

08282012:1135:PO080

PROBATE COURT #4

NO. 412.249

ESTATE OF § IN PROBATE COURT  
 NELVA E. BRUNSTING, § NUMBER FOUR (4) OF  
 DECEASED § HARRIS COUNTY, TEXAS

**ORDER ADMITTING WILL TO PROBATE AND  
 AUTHORIZING LETTERS TESTAMENTARY**

On this day came on to be heard the Application for Probate of Will and For Issuance of Letters Testamentary filed by CARL HENRY BRUNSTING ("Applicant") in the Estate of Nelva E. Brunsting, Deceased ("Decedent").

The Court, having heard the evidence and having reviewed the Will, and other documents filed herein, finds that the allegations contained in the Application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four (4) years have not elapsed since the date of Decedent's death; that this Court has jurisdiction and venue of the Decedent's estate; that Decedent left a Will dated January 12, 2005, executed with the formalities and solemnities and under the circumstances required by law to make a valid Will; that on such date Decedent had attained the age of eighteen (18) years and was of sound mind; that such Will was not revoked by Decedent; that no objection to or contest of the probate of such Will has been filed; that all of the necessary proof required for the probate of such Will has been made; that in such Will, Decedent named Elmer H. Brunsting to serve as Executor, but he predeceased Decedent in 2009; that in such Will, Decedent named CARL HENRY BRUNSTING to serve as alternate or successor Independent Executor, without bond; that CARL HENRY BRUNSTING is duly qualified and not disqualified by law to act as such and to receive Letters Testamentary; that a necessity exists for the administration of this estate; that Decedent's Will did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a

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devisee; and that no interested person has applied for the appointment of appraisers and none are deemed necessary by the Court.

It is therefore ORDERED that such Will is admitted to probate, and the Clerk of this Court is ORDERED to record the Will, together with the Application, in the Minutes of this Court.

It is further ORDERED that no bond or other security is required and that upon the taking and filing of the Oath required by law, Letters Testamentary shall be issued to CARL HENRY BRUNSTING, who is appointed as Independent Executor of Decedent's Will and Estate, and no other action shall be necessary in this Court other than the filing of an Inventory, Appraisal, and List of Claims or an Affidavit in Lieu of Inventory, Appraisal and List of Claims and Probate Code Section 128A Notice, as required by law.

SIGNED this 28 day of August, 2012.

*Cristine Butler*  
\_\_\_\_\_  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By:

*B. G. Bayless*  
\_\_\_\_\_  
*D. B. Stokes*  
\_\_\_\_\_

*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale Street  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Applicant*

*Stan Stewart*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS  
2012 AUG 28 AM 10:09

FILED



NO. 412.248

ESTATE OF  
ELMER H. BRUNSTING,  
DECEASED

§  
§  
§  
§  
§

IN PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

ORDER

The foregoing Application for Extension is found to be in order and good cause has been shown to exist. It is ORDERED that the date for filing such Inventory is extended to March 26, 2013.

SIGNED this 30 day of Nov, 2012.

Cristine Potts  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By:

Bobbie G. Bayless

*Bobbie G. Bayless*

State Bar No. 01940600

*Dalia B. Stokes*

State Bar No. 19267900

2931 Ferndale Street

Houston, Texas 77098

Telephone: (713) 522-2224

Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

2012 DEC -5 PM 3:33

FILED

NO. 412.248

ESTATE OF § IN PROBATE COURT  
 ELMER H. BRUNSTING, § § NUMBER FOUR (4) OF  
 DECEASED § § HARRIS COUNTY, TEXAS

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Date of Death: April 1, 2009

The following is a full, true, and complete Inventory and Appraisement of all personal property and of all real property situated in the State of Texas, together with a List of Claims due and owing to this Estate as of the date of death, which have come to the possession or knowledge of the undersigned.

