asset. That's his interest in
6 Montreux Development. And so the information for the
7 accounting is not yet available.

8 If you give us six days to respond, we're
9 responding without the ability to see the accounting
10 information that Toiyabe is entitled to. We've got
11 receivables for Toiyabe from Stan Jaksick in the amount
12 of \$600,000. Toiyabe Golf Course, LLC have receivables
13 for \$146,000; Montreux Golf Club Holdings Corporation,
14 another thousand dollars.

15 We have \$750,000 of accounts receivable for
16 Mr. Jaksick's entity which is, I don't think, factored
17 into this \$2 million-dollar offer. And it's those kinds
18 of things that we are very concerned about whether or not
19 we'll get the highest and best price and whether or not
20 the receivables from Mr. Jaksick are in fact going to be
21 paid back to Toiyabe as part of this alleged transaction.

22 Your Honor, I hope that you took my comment
23 about depositions in the vain that it was intended. It
24 was a hypothetical where I said how am I going to respond

1 to Judge Hardy when he says what to do. I welcome the
2 opportunity to respond within this period of time that
3 you've recommended, but my marching orders from this
4 standpoint, Your Honor, is to go to experts who are
5 involved in these developments.

6 And I don't think there's anybody in this
7 hearing, Your Honor, that doesn't dispute the fact that
8 Montreux is the diamond in our community. And right now,
9 the market is awesome as are the costs are high. I agree
10 with Mr. Proctor. But this is a very attractive project
11 right now together with all of the assets, all of the
12 assets Toiyabe has including the accounts receivable.

13 THE COURT: So can't you accommodate
14 everything you just said in your suggestion to Ms. Lee
15 about the content of the proposed order?

16 MR. ROBISON: If we see the financials.

17 THE COURT: So you believe you need to see
18 the financials before we can agree upon a proposed order?

19 MR. ROBISON: Well, Your Honor, if I were
20 going to go to a client of mine or someone who we know is
21 interested in these kind of projects, we're pretty much
22 sure what we would expect them to ask for to make some
23 kind of statement about whether or not \$2 million dollars
24 is attractive or unattractive. But the financials, the

1 operation history of that company selling lots in
2 Montreux would be a crucial element for that potential
3 investor to consider.

4 THE COURT: I'd like to hear from the other
5 attorneys. I'll end with Ms. Lee. My suggestion is
6 there will be a very short amount of time for each of you
7 to communicate to Ms. Lee the content of an order
8 granting the petition for instruction specifically
9 relating to the concerns that have been expressed today.

10 I'm looking for timeline and milestones. And
11 then give Ms. Lee a chance to analyze all of that and
12 then propose to me her very best order, giving each of
13 you a chance to object or to create a record of your
14 objections before I sign that order.

15 Mr. Johnson?

16 MR. JOHNSON: Your Honor, in relation to that
17 or in relation to just anything else that's pending?

18 THE COURT: No, just the idea of how I get to
19 a proposed order at this point. Well, no. Let me back
20 up because you haven't had a chance to speak
21 substantively. I think Mr. Lee and Mr. Proctor would
22 benefit from that.

23 Go ahead, please.

24 MR. JOHNSON: Well, and just in relation to

1 everything else, Mr. Proctor was appointed as a neutral
2 person that everyone can look to and trust to do the
3 right thing for the trust.

4 And it's troubling that he is having trouble
5 getting basic information that he needs to have in order
6 to evaluate things like the sale of his interest. And so
7 we would encourage him to do whatever he needs to do to
8 get that information, and then any and all of that
9 information he can provide to the other parties, to do
10 that as quickly as possible so that again, everybody can
11 be comfortable that this is a fair and transparent
12 process. I think that's one of the major problems that
13 the administration of the trust has been for many years
14 and has led to a lot of the litigation.

15 Otherwise, Your Honor, whatever you propose
16 as far as submitting ideas to Ms. Lee within a short
17 timeframe, you know, and proposing things, I think that's
18 fine. We're fine with whatever Your Honor decides. We
19 would though request and we do agree with Ms. Robison
20 that any buyer is going to want the financials. They're
21 not buying lots. Like Ms. Lee said, they're buying
22 interest in an entity. So they need to see the
23 financials. And so I think everybody should be entitled
24 to see that.

1 THE COURT: See, I agree with that, but I'm
2 struggling to understand Mr. Robison's request that we
3 need to see these financials before I sign the order
4 because I believe that seeing the financials can be the
5 first step in a series of steps that the order
6 contemplates. And we can even have a, you know, a window
7 of time just to acquire and then analyze those
8 financials.

