

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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Jan 10 2019 08:13 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No.: 75750

**APPELLANT/CROSS-RESPONDENTS' APPENDIX - VOLUME 15**

*Filed by:*

*/s/ Cary Colt Payne, Esq.*

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CARY COLT PAYNE, ESQ.  
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CARY COLT PAYNE, CHTD.  
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Las Vegas, NV 89101  
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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> |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <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> |
|--------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 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 |

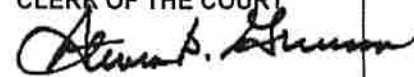
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| <i><b>APPENDIX VOLUME 9:</b></i>  |                                                                                                                                           |                        |
| 3/9/18                            | Petitioners 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> |
|------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| <i><b>APPENDIX VOLUME 12:</b></i>  |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/2/18                             | Motion for Turnover of Assets and to Dissolve the Injunction Over Christian Family Trust Assets                                                                                                                                                                                                                      | APP-ROA--961-998       |
| 4/3/18                             | Countermotion 1) to Strike Petitioner's Supplemental Response to Opposition to Petition for Fees (Barney Firm); request for Evidentiary Hearing, and Reopening Discovery; 2) To Find the Former Trustees to be Vexatious Litigants, and 3) For sanctions Against Cary Colt Payne Pursuant to NRS 7.085 and EDCR 7.60 | APP-ROA--999-1036      |
| <i><b>APPENDIX VOLUME 13a:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 1                                                                                                                                                                                                                                                                                            | APP-ROA-1037-1061      |
| <i><b>APPENDIX VOLUME 13b:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 2                                                                                                                                                                                                                                                                                            | APP-ROA-1062-1186      |
| <i><b>APPENDIX VOLUME 13c:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 3                                                                                                                                                                                                                                                                                            | APP-ROA-1087-1111      |
| <i><b>APPENDIX VOLUME 13d:</b></i> |                                                                                                                                                                                                                                                                                                                      |                        |
| 4/4/18                             | Hearing Transcript Part 4                                                                                                                                                                                                                                                                                            | APP-ROA-1112-1134      |

| <i><b>DATE</b></i>                 | <i><b>DOCUMENT</b></i>                                                                                                                                                                                                                                                                                                    | <i><b>NUMBERED</b></i> |
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| <i><b>APPENDIX VOLUME 14a:</b></i> |                                                                                                                                                                                                                                                                                                                           |                        |
| 4/10/18                            | Motion for (1) Fees Pursuant to NRS 165.148<br>(2) Compliance with and Enforcement of<br>Court Order and Sanctions; (3) for Order<br>to Show Cause Why Former Trustees<br>Should Not be Held in Contempt, and<br>(4) for Extension of Discovery<br>Part 1                                                                 | APP-ROA-1135-1279      |
| <i><b>APPENDIX VOLUME 14b:</b></i> |                                                                                                                                                                                                                                                                                                                           |                        |
| 4/10/18                            | Motion for (1) Fees Pursuant to NRS 165.148<br>(2) Compliance with and Enforcement of<br>Court Order and Sanctions; (3) for Order<br>to Show Cause Why Former Trustees<br>Should Not be Held in Contempt, and<br>(4) for Extension of Discovery<br>Part 2                                                                 | APP-ROA-1180-1224      |
| <i><b>APPENDIX VOLUME 15:</b></i>  |                                                                                                                                                                                                                                                                                                                           |                        |
| 4/12/18                            | Notice of Entry of Order (Barney Petition Fees)                                                                                                                                                                                                                                                                           | APP-ROA-1225-1232      |
| 4/19/18                            | Petitioner's Combined Opposition to (1) Motion<br>to Turnover Assets and Dissolve Injunction over<br>Trust Assets; (2) Motion to 1. Expunge Lis<br>Pendens and 2. Preliminary Injunction and<br>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 ANTHONY L. BARNEY, ESQ.  
2 NV State Bar No. 8366  
3 TIFFANY S. BARNEY, ESQ.  
4 NV State Bar No. 9754  
5 ZACHARY D. HOLYOAK, ESQ.  
6 NV State Bar No. 14217  
7 ANTHONY L. BARNEY, LTD.  
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10 Telephone: (702) 438-7878  
11 Facsimile: (702) 259-1116  
12 E-Mail: office@anthonybarney.com  
13 Prior Attorneys for Nancy Christian

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **FAMILY DIVISION**

16 **CLARK COUNTY, NEVADA**

17 In the Matter of the

Case Number: P-17-092512-T  
Dept.: S

18 THE CHRISTIAN FAMILY TRUST

19 Dated October 11, 2016

20 **NOTICE OF ENTRY OF ORDER**

21 TO: SUSAN CHRISTIAN-PAYNE, ROSEMARY KEACH, and RAYMOND  
22 CHRISTIAN JR., by and through their attorney Cary C. Payne, Esq., of the Law Office  
23 of Cary Colt Payne, CHTD.

24 TO: MONTE REASON, by and through his attorney, Joseph J. Powell, Esq., of Rushforth,  
25 Lee & Kiefer, LLP

26 TO: JACQUELINE UTKIN, by and through her attorney, Jerimy Kirschner, Esq. of  
27 Kirschner & Associates

28 TO: CHRISTOPHER A. CHRISTIAN

TO: TOMMY L. CHRISTIAN

PLEASE TAKE NOTICE, each of you, of the following:

1 ///

2 An Order was entered and filed on April 12<sup>th</sup>, 2018 in the above entitled matter. A copy of  
3 said Order is attached hereto and incorporated herein as Exhibit 1.  
4

5

6

7

Respectfully Submitted,  
**ANTHONY L. BARNEY, LTD.**

8

9



10

Anthony L. Barney, Esq.  
Nevada Bar No. 8366

11

Tiffany S. Barney, Esq.  
Nevada Bar No. 9754

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13

(702) 438-7878

14

*Attorneys for Nancy Christian, Trustor*

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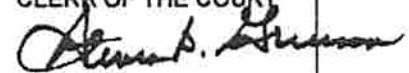
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Cary Colt Payne, Esq.  
Law Office of Cary Colt Payne, CHTD.  
700 South 8<sup>th</sup> Street,  
Las Vegas, NV 89101  
*Attorney for Susan Christian-Payne,  
Rosemary Keach, and  
Raymond Christian, Jr.*

Jerimy Kirschner, Esq.  
5550 Painted Mirage Rd., Suite 320  
Las Vegas, NV 89149  
*Attorney for Jacqueline Utkin, Successor  
Trustee*

3

# EXHIBIT 1



1 ANTHONY L. BARNEY, ESQ.  
NV State Bar No. 8366  
2 TIFFANY S. BARNEY, ESQ.  
NV State Bar No. 9754  
3 ZACHARY D. HOLYOAK, ESQ.  
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9 *Prior Attorneys for Nancy Christian,  
Creditors of The Christian Family Trust*

10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 In the Matter of the

Case Number: P-17-092512-T

13 THE CHRISTIAN FAMILY TRUST

Dept.: S

14 Dated October 11, 2016

15 ORDER

16  
17  
18 This matter came before the above-entitled court on April 4, 2018 at 2:00 p.m. on  
19 Anthony L. Barney, Ltd.'s, ("ALB. LTD.," or "Petitioner") Creditor of the Christian Family  
20 Trust dated October 11, 2018 ("Trust"), PETITION FOR FEES AND COSTS ("Petition"), and  
21 upon the Petitioner's Oral Motion to Strike Exhibit A of the SUPPLEMENTAL RESPONSE  
22 TO OPPOSITION TO PETITION FOR FEES (BARNEY FIRM); REQUEST FOR  
23 EVIDENTIARY HEARING, AND REOPENING DISCOVERY ("Supplement") filed March  
24 30, 2018 by Cary Colt Payne, Esq. on behalf of Susan Christian Payne ("Susan"), Rosemary  
25 Keach ("Rosemary"), and Raymond Christian Jr. ("Raymond"). The Petitioner was represented  
26 by its attorneys at the Law Office of Anthony L. Barney, Ltd. Jackie Utkin, Successor Trustee  
27  
28

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APP-ROA--1229

1 of the Trust was not present but was represented by her attorney, Jerimy Kirschner, Esq., Monte  
2 Reason, former Trustee and beneficiary of the Trust was not present but was represented by his  
3 attorney Joseph J. Powell, Esq., Raymond was not present, Susan and Rosemary were present  
4 and Raymond, Susan and Rosemary were represented by Cary C. Payne, Esq., After reviewing  
5 the pleadings on file in this matter, hearing the oral argument, and reviewing the evidence, the  
6 Court hereby makes the following findings of fact and conclusions of law.  
7

8  
9 **I. FINDINGS OF FACT**

10 The Court hereby finds the following:

- 11 1. The Trust contains broad discretion regarding decisions made by the Trustee with the  
12 specific language of the Trust stating:

13 **11.1 Protection.** Trustees shall not be liable for any loss or injury to the property at  
14 any time held by them hereunder, except only such as may result from their fraud,  
15 willful misconduct, or gross negligence. Every election, determination, or other  
16 exercise by Trustees of any discretion vested, either expressly or by implication, in  
17 them, pursuant to this Trust Agreement, whether made upon a question actually  
raised or implied in their acts and proceedings, shall be conclusive and binding upon  
all parties in interest.

- 18 2. The Trust's spendthrift provision does not apply to the trustor's interest in the Trust estate  
19 regarding the fees and costs payable to ALB, LTD.

- 20 3. ALB, LTD's request for payment of fees has been approved by the prior Trustee, Monte  
21 Reason, and the current Trustee, Jackie Utkin.

- 22 4. The Court has previously ordered that all Trust assets be frozen pending the current  
23 litigation in this matter.

- 24 5. Exhibit A to Susan, Rosemary, and Raymond's Supplement is immaterial and impertinent  
25 in this matter.  
26

27 ///

28 ///

1 **II. CONCLUSIONS OF LAW**

2 1. NRS 132.390(c)(8) states in pertinent part "[f]or the purposes of this title, a person is an  
3 interested person with respect to:... at trust, if the person:... Is a creditor of the settlor who  
4 has a claim which has been accepted by the trustee."  
5

6 2. NRCP 12(f) provides:

7 Upon motion made by a party before responding to a pleading or, if no responsive  
8 pleading is permitted by these rules, upon motion made by a party within 20 days after  
9 the service of the pleading upon the party or upon the court's own initiative at any time,  
10 the court may order stricken from any pleading any insufficient defense or any  
11 redundant, immaterial, impertinent, or scandalous matter.

12 **III. ORDER**

13 WHEREFORE, the Court hereby orders, adjudges and decrees the following:

14 1. That within seven (7) days of the entry of this order a certified check in the amount  
15 of \$50,000.00 shall be issued by Chase Bank from either or both blocked trust accounts (if  
16 funds are insufficient in either account), currently held in the names of Susan Christian-Payne,  
17 Rosemary Keach, and Raymond Christian Jr., at Chase Bank, account numbers  
18 000000446556040 and 000003008644816 (a Chase Private Client Savings Account) and shall  
19 be delivered to Jackie Utkin as Trustee of the Christian Family Trust;

20 2. That within seven (7) days of the entry of this order a certified check in the amount  
21 of \$3,031.97 representing the costs filed with this Court which were incurred by ALB, LTD.,  
22 shall be issued by Chase Bank from either or both blocked trust accounts (if funds are  
23 insufficient in either account), currently held in the names of Susan Christian-Payne, Rosemary  
24 Keach, and Raymond Christian Jr., at Chase Bank, account numbers at Chase Bank, account  
25 numbers 000000446556040 and 000003008644816 (a Chase Private Client Savings Account)  
26 and shall be delivered to Jackie Utkin as Trustee of the Christian Family Trust;  
27  
28

1 3. That within seven (7) days of receipt of the certified checks for \$50,000.00 and  
2 \$3,031.97, Jackie Utkin shall pay \$53,031.97 to ALB, LTD., for payment of attorney's fees and  
3 costs; and,

4  
5 4. That Exhibit A of the SUPPLEMENTAL RESPONSE TO OPPOSITION TO  
6 PETITION FOR FEES (BARNEY FIRM); REQUEST FOR EVIDENTIARY HEARING,  
7 AND REOPENING DISCOVERY is hereby stricken from the Nevada Eighth Judicial District  
8 Court's record as immaterial and impertinent.

9 IT IS SO ORDERED, ADJUDGED AND DECREED,

10 DATED this 10<sup>th</sup> day of April 2018. *VO*

11  
12  
13 *Vincent Ochse*  
DISTRICT COURT JUDGE *me*

14 Respectfully Submitted,  
15 ANTHONY L. BARNEY, LTD.

16 *Anthony L. Barney, Esq.*  
17 Anthony L. Barney, Esq.  
18 Nevada Bar No. 8366  
19 Tiffany S. Barney, Esq.  
20 Nevada Bar No. 9754  
21 Zachary D. Holyoak, Esq.  
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25 office@anthonybarney.com  
26  
27  
28







1 Countermoves for Distribution/Termination of Trust; Alternatively for Stay/Utkin to post  
2 Bond/Set Evidentiary Hearing, which is made and based upon the attached Points and  
3 Authorities, Exhibits, pleadings on file to date, and any oral argument that the Court may  
4 allow at the time of the hearing.  
5

## 6 I. POINTS AND AUTHORITIES

### 7 1. Introduction

8 Despite being warned by the Hon. Judge Ochoa at the hearing held January 17,  
9 2018, that the court was not going to allow the attorneys to continue in such a way to give  
10 all the money to be paid out to the attorneys, and the beneficiaries get next to nothing.  
11

12 Utkin and/or her counsel have continued on an unfettered campaign to "pump out"  
13 what would otherwise be an unconscionable amount of litigation regarding a matter that  
14 should not have been permitted to go this far.  
15

16 In a shockingly wasteful use of trust assets, peoples time, Utkin and her attorney  
17 have continued to compound accounting issues, that mean nothing. Any purported  
18 malfeasance would ultimately be sought to be paid from the Petitioner's beneficial share.  
19 Utkin has filed three new motions (including those of this opposition) and a dozen  
20 subpoenas to banks and/or other businesses, and now seeking depositions (**Exhibit**  
21 **"A"**), where there were no known connection to the trust or Raymond Christian, Sr. The  
22 Trust, and the trust assets continue to pay a steep price for allowing Utkin, without first  
23 deciding the Monte Reason issue (discussed below), to be trustee.  
24

25 This matter has now been "back doored" for allowing further fees, and for the prior  
26 payment of \$50,000 in fees (Barney firm) in total contravention to the trust agreement  
27 itself.  
28



1 Counsel stated in open court that whatever the petitioners provide as and for  
2 accounting, will never be enough for opposing counsel, and they have proven that  
3 statement true. All of these motions, subpoenas, whining about accounting is insufficient  
4 or some other problem, are all geared to continue useless and needless litigation, which  
5 this court needs to end.  
6

## 7 COUNTERMOTIONS

### 8 **2. Countermotion for Bond**

9  
10 Utkin is an out of State party, who resides in Hawaii, who has yet to step foot in the  
11 State of Nevada. When this court essentially imposed an injunction over the funds, and  
12 appointed an out of state party as trustee, Utkin should have been required to post a  
13 bond. See NRS 18.090, 18.130.

14 NRCP 65(c) requires the posting of a bond for any preliminary injunction, which  
15 states in pertinent part:  
16

17 (c) Security. No restraining order or preliminary injunction shall issue  
18 except upon the giving of security by the applicant, in such sum as the court deems  
19 proper, for the payment of such costs and damages as may be incurred or suffered  
20 by any party who is found to have been wrongfully enjoined or restrained.

21 "The expressed purpose of posting a security bond is to protect a party from  
22 damages incurred as a result of a wrongful injunction, not from damages existing before  
23 the injunction was issued." American Bonding Co. v. Roggen Enterprises, 109 Nev. 588,  
24 591 (1993). The Petitioners, as major beneficiaries, have now been denied their  
25 beneficial share, and access to what is legally theirs. The longer they are denied, the  
26 more the damage to them becomes. There is still no adequate protection for the  
27 petitioners/beneficiaries.  
28



1 Given the litigious nature of Utkin in her continuous frivolous motions, subpoenas  
2 (approximately a dozen or more), etc., it is entirely probable that this out of state  
3 individual, who has yet to step foot in the State of Nevada and/or her attorney will seek  
4 usurious fees and costs for their continued harassment of the beneficiaries/petitioners.  
5

6 This Court should required Utkin to post a bond in an amount in at least \$50,000 or  
7 more to cover the potential losses to the trust and/or damages to the beneficiaries for her  
8 litigious actions.  
9

10 Since Utkin has come into this matter, there has been an endless barrage of  
11 motions, discovery requests, and further litigation. All when she is supposed to maintain  
12 the assets for the beneficiaries, not spend it on her own needless litigation for the benefit  
13 of her attorney. Utkin's attorney has admitted that he is seeking sanctions for the period  
14 from the day the trust was executed (10/11/16) and the day the petitioners actually  
15 commenced as trustees over accounts, etc. (10/16/16)- a period of five (5) days. They  
16 have created multiple thousands of dollars in attorneys fees for a 5 day period wherein  
17 nothing changed. (email-**Exhibit "B"**) The Inventory and Amended Account are correct.  
18 During those five days, accounts were created, funds transferred, deeds recorded, etc.  
19 For this Utkin and/or her attorneys want sanctions. This is manufacturing an issue where  
20 none exist to seek to justify the frivolousness of their multiple petitions/motions,  
21 subpoenas, etc.  
22

### 23 **3. Countermotion for Distribution/Termination of Trust**

24

25 As of the date of Grantor Nancy's death, The Christian Family Trust u.a.d.  
26 10/11/16 became irrevocable, and subject to distribution, etc.

27 Pursuant to the Trust, the beneficiaries of the Trust are as follows:

28 (1) as to the proceeds of the sale of the Dancing Vines property (\$194,704.59),  
see Trust ¶6.1 (a)-(f):

Rosemary K, Christian-Keach (20%=\$38,940.92), outright, free of trust;  
 Raymond T. Christian, Jr. (20%=\$38,940.92) outright, free of trust;  
 Tommy L. Christian (20%=\$38,940.92) outright, free of trust;  
 Susan G. Christian-Payne (20%=\$38,940.92) outright, free of trust;  
 Christopher A. Christian (10% = \$19,470.45) outright, free of trust;  
 Monte B. Reason (10% = \$19,470.45), and this Trust share shall be held, in  
 Trust and ***distributed to him in the sole discretion of SUSAN  
 G. CHRISTIAN-PAYNE*** for his health, education, maintenance and support.

(2) The rest, residue and remainder of the Trust Estate, including cash and the  
 real properties located at 2848 Bluff Point Drive, Las Vegas, Nevada and 37920  
 Grandview Ave., Yermo, California, see Trust ¶16.2 the beneficiaries are:

Rosemary K, Christian-Keach (one third – 33⅓%) outright, free of trust;  
 Raymond T. Christian, Jr. (one third – 33⅓%) outright, free of trust;  
 Susan G. Christian-Payne (one third – 33⅓%) outright, free of trust;

(3) the Voya account, while owned by the trust, is not a trust asset as it relates to  
 these proceedings or subject to trust administration, as it has named beneficiaries and is  
 a non-probate transfer, whose beneficiaries are (**Exhibit "C"**):

Rosemary K, Christian-Keach (one third – 33⅓%)  
 Raymond T. Christian, Jr. (one third – 33⅓%)  
 Susan G. Christian-Payne (one third – 33⅓%)

The Trust made provisions to pay for debts/last illness of only the first grantor to  
 die, which was Raymond Christian, Sr., whose debts were all paid after he died, and  
 nothing remains.

As to Grantor Nancy's last illnesses or debts, the Trust makes no other provisions  
 for the payments of her debts. The only issue remaining is distribution after the death of  
 the second grantor.

The Trust has no known creditors, subject to notice, etc.





1 Grantor Nancy Christian, individually, has assets, possibly debts, which should be  
2 dealt with in her personal probate estate.  
3

4 The Trust is in a position to be distributed pursuant to Trust ¶6.1 (a)-(f) and 6.2  
5 above.

6 That after distribution of the trust, there is no further reason for the trust to be  
7 maintained and the trust should be terminated. NRS 163.185 states:

8 **NRS 163.185 Power of court to order termination and distribution of trust**  
9 **before time provided in trust instrument.** Upon such terms and conditions as  
10 are just and proper, the court may order termination and distribution of a trust  
11 before the time provided in the trust instrument, if administration or continued  
12 administration of the trust is no longer feasible or economical. A petition for such an  
13 order may be filed by an interested person under NRS 164.010 and 164.015.

14 Monte's 10% share of the Dancing Vines property (\$19,470.45) can be distributed  
15 to Susan Christian Payne, and held in a separate account for periodic distribution to  
16 Monte in her sole discretion pursuant to the terms of the trust.

17 This matter hinges upon whether or not (1) Nancy Christian had the authority to  
18 remove petitioners as signatories to the trust as trustees; (2) Nancy Christian had the  
19 right to nominate Monte Reason; (3) Monte Reason not being qualified to act or not  
20 having been confirmed as trustee by the court, while the court had jurisdiction over the  
21 trust; (4) did Monte Reason have the authority to nominate another trustee.

22 Until those initial questions are decided by the court, all else in this matter, and the  
23 orders made, as a matter of law, can be stricken as void. Jacqueline Utkin's nomination  
24 by Monte Reason could very well be deemed void, and Utkin is expending an excess of  
25 attorney's fees while everyone awaits the court to decide the above integral issues.

26 Unfortunately, this matter is escalating with Utkin's continuous expending of  
27 attorneys fees/costs, etc., which can only be considered frivolous, and holds no benefit to  
28 the trust. We have numerous subpoenas, and now three motions and Rule 11 threats.





1 Now Utkin wants to reopen discovery for depositions. Utkin's first duty is to preserve the  
2 assets for the beneficiaries, including the petitioners, and not incur unnecessary debt to  
3 the trust.  
4

5 At what point in time is enough for the court to take a stand and follow the terms of  
6 the trust. The award of attorneys fees to the Barney firm, a creditor of Nancy Christian, is  
7 in direct contravention of the trust's terms, and is reversible error.

8 Utkin should have to appear before the court, personally, to ensure that she, as the  
9 alleged trustee, is, in fact fully informed and making the decisions personally, not being  
10 led by counsel so they can bill fees.  
11

12 The Trust needs to be distributed, before all of its assets end up only paying  
13 attorneys. The beneficiaries have a vested interest in not having trust assets be further  
14 utilized (wasted) by Utkin and/or her counsel for useless, needless litigation, diminishing  
15 the trust, which does not further the intent of the trust.  
16

17 Should the court not grant this petition, then everything in this matter needs to be  
18 stayed until the above integral issues are decided. An Evidentiary Hearing on these most  
19 important issues is requested to be scheduled in order to, before things go even further  
20 than they are now, so far afield, resolve the root issues.  
21

## 22 OPPOSITION TO MOTIONS

### 23 *4. Opposition to Motion for Preliminary Injunction*

24 As to a Preliminary Injunction, since the court ordered that they be allowed to  
25 enter, and as the trustee does not reside in Nevada, that keys be provided, the petitioners  
26 permitted to enter the premises, pursuant to the court's statements on the record.  
27  
28



1 The house remains empty, as Raymond Christian, Jr. was the resident in the  
2 property. There was absolutely no reason to evict him after Nancy died. He was a  
3 beneficiary in residence, taking care of the property, which now sits as abandoned, empty  
4 house, clearly inviting any criminal element. That was Monte Reason's doing.

6 Petitioners were seeking those rights afforded to them by the court. The court  
7 ordered that the property is not to be sold. In the meantime, Utkin has done nothing to  
8 ensure and prove that the property is taken off the market and the for sale signs removed.

10 There is no need for a preliminary injunction. Petitioners have not threatened  
11 anything, or caused any irreparable harm, which is a requirement under the statute for a  
12 preliminary injunction to issue. They relied upon this court's orders to be able to enter the  
13 home, retrieve their own belongings.

#### 14 ***5. Opposition to Dissolve Injunction***

16 In conjunction to the countermotion for a stay, the trust assets are in a blocked  
17 account, which is where they should stay until the above issues are decided. The factual  
18 misrepresentations that the Petitioners used trust funds in an improper manner is not a  
19 bona fide fact, and is supposition at best, and legal posturing. Given this posture, the  
20 funds currently frozen should remain so right where they are, and Utkin ordered to post a  
21 bond as discussed herein. Since Utkin has never been a percipient witness, and has no  
22 personal knowledge, her Declaration that "which I know to be true of my own knowledge",  
23 is a false statement in and of itself. The words upon information and belief, do not appear  
24 at all in the motion.

26 Nevertheless, until the above issues as to ultimately Utkin's legal right to serve as  
27 trustee is decided. At the hearing on March 15, 2018, the court required the blocked  
28 account to remain status quo.





1 As to the "Voya" account, despite Utkin's statements to the contrary, is an account  
2 owned by the trust, which, by operation of law, should be turned over to the named  
3 beneficiaries, to wit: the petitioners. It is not a trust asset to be divided as part of the trust  
4 beneficial interest. (Exhibit "C")  
5

6 There is no immeasurable harm by maintaining the status quo. Despite Utkin's  
7 assertions to the contrary, the Christian Family Trust, by its terms, has no obligation to  
8 pay for Nancy Christian's bills or her personal creditors. The Christian Family Trust itself  
9 has no "creditors" to worry about. Utkin should now define what creditors she is so  
10 worried about.  
11

12 The only funds Utkin required was to keep the utilities, etc. paid in the empty  
13 Bluffpoint residence, for which she received \$5,000. That sum should pay those utilities  
14 for some time while the necessary issues are heard. The court specifically stated at the  
15 January 17, 2018 hearing:  
16

17 The amount of \$5,000.00 shall be released to pay for whatever property  
18 needs to be saved and any bills that needs to be paid, not for administrative  
19 expenses or attorney's fees. Mr. Kirschner shall be responsible for the  
20 accounting of the \$5,000.00.

21 Utkin should account for the \$5,000 at this time to ensure that the only items paid  
22 are for the Bluffpoint property.

23 As to being "starved out of finances" during Nancy's lifetime, had Nancy, or Monte,  
24 during her lifetime, concerned themselves with that sole issue, rather all the other  
25 tangential issues and commencing litigation, there would not have been any such  
26 problem. At the beginning, Nancy wanted \$5,000 a month. The petitioners, within their  
27 discretion and fiduciary duty, asked what for. They never received any sort of answer to  
28 that question, and Nancy immediately sought retaliatory actions, bringing on litigation.  
Nancy failed to deal in good faith regarding her request, and needless litigation ensued.



1 Utkin cannot now complain over issues of which she has no personal knowledge,  
2 or was not a part of.

3  
4 Jacqueline Utkin should be sanctioned, pursuant to EDCR 7.60(b)(1)(3) for  
5 presenting to this court multiple motions which is obviously frivolous, unnecessary or  
6 unwarranted, and multiplies the proceedings in a case as to increase fees and costs  
7 unreasonably and vexatiously.

8 **5. Opposition to Motion for Lis Pendens**

9  
10 Monte Reason, who did not have the authority to do so, executed a contract to  
11 place the real property located at 2848 Bluffpoint Drive, Las Vegas, Nevada on the  
12 market for sale. He has now relegated this "responsibility" to Utkin. As it is the  
13 petitioner's (sole beneficiaries to this property) desire to maintain this property, a Lis  
14 Pendens was prepared and filed with the court. As Utkin so states in her motion, it was  
15 not recorded. Therefore, there is nothing to expunge, and this instant request is frivolous  
16 in nature and intended to create unnecessary litigation and unwarranted fees.

17  
18 The court, during the hearing held on January 17, 2018, ordered that the house not  
19 be sold, and that the petitioners had the right to enter the premises. The minutes stated:

20 "The Bluff Point home shall not be sold. Mr. Payne and his clients shall  
21 make arrangement to go to the Bluff Point home and remove their property  
22 and pictures shall be taken of items in dispute for future litigations."

23 Despite the court making these orders on the record, no formal court order  
24 reflecting this pronouncement by the court has been entered. Petitioner's counsel  
25 disapproved the order as written as it did not, inter alia, include the provisions made by  
26 the court as it pertains to the petitioners entry into the home.

27 To date, the "for sale" signs are still on the property, the real property is still an  
28 active listing for sale, and, three months later, no movement on obtaining a set of keys to  
enter the premises, as permitted by the court, despite the requests to do so. Ultimately,



1 the need to contact the real estate agent was required, because Monte Reason's counsel  
2 advised that the agent was the person in possession of the keys.

3  
4 Monte Reason forced beneficiary Raymond Christian, Jr., who was residing in the  
5 home, out of his home via an eviction proceeding, after Nancy died. The three petitioners  
6 are the primary beneficiaries of this real property. To preserve the asset, a Lis Pendens  
7 was prepared, filed, but not recorded, as the court ordered the property not to be sold.  
8 Therefore, NRS 14.015 does not apply, and the entire argument and motion is moot.

9  
10 Apparently Utkin and/or her counsel believe this is something to complain about,  
11 but is a non-starter. The document was prepared in good faith, and the Petitioners have  
12 relied upon the court's order that the property not be sold and that the petitioners could  
13 enter.


14 This motion is particularly frivolous and unnecessary. Again, Jacqueline Utkin  
15 should be sanctioned, pursuant to EDCR 7.60(b)(1)(3) for presenting to this court a  
16 motion which is obviously frivolous, unnecessary or unwarranted, and multiplies the  
17 proceedings in a case as to increase fees and costs unreasonably and vexatiously.

### 18 CONCLUSION

19  
20 This motions and the relief requested therein are frivolous, and the facts do not  
21 support the relief requested.

22 The motions should be denied in their entirety, and the countermotion to distribute  
23 the trust or alternatively all matters be stayed, and set an evidentiary hearing be granted.

24  
25 Dated: April 19, 2018

26  
27   
28 CARY COLT PAYNE, ESQ.  
Nevada Bar No. 4357  
CARY COLT PAYNE, CHTD.  
700 S. Eighth Street  
Las Vegas, Nevada 89101  
Attorney for Petitioners



## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 19, 2018, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

✕

**BY MAIL:** N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;

Tommy L. Christian  
245 South Lemon, Apt C  
Orange, CA 92566


Christopher A. Christian  
560 W. 20th Street #12  
San Bernardino, CA 92405

✕

**BY E-MAIL AND/OR ELECTRONIC MEANS:** Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

Jerimy Kirschner, Esq.  
JERIMY KIRSCHNER & ASSOCIATES, LTD.  
5550 Painted Mirage Rd., Suite 320  
Las Vegas, NV 89149  
Email: [jerimy@jkirschnerlaw.com](mailto:jerimy@jkirschnerlaw.com)  
Attorney for Jacqueline Utkin

Joseph Powell, Esq.  
RUSHFORTH, LEE & KIEFER, LLP  
1701 Village Center Circle, Suite 150  
Las Vegas, NV 89134  
email: [joey@rushforth.com](mailto:joey@rushforth.com)  
Attorney for Monte Reason

  
An employee of CARY COLT PAYNE, CHTD.



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

*EXHIBIT PAGE INTENTIONALLY LEFT BLANK*

**EXHIBIT "A"**

5550 Painted Mirage Rd, Suite 320  
Las Vegas, NV 89149  
(702) 563-4444 Fax (702) 563-4445  
Website: JKirschnerLaw.com



**JERIMY  
KIRSCHNER**  
— & ASSOCIATES PLLC

1326 Tacoma Ave. S., Suite 200  
Tacoma, WA 98402  
(206) 623-4444 Fax (206) 538-2008  
Licensed in Nevada and Washington

April 18, 2018

Sent Via Fax/Email: (702) 383-9049, [carycotpaynechtd@yahoo.com](mailto:carycotpaynechtd@yahoo.com)

Cary Colt Payne, Esq.  
700 S 8<sup>th</sup> St  
Las Vegas, NV 89101

Re: Temporary address, In the Matter of THE CHRISTIAN FAMILY TRUST, Dated October 11, 2016, Case Number: P-17-092512-T

Hello Mr. Payne,

Please respond with the availabilities for your clients Susan Christian-Payne, Rosemary Keach, and Raymond Christian Jr. to be deposed within the next 30 days.

Sincerely,



Jeremy Kirschner, Esq.

JLK/sjm



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

*EXHIBIT PAGE INTENTIONALLY LEFT BLANK*

**EXHIBIT "B"**



Marj Arena &lt;marja.carycoltpayne@gmail.com&gt;

**Re: Fw: Re: Christian Family Trust**

message

Jeremy Kirschner &lt;jerimy@jkirschnerlaw.com&gt;

Thu, Apr 19, 2018 at 10:48 AM

To: Cary Payne &lt;carycoltpaynechtd@yahoo.com&gt;

Cc: Marj Arena &lt;marja.carycoltpayne@gmail.com&gt;, Sarah Mintz &lt;sarah@jkirschnerlaw.com&gt;, Joey Powell &lt;joeypowell@rklegal.com&gt;

Hello Cary,

It is in our motion for sanctions, but for example: failure to provide an inventory stretching back to October 11, 2016.

Rebuild, i.e. prepare proper inventory and accounting.

There are outstanding demands for an accounting which have not yet been satisfied. It is a duty under the trust, statute, and court order. This is what is being accomplished.

We will have a SAO circulated shortly. Thank you.

On Thu, Apr 19, 2018 at 10:00 AM, Cary Payne &lt;carycoltpaynechtd@yahoo.com&gt; wrote:

Jeremy, please provide a specific (single) instance of what you claim the trustees did or did not do?

Rebuild trust financials-please clarify.

The inability of your response to explain how any of this benefits my client's or the trust speaks volumes.

I have already told your office I would agree to consolidate these hearings.

Sincerely,

Cary Colt Payne, Esq.

CARY COLT PAYNE, CHTD.

700 South Eighth Street

Las Vegas, NV 89101 Tel. (702) 383-9010 Fax: (702) 383-9049

Email: carycoltpaynechtd@yahoo.com

Web: carycoltpaynechtd.com

lasvegasarmstrust.com

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----- Forwarded Message -----

**From:** Jeremy Kirschner <jerimy@jkirschnerlaw.com>

To: Cary Payne <carycollpaynechtd@yahoo.com>

Cc: Marj Arena <marja.carycoltpayne@gmail.com>; Sarah Mintz <sarah@jkirschnerlaw.com>; Joey Powell <jpow@rlklegal.com>

**Sent:** Wednesday, April 18, 2018, 3:44:08 PM PDT

**Subject:** Re: Christian Family Trust

Hello Cary.

Thank you for the response. To address your comments:

We have made no bones about what is occurring, or what is needed. The Trust has repeatedly and adamantly requested that a proper accounting and inventory be conducted. Nothing more. Requests have been made under the terms of the Trust, by statute, and by court order. Your clients, as former trustees, have repeatedly failed to do so or at best, partially complied. As a direct result, Trustee Utkin has been forced to rebuild Trust financials. This is not the preferred route, and it is costly to do so. She waited until your clients once again failed to provide a proper accounting before she started her investigation in earnest.

Your clients objections to discovery could be easily solved by providing a proper accounting and cooperation with Trustee Utkin. Full stop, and no more attorney fees. No one is hiding the ball here, they have been given explicit directions by the Court, and the requirements are also spelled out by statute. A rope-a-dope, partial compliance which leaves the Trust with blinds spots is not an option. This is not controversial in the least, it is the duty of a trustee to know what a trust has for assets, what it started with and what it is at currently.

Trustee Utkin is here to administer the Trust, however she is being fought on virtually every point by your clients. This has caused a significant increase in tensions and the cost of litigation. That being said, we take your threat to against Trustee Utkin very seriously. Please identify any provision of the Trust or order from the Court that she is violating and we will quickly move to remedy it. To be clear, a nebulous statement of unhappiness is not sufficient. The Trust provides Trustee Utkin substantial discretion to hire professionals and to conduct the business of the Trust, as your clients well know. This is all she has done.

I have repeatedly tried to engage you to provide a legal basis for objecting to the Barney Firm's fees. The fees were approved by Monte Reason as trustee before Jacqueline came on board, which was authorized by 4.3, and 10.1(m). Not only that, but the spendthrift provision of 14.2 specifically excludes creditors of the trustors, i.e. Nancy Christian. The provisions you cited in your opposition brief, and at oral arguments, simply do not apply. The battle you are fighting is not based on solid legal reasoning.

Finally, would you agree to a stipulation moving the hearings from the 14th to the 16th?

On Wed, Apr 18, 2018 at 2:08 PM, Cary Payne <carycoltpaynechtd@yahoo.com> wrote:

Jeremy, I agree.

Can you enlighten us on exactly what the hell you're doing? For example what the goal to spending this time and money when my clients object to EVERYTHING YOU HAVE done!

The District Court has already cautioned you about the needless discovery. Let me be clear the beneficiaries (Rose Mary, Susan Payne and Mr. Christian) strongly object to your continuing activities both as attorney for Utkin and the Trust. Discovery is over and you need to cease and desist with this unwanted horrible waste of everyone's time and money. I seriously doubt your client knows about the exposure you have placed her in. The next hearing we will be asking her to post a bond.

Lastly, I'm strongly recommending my clients appeal the Barney order and look for damages against you and your clients for the failure to object to the baseless Barney petition for fees.

Sincerely,



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

*EXHIBIT PAGE INTENTIONALLY LEFT BLANK*

**EXHIBIT "C"**



January 8, 2018



Christian Family Trust  
1704 Double Arch Court  
Las Vegas NV 89128

Re: Voya Insurance and Annuity Company  
Contract 90355653

Dear Representative,

We received your claimant statement for this annuity contract. However, our records do not show that you are a beneficiary. In order for us to release the name of the beneficiary(s), we need the executor of the estate of Raymond Christine to submit the estate documents and a written request for beneficiary information, signed by the executor. Documents can be sent to the address below. If you feel this is an error, the agent listed on the contract may be able to provide you with beneficiary information. Also, you can double check any contract documents or paperwork we may have sent Raymond Christine as part of servicing this contract.

Another option would be to reach out to the executor of the estate for beneficiary information.

If you have any questions, please contact us at the number shown below and a representative will be happy to assist you 8:30 a.m. to 6:30 p.m. Eastern Time Monday through Thursday, and 8:30 a.m. to 5:30 p.m. on Friday.

Customer Service  
PO Box 1337  
Des Moines, IA 50305-1337  
(800) 369-5303  
voya.com

## REQUEST FOR NON-FINANCIAL SERVICE

Voya Insurance and Annuity Company, Des Moines, IA  
Voya Retirement Insurance and Annuity Company, Windsor, CT  
ReliaStar Life Insurance Company, Minneapolis, MN  
ReliaStar Life Insurance Company of New York, Woodbury, NY  
Security Life of Denver Insurance Company, Denver, CO  
(the "Company")

Members of the Voya<sup>®</sup> family of companies

Fax: 515-698-2034 (Variable Annuity) 515-698-2001 (Fixed Annuity)

Customer Service: 909 Locust Street, Des Moines, IA 50309-2899

Website: Voya.com Phone: 800-366-0066 (Variable Annuity) 800-369-5303 (Fixed Annuity) **Annuities**

The contract owner may use this form to request action by the Company. Check the appropriate boxes and supply the information indicated. Please remember to read Section 6, on page 2, and provide your signature of authorization to make this request effective.

### 1. CONTRACT INFORMATION

Owner Name Raymond Christian Contract # 90355653

Owner SSN/TIN 417-48-8865 Owner Phone (702) 483-5847 Gender male

Joint Owner Name \_\_\_\_\_

Joint Owner SSN/TIN \_\_\_\_\_ Joint Owner Phone \_\_\_\_\_ Gender \_\_\_\_\_

### 2. ADDRESS CHANGE

☐ Owner ☐ Joint Owner ☐ Annuitant

New Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

New Phone \_\_\_\_\_

### 3. NAME CHANGE (Select one. Not to be used for ownership or beneficiary changes.)

☐ Owner ☐ Joint Owner ☐ Annuitant

From \_\_\_\_\_ To \_\_\_\_\_

Reason for Change \_\_\_\_\_

Please provide a legal document (such as a marriage certificate or divorce decree) to support this change.

### 4. OWNER CHANGE

Please note that as the current owner, certain changes in your contract's ownership may result in the Company issuing a 1099-R reporting taxable income to you.

Ownership changes may terminate systematic withdrawals from this contract. To begin a systematic withdrawal, please complete a Request for Financial Service form.

☐ New Individual Owner ☐ Custodian to Custodian<sup>1</sup>  
☐ New Individual Owner who is a current or former spouse ☐ Remove Joint Owner  
☐ New Custodian Owner ☐ Remove Custodian - Annuitant will become owner.  
☒ New Trust Owner (Certificate of Trust form required.) ☐ Other (Transfer from Trust, etc.)  
☐ Add Joint Owner<sup>2</sup>

New Owner Name Christian Family Trust

SSN/TIN 417-48-8865 Country of Citizenship \_\_\_\_\_ Gender \_\_\_\_\_

Address 1060 Dancing Vines Ave City Las Vegas State NV ZIP 89135

Birth Date 10/11/10 Relationship to Current Owner \_\_\_\_\_ Phone \_\_\_\_\_

<sup>1</sup>Some living and death benefit features are not available with joint ownership. If your contract has one of these features, any change in ownership may result in a change or deletion of this feature. See your prospectus for additional details.

<sup>2</sup>Changes to or from custodian require a custodial approval signature (the required signor is specific to each custodian's Custodial Agreement. See custodial back office for more information.) If changing ownership to a new custodian, the producer must be affiliated with the new broker-dealer custodian. A change of producer may be necessary to complete a custodial change. A beneficiary change is required with a custodian to individual owner change.

## 5. BENEFICIARY CHANGE

The designation of a new beneficiary revokes and replaces prior beneficiary designations for each beneficiary type. For example, if you change only the primary beneficiary, the contingent beneficiary remains unchanged. A beneficiary change may impact your contractual benefits. Please refer to your prospectus or contract or consult your tax advisor for additional details.

- If the annuity is corporately owned, an officer of the corporation must sign the form for the corporation. The officer's title must be included and a copy of the corporate resolution giving the officer authority to sign for the corporation must also be submitted with this form.
- If the current beneficiary designation is irrevocable, this form must also be signed by any irrevocable beneficiary(ies).
- If a trust is the beneficiary, please list the entire trust name and the trust date as applicable and complete the Certificate of Trust form.
- Total percentage of primary beneficiary shares must equal 100%. Total percentage of contingent beneficiary shares must also equal 100%. If no percentages are listed, beneficiaries' shares will be distributed equally.
- If no primary beneficiary is living, unless otherwise stated, proceeds will be paid equally to each living contingent beneficiary.
- For additional beneficiary designations, attach a separate page, signed and dated by the owner(s).
- If you would like to designate a restricted beneficiary, complete the Restricted Beneficiary form.

| Name                                | Gender | Birth Date/Trust Date | SSN/TIN               | %     | Beneficiary Type:                                                                  |
|-------------------------------------|--------|-----------------------|-----------------------|-------|------------------------------------------------------------------------------------|
| Rosemary R. Christian-Keach         | F      | 10/31/60              | 562-13-6893           | 33.33 | <input checked="" type="checkbox"/> Primary<br><input type="checkbox"/> Contingent |
| Address                             |        | Phone                 | Relationship to Owner |       |                                                                                    |
| 2016 Grouse Ave, LV, NV 89123       |        | 702 271-3864          | Daughter              |       |                                                                                    |
| Name                                | Gender | Birth Date/Trust Date | SSN/TIN               | %     | Beneficiary Type:                                                                  |
| Raymond T. Christian, Jr.           | M      | 10/25/62              | 546-17-5920           | 33.33 | <input checked="" type="checkbox"/> Primary<br><input type="checkbox"/> Contingent |
| Address                             |        | Phone                 | Relationship to Owner |       |                                                                                    |
| 3229 Little Stream St, LV, NV 89135 |        | 702 340-4700          | Son                   |       |                                                                                    |
| Name                                | Gender | Birth Date/Trust Date | SSN/TIN               | %     | Beneficiary Type:                                                                  |
| Susan G. Christian-Payne            | F      | 10/01/65              | 546-17-5892           | 33.34 | <input checked="" type="checkbox"/> Primary<br><input type="checkbox"/> Contingent |
| Address                             |        | Phone                 | Relationship to Owner |       |                                                                                    |
| 1704 Double Arch Ct, LV, NV 89128   |        | 702 308-6674          | Daughter              |       |                                                                                    |
| Name                                | Gender | Birth Date/Trust Date | SSN/TIN               | %     | Beneficiary Type:                                                                  |
|                                     |        |                       |                       |       | <input type="checkbox"/> Primary<br><input type="checkbox"/> Contingent            |
| Address                             |        | Phone                 | Relationship to Owner |       |                                                                                    |
|                                     |        |                       |                       |       |                                                                                    |

## 6. AUTHORIZATION AND SIGNATURES (If there are joint owners, both must sign this form.)

I hereby certify that I, the owner, have an insurable interest in the life of the annuitant. As defined in more detail in my prospectus, an insurable interest means I have a lawful and substantial economic interest in the continued life of the annuitant. I hereby certify that I have read and understand the terms of this form and that the information provided on this form is true and complete to the best of my knowledge, and I authorize the transactions requested.

## IMPORTANT INFORMATION ABOUT PROCEDURES FOR OWNING A REGISTERED ANNUITY CONTRACT:

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who purchases a registered annuity contract. What this means for you: When a change of ownership is submitted, we will ask for the new owner's name, address, date of birth, Social Security number and other identifying information. We may also request a copy of additional identifying documentation and use the information provided to further verify the new owner's identity through the use of third-party sources.

6. AUTHORIZATION AND SIGNATURES (continued) (If there are joint owners, both must sign this form.)

THE FOLLOWING LANGUAGE IS APPLICABLE TO OWNERSHIP CHANGES ONLY.

U.S. TAXPAYER CERTIFICATIONS FOR CURRENT OWNER

Under penalties of perjury, I certify that:

1. The Taxpayer Identification Number that appears on this form is correct.
2. I am not subject to back-up withholding due to failure to report interest and dividend income;  
☐ If I am subject to backup withholding, I have checked here.
3. I am a U.S. person.

If you are a Non-Resident Alien, please check the box below.

☐ Under penalties of perjury, I certify that I am a Non-Resident Alien.

The amount paid to you will be subject to 30% tax withholding unless you submit an IRS Form W-8 and are entitled to claim a reduced rate of withholding under the applicable U.S. tax treaty.

U.S. TAXPAYER CERTIFICATIONS FOR NEW OWNER

Under penalties of perjury, I certify that:

1. The Taxpayer Identification Number that appears on this form is correct.
2. I am not subject to back-up withholding due to failure to report interest and dividend income;  
☐ If I am subject to backup withholding, I have checked here.
3. I am a U.S. person.

If you are a Non-Resident Alien, please check the box below.

☐ Under penalties of perjury, I certify that I am a Non-Resident Alien.

The amount paid to you will be subject to 30% tax withholding unless you submit an IRS Form W-8 and are entitled to claim a reduced rate of withholding under the applicable U.S. tax treaty.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications (in bold above) required to avoid back-up withholding.

Current Owner Signature [Signature] Date 10/21/16  
Joint Owner Signature (if applicable) \_\_\_\_\_ Date \_\_\_\_\_  
New Owner Signature (if applicable) [Signature] Date \_\_\_\_\_  
Current Custodian Signature and Title (if applicable) \_\_\_\_\_ Date \_\_\_\_\_  
New Custodian Signature and Title (if applicable) \_\_\_\_\_ Date \_\_\_\_\_  
Irrevocable Beneficiary Signature (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

A signature guarantee or notarized signature is required in the following instance:

- A valid signature of owner or power of attorney is not on file.
- The Irrevocable Beneficiary signs the form.

(Please print)

Venue \_\_\_\_\_

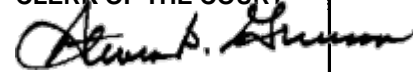
Subscribed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public Name \_\_\_\_\_ ID# \_\_\_\_\_ Phone \_\_\_\_\_

My commission expires \_\_\_\_\_

Firm Name on Medallion \_\_\_\_\_ ID# \_\_\_\_\_ Phone \_\_\_\_\_

Affix your notary stamp, if state required, and/or medallion signature guarantee stamp below. An embossing notary seal is not required. Please note that this form may be imaged and your transaction may be delayed when the stamp is illegible on scanned documents. The servicing producer is not permitted to act as notary or signature guarantee.



**OPPS**  
CARY COLT PAYNE, ESQ.  
Nevada Bar No. 4357  
CARY COLT PAYNE, CHTD.  
700 South Eighth Street  
Las Vegas, Nevada 89101  
(702) 383-9010  
carycoltpaynechtd@yahoo.com  
Attorney for Petitioners

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

|                              |   |            |               |
|------------------------------|---|------------|---------------|
| In the Matter of             | ) | Case No.:  | P-17-092512-T |
|                              | ) | Dept. No.: | S (Probate)   |
| THE CHRISTIAN FAMILY         | ) |            |               |
| TRUST u.a.d. 10/11/16        | ) | Date:      | 5/16/18       |
|                              | ) | Time:      | 2:00 PM       |
| ~~~~~                        | ) |            |               |
| SUSAN CHRISTIAN-PAYNE,       | ) |            |               |
| ROSEMARY KEACH AND           | ) |            |               |
| RAYMOND CHRISTIAN            | ) |            |               |
| Petitioners,                 | ) |            |               |
| -vs-                         | ) |            |               |
| NANCY I CHRISTIAN, MONTE     | ) |            |               |
| REASON and JACQUELINE UTKIN, | ) |            |               |
| Respondents.                 | ) |            |               |
| ~~~~~                        | ) |            |               |

**OPPOSITION TO MOTION FOR (1) FEES, (2) COMPLIANCE, (3) FOR ORDER TO  
SHOW CAUSE AND (4) EXTENSION OF DISCOVERY**

**COUNTERMOTION TO DISTRIBUTE TRUST PROPERTY (2<sup>nd</sup> Request)**

COMES NOW Petitioners, SUSAN CHRISTIAN-PAYNE, ROSEMARY KEACH and  
RAYMOND CHRISTIAN, original co-trustees and primary beneficiaries of The Christian  
Family Trust u.a.d. 10/11/16, by and through their attorney, CARY COLT PAYNE, ESQ., of  
the lawfirm of CARY COLT PAYNE, CHTD., hereby submits this Opposition to the Motion  
for (1) Fees, (2) Compliance, (3) For Order To Show Cause And (4) Extension Of  
Discovery, and Countermoves to Distribute, which is made and based upon the attached  
Points and Authorities, Exhibits, pleadings on file to date, and any oral argument that the  
Court may allow at the time of the hearing.







## I. POINTS AND AUTHORITIES

### 1. Introduction

1. On October 11, 2016, Raymond Christian, Sr., and Nancy Christian, together with their children, (within Petitioners) Susan Christian-Payne, Rosemary Keach and Raymond Christian, Jr., created The Christian Family Trust ("CFT").

2. Raymond Christian, Sr. died January 31, 2017.

3. The Petitioners, as co-trustees commence to administer the CFT. There were no assets to marshal until after their father's death.

4. Petitioners filed an accounting (first) on October 25, 2017 (for the period 10/27/16-9/30/17), with sufficient information for a reasonable individual to understand and/or follow the document to conclusion.

5. Petitioners also filed an Inventory (10/25/17), which correctly listed the distributable trust assets, including real property (\$357,048.00), "cash" and insurance proceeds (\$428,828.93) and working accounts (\$10,871.29) at \$796,748.22.

6. There was a Voya (Wells Fargo) account owned by the trust, but it has designated beneficiaries (Petitioners), and is not part of the CFT distributable trust assets.

(Exhibit "A")

7. Nancy Christian dies December 14, 2017.

8. At the first hearing after Nancy's death, Utkin suddenly appears claiming they need an accounting. The court ordered Utkin's attorney to forward a letter stating exactly what they are seeking. No letter was ever sent. The court also ordered that "within 45 days, Petitioners are to provide an accounting from the moment they became trustee 10/11/16, until they ceased all trustee functions, or were "removed" by settlor, whichever is later." The Petitioners awaited any sort of "letter", and served the second/amended accounting on March 20, 2018 (covering the period 10/16/16- 2/28/18





1           9. On 3/16/18, Utkin serves her First Request for Production of Documents to  
2           Petitioners asking for "other" accounting documents. Pursuant to court rules, those  
3           documents were not due until April 16, 2018.

4  
5           10. Despite the court's order for Utkin to forward a letter regarding what exactly  
6           they wanted regarding the "accounting", but never did so, on March 20, 2018 the  
7           petitioners filed their "Account and Report" (10-27/16-9/30/18), including a copy of the  
8           Inventory. In an abundance of caution, petitioners also identified the Voya account with  
9           Wells Fargo (\$143,056.28). (Exhibit "A") This particular account (a) had not been  
10          marshaled by original trustees ; (b) has specific beneficiaries (the 3 petitioners), and  
11          should not be marshaled; (c) and is not part of the trust distributable assets under this  
12          court's jurisdiction.

13  
14          11. This matter was scheduled for settlement conference March 27, 2018. It is  
15          now clear that Utkin nor Monte ever had any intent to settle these matters whatsoever,  
16          and did not participate in the conference in good faith. At the outset, Monte requested  
17          half of the trust estate as his share. Further, despite the court's order that the Barney firm  
18          not participate, they intentionally interfered with the settlement conference by emailing an  
19          affidavit from Petitioner Susan Christian Payne's soon to be ex-husband, claiming some  
20          sort of theft- specifically the above noted Voya account. Michael Payne's divorce attorney  
21          apparently contacted the Barney firm regarding this, after rifling through Susan's private  
22          papers. This email and it's attachments invaded the settlement process and ended any  
23          sort settlement conference. (email- Exhibit "B")

24  
25  
26          12. On April 2, 2018 Motion to Turnover Assets and Dissolve Injunction Over Trust  
27          Assets; on April 10, 2018 Utkin files her Motion to Expunge Lis Pendens and Strike  
28          Pleading and for Preliminary Injunction.

          13. On April 10, 2018, Utkin files the within motion.



1  
2 **2. Opposition to Sanctions, OSC, etc.**

3 Utkin asserts "RRS beneficiaries failed to provide an accounting within 45 days."  
4 This is the pot calling the kettle black. Utkin and/or her counsel did not provide the  
5 ordered letter detailing what they wanted. Petitioners were then left to guess exactly what  
6 they were actually looking for.

7 Ultimately Utkin received the amended accounting. The repeated allegations that  
8 "it does not comport with NRS 165.135" is getting old. The undersigned stated in open  
9 court that no matter what they received it would not be good enough, and that statement  
10 has come true. Utkin conitnes that she "finally produced an Amended Inventory and  
11 accounting and it still fails to satisfy NRS 165.135. " (Id page 3 lines 13-17).

12 The documentation provided is everything the petitioners have in their possession,  
13 and it all shows what money came in, what assets there are, and what was spent, which  
14 is what is required by the court.

15 Since Utkin has come into this matter, there has been an endless barrage of  
16 motions, discovery requests, and further litigation. All when she is supposed to maintain  
17 the assets for the beneficiaries, not spend it on her own needless litigation for the benefit  
18 of her attorney. Utkin's attorney has admitted that he is seeking sanctions for the period  
19 from the day the trust was executed (10/11/16) and the day the petitioners actually  
20 commenced as trustees over accounts, etc. (10/16/16)- a period of five (5) days. They  
21 have created multiple thousands of dollars in attorneys fees for a 5 day period wherein  
22 nothing changed. (email-Exhibit "C") The Inventory and Amended Account are correct.  
23 During those five days, accounts were created, funds transferred, deeds recorded, etc.  
24 For this Utkin and/or her attorneys want sanctions. This is manufacturing an issue where  
25 none exist to seek to justify the frivolousness of their multiple petitions/motions,  
26 subpoenas, etc.



1 This court warned Utkin and/or her attorney, from day one, when Utkin appeared in  
2 this matter (hearing 1/17/18- full copy of transcript attached) that:

3  
4 " THE COURT: The case is going to be settled in 120 days. So I'll give you  
5 90 days to do some discovery. But, you know, this is not going to be an  
6 attorneys' fees case. I want to get this case resolved. They want their  
7 money. Your client wants your money. The trust is written clearly enough  
8 after the death. There might have been some confusion before, but it's  
9 clear afterwards what's going to happen." (transcript 1/17/18 page 56, lines  
10 1-10)

11  
12 THE COURT: Well, if you guys want to litigate everything you guys have  
13 discussed here today, you might as well just give me all the money and I'll  
14 just distribute it to attorneys' fees tomorrow. And that will be the end of the  
15 trial. (transcript 1/17/18 page 60-51 lines 24-2)

16 That was in January. In the few months following, there has been three motions, a  
17 dozen subpoenas, some of which indicate there were no accounts (therefore a needless  
18 fishing expedition) and a settlement conference in which both Monte Reason and Utkin  
19 (she did not appear) failed to even participate. Monte waltzed in and absurdly wanted a  
20 high amount of money as his share. Utkin is intentionally and frivolously is racking up  
21 attorneys fees.

22 What there has been, since the petitioners put in their inventory are the assets of  
23 the trust: proceeds of Dancing Vines property sale, proceeds of insurance (Oxford),  
24 some other "cash", and two other real properties. Not more, not less. Has not changed.

25 There is nothing in the accounting to complain about. In fact at this point, the  
26 purpose of the accounting is for the beneficiaries, not Utkin. She has yet to account for  
27 the \$5,000 the court wanted. "THE COURT: But I want accounting on both sides."  
28 (Transcript 1/17/18 -page 63, line 13)

29 This motion should be denied, and the trust distributed. Without repeating the  
30 entirety of the pleading, Petitioners also Countermove for Distribution as stated in their



1 Combined Opposition filed contemporaneously herewith, which they repeat and reallege  
2 as if fully set forth herein.

3  
4 Finally, there is no showing that with the ninety days allotted to them, that Utkin  
5 requires to reopen discovery to conduct depositions. At this point it is unwarranted and  
6 unnecessary.

7 **3. Countermotion for Bond**

8 Utkin is an out of State party, who resides in Hawaii, who has yet to step foot in the  
9 State of Nevada. When this court essentially imposed an injunction over the funds, and  
10 appointed an out of state party as trustee, Utkin should have posted a bond. See NRS  
11 18.090, 18.130.

12 NRCP 65(c) requires the posting of a bond for any preliminary injunction, which  
13 states in pertinent part:

14  
15 (c) Security. No restraining order or preliminary injunction shall issue  
16 except upon the giving of security by the applicant, in such sum as the court deems  
17 proper, for the payment of such costs and damages as may be incurred or suffered  
18 by any party who is found to have been wrongfully enjoined or restrained.

19 "The expressed purpose of posting a security bond is to protect a party from  
20 damages incurred as a result of a wrongful injunction, not from damages existing before  
21 the injunction was issued." American Bonding Co. v. Roggen Enterprises, 109 Nev. 588,  
22 591 (1993). The Petitioners, as major beneficiaries, have now been denied their  
23 beneficial share. The longer they are is denied, the more the damage to them becomes.  
24 There is still no adequate protection for the petitioners/beneficiaries.

25 Given the litigious nature of Utkin in her continuous motions, subpoenas, etc., it is  
26 entirely probable that this out of state individual, who has yet to step foot in the State of  
27 Nevada and/or her attorney will seek usurious fees and costs for their continued  
28 harassment of the beneficiaries/petitioners.



1 This Court should required Utkin to post a bond in an amount in at least \$50,000 or  
2 more to cover the potential losses to the trust and/or damages to the beneficiaries for her  
3 litigious actions.  
4


### 5 CONCLUSION

6 This motion and the relief requested is frivolous, and the facts do not support the  
7 relief requested.  
8

9 The continued motion practice is in contravention to this court's specific orders that  
10 the court wants this matter resolved, without incurring extensive attorneys fees. This  
11 should be taken into consideration when Utkin files for future request for usurious fees.

12 The motions should be denied in their entirety, and the countermotion for Utkin to  
13 post a suitable bond, for distribution/stay, and to set an evidentiary hearing be granted.  
14

15 Dated: April 19, 2018  
16

  
\_\_\_\_\_  
CARY COLT PAYNE, ESQ.  
Nevada Bar No. 4357  
CARY COLT PAYNE, CHTD.  
700 S. Eighth Street  
Las Vegas, Nevada 89101  
Attorney for Petitioners

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on April 19, 2018, a true and correct copy of the foregoing was served to the following at the their last known address(es), facsimile numbers and/or e-mail/other electronic means, pursuant to:

X

**BY MAIL:** N.R.C.P 5(b), I deposited for first class United States mailing, postage prepaid at Las Vegas, Nevada;

Tommy L. Christian  
245 South Lemon, Apt C  
Orange, CA 92566

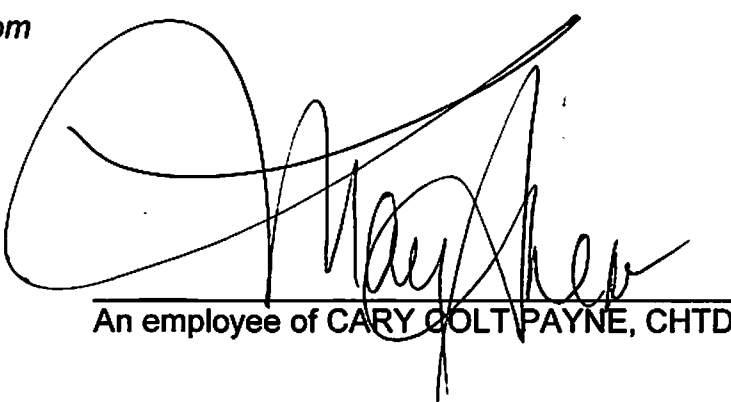
Christopher A. Christian  
560 W. 20th Street #12  
San Bernardino, CA 92405

X

**BY E-MAIL AND/OR ELECTRONIC MEANS:** Pursuant to Eighth Judicial District Court Administrative Order 14-2, Effective June 1, 2014, as identified in Rule 9 of the N.E.F.C.R. as having consented to electronic service, I served via e-mail or other electronic means (Wiznet) to the e-mail address(es) of the addressee(s).

Jerimy Kirschner, Esq.  
JERIMY KIRSCHNER & ASSOCIATES, LTD.  
5550 Painted Mirage Rd., Suite 320  
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Attorney for Monte Reason

  
An employee of CARY COLT PAYNE, CHTD.



**CARY COLT PAYNE, CHTD.**

Attorney at Law

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(702) 383-9010 • Fax (702) 383-9049

***EXHIBIT PAGE INTENTIONALLY LEFT BLANK***

**TRANSCRIPT 1/17/18**



800-843-7348 - [SOUSA.COM](http://SOUSA.COM) - 877-843-8443

## **In the Matter of the Christian Family Trust**

### **Audio Transcription of Hearing**

**Date: 1/17/2018**

**Job #: 608764**

Court Reporting – Videoconferencing – Trial Presentation – Nationwide Networking

**1013 Garces Avenue | Las Vegas | 89101  
702-765-7100**



DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

In the Matter of )  
 )  
THE CHRISTIAN FAMILY )  
TRUST u.a.d. 10/11/16 ) CASE NO. P-17-092512T  
 ) DEPT NO. S (Probate)  
 )  
~~~~~ )  
SUSAN CHRISTIAN-PAYNE,) Date: January 17, 2018
ROSEMARY KEACH AND) Time: 2:00 p.m.
RAYMOND CHRISTIAN)
Petitioners,)
-vs-)
NANCY I CHRISTIAN and)
MONTE REASON and)
JACQUELIN UTKIN)
Respondents.)
~~~~~ )

AUDIO TRANSCRIPTION OF  
Hearing before the Honorable  
JUDGE VINCENT OCHOA

Transcribed by Kathy Hoffman

## APPEARANCES

For the Petitioners:

CARY COLT PAYNE, ESQ

CARY COLT PAYNE, CHTD

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(702) 383-9016

For the Respondent, Jacqueline Utkin:

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JERIMY KIRSCHNER & ASSOCIATES, PLLC.

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For the Respondent, Monte Reason:

JOSEPH POWELL, ESQ.

RUSHFORTH, LEE & KIEFER, LLP.

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Las Vegas, Nevada 89134

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For Nancy Christian, deceased:

ZACHARY HOLYOAK, ESQ.

ANTHONY BARNEY, LTD

3317 West Charleston Boulevard

Las Vegas, Nevada 89102

(702) 438-7878

ALSO PRESENT:

Susan Christian-Payne

Rosemary Keach

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 PROCEEDING</p> <p>2</p> <p>3 THE COURT: This is in the matter of the</p> <p>4 Christianson [sic] family. Can we have</p> <p>5 introductions and who you represent?</p> <p>6 MR. KIRSCHNER: Yes, Your Honor. My name</p> <p>7 is Jeremy Kirschner, Bar No. 12012. I'm here on</p> <p>8 behalf of Jacquelin Utkin. We filed a substitution</p> <p>9 of party in interest under 17A. We are the</p> <p>10 successor trustee to the Christian Family Trust at</p> <p>11 this time.</p> <p>12 THE COURT: Who were you representing</p> <p>13 again? I'm sorry.</p> <p>14 MR. KIRSCHNER: Her name is Jacquelin,</p> <p>15 J-a-c-q-u-e-l-i-n, last name Utkin, U-t-k-i-n.</p> <p>16 THE COURT: Okay.</p> <p>17 MR. KIRSCHNER: And we've accepted the</p> <p>18 appointment as the successor trustee.</p> <p>19 THE COURT: Okay.</p> <p>20 MR. HOLYOAK: Zach Holyoak, Bar</p> <p>21 No. 14217. We represented Nancy Christian before</p> <p>22 her passing.</p> <p>23 MR. POWELL: Good afternoon, Your Honor.</p> <p>24 Joey Powell appearing on behalf of Monte Reason in</p> <p>25 his capacity as trustee of the Nancy Christian</p> <p style="text-align: right;">Page 3</p> | <p>1 MR. KIRSCHNER: She is the aunt and the</p> <p>2 sister of the settler to the trust, the father.</p> <p>3 THE COURT: Okay. Counselor?</p> <p>4 MR. PAYNE: Good morning, Your Honor.</p> <p>5 Cary Colt Payne on behalf of Susan Christian-Payne,</p> <p>6 Rosemary Keach, who are also both present, and</p> <p>7 Raymond Christian is not here today. 4357.</p> <p>8 THE COURT: I understand that maybe the</p> <p>9 second settler has died?</p> <p>10 MR. HOLYOAK: Correct.</p> <p>11 THE COURT: Has anyone filed anything</p> <p>12 officially to let me know that?</p> <p>13 MR. KIRSCHNER: Yes. There was a notice</p> <p>14 of death that was filed, I believe, on January 4th</p> <p>15 of this year.</p> <p>16 THE COURT: Okay.</p> <p>17 MR. KIRSCHNER: A Suggestion of Death</p> <p>18 that was filed by Mr. Payne.</p> <p>19 THE COURT: Well, maybe I have a simple</p> <p>20 mind, but to my mind I would maybe have provided</p> <p>21 some area of negotiations to try to get this</p> <p>22 resolved now since there is a trust, and the trust</p> <p>23 now by its language, we should take care of what</p> <p>24 the trust requested. Or am I wrong?</p> <p>25 MR. KIRSCHNER: Well, I think that there</p> <p style="text-align: right;">Page 5</p>                                                                                                                                    |
| <p>1 Trust.</p> <p>2 THE COURT: And who's the successor</p> <p>3 trustee to what trust?</p> <p>4 MR. KIRSCHNER: So we are here for the</p> <p>5 primary party in interest, the Christian Family</p> <p>6 Trust that was executed on October 11, 2016, the</p> <p>7 one that's the subject of this action that we've</p> <p>8 asked for jurisdiction over the trust.</p> <p>9 THE COURT: And you represent the</p> <p>10 trustee?</p> <p>11 MR. KIRSCHNER: I represent the current</p> <p>12 trustee, yes, Your Honor.</p> <p>13 THE COURT: Is your client the current</p> <p>14 trustee anymore or not?</p> <p>15 MR. POWELL: No. He executed a</p> <p>16 resignation, Your Honor.</p> <p>17 THE COURT: Okay.</p> <p>18 MR. KIRSCHNER: And under the</p> <p>19 modification, it was first offered to Wells Fargo</p> <p>20 Bank. Wells Fargo Bank declined it. And then it</p> <p>21 was offered to my client under a delegation</p> <p>22 authority under the trust. My client has accepted</p> <p>23 it.</p> <p>24 THE COURT: And how is she related to the</p> <p>25 family?</p> <p style="text-align: right;">Page 4</p>                                                  | <p>1 was a number of petitions that were being on before</p> <p>2 the Court that were to be heard today that we were</p> <p>3 ratifying as the successor trustee that we need</p> <p>4 assistance with the court for.</p> <p>5 One of them is as far as the accounting</p> <p>6 of the original trustees, the accounting was</p> <p>7 deficient as to the substantiation of the documents</p> <p>8 that were behind it. There were a number of</p> <p>9 expenses that were simply unexplainable that we're</p> <p>10 requiring a little bit of discovery for to find out</p> <p>11 what happened to the assets.</p> <p>12 So there's a body of it in the original</p> <p>13 petitions that were before the Court that we're</p> <p>14 prepare today argue today, Your Honor. And we're</p> <p>15 ratifying as the successor trustee that we need</p> <p>16 assistance with.</p> <p>17 THE COURT: So is there any objection to</p> <p>18 the successor trustee, first?</p> <p>19 MR. PAYNE: Absolutely. There's no need,</p> <p>20 Your Honor. As you kind of picked up on this</p> <p>21 thing, when Mrs. Christianson [sic] passed, the</p> <p>22 primary beneficiaries, the ultimate beneficiaries</p> <p>23 are my three clients who were the original</p> <p>24 trustees. And then there are two other</p> <p>25 beneficiaries which is their brother, Tommy</p> <p style="text-align: right;">Page 6</p> |

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| <p>1 Christianson and Christopher Christianson, who are<br/>2 10 percent and 20 percent beneficiaries under one<br/>3 of the pieces of properties that was previously<br/>4 sold.</p> <p>5 What I think is going on here,<br/>6 Your Honor, is kind of a cute way to kind of stay<br/>7 into this proceeding a little bit longer for some<br/>8 other purpose. Because when Mrs. Christianson<br/>9 died, Nancy, her interest are no longer -- cease to<br/>10 exist. And so what has gone on here is Mr. Powell<br/>11 has nominated this aunt to try and do something<br/>12 that doesn't need to be done.</p> <p>13 The trust by its terms need to be<br/>14 distributed, and we brought a petition forward to<br/>15 final this thing out. I'm not --</p> <p>16 THE COURT: Well, does the trust provide<br/>17 for a trustee successor?</p> <p>18 MR. PAYNE: No, it does not, Your Honor.<br/>19 And that's why I'm asking you to just reinstate the<br/>20 original trustees. There's nothing to administer.<br/>21 There was -- if you recall, there was a -- I may<br/>22 have misspoke.</p> <p>23 There is a California piece of real<br/>24 estate and there's a Nevada real estate. The house<br/>25 that was sold during Mr. Christianson's lifetime</p> <p style="text-align: right;">Page 7</p> | <p>1 to be the trustee, do you have a right to object?</p> <p>2 MR. KIRSCHNER: No, Your Honor. That's<br/>3 one of the things inside of the trust that it was a<br/>4 delegated authority for that trustee. First they<br/>5 had to offer it to Wells Fargo. And then if<br/>6 Wells Fargo did not accept the appointment, then<br/>7 that trustee was within their power to assign the<br/>8 next trustee, which is what has happened in this<br/>9 case.</p> <p>10 We have on there that Wells Fargo -- and<br/>11 it was as part of our notice of substitution of the<br/>12 real property -- or party that Wells Fargo declined<br/>13 the appointment. We have the written declination<br/>14 from Wells Fargo. And then in his power as the<br/>15 then existing trustee, he assigned the trustee<br/>16 afterwards.</p> <p>17 And I want to make sure that we're not<br/>18 simplifying this thing beyond what it is. We have<br/>19 more than just three beneficiaries involved in this<br/>20 matter. We have a total of six beneficiaries who<br/>21 are set to receive distributions underneath this<br/>22 trust.</p> <p>23 And as part of having six beneficiaries,<br/>24 we have to perform an accounting up to date of what<br/>25 the assets of the trust are, find out if there were</p> <p style="text-align: right;">Page 9</p> |
| <p>1 was sold and has been held in an estate account<br/>2 that Your Honor ordered us to block, which we did.<br/>3 There's about, I believe, is it \$400,000 cash<br/>4 that's there. Under the trust --</p> <p>5 THE COURT: Well, before we go there,<br/>6 there was a trustee.</p> <p>7 MR. PAYNE: There was the original<br/>8 trustees.</p> <p>9 THE COURT: There was the original,<br/>10 successor trustee and then there's this third<br/>11 trustee.</p> <p>12 Did you come in after the death of<br/>13 Mrs. Christianson or before?</p> <p>14 MR. KIRSCHNER: We came in after the<br/>15 death of Mrs. Christianson. And to be clear,<br/>16 Your Honor --</p> <p>17 THE COURT: Well, when did you come into<br/>18 the case?</p> <p>19 MR. KIRSCHNER: It would have been late<br/>20 last week, Your Honor. I think we filed our -- it<br/>21 might be earlier this week. But we did file our<br/>22 notice of substitution of property -- of the party,<br/>23 and the appointment was accepted after the<br/>24 resignation.</p> <p>25 THE COURT: Well, when you get appointed</p> <p style="text-align: right;">Page 8</p>                                                                                                                                                                   | <p>1 any expenses that need to be surcharged against<br/>2 anybody for improper use of the trust, and then<br/>3 make those distributions.</p> <p>4 So right now what we've asked for and<br/>5 which was in the petitions is we asked --</p> <p>6 THE COURT: So we have six people that<br/>7 should be receiving something from the trust. But<br/>8 instead of receiving something from the trust,<br/>9 we're going to eat this money up with attorneys'<br/>10 fees.</p> <p>11 MR. KIRSCHNER: It's not the --</p> <p>12 THE COURT: If the six people want that<br/>13 to happen and that's the way they want to handle<br/>14 this and they're okay with getting less amount of<br/>15 money, a less amount of money, fine. We'll go that<br/>16 way. And then your firm will be the winner.</p> <p>17 MR. KIRSCHNER: Well, it's not a matter<br/>18 of winning, Your Honor. We're hoping significantly<br/>19 that we get a lot of these questions answered<br/>20 without litigation. We're hoping to get these<br/>21 questions answered without fights between the<br/>22 parties.</p> <p>23 THE COURT: Well, why are you here then?<br/>24 Why didn't you do that?</p> <p>25 MR. KIRSCHNER: Well, we'll go --</p> <p style="text-align: right;">Page 10</p>                                                                               |