INVENTORY AND APPRAISEMENT

ASSETS	VALUE	ESTATE INTEREST
--------	-------	-----------------

1. **Real Estate:**  
See List of Claims
2. **Stocks and Bonds**  
See List of Claims
3. **Mortgages, Notes and Cash:**  
See List of Claims
4. **Insurance Payable to Estate**  
See List of Claims
5. **Jointly Owned Property**  
See List of Claims

*Stan Sifuentes*  
 COUNTY CLERK  
 HARRIS COUNTY, TEXAS

2013 MAR 26 PM 3:15

FILED

09262013:1558:PO098

03262013:1558:PO99

ASSETS	VALUE	ESTATE INTEREST
--------	-------	-----------------

**6. Miscellaneous Property**

6a. See List of Claims

6b. 2000 Buick LeSabre..... \$6915.00  
VIN--1G4HR54K3YU229418

DECEDENT'S COMMUNITY ONE-HALF OF Buick Vehicle..... \$3457.50

**TOTAL VALUE OF ESTATE..... Yet to be determined**

COPY UNOFFICIAL

LIST OF CLAIMS

1. Based upon the information currently available to the personal representative of the estate, it is not possible to determine with certainty what assets were in the estate at the Decedent's death. That determination will have to be made the subject of further judicial proceedings. After that judicial determination is made, to the extent it becomes necessary, this Inventory, Appraisement and List of Claims will be amended to reflect the descriptions and values of assets later determined to have been estate assets at the time of Decedent's death.

2. The estate has asserted a claim against Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC relating to actions taken and omissions made in the course of their representation of decedent and his wife which may result in additional estate assets. That case is pending under Cause No. 2013-05455, styled *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC*, in the 164<sup>th</sup> Judicial District Court of Harris County, Texas.


3. The Brunsting Family Living Trust was signed by Decedent and his wife on October 10, 1996 and was restated on January 12, 2005 (the "Family Trust"). The Family Trust purported by its terms to provide for the creation of successor and/or subsequent trusts. The Family Trust also described other documents which, if created in compliance with the terms of the Family Trust, could impact the assets and status of the Family Trust. Attempts were made by various parties to change the terms and control of the Family Trust through later instruments which have been or will be challenged. The estate also asserts claims against Anita Brunsting and Amy Brunsting, the current purported trustees of the successor trusts or trusts arising from the Family Trust or documents

allegedly created pursuant to the terms of the Family Trust. Those claims will be the subject of separate proceedings and may result in additional estate assets.

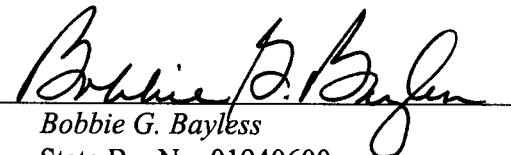
4. The estate also asserts a claim against Anita Brunsting, Amy Brunsting, and Carole Brunsting in their individual capacities for amounts paid and assets believed to also include, among other things, stocks and bonds which were removed from the Family Trust and/or the estate. This was accomplished either through the use of a power of attorney for Decedent's wife, through their position as trustees, through their position as joint signatories on accounts and safe deposit boxes, or because they otherwise had access to the assets. Those claims will also be the subject of a separate proceeding and may result in additional estate assets.

There are no known claims due or owing to the Estate other than those shown on the foregoing Inventory and Appraisal.

The foregoing Inventory, Appraisal and List of Claims should be approved and ordered entered of record.

  
 CARL HENRY BRUNSTING,  
*Independent Executor of the Estate of  
 Elmer H. Brunsting*

BAYLESS & STOKES

By:   
*Bobbie G. Bayless*  
 State Bar No. 01940600  
*Dalia B. Stokes*  
 State Bar No. 19267900  
 2931 Ferndale  
 Houston, Texas 77098  
 Telephone: (713) 522-2224  
 Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to the following interested parties as specified below on the 26<sup>th</sup> day of March, 2013, as follows:

Maureen Kuzik McCutchen  
Mills Shirley, LLP  
2228 Mechanic, Suite 400  
P.O. Box 1943  
Galveston, Texas 77553-1943  
Houston, Texas 77056  
*sent via Telecopier*

Carole Ann Brunsting  
5822 Jason St.  
Houston, Texas 77074  
*sent via U.S. First Class Mail*

Candace Louise Curtis  
1215 Ulfinian Way  
Martinez, California 94553  
*sent via U.S. First Class Mail*

  
BOBBIE G. BAYLESS

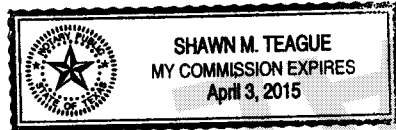
09262013:155B:PO103

THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

I, CARL HENRY BRUNSTING, having been duly sworn, hereby state on oath that the foregoing Inventory, Appraisal and List of Claims is a true and complete statement of all the property and claims of the Estate that have come to my knowledge.