9 I'm really anxious to enter an order on the
10 petition for instructions, so I'd rather include the
11 mechanism for getting those financials or the timeline or
12 so forth instead of just waiting until they've arrived
13 before I sign the order.

14 MR. JOHNSON: And, Your Honor, that works,
15 you know, assuming they don't have to issue a subpoena to
16 go get those, and then that takes two or three weeks or
17 whatever it is to get them.

18 THE COURT: Yeah. Mr. Proctor and then
19 Mr. Hosmer-Henner.

20 MR. PROCTOR: Your Honor, I just want to
21 clarify a couple of things. First of all, the way the
22 appraisal was prepared, it grouped the lots in six, but
23 there's 30 to 33 lots. So let's clarify that. It's just
24 the way the appraisal grouped the method of how it was he

1 was appraising those groups.

2 Second of all, Mr. Riley has been cooperative
3 to an extent. When I started analyzing and feeling just
4 like Mr. Robison said, needing more information of the
5 subentities of what's been going on, again, without
6 digging outside the scope that you've limited me and
7 what's pertinent to bringing it to the Court in a status
8 report was there was a reluctance of him to release that.

9 And I frankly, in defense of him, I can
10 understand that being that he had been a litigant in this
11 party or in this matter. But at the same time, he kind
12 of did take me aback. Let Mr. Stan Jaksick and Mr. Todd
13 Jaksick communicate with them and say give them what they
14 need. And if not, then we can subpoena documents.

15 And if we're going to subpoena documents, I
16 would want more inclusive information because I don't
17 want to have to keep going back as I analyze items and
18 have questions. So that's kind of -- I just wanted to
19 clarify for the Court my thinking and then exactly with
20 respect to the lots and Mr. Riley's cooperation.

21 THE COURT: Thank you.

22 Mr. Hosmer-Henner, anything from you?

23 MR. HOSMER-HENNER: Your Honor, we agree with
24 Mr. Proctor, I think, that inadvertent description of the

1 sale of just six lots was just that: Inadvertent.

2 I can say I am significantly taken aback too
3 by the idea that Mr. Proctor doesn't have this
4 information from Mr. Riley. I was just looking through
5 my messages and found a message to Ms. Lee on July 8th
6 informing her that prior to Mr. Proctor's illness, we
7 were waiting on Mr. Proctor to connect with Kevin Riley
8 on several trust family items as well and letting -- and
9 saying if they needed anything from us -- and I didn't
10 understand there was anything outstanding. I just
11 confirmed with my client that we've authorized this
12 disclosure as well. And so I think Mr. Robison is in the
13 same boat.

14 The only thing I can recall is that Mr. Riley
15 had some extreme concern about tax confidentiality
16 pursuant to one of his ethical duties, was concerned
17 about disclosure. I thought that had been resolved and
18 we'd authorized everything to be released. And in fact,
19 I have to say that I think most of this information has
20 already been released, as Mr. Robison was just quoting
21 from it in the financial statements, this very detailed
22 information about Toiyabe.

23 That said, with respect to that, what we will
24 do is immediately go back and talk to Mr. Riley, confirm

1 that he's authorized to share the financial information
2 and tax returns of these entities with Mr. Proctor, and
3 then I would request a status conference because of the
4 seriousness of this issue, and I absolutely understand
5 the concern of Mr. Johnson that this seems to be
6 something repetitive in this litigation.

7 A status conference at the conclusion of the
8 submission of the order that one goes over the proposed
9 order that Ms. Lee will recommend to the Court and make
10 sure that the parties actually have disclosed the
11 financial information to Mr. Proctor. And I think there
12 is no reason to delay this further.

13 So we would propose a relatively short period
14 of seven calendar dates for the submission of our
15 proposed language and precision to Ms. Lee, an additional
16 seven days for Ms. Lee to submit that proposed order to
17 the Court, the standard five days for the parties to
18 object and to put their objections on the record to the
19 proposed order and then a status conference shortly
20 thereafter in which the two issues that I discussed will
21 be addressed by the Court.

22 THE COURT: Mr. Lattin?

23 MR. LATTIN: I would have no -- I think your
24 suggestion is a good one that we have a timeframe in

1 which we can make our suggestions to Miss Lee, and we'll
2 accommodate whatever the Court has. It's my
3 understanding from talking to Mr. Riley that he does have
4 the authorizations and is going to provide the
5 information as quickly as possible.

6 THE COURT: Mr. Collier, I'm going to just
7 fly over you until you raise your hand and tell me you
8 want to be heard because you are here on behalf of your
9 client. And I don't want to ignore you, but I'm not sure
10 whether I bring you into the roundtable in the same way.

