

1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2           IN THE MATTER OF THE  
3           CHRISTIAN FAMILY TRUST U/A/D 10/11/16

Case No.: 75750

4           SUSAN CHRISTIAN-PAYNE,  
5           ROSEMARY KEACH, AND  
6           RAYMOND CHRISTIAN, JR.,  
7                                   Appellants,

Electronically Filed  
Mar 27 2019 05:00 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

8                               vs.  
9           ANTHONY L. BARNEY, LTD. and  
10           JACQUELINE UTKIN,  
11                                   Respondents.

12           ANTHONY L. BARNEY, LTD.,  
13                                   Cross-Appellant,

14                               vs.  
15           SUSAN CHRISTIAN-PAYNE,  
16           ROSEMARY KEACH, and  
17           RAYMOND CHRISTIAN, JR.,  
18                                   Cross-Respondents.

19                   **RESPONDENT/CROSS-APPELLANT'S APPENDIX**  
20                   **VOLUME IV**

21                   Respectfully Submitted,  
22                   ANTHONY L. BARNEY, LTD.

23                   

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FILED

SEP 13 2018

*John J. Blum*  
CLERK OF COURT

ORIGINAL

1 TRANS

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EIGHTH JUDICIAL DISTRICT COURT

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FAMILY DIVISION

7

CLARK COUNTY, NEVADA

8

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10 IN THE MATTER OF THE )  
11 TRUST OF: )

CASE NO. P-17-092512-T

12 THE CHRISTIAN FAMILY )  
13 TRUST, U.A.D. 10/11/16 )

DEPT. PROBATE

14

15

BEFORE THE HONORABLE VINCENT OCHOA  
DISTRICT COURT JUDGE

16

TRANSCRIPT RE: PETITION

17

18

WEDNESDAY, APRIL 4, 2018

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22

23

24

1 LAS VEGAS, NEVADA

WEDNESDAY, APRIL 4, 2018

2 PROCEEDINGS

3 (THE PROCEEDINGS BEGAN AT 02:00:22)

4

5 MR. KIRSCHNER: -- Your Honor.

6 THE COURT: How are we doing?

7 MR. KIRSCHNER: I'm doing pretty good. How have you  
8 been?

9 THE COURT: Not too good today.

10 MR. KIRSCHNER: Not too good. We're the Plaintiff  
11 today, but if you want, we'll just sit -- sit in the same  
12 place as we always sit.

13 THE COURT: Well, I wish you would sit instead of  
14 the jumping around we did last time. Are we on?

15 THE CLERK: We're on.

16 THE COURT: This is on the matter of Christian  
17 Family Trust. Everyone can have a seat. We'll start off with  
18 the show you guys put on last time. It was not very pretty,  
19 not acceptable for Nevada lawyers to act that way. I don't  
20 expect it to happen today. That leaves me to the pleadings  
21 that were filed. And I enjoy your insults as much as anyone  
22 else, but that's not acceptable, is it?

23 So let's discuss your client's case. Let's discuss  
24 Nevada law. Let's discuss the facts of this case without



1 insulting each other. I don't appreciate it. I'm going to  
2 take action either with the State Bar or in the courtroom if  
3 that continues. Let's try to resolve this case as quickly as  
4 possible.

5 Both Trustors have -- are deceased. So let's start  
6 -- why can't we distribute the assets? Who would like to  
7 answer that? I don't know why we just can't move forward and  
8 close this case out.

9 MR. KIRSCHNER: Well, I -- as a starting point, Your  
10 Honor, if -- if we're looking at basically the status of where  
11 we're at, first and foremost the --

12 THE COURT: Because I thought the trust was very  
13 clear and that's what we hear from this side all the time. So  
14 if it's very clear, we should just follow what the trust tells  
15 us to do.

16 MR. KIRSCHNER: Well, as a starting point, one of  
17 the things that you need to do as a trustee and as a trust.  
18 You need to fine out whether or not -- what the assets of the  
19 trust were. Now we've had two accounting inventories that had  
20 been prepared and submitted. Both of them are incorrect.  
21 This is a problem. And here is how the --

22 THE COURT: Who filed those?

23 MR. KIRSCHNER: That would be the -- the former  
24 trustees. Here is the problem with that, Your Honor. Under

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1 the 20 -- so -- so I'm going to refer to them as the --

2 THE COURT: So you -- if they're incorrect then you  
3 -- you know what the correct version is.

4 MR. KIRSCHNER: No, that's not --

5 THE COURT: No?

6 MR. KIRSCHNER: -- quite it. But --

7 THE COURT: Not --

8 MR. KIRSCHNER: -- here -- to get to it. The 2017  
9 inventory and accounting which is one that was filed in  
10 October 2017, I'm going to refer to them colloquial as the  
11 2017 accounting, 2018 accounting. Okay.

12 In the 2017 accounting, we now know that even though  
13 it was verified under oath that the statements contained  
14 within are incorrect. Here's how we know. When compare  
15 against the 2018 account, which I want to be very clear with  
16 this -- this was in response to the Court's order that they  
17 provide the accounting along with substantiation in the form  
18 of bank -- bank accounts, bank statements, receipts, invoices  
19 for the stuff that was done. This was this Court's order.  
20 They miss the 45 day deadline.

21 Then when they did file it, we found out for the  
22 first time there's a hundred and fifty-thousand dollar asset  
23 in Wells Fargo. Well, this is a problem because their 2017  
24 accounting did not list this asset.

1           So now what we have is -- and by the way, that  
2 disclosure occurred -- we sent out a subpoena.

3           THE COURT: Okay. So I --

4           MR. KIRSCHNER: We --

5           THE COURT: -- I --

6           THE WITNESS: We --

7           THE COURT: The accounting is incorrect and what's  
8 the other reasons?

9           MR. KIRSCHNER: The accounting is incorrect, but I  
10 want to point out that the -- that the disclosure of the Wells  
11 Fargo account was preceded four days previous by us issuing a  
12 subpoena to Wells Fargo bank for any information they may have  
13 on accounts. Four days later, we see the new accounting come  
14 in and the new accounting has the disclosure of a Wells Fargo  
15 bank account.

16           Now we are required to have this information in  
17 advance. Just statutorily, they're required to give all  
18 information about all assets to the trust. The demand was  
19 made by the prior beneficiary, Nancy. The demands and a  
20 requirement has been made by this Court.

21           We shouldn't have to continue to come to the Court  
22 and say give us the more information. Not only that, but  
23 their most recent accounting that was filed, the one in 20 --  
24 2018, it does not go back to the original date they became

1 trustees. So once again, we do not have the image of what  
2 happened when they became trustees.

3 This Court's order was explicit. You go back to the  
4 day you became trustee on October 11th, 2016. There's no  
5 ambiguity in this Court's order about that.

6 What they did in the most recent accounting is refer  
7 to our prior inventory.

8 THE COURT: When the trust was created, they don't  
9 keep an inventory of what -- what is put into the trustee?

10 MR. KIRSCHNER: That is the fundamental problem that  
11 we have. We need to know what that inventory was. The proper  
12 accounting under NRS 165 --

13 THE COURT: Is that --

14 MR. KIRSCHNER: -- 135 --

15 THE COURT: Is that the trustee's obligation or --

16 MR. KIRSCHNER: Yes.

17 THE COURT: -- the trustor's?

18 MR. KIRSCHNER: That is -- that is the -- they were  
19 the -- they became trustees on that instant. When the trust  
20 was formed, they became trustees. The accounting that's been  
21 requests by the prior settlor when she was alive and requested  
22 by this Court is for them to go back to October 11th, 2016.  
23 All of this -- these -- these battles that are going on right  
24 now is because of a fundamental breakdown that they won't

1 account for that period of time. And they're statutorily  
2 required to account for it. And they're required by this  
3 Court's order to account for it.

4 Now what we stated and was absolutely -- we -- we  
5 kept to our word. We said we wouldn't do any discovery until  
6 we got in or we had the 45 days past for them to provide this  
7 accounting. They didn't do it. And then when they did submit  
8 it, there's no bank statements. There's no receipts, no  
9 invoices.

10 At this point, we have to start conducting  
11 discovery, because they're not giving us information,  
12 information not only are we entitled to, but this Court is  
13 ordering.

14 So when we're talking about discipline before the  
15 Court, I'm looking at we have a court order we're asking for  
16 them to abide by. In the absence of us coming here doing  
17 filing after filing after filing, we're going to send out some  
18 general subpoenas to find out what assets there are.

19 THE COURT: Could -- could I get your name and who  
20 you represent?

21 MR. KIRSCHNER: My apology, Your Honor. Jeremy  
22 Kirschner here on behalf of the Trustee Jacqueline Utkin.

23 THE COURT: Okay. What do you estimate -- since I  
24 guess it's an estimate, the size of this estate?

1           MR. KIRSCHNER: The current size of the estate with  
2 assets excluding the Wells Fargo was approximately \$800,000.  
3 Now there is a -- with the Wells Fargo account, it added --  
4 and we just -- as we said, this was disclosed on March 20th.  
5 So last 14 days.

6           THE COURT: So that puts you up to 950?

7           MR. KIRSCHNER: Puts it up to 950. And once  
8 again --

9           THE COURT: That should be just enough to pay the  
10 attorneys. So what's going to be left for anybody else?

11          MR. KIRSCHNER: Your Honor, I want to be clear on  
12 this. We have made every effort to come forward and say just  
13 do your job as the former trustees who provided your  
14 disclosures. And I want to be clear, under NRS 165.148, the  
15 fact that they didn't do their proper accounting, they're  
16 personally liable for the attorney's fees that are being  
17 incurred after this point. The trust isn't liable. They have  
18 a personal liability statutorily.

19          And so what we're saying is -- what -- what -- we're  
20 trying not to get -- we're not trying to get as aggressive and  
21 super ugly going after personal liability for these former  
22 trustees, but we need this information. That's what it boils  
23 down to. We need this information. It's been required. We  
24 need an appro -- appropriate viewing of what the assets are.

1 And if they're not -- if they're ignoring statute and they're  
2 ignoring this Court's order, that was explicit, then we have  
3 to conduct discovery to find out what exactly is there.

4 We can't have this blind spot in the trust which  
5 we're not required --

6 THE COURT: What do you suggest is the best approach  
7 besides -- before we get to the discovery and before they  
8 becomes personally liable for the expenses to determine what's  
9 in the estate?

10 MR. KIRSCHNER: Well, Your Honor, the most simplest  
11 answer is abide by your order that was entered on February 5th  
12 of 2018. I mean, frankly if the -- the clearest point is  
13 follow the order. You do that and that eliminates this work.

14 THE COURT: So right now do you suspect there is  
15 more to this estate dismissing or --

16 MR. KIRSCHNER: Yes, I do expect that there may be  
17 more to the estate at this point. What -- at a minimum, we  
18 know that we have the Wells Fargo accounts. We're also -- we  
19 -- and we saw an affidavit from -- I'm trying to remember the  
20 gentleman's name that said there may be additional assets. I  
21 don't necessarily believe that, but at least --

22 THE COURT: The -- the --

23 MR. KIRSCHNER: -- we need to find out --

24 THE COURT: -- question I --



1 MR. KIRSCHNER: -- what he said.

2 THE COURT: -- started with that was presented to me  
3 was who is the trustee and whether the removal of the three  
4 trustees was appropriate under the trust.

5 MR. KIRSCHNER: Right.

6 THE COURT: Do we have to answer that question or do  
7 we -- can we proceed without answering that question?

8 MR. KIRSCHNER: I think that question has already  
9 been answered. The order that this Court signed has been  
10 entered on the docket. The notice of entry of order was  
11 entered a few minutes ago confirming that the language of the  
12 trust is clear and unambiguous and that my client --

13 THE COURT: It is clear --

14 MR. KIRSCHNER: -- is the current trustees.

15 THE COURT: -- but let me put it this way. If I say  
16 I want to go to St. George, Utah from downtown Las Vegas,  
17 that's clear. And if I say I'm going to be driving south on  
18 I-15, that's clear. But it's obviously wrong. So to -- when  
19 I looked at the trust, and I'll be very straightforward, it  
20 looks like Nancy -- is that her name?

21 MR. KIRSCHNER: It would -- yes, it would be Nancy,  
22 Your Honor.

23 THE COURT: Was supposed to ask for -- for  
24 additional sums and they had total discretion to grant it.

1 And if they didn't grant it, you're telling me Nancy could  
2 terminate them.

3 MR. KIRSCHNER: I'm saying that the clear and --

4 THE COURT: That's what the trust -- that's what  
5 your interpretation of the trust is.

6 MR. KIRSCHNER: It's not --

7 THE COURT: So what's the purpose of giving them  
8 total discretion to do one thing and if she doesn't like their  
9 answer, they terminate?

10 MR. KIRSCHNER: Well, I think you're answering your  
11 question, Your Honor, that if they abuse their discretion  
12 according to the person who's the beneficiary of the estate  
13 has the ability to terminate them. That trustee had the  
14 ability to terminate them which was under the clear language  
15 of the trust and that's just what she did.

16 THE COURT: Who prepared this trust?

17 MR. KIRSCHNER: My understanding is Grant Morris  
18 Dodds was the ones who had prepared the trust.

19 THE COURT: Who is the individual?

20 MR. KIRSCHNER: I don't know the specific attorney,  
21 but I --

22 MR. PAYNE: David Grant.

23 MR. KIRSCHNER: -- will tell you it wasn't the  
24 attorneys --

1 THE COURT: What?

2 MR. PAYNE: David Grant.

3 MR. KIRSCHNER: It wasn't the attorneys who are  
4 before this Court now.

5 THE COURT: Are we going to take his deposition?

6 MR. KIRSCHNER: I think that there's an issue, one,  
7 with whether or not there is a waiver of attorney/client  
8 privilege for that. And secondarily --

9 THE COURT: So --

10 MR. KIRSCHNER: -- it doesn't --

11 THE COURT: I'm -- I'm ready to start addressing  
12 those issues so we can get his -- his opinion on file.

13 MR. KIRSCHNER: Secondarily, Your Honor, with this  
14 Court's ruling about the clear and unambiguous language of the  
15 trust, we don't get to extrinsic evidence, including extrinsic  
16 evidence of the drafter of the trust, unless we have an  
17 ambiguity there. We don't have ambiguity as to the trustee.  
18 We don't have ambiguity as to the termination power and --

19 THE COURT: The language --

20 MR. KIRSCHNER: -- selection power.

21 THE COURT: -- is clear.

22 MR. KIRSCHNER: Right.

23 THE COURT: But there might be a little word missing  
24 like not.

1           MR. KIRSCHNER: That is a dispositive change that  
2 would be subject to extrinsic evidence which would be barred  
3 under the four corners of the document and the fact that  
4 there's no ambiguity there.

5           THE COURT: Well --

6           MR. KIRSCHNER: The threshold --

7           THE COURT: -- that will be up for the Supreme Court  
8 to review then.

9           MR. KIRSCHNER: And it's one that's subject to the  
10 noble review. Whether the threshold issue of the clear terms  
11 of the trust let's an extrinsic evidence that follows  
12 traditional contract law and we --

13          THE COURT: If you --

14          MR. KIRSCHNER: -- agreed to --

15          THE COURT: -- look at the trust and you read it  
16 from start to finish, 95 percent I think, or 90 percent, goes  
17 to these three trustees. Whether they had undue influence, I  
18 don't know, but that's what the trust says. And five percent  
19 goes to another individual. Of all the people in the world  
20 she could have selected as trust -- trustee, who did she  
21 select? The one person that is limited to five percent in the  
22 trust. And he doesn't even get the five percent. He gets it  
23 through another trust.

24          MR. KIRSCHNER: So we're bleeding over into a

1 multiple -- multitude of issues. And I want to make sure that  
2 I know which one we're addressing as we're talking. First, we  
3 were talking about authority for the trust to select --

4 THE COURT: I'm trying to resolve this matter as  
5 soon as possible because we have \$960,000, maybe, maybe a  
6 little bit more and maybe a -- a little bit less, but the  
7 individuals that are in the trust that are supposed to get  
8 this sum are never going to get it at this rate. It's going  
9 to disappear in discovery, legal fees, cross fees, cross  
10 actions, everything.

11 MR. KIRSCHNER: To that, Your Honor, I would say  
12 that one of the things that I've -- we've done -- Jacqueline  
13 Utkin has done, as we've become trustees, is we've gave every  
14 opportunity for them to abide by this Court's order, abide by  
15 the statutory duties.

16 THE COURT: Well, I'm going to help you try to find  
17 this -- the size of this estate. I'm going to draw a stat as  
18 we go along soon.

19 MR. KIRSCHNER: So -- and -- and what we've done is  
20 we've only sought to establish the traditional controls that a  
21 trustee has, control of the assets, we're not talking about  
22 doing distributions to Monte or trying to increase anything.  
23 I will tell you that we've put on -- been put on notice of two  
24 potential problems. One, is that when Mr. Payne said in this

1 open court that my client sat at the table and drafted the  
2 instrument, now Mr. Monte has declared that there might be a  
3 problem with the drafting of the instrument, because under 155  
4 you have a presumption of undue influence that can only be  
5 overcome by clear and convincing evidence. That's not allowed  
6 to include their testimony. They haven't pursued that.

7 And frankly, as long as they don't pursue it, it  
8 doesn't matter to the trust. I'm going to continue doing  
9 distributions.

10 THE COURT: So who --

11 MR. KIRSCHNER: They also --

12 THE COURT: -- who are the parties? Are you --  
13 you're going to be out?

14 MR. BARNEY: I'm going to be out once my fees are  
15 paid, yeah. I'm --

16 THE COURT: Okay.

17 MR. KIRSCHNER: So --

18 THE COURT: Who do you represent?

19 MR. POWELL: I represent Monte --

20 THE COURT: You've met --

21 MR. POWELL: -- Reason.

22 THE COURT: -- Monte Reason, right?

23 MR. POWELL: Monte Reason.

24 THE COURT: But he's -- he's the trustee who's no

1 longer the trustee and maybe shouldn't have been the trustee  
2 but he was for awhile because the settlor made him the  
3 trustee.

4 MR. POWELL: I represent now Monte Reason in his  
5 capacity as trustee of the Nancy Christian Trust and also he  
6 is the nominated representative of Nancy Christian's estate.  
7 And if I can address the Court for a few minutes, I think I  
8 can summarize for you of what the issues are as to your  
9 inquiry as to why this isn't just -- why aren't we done and  
10 why can't we just be done. And I can explain that to you if  
11 the Court would indulge me for --

12 THE COURT: Okay.

13 MR. POWELL: -- for a few minutes.

14 THE COURT: Are you done, sir?

15 MR. KIRSCHNER: Unless the Court had any additional  
16 questions, I will add on the -- the fees --

17 THE COURT: I'm sorry.

18 MR. KIRSCHNER: -- in addition to that.

19 THE COURT: I do want one -- I forgot.

20 MR. KIRSCHNER: Yes.

21 THE COURT: I asked already who do you represent?

22 MR. KIRSCHNER: Jerimy Kirschner, trustee -- Jerimy  
23 Kirschner, I represent the trustee Jacqueline Utkin.

24 THE COURT: Okay. The new trustee.

1 MR. KIRSCHNER: Yes, Your Honor.

2 THE COURT: Appointed by the old trustee who may not  
3 have been properly appointed.

4 MR. KIRSCHNER: I think the clear and unambiguous  
5 terms of the trust allow for the appointment, not allow for  
6 appointment authorized --

7 THE COURT: Well, that's the --

8 MR. KIRSCHNER: -- to occur.

9 THE COURT: -- whole issue before me. If -- if it  
10 was that, we would just --

11 MR. KIRSCHNER: If -- if we're going to venture into  
12 seeing --

13 THE COURT: I thought that was their whole claim.

14 MR. KIRSCHNER: Well, the -- the -- a little bit of  
15 a fact based problem that we have, Your Honor, is that the  
16 originally settlor was demanding trust, was demanding  
17 distributions from them as trustees which they were denied.  
18 And during that same period of time, they were taking funds  
19 from the trust from themselves as former reimbursements and  
20 then they were taking memorial trips at the cost of the trust  
21 while telling her you have to justify why you're getting  
22 distribution.

23 Well, taken memorial trips are not authorized by the  
24 trust and the reimbursements you got to have an accounting



1 for.

2           So they didn't -- they couldn't provide her money  
3 while she was demanding it. So she removed them. After she  
4 removed them, she sought to get access to her money through  
5 the new trustee saying give me a distribution. But those  
6 funds were once again blocked by having them locked up inside  
7 of Mr. Payne's trust account to where this trustee, the  
8 settlor of the trust, died being unable to access her money.

9           So the problem we have, we have another potential  
10 claim that's at least being asserted by the estate for Nancy  
11 that they're -- I -- I'm going to say upset is a mild term.  
12 But they have a problem with the fact that she couldn't access  
13 her funds even when she's replaced the trustee afterwards.  
14 It's something that needs to be -- I'm sure they're going to  
15 be talking about that, but that's something that needs to be  
16 resolved.

17           When we're talking about equities, you keep hearing  
18 this is all of our money, this is all of our money, we're the  
19 three beneficiaries. Well, in reality, there was a living  
20 beneficiary who was denied the access to her funds during her  
21 life because somebody decided that they want to go on trips --  
22 to memorial trips, or they want to spend and -- and reimburse  
23 themselves without any receipts and then block her from using  
24 her money after she got a new trustee.

1 THE COURT: Do you represent her?

2 MR. KIRSCHNER: I represent the trust, Your Honor.

3 THE COURT: Okay.

4 MR. KIRSCHNER: And the trust had an obligation to  
5 provide for its beneficiaries even after they were removed,  
6 while they were in power and after --

7 THE COURT: What was --

8 MR. KIRSCHNER: -- they were removed.

9 THE COURT: What amount was she asking for?

10 MR. KIRSCHNER: I believe she was asking for  
11 approximately \$5,000 a month.

12 THE COURT: And how many months did she live after  
13 that?

14 MR. POWELL: 14, Your Honor. 14 months.

15 MR. KIRSCHNER: 14 months. But Your Honor, there's  
16 a fun -- I'll let them make that argument. But at -- at a  
17 minimum, Your Honor, there is approximately \$5,000 a month  
18 that she was requesting is my understanding.

19 THE COURT: Okay.

20 MR. POWELL: Good afternoon, Your Honor. Joseph  
21 Powell on behalf of Monte Reason. I'd like to explain to you  
22 what the issue is. The issue is is that you had a trust  
23 formed in October of 2016 between a married couple. Mr. -- he  
24 goes by Tyrone (ph). Tyrone Christian and Nancy Christian.

1 This is a joint trust formed by a married couple who put  
2 assets into that trust including a house that they owned in  
3 joint tenancy that was put into the trust. So the -- there's  
4 a claim by Mr. Payne's clients that --

5 THE COURT: Which house -- what -- what house are  
6 you talking about?

7 MR. POWELL: This was --

8 THE COURT: And which house was sold before --

9 MR. POWELL: Correct, Your Honor.

10 THE COURT: -- Raymond died?

11 MR. POWELL: That was Dancing Vines. That was  
12 owned. If -- and -- and the record is exceedingly clear on  
13 this and you can look it up easily on the assessor side, it  
14 shows that that home before the creation of this trust was  
15 owned by Raymond -- Raymond, Sr., Tyrone, and Nancy Christian  
16 as joint tenants. They were a married couple. They formed  
17 the trust in October of 2016. Mr. Payne says in open court by  
18 the way, my client's actively participated in drafting this  
19 trust.

20 Well, there's a statute, Your Honor, which says that  
21 if you actively participate in the drafting of the trust,  
22 there's a presumption that something nefarious was going on  
23 and you drafted it in a way that benefits you. So that's one  
24 issue, Your Honor.

1 But the heart of this matter, where this stemmed  
2 from, and you have to keep in mind, the -- this was -- Nancy  
3 passed away in December, Your Honor. When she formed --

4 THE COURT: Of 2017.

5 MR. POWELL: 2017. Correct. When she formed the  
6 trust along with her husband, Tyrone, this was in October of  
7 2016. From October of 2016 when she puts her assets in there  
8 and -- and their joint assets in -- in that trust, she doesn't  
9 get a red cent, Your Honor, of her own money for 14 months.  
10 She dies without ever having received a cent from that trust.

11 THE COURT: What -- what --

12 MR. POWELL: She made --

13 THE COURT: What --

14 MR. POWELL: -- the --

15 THE COURT: Where do you start the 14 months from?

16 MR. POWELL: From October of 2016.

17 THE COURT: And the trust was formed.

18 MR. POWELL: And the trust was formed. It was 14  
19 months, Your Honor. She passed --

20 THE COURT: But --

21 MR. POWELL: -- away in --

22 THE COURT: -- Raymond --

23 MR. POWELL: -- in December --

24 THE COURT: -- didn't --

1 MR. POWELL: -- I believe.  
2 THE COURT: Raymond didn't die until January of --  
3 MR. POWELL: Correct.  
4 THE COURT: -- 2017.  
5 MR. POWELL: Correct. Raymond was in bad health  
6 though, very bad health, already in that October period when  
7 the trust was formed --  
8 THE COURT: So maybe her claim --  
9 MR. POWELL: -- which is -- that's another issue.  
10 THE COURT: -- maybe goes to February of 2017?  
11 MR. POWELL: I'm sorry, Your Honor?  
12 THE COURT: Why wouldn't her claim start after his  
13 death and not be -- not before?  
14 MR. POWELL: She was -- she was a beneficiary -- she  
15 was a creator of the trust and a beneficiary of that trust on  
16 the moment of formation. It was a joint trust.  
17 THE COURT: And did she make --  
18 MR. POWELL: This is a husband and wife.  
19 THE COURT: Did she make any requests at -- for any  
20 money at that time?  
21 MR. POWELL: She did, Your Honor. She did.  
22 THE COURT: Before January?  
23 MR. POWELL: I -- I couldn't tell you precisely,  
24 because I wasn't in the case at that point and I never

1 represented Nancy Christian.

2 THE COURT: Because I thought the claim started  
3 after Raymond was deceased maybe a month or two after that.

4 MR. POWELL: I couldn't tell you with -- with  
5 precision on that. I --

6 THE COURT: All right.

7 MR. POWELL: I don't know. But what I can tell you  
8 is from the moment of formation, that trust was supposed to  
9 benefit her and Tyrone. It's their assets, Your Honor. You  
10 have to understand a trust is no different than a business  
11 formation effectively in entity. You setup an company, you  
12 put it in an LLC, it's still your company. You're -- you --  
13 you -- they're still your assets. You've just put them into a  
14 structure. Well, that's what a trust is. Instead of owning  
15 it outside of the trust, it's -- it -- they're still your  
16 assets. That's still your home that you owned that you're  
17 putting into the trust. You're putting in there for a couple  
18 reasons, for management, for also probate avoidance, to  
19 simplify things.

20 The issue we have here Your Honor is that Nancy got  
21 nothing from the trust. She made a demand and said hey, I put  
22 you in a trustees but you're managing this for me. You're  
23 managing this for me and my husband, my husband is now passed  
24 away. It's -- they're my assets. The trust is exceedingly

1 clear that this is for the benefit of her. And again, it  
2 contains her assets. There was a joint home put into there.  
3 The trust is exceedingly clear. And it doesn't just say it's  
4 for Nancy. It says it's for the survivor.

5 Let's say for instance Nancy forms a trust in  
6 October and she happens to predecease Tyrone even though  
7 Tyrone wasn't --

8 THE COURT: Well, let's not --

9 MR. POWELL: -- himself.

10 THE COURT: -- go into that because we've already  
11 got enough problems with --

12 MR. POWELL: I -- I understand.

13 THE COURT: -- the actual facts.

14 MR. POWELL: But I'm just trying to set the table  
15 for you because I think this is part of the --

16 THE COURT: Nancy --

17 MR. POWELL: -- issue you're having.

18 THE COURT: -- was a survivor. We all agree on that  
19 at least.

20 MR. POWELL: Sure. Sure. But this -- this goes to  
21 what the claims are and the fact that the claims don't just go  
22 away because Nancy has now passed. Your Honor, you know this.  
23 There's a car accident. Somebody dies in the car accident.  
24 Their estate then has the right to go sue whoever caused the

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

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

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

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



1 done or this or that, whatever. No.

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

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

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

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

21 MR. POWELL: The removal?

22 THE COURT: Yes.

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

1 MR. PAYNE: June 12th, 2017.

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

7 THE COURT: And --

8 MR. POWELL: They --

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

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

13 THE COURT: All right. But you --

14 MR. POWELL: -- appointed herself.

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

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

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

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

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

13           THE COURT: I really --

14           MR. POWELL: -- and influence.

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

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

22           THE COURT: What is the problem?

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

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

3 THE COURT: What is Nancy claiming now?

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

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

11 MR. POWELL: Okay.

12 THE COURT: Or have you filed something?

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

14 THE COURT: Okay.

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

21 THE COURT: Okay.

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

24 THE COURT: No, I --

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

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

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

3 MR. POWELL: Yes.

4 THE COURT: And it --

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

7 MR. BARNEY: We --

8 THE COURT: Okay.

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

11 THE COURT: And it --

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

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

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

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

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

7 MR. KIRSCHNER: All right.

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

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

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

18 THE COURT: So --

19 MR. KIRSCHNER: -- on --

20 THE COURT: -- do you --

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

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

1 MR. KIRSCHNER: All right.  
2 MR. BARNEY: Your Honor, may I add something? I --  
3 we --  
4 MR. PAYNE: Just for the record, I'm going to  
5 object. He's not a party, but I want --  
6 THE COURT: Okay.  
7 MR. PAYNE: I know you're going to let it --  
8 THE COURT: Just for the record --  
9 MR. BARNEY: It was my understanding it's my  
10 petition.  
11 THE COURT: Today is your day. Yes.  
12 MR. POWELL: Yes.  
13 MR. HOLYOAK: Yes.  
14 MR. BARNEY: Yeah. It is --  
15 THE COURT: We'll get to your claim.  
16 MR. BARNEY: It is my petition. Your Honor, I -- I  
17 can't --  
18 THE COURT: Are you're suggesting something to try  
19 to resolve this? Is that what I'm -- I'm going to hear?  
20 MR. BARNEY: Well, I'm -- I'm suggesting that  
21 getting us paid pursuant to the terms of the trust which I  
22 don't think is in dispute at this point. You sign the order.  
23 Jackie Utkin is the trustee that's been confirmed.  
24 Irrespective of that issue, these aren't prevailing



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

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

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

14 THE COURT: Well --

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

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

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

6 THE COURT: Okay.

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

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

16 I think at this point essentially --

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

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

20 THE COURT: Okay.

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

24 THE COURT: Okay.

1 MR. BARNEY: Yeah.

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

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

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

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

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

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

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

7 THE COURT: Well --

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

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

10 MR. KIRSCHNER: -- serve --

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

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

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

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

18 THE COURT: I'm not --

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

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

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

5 THE COURT: Well, maybe --

6 MR. KIRSCHNER: So --

7 THE COURT: -- I'm wrong.

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

10 THE COURT: I'm not --

11 MR. KIRSCHNER: -- any statement --

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

13 MR. KIRSCHNER: -- on either side.

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

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

22 THE COURT: No.

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

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

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

2

3 THE COURT: -- for negotiations.

4 MR. KIRSCHNER: Okay. As far as negotiations, I  
5 apologize. If we're doing -- we're kind of at a quasi  
6 settlement right now. I mean, I --

7 THE COURT: We're not --

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

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

12 MR. KIRSCHNER: Yes, Your Honor.

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

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

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

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

21 THE COURT: Okay.

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

1 that we're going to be preparing.

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

4 THE COURT: Well, I think --

5 MR. KIRSCHNER: -- Rule 55 challenge.

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

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

10 THE COURT: Oh, the trust.

11 MR. KIRSCHNER: -- or the trust.

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

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

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

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

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

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

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



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

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

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

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

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

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

1 THE COURT: Now --

2 MR. KIRSCHNER: -- first good one.

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

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

12 THE COURT: Okay.

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

16 THE COURT: Do you have any problem --

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

19 THE COURT: -- with 60 days?

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

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

24 MR. KIRSCHNER: So --

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

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

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

22           THE COURT: Well --

23           MR. KIRSCHNER: -- regarding assets.

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

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

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

7 MR. PAYNE: Your Honor, when --

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

10 MR. PAYNE: Right.

11 THE COURT: -- missing.

12 MR. PAYNE: Right.

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

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

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

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

5 THE COURT: Okay.

6 MR. BARNEY: He appeared at --

7 THE COURT: They're in a --

8 MR. BARNEY: Yes.

9 THE COURT: -- divorce proceeding?

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

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

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

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

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

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

23 MR. PAYNE: Your Honor --

24 THE COURT: -- with --

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

3 THE COURT: What is what?

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

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

14 MR. PAYNE: But you --

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

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

20 THE COURT: Okay.

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

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

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

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

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

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

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



1 may not be an ultimate asset of the trust.

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

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

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

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

1 about, so be it.

2 But Your Honor, this thing went astray at the last  
3 hearing. We brought a petition to reappoint these people.  
4 And I said -- and your client -- Your Honor has figured it  
5 out. The trust, it needs to be -- it's -- it's disbursed and  
6 terminated. The only issue is the \$19,000 that's going to be  
7 held for Monte. What is that going to do? That can be held  
8 pending the Court's further -- further resolution.

9 Furthermore, if you think Mr. Barney is entitled to some fees,  
10 we'll hold back \$60,000 and if -- if Mr. Joey Powell's client  
11 thinks he's entitled to 37, we can hold back a hundred  
12 thousand dollars. We'll distribute this trust to the -- to  
13 the ultimate beneficiaries and we're done. We don't need to  
14 listen to Mrs. Utkin go over and reconstitute everything that  
15 Mr. Barney has already previously done because she has some  
16 hidden agenda that she doesn't like these children and she  
17 wants to get back at the way Nancy was treated.

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

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

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

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

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

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

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

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

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

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

1 ruling on that now, not at the day of trial.  
2 MR. PAYNE: Right. I agree.  
3 THE COURT: And then this may resolve or I hope --  
4 MR. PAYNE: Well --  
5 THE COURT: -- resolve.  
6 MR. PAYNE: -- I'll notice the deposition. And if  
7 they want to bring them a -- a protective --  
8 THE COURT: I need some --  
9 MR. PAYNE: -- order --  
10 THE COURT: I need some pleadings --  
11 MR. PAYNE: I understand.  
12 THE COURT: -- some law.  
13 MR. KIRSCHNER: Your Honor, would it be well for the  
14 Court to treat this more like a traditional civil discovery  
15 and bring that in the form of a motion in limine or for us to  
16 bring that up so that this Court has some case law regarding  
17 the privilege, who it works for?  
18 THE COURT: That's --  
19 MR. KIRSCHNER: And --  
20 THE COURT: That's what I'm asking for, whatever  
21 vehicle you want to use, but, you know, I need the law.  
22 They're going to want to bring an -- an attorney. You're  
23 going to say he's protected by attorney/client privilege and  
24 it's --

1 MR. KIRSCHNER: But to be clear, Your Honor --  
2 THE COURT: -- parole evidence.  
3 MR. KIRSCHNER: -- I don't have the privilege. The  
4 trust doesn't have the privilege. The estate has the  
5 privilege, so --  
6 MR. HOLYOAK: The estate would have the privilege.  
7 MR. KIRSCHNER: So I -- I don't even have the  
8 ability to invoke. So it's not something I'm -- I'm looking  
9 for purposes of just trying to get this procedurally moved  
10 forward.  
11 THE COURT: So let's get to why we're really here  
12 today.  
13 MR. KIRSCHNER: Okay.  
14 MR. BARNEY: My petition.  
15 THE COURT: Now your fees are kind of high.  
16 MR. BARNEY: Let -- can I -- can I -- Your Honor,  
17 I'd like to -- I'd like to clarify some of the record though.  
18 Even --  
19 THE COURT: Do you want to talk about your fees or  
20 do you want to talk -- you were -- I -- you're -- you're going  
21 to be out of the case, so --  
22 MR. BARNEY: I -- I know, but --  
23 THE COURT: You're lucky -- you're the lucky one.  
24 You should take --

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

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



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

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

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

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

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

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

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

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

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

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

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

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

22 MR. BARNEY: Yeah.

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

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

2 MR. BARNEY: The --

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

5 MR. BARNEY: It --

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

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

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

16 THE COURT: I -- I would --

17 MR. BARNEY: -- this big --

18 THE COURT: -- accept that --

19 MR. BARNEY: What's that?

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

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

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

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

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

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

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

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

1 provision doesn't apply into the terms of this trust. At --  
2 because if you look at 4.4 --

3 THE COURT: I read your pleadings.

4 MR. BARNEY: Okay. Excellent. If you've read the  
5 pleadings, Your Honor, I don't want to --

6 THE COURT: I did read your --

7 MR. BARNEY: -- belabor the point. Yeah.

8 THE COURT: -- pleadings, yes.

9 MR. BARNEY: Okay. If you have no further  
10 questions, I would just like to reserve rebuttal. Thank you.

11 THE COURT: And I read your pleadings and what he's  
12 replying. I think a reply brief he's upset with.

13 MR. PAYNE: He's -- he's always upset. I don't  
14 know, Your Honor.

15 MR. BARNEY: No, I'm -- I'm not always upset.

16 MR. KIRSCHNER: I --

17 MR. BARNEY: I --

18 MR. KIRSCHNER: No insults, guys.

19 MR. HOLYOAK: It was titled a --

20 THE COURT: Okay.

21 MR. HOLYOAK: -- supplement --

22 THE COURT: Calm down.

23 MR. HOLYOAK: -- but it really --

24 THE COURT: Let's calm down.

1 MR. HOLYOAK: -- is surreply.

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

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

8 THE COURT: I agree with you.

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

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

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

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

3 THE COURT: No insults, please.

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

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

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

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

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

21 THE COURT: -- to what I read.

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

24 THE COURT: And --

1 MR. PAYNE: -- because --

2 THE COURT: -- it may well be.

3 MR. PAYNE: Because -- because the --

4 THE COURT: I don't know.

5 MR. PAYNE: -- the beneficiary is the ultimate  
6 beneficiaries of this thing are going to be at -- at a loss of  
7 their principal if this fee is -- is granted. Furthermore, we  
8 should be able to do discovery. In other words, if -- if this  
9 petition --

10 THE COURT: That's going to reduce the fees?

11 MR. PAYNE: But we're entitled to discovery. How --  
12 you -- you know, these -- the -- the bills that they submitted  
13 Your Honor don't show the -- the credits that Nancy apparently  
14 paid. They want the entire 62,000 paid but -- but apparently  
15 Nancy paid some of the bill. So the bills themselves are  
16 incorrect. So there's a lot of problems with this thing.

17 But primarily, Your Honor, and let me just focus on  
18 -- on 160 -- 164.025, the -- the prop -- the proper process.  
19 And they admit that they're a creditor. Okay. 164.02 --

20 THE COURT: I don't know if they did or not.

21 MR. PAYNE: Sure, they did. It's the first thing in  
22 their pleading. It says we're a creditor of Nancy. 164.025  
23 is notice of death of settlor, filing of claim against the  
24 trust estate. Number three, a person having a claim due or --



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

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

6 MR. PAYNE: But Your Honor --

7 THE COURT: -- approved it.

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

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

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

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

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

22 Regarding the increase in fees, so we --

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

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

3 THE COURT: Sorry.

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

9 So as this fight goes on and --

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

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

14 THE COURT: And you have already said --

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

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

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

21 THE COURT: And you --

22 MR. KIRSCHNER: Yes, sir.

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

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

1 THE COURT: Okay.

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

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

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

20 THE COURT: What --

21 MR. BARNEY: -- month --

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

24 MR. BARNEY: He -- he --

1 THE COURT: What did he say that got you so upset?  
2 MR. BARNEY: He -- he's taken an order that was  
3 issued sua sponte from the bench with -- without a notice or  
4 hearing by -- by Judge Potter. And he's -- he's placed it on  
5 the record. It's from another --  
6 THE COURT: Well, that's --  
7 MR. BARNEY: -- case.  
8 THE COURT: -- stricken. That's stricken.  
9 MR. BARNEY: Thank you. I -- I just wanted to know  
10 that that was stricken and -- and part of the court order. I  
11 just -- I -- I've got no use for this citing to other stuff.  
12 I -- I don't think it --  
13 THE COURT: Okay.  
14 MR. BARNEY: -- it serves anybody's time.  
15 THE COURT: Well, you're the one talking about it  
16 more than I am.  
17 MR. BARNEY: Okay.  
18 THE COURT: It's stricken.  
19 MR. BARNEY: Thank you. Thank you.  
20 THE COURT: Now I want you out of the case.  
21 MR. BARNEY: I want to be out of the case, Your  
22 Honor.  
23 THE COURT: You're a nice guy and everything, but  
24 the fees are kind of high.

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

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

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

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

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

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

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

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

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

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

5 THE COURT: No.

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

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

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

14 (COUNSEL CONFER BRIEFLY)

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

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

19 THE COURT: Thank you.

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

22 THE COURT: So --

23 MR. BARNEY: -- one --

24 THE COURT: -- that --

1 MR. BARNEY: -- one request.

2

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

7 MR. POWELL: I mean --

8 THE COURT: You better tell --

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

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

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

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

18 MR. POWELL: All right.

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

23 MR. POWELL: Well --

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

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

3

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

7 THE COURT: No. No.

8 MR. POWELL: Okay.

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

10 MR. POWELL: Okay.

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

14 MR. POWELL: Can I --

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

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

20 THE COURT: I'm not --

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

22 THE COURT: I'm not --

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

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



1 MR. POWELL: No, I know.  
2 THE COURT: -- right now, but --  
3 MR. POWELL: I --  
4 THE COURT: -- you know --  
5 MR. POWELL: I understand.  
6 THE COURT: -- you can -- you can use the date that  
7 she went to see the attorney if you want -- if that's a  
8 different date, but I'm just saying be reasonable, that's  
9 all --  
10 MR. POWELL: I understand.  
11 THE COURT: -- because these -- I think this party  
12 over here can settle the case but we need to know what your  
13 client's going to want.  
14 MR. POWELL: Sure, Your Honor.  
15 THE COURT: And -- and more than he was he -- what  
16 he was entitled to. And we're not making changes to the trust  
17 until we get this resolved, right? I don't want the wording  
18 to the trust to change because he was supposed to get -- Mr.  
19 Reason was supposed to get some money under the trust but I  
20 thought it was supposed to go to a separate trust, not  
21 directly to Mr. Reason.  
22 MR. KIRSCHNER: My client --  
23 MR. POWELL: And --  
24 MR. KIRSCHNER: -- doesn't have the authority to

1 make any of those changes to the trust, Your Honor.

2 THE COURT: Okay.

3 MR. KIRSCHNER: And that's -- that's not --

4 MR. BARNEY: And nobody can --

5 MR. KIRSCHNER: -- even an --

6 MR. BARNEY: -- change the trust.

7 MR. KIRSCHNER: -- offer that's (indiscernible).

8 THE COURT: Okay.

9 MR. POWELL: And we just like to make it clear Your  
10 Honor though is we're -- we're confusing two things. We're  
11 confusing Nancy Christian's rights and Monte Reason's rights.  
12 They're two different parties in this.

13 THE COURT: Well --

14 MR. POWELL: This is not about --

15 THE COURT: -- only Monte --

16 MR. POWELL: -- what Monte Reason --

17 THE COURT: Monte -- Monte is alive right now.

18 MR. POWELL: Sorry?

19 THE COURT: Monte is the only one alive. Who's  
20 speaking for Nancy?

21 MR. POWELL: Monte.

22 THE COURT: Monte is.

23 MR. POWELL: Monte.

24 THE COURT: Okay.

1 MR. POWELL: And -- and if -- if I can put it on the  
2 record because I know this will come up --

3 THE COURT: That's why I'm asking Monte to be  
4 reasonable.

5 MR. POWELL: I understand. You -- I -- I think  
6 again as you -- you -- we -- we have to go with the -- the  
7 presumption too though is who wasn't allowed to do his job  
8 that Nancy asked him to do when the -- the monies were taken  
9 out of the account in -- after they were notified. So I  
10 realize it -- I get the impression, and I'm not trying to put  
11 words in your mouth, that you'll look at this as though  
12 somehow it's Monte's fault or something that he created this  
13 mess which can be further from the truth. The initiating  
14 petition on this Your Honor was from Mr. Payne's clients.  
15 They didn't like the fact that they were removed.

16 We never asked -- we never came to Court because we  
17 didn't have to ask you for permission to have Nancy appoint  
18 Mr. Reason.

19 THE COURT: Well, I -- I think -- I mean, there's a  
20 lot of blame to go around. I think number one whoever did the  
21 trust maybe should have been a little bit more clear as to why  
22 they have so much discretion and then they can be removed if  
23 they use their discretion.

24 MR. POWELL: That -- that's -- that's trust 101,

1 Your Honor. That -- that's -- like I -- like I tried to  
2 analogize with you. If it's your ball and your bat, you're --  
3 you're going to dictate the rules of the game. You're going  
4 to tell me when you're going to go home and we're not playing  
5 anymore.

6 THE COURT: Okay.

7 MR. POWELL: Because it's your stuff. And -- and  
8 that's --

9 THE COURT: All I've asked just -- well, before we  
10 -- when we started this conversation is --

11 MR. POWELL: Yeah.

12 THE COURT: -- to let us know what the demand is so  
13 these people can try to work with that and try to resolve the  
14 case without more expenses.

15 MR. POWELL: I -- I understand, Your Honor, but it  
16 -- it's one --

17 THE COURT: In light of what -- what Mr. Reason was  
18 going to get under the estate, under the trust, I'm sorry.

19 MR. POWELL: Well, again -- again --

20 THE COURT: And then there -- there might --

21 MR. POWELL: -- these are Nancy's --

22 THE COURT: -- be some -- there might be some  
23 damages to Nancy, maybe, but that's subject for negotiations.

24 MR. POWELL: Correct. And we tried yesterday and

1 unfortunately we didn't resolve anything. So I -- what I  
2 would suggest is that I think we need more time to pass, quite  
3 frankly. There -- there needs to be -- we need to be --  
4 THE COURT: It's going to get better?  
5 MR. POWELL: -- further down the --  
6 THE COURT: It's going to get better with time?  
7 MR. POWELL: I don't know, Your Honor. But you know  
8 negotiations how they work.  
9 THE COURT: Well, I'm going to  
10 MR. POWELL: I mean, there's --  
11 THE COURT: I'm going to set a -- a hearing date, a  
12 trial date. So you --  
13 MR. PAYNE: Just --  
14 THE COURT: -- you want it --  
15 MR. POWELL: Just to be clear, as to what though?  
16 And because --  
17 THE COURT: But he wanted a 155 challenge.  
18 MR. BARNEY: Your Honor --  
19 MR. POWELL: No, Your Honor. I -- I have not  
20 formally launched anything. I -- I just want to be  
21 exceedingly clear. I haven't take -- I'm -- I'm not sure.  
22 And no, I'm not going to tell you right now, is well, I'm  
23 going to do this, this, and this. I -- we're -- we're putting  
24 the cart before the horse here.

1           The issue -- the -- the only issue that you have  
2 before you, and -- and please don't -- I'm not trying to yell  
3 at you. What I'm saying is Mr. Payne's clients have said they  
4 want their day in court to claim that Nancy Christian never  
5 had any right to remove them and that they should have never  
6 removed from day one. That's --

7           THE COURT: Well --

8           MR. POWELL: -- the only litigated issue --

9           THE COURT: Right.

10          MR. POWELL: -- Your Honor that's before this Court.

11          THE COURT: Right.

12          MR. POWELL: The rest of it would have to obviously  
13 come from Monte on behalf of Nancy to go forward. So that's  
14 why I just want to be clear. I know your -- your mindset  
15 is --

16          THE COURT: Well --

17          MR. POWELL: -- resolve --

18          THE COURT: -- they're going to --

19          MR. POWELL: -- everything.

20          THE COURT: But that's their claim. You're right.

21 That's --

22          MR. POWELL: Yeah.

23          THE COURT: -- their claim.

24          MR. POWELL: Yeah.

1 THE COURT: Who's defending that claim?  
2 MR. POWELL: Who's defending --  
3 THE COURT: Who --  
4 MR. POWELL: -- that claim?  
5 THE COURT: Yes, who's opposing that claim?  
6 MR. POWELL: Well, that would be Mrs. Utkin. She's  
7 the current --  
8 MR. KIRSCHNER: We would be (indiscernible).  
9 MR. POWELL: -- trustee.  
10 THE COURT: Okay.  
11 MR. BARNEY: Your Honor, just -- just for my order,  
12 because I know there's going to probably be another order with  
13 the other parties, that you're releasing \$50,000 from -- from  
14 the blocked account --  
15 THE COURT: Plus your cost.  
16 MR. BARNEY: Plus a hundred percent of the cost from  
17 the blocked account --  
18 THE COURT: Right.  
19 MR. BARNEY: And there's --  
20 THE COURT: Which the hundred percent that you  
21 listed in your pleading.  
22 MR. BARNEY: Correct. And that you are striking the  
23 addition of the -- the recusal order that --  
24 THE COURT: Regarding --

1 MR. BARNEY: -- he attached --  
2 THE COURT: -- Judge Potter's --  
3 MR. BARNEY: Yeah, that -- that he attached to his  
4 pleading.  
5 THE COURT: Yes.  
6 MR. BARNEY: Okay. Thank you.  
7 THE CLERK: Do you know when that was filed?  
8 MR. BARNEY: He -- he filed it I think on --  
9 MR. HOLYOAK: It was March --  
10 MR. BARNEY: I got it on Mon --  
11 MR. HOLYOAK: March 30th.  
12 MR. BARNEY: I got it this Monday, but I -- I think  
13 he must have filed it --  
14 MR. PAYNE: You're talking about Judge Potter's  
15 order or the --  
16 MR. BARNEY: Yes, Judge Potter's order that you  
17 appended to the --  
18 MR. PAYNE: Well, but that -- that's what I think  
19 the Clerk is asking.  
20 MR. HOLYOAK: The -- the pleading that it's  
21 contained in was filed March 30th. I don't know the date of  
22 Judge Potter's order.  
23 THE COURT: And you're just striking Judge Potter's  
24 order.



1 MR. HOLYOAK: Yes.

2 THE COURT: Okay. So just that part of the pleading

3 which --

4 MR. BARNEY: It's already been sealed by one of the

5 judges. It'll come back before you again --

6 MR. HOLYOAK: In a different case.

7 MR. BARNEY: Yeah, and Betsy Gonzalez is going to --

8 going to look at it. He -- he's got this habit of --

9 MR. PAYNE: Your Honor --

10 MR. BARNEY: -- pushing this order --

11 MR. PAYNE: -- you know what --

12 MR. BARNEY: -- all over the --

13 MR. PAYNE: -- Your Honor --

14 MR. BARNEY: -- place whenever he sees me.

15 MR. PAYNE: Your Honor -- Your Honor --

16 THE COURT: I -- I don't -- I don't like Judge

17 Potter's order because it didn't include me in it, but here I

18 am.

19 MR. POWELL: But Your Honor, if we can just go back

20 to the point is if you -- if you would love to set that

21 evidentiary hearing on that specific issue --

22 THE COURT: Well, that's --

23 MR. POWELL: -- right now, I'm --

24 THE COURT: -- the only issue that I have.

1 MR. POWELL: I know. And -- and that's the whole  
2 thing is let's get rid of that issue because that's going to  
3 -- that -- that -- that's going to filter out some of this --

4 THE COURT: Well, once that issue is --

5 MR. POWELL: -- stuff.

6 THE COURT: -- resolved for them, they'll -- they'll  
7 take control and if it's against them, then he'll take control  
8 and then we'll go forward, right?

9 MR. POWELL: Sure. So let's -- let's get going with  
10 that, I guess. Let's put that --

11 THE COURT: But we need -- we -- he wants to take a  
12 depo of the person who wrote the trust and we're going to have  
13 some pleadings on that and then we're going to make a  
14 decision.

15 MR. PAYNE: For the record, there's two --

16 THE COURT: Whether you call it motion in limine or  
17 you call it motion -- notice to depo.

18 MR. PAYNE: For the record, Your Honor, there's two  
19 motions that -- that Jeremy Kirschner has out there in front  
20 of you. It's -- one is a motion to turn over the assets and  
21 the second motion is to expunge --

22 THE COURT: I already denied the first one, so --

23 MR. PAYNE: Okay. And then the second one is a  
24 motion to -- it --

1 MR. KIRSCHNER: That -- that's not before the Court  
2 today --

3 MR. PAYNE: No, I know.

4 MR. KIRSCHNER: -- and I would -- I would highly  
5 object to --

6 THE COURT: Okay.

7 MR. KIRSCHNER: -- before we had --

8 MR. PAYNE: I'm just letting the Court --

9 MR. KIRSCHNER: -- an opportunity --

10 MR. PAYNE: -- Your Honor --

11 MR. KIRSCHNER: -- for it to be briefed for this to  
12 be done orally --

13 THE COURT: Okay.

14 MR. KIRSCHNER: -- today.

15 THE COURT: Okay. I -- I agree with you.

16 MR. PAYNE: I'm just letting Your Honor know that  
17 there are two motions now pending in --

18 THE COURT: Okay.

19 MR. PAYNE: -- May -- or what's the date of them?

20 MR. KIRSCHNER: There's two pending in May, yes.

21 MR. PAYNE: Two in May. One again relates to  
22 turning over the assets and the other one is to expunge a lis  
23 pendens that was -- was filed to protect the -- the --

24 THE COURT: Right.

1 MR. PAYNE: -- interest in that. And so I'm just  
2 letting Your Honor know that those are coming down the road.  
3 THE COURT: I saw them, yeah.  
4 MR. PAYNE: Oh, okay. All right. So are we have a  
5 return date?  
6 MR. BARNEY: Your Honor, I -- I --  
7 THE COURT: That will be the return date.  
8 MR. KIRSCHNER: We can set that up, consolidate the  
9 hearings, and have that as a status update at that point.  
10 Will that work, Your Honor?  
11 THE COURT: What other hearing do we have to have?  
12 MR. HOLYOAK: They're two separate weeks.  
13 MR. KIRSCHNER: They're -- they're on two separate  
14 weeks, so we're going to need to consolidate those --  
15 THE COURT: Okay.  
16 MR. KIRSCHNER: -- two hearings.  
17 THE COURT: Well, we'll move them to the -- the  
18 latter date and we'll put them both on the same date.  
19 MR. KIRSCHNER: Thank you, Your Honor.  
20 MR. PAYNE: As a -- as a status?  
21 MR. BARNEY: For purposes of my --  
22 THE COURT: No, for the hearing the motions, his --  
23 MR. PAYNE: Okay.  
24 THE COURT: -- motions.

1 MR. BARNEY: For purposes of my order --  
2 MR. PAYNE: Will you --  
3 MR. BARNEY: -- where -- where are the funds right  
4 now? Like where are the trust funds that are going to be --  
5 MR. PAYNE: They're at Chase.  
6 THE COURT: Well, I -- the Plaintiff's Counsel is  
7 going to have to release the money. I don't know --  
8 MR. BARNEY: No, I know, but -- but what I'm saying  
9 is is Chase is typically going to want an order that actually  
10 names the account. Can you -- can you provide that --  
11 THE COURT: Well, the order --  
12 MR. BARNEY: -- to me?  
13 THE COURT: -- the order is Plaintiff's Counsel is  
14 going to give you a check for that amount.  
15 MR. BARNEY: Oh.  
16 MR. PAYNE: Oh, no, no, no, no, no, no. Your Honor,  
17 that is --  
18 MR. BARNEY: Well, but --  
19 MR. PAYNE: -- a nightmare --  
20 THE COURT: No?  
21 MR. PAYNE: -- of things to do. He -- if he'll  
22 prepare the order, Jeremy knows all the information. Give it  
23 to him, he can go down --  
24 MR. BARNEY: Do you --

1 MR. PAYNE: -- to the bank --  
2 MR. BARNEY: Do you have the Chase account number?  
3 MR. PAYNE: Of course he does.  
4 MR. KIRSCHNER: I have the Chase account. Your  
5 Honor, this is the question that I asked which is that their  
6 names on the account. My client is trustee. If I -- my client  
7 can go down with the order as the trustee, became the trustee  
8 of the account. I'll cut them a check to them for the  
9 \$50,000. But for right now because those three are over the  
10 account, my client doesn't have --  
11 MR. BARNEY: But that's --  
12 MR. KIRSCHNER: -- the authority --  
13 MR. BARNEY: -- that's normally --  
14 MR. KIRSCHNER: -- to write off on --  
15 MR. BARNEY: -- how it's done, Your Honor. So the  
16 acting trustee is going to cut me a check for -- on behalf of  
17 the trustee because that keeps liability clean and doesn't  
18 create more problems for the trustee. So if I --  
19 THE COURT: And how do we get the money to the  
20 trustee to give to you?  
21 MR. HOLYOAK: Put it in the name of the trustee.  
22 MR. BARNEY: Well, yeah. It -- it needs to be put  
23 in the name of the trust. That -- that's the whole -- that's  
24 the whole --

1 THE COURT: Who does that?  
2 MR. BARNEY: You -- you. You do that.  
3 MR. KIRSCHNER: Wait, can you --  
4 MR. BARNEY: You.  
5 MR. KIRSCHNER: -- do that by order, Your Honor, put  
6 that -- the asset in the name of the trust?  
7 MR. BARNEY: That's why I'm kind of asking like this  
8 is kind of unorthodox. Normally what happens, the trustee  
9 writes me a check.  
10 MR. POWELL: His client is going to have to  
11 account --  
12 MR. BARNEY: Yes.  
13 MR. POWELL: -- because you've already appointed his  
14 client.  
15 MR. BARNEY: Correct.  
16 MR. POWELL: So from the date of -- date of the  
17 control, I mean, you already said before, you -- you wanted an  
18 accounting from Monte of all the time he served as trustee  
19 which I'm happy to provide and I can already tell you orally  
20 is zero because he never got access to -- to be able to  
21 control anything. But I can put that in writing for Your  
22 Honor, but Mr. Kirschner's client has a same obligation as  
23 they're -- she's appointed. She's got every duty to account  
24 to the Court.

1 THE COURT: Isn't that part of the motion that's  
2 coming up?

3 MR. KIRSCHNER: The part of the motion that's coming  
4 up is the ability for us to be able to get access over the  
5 account so that we can administer and follow this Court's  
6 orders. I contacted Mr. Payne out in the hallway to see if we  
7 can stipulate or work this out. I understand that we're going  
8 to take this through traditional briefing methods.

9 But for right now cutting this check for \$50,000, my  
10 client can only do it if I have access to the account. The  
11 account's in her name as the trustee of the trust. So that's  
12 what I was asking for when I was asking for clarification,  
13 Your Honor.

14 THE COURT: And how much is in this Chase account?

15 MR. KIRSCHNER: I believe approximately \$428,000.

16 THE COURT: Okay.

17 MR. BARNEY: And -- and Your Honor, I have no  
18 problem with the order saying that it's released to the  
19 trustee, but I think that's the proper way to do it and -- and  
20 then the --

21 THE COURT: Well --

22 MR. BARNEY: -- trustee turns around and --

23 THE COURT: -- write the order that way then.

24 MR. BARNEY: Okay.



1 THE COURT: The -- the --

2 MR. PAYNE: Yeah, just directing Chase to -- to  
3 release 50,000 to --

4 THE COURT: Plus --

5 MR. PAYNE: -- Ms. Utkin --

6 THE COURT: Plus his --

7 MR. PAYNE: -- as trustee.

8 THE COURT: Plus his costs.

9 MR. BARNEY: To -- to --

10 MR. PAYNE: Plus cost.

11 MR. BARNEY: To Mrs. -- yeah, plus cost to Mrs. --

12 MR. PAYNE: Plus cost.

13 MR. BARNEY: -- Utkin as trustee of the trust.

14 Perfect.

15 MR. KIRSCHNER: All right. My client's opening up a  
16 bank account. We'll deposit the \$50,000 check and then we'll  
17 pass it over to Mr. Barney.

18 THE COURT: Okay.

19 MR. KIRSCHNER: I don't know why it wouldn't be  
20 easier for just if they're going to be writing a check from  
21 the account anyway it's for the exact amount, not to play  
22 telephone with my client and involve me and attorney's fees,  
23 instead just have the check written directly to Mr. Barney's.  
24 This is -- this is a bizarre game of telephone where it --

1 THE COURT: Well, the --  
2 MR. KIRSCHNER: -- simply mailed a check --  
3 THE COURT: -- he wanted it to come from the trustee  
4 to be safe.  
5 MR. KIRSCHNER: Okay.  
6 THE COURT: That's the only reason.  
7 MR. BARNEY: I -- I do.  
8 THE COURT: I -- my -- my issue is this. When you  
9 write -- he writes a check, he's going to -- you're going to  
10 open an account.  
11 MR. KIRSCHNER: My client is going to open up an  
12 account in the name --  
13 THE COURT: And then it's going to be closed?  
14 MR. KIRSCHNER: -- of the trust.  
15 MR. BARNEY: No.  
16 MR. KIRSCHNER: And she also has -- because we just  
17 got the court order, we previously haven't been able to  
18 deposit the \$5,000 check. So now that I have a court order  
19 stating that she's the trustee, she's going to walk that into  
20 the bank and we can open --  
21 THE COURT: Okay.  
22 MR. KIRSCHNER: -- up a bank account. So there is  
23 going to be an active bank account --  
24 THE COURT: Okay.

1 MR. KIRSCHNER: -- for the trust.

2 THE COURT: Okay.

3 THE MARSHAL: And the continuance to -- on two  
4 motions and a status check is going to be May 14th at 3:00  
5 o'clock.

6 MR. BARNEY: Thank you, Your Honor.

7 THE COURT: Thank you.

8 MR. PAYNE: And that's a --

9 THE COURT: So you're out, right?

10 MR. HOLYOAK: At 3:00 o'clock.

11 THE COURT: Yeah. So thank you very much.

12 MR. HOLYOAK: Yeah.

13 MR. POWELL: So Your Honor, too that -- just to  
14 clarify, we -- we also as you know we submitted our  
15 application while we represented Monte Reason and as trustee.  
16 But --

17 THE COURT: Is that today?

18 MR. POWELL: That already the last --

19 MR. BARNEY: Yeah, that --

20 MR. POWELL: -- time we were in here.

21 MR. BARNEY: I -- that's true.

22 MR. POWELL: I --

23 MR. BARNEY: They -- they are --

24 MR. POWELL: We haven't been paid --

1 MR. BARNEY: -- they are on --  
2 MR. POWELL: -- a red cent --  
3 MR. BARNEY: -- for their petition.  
4 MR. POWELL: -- for representing a gentleman who was  
5 the trustee of the trust that we decided to contract with.  
6 THE COURT: And what was --  
7 MR. POWELL: And --  
8 THE COURT: -- what was that amount?  
9 MR. POWELL: 37,000 and change, 38,000, somewhere in  
10 that range.  
11 THE COURT: Did you address that as -- was that part  
12 of your --  
13 MR. PAYNE: Yes, Your Honor.  
14 THE COURT: Okay. Let me review that.  
15 MR. POWELL: Okay.  
16 MR. PAYNE: Your Honor said previously that I'm not  
17 going to decide that issue under first base is decided  
18 repeatedly.  
19 MR. POWELL: I would disagree.  
20 MR. BARNEY: But Your Honor, if -- if you're paying  
21 me, you almost have to pay --  
22 MR. PAYNE: Your Honor, he's out.  
23 MR. BARNEY: -- the guy before me. I mean --  
24 MR. PAYNE: Why are you talking?

1 MR. BARNEY: -- I -- it's -- it doesn't make sense  
2 from a -- from a legalistic --

3 THE COURT: Well, I like him. I like him in the  
4 case.

5 MR. BARNEY: Okay.

6 THE COURT: It was you I was worried about. No.

7 MR. BARNEY: Do I sense favoritism here?

8 THE COURT: I'll review your motion, but I did say  
9 what he just said, that, you know, we're kind of --

10 MR. POWELL: Well, I -- I understand.

11 THE COURT: -- approving that, but I -- I -- and  
12 you're going to stay in the case anyway, right? In this  
13 case --

14 MR. POWELL: Yeah, but in a different capacity, Your  
15 Honor.

16 THE COURT: In a different capacity.

17 MR. POWELL: Different capacity. We're -- we --  
18 we --

19 THE COURT: So are you going to keep that fee  
20 separate and your new capacity is going to be a new fee?

21 MR. POWELL: Absolutely.

22 MR. BARNEY: He has to.

23 MR. POWELL: It -- it is.

24 MR. BARNEY: By trust --

1 MR. POWELL: It's completely different.

2 MR. BARNEY: Yeah, under the --

3 THE COURT: And --

4 MR. BARNEY: -- county trust.

5 THE COURT: -- who -- what's your capacity going to  
6 be?

7 MR. POWELL: Well, we represent Monte as trustee of  
8 the Nancy Christian Trust and then also as well as -- as the  
9 representative of un -- under her will as --

10 THE COURT: Oh, okay.

11 MR. POWELL: -- the estate. But just to be clear is  
12 we're bringing these claims because we feel we can as trustee  
13 of Nancy Christian's trust that says that she has the ability  
14 to -- the -- the trustee has the ability to -- to pur --  
15 pursue claims on her behalf. So --

16 THE COURT: Okay.

17 MR. POWELL: And if --

18 THE COURT: And --

19 MR. POWELL: -- there's no need, and -- and I'm not  
20 sure where Mr. Payne would want --

21 THE COURT: You're the trustee of the Christian --  
22 her -- her fam -- Nancy's --

23 MR. POWELL: Personal.

24 THE COURT: -- trust.

1 MR. POWELL: Yes.  
2 THE COURT: Yeah.  
3 MR. POWELL: Her person --  
4 MR. PAYNE: But Your Honor --  
5 MR. POWELL: Nancy -- Nancy Christian Trust.  
6 MR. PAYNE: -- first of all, there's no estate open,  
7 so he -- he can't represent the estate. And -- and number  
8 two, I don't know what this trust says.  
9 THE COURT: He's not in the case yet -- yet. So I  
10 -- you know --  
11 MR. PAYNE: Right.  
12 THE COURT: -- I -- I don't --  
13 MR. PAYNE: So he's got some --  
14 THE COURT: You don't need to argue.  
15 MR. PAYNE: All right. I got it.  
16 THE COURT: Thank you.  
17 THE MARSHAL: Thank you, guys.  
18 MR. KIRSCHNER: Thank you, Your Honor.  
19 MR. BARNEY: Thank you.  
20 MR. HOLYOAK: Thank you, Your Honor.  
21 THE MARSHAL: May 14th, 3:00 o'clock, guys. We'll  
22 see you back.  
23 MR. POWELL: Thank you.  
24 THE COURT: You're always welcome -- you're always

1 welcome to come back and sit in the back if you want.

2 MR. BARNEY: I wasn't I -- I wasn't sure if you're  
3 -- if you wanted to be included in Judge Potter's order to get  
4 rid of us.

5 (PROCEEDINGS CONCLUDED AT 03:19:58)

6 \* \* \* \* \*

7 ATTEST: I do hereby certify that I have truly and  
8 correctly transcribed the digital proceedings in the above-  
9 entitled case to the best of my ability.

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*Adrian Medrano*

---

Adrian N. Medrano



*Steven D. Grierson*

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4/04  
o chon

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9 *Attorney for Jacqueline Utkin,*  
10 *Successor Trustee to the Christian Family Trust*  
11 *Dated October 11, 2016*

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 In the Matter of the

15 THE CHRISTIAN FAMILY TRUST

Case Number: P-17-092512-T

Dept.: (PC-1) 26

16 Dated October 11, 2016

17 **ORDER GRANTING PETITION TO CONFIRM SUCCESSOR TRUSTEE AND DENYING**  
18 **COUNTER-PETITION FOR REINSTATEMENT OF CO-PETITIONERS**

19 This matter having come before this Court on March 15, 2018 ("Hearing"), In the Matter of  
20 THE CHRISTIAN FAMILY TRUST Dated October 11, 2016 ("Action"), for the Christian Family  
21 Trust Dated October 11, 2016 ("Trust") this Court having reviewed all pending motions, petitions,  
22 and oppositions, including:

23 (1) PETITION TO CONFIRM SUCCESSOR TRUSTEE; AND

24 (2) COUNTER-PETITION FOR REINSTATEMENT OF CO-PETITIONERS

25  
26  
27  
28  
**RECEIVED**  
**MAR 27 2018**  
**DEPT. S**

1 Jerimy Kirschner, Esq. having appeared on behalf of Jacqueline Utkin, Trustee of The Christian  
2 Family Trust Dated October 11, 2016; Cary C. Payne, Esq. having appeared on behalf of Susan  
3 Christian Payne, Raymond Christian, and Rosemary Keach ("Counter-Petitioners"); Joey Powell,  
4 Esq. and Danels Kiefer, Esq. having appeared on behalf of Monte Brian Reason, beneficiary, and  
5 trustee to the Nancy Christian Trust and executor to the Nancy Christian Estate ("Monte"); and  
6 Zachary Holyoak, Esq. and Anthony L. Barney having appeared on behalf of creditor Anthony L.  
7 Barney, Ltd. ("creditor"); this Court having considered papers and pleadings on file, the statements  
8 of counsel, and for good cause appearing:

9 **THE COURT HEREBY FINDS THAT:** the language of The Christian Family Trust  
10 Dated October 11, 2016 ("Trust") is clear and unambiguous.

11 **THE COURT FURTHER FINDS THAT:** Trustor Nancy Christian's modification to  
12 name Monte Reason trustee was permitted pursuant to the clear and unambiguous terms of the  
13 Trust.

14 **THE COURT FURTHER FINDS THAT:** Monte Reason's nomination of Jacqueline  
15 Utkin to serve as successor trustee was permitted pursuant to the clear and unambiguous terms of  
16 the Trust.

17 **THE COURT FURTHER FINDS THAT:** Jacqueline Utkin has accepted the appointment  
18 to serve as successor trustee to the Trust.

19 **THE COURT FURTHER FINDS THAT:** Jacqueline Utkin is the successor trustee to the  
20 Trust.

21 **THE COURT FURTHER ORDERS THAT:** Jacqueline Utkin petition confirming her as  
22 Successor Trustee of the Trust is **GRANTED**.

23 **THE COURT FURTHER ORDERS THAT:** the Counter-Petition For Reinstatement Of  
24 Co-Petitioners Susan Christian Payne, Raymond Christian, and Rosemary Keach is **DENIED**.





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*Attorney for Jacqueline Utkin,  
Successor Trustee to the Christian Family Trust  
Dated October 11, 2016*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of the  
  
THE CHRISTIAN FAMILY TRUST

Case Number: P-17-092512-T

Dept.: (PC-1) 26

Dated October 11, 2016

**NOTICE OF ENTRY OF ORDER**

NOTICE IS HEREBY GIVEN that the Court entered an ORDER GRANTING PETITION TO CONFIRM SUCCESSOR TRUSTEE AND DENYING COUNTER-PETITION FOR REINSTATEMENT OF CO-PETITIONERS in the above titled action on or about April 4, 2018. A copy of said report is attached hereto and incorporated herein by reference as **Exhibit 1**.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jeremy Kirschner, Esq.  
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# EXHIBIT 1

*Steven D. Grierson*

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9 *Attorney for Jacqueline Utkin,*  
10 *Successor Trustee to the Christian Family Trust*  
11 *Dated October 11, 2016*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

14 In the Matter of the

15 THE CHRISTIAN FAMILY TRUST

16 Case Number: P-17-092512-T

17 Dept.: (PC-1) 26

18 Dated October 11, 2016

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23 Trust Dated October 11, 2016 ("Trust") this Court having reviewed all pending motions, petitions,  
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25 (1) PETITION TO CONFIRM SUCCESSOR TRUSTEE; AND

26 (2) COUNTER-PETITION FOR REINSTATEMENT OF CO-PETITIONERS

27 **RECEIVED**  
28 **MAR 27 2018**  
**DEPT. S**

1 Jerimy Kirschner, Esq. having appeared on behalf of Jacqueline Utkin, Trustee of The Christian  
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4 Esq. and Danels Kiefer, Esq. having appeared on behalf of Monte Brian Reason, beneficiary, and  
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19 **THE COURT FURTHER FINDS THAT:** Jacqueline Utkin is the successor trustee to the  
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21 **THE COURT FURTHER ORDERS THAT:** Jacqueline Utkin petition confirming her as  
22 Successor Trustee of the Trust is **GRANTED**.