*Carl Henry Brunsting*  
CARL HENRY BRUNSTING  
*Independent Executor of the Estate of  
Elmer H. Brunsting, Deceased*

SWORN TO and SUBSCRIBED BEFORE ME by the said CARL HENRY BRUNSTING,  
on this 26<sup>th</sup> day of March, 2013, to certify which witness my hand and seal of office.



*Shawn M. Teague*  
Notary Public in and for the  
State of TEXAS  
Printed Name: Shawn M. Teague  
My Commission Expires: 4-3-2015

03262013:155H:PO104

NO. 412.248

ESTATE OF § IN PROBATE COURT  
ELMER H. BRUNSTING, § § NUMBER FOUR (4) OF  
DECEASED § HARRIS COUNTY, TEXAS

**ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS**

The foregoing Inventory, Appraisement and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

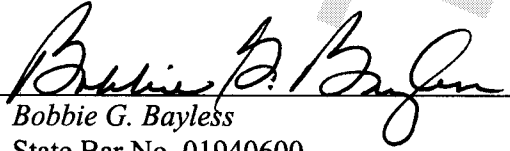
SIGNED on this \_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By:

  
Bobbie G. Bayless  
State Bar No. 01940600  
Dalia B. Stokes  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*



NO. 412.249

ESTATE OF § IN PROBATE COURT  
 NELVA E. BRUNSTING, § § NUMBER FOUR (4) OF  
 DECEASED § § HARRIS COUNTY, TEXAS

**INVENTORY, APPRAISEMENT AND LIST OF CLAIMS**

**Date of Death: November 11, 2011**

The following is a full, true, and complete Inventory and Appraisement of all personal property and of all real property situated in the State of Texas, together with a List of Claims due and owing to this Estate as of the date of death, which have come to the possession or knowledge of the undersigned.

**INVENTORY AND APPRAISEMENT**

ASSETS	VALUE	ESTATE INTEREST
--------	-------	-----------------

- 1. **Real Estate:**  
See List of Claims
- 2. **Stocks and Bonds**  
See List of Claims
- 3. **Mortgages, Notes and Cash:**  
See List of Claims
- 4. **Insurance Payable to Estate**  
See List of Claims
- 5. **Jointly Owned Property**  
See List of Claims

*Susan Stewart*  
 COUNTY CLERK  
 HARRIS COUNTY, TEXAS  
 2013 MAR 26 PM 3:16  
**FILED**

03272013:0821:PO032

UNOFFICIAL COPY

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ASSETS	VALUE	ESTATE INTEREST
--------	-------	-----------------

6. **Miscellaneous Property**

6a. See List of Claims

6b. One-half (1/2) interest in  
2000 Buick LeSabre..... \$2,750.00  
VIN--1G4HR54K3YU229418

**TOTAL VALUE OF ESTATE**..... Yet to be determined

03272013:0821: P0034

LIST OF CLAIMS

1. Based upon the information currently available to the personal representative of the estate, it is not possible to determine with certainty what assets were in the estate at the Decedent's death. That determination will have to be made the subject of further judicial proceedings. After that judicial determination is made, to the extent it becomes necessary, this Inventory, Appraisement and List of Claims will be amended to reflect the descriptions and values of assets later determined to have been estate assets at the time of Decedent's death.

2. The estate has asserted a claim against Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC relating to actions taken and omissions made in the course of their representation of decedent and her husband which may result in additional estate assets. That case is pending under Cause No. 2013-05455, styled *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC*, in the 164<sup>th</sup> Judicial District Court of Harris County, Texas.


3. The Brunsting Family Living Trust was signed by Decedent and her husband on October 10, 1996 and was restated on January 12, 2005 (the "Family Trust"). The Family Trust purported by its terms to provide for the creation of successor and/or subsequent trusts. The Family Trust also described other documents which, if created in compliance with the terms of the Family Trust, could impact the assets and status of the Family Trust. Attempts were made by various parties to change the terms and control of the Family Trust through later instruments which have been or will be challenged. The estate also asserts claims against Anita Brunsting and Amy Brunsting, the current purported trustees of the successor trusts or trusts arising from the Family

Trust or documents allegedly created pursuant to the terms of the Family Trust. Those claims will be the subject of separate proceedings and may result in additional estate assets.