11 MR. COLLIER: I understand and appreciate
12 that, Your Honor.

13 THE COURT: All right. So I was going to
14 order that by close of business on Wednesday, all counsel
15 submit to Ms. Lee proposed language, and then I would
16 give her until the following Tuesday. If you want to do
17 seven days, it doesn't matter to me. I don't want to
18 push you either, Counsel, to go too fast.

19 Ms. Lee, I'll let you call it. How soon do
20 you want everything from counsel and then how much time
21 do you need after that?

22 MS. LEE: You know, Your Honor, I think by
23 next Wednesday is fine. And I think a couple of business
24 days after that, the following Monday would be fine, too.

1 I don't have a problem with that.

2 THE COURT: All right. So again, I am going
3 to go to the status report. But the order will be that
4 all attorneys who wish to include specifics about the
5 proposed order, specifically acquisition of information,
6 marketing methods and timing, think about it and propose
7 to Ms. Lee by Wednesday as close of business next week.
8 Then Ms. Lee will have until Tuesday at noon to submit a
9 proposed order to me. Any objections will be made by
10 Monday at noon. So that's Wednesday, Thursday, Friday
11 weekend and Monday. And then I'll either modify the
12 proposed order consistent with the objections or I'll
13 sign it.

14 We're going to take a very quick recess, just
15 five minutes. We've been on the record for an hour, and
16 we're all going to stand and shake our hands off.
17 Remember to mute yourselves, Counsel, so no inadvertent
18 communications. I'll be back at exactly 2:35.

19 (Recess.)

20 THE COURT: I would like to share my
21 preliminary thoughts about the status report to include
22 an order I would like to enter in response to the status
23 report and then invite all of you to respond.

24 First of all, I acknowledge and appreciate

1 the trustee's detail. The main theme of the status
2 report is that there was much yet to do. My inclination
3 is to enter an order in response to the status report
4 regarding the accounting and appraisal fees. My sense is
5 that there may be disagreements about the priority of
6 claims against the trust. So I want everyone to have a
7 chance to be heard, but I do want to enter an order
8 providing guidance to the trustee about those fees. I
9 also want to give everyone an opportunity to be heard
10 about the intangible assets.

11 Mr. Proctor has suggested that the
12 examination of those assets could be expensive. And I
13 don't know if it's advisable or not to begin a water
14 rights inquiry. And I want everyone to have a chance to
15 be heard. And so my order would in some way give
16 everyone a chance to be heard, and then I would want to
17 make a decision so that the trustee has further guidance
18 from the Court. That's what I thought I would do. And
19 with that, the entire report is subject to your comment.

20 Who has not started first? Let's go to
21 Mr. Johnson. Anything you want to say about the trustee
22 status report?

23 MR. JOHNSON: Just a couple things. I guess
24 there's two things that kind of jumped out. One was the

1 section on the debts or the liabilities of the trust, and
2 it appears that it mentions about \$3.7 million in
3 liabilities. It says \$2.1 of that has not been included
4 in the general ledger, and it looks like \$2.8 have not
5 been corroborated by any kind of evidence.

6 And so Mr. Lattin, I think, mentioned earlier
7 one of the most important things about the trust
8 administration is going to be the debts and whether
9 anybody actually gets anything out of this thing. And so
10 I don't know what else can be done on that or what focus
11 can be made on that to kind of shore that up in the
12 future.

13 I do also know that I stated earlier we had
14 not received the information from Mr. Proctor. I
15 understand this is a very big process, and so I didn't
16 mean to insinuate that he was dragging his feet. And so
17 I want to throw that in there. But the debts and then
18 the other issue was he did indicate some concern about
19 the financial statements not including information about
20 all of the entities and all of the interest, and we would
21 obviously like to follow up on that.

22 THE COURT: I intend to give to Ms. Lee and
23 Mr. Proctor the last word on this after they hear from
24 everybody. So please hold off.

1 Mr. Robison, anything in response to the
2 trustee's status report?

3 MR. ROBISON: Your Honor, I may have missed
4 it, but I would like to have the settlement agreement
5 addressed in the trustee's report. And there are very
6 substantial debts in that that the family trust agreed to
7 and the Court agreed, and it should be addressed by the
8 temporary trustee.

9 THE COURT: Anything else?

10 MR. ROBISON: No, Your Honor. Thank you.

11 THE COURT: All right. Mr. Hosmer-Henner?

12 MR. HOSMER-HENNER: I agree with both of
13 previous counsel. I think the settlement agreement
14 should be addressed in the status report, and I think
15 it's absolutely critical at this point not to have
16 ambiguities when we're actually close to the point
17 hopefully of winding down this trust. And I think I
18 would strongly support any sort of order or
19 recommendation or encouragement to precisely pin down the
20 claimed debts against this trust.

21 THE COURT: Mr. Lattin?

22 MR. LATTIN: Thank you, Your Honor. You
23 know, I would like to, if I may, point out a couple of
24 things in the status report that I think need to be

1 clarified. And right now, I am referring to page five
2 under the section that is entitled, "Northern Washoe
3 County Investments." And in the last paragraph of that,
4 it talks about the ag credit debt.

5 With regard to the ag credit debt, the trust
6 is not a co-buyer as it indicates. They are the primary
7 obligor on the ag credit debt. That was an obligation
8 that Sam Jaksick had before he passed away. And as a
9 result of his passing, the family trust picked that up as
10 the primary obligor.

11 On that obligation, Stan Jaksick and Todd
12 Jaksick are guarantors. There is also -- so I do think
13 that needs to be clarified because there's a difference
14 between a co-borrower and a primary obligor. Also, there
15 is a statement in that paragraph that the 2020 ag credit
16 obligation was not paid, and I in fact was paid and I
17 have a statement.

18 THE COURT: Hold on. Excuse me. I need to
19 go into recess for just a minute, please. It could be as
20 much as three or four minutes. Put a placeholder on
21 where you were.

22 MR. LATTIN: Thank you.

23 (Recess.)

24 THE COURT: Mr. Lattin, I was listening to

1 you.

2 MR. LATTIN: Thank you, Your Honor. Hold on.
3 I'm so embarrassed and upset and sorry. So I'm here and
4 you have all of me.

5 Mr. Lattin, you may continue.

6 MR. LATTIN: Thank you, Your Honor. I was
7 referring to the status report prepared by the trustee,
8 and I was looking at the section on page five which
9 refers to Northern Washoe County Investments. And at the
10 bottom of that section, there's a paragraph that
11 addresses the ag credit loan which I would like to
12 clarify.

13 First of all, family trust is a primary
14 obligor not a co-borrower. And the guarantors, Todd
15 Jaksick and Stan Jaksick personally, which means if the
16 payment is not paid, there's some personal implications
17 to them.

18 Additionally, with regard to the ag credit
19 loan, all of the farm properties cross collateralize this
20 loan. So that has significant implication to the farm
21 properties in that they're harder to sell, and when there
22 is a sale, there's a release price that is required to be
23 paid to ag credit. So I just want the Court and I'll let
24 Mr. Proctor know if he doesn't -- he may already know

1 that, but I wanted to inform him of that.

2 Also, there's a statement in this section
3 that the 2020 payment was not paid, and that is not
4 correct. And I have a statement that was given to me by
5 Mr. Riley that I will email to Mr. Proctor and to his
6 counsel so that they are aware that this payment was
7 made. It was \$120,000 and it was paid on 9-14 of '20,
8 but I will forward that to Mr. Proctor so he is aware of
9 that and can make that clarification.

10 THE COURT: Thank you.

11 MR. LATTIN: Also, with regard to, as I
12 mentioned, there is a release price on each of the farm
13 properties that has to go to ag credit. Those two loans
14 that were referenced that you asked Mr. Hosmer-Henner as
15 to whether or not his client consented. Both Todd
16 Jaksick and Stan Jaksick consented to those sales in
17 writing. It's in writing. And so everybody was
18 well-aware of that, and they were well-aware of where the
19 proceeds went.

20 Now, there has also been some discussion of
21 financial information that has been and has not been
22 provided to the trustee. On page four of the summary,
23 there's an exhibit or a reference to an exhibit, and it's
24 entitled, "Schedule of Closely Held Business Valuations."

1 And if you look at the center column, it talks about the
2 date of financial information. The two -- the Toiyabe
3 Investment Company and the Montreux Golf Holding Company
4 entities controlled by Stan Jaksick show that the
5 financial information is late and was not provided from
6 2019. And I think that is the information that the
7 trustee was requesting and needs, and you contrast that
8 with Buckhorn and all of the Base Camp, White Pine
9 Lumber, those are entities controlled by Todd Jaksick,
10 and all of his financial information has been provided
11 through the 20th.

12 Now, we're all concerned about the income,
13 and this family trust needs income so that the
14 obligations can be paid. And the trustee is looking into
15 that, and that's his charge by the Court. There's a
16 couple of areas that can be addressed. And if you look
17 at the Samuel S. Jaksick Family Trust financials, and
18 specifically page 12 of the enhanced financial, it talks
19 about closely-held businesses and it refers to Toiyabe
20 Investment Company, which is again an entity controlled
21 by Stan Jaksick.