23 **THE COURT FURTHER ORDERS THAT:** the Counter-Petition For Reinstatement Of  
24 Co-Petitioners Susan Christian Payne, Raymond Christian, and Rosemary Keach is **DENIED**.

**THE COURT FURTHER ORDERS THAT:** Counter-Petitioners must provide the EIN for the trust within seven (7) days of the Hearing.

**IT IS SO ORDERED.**

DATED this 30 day of March, 2018

Vincent Ochoa

**DISTRICT COURT JUDGE VINCENT OCHOA**

VINCENT OCHOA

Respectfully Submitted by

DATED this 16<sup>th</sup> day of March, 2018.

JERIMY KIRSCHNER & ASSOCIATES, PLLC

/s/ Jerimy L. Kirschner, Esq.

JERIMY L. KIRSCHNER, ESQ.

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*Attorney for Jacqueline Utkin, Successor Trustee*

**APPROVE/DISAPPROVE**

CARY COLT PAYNE, CHTD.

REFUSED TO SIGN

Cary Colt Payne, Esq.

Cary Colt Payne, Chtd.

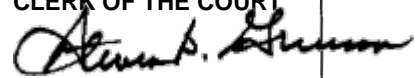
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8 *Prior Attorneys for Nancy Christian,*  
9 *Creditors of The Christian Family Trust*

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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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 **I. FINDINGS OF FACT**

9 The Court hereby finds the following:  
10

- 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  
redundant, immaterial, impertinent, or scandalous matter.

11 **III. ORDER**

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

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

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 10th day of April 2018. *vo*

*Vincent Och*  
DISTRICT COURT JUDGE *YMC*

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

16 *Anthony L. Barney*  
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.  
22 Nevada Bar No. 14217  
23 3317 W. Charleston Blvd., Suite B  
24 Las Vegas, NV 89102  
25 office@anthonybarney.com  
26  
27  
28



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.  
8 3317 W. Charleston Boulevard, Suite B  
9 Las Vegas, NV 89102-1835  
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

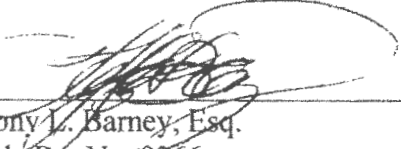
PLEASE TAKE NOTICE, each of you, of the following:

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

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



---

Anthony L. Barney, Esq.  
Nevada Bar No. 8366  
Tiffany S. Barney, Esq.  
Nevada Bar No. 9754  
3317 W. Charleston Blvd., Suite B  
Las Vegas, NV 89102-1835  
(702) 438-7878  
*Attorneys for Nancy Christian, Trustor*

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to this action. I further certify that on April 12, 2018 I served the foregoing **NOTICE OF ENTRY OF ORDER** via regular mail and/or electronic service through the Eighth Judicial District Court's electronic filing system, upon the following party(ies):

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.*

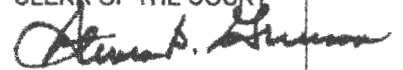
Joseph J. Powell, Esq.  
Rushforth, Lee & Kiefer LLP  
1707 Village Center Cir., #150  
Las Vegas, NV 89134  
*Attorney for Monte Reason, Successor  
Trustee*

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

\_\_\_\_s/ Zachary Holyoak/s\_\_\_\_  
Employee of Anthony L. Barney, Ltd.

# EXHIBIT 1





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  
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Telephone: (702) 438-7878  
Facsimile: (702) 259-1116  
E-Mail: office@anthonybarney.com  
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 This matter came before the above-entitled court on April 4, 2018 at 2:00 p.m. on  
18 Anthony L. Barney, Ltd.'s, ("ALB, LTD.," or "Petitioner") Creditor of the Christian Family  
19 Trust dated October 11, 2018 ("Trust"), PETITION FOR FEES AND COSTS ("Petition"), and  
20 upon the Petitioner's Oral Motion to Strike Exhibit A of the SUPPLEMENTAL RESPONSE  
21 TO OPPOSITION TO PETITION FOR FEES (BARNEY FIRM); REQUEST FOR  
22 EVIDENTIARY HEARING, AND REOPENING DISCOVERY ("Supplement") filed March  
23 30, 2018 by Cary Colt Payne, Esq. on behalf of Susan Christian Payne ("Susan"), Rosemary  
24 Keach ("Rosemary"), and Raymond Christian Jr. ("Raymond"). The Petitioner was represented  
25 by its attorneys at the Law Office of Anthony L. Barney, Ltd. Jackie Utkin, Successor Trustee  
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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 **I. FINDINGS OF FACT**  
9

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.  
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///



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.

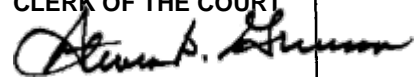
9 IT IS SO ORDERED, ADJUDGED AND DECREED.

10 DATED this 10th day of April 2018. VO

Vincent Ochon  
DISTRICT COURT JUDGE YMC

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.  
22 Nevada Bar No. 14217  
3317 W. Charleston Blvd., Suite B  
Las Vegas, NV 89102  
office@anthonybarney.com



**DISTRICT COURT**  
**FAMILY DIVISION**  
**CLARK COUNTY, NEVADA**

In the Matter of:

Case No.: P-17-092512-T  
DEPT. NO. S

THE CHRISTIAN FAMILY TRUST,

DATE OF HEARING: 11/02/2018  
TIME OF HEARING: 3:00 PM

Dated October 11, 2016.

**ORDER**

The Court, having considered the papers and pleadings on the file herein, considering singularly the law and the premises, the cause having been submitted for decision and judgment, the Court, being fully advised in the premises:

**NRCP 53 (2) In Non-Jury Actions provides:**

In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

**PROCEDURE**

The Probate Commissioner's Report and Recommendations was filed on Oct 8, 2018. Notice of Entry was filed on the same date. The Notice of Entry was served by E-mail and or Electronic Means. The Objection to the Probate Report and Recommendation was filed on Oct 22, 2018.

1 **MERITS**

2 A special master's findings of fact are given deference and reviewed under the  
3 clearly erroneous standard. *See, Venetian Casino Resort. LLC v. Eighth Judicial Dist.*  
4 *Court of State ex rel. County of Clark. 118 Nev. 124, 132, 41 P.3d 327, 331-32 (2002.);*  
5 *See Also, NRCP 53(e)(2).* The district court's review of a probate commissioner's reports  
6 and recommendations are "confined to the record, together with the specific written  
7 objections." EDCR 4.07(a).

9 Conclusions of law, on the other hand, require de novo review by the district  
10 court. A special master's conclusions of law are reviewed de novo. *See, Farmers Ins.*  
11 *Exc. v. Neal, 119 Nev. 62, 64, 64 P.3d 472, 473 (2003) (noting review questions of law*  
12 *de novo); Venetian, 118 Nev. at 132, 41 P.3d at 331-32 (noting the district court reviews*  
13 *the special master's conclusions of law de novo).*

14 Following the special master's hearing, the master must submit a report to the  
15 district court, including findings of fact and conclusions of law. NRCP 53(e)(1). In cases  
16 not tried before a jury, "the court shall accept the master's findings of fact unless clearly  
17 erroneous." NRCP 53(e)(2). If any party makes an objection within ten days after being  
18 served with the master's findings, the district court, "after [a] hearing[,] may adopt the  
19 report or may modify it or may reject it in whole or in part or may receive further  
20 evidence or may recommit it with instructions." *Id.*

21 Prior to the hearing Jacqueline Utkin was giving notice of the factual and legal  
22 reasons for the hearing on her removal as Trustee by the district judge. See Order filed  
23 June 1, 2018. Jacqueline Utkin requested a due process evidentiary hearing. Said hearing  
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1 was set and Jacqueline Utkin was given notice of the hearing. See Notice filed July 7,  
2 2018. The hearing was set for August 22, 2018.

3 Her attorney filed a pre-trial memorandum on August 17, 2018 regarding the  
4 issues to be addressed at the hearing. Her attorney appeared at the hearing on August 22,  
5 2018, but Jacqueline Utkin did not appear at the hearing nor did she seek leave to appear  
6 telephonically. Monte Reason was represented by his attorney Joseph Powell.

7  
8 In cases not tried before a jury, “the court shall accept the master's **findings of**  
9 **fact** unless clearly erroneous.” NRCP 53(e)(2). The record does not include any  
10 indication that the findings of facts in the report are clearly erroneous.

11 The Probate Commissioner’s Report is legally correct that the Court has inherent  
12 power to “amend, correct, resettle, modify, or vacate, as the case may be, an order  
13 previously made and entered on motion in the progress of the cause or proceeding.” *Trail*  
14 *v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975). District courts have inherent  
15 power to reconsider interlocutory orders and reopen any part of a case before entry of a  
16 final judgment. *Rochow v. Life Ins. Co. of North America*, 737 F.3d 415 (6th Cir. 2013).

17  
18 “Law of the case directs a court's discretion, it does not limit the tribunal's  
19 power.” *Arizona v. California*, 460 U.S. 605, 618, 103 S.Ct. 1382, 75 L.Ed.2d 318  
20 (1983)). “Under law of the case doctrine, as now most commonly understood, it is not  
21 improper for a court to depart from a prior holding if convinced that it is clearly  
22 erroneous and would work a manifest injustice.” *Id.* at 618, 103 S.Ct. 1382 n. 8.” Harlow  
23 v. Children's Hosp., 432 F.3d 50, 55 (1st Cir. 2005). *See Geffon v. Micrion Corp.*, 249  
24 F.3d 29, 38 (1st Cir.2001) (reviewing a district court's reconsideration of its own prior  
25 ruling on summary judgment motion for abuse of discretion).  
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1 On an objection to a master's Report, we cannot simply re-weigh the factual  
2 evidence. The court's role on review of an objection under the limited clearly erroneous  
3 standard is to determine whether the findings made by the Probate Commissioner were  
4 not clearly erroneous. So long as the findings made by the Probate Commissioner were  
5 properly supported by one version of the conflicting evidence, the Probate Commissioner  
6 report is not clearly erroneous.  
7

8 **WHEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED**

9 The District Court will accept and adopt the Probate Commissioner's Report and  
10 Recommendations filed on October 8, 2018.

11 **IT IS FURTHER ORDERED** that Jacqueline Utley is removed as Trustee of the  
12 Christian Family Trust.  
13

14 **IT IS FURTHER ORDERED** that Fred Waid is appointed as an independent  
15 trustee of the Christian Family Trust.

16 **IT IS SO ORDERED** this 8<sup>th</sup> day of November 2018.

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19 **Honorable VINCENT OCHOA**  
20 **District Court Judge, Department S**  
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