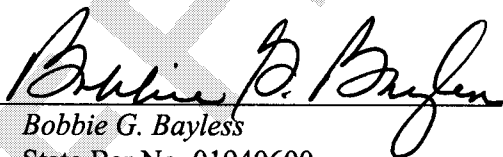
4. The estate also asserts a claim against Anita Brunsting, Amy Brunsting, and Carole Brunsting in their individual capacities for amounts paid and assets believed to also include, among other things, stocks and bonds which were removed from the Family Trust and/or the estate. This was accomplished either through the use of a power of attorney for Decedent, through their position as trustees, through their position as joint signatories on accounts and safe deposit boxes, or because they otherwise had access to the assets. **Those claims will also be the subject of a separate proceeding and may result in additional estate assets.**

There are no known claims due or owing to the Estate other than those shown on the foregoing Inventory and Appraisement.

The foregoing Inventory, Appraisement and List of Claims should be approved and ordered entered of record.

  
CARL HENRY BRUMSTING,  
*Independent Executor of the Estate of  
Nelva E. Brunsting*

BAYLESS & STOKES

By:   
*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

03272013:0821: P0036

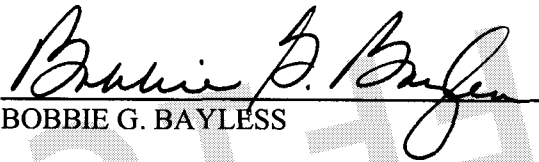
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to the following interested parties as specified below on the 26<sup>th</sup> day of March, 2013, as follows:

Maureen Kuzik McCutchen  
Mills Shirley, LLP  
2228 Mechanic, Suite 400  
P.O. Box 1943  
Galveston, Texas 77553-1943  
Houston, Texas 77056  
*sent via Telecopier*

Candace Louise Curtis  
1215 Ulfonian Way  
Martinez, California 94553  
*sent via U.S. First Class Mail*

Carole Ann Brunsting  
5822 Jason St.  
Houston, Texas 77074  
*sent via U.S. First Class Mail*

  
BOBBIE G. BAYLESS


COPY UNOFFICIAL

09272013:0821:P0097

THE STATE OF TEXAS §

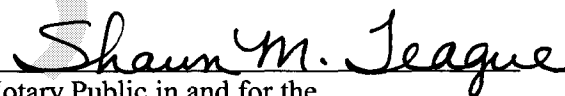
COUNTY OF HARRIS §

I, CARL HENRY BRUNSTING, having been duly sworn, hereby state on oath that the foregoing Inventory, Appraisalment and List of Claims is a true and complete statement of all the property and claims of the Estate that have come to my knowledge.

  
CARL HENRY BRUNSTING  
*Independent Executor of the Estate of  
Nelva E. Brunsting, Deceased*

SWORN TO and SUBSCRIBED BEFORE ME by the said CARL HENRY BRUNSTING,  
on this 26<sup>th</sup> day of March, 2013, to certify which witness my hand and seal of office.



  
Notary Public in and for the  
State of T E X A S  
Printed Name: Shawn M. Teague  
My Commission Expires: 4-3-2015

03272013:0821:P003B

NO. 412.249

ESTATE OF	§	IN	PROBATE	COURT
NELVA E. BRUNSTING,	§	NUMBER	FOUR (4)	OF
DECEASED	§	HARRIS COUNTY,	T E X A S	

**ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS**

The foregoing Inventory, Appraisalment and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: *Bobbie G. Bayless*  
*Bobbie G. Bayless*