22 And there's a couple of significant things
23 that I hope the trustee could look into that would
24 potentially provide approximately \$375,000 of income to

1 the family trust. Toiyabe Investment Company is owned 50
2 percent by the family trust. In the list on that page,
3 which is page 12, there are two significant receivables.
4 In other words, there is money owing to Toiyabe
5 Investment which is 50 percent owned by the family trust.
6 One is a \$600,000 personal loan to Stan Jaksick. So we
7 need to look into whether or not that receivable is
8 collectible, and if that is collectible, half of that
9 should go to the family trust which would be \$300,000.

10 In addition, there's another receivable by
11 the Toiyabe Golf Club, LLC, which is another entity owned
12 by or controlled by Stan payable to Toiyabe in the amount
13 of \$146,000. So there's almost \$750,000 in receivables
14 by Stan Jaksick personally or entities controlled by him
15 of which the family trust would be entitled to 50
16 percent. So there is a potential in that in those
17 transactions, as shown on the financials, of \$375,000
18 cash to the family trust.

19 In addition to that, in 2020, there was a
20 phantom income tax bill of approximately \$350,000 sent by
21 the Toiyabe Enterprises to the family trust, and those
22 were for lot sales. And so there is income to the
23 Toiyabe Montreux entities in the amount of \$350,000 for
24 the year 2020, of which the family trust did not receive

1 a dime. So that potentially could be another \$175,000 of
2 cash to the family trust.

3 So I would request that in an order, or in
4 further direction to the trustee that he look in to see
5 whether or not those collectibles can be collected and
6 also the backup for the phantom income tax bill of which
7 the family trust was required to pay taxes on but
8 received no income. So those are areas that I would hope
9 that the Court would ask the trustee to address as they
10 will provide potential income, significant income, to the
11 family trust.

12 And there's just one other item, and we've
13 mentioned this in the family trust accountings. There
14 were or the -- what's included in the sale. And there's
15 been a reference of 33 lots.

16 Since Sam Jaksick's death over eight years
17 ago, there has been a sale by the Toiyabe Montreux
18 entities of 33 lots of which there has been no income
19 from the sale of those lots that have made it to the
20 family trust.

21 So I think those are again, that's an area
22 that is ripe for the interim trustee to look into and
23 hopefully would be part of this order so that the trustee
24 could -- the interim trustee can look into this and

1 determine whether or not that is income that could go to
2 the family trust that would assist in at least lowering
3 the obligations and helping the family trust fulfill its
4 obligations. I think that's all I have unless the Court
5 has any questions.

6 THE COURT: I appreciate that detail. I'm
7 confident that Mr. Proctor and Ms. Lee were taking notes.
8 I don't know that I'm going to include a specific
9 direction to those enumerated matters because I don't
10 want to -- I may or may not. I don't want to limit the
11 trustee by listing some things.

12 But Mr. Lattin and others, as long as we have
13 the trustee's report, if you'll go to page five, that
14 same paragraph: "Northern Washoe County Investments."
15 The second full paragraph -- excuse me. The last
16 sentence of the first paragraph is one that I
17 highlighted. I'll read it.

18 "Regardless of the analyses, it may be that
19 the parties or the Court need to decide whether to
20 continue with additional analysis and incurring
21 professional fees to value the intangible assets in those
22 entities." That's an invitation for the Court and the
23 parties to entertain the question. I just don't know
24 what to do with the invitation.

1 MR. LATTIN: If I may, Your Honor. I know I
2 just quit, but if I may address that issue. I do know
3 that in some of these entities in the various accountings
4 by the family trust, they have been listed at a zero or
5 negative value. And I see Mr. Proctor shaking his head,
6 so I'm certain he's seen that and I'm not telling him
7 anything he doesn't know.

8 Quite frankly, with regard to these entities,
9 at this point of time, I don't think it would be a good
10 use of the already limited funds that we have. There may
11 become a point in time when that changes, but I don't see
12 any of those entities that are really going to -- some of
13 them have already been appraised, some of the Buckhorn,
14 Duckflat Land, but the rest of it, I think, is it would
15 not be a good use of family trust funds at this time.
16 The Court may want to revisit that at some point in time,
17 but that would be my view of these intangible assets.
18 Thank you.

19 THE COURT: Well, I don't believe I'll say
20 anything until I give Mr. Hosmer-Henner a chance. He's
21 been communicating nonverbally during the last few
22 minutes.

23 Mr. Hosmer-Henner, what do you think I should
24 do with Mr. Proctor's invitation that the parties or the

1 Court consider other additional analysis and expense of
2 examining intangible assets?

3 MR. HOSMER-HENNER: Your Honor, I apologize
4 for my nonverbal signals. It's not an inside joke. I
5 could have sworn that Mr. Lattin said he represented Stan
6 Jaksick at the beginning of this hearing. It was an
7 interesting way of showing it during that last
8 presentation.

9 And I think you see exactly what the issue is
10 that the second the shoe is on the other foot, Mr. Lattin
11 has asked about whether more investigation should go into
12 the assets that Todd controls, immediately it's not worth
13 the family's time to investigate that or to go back in
14 time. So the hypocrisy there and the lack of neutrality
15 was extreme.

16 With respect to investigating these assets,
17 if there is ranchland that the family trust owns and we
18 are going to liquidate those assets, then some amount of
19 marketing or evaluation can be done, and I think the
20 market can take care of the valuation to some extent in
21 terms of if there is -- if it 's put up for sale publicly
22 and someone can analyze whether there's water rights then
23 someone will pay a higher price for it as long as it's
24 open and obvious in an open and marketable transaction.

1 I don't have the information and again, I'm not a
2 developer to know.

3 And I don't want to -- I also, consistent
4 with I think Mr. Lattin's prior objection to why this
5 trustee shouldn't be appointed is to go back and litigate
6 all of the transactions that he just talked about with
7 Toiyabe and with respect to these water rights in terms
8 of evaluating and estimating the prices.

9 So if the temporary trustee is liquidating
10 this trust and marketing these assets, that's what the
11 temporary trustee should do. And I offered no opinion on
12 whether these individual entities, whether any kind of
13 full trust-style accounting back to the beginning of time
14 for each of these entities is warranted.

15 THE COURT: So far, I've heard that the
16 trustee should increase his focus upon the debts and
17 liabilities of the trust to work through those
18 uncorroborated claims off general ledger debts and so
19 forth. There needs to be more work. I've heard that
20 there should be some inclusion of the settlement
21 agreement, that it be addressed in some way by the
22 trustees by the trustee in his report.

23 I've heard some clarifying comments about the
24 ag credit debt, both last year's payment and the

1 distinction between co-borrowing and guaranteeing. I've
2 heard proposals for how the trustee may tap into income
3 through amounts that may be owed to the family trust.

4 I think -- Well, I want to give everyone a
5 chance to reflect and be heard, but my sense is that on
6 these intangible assets because I know what the
7 additional expense will be, it seems to me that when the
8 tangible assets are offered for sale through the
9 diligence required in the transaction will be some
10 examination and valuation of intangible assets. So I
11 don't think that I'm ready to order that additional
12 expense. I haven't heard anything yet about the priority
13 of the trustees' accounting and appraisal fees, which I'm
14 inclined to prioritize.

15 And with that summary, who else has not been
16 heard who wishes to be heard on the trustee's report?

17 MR. ROBISON: Your Honor, may I inquire as to
18 whatever is involved in the valuation of the intangible
19 assets? For example, water rights. If it is a
20 full-blown valuation or if it is a water rights-type of
21 expert who can submit an affidavit of declaration, we
22 might have a pretty expensive way to determine the value,
23 if any, of the alleged water rights because they are
24 referred to existing appraisals.

1 THE COURT: I can't answer that. I just
2 don't have the experience and I don't believe it's my
3 province.

4 But, Mr. Proctor and Ms. Lee, do you have a
5 response to what Mr. Robison just said?

6 MR. PROCTOR: Your Honor, no. We would have
7 to hire some type of expert. The last time I worked with
8 the water rights expert was approximately 15 years ago.
9 I'm open for suggestions if there are ways to expedite
10 and minimize costs as to how to establish some type of
11 value.

12 We want to have some type of assurance that
13 whoever we hire is independent and objective, but no. At
14 this point, I mean, that's why I put that in my report is
15 I'm looking for suggestions. And what do you want to do
16 with this? I don't want to go out and hire, you know, a
17 geologist and water rights experts and engage real estate
18 agents that may deal in easements without further
19 direction. And I don't know. I have not researched
20 those costs recently, and I'm open to suggestion. And if
21 Mr. Robison and his client have some suggestions, I'm
22 certainly willing to consider those.

23 MR. ROBISON: Yeah, we have certain permitted
24 waters from groundwater, which is very ascertainable.

1 There's a market for groundwater even though you can't
2 transport it from basin to basin. You also have the
3 value, if any, of surface waters. You go and you talk to
4 somebody like I had here, who is the biggest water buyer
5 and seller in the state and say: Hey. Here's the water.
6 What's the price?

7 MR. PROCTOR: And that may be something we
8 can look at.

9 THE COURT: I think, Mr. Proctor, I think you
10 should begin your examination a little bit only because
11 these intangible assets were included in the financials
12 and either coordinate with counsel or bring it to the
13 Court's attention in the next status report. But you
14 should take a few steps in that direction without
15 committing, you know, to significant six-figure expenses.

16 MR. PROCTOR: Your Honor, that's exactly what
17 I was planning to do in my second status report is more
18 analysis of the Washoe County Investments, the Northern
19 Washoe County Investments. Again, without having to go
20 through and necessarily engage experts. But there are an
21 analysis. They're related party transactions. There are
22 capital transactions in those entities that need further
23 analysis.

24 THE COURT: Before I turn to Ms. Lee or

1 Mr. Proctor, have all attorneys been heard?

2 MR. ROBISON: I just want to point out, Your
3 Honor, that the numbers that were referred to the Court
4 by Mr. Lattin, those are numbers as of December 31st,
5 2019. We're 18 months from those numbers.

6 THE COURT: Okay. Ms. Lee or Mr. Proctor,
7 anything in conclusion regarding this trustee status
8 report?

9 MR. PROCTOR: Your Honor, if I may speak to a
10 couple of items. Mr. Lattin, in prior transactions in
11 Montreux, that's when I came to the stopping point with
12 Mr. Riley when I started asking more information, what
13 did happen in prior years, the tax returns were obvious
14 starting points and obtaining the account papers or any
15 financial statements, that's when we hit the roadblock.
16 Oh, I need releases. So that was already planned. That
17 just was the stopping point.

18 As far as other debt goes, you know, related
19 party debt, incoming debt is like \$700,000 difference.
20 If Entity A owes \$10, Entity B ought to have a receivable
21 of \$10. When you match those all up between all of the
22 different assets, there's a \$700,000 difference in the
23 related parties' slash intercompany debt. That is not
24 something that I want to undertake. I would elicit

1 Mr. Riley's assistance in that. He has the historical
2 knowledge. His billing rates might be slightly higher
3 being in Sacramento, but he has the institutional
4 knowledge. He may have work papers on them.

5 I know when I was in public practice, I had
6 work papers to make sure they balance. There are some
7 intercompany debt there for assets and entities that are
8 no longer listed as assets. So yes, obviously, the debt
9 needs to be further defined, but it's going to take some
10 time because we do have these vast differences.

11 As far as the on financial statement and off
12 financial statement, I believe that was Mr. Riley's way
13 of saying he has, for instance, \$7 -- approximately
14 \$780,000 indemnification agreement debt to Todd Jaksick
15 the way I understand it. But at the same time, we have
16 something else that says there's \$600,000 in legal fees
17 to him. That's not on the general ledger but it's out
18 there and Mr. Riley's kept an accounting of it.

19 So in that particular instance, I don't know
20 if that includes future projected amounts. I don't know
21 if that includes amounts that are paid or included in the
22 indemnification. So again, those need to be tied down,
23 reconciled. I certainly understand that. That's part of
24 the conditional analysis that needs to be done.

1 I appreciate Mr. Lattin's historical
2 knowledge and being involved in this case for years on
3 the ag credit, as I did not understand that to be that
4 way. I read the agreement I have in my position as a
5 co-borrower. I may have misinterpreted that. Again, the
6 general ledger doesn't reflect that \$120,000 payment in
7 September. That's what I based my analysis on. So if he
8 has the information and the proof of that, that would be
9 great to have.

10 Based on what the attorneys have raised as
11 issues, that was basically my response to those. I do
12 appreciate being further informed because I'm only here
13 three months into this, and there's a lot of historical
14 knowledge out there that I'm still trying to get up to
15 speed on. I appreciate it.

16 THE COURT: So to Mr. Proctor and to Ms. Lee,
17 understanding what work needs to be done, do you need any
18 tools from the Court? Any specific authority embedded in
19 the court order or with this status hearing, can you
20 continue to move forward understanding of the scope of
21 his future work?

22 MS. LEE: Your Honor, if I can respond to
23 that. I think it would be helpful for us to have
24 something that makes it very clear that Mr. Proctor can

1 talk to professionals for the trust with respect to all
2 aspects of the trust including the entities in which the
3 trust owns an interest.

4 I think that would be helpful because while
5 we may get information that comes in, particularly from
6 Mr. Riley, it is going to be, I think, very important for
7 Mr. Proctor to be able to pick up the phone and have a
8 conversation with Mr. Riley and not have Mr. Riley say:
9 Oh, you know, am I stepping on someone's toes? So both
10 to protect him as well as to give the trustee somewhat
11 more accessible information without having to go to
12 extraordinary means. To me, that would be very important
13 right now.

14 THE COURT: If you would submit a very brief
15 proposed order identifying that authority, I would sign
16 it and enter it.

17 MS. LEE: Okay. Thank you, Your Honor.

18 THE COURT: Does anybody else have anything
19 else? And should we set another hearing now or just
20 await the next filed documents? I think we should await
21 the next filed documents, but I'm open to setting a
22 hearing date as I think about it because we always seem
23 to work backwards from hearing dates.

24 Ms. Lee, Mr. Proctor, what's your preference?

1 MR. PROCTOR: Your Honor, it doesn't matter
2 to me. We recognize that it's going to be probably 60
3 days out before we would have some more substantive
4 analysis, especially with respect to the Northern Washoe
5 Investment properties. Just don't know, you know, the
6 Court and through the discussion with counsel today, has
7 expanded my duties somewhat back and forth historical
8 information. That's fine with me. I feel comfortable
9 with that. I recognize it's going to take some time to
10 do that, and that might further generate additional
11 questions. We'll try to stay on point and focused. We
12 don't want to get off track and get into the weeds on
13 something we don't need to.

14 But going back to like transactions to '17 or
15 with the ag credit back to looking at documents
16 originally that Mr. Sam Jaksick did, those were beyond
17 the scope originally of what we interpreted. It limited
18 that. So in some respects -- Ms. Lee can correct me if
19 I'm wrong -- we've expanded my duties somewhat, and I
20 recognize that it 's going to take some additional time.

21 Every day I feel stronger, I'm able to devote
22 more time for this and still have staff working on it
23 even when I'm not, and we can move forward. But, you
24 know, in a process like this, it's kind of a building

1 block. And we come across something and it's like of all
2 of a sudden, this is a transaction that may be needed to
3 look at. Maybe not. Certainly inquire of versus analyze
4 or substantiate. So that's my thought. I prefer kind of
5 a, you know, working plane where I know that I have 60
6 days, but give it some time without setting something and
7 then having to reschedule.

8 THE COURT: Is anybody going to be gone the
9 Thanksgiving week? We don't do trials that week. But
10 Monday, Tuesday, and Wednesday are often workdays.
11 Anybody planning?

12 MR. HOSMER-HENNER: I'll be in Las Vegas, but
13 I may be able to have a hearing that week.

14 THE COURT: Look at your calendars for that
15 Tuesday, Counsel. I don't know exactly the date. 22nd
16 or 23rd. Any objections to that day?

17 MS. LEE: None.

18 THE COURT: So let's have a hearing again at
19 1:30 in the afternoon on Tuesday of Thanksgiving week.
20 We'd like to have the trustee's next status report filed
21 ten days in advance; any responses filed by noon on the
22 Monday the day before, please.

23 Ms. Clerk, would you remember to prepare a
24 two-sentence order identifying the date of the hearing so

1 it can be a stand-alone item in the Court's file like a
2 noticed setting time form so that that goes out by
3 electronic record to all --

4 THE CLERK: Yes.

5 THE COURT: -- registered users?

6 So at this time, the next time the Court
7 speaks will be through a modified proposed order relating
8 to the petition for instructions. I think we have the
9 procedure in place, and I don't have anything else.

10 MS. LEE: Thank you, Your Honor.

11 THE COURT: Oh, yeah. Great question. The
12 question is whether we do it by Zoom or in person. I'm
13 really struggling, Counsel, because I enjoyed the
14 pre-COVID courtroom, and I think there's just this
15 overwhelming sense that we're going to continue with Zoom
16 because it's so convenient for everybody. And I want to
17 draw a hard line against that. It's not as good for me.

18 And I also am mindful that Wendy's counsel
19 don't live here, of her own choice of course. I'm not
20 ready to answer that question. We'll set it in person
21 now. We'll take a snapshot of what the pandemic looks
22 like. Of course this was set electronically because of
23 Mr. Proctor's request. I'm returning to in-courtroom
24 hearings. So I don't know if this will be it or not, but

1 that's what I'm doing. So we'll set it in person. Thank
2 you for that question.

3 (The hearing concluded at 4:05 p.m.)

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

3

4 I, NICOLE J. HANSEN, Certified Court
5 Reporter in and for the State of Nevada, do hereby
6 certify:

7 That the foregoing proceedings were taken by
8 me at the time and place therein set forth; that the
9 proceedings were recorded stenographically by me and
10 thereafter transcribed via computer under my supervision;
11 that the foregoing is a full, true and correct
12 transcription of the proceedings to the best of my
13 knowledge, skill and ability.

14 I further certify that I am not a relative
15 nor an employee of any attorney or any of the parties,
16 nor am I financially or otherwise interested in this
17 action.

18 I declare under penalty of perjury under the
19 laws of the State of Nevada that the foregoing statements
20 are true and correct.

21 Dated this August 29, 2022.

22 Nicole J. Hansen

23 -----
24 Nicole J. Hansen, CCR #446,
CAL CSR 13,09, RPR, CRR, RMR

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