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| <p>1 THE COURT: Do you need time do that?</p> <p>2 MR. KIRSCHNER: Yes, we do need time do</p> <p>3 that, Your Honor. What we've asked for is 120 days</p> <p>4 of discovery so that we can subpoena the financial</p> <p>5 records involved in the case to find out what</p> <p>6 expenses were made because the previous accounting</p> <p>7 that was provided is insufficient. It provides</p> <p>8 information that is not -- that is not --</p> <p>9 THE COURT: How long was your client as</p> <p>10 trustee?</p> <p>11 MR. POWELL: Since --</p> <p>12 MR. KIRSCHNER: June 12th of 2017, so</p> <p>13 that would be -- that was when the modification was</p> <p>14 done?</p> <p>15 MR. POWELL: Was that approximately --</p> <p>16 was it June or August? June, okay.</p> <p>17 MR. KIRSCHNER: Okay. June 12th of 2017.</p> <p>18 So we've got --</p> <p>19 THE COURT: Well, do you have an</p> <p>20 accounting for that six-month period?</p> <p>21 MR. POWELL: Well, Your Honor, that's the</p> <p>22 problem is that when my client was appointed and</p> <p>23 then notified through my office, Mr. Payne to gain</p> <p>24 access to the assets, the assets were removed from</p> <p>25 the account, the account that belonged to the trust</p> <p style="text-align: right;">Page 11</p> | <p>1 MR. POWELL: Oh, I understand. But the</p> <p>2 problem becomes, Your Honor, is it's like anything</p> <p>3 else, is your rights don't simply just go away now.</p> <p>4 Mr. Payne's clients would like to just wipe it off</p> <p>5 the table and say, well, that's all water under the</p> <p>6 bridge and it's done.</p> <p>7 Well, no, Your Honor, there's recourse</p> <p>8 that has to be taken here because of the fact that</p> <p>9 Nancy Christian never received a dime from this</p> <p>10 trust since it was formed, Your Honor, which was in</p> <p>11 October of 2016. A trust that she co-created and</p> <p>12 which held her assets.</p> <p>13 THE COURT: And who's her attorney?</p> <p>14 MR. POWELL: It used to be Mr. Holyoak's</p> <p>15 office before she passed --</p> <p>16 MR. HOLYOAK: We used to before she</p> <p>17 passed we represented Nancy. And that is also part</p> <p>18 of why we're here. And it goes to Mr. Payne's</p> <p>19 argument that there's no administration left in the</p> <p>20 trust.</p> <p>21 We have substantial attorneys' fees that</p> <p>22 are payable by the trust. And if necessary we'll</p> <p>23 file a creditor's claim. But that's part of the</p> <p>24 reason that I'm here is to make sure that there's</p> <p>25 no resolution without addressing the claims against</p> <p style="text-align: right;">Page 13</p> |
| <p>1 at Chase. And then they've been in Mr. Payne's</p> <p>2 trust account since that time.</p> <p>3 THE COURT: Can you determine roughly how</p> <p>4 much that is?</p> <p>5 MR. POWELL: Well, according to</p> <p>6 Mr. Payne's records, it's about \$400,000.</p> <p>7 THE COURT: Okay.</p> <p>8 MR. POWELL: So from that time that my</p> <p>9 client was trustee, he was unable to take any</p> <p>10 action as a trustee because he was blocked by not</p> <p>11 having any access to the funds to administer the</p> <p>12 trust, which at that point during Mrs. Christian's</p> <p>13 lifetime was still -- she was the sole beneficiary</p> <p>14 of this trust, Your Honor.</p> <p>15 So there's issues there. Mr. Payne's</p> <p>16 clients want --</p> <p>17 THE COURT: So your client never touched</p> <p>18 any assets then?</p> <p>19 MR. POWELL: Correct. And that was part</p> <p>20 of what we were here today on was gaining authority</p> <p>21 to be able to get possession of the assets to be</p> <p>22 able to make them productive and to be able to use</p> <p>23 them for Mrs. Christian who was --</p> <p>24 THE COURT: Well, yeah, but she died in</p> <p>25 January.</p> <p style="text-align: right;">Page 12</p>                                                    | <p>1 the trust.</p> <p>2 THE COURT: Well, I can see -- I don't</p> <p>3 know what claims you're referring to. Attorneys'</p> <p>4 fees I can see as at least a reason to request --</p> <p>5 and obviously I think you're entitled to that for</p> <p>6 her representation.</p> <p>7 But I don't know what damage or recourse</p> <p>8 you're asking for Mrs. Christianson. This is</p> <p>9 Mrs. Christianson's attorney, so.</p> <p>10 MR. HOLYOAK: I can address that if</p> <p>11 Your Honor would like me to. I don't know that</p> <p>12 it's my place to now that she's passed, though.</p> <p>13 THE COURT: Yeah.</p> <p>14 MR. KIRSCHNER: Your Honor, if I may.</p> <p>15 From the point of the trust, I can give just what</p> <p>16 we're looking to do. And it's going to be embodied</p> <p>17 in all the petitions that are before the Court</p> <p>18 right now.</p> <p>19 Is that, one, we want to account for the</p> <p>20 assets. We want to account from the assets from</p> <p>21 the moment that the trust was formed. There's</p> <p>22 approximately four to five months period of time</p> <p>23 when there are no records or no accounting</p> <p>24 whatsoever.</p> <p>25 THE COURT: How long were these trustees</p> <p style="text-align: right;">Page 14</p>                                                                                                       |

1 in --  
 2 MR. KIRSCHNER: These trustees would have  
 3 been in power for approximately ten to  
 4 eleven months. And from what we know, Your Honor,  
 5 there may have been some changes to assets, the  
 6 beneficiaries on assets that we wanted to  
 7 investigate.  
 8 We also wanted -- part of the problem is  
 9 because we haven't been given a complete  
 10 accounting. So normally when we ask for an  
 11 accounting from the trust, we have substantiation  
 12 with documents. We get to see bank statements. We  
 13 get to see checks. We get to see what actually  
 14 happened.  
 15 Also that accounting normally takes place  
 16 from the time that the person became trustee until  
 17 the time that they're removed. What we have is we  
 18 have a gap of time when there is no explanation as  
 19 to any expenses.  
 20 And, one, we're looking for that gap of  
 21 time to be filled. Hopefully we can file that gap  
 22 of time without any litigation, without any  
 23 subpoenas, but it needs to be done.  
 24 Part of the problem is that this request  
 25 that I'm making right now and has been made in

Page 15

1 these petitions has already been requested of them  
 2 separately through letters between attorneys.  
 3 They said give us this period of time  
 4 when there was a gap when you guys haven't provided  
 5 us records or an accounting. Just give that to us.  
 6 Give us substantiation of the documents, show us  
 7 the documents support that these expenses were the  
 8 expenses of the trust.  
 9 Things like if you guys went on a trip or  
 10 vacation somewhere and you're claiming that this  
 11 was a trust expense -- and we do have evidence that  
 12 shows that they went on a trip after their father  
 13 passed away, paid for a trip for all the trustees  
 14 to go somewhere -- we just need substantiation that  
 15 these were a trust expense.  
 16 Because understand, we have six  
 17 beneficiaries, not just three. Let's not confuse  
 18 the issue. So if we see the trustees of the trust  
 19 spending money to go on a vacation or a memorial  
 20 trip, whatever it may be, we need to be able to  
 21 detail this is a trust expense.  
 22 Or alternatively, this is -- were the  
 23 original trust assets when we took over. This is  
 24 what happened to the trust assets. When the  
 25 handoff then occurs to Mr. Monte, Mr. Monte can

Page 16

1 then be forced to account for those assets between  
 2 the time that he took over as trustee and the time  
 3 that my client took over as trustee.

4 There are outstanding demands and  
 5 requests for information. And, like I said, we get  
 6 these questions answered, we get these documents  
 7 turned over, there's no reason for litigation in  
 8 this case.

9 But the trust allows for beneficiaries to  
 10 demand an accounting. There's an outstanding  
 11 demand. Statute allows for a demand for  
 12 accounting. So all in all, we need this  
 13 information. And we're able to either force it  
 14 through the Court, which is why we're asking for  
 15 the Court's assistance or they can do it  
 16 voluntarily.

17 But simply saying we're not going to give  
 18 it over to you is not covered by -- or saying is  
 19 not a defense on either the trust or the statute.  
 20 So the first thing we've asked for is information.  
 21 We need that information.

22 The second thing we've asked for is that  
 23 we have assets that are outstanding that are  
 24 sitting in a trust account. Well, as the trustee,  
 25 we have two problems. We have to preserve the

Page 17

1 assets. Now we have a house here in Nevada that is  
 2 currently being the subject to utility liens  
 3 because they have -- even though one of the  
 4 beneficiaries was living in it for a period of  
 5 time, they didn't pay any utilities on the  
 6 property.

7 So now we have Republic Services letting  
 8 us know, we're filing a lien on the property that  
 9 can give us the right to sale. And we don't know  
 10 how many other bills are outstanding with it.

11 Well, my client has the option. Either  
 12 we let these liens go forward and we continue to  
 13 put the property of the trust at risk or she loans  
 14 her own money. Because the October 31st order from  
 15 this Court puts a freeze order on everything. And  
 16 Mr. Payne has locked up the assets in his trust  
 17 account. At a minimum --

18 THE COURT: What would it take to save  
 19 that house?

20 MR. KIRSCHNER: I think --

21 THE COURT: At a minimum.

22 MR. KIRSCHNER: I think at this point  
 23 it's probably between a thousand and \$2,000. I'm  
 24 shooting from the hip on that one, Your Honor. I  
 25 apologize I don't have the exact number.

Page 18

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| <p>1 But we want to be able to, first, make<br/>2 sure that any utilities, any liens against the<br/>3 house right now are being paid. The house is<br/>4 vacant so we're not asking for somebody to live in<br/>5 the house. My client isn't asking to live in the<br/>6 house. We're not asking to put a beneficiary in<br/>7 it. We just want the assets preserved. That's the<br/>8 first job of us as a trustee.</p> <p>9 Secondly, we have assets sitting in an<br/>10 IOLTA account where the interest that's being<br/>11 earned on the money, which should go to the<br/>12 beneficiaries is instead going to the Nevada State<br/>13 Bar. And although on a personal level I have no<br/>14 problem with that. As my client as a beneficiary,<br/>15 I have to account for those interests.</p> <p>16 We at a minimum need to stick that in an<br/>17 account that's frozen for the trust. The interest<br/>18 on it is incurred for the beneficiaries during that<br/>19 period of time. This is part of preserving the<br/>20 assets.</p> <p>21 As part of the preservation, if we're<br/>22 looking back and we start discovering, oh, my<br/>23 goodness, there was either thousands of dollars or<br/>24 tens of thousands of dollars that were taken from<br/>25 prior trustees.</p> <p style="text-align: right;">Page 19</p>       | <p>1 MR. KIRSCHNER: The claim as I understand<br/>2 it from Mr. Joey Powell was that the prior settler<br/>3 of the trust, Ms. Nancy Christianson is -- well,<br/>4 she took issue, and I guess the estate would take<br/>5 issue with the fact that there were distributions<br/>6 that she was demanding during her lifetime. And<br/>7 those distributions were never made during the time<br/>8 --</p> <p>9 THE COURT: They were never made. They<br/>10 were never resolved. They were never litigated.<br/>11 They were just discussed, and then she died. So I<br/>12 don't know what Monte Reason's claim would be to<br/>13 file a lawsuit except to eat up the estate.</p> <p>14 MR. POWELL: Your Honor, if I could jump<br/>15 in here. Let's use, I guess, more of a common,<br/>16 simple sorts of --</p> <p>17 THE COURT: Well, that's okay. We don't<br/>18 need to address it today. I'm just saying I don't<br/>19 know as of today what reason he would file a<br/>20 lawsuit for the time he was a trustee when I don't<br/>21 think he was entitled to some unless he wants to<br/>22 say that his mother should have received something<br/>23 and it didn't happen.</p> <p>24 MR. POWELL: That's exactly it,<br/>25 Your Honor.</p> <p style="text-align: right;">Page 21</p> |
| <p>1 Well, what we may ask is can we get a<br/>2 surcharge against them. But I'm not prepared to<br/>3 argue that today. And I don't want to argue that<br/>4 because we don't have the information to be able to<br/>5 make an educated claim on either way.</p> <p>6 We also have the problem of liability.<br/>7 So I guess Mr. Powell has stated that he's worried<br/>8 that his client may have a claim on behalf of his<br/>9 client's estate that whether there's bad actions by<br/>10 the trustee.</p> <p>11 I need to get that resolved before any<br/>12 distributions are done. Because if he's going to<br/>13 sue somebody, particularly even the trust, for not<br/>14 distributing to his clients, I need to make sure<br/>15 that liability is settled and outstanding prior to<br/>16 me making a distribution. Because if my client<br/>17 distributes while there's an outstanding liability,<br/>18 it might suspect her to become a liability.</p> <p>19 THE COURT: Well, I don't know what<br/>20 Monte Reason's claim would be because he was only<br/>21 the trustee -- and there wasn't, I don't think, any<br/>22 money due to him --</p> <p>23 MR. KIRSCHNER: I think that the claim --</p> <p>24 THE COURT: -- at the time for those six<br/>25 months he was a trustee.</p> <p style="text-align: right;">Page 20</p> | <p>1 THE COURT: For during those six months.<br/>2 MR. POWELL: That's exactly it.</p> <p>3 THE COURT: And he would do more damage<br/>4 to the trust and to his mother's trust and the<br/>5 father's trust than what he would be claiming. So<br/>6 think about what you're doing.</p> <p>7 Counselor, would you like to address what<br/>8 he stated? He would like some money released to<br/>9 save the house and pay any -- everything and<br/>10 anything that's necessary within reason to preserve<br/>11 the estate. And we would also like the money<br/>12 transferred to a different account than your trust<br/>13 account.</p> <p>14 Is that a fair --</p> <p>15 MR. KIRSCHNER: Yes, Your Honor. We're<br/>16 asking it to be put into a blocked account, which I<br/>17 think was under the original court orders.</p> <p>18 THE COURT: Well, I want to see why not.</p> <p>19 MR. PAYNE: Your Honor, let me just back<br/>20 up and let me make one observation about Nancy's<br/>21 entitled her debts to be paid. She only had a<br/>22 right to income. So your comment about having her<br/>23 attorney's --</p> <p>24 THE COURT: Like I told him, today is not<br/>25 the day --</p> <p style="text-align: right;">Page 22</p>                                                 |

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| <p>1 MR. PAYNE: No, I know that, but --</p> <p>2 THE COURT: I just -- I'm telling</p> <p>3 everyone here they better think carefully about</p> <p>4 bringing lawsuits to discuss that six-month period.</p> <p>5 Because it's going to be more expensive than it's</p> <p>6 going to be productive.</p> <p>7 MR. PAYNE: And I agree, Your Honor.</p> <p>8 THE COURT: I don't see much of a damage</p> <p>9 there, and it was never litigated. I don't even</p> <p>10 know if he can litigate for his mother, and even</p> <p>11 his mother can litigate for something now that</p> <p>12 she's deceased.</p> <p>13 MR. PAYNE: Right. And I agree. And I'm</p> <p>14 trying to get to the end result. And the end</p> <p>15 result is that upon mother's dying, Rosemary</p> <p>16 Christian Keach is to get 20 percent. Raymond is</p> <p>17 to get 20 percent.</p> <p>18 THE COURT: They're trying to get to the</p> <p>19 same point, but they're saying we got to know what</p> <p>20 first.</p> <p>21 MR. PAYNE: What difference does it make?</p> <p>22 It makes absolutely no difference on this side of</p> <p>23 the balance sheet except for attorneys' fees. And</p> <p>24 that's what this is all about. This is a grab to</p> <p>25 see if they can bring in some assets because at</p> <p style="text-align: right;">Page 23</p> | <p>1 the attachments. It's not there, so.</p> <p>2 THE COURT: I've heard enough. What I'm</p> <p>3 going to do, I'm going to order whatever's in the</p> <p>4 trust, your trust account to be transferred to an</p> <p>5 interest-bearing account and it will be frozen.</p> <p>6 Once you open that account, provide them</p> <p>7 the account number and the amount that you put into</p> <p>8 that account.</p> <p>9 MR. PAYNE: What do we do for a taxpayer</p> <p>10 ID number?</p> <p>11 MR. KIRSCHNER: Does the trust have the</p> <p>12 EIN?</p> <p>13 THE COURT: Okay. We can put --</p> <p>14 MR. POWELL: I don't know if it was --</p> <p>15 MR. KIRSCHNER: Okay. If not we can</p> <p>16 obtain an EIN for the trust, Your Honor, to put</p> <p>17 that on it.</p> <p>18 THE COURT: How long?</p> <p>19 MR. KIRSCHNER: I would say if we can 30</p> <p>20 to 45 days on that, Your Honor.</p> <p>21 MR. PAYNE: Your Honor, I was just</p> <p>22 informed that she has one. So we already have one.</p> <p>23 THE COURT: Okay.</p> <p>24 MR. KIRSCHNER: If we have one, we can</p> <p>25 use the EIN for the account.</p> <p style="text-align: right;">Page 25</p>                                          |
| <p>1 this point --</p> <p>2 THE COURT: Well, it may make a</p> <p>3 difference if there was \$500,000 to start at one</p> <p>4 time and your clients took \$400,000 and there's</p> <p>5 only a hundred --</p> <p>6 MR. PAYNE: Your Honor, we filed -- you</p> <p>7 ordered us to file an inventory --</p> <p>8 THE COURT: Well, all they want is</p> <p>9 discovery. They may not object.</p> <p>10 MR. PAYNE: What they want is --</p> <p>11 THE COURT: They want an accounting and</p> <p>12 they may not object after that.</p> <p>13 MR. PAYNE: Your Honor, we already</p> <p>14 provided an accounting. We gave the accounting.</p> <p>15 We filed the accounting on October 25th, 2017. We</p> <p>16 attached all the receipts. What they're saying is</p> <p>17 -- and somebody jumps into this late and says</p> <p>18 there's this missing information. I don't know</p> <p>19 what he's talking about. Okay?</p> <p>20 MR. HOLYOAK: Again, Your Honor, I know</p> <p>21 I'm not here with standing, but --</p> <p>22 MR. KIRSCHNER: Here, here. Let me say.</p> <p>23 There were no receipts attached to it. It's an</p> <p>24 equivalent of an Excel spreadsheet, Your Honor.</p> <p>25 I've reviewed the accounting. I've reviewed all</p> <p style="text-align: right;">Page 24</p>                                             | <p>1 THE COURT: So this will be done within</p> <p>2 the week, seven days.</p> <p>3 MR. PAYNE: Your Honor, I'm a sole</p> <p>4 practitioner. Just give me a little due diligence.</p> <p>5 I've got to go down to U.S. Bank. If for some</p> <p>6 reason they're not there or the person is not</p> <p>7 there. I will do my best, but I'm a sole</p> <p>8 practitioner.</p> <p>9 THE COURT: Seven days.</p> <p>10 MR. PAYNE: Seven banking days, please?</p> <p>11 THE COURT: Okay. Seven banking days</p> <p>12 which will put it next Friday.</p> <p>13 MR. PAYNE: I'll do the best I can.</p> <p>14 THE COURT: Thursday, Friday of this</p> <p>15 week, five days next week.</p> <p>16 MR. KIRSCHNER: Is it a matter -- I guess</p> <p>17 it's a matter of time to get the funds over to the</p> <p>18 account?</p> <p>19 THE COURT: I don't know exactly, but</p> <p>20 he's a sole practitioner. I guess he'll have to do</p> <p>21 it himself and get the accounting done.</p> <p>22 But I want that information in your hands</p> <p>23 after the account is made within two weeks from</p> <p>24 today's date so you know what amount was</p> <p>25 transferred.</p> <p style="text-align: right;">Page 26</p> |



1 MR. KIRSCHNER: Your Honor, can we  
2 release at least \$5,000 of that for administrative  
3 costs at least for the house so we don't have any  
4 issue with my client paying that out of pocket for  
5 any bills or liens on the property?  
6 MR. PAYNE: Your Honor, my clients are  
7 the ultimate beneficiaries. They --  
8 THE COURT: Well, yeah, but we need --  
9 they're going to get the house if they save it. If  
10 they lose the house, they're going to be harmed  
11 too.  
12 MR. PAYNE: Right. But we're not aware  
13 of any bills that haven't been paid.  
14 MS. CHRISTIAN-PAYNE: There was the  
15 Republic bill that we never received.  
16 MR. PAYNE: Trash lien?  
17 MS. CHRISTIAN-PAYNE: So it's for two  
18 quarters, sir.  
19 THE COURT: Well, we can handle it this  
20 way. You'll be responsible for all the bills.  
21 MS. CHRISTIAN-PAYNE: I understand, sir.  
22 THE COURT: And if there's damage done to  
23 the trust because you didn't handle the bills and  
24 pay them, then you will be personally responsible  
25 for the damage.

Page 27

1 MR. PAYNE: That's fine. They're the  
2 beneficiaries, their three brothers -- the three  
3 siblings.  
4 MR. KIRSCHNER: Your Honor, if it's  
5 \$5,000 to just release to pay any liens on the  
6 property, any outstanding bills, any property taxes  
7 as it's ongoing as we're currently -- doing  
8 whatever, however long it takes them to get this  
9 matter.  
10 I really don't want my client having to  
11 pay out of her own pocket for property taxes on it  
12 or any utilities. That's not fair to her as the  
13 trustee. Anybody, regardless of whether it was  
14 their client who's trustee, Monte as trustee or my  
15 client as trustee somebody would have to pay these  
16 bills.  
17 We also have a California property that  
18 we don't know any liabilities at. I'm not asking  
19 for hundreds of thousands of dollars to be released  
20 to my client unchecked. But at least a few  
21 thousand dollars so that she can pay any  
22 outstanding liabilities on these properties so we  
23 don't lose it to somebody got getting a bill or  
24 somebody stupidly forgetting something and having  
25 something happen to the property.

Page 28

1 Whether it's insurance costs that are  
2 coming up, whether we have any renewals going on.  
3 This needs to be done. This is standard stuff for  
4 a trustee. So I don't understand why even a few  
5 thousand dollars can't be released to pay  
6 administrative costs while we're resolving these  
7 issues.

8 I just don't want to have property risked  
9 regardless of whether they're the beneficiaries or  
10 somebody else is. We have six people involved in  
11 this trust.

12 THE COURT: I'm going to release 5,000 to  
13 an account that you're going to open up for the  
14 trust. And it's not for administrative expenses  
15 like you mentioned by mistake maybe.

16 MR. KIRSCHNER: Not attorneys' fees.

17 THE COURT: Not attorneys' fees, not  
18 administrative fees. It's to save whatever  
19 property needs to be saved, whatever bills need to  
20 be paid. And you're going to be fully responsible  
21 for the accounting for every penny of that 5,000,  
22 okay?

23 MR. KIRSCHNER: No problem with that,  
24 Your Honor.

25 THE COURT: We don't need more accounting

Page 29

1 problems.  
2 MR. PAYNE: For the record, Your Honor,  
3 my client has been administering that California  
4 asset. She knows the tenants there. She's been  
5 collecting the rent. The rent is deposited into  
6 the Chase account and the mortgage is being paid  
7 every month at \$326.

8 There was one account that I disclosed  
9 was not subject to the freeze order because this  
10 account has been -- was it established by your dad  
11 or established by you?

12 MS. CHRISTIAN-PAYNE: Yes.

13 MR. PAYNE: It was established by the  
14 decedent while he was alive. They collected the  
15 rent, deposited it into that account and the  
16 mortgage payment was made out of Wells Fargo.

17 The tenant has been there for how many  
18 years?

19 MS. CHRISTIAN-PAYNE: Eleven, sir.

20 MR. PAYNE: And long is his lease?

21 MS. CHRISTIAN-PAYNE: It's never ending.  
22 My dad said let them live there as long as they pay  
23 the rent.

24 MR. PAYNE: So this has been a long-term  
25 relationship that's been set up for many, many

Page 30

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| <p>1 years. There's no reason to upset that current<br/>2 mechanism unless Your Honor thinks that they need<br/>3 to. And that was something that was established<br/>4 while Mr. Christianson was alive and continued on<br/>5 while the --</p> <p>6 THE COURT: Are there any bills or debt<br/>7 on that?</p> <p>8 MR. PAYNE: There's a mortgage payment.<br/>9 MS. CHRISTIAN-PAYNE: There's the<br/>10 mortgage.</p> <p>11 THE COURT: Yeah, but are you behind?<br/>12 MR. PAYNE: No.<br/>13 MS. CHRISTIAN-PAYNE: No, sir.<br/>14 THE COURT: Is there any lien notice on<br/>15 that?</p> <p>16 MS. CHRISTIAN-PAYNE: No, sir.<br/>17 MR. KIRSCHNER: Your Honor, that's one of<br/>18 the problems is that we're having what appears to<br/>19 be a multi-faceted trusteeship. That's something<br/>20 that should have been handled by his client while<br/>21 they were the trustee. It needs to be handle by my<br/>22 client as the trustee.</p> <p>23 We don't have a de facto trustee under<br/>24 the trust. There's nothing in there about that.<br/>25 We need that information turned over to us. The</p> <p style="text-align: right;">Page 31</p>                                                                                                                                               | <p>1 THE COURT: We never decided it.<br/>2 MR. KIRSCHNER: So we're essentially --<br/>3 THE COURT: That was the litigation that<br/>4 was ongoing and then she died a couple of weeks<br/>5 ago.</p> <p>6 MR. KIRSCHNER: So we're going for a<br/>7 standing question. Whether or not my client has<br/>8 standing to appear before the action, whether Monte<br/>9 had action to appear before this Court as a<br/>10 successor trustee. If we want to do that, that's a<br/>11 pure contractual issue of law which is that the<br/>12 trust by itself allowed for this modification<br/>13 taking it by it --</p> <p>14 THE COURT: I don't want to argue it<br/>15 right now. I'm just saying it was never decided.<br/>16 MR. KIRSCHNER: We are happy to have a<br/>17 hearing on that issue, Your Honor, because we think<br/>18 that the trust itself is absolutely clear and<br/>19 unambiguous --</p> <p>20 THE COURT: I think you want hearings on<br/>21 everything, and by the time these people get done,<br/>22 your client's not going to get much left. They're<br/>23 not going to have much left. So I think the family<br/>24 needs to discuss if they want to litigate this when<br/>25 we have a trust that spells everything out.</p> <p style="text-align: right;">Page 33</p> |
| <p>1 payment system, the bank accounts everything that's<br/>2 part of the trust needs to be turned over. Because<br/>3 these are trust assets is now responsible for.<br/>4 What we can't have is this de facto trustee.</p> <p>5 THE COURT: Well, here's the big problem,<br/>6 you know, we kind of skipped over. He became<br/>7 trustee temporarily while we litigated whether he<br/>8 should have been trustee at all. And in the<br/>9 meantime the mother dies. So we kind of like<br/>10 skipped the first point.</p> <p>11 Okay. You're the trustee de facto<br/>12 because of the language in the trust, which we have<br/>13 never addressed and made a ruling on or a decision.<br/>14 They say it was misread, typo, and it doesn't make<br/>15 any sense to limit someone's proceeds from a trust<br/>16 and then make him possible the trustee when that<br/>17 whole purpose of it was to protect the trust from<br/>18 his client.</p> <p>19 MR. PAYNE: Well, first, I would say,<br/>20 Your Honor --</p> <p>21 THE COURT: (Inaudible) argument.<br/>22 MR. KIRSCHNER: I understand. First, the<br/>23 terms of the trust control as far as their claims<br/>24 of a scribe's error, you have to look for either<br/>25 patent ambiguity --</p> <p style="text-align: right;">Page 32</p> | <p>1 We do need an accounting. And we're<br/>2 going to order the accounting. I want a complete<br/>3 accounting during their period of time. And then<br/>4 once you get that accounting done. I'm going to<br/>5 give them -- how much time do you need for an<br/>6 accounting? I'm thinking 30 to 45 days because I<br/>7 want to get this resolved. Counselor?</p> <p>8 MR. PAYNE: I've done the accounting. I<br/>9 don't know what else I need to do.</p> <p>10 THE COURT: I think they want backup to<br/>11 your numbers.</p> <p>12 MR. KIRSCHNER: The accounting needs to<br/>13 stretch back to the time of the trust formation<br/>14 when he became trustee first the time period. So<br/>15 it needs to be longer.</p> <p>16 Two, we need substantiation of documents<br/>17 for anything in there. So if you're talking about<br/>18 the two things we need from the accounting from<br/>19 them, is we need -- that the time period has to be<br/>20 correct and then we need substantiation of the<br/>21 documents.</p> <p>22 Simply sending us an Excel spreadsheet is<br/>23 not an accounting. We as the successor trustees<br/>24 are allowed to ask for the substantiation.<br/>25 THE COURT: Well, you will write a letter</p> <p style="text-align: right;">Page 34</p>    |

1 explaining what you need --  
 2 MR. KIRSCHNER: This has been written to  
 3 them as of October and September of this year. I  
 4 will renew the letter to them today.  
 5 THE COURT: And they will provide that  
 6 information to you within 45 days. And thereafter  
 7 how much time will you have for your client to  
 8 follow up from their accounting for your time?  
 9 MR. POWELL: I can do that basically the  
 10 next day because my client never had access to any  
 11 of the funds.  
 12 THE COURT: So after they've done there's  
 13 in 45 days, you will have 15 days to file your  
 14 accounting.  
 15 MR. POWELL: Okay.  
 16 MR. KIRSCHNER: Your Honor, as far as the  
 17 assets that are currently being administered --  
 18 THE COURT: You will receive the \$6,000  
 19 to pay whatever bills may be due and owing.  
 20 MR. KIRSCHNER: And for the record  
 21 regarding the California property and control of  
 22 the California property that's under the trust, are  
 23 we also getting that turned over to the successor  
 24 trustee?  
 25 THE COURT: No. They're paying the

Page 35

1 bills. They're going to continue to pay the bills.  
 2 If you have any problems, send them a  
 3 letter. Make sure you keep it so we'll have the  
 4 letter as evidence that you requested additional  
 5 sums of money.  
 6 But there's not going to be anymore sums  
 7 of money released without a petition to the Court.  
 8 MR. KIRSCHNER: I understand, Your Honor.  
 9 THE COURT: You're to keep accounting of  
 10 the \$6,000 and what bills you pay from that.  
 11 You're responsible, you say, for the  
 12 California property? Is that what we're talking  
 13 about the rent?  
 14 MS. CHRISTIAN-PAYNE: Yes, sir.  
 15 THE COURT: So you're going to be  
 16 responsible for that, correct?  
 17 MS. CHRISTIAN-PAYNE: Yes, sir.  
 18 THE COURT: So they're going to be  
 19 responsible for the California property. Do we  
 20 have one property or city so we can make sure we  
 21 put it on the record and they're clear that they're  
 22 not supposed to pay any bills on that property?  
 23 MS. CHRISTIAN-PAYNE: Yermo, California,  
 24 is where the property is at.  
 25 THE COURT: Where is that again?

Page 36

1 MS. CHRISTIAN-PAYNE: Yermo, California.  
 2 THE COURT: Okay. You understand that,  
 3 Counselor?  
 4 MR. KIRSCHNER: Yes, Your Honor.  
 5 THE COURT: Okay. They're going to be  
 6 responsible for that property and the rent  
 7 collection.  
 8 And you're going to keep accounting of  
 9 the rent collection and the bills.  
 10 MR. KIRSCHNER: Your Honor, and can we  
 11 make sure that the California property is included  
 12 in the accounting they're going to be submitting to  
 13 us and all the information on it? We're not asking  
 14 for control of it, but as part of the accounting.  
 15 THE COURT: No. Yeah, well, if it's part  
 16 of the trust, it's part of the trust. And that's  
 17 what the accounting is about.  
 18 MR. PAYNE: There's one other issue,  
 19 Your Honor, here, just so that we clarify. The  
 20 Bluff Point property --  
 21 THE COURT: The what?  
 22 MR. PAYNE: The Bluff Point, the property  
 23 here in Las Vegas. Just by way of background --  
 24 THE COURT: Is that the one that's in  
 25 arrears?

Page 37

1 MR. KIRSCHNER: That's the one that's  
 2 currently in arrears.  
 3 THE COURT: Okay.  
 4 MR. KIRSCHNER: And I think I know what  
 5 he's going to say, but I'll let you go ahead and  
 6 say it first. There was the freeze order from  
 7 October 31st.  
 8 There was a listing of the property that  
 9 I think -- it won't -- it's being stopped because  
 10 it was subject to the October 31st, 2017, freeze  
 11 order. So they had filed a lis pendens on the  
 12 property in order to stop the sale. I'm telling  
 13 the Court now, now that I'm in as the trustee's  
 14 counsel and we have a trustee, the sale is being  
 15 stopped because, one, we don't have a petition  
 16 before this Court to do it.  
 17 If there were going to be any requests to  
 18 sell a trust asset, there would be a petition  
 19 before this Court to do it because we have a freeze  
 20 order in place.  
 21 THE COURT: And you were going to say?  
 22 MR. PAYNE: Monte with unbeknownst to us  
 23 I suspect before his mother died, listed the house  
 24 for sale. I reached out to Mr. Powell is said now  
 25 that Ms. Christianson has passed, my clients have

Page 38

1 the rights to that house. Take it off the market.  
 2 And then new counsel came in here, so here we're  
 3 at.  
 4 Full disclosure, there was a -- Raymond,  
 5 my other client, was living in the house. Was the  
 6 subject of an eviction several weeks ago, a month  
 7 ago. He was evicted from the house. The Court  
 8 ruled that because Mrs. Christianson was alive she  
 9 had the right to occupy the house. So the house is  
 10 now sitting vacant.  
 11 So I just wanted to inform the Court.  
 12 I'm not sure who's really in control of that at  
 13 this point. The house is not in arrearages. The  
 14 only thing is there's a lien from --  
 15 THE COURT: Is it paid? The mortgage?  
 16 Is it fully paid?  
 17 MR. PAYNE: Oh, it's --  
 18 MS. CHRISTIAN-PAYNE: It's paid off, sir.  
 19 MR. PAYNE: -- paid off. There is a  
 20 trash lien, I guess is the only lien that I'm aware  
 21 of.  
 22 MR. KIRSCHNER: And quarterly property  
 23 taxes that have to be paid.  
 24 MR. PAYNE: That was my next point is, is  
 25 that in the interim we don't want the house sold.

Page 39

1 My clients are the beneficiaries.  
 2 THE COURT: It's not going to be sold.  
 3 MR. PAYNE: Correct.  
 4 THE COURT: Okay.  
 5 MR. PAYNE: And so we need to take it off  
 6 the market.  
 7 THE COURT: Now, who's going to use it?  
 8 MR. PAYNE: Well, that's why I'm asking  
 9 you. I'm trying to anticipate another dispute. My  
 10 clients are the residual beneficiaries of this  
 11 trust. It flows through to them. The three of  
 12 them equally would take this house. They don't  
 13 want it sold.  
 14 Without violating any of Your Honor's  
 15 orders or the order that he just referenced or the  
 16 Justice Court action, I wanted to ask the Court if  
 17 it was okay to reoccupy the house or re-possess it  
 18 or not? Because it's in limbo.  
 19 THE COURT: Well, let's see.  
 20 MR. PAYNE: They've been paying all the  
 21 bills up until the eviction.  
 22 MR. POWELL: Your Honor, just to be clear  
 23 and put it on the record as well, there's also a  
 24 dispute as to the proceeds of the sale of the home.  
 25 THE COURT: What home? We're not going

Page 40

1 to sell it.  
 2 MR. POWELL: His current home. Exactly.  
 3 Well, there's also issues because the way that the  
 4 trust was written is -- and you wouldn't, I don't  
 5 think, know this unless it was pointed out to you,  
 6 the original home that was referenced was a  
 7 property called Dancing Vines. That was sold while  
 8 Mr. Christian and Mrs. Christian were still alive.  
 9 That house then turned into the Bluff Point Drive  
 10 house.  
 11 So the question there becomes is based on  
 12 the way that the trust is written whether or not  
 13 the sale of that property is then to be used to  
 14 satisfy the specific percentages that are provided  
 15 for to receive the sales proceeds of the home.  
 16 The question becomes is what home were we  
 17 talking about and what was the intent there.  
 18 That's not just a clear cut, clear and dry issue.  
 19 THE COURT: All we're trying to figure  
 20 out right now is who's going to live in the house.  
 21 MR. POWELL: I understand. I just wanted  
 22 --  
 23 THE COURT: In the next 90 days.  
 24 MR. POWELL: I just wanted to point that  
 25 out that when Mr. Payne is representing that, oh,

Page 41

1 this is his client's house --  
 2 THE COURT: Yeah, there's a weird couple  
 3 of sentences in that area.  
 4 MR. POWELL: Yes. Yeah. So I just  
 5 didn't know if you were aware that the Dancing  
 6 Vines --  
 7 THE COURT: I remember reading it and  
 8 saying I don't know what this means exactly because  
 9 this means hold it, if we do sell it before I die,  
 10 hold that money --  
 11 MR. POWELL: Correct. And there's a  
 12 provision in there that says after the death --  
 13 THE COURT: And it was sold before he  
 14 died, correct?  
 15 MR. PAYNE: Yes.  
 16 MR. POWELL: The Dancing Vines was, yes.  
 17 MR. KIRSCHNER: And, Your Honor, before  
 18 anybody occupies any property I would request that  
 19 a proper petition and/or request be made to the  
 20 trustee so we can get that resolved. Only because  
 21 asking somebody to move in after they were just  
 22 evicted a few days ago, I need to find out what's  
 23 going on with that. I don't know the grounds for  
 24 the eviction yet or what occurred. Whether they  
 25 were not paying bills or what --

Page 42

1 THE COURT: What was the purpose? Do you  
2 know why he was evicted?  
3 MR. POWELL: I can tell you because -- it  
4 was a co-petition, Your Honor. The reason why is  
5 because Nancy Christian was entitled to live in the  
6 home and she had been thrown out of the home by  
7 Mr. Christian, Raymond Christian, Jr. And so the  
8 part of the petition was to gain access to the  
9 home, the trustee to gain access to the home.  
10 THE COURT: But she's died.  
11 MR. POWELL: Correct. But, again, there  
12 was still damage that she had -- she wasn't allowed  
13 to live in the home.  
14 THE COURT: Is your client living some  
15 place now?  
16 MR. POWELL: Sorry?  
17 THE COURT: Where is your client living?  
18 MR. POWELL: He does not live in that  
19 property.  
20 THE COURT: Well, where is he living --  
21 MR. POWELL: The condo that he's been  
22 living in that also Nancy --  
23 THE COURT: So who do you think is going  
24 to move into the place?  
25 MR. PAYNE: Well, I just didn't want a

Page 43

1 dispute if we re-possess the house or reoccupy the  
2 house. I didn't want to violate any court order.  
3 And so I was just informing the Court.  
4 Raymond lived there for how long? Two  
5 years?  
6 MS. CHRISTIAN-PAYNE: A year and a half.  
7 MR. PAYNE: A year and a half. Their  
8 brother lived there pursuant to an agreement with  
9 the father.  
10 THE COURT: And when did he move out?  
11 MR. PAYNE: He was evicted, what, a month  
12 ago?  
13 MR. POWELL: Approximately. It was a few  
14 weeks ago.  
15 MR. PAYNE: December 18th. And he was  
16 represented by counsel. So after me moved out,  
17 then Monte lists the house for sale, and here we  
18 are.  
19 MS. CHRISTIAN-PAYNE: Can I say  
20 something?  
21 THE COURT: Yeah.  
22 MS. CHRISTIAN-PAYNE: So he did move out  
23 by the dateline. Then the house -- we found out  
24 our mother passed away the week before. So he was  
25 moving out. He had another residence. We didn't

Page 44

1 take everything out because we figured our mom  
2 passed away and so now it's our house.  
3 A week after the eviction, there was a  
4 seal put on the house. We never got to get the  
5 last bits of our property. But we went to go check  
6 the mail to make sure we had our mail, and then be  
7 found out that there's a sign in the yard.  
8 So the property that we had left behind,  
9 we don't know what happened to it. I don't know if  
10 it got thrown away. It was my dad's papers, a  
11 couple of things from our family stuff. So we want  
12 to re-possess the house so we can go back and make  
13 sure we can get our things back.  
14 THE COURT: So Raymond's not going to  
15 move back in?  
16 MS. CHRISTIAN-PAYNE: No, sir.  
17 THE COURT: Okay. Well, you and the  
18 attorney for the trustee will make arrangements for  
19 a time certain where you can go back and look at  
20 the place and remove your personal property and  
21 whatever is under discussion, you just take  
22 pictures of. And you can move them for protection.  
23 But some items will be given to you  
24 outright. Some items may be under discussion with  
25 the trustee. But you can move them because

Page 45

1 otherwise they're going to be left in a vacant  
2 home. And whatever you have under discussion, make  
3 sure you take pictures of for future litigation on  
4 that.  
5 MR. KIRSCHNER: And, Your Honor, we're  
6 not going to withhold them getting their personal  
7 belonging from them unreasonably, Your Honor.  
8 We're trying to do this by the book.  
9 THE COURT: Well, you guys have never  
10 agreed on anything, so I'm glad there's some  
11 agreement.  
12 I'm going to send this case to a  
13 settlement judge.  
14 MR. KIRSCHNER: Could we at least get an  
15 opportunity first to get --  
16 THE COURT: You can get the discovery  
17 done.  
18 MR. KIRSCHNER: Yeah, if we can get  
19 discovery, give us about 120 days, I think,  
20 Your Honor, is more than reasonable for anything  
21 that we could potentially want. And that's only  
22 really if we don't get the information we need from  
23 the other side that we're going to start engaging  
24 in discovery.  
25 So for right now, we're going to give the

Page 46

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1 opportunity for them to provide us the information<br/>2 we need and then and only then will we decide, hey,<br/>3 we've got to issue a subpoena to find out further<br/>4 substantiating information.<br/>5 So it's not the goal to litigate to start<br/>6 with. The goal is to try to collaborate, and then<br/>7 if collaboration does not work, then litigate.<br/>8 THE COURT: So here's the situation. You<br/>9 are going to have to seriously think about that<br/>10 six-month period if you and you would like to bring<br/>11 a lawsuit regarding your client, the mother, and<br/>12 your -- I don't know what you --<br/>13 MR. POWELL: He's the trustee of his<br/>14 mother --<br/>15 THE COURT: But I don't know what injury<br/>16 was done to your client.<br/>17 MR. POWELL: And I can brief that and,<br/>18 you know.<br/>19 THE COURT: Yeah.<br/>20 MR. HOLYOAK: If I may clarify,<br/>21 Your Honor --<br/>22 THE COURT: But if we have to go that<br/>23 far, we're going to have to go back all the way<br/>24 back to point one is whether your client should<br/>25 have even been the trustee temporarily based upon</p> <p style="text-align: right;">Page 47</p> | <p>1 MR. HOLYOAK: -- that's fixed with the<br/>2 new trustee. We would anticipate the payment.<br/>3 THE COURT: Okay. Well, how much assets<br/>4 do we have with property and trust?<br/>5 MR. KIRSCHNER: Well, we need a valuation<br/>6 of the California house. That's a complete<br/>7 question mark on that point. As far as the house<br/>8 in Las Vegas, I think --<br/>9 MR. POWELL: I believe 300,000 was kind<br/>10 of the estimated value.<br/>11 MR. KIRSCHNER: The 300,000 for that, and<br/>12 then we have approximately \$400,000 cash. So we're<br/>13 going to be closing in on probably a million,<br/>14 Your Honor.<br/>15 MR. PAYNE: Your Honor, the inventory<br/>16 filed \$796,748.<br/>17 THE COURT: Does that include the<br/>18 California property?<br/>19 MR. PAYNE: Yes, Your Honor.<br/>20 THE COURT: Okay.<br/>21 MR. KIRSCHNER: We're just looking for<br/>22 substantiation for everything, Your Honor.<br/>23 THE COURT: Okay. So you'll be receiving<br/>24 an order soon that probably Justice Becker will be<br/>25 hearing your case if you guys don't resolve it</p> <p style="text-align: right;">Page 49</p>                  |
| <p>1 the language of the trust.<br/>2 So all I'm asking is you seriously<br/>3 consider is this going to be a productive lawsuit<br/>4 or is this just going to be resulting in money<br/>5 being transferred out of the trust from your client<br/>6 and from this side.<br/>7 MR. KIRSCHNER: Understood.<br/>8 THE COURT: For no good reason.<br/>9 Is Nancy Becker, does anyone have any<br/>10 issues for her appointment to be a settlement<br/>11 judge?<br/>12 MR. POWELL: I like Nancy Becker. So<br/>13 she's got my vote of confidence.<br/>14 MR. KIRSCHNER: No objection, Your Honor.<br/>15 MR. PAYNE: No objection, Your Honor.<br/>16 MR. HOLYOAK: To the extent that we're<br/>17 still in it if our attorneys' fees haven't been<br/>18 paid by that point, I don't have any objection.<br/>19 THE COURT: Well, we haven't had a<br/>20 petition, have we?<br/>21 MR. HOLYOAK: We haven't, but the former<br/>22 trustee Monte has approved our fees and assuming<br/>23 that --<br/>24 MR. KIRSCHNER: I need to see the fees<br/>25 before I can approve, Your Honor.</p> <p style="text-align: right;">Page 48</p>                                                                | <p>1 among yourselves.<br/>2 I mean, we have brothers and sisters.<br/>3 We're going to do the accounting. We're going to<br/>4 have the accounting, and we're going to follow the<br/>5 language of the trust. So I don't know why this<br/>6 has to be turned into a federal case.<br/>7 MR. KIRSCHNER: And, Your Honor, if you'd<br/>8 like for today I can take the first crack at the<br/>9 order and pass it back and forth between me and<br/>10 Mr. Cary with the results of what you're asking<br/>11 for.<br/>12 Mr. Payne. I apologize.<br/>13 MR. PAYNE: That's fine.<br/>14 MR. HOLYOAK: Would Your Honor like me to<br/>15 submit a petition for our fees? Is that what I'm<br/>16 reading into what your question was earlier?<br/>17 THE COURT: Well, considering everything,<br/>18 I think you should file a petition and so we can<br/>19 have objections to it and we can have it resolved<br/>20 by the Court.<br/>21 MR. HOLYOAK: Okay. We will get that on.<br/>22 THE COURT: Okay. So the home is going<br/>23 to remain vacant?<br/>24 MR. KIRSCHNER: I would ask -- I don't<br/>25 want to make --</p> <p style="text-align: right;">Page 50</p> |

1 THE COURT: That doesn't seem to be a  
2 very productive way of handling it.  
3 MR. KIRSCHNER: It's not that I'm trying  
4 to make the decision right this moment, Your Honor,  
5 it's that I want an opportunity to speak with  
6 Mr. Payne about how we're going to be resolving  
7 that issue with the house.  
8 THE COURT: I would recommend if Raymond  
9 wants to move back in and he's lived there all this  
10 time that Raymond be permitted to move back in at  
11 least to preserve the property for no other reason.  
12 MR. KIRSCHNER: I think --  
13 THE COURT: A vacant home is dangerous in  
14 the city.  
15 MR. KIRSCHNER: I completely understand,  
16 Your Honor. I've seen break-ins happen over and  
17 over again.  
18 THE COURT: Okay.  
19 MR. KIRSCHNER: I just want to make sure  
20 I have an opportunity to, one, discuss it with my  
21 client and --  
22 THE COURT: Well, I'm just putting that  
23 out as a recommendation that you guys talk about  
24 that. And if there's a way to do that, then do it  
25 because the vacant home doesn't help anyone here.

Page 51

1 MR. KIRSCHNER: So to confirm, we have  
2 jurisdiction of the trust today. This Court is  
3 taking jurisdiction. The Court's ordering the  
4 accounting for them. They have 45 days in which to  
5 provide the accounting.  
6 Mr. Payne has seven days, business bank  
7 days in which to turn over the \$400,000 plus that's  
8 being held in his IOLTA account --  
9 THE COURT: Minus the \$6,000 that he's  
10 going to give -- 5,000.  
11 MR. KIRSCHNER: Six -- was it 6,000 or  
12 5,000?  
13 THE COURT: Five thousand, I'm sorry.  
14 MR. KIRSCHNER: So minus the \$5,000  
15 that's going to be distributed to my -- we'll put  
16 into an account that my client has to account for  
17 whatever funds and administrative cases that are  
18 required. They're going to be turning over --  
19 THE COURT: Not administrative costs.  
20 MR. POWELL: Fees related to the house.  
21 MR. KIRSCHNER: Fees related to the  
22 homes. I apologize, Your Honor. More narrow on  
23 that. And they're going to be providing us  
24 substantiating documents related to the accounting,  
25 right?

Page 52

1 THE COURT: That's what we resolved  
2 today, yes.  
3 MR. KIRSCHNER: Okay. Just making sure.  
4 THE COURT: You said wait a minute.  
5 MR. PAYNE: Well, I was a little confuse  
6 about -- I think you clarified on the 5,000.  
7 On the IOLTA account, that's just a  
8 sub-account at U.S. Bank that's in the name of the  
9 trust, correct?  
10 MR. KIRSCHNER: We want a separate frozen  
11 account. We don't want to associate --  
12 THE COURT: It's going to be an  
13 interest-bearing account frozen.  
14 MR. KIRSCHNER: Right. Right.  
15 THE COURT: But it's not going to be in  
16 your trust account. I don't care what the --  
17 MR. KIRSCHNER: You want it titled in the  
18 name of the trust.  
19 THE COURT: Yes.  
20 MR. POWELL: It should be titled in the  
21 name of the trust.  
22 THE COURT: Yes.  
23 MR. KIRSCHNER: Titled in the name of the  
24 trust.  
25 MR. PAYNE: But also, you're not making a

Page 53

1 ruling that this nomination by Monte is that Mrs.  
2 -- is it Utkin?  
3 MR. KIRSCHNER: Utkin.  
4 MR. PAYNE: Utkin is the new trustee,  
5 correct?  
6 THE COURT: I've not accepted that. I'm  
7 just working with that right now.  
8 MR. PAYNE: Gotcha.  
9 THE COURT: We're all working with that.  
10 MR. PAYNE: Gotcha, just wanted to clear  
11 that up.  
12 THE COURT: I'm working with it to try to  
13 save everyone some money.  
14 MR. PAYNE: And we are too. Monte -- the  
15 only provision --  
16 THE COURT: Once we get the accounting  
17 done, and I don't care who the trustee is. The  
18 language is very clear. So it's going to go to  
19 them and it's going to go some to your client  
20 pursuant to another trust.  
21 MR. PAYNE: We represent 90 percent of  
22 the trust refs right here. Ten percent is what  
23 would go to Monte.  
24 THE COURT: Well, I --  
25 MR. POWELL: Unless there is, again, like

Page 54

1 Your Honor foreshadowed, there is likely to be  
2 briefing on the issue of what damages were caused  
3 to Mrs. Christian by the fact that she never  
4 received anything --  
5 THE COURT: I said I foresee that and I'm  
6 asking it to stop.  
7 MR. POWELL: I understand. And that's  
8 why once we see the accounting and then we'll  
9 hopefully go to Judge Becker at that point if  
10 needed.  
11 THE COURT: Okay. Because your client  
12 got -- the language after the death is very clear  
13 of the two settlers how much is going to go here.  
14 How much is going to go here. We just have to  
15 figure out how much there is now, and that's all  
16 I'm giving you time to do and preserve the estate  
17 until then.  
18 MR. KIRSCHNER: And permitting discovery  
19 of 120 days. Is that fair, Your Honor?  
20 THE COURT: For what reason?  
21 MR. KIRSCHNER: In the event that we  
22 don't get the substantiation from the accounting  
23 and we need to issue subpoenas to get the financial  
24 documents supporting it. Do we have that ability  
25 as part of this order?

Page 55

1 THE COURT: The case is going to be  
2 settled in 120 days. So I'll give you 90 days to  
3 do some discovery. But, you know, this is not  
4 going to be an attorneys' fees case. I want to get  
5 this case resolved.  
6 They want their money. Your client wants  
7 your money. The trust is written clearly enough  
8 after the death. There might have been some  
9 confusion before, but it's clear afterwards what's  
10 going to happen.  
11 So let's get the money determined and  
12 then let's get it passed to the proper owners  
13 afterwards. And Judge Becker will help you if you  
14 need help.  
15 MR. KIRSCHNER: Thank you, Your Honor.  
16 MR. HOLYOAK: Can the order include that  
17 the substitution of attorney's took place so that  
18 our firm is not still showing as representing Nancy  
19 Christian?  
20 THE COURT: Who's representing Nancy  
21 Christian?  
22 MR. HOLYOAK: Well, our firm still  
23 technically.  
24 THE COURT: Your client's deceased, so  
25 you can put down -- are you withdrawing from the

Page 56

1 case?  
2 MR. HOLYOAK: I just wanted to have it  
3 show that there was a suggestion of death and a  
4 substitution of attorneys.  
5 THE COURT: Or? He's not substituting in  
6 for the mother, are you? You represent --  
7 MR. POWELL: I represent her trust and --  
8 MR. KIRSCHNER: Her estate.  
9 MR. POWELL: -- her estate through her  
10 right to -- but I don't know if it's clear to  
11 Your Honor. She created a trust --  
12 THE COURT: Now, who's going to -- you  
13 represent Monte Reason.  
14 MR. POWELL: He is trustee of Nancy  
15 Christian Trust.  
16 THE COURT: Okay.  
17 MR. PAYNE: Another trust. Another  
18 trust.  
19 MR. POWELL: This trust is the Christian  
20 Family Trust. So just so you're clear Nancy  
21 created a trust after the Christian Family Trust in  
22 '16.  
23 THE COURT: Do you represent Monte Reason  
24 in any --  
25 MR. POWELL: Right. That's trustee of

Page 57

1 that trust.  
2 THE COURT: Well, isn't there a conflict?  
3 MR. POWELL: Which is why Monte Reason is  
4 no longer serving as trustee of the family trust.  
5 THE COURT: Well, isn't there a conflict  
6 if you're going to represent him and the mother  
7 potential interest in the past?  
8 MR. POWELL: I don't think, Your Honor,  
9 because as to the Christian Family Trust, there's  
10 two issues. The one is what is clearly articulated  
11 in the document. The other question is is during  
12 Nancy Christian's lifetime after formation of that  
13 trust, what damages occurred.  
14 THE COURT: Well, for just purposes of  
15 this order, the substitution, it will reflect the  
16 substitution. I'm not clear whether there's is a  
17 conflict in my own mind.  
18 MR. POWELL: I can brief that,  
19 Your Honor, if need be.  
20 THE COURT: Okay.  
21 MR. HOLYOAK: There shouldn't be a  
22 conflict, though, because --  
23 THE COURT: I don't want anymore  
24 briefing. I want this matter resolved.  
25 MR. POWELL: I hear you.

Page 58



1 MR. HOLYOAK: There shouldn't be a  
2 conflict, though, because at no time did I  
3 represent Monte and at no time did he represent  
4 Nancy. And so as of her death, he's only  
5 representing Monte as her --  
6 THE COURT: And just for the purpose of  
7 putting it on the record, your client wanted more  
8 money.  
9 MR. HOLYOAK: She wanted what she was  
10 entitled to under the terms of the trust, which  
11 included --  
12 THE COURT: She made a request -- she  
13 made a request --  
14 MR. HOLYOAK: Which included living in  
15 the home that they --  
16 THE COURT: She made a request for more  
17 money and they rejected it.  
18 MR. HOLYOAK: -- prevented her from  
19 doing.  
20 THE COURT: How much more money does she  
21 want?  
22 MR. HOLYOAK: Well, she passed away, but  
23 at the time of her death there was --  
24 THE COURT: Well, that's what's going to  
25 determine the damages if we have damages.

Page 59

1 MR. HOLYOAK: There was, I believe,  
2 almost a hundred thousand dollars that we  
3 calculated should have been paid to her through  
4 attorneys' fees and through medical --  
5 THE COURT: In that six-month period when  
6 he was a trustee? Because he became --  
7 MR. HOLYOAK: No, no, not from when he  
8 was trustee, from when they took over as trustees  
9 and sequestered the funds while he was trustee. It  
10 was almost a year and a half period of time where  
11 she received nothing.  
12 THE COURT: Well, during that period of  
13 time --  
14 MR. HOLYOAK: And also -- and also wasn't  
15 allowed to live in the house --  
16 THE COURT: During that period of time  
17 they had the discretion to give her nothing.  
18 MR. HOLYOAK: They didn't have the  
19 discretion to prevent her from living in the house,  
20 though, and that's part of the issue with the  
21 house. And that's part of the calculation that  
22 went into those figures.  
23 THE COURT: Well, if you guys want to  
24 litigate everything you guys have discussed here  
25 today, you might as well just give me all the money

Page 60

1 and I'll just distribute it to attorneys' fees  
2 tomorrow. And that will be the end of the trial.  
3 MR. HOLYOAK: To be clear we're out of  
4 the case except for as to our attorneys' fees.  
5 THE COURT: Okay. Because I'm not going  
6 to permit all these back and forth. Why don't we  
7 get it resolved and get your client his money and  
8 put in -- his money is going to go into a trust,  
9 right? Isn't that what this trust says?  
10 MR. POWELL: Through the Christian Family  
11 Trust it stays -- his share stays in trust as its  
12 written.  
13 THE COURT: And who's going to be the  
14 trustee of that trust?  
15 MR. POWELL: Well, that's the issue, Your  
16 Honor, is who is the trustee --  
17 MR. PAYNE: Right here. No, it's --  
18 THE COURT: No, it's very clear who the  
19 trustee is.  
20 MR. PAYNE: It's very clear who the  
21 trustee is.  
22 MR. POWELL: Okay.  
23 THE COURT: Isn't it?  
24 MR. POWELL: I don't know. If we're  
25 going to say by that --

Page 61

1 THE COURT: You were trying to school me  
2 on the trust language --  
3 MR. POWELL: Oh, I'm not. No, I'm not  
4 trying --  
5 THE COURT: You forgot this part that  
6 she's supposed to be the trustee of your client's  
7 new trust after the death of the mother.  
8 MR. POWELL: Okay.  
9 MR. PAYNE: That's correct.  
10 MR. POWELL: Okay.  
11 THE COURT: Okay. Thank you. You're  
12 going to prepare the order. Run it over here. The  
13 money part is going to be taken care of promptly,  
14 correct?  
15 MR. PAYNE: Yes, Your Honor.  
16 THE COURT: Okay. And you're going to  
17 get the money.  
18 MR. KIRSCHNER: And name Jerimy  
19 Kirschner, J-e-r-i-m-y, last name Kirschner, bar  
20 number 12012.  
21 THE COURT: And you're the attorney for a  
22 new trustee.  
23 MR. KIRSCHNER: Yes, Your Honor.  
24 MR. PAYNE: Your Honor, just  
25 clarification. Am I taking that 5,000 out of the

Page 62

1 430 that --  
2 THE COURT: Yes, you are.  
3 MR. PAYNE: Okay. All right. Fine.  
4 THE COURT: Unless you have another place  
5 to take it from?  
6 MR. PAYNE: No, no. There's one other  
7 account as we indicated that manages the California  
8 property.  
9 THE COURT: No, no. You're taking it  
10 from the 400,000.  
11 MR. PAYNE: Fine. Fine, Your Honor.  
12 THE COURT: But I want accounting on both  
13 sides.  
14 MR. PAYNE: We understand.  
15 MR. KIRSCHNER: Thank you, Your Honor.  
16 MR. HOLYOAK: Thank you, Your Honor.  
17 (Whereupon, the recording ended.)  
18  
19  
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22  
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Page 63

1 TRANSCRIBER'S CERTIFICATE  
2  
3 STATE OF NEVADA )  
4 ) ss.  
5 COUNTY OF CLARK )  
6 I, Kathy Hoffman, do hereby certify:  
7 That I listened to the recording of a  
8 hearing in the above entitled case of January 17,  
9 2018, at 2:00 p.m.;  
10 That I thereafter transcribed said  
11 recording into a typewritten transcript and that  
12 the typewritten transcript of said proceedings are  
13 a complete, true, and accurate transcription of  
14 said recording to the best of my ability to hear  
15 and understand the recording.  
16 I further certify that I am not a  
17 relative or employee of counsel involved in said  
18 action, nor a person financially interested in the  
19 outcome of said action.  
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KATHY HOFFMAN, TRANSCRIBER

Page 64



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

***EXHIBIT PAGE INTENTIONALLY LEFT BLANK***

**EXHIBIT "A"**



January 8, 2018



Christian Family Trust  
1704 Double Arch Court  
Las Vegas NV 89128

Re: Voya Insurance and Annuity Company  
Contract 90355653

Dear Representative,

We received your claimant statement for this annuity contract. However, our records do not show that you are a beneficiary. In order for us to release the name of the beneficiary(s), we need the executor of the estate of Raymond Christine to submit the estate documents and a written request for beneficiary information, signed by the executor. Documents can be sent to the address below. If you feel this is an error, the agent listed on the contract may be able to provide you with beneficiary information. Also, you can double check any contract documents or paperwork we may have sent Raymond Christine as part of servicing this contract.

Another option would be to reach out to the executor of the estate for beneficiary information.

If you have any questions, please contact us at the number shown below and a representative will be happy to assist you 8:30 a.m. to 6:30 p.m. Eastern Time Monday through Thursday, and 8:30 a.m. to 5:30 p.m. on Friday.

Customer Service  
PO Box 1337  
Des Moines, IA 50305-1337  
(800) 369-5303  
voya.com

000381 00001 00001

## REQUEST FOR NON-FINANCIAL SERVICE

Voya Insurance and Annuity Company, Des Moines, IA  
Voya Retirement Insurance and Annuity Company, Windsor, CT  
ReliaStar Life Insurance Company, Minneapolis, MN  
ReliaStar Life Insurance Company of New York, Woodbury, NY  
Security Life of Denver Insurance Company, Denver, CO  
(the "Company")

Members of the Voya® family of companies

Fax: 515-698-2034 (Variable Annuity) 515-698-2001 (Fixed Annuity)

Customer Service: 909 Locust Street, Des Moines, IA 50309-2899

Website: Voya.com Phone: 800-366-0066 (Variable Annuity) 800-369-5303 (Fixed Annuity) Annuities



The contract owner may use this form to request action by the Company. Check the appropriate boxes and supply the information indicated. Please remember to read Section 6, on page 2, and provide your signature of authorization to make this request effective.

### 1. CONTRACT INFORMATION

Owner Name Raymond Christian Contract # 90355653

Owner SSN/TIN 417-48-8865 Owner Phone (702) 483-5847 Gender male

Joint Owner Name \_\_\_\_\_

Joint Owner SSN/TIN \_\_\_\_\_ Joint Owner Phone \_\_\_\_\_ Gender \_\_\_\_\_

### 2. ADDRESS CHANGE

☐ Owner ☐ Joint Owner ☐ Annuitant

New Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

New Phone \_\_\_\_\_

### 3. NAME CHANGE (Select one. Not to be used for ownership or beneficiary changes.)

☐ Owner ☐ Joint Owner ☐ Annuitant

From \_\_\_\_\_ To \_\_\_\_\_

Reason for Change \_\_\_\_\_

Please provide a legal document (such as a marriage certificate or divorce decree) to support this change.

### 4. OWNER CHANGE

Please note that as the current owner, certain changes in your contract's ownership may result in the Company issuing a 1099-R reporting taxable income to you.

Ownership changes may terminate systematic withdrawals from this contract. To begin a systematic withdrawal, please complete a Request for Financial Service form.

☐ New Individual Owner ☐ Custodian to Custodian<sup>1</sup>  
☐ New Individual Owner who is a current or former spouse ☐ Remove Joint Owner  
☐ New Custodian Owner ☐ Remove Custodian - Annuitant will become owner.  
☒ New Trust Owner (Certificate of Trust form required.) ☐ Other (Transfer from Trust, etc.) \_\_\_\_\_  
☐ Add Joint Owner

New Owner Name Christian Family Trust

SSN/TIN 417-48-8865 Country of Citizenship \_\_\_\_\_ Gender \_\_\_\_\_

Address 1060 Dancing Vines Ave City Las Vegas State NV ZIP 89183

Birth Date 10/11/10 Relationship to Current Owner \_\_\_\_\_ Phone \_\_\_\_\_

<sup>1</sup>Some living and death benefit features are not available with joint ownership. If your contract has one of these features, any change in ownership may result in a change or deletion of this feature. See your prospectus for additional details.

<sup>2</sup>Changes to or from custodian require a custodial approved signature (the required signer is specific to each custodian's Custodial Agreement. See custodial back office for more information.) If changing ownership to a new custodian, the producer must be affiliated with the new broker-dealer custodian. A change of producer may be necessary to complete a custodial change. A beneficiary change is required with a custodian to individual owner change.

## 5. BENEFICIARY CHANGE

The designation of a new beneficiary revokes and replaces prior beneficiary designations for each beneficiary type. For example, if you change only the primary beneficiary, the contingent beneficiary remains unchanged. A beneficiary change may impact your contractual benefits. Please refer to your prospectus or contract or consult your tax advisor for additional details.

- If the annuity is corporately owned, an officer of the corporation must sign the form for the corporation. The officer's title must be included and a copy of the corporate resolution giving the officer authority to sign for the corporation must also be submitted with this form.
- If the current beneficiary designation is irrevocable, this form must also be signed by any irrevocable beneficiary(ies).
- If a trust is the beneficiary, please list the entire trust name and the trust date as applicable and complete the Certificate of Trust form.
- Total percentage of primary beneficiary shares must equal 100%. Total percentage of contingent beneficiary shares must also equal 100%. If no percentages are listed, beneficiaries' shares will be distributed equally.
- If no primary beneficiary is living, unless otherwise stated, proceeds will be paid equally to each living contingent beneficiary.
- For additional beneficiary designations, attach a separate page, signed and dated by the owner(s).
- If you would like to designate a restricted beneficiary, complete the Restricted Beneficiary form.

|                                                       |                              |                                          |                               |                   |                                                                                                         |
|-------------------------------------------------------|------------------------------|------------------------------------------|-------------------------------|-------------------|---------------------------------------------------------------------------------------------------------|
| Name<br><u>Rosemary R. Christian-Keach</u>            | Gender<br><u>F</u>           | Birth Date/Trust Date<br><u>10/31/60</u> | SSN/TIN<br><u>562-13-6293</u> | %<br><u>33.33</u> | Beneficiary Type:<br><input checked="" type="checkbox"/> Primary<br><input type="checkbox"/> Contingent |
| Address<br><u>2016 Grouse Ave, LV, NV 89128</u>       | Phone<br><u>702 271-3864</u> | Relationship to Owner<br><u>Daughter</u> |                               |                   |                                                                                                         |
| Name<br><u>Raymond T. Christian, Jr.</u>              | Gender<br><u>M</u>           | Birth Date/Trust Date<br><u>10/25/62</u> | SSN/TIN<br><u>546-17-5920</u> | %<br><u>33.33</u> | Beneficiary Type:<br><input checked="" type="checkbox"/> Primary<br><input type="checkbox"/> Contingent |
| Address<br><u>3229 Little Stream St, LV, NV 89135</u> | Phone<br><u>702 340-4700</u> | Relationship to Owner<br><u>Son</u>      |                               |                   |                                                                                                         |
| Name<br><u>Susan G. Christian-Payne</u>               | Gender<br><u>F</u>           | Birth Date/Trust Date<br><u>10/01/65</u> | SSN/TIN<br><u>546-17-5892</u> | %<br><u>33.34</u> | Beneficiary Type:<br><input checked="" type="checkbox"/> Primary<br><input type="checkbox"/> Contingent |
| Address<br><u>1704 Double Arch Ct, LV, NV 89128</u>   | Phone<br><u>702 308-4674</u> | Relationship to Owner<br><u>Daughter</u> |                               |                   |                                                                                                         |
| Name                                                  | Gender                       | Birth Date/Trust Date                    | SSN/TIN                       | %                 | Beneficiary Type:<br><input type="checkbox"/> Primary<br><input type="checkbox"/> Contingent            |
| Address                                               | Phone                        | Relationship to Owner                    |                               |                   |                                                                                                         |

## 6. AUTHORIZATION AND SIGNATURES (If there are joint owners, both must sign this form.)

I hereby certify that I, the owner, have an insurable interest in the life of the annuitant. As defined in more detail in my prospectus, an insurable interest means I have a lawful and substantial economic interest in the continued life of the annuitant. I hereby certify that I have read and understand the terms of this form and that the information provided on this form is true and complete to the best of my knowledge, and I authorize the transactions requested.

## IMPORTANT INFORMATION ABOUT PROCEDURES FOR OWNING A REGISTERED ANNUITY CONTRACT:

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who purchases a registered annuity contract. What this means for you: When a change of ownership is submitted, we will ask for the new owner's name, address, date of birth, Social Security number and other identifying information. We may also request a copy of additional identifying documentation and use the information provided to further verify the new owner's identity through the use of third-party sources.

**6. AUTHORIZATION AND SIGNATURES (continued) (If there are joint owners, both must sign this form.)**

THE FOLLOWING LANGUAGE IS APPLICABLE TO OWNERSHIP CHANGES ONLY.

**U.S. TAXPAYER CERTIFICATIONS FOR CURRENT OWNER**

Under penalties of perjury, I certify that:

1. The Taxpayer Identification Number that appears on this form is correct.
2. I am not subject to back-up withholding due to failure to report interest and dividend income;  
☐ If I am subject to backup withholding, I have checked here.
3. I am a U.S. person.

If you are a Non-Resident Alien, please check the box below.

☐ Under penalties of perjury, I certify that I am a Non-Resident Alien.

The amount paid to you will be subject to 30% tax withholding unless you submit an IRS Form W-8 and are entitled to claim a reduced rate of withholding under the applicable U.S. tax treaty.

**U.S. TAXPAYER CERTIFICATIONS FOR NEW OWNER**

Under penalties of perjury, I certify that:

1. The Taxpayer Identification Number that appears on this form is correct.
2. I am not subject to back-up withholding due to failure to report interest and dividend income;  
☐ If I am subject to backup withholding, I have checked here.
3. I am a U.S. person.

If you are a Non-Resident Alien, please check the box below.

☐ Under penalties of perjury, I certify that I am a Non-Resident Alien.

The amount paid to you will be subject to 30% tax withholding unless you submit an IRS Form W-8 and are entitled to claim a reduced rate of withholding under the applicable U.S. tax treaty.

The Internal Revenue Service does not require your consent to any provision of this document other than the certifications (in bold above) required to avoid back-up withholding.

➔ Current Owner Signature Raymond C. [Signature] Date 10/21/16  
➔ Joint Owner Signature (if applicable) \_\_\_\_\_ Date \_\_\_\_\_  
➔ New Owner Signature (if applicable) THC Date \_\_\_\_\_  
➔ Current Custodian Signature and Title (if applicable) \_\_\_\_\_ Date \_\_\_\_\_  
➔ New Custodian Signature and Title (if applicable) \_\_\_\_\_ Date \_\_\_\_\_  
➔ Irrevocable Beneficiary Signature (if applicable) \_\_\_\_\_ Date \_\_\_\_\_

**A signature guarantee or notarized signature is required in the following instance:**

- A valid signature of owner or power of attorney is not on file.
- The Irrevocable Beneficiary signs the form.

(Please print)

Venue \_\_\_\_\_

Subscribed and sworn before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

Notary Public Name \_\_\_\_\_ ID# \_\_\_\_\_ Phone \_\_\_\_\_

My commission expires \_\_\_\_\_

Firm Name on Medallion \_\_\_\_\_ ID# \_\_\_\_\_ Phone \_\_\_\_\_

Affix your notary stamp, if state required, and/or medallion signature guarantee stamp below. An embossing notary seal is not required. Please note that this form may be imaged and your transaction may be delayed when the stamp is illegible on scanned documents. The servicing producer is not permitted to act as notary or signature guarantee.



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

*EXHIBIT PAGE INTENTIONALLY LEFT BLANK*

**EXHIBIT "B"**





Marj Arena &lt;marja.carycoltpayne@gmail.com&gt;

**Fwd: Christian Family Trust**

1 message

Cary Colt Payne, Chtd <carycoltpaynechtd@yahoo.com>  
To: Marj Arena <marja.carycoltpayne@gmail.com>

Wed, Apr 4, 2018 at 9:31 AM

Sent from my iPhone

Begin forwarded message:

**From:** "Zachary Holyoak" <zach@anthonybarney.com>  
**Date:** April 3, 2018 at 12:12:39 PM PDT  
**To:** <jerimy@jkirschnerlaw.com>, <joey@rlklegal.com>, <carycoltpaynechtd@yahoo.com>  
**Cc:** <anthony@anthonybarney.com>  
**Subject:** Christian Family Trust

All,

Please see the attached affidavit provided to our office just minutes ago by Michael Payne. We plan to provide this document as an exhibit to our soon to be filed motion to Strike the Former Trustee's supplement filed March 30, 2018. This is also provided to inform all parties of what appears to be imminent claims by Miles Payne against the former Trustees and the Trust.

Thanks,

Zachary D. Holyoak, Esq.

ANTHONY L. BARNEY, LTD.

3317 W. Charleston Boulevard, Suite B

Las Vegas, Nevada 89102-1835

Telephone: (702) 438-7878

Facsimile: (702) 259-1116

E-Mail: zach@anthonybarney.com

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**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

***EXHIBIT PAGE INTENTIONALLY LEFT BLANK***

**EXHIBIT "C"**



Marj Arena &lt;marja.carycoltpayne@gmail.com&gt;

**Re: Fw: Re: Christian Family Trust**

1 message

Jerlmy Kirschner &lt;jerimy@jkirschnerlaw.com&gt;

Thu, Apr 19, 2018 at 10:48 AM

To: Cary Payne &lt;carycoltpaynechtd@yahoo.com&gt;

Cc: Marj Arena &lt;marja.carycoltpayne@gmail.com&gt;, Sarah Mintz &lt;sarah@jkirschnerlaw.com&gt;, Joey Powell &lt;joeypowell@riklegal.com&gt;

Hello Cary,

It is in our motion for sanctions, but for example: failure to provide an inventory stretching back to October 11, 2016.

Rebuild, i.e. prepare proper inventory and accounting.

There are outstanding demands for an accounting which have not yet been satisfied. It is a duty under the trust, statute, and court order. This is what is being accomplished.

We will have a SAO circulated shortly. Thank you.

On Thu, Apr 19, 2018 at 10:00 AM, Cary Payne &lt;carycoltpaynechtd@yahoo.com&gt; wrote:

Jerimy, please provide a specific (single) instance of what you claim the trustees did or did not do?

Rebuild trust financials-please clarify.

The inability of your response to explain how any of this benefits my client's or the trust speaks volumes.

I have already told your office I would agree to consolidate these hearings.

Sincerely,

Cary Colt Payne, Esq.

CARY COLT PAYNE, CHTD.

700 South Eighth Street

Las Vegas, NV 89101 Tel. (702) 383-9010 Fax: (702) 383-9049

Email: carycoltpaynechtd@yahoo.com

Web: carycoltpaynechtd.com

lasvegasarmstrust.com

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## ----- Forwarded Message -----

**From:** Jerimy Kirschner <jerimy@jkirschnerlaw.com>

**To:** Cary Payne <carycoltpaynechtd@yahoo.com>

**Cc:** Marj Arena <marja.carycoltpayne@gmail.com>; Sarah Mintz <sarah@jkirschnerlaw.com>; Joey Powell <joeyp@rkllegal.com>

**Sent:** Wednesday, April 18, 2018, 3:44:08 PM PDT

**Subject:** Re: Christian Family Trust

Hello Cary,

Thank you for the response. To address your comments:

We have made no bones about what is occurring, or what is needed. The Trust has repeatedly and adamantly requested that a proper accounting and inventory be conducted. Nothing more. Requests have been made under the terms of the Trust, by statute, and by court order. Your clients, as former trustees, have repeatedly failed to do so or at best, partially complied. As a direct result, Trustee Utkin has been forced to rebuild Trust financials. This is not the preferred route, and it is costly to do so. She waited until your clients once again failed to provide a proper accounting before she started her investigation in earnest.

Your clients objections to discovery could be easily solved by providing a proper accounting and cooperation with Trustee Utkin. Full stop, and no more attorney fees. No one is hiding the ball here, they have been given explicit directions by the Court, and the requirements are also spelled out by statute. A rope-a-dope, partial compliance which leaves the Trust with blinds spots is not an option. This is not controversial in the least, it is the duty of a trustee to know what a trust has for assets, what it started with and what it is at currently.

Trustee Utkin is here to administer the Trust, however she is being fought on virtually every point by your clients. This has caused a significant increase in tensions and the cost of litigation. That being said, we take your threat to against Trustee Utkin very seriously. Please identify any provision of the Trust or order from the Court that she is violating and we will quickly move to remedy it. To be clear, a nebulous statement of unhappiness is not sufficient. The Trust provides Trustee Utkin substantial discretion to hire professionals and to conduct the business of the Trust, as your clients well know. This is all she has done.

I have repeatedly tried to engage you to provide a legal basis for objecting to the Barney Firm's fees. The fees were approved by Monte Reason as trustee before Jacqueline came on board, which was authorized by 4.3, and 10.1(m). Not only that, but the spendthrift provision of 14.2 specifically excludes creditors of the trustors, i.e. Nancy Christian. The provisions you cited in your opposition brief, and at oral arguments, simply do not apply. The battle you are fighting is not based on solid legal reasoning.

Finally, would you agree to a stipulation moving the hearings from the 14th to the 16th?

On Wed, Apr 18, 2018 at 2:08 PM, Cary Payne <carycoltpaynechtd@yahoo.com> wrote:

Jerimy, I agree.

Can you enlight us on exactly what the hell you're doing? For example what the goal to spending this time and money when my clients object to EVERYTHING YOU HAVE done!

The District Court has already cautioned you about the needless discovery. Let me be clear the beneficiaries (Rose Mary, Susan Payne and Mr. Christian) strongly object to your continuing activities both as attorney for Utkin and the Trust. Discovery is over and you need to cease and desist with this unwanted horrible waste of everyone's time and money. I seriously doubt your client knows about the exposure you have placed her in. The next hearing we will be asking her to post a bond.

Lastly, I'm strongly recommending my clients appeal the Barney order and look for damages against you and your clients for the failure to object to the baseless Barney petition for fees.

Sincerely,