State Bar No. 01940600

*Dalia B. Stokes*

State Bar No. 19267900

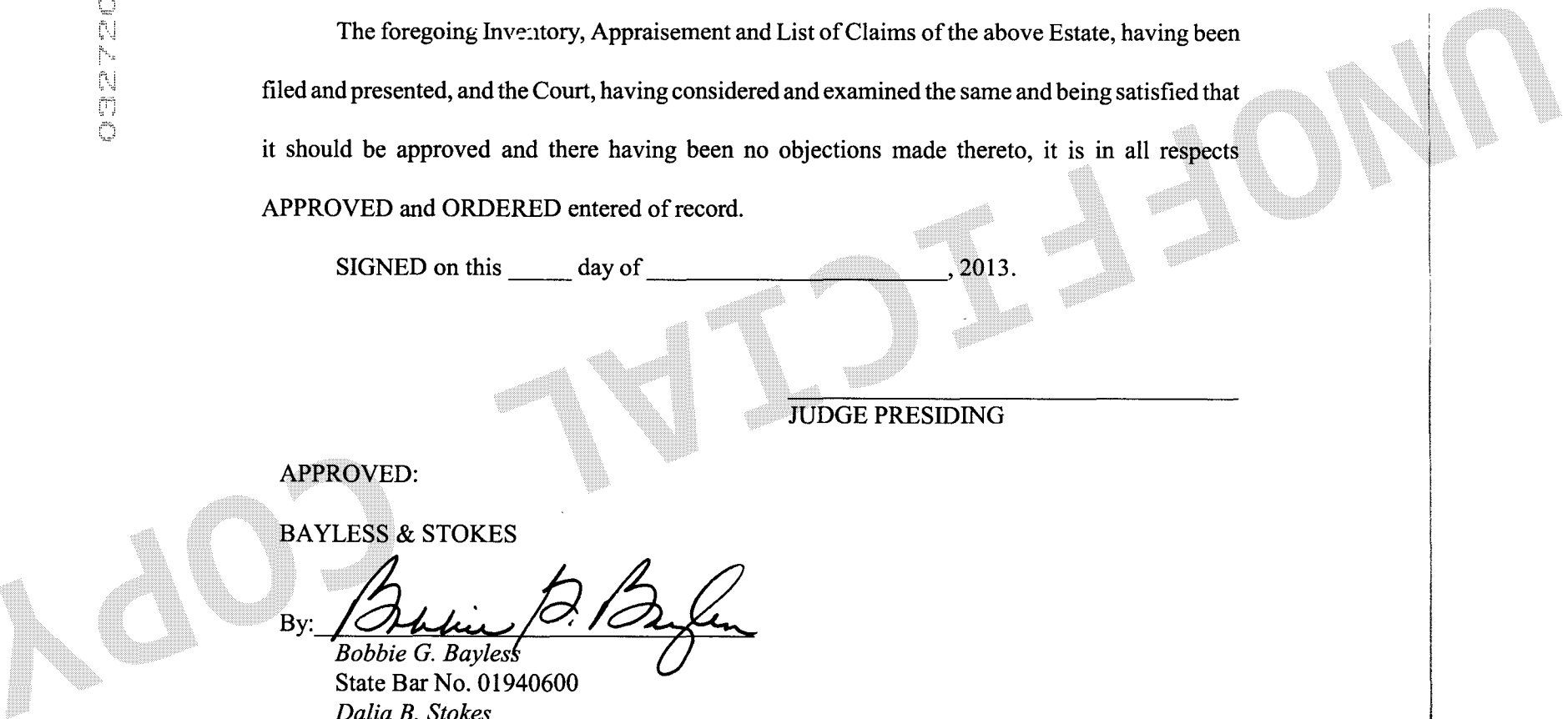
2931 Ferndale

Houston, Texas 77098

Telephone: (713) 522-2224

Telecopier: (713) 522-2218

*Attorneys for Independent Executor*



04052013:1514:P0006

PROBATE COURT 4

NO. 412.248

ESTATE OF § IN PROBATE COURT  
ELMER H. BRUNSTING, § NUMBER FOUR (4) OF  
DECEASED § HARRIS COUNTY, TEXAS

ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS

3930 (b)  
EFF 9-1-83

The foregoing Inventory, Appraisement and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this 4 day of April, 2013.

Cristine Bonin  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: Bobbie G. Bayless  
*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

Star  
2013 APR -5 AM 10:01  
FILED  
CLERK  
HARRIS COUNTY, TEXAS

APR 05 2013



04052013:1514:P0006

PROBATE COURT 4

NO. 412.248

ESTATE OF	§	IN	PROBATE	COURT
ELMER H. BