

**In the Supreme Court of the State of Nevada**

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

Appellants, )

-vs- )

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

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

-vs- )

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

and )  
JACQUELINE UTKIN, )  
Respondent. )  
~~~~~ )

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Case No.: 75750

**APPELLANT/CROSS-RESPONDENTS' APPENDIX - VOLUME 13b**

*Filed by:*

*/s/ Cary Colt Payne, Esq.*

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

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

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

***APPENDIX VOLUME 7a:***

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

***APPENDIX VOLUME 7b:***

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

***APPENDIX VOLUME 8:***

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

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

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

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

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



1 accident in the first place that caused the death. You just  
2 don't -- oh, sorry, you're -- we -- we rear ended you into  
3 traffic and now you're deceased. Oh, sorry, well, I --

4 THE COURT: So is there more pleadings coming or if  
5 I --

6 MR. POWELL: Well, Your Honor, at this point what  
7 the issue is is that was the ini -- that -- you have to  
8 understand this. What -- what -- and -- and I want to correct  
9 Mr. Kirschner on this quickly on this. The right to remove  
10 the trustee wasn't beholden on showing anything about the  
11 trustee acting in bad faith or anything about that. That was  
12 not the standard. That's not the applicable standard. You  
13 can remove the trustee at any time. You have to keep in mind  
14 and conceptualize the fact that this is their trust, their  
15 assets. They control the rules. If you tell me that we're  
16 going to play a game of baseball and it takes five strikes to  
17 strike you out, well, that -- you're -- you're the one --  
18 you're the one dictating the rules of the game. We play it  
19 under your rules, because it's your ball, it's your bat.  
20 We're playing how you -- you dictate it. That's no different  
21 than the way that a trust is created.

22 I can form a trust with my wife and say this is how  
23 it's going to -- this is how it's going to lay out. I'm not  
24 subject to -- to saying oh, well, this is how it's normally

1 done or this or that, whatever. No.

2 And I will tell you off the bat, what is concerning  
3 is the fact is why were the children trustees in the first  
4 place? That's highly abnormal, Your Honor. I don't know if  
5 you have a trust. I have a trust. I'm the trustee of my own  
6 trust along with my wife. No one else is. I want to control  
7 my stuff. If you've setup your business entity, you want to  
8 be the president, I'm sure. You want to -- you want to be the  
9 man that -- that man that calls the shots. That's your right  
10 because it's your -- your things.

11 THE COURT: Number one, do we need to answer that  
12 question? And if we do, how do we -- how do we answer that  
13 question? I mean, is that going to be part of the litigation?

14 MR. POWELL: Well, the -- the issue right now is --  
15 is Nancy made these claims for -- for the assets during her  
16 life. So what happened Your Honor is that she then removes  
17 the trustees, the acting trustees, and she doesn't have to say  
18 why. The --

19 THE COURT: Do you -- do you remember what date that  
20 was, approximately?

21 MR. POWELL: The removal?

22 THE COURT: Yes.

23 MR. POWELL: Yeah, the removal was in June I want to  
24 say.

1 MR. PAYNE: June 12th, 2017.

2 MR. POWELL: It was -- it was in June. She had  
3 enough of trying to fight the trustees to get her own money.  
4 They said we're not giving you anything and she says fine,  
5 great. I have the power to remove you. So I'm going to  
6 remove you.

7 THE COURT: And --

8 MR. POWELL: They --

9 THE COURT: -- then that brings us to your point  
10 that you just made. Why did she appoint her son?

11 MR. POWELL: Because she wanted to and she could.  
12 And she could have --

13 THE COURT: All right. But you --

14 MR. POWELL: -- appointed herself.

15 THE COURT: -- you were asking me why the three  
16 children were the trustees and then she did the same thing.

17 MR. POWELL: Because she obviously figured out is my  
18 -- my children that I named obviously don't have my best  
19 interest in mind because they're deciding that I'm apparently  
20 not worthy of getting my own assets and -- and living off of  
21 -- and benefitting from my own assets. So she decides, well,  
22 I'm going to appoint Monte.

23 Your -- Your Honor, you have to keep in mind too,  
24 there was no prohibition. She could have appointed herself if

1 she wished to. She didn't. And -- but -- but that doesn't  
2 create an issue.

3           You also happen to keep in mind in -- when she did  
4 the appointment, they want to allege is, oh, somehow Monte  
5 influenced her. You have -- you have an independent review by  
6 Sean Tanko who sits as the pro tem judge when Commissioner  
7 Yamashita is not available, who has a great reputation in this  
8 community, he is the attorney that signed that document, Your  
9 Honor, which verified yes, this is what Nancy wants to do.  
10 And the verification said -- the -- the independent  
11 certification says this is what she's doing. She's not acting  
12 under any duress --

13           THE COURT: I really --

14           MR. POWELL: -- and influence.

15           THE COURT: -- appreciate the education, but today  
16 is not the day for trial.

17           MR. POWELL: Oh, I understand, but you -- you're --  
18 you led off this hearing Your Honor was -- with asking Mr.  
19 Kirschner is why don't we just distribute the -- the assets  
20 right now, what's the problem. And I'm trying to give you the  
21 background of what the problem is.

22           THE COURT: What is the problem?

23           MR. POWELL: The problem is the fact is that Nancy  
24 Christian's rights didn't terminate because of her death.

1 They're still in effect. And -- and the fact that the  
2 trustees didn't like the fact that they were removed --

3 THE COURT: What is Nancy claiming now?

4 MR. POWELL: There -- there's -- there's multiple  
5 claims, Your Honor. But I -- if -- if you're going to ask me  
6 right now to -- to give you all my pleadings on my strategy,  
7 I'm -- I'm not -- I -- I can't do it right now.

8 THE COURT: Well, when -- when will I get that?  
9 Because I don't think that you have -- I have -- I read most  
10 of the pleadings. I haven't got to these new ongoing claims.

11 MR. POWELL: Okay.

12 THE COURT: Or have you filed something?

13 MR. POWELL: No, I -- I have not, Your Honor.

14 THE COURT: Okay.

15 MR. POWELL: I have not. And that -- and that's  
16 another issue in terms of what -- what course I have to take.  
17 And -- and just to be candid with you, I'm not sure  
18 necessarily it has to be done. You're obviously sitting as a  
19 judge in probate court in this matter. This may turn into a  
20 civil matter as well. So --

21 THE COURT: Okay.

22 MR. POWELL: And -- and I'm not being disrespectful.  
23 I'm just saying --

24 THE COURT: No, I --

1 MR. POWELL: -- is that --  
2 THE COURT: -- I --  
3 MR. POWELL: -- you may not --  
4 THE COURT: I -- I'm -- I'm not trying to --  
5 MR. POWELL: -- you may not be hearing some of  
6 the --  
7 THE COURT: I'm not trying --  
8 MR. POWELL: -- the claims.  
9 THE COURT: -- to see all your cards. I'm just  
10 saying --  
11 MR. POWELL: Oh, I hear you.  
12 THE COURT: -- whether there was something I  
13 missed --  
14 MR. POWELL: No.  
15 THE COURT: -- before --  
16 MR. POWELL: No.  
17 THE COURT: -- or these are something that may be  
18 coming.  
19 MR. POWELL: No. But -- but what launched this  
20 litigation, you have to keep in mind is Nancy does all of this  
21 -- the -- the -- what she has the right to do to remove them  
22 and to say you're not acting in my best interest, I don't -- I  
23 want to remove you, she appoints Monte, there's an independent  
24 certification by, again, Sean Tanko, who he's an independent

1 third party attorney here who has no skin in this game at all.

2 You -- you all went to the settlement conference yesterday?

3 MR. POWELL: Yes.

4 THE COURT: And it --

5 MR. HOLYOAK: At your direction, Your Honor, we --  
6 we did not attend.

7 MR. BARNEY: We --

8 THE COURT: Okay.

9 MR. BARNEY: -- didn't, because you -- you asked  
10 us --

11 THE COURT: And it --

12 MR. BARNEY: -- not to be there.

13 THE COURT: Was it close or was it not close? Any  
14 progress made? I don't need to know -- I don't want to hear  
15 it, but I just wondered if you guys negotiate. Was it close,  
16 not close? Didn't even get started.

17 MR. KIRSCHNER: What I will tell you Your Honor is  
18 that there is a framework that I think that can be -- that  
19 might be workable, but the details and the meat that's going  
20 to be put on that framework really has to be either worked out  
21 between Counsel. And it's probably going to take a little bit  
22 of time at a minimum for it. So I -- I would say that there  
23 is a framework discussed, but --

24 THE COURT: My number one goal with all due respect

1 to all the attorneys here is to reduce your fees as much as  
2 possible. So I'm trying to terminate the litigation as soon  
3 as possible. I'm -- I don't know where he's going and -- and  
4 where -- if he's going to go to a different courthouse or --  
5 and -- and file something different, but this is what I have  
6 before me. What do we need to set a trial date?

7 MR. KIRSCHNER: All right.

8 THE COURT: And I don't want to rush it, but I don't  
9 want to prolong it either -- and -- and create a lot more fees  
10 for the attorneys. I -- I love attorneys, they're nice  
11 people, for the most part, and they need to make a living.

12 But, you know, I think Nancy and Raymond didn't  
13 expect to see this -- this show and hopefully this -- this is  
14 what they were trying to avoid, I think.

15 MR. KIRSCHNER: I think that we can break that up  
16 into different pats, Your Honor. And I want to try to -- I --  
17 and I guess --

18 THE COURT: So --

19 MR. KIRSCHNER: -- on --

20 THE COURT: -- do you --

21 MR. KIRSCHNER: -- on the fly here trying to get a  
22 pathway for -- for us.

23 THE COURT: Whatever I can do to -- to try to get a  
24 settlement, I'm willing to try.



1 MR. KIRSCHNER: All right.

2 MR. BARNEY: Your Honor, may I add something? I --

3 we --

4 MR. PAYNE: Just for the record, I'm going to

5 object. He's not a party, but I want --

6 THE COURT: Okay.

7 MR. PAYNE: I know you're going to let it --

8 THE COURT: Just for the record --

9 MR. BARNEY: It was my understanding it's my

10 petition.

11 THE COURT: Today is your day. Yes.

12 MR. POWELL: Yes.

13 MR. HOLYOAK: Yes.

14 MR. BARNEY: Yeah. It is --

15 THE COURT: We'll get to your claim.

16 MR. BARNEY: It is my petition. Your Honor, I -- I

17 can't --

18 THE COURT: Are you're suggesting something to try

19 to resolve this? Is that what I'm -- I'm going to hear?

20 MR. BARNEY: Well, I'm -- I'm suggesting that

21 getting us paid pursuant to the terms of the trust which I

22 don't think is in dispute at this point. You sign the order.

23 Jackie Utkin is the trustee that's been confirmed.

24 Irrespective of that issue, these aren't prevailing

1 party fees. You know, I mean, we -- we sent -- we essentially  
2 indulged the Court on the -- on the issue of the -- on the  
3 Brunzell factors. It's -- Brunzell factors really don't come  
4 into play on a trust payment, because the terms of the trust  
5 control in terms of us getting paid.

6 We frankly would like to be out of this case at this  
7 point, Your Honor. Our fees have already been approved by the  
8 trustees, both trustees. The confirmation has occurred.  
9 Essentially, you get one less party in here once -- once the  
10 -- the funds are released so that their approval can take  
11 effect. And then we don't have to appear anymore.

12 Believe me, I would really appreciate Your Honor to  
13 not have to appear anymore on this matter.

14 THE COURT: Well --

15 MR. BARNEY: Unfortunately now, I have to file a  
16 motion to strike because there's been something put on the  
17 record that the judges are quiet -- are -- are quietly and  
18 succinctly striking in the different courts that they're in.  
19 Judge Sturman just sealed it. We're waiting for Betsy  
20 Gonzalez to seal it. I will now have to ask you to seal it,  
21 Your Honor.

22 Mr. -- Mr. Payne has about 14,000 in sanctions that  
23 are outstanding that he's fighting right now for doing just  
24 this what he did again.

1 I would like to be out of the -- this case because I  
2 don't like being defamed on a regular basis. And I --  
3 frankly, I think it's bad policy to like beat other attorneys  
4 up and try to besmirch their character. I -- I would just  
5 like to get paid.

6 THE COURT: Okay.

7 MR. BARNEY: And I would like to be out of this. I  
8 of course unfortunately unless Mr. Payne will stipulate to  
9 remove what he put on the record, I'll have to file another --  
10 I'll have to renotice my countermotion to strike if the Court  
11 isn't inclined to strike it today.

12 But yes, I -- I would like to be paid and I don't  
13 think there's anything that prevents me from being paid  
14 because I have both of the prior trustees that approved my  
15 fees.

16 I think at this point essentially --

17 THE COURT: Then why did you ask me to approve it?

18 MR. BARNEY: Only -- we only asked to approve to  
19 release --

20 THE COURT: Okay.

21 MR. BARNEY: -- to -- yeah, you don't have to  
22 approve the fees, just to release the funds so that we can be  
23 paid.

24 THE COURT: Okay.

1 MR. BARNEY: Yeah.

2 THE COURT: Well, I -- I appreciate -- and this is  
3 your day and if you need more time to argue your fees, I'll --  
4 I'll give you more time, but I was working to try to get a  
5 framework to try to resolve this matter as soon as possible  
6 without having to keep coming back. And you were kind of  
7 saying that there's a framework but it needs more skin.

8 MR. KIRSCHNER: All right. The first question that  
9 needs to be resolved which is resolved by this Court's order  
10 is who's the trustee of -- who's the trustee of the trust?  
11 And that needs to be resolved in -- it -- because  
12 fundamentally there's the threshold issue as we're going  
13 through this being able to ask the questions who's going to be  
14 taking these fines out?

15 So we have that. Mr. Monte Reason has made two  
16 potential problems. One that arguing that there's undue  
17 influence and that two that there's potential claims from  
18 Nancy's lifetime that can be made against the trust or the  
19 former trustees. Okay.

20 THE COURT: I hope they don't get too carried away  
21 with that.

22 MR. POWELL: I -- I sincerely hope so too, Your  
23 Honor, because at -- at the end of the day being blunt, if it  
24 goes to a civil matter and you have extended discovery,

1 everybody loses. There's no point. Okay.

2 But as the first matter, we need to have somebody in  
3 control of this. And right now my client is the one who has  
4 been ordered by this Court to be in control. There has been  
5 no shown -- we want to get control of the assets. We want to  
6 get the information about the assets --

7 THE COURT: Well --

8 MR. KIRSCHNER: And -- be able to sit --

9 THE COURT: -- if you're --

10 MR. KIRSCHNER: -- serve --

11 THE COURT: -- really serious about that first  
12 point, can we get a neutral trustee?

13 MR. KIRSCHNER: I don't believe I can take that  
14 position one, Your Honor, because that wasn't before the  
15 Court. I haven't briefed this issue and I'm --

16 THE COURT: No, I'm not --

17 MR. KIRSCHNER: -- and forgive me for --

18 THE COURT: I'm not --

19 MR. KIRSCHNER: -- being on the fly here.

20 THE COURT: I'm just saying that -- that there's  
21 this side and this side and you want a trustee but they pick  
22 the trustee. I'm sure they don't like the trustee. Maybe  
23 with a neutral trustee, maybe some professional trustee, we  
24 can get this resolved quicker.

1 MR. KIRSCHNER: I don't think there's been any  
2 showing that my client has done anything wrong in her role as  
3 trustee or show favoritism. If anything, I fought both sides  
4 on this matter, Your Honor.

5 THE COURT: Well, maybe --

6 MR. KIRSCHNER: So --

7 THE COURT: -- I'm wrong.

8 MR. KIRSCHNER: So I -- I -- as a starting point, I  
9 don't think that there has been --

10 THE COURT: I'm not --

11 MR. KIRSCHNER: -- any statement --

12 THE COURT: I don't even know --

13 MR. KIRSCHNER: -- on either side.

14 THE COURT: I don't even know your client. I don't  
15 think we ever met. But I'm just saying just from the history  
16 of this case it seems that that's going to be a stone in  
17 someone's shoes and it's not going to lead to a quick  
18 resolution.

19 MR. KIRSCHNER: I can say at this time Your Honor my  
20 client is not prepared to resign as the trustee. I -- I think  
21 I can say --

22 THE COURT: No.

23 MR. KIRSCHNER: -- and -- and I can't --

24 THE COURT: I'm just putting that out there --

1 MR. KIRSCHNER: -- really take a position on that.

2

3 THE COURT: -- for negotiations.

4 MR. KIRSCHNER: Okay. As far as negotiations, I

5 apologize. If we're doing -- we're kind of at a quasi

6 settlement right now. I mean, I --

7 THE COURT: We're not --

8 MR. KIRSCHNER: -- want to be clear.

9 THE COURT: No. No. But I just asked you how much  
10 progress you've made yesterday and you said there was some  
11 progress and --

12 MR. KIRSCHNER: Yes, Your Honor.

13 THE COURT: -- and that it could lead to a  
14 resolution.

15 MR. KIRSCHNER: Yes. So the -- the first question  
16 is cement the --

17 THE COURT: And you -- but you said we need to know  
18 who the trustee is first.

19 MR. KIRSCHNER: We need -- we -- we need to cement  
20 the trustee, which --

21 THE COURT: Okay.

22 MR. KIRSCHNER: -- we've done through order. But  
23 also for me, I need to know whether or not somebody's going to  
24 be contesting the trust, because that's a different battle

1 that we're going to be preparing.

2 So for us, we're going to seek whether or not we're  
3 going to have a --

4 THE COURT: Well, I think --

5 MR. KIRSCHNER: -- Rule 55 challenge.

6 THE COURT: -- Monte Reason, the person who picked  
7 this trustee, is going to be contesting the will. I don't  
8 know if that's a conflict or not, but --

9 MR. KIRSCHNER: Contesting the will or the --

10 THE COURT: Oh, the trust.

11 MR. KIRSCHNER: -- or the trust.

12 THE COURT: I'm sorry. He's going to be asking --  
13 he's going to be filing more claims some place.

14 MR. KIRSCHNER: All right. Well, I think that  
15 there's two different sets. First, if he has a contest  
16 regarding the trust, he's got to come here for it. For NE  
17 155, undue influence. This Court has jurisdiction over the  
18 trust. No other court or anybody, where else, is going to be  
19 able to take jurisdiction over this trust because you have it  
20 first. So 155 claims of undue influence this Court is going  
21 to have to answer, if they so bring those claims.

22 As far as any civil claims, that would be a separate  
23 matter that they would have to bring before another court.  
24 There is a statute of limitations on those deadlines and if



1 they're going to be making claims, at a minimum we would  
2 appreciate some notice of what claims are going to be brought  
3 forward so we can work through them, because they're --  
4 whatever they are, whatever they are, they just need to be  
5 asserted so we can deal with it.

6 But as far as challenges to the trust, we need to  
7 get the trustee in place. We need to find out whether or not  
8 we're going to have a 155 challenge on our hands. If we are,  
9 that's going to be subject to an evidentiary hearing that this  
10 Court can set. It can set it on the -- on -- on that. Do we  
11 have an undue influence problem? Are they going to challenge  
12 it?

13 In the meantime, Your Honor, knowing that there's a  
14 155 challenge that's coming, if you set it out for a hearing  
15 six months in advance, I think that people are going to take a  
16 very serious assessment of their positions if they have to  
17 worry about whether or not this trust is going to be  
18 invalidated. Now it's going to be obviously the trustee's  
19 position that this is a valid trust. That's the position that  
20 she wants to take. That's the position she has to take.

21 But if we're going to have serious settlement  
22 negotiations, let's put it out for an evidentiary hearing on  
23 the 155, undue influence, find out whether or not this is  
24 going to take place. The parties in the meantime can seek to

1 negotiate and/or bring any other claims that need to be  
2 brought.

3 But that's probably going to be the single greatest  
4 thing that this Court can do, to bring pressure on all the  
5 parties here to bring a settlement negotiation.

6 THE COURT: In addition to the 155 challenge, what  
7 else should we hear to keep the pressure on everyone?

8 MR. KIRSCHNER: I think that we need enforcement of  
9 this Court's prior order. Actually, that's one of the  
10 petitions that will -- I can't remember if we filed it or  
11 we're looking to file it, which is enforcement of this Court's  
12 prior order which was simply put provide us the documents that  
13 you are required to provide, explicitly laid out. It wasn't a  
14 -- a guess. We said bank statements, receipts, invoices.  
15 Okay.

16 Second thing is we need that inventory going back to  
17 the moment they became trustee. If you look at the inventory  
18 that was provided in the 2018 accounting, it says refer back  
19 to our previous inventory. That was her justification. But  
20 the problem is their previous inventory didn't cover the  
21 entire period of time.

22 So referring back to an -- an old inventory is  
23 appropriate, if you have a first good one, okay, we don't have  
24 a first --

1 THE COURT: Now --

2 MR. KIRSCHNER: -- first good one.

3 THE COURT: -- regarding the order I already issued  
4 in February, what's a good time frame to say after X period of  
5 time, then there may be -- your -- it may be your  
6 responsibility for any fees that are caused by your delay or  
7 refusal to provide information?

8 MR. KIRSCHNER: I think this Court needs to do an  
9 order to show cause on that question, set it out for 60 days,  
10 which would be vacated in the event that all the documents are  
11 provided.

12 THE COURT: Okay.

13 MR. KIRSCHNER: This gives a fair opportunity for  
14 everybody to be heard. It gives a fair opportunity to read  
15 the documents, to amend --

16 THE COURT: Do you have any problem --

17 MR. KIRSCHNER: -- any inventory that they have  
18 provided.

19 THE COURT: -- with 60 days?

20 MR. PAYNE: Your Honor, yes. Can I be heard on this  
21 issue?

22 THE COURT: Okay. Wait. Wait. Let me -- let him  
23 finish. He's --

24 MR. KIRSCHNER: So --

1           THE COURT: -- trying to get the case settled, I  
2 think. So 60 days order to show cause to provide us that  
3 information. If we get that information, they can come back.  
4 Let's do a very -- let -- let's do an electronic service to  
5 these documents or let -- let's sign off so that we know who  
6 -- where these documents are.

7           We don't have Counsel coming in on -- on either my  
8 side or anybody else's side saying I gave these to you. No,  
9 let's have something electronic that shows that these were  
10 going back and forth whether it be by email or, you know,  
11 electronic service through the Court so that we know and this  
12 Court can rely upon something that's got a file stamp or has a  
13 date and time to it. This is what was turned over to the  
14 parties. I think that would be incredible helpful just for  
15 verification purposes. Okay.

16           So 60 days for them to provide that information.  
17 After six days, we review that information, we have the  
18 subpoenas out, the institutions. They'll come in and we'll  
19 say all right, did we get anything else besides what you've  
20 provided us, if there's nothing new. I think that settles a  
21 lot of the questions --

22           THE COURT: Well --

23           MR. KIRSCHNER: -- regarding assets.

24           THE COURT: -- go ahead and prepare that order.

1 MR. PAYNE: Wait. Wait. Wait. Wait, Your Honor.

2 THE COURT: I didn't say I was going to grant it. I  
3 just said -- asked him to prepare it and submit it to everyone  
4 for their review and we're going to hear your opposition to  
5 following my discovery order that was already issued in  
6 February, but I -- go ahead. You can -- you can address that.

7 MR. PAYNE: Your Honor, when --

8 THE COURT: But I'm not accepting that there's  
9 nothing out there that has been hidden or --

10 MR. PAYNE: Right.

11 THE COURT: -- missing.

12 MR. PAYNE: Right.

13 THE COURT: All I'm saying is after 60 days that  
14 will be the deadline. And if they find more -- more, then  
15 there may be consequences after that.

16 MR. BARNEY: Your Honor, I can address some of those  
17 documents for you. We don't have all the documents, but --  
18 and -- and of course, we -- we have -- we're asserting our  
19 retaining lien, but we were given a significant amount of  
20 documents just recently by Mrs. Payne's husband that outline  
21 things that I think Your Honor needs to see. They're very,  
22 very concerning. I think Your Honor as you -- as you view  
23 these documents, you will see that there has not been  
24 compliance with your order.

1 THE COURT: And where did you receive this  
2 information?

3 MR. BARNEY: I got it from a witness, from Mrs.  
4 Payne's husband.

5 THE COURT: Okay.

6 MR. BARNEY: He appeared at --

7 THE COURT: They're in a --

8 MR. BARNEY: Yes.

9 THE COURT: -- divorce proceeding?

10 MR. BARNEY: Yeah, he -- he provided us numerous  
11 documents that regard the affidavit. And these will clearly  
12 show that there are assets in the Christian Family Trust we  
13 didn't get in discovery. So we know that there's a likelihood  
14 they didn't get them in their discovery in which Your Honor  
15 really needs to see that the issue that we have is we have a  
16 retaining lien on file which we would love to release. We  
17 just -- we -- we want to get paid so that we can release these  
18 documents. I think it'll be -- bring great clarity to this  
19 Court if you can just see these documents.

20 THE COURT: Okay. So you were objecting to the  
21 order for -- an order to show cause that he's going to prepare  
22 that doesn't take effect for another 60 days and if you  
23 provided them everything and you don't have anything to worry  
24 about, if there's something missing, you have 60 days to -- to

1 show them what's missing or what's been not represented. So  
2 what -- having said that, what -- what other objections do you  
3 have today?

4 MR. PAYNE: First of all, Cary Colt Payne on Mrs.  
5 Keach and Mrs. Payne is also present, Your Honor. This is so  
6 disingenuous, I just -- I -- I just -- I don't -- I don't  
7 understand how this can keep going forward. The inventory and  
8 record of value that we originally filed that Your Honor told  
9 us to file which was on October 25th, 2017. We referenced the  
10 date of -- of Mr. Christiansen's (ph) death. And so because  
11 like Your Honor said, Mr. Christiansen still was in control,  
12 we figured that the date of the inventory would be the date  
13 that he died. So we filed it from that date, the date of  
14 death.

15 Arguably, it missed three months. And in that  
16 inventory that we filed, and this came up at the last hearing  
17 and the hearing before, there is two pieces of real estate and  
18 essentially the proceeds from four bank accounts which comes  
19 out to 796 --

20 THE COURT: We're not going to do the discovery  
21 today. If you provided them everything, then you've provided  
22 them --

23 MR. PAYNE: Your Honor --

24 THE COURT: -- with --

1 MR. PAYNE: -- they keep making this  
2 misrepresentation to you --

3 THE COURT: What is what?

4 MR. PAYNE: -- that's -- well, first of all, that  
5 there's this new asset. Now I don't understand what he's  
6 doing here. He's now apparently representing Mr. Payne in  
7 this divorce proceeding who's now submitting affidavits on  
8 hearsay. And it all surrounds a statement that was -- that is  
9 regarding the Voya account. Okay. Wells Fargo had four  
10 investments.

11 THE COURT: I don't want to get into discovery  
12 today. We're only here for his attorney's fees. I'm just  
13 saying I'm going --

14 MR. PAYNE: But you --

15 THE COURT: -- to issue -- do you have -- what  
16 opposition do you have an -- for an order for discovery that  
17 has a day of 60 days, after that, then discovery will start?

18 MR. PAYNE: You've already -- you've already entered  
19 that order.

20 THE COURT: Okay.

21 MR. PAYNE: And -- and the last --

22 THE COURT: He then -- you don't have to -- then --  
23 that'll -- he's going to update it with an order to show cause  
24 and give everyone an opportunity on every -- on both sides to



1 bring any new information to light regarding the size of this  
2 estate, the items involved, the bank accounts, the houses, the  
3 titles.

4 MR. PAYNE: It's not going to stop, Your Honor.  
5 It's just going to keep going on. Because now what they're  
6 saying is there's -- there's more. And then -- and then we  
7 come back next time there's going to be more.

8 Let me just address the Voya account just briefly.  
9 The Voya account apparently because we just got the documents  
10 from Counsel names my three clients as the beneficiary.  
11 They're the beneficiaries of this Voya account which was the  
12 hundred and fifty-thousand dollars.

13 When we filed the original inventory, my clients  
14 didn't marshal that asset because Voya/Wells Fargo said we  
15 don't know what to do. We're not sure if this is a trust  
16 asset or it's a pay on death asset, but -- payable on death.

17 So when we updated the accounting which we just  
18 filed and we put a little footnote down on there because we  
19 still didn't know, but it's the -- still -- it's the -- it's  
20 -- it's the still starting point, the 796,000 -- 796,748, and  
21 we put an asterisk here. This amended accounting does not  
22 include the Voya account and slash Wells -- in paren, Wells  
23 Fargo, the the 143, which has not been marshaled. It's an  
24 asset of Raymond Christian, Sr., beneficiary unknown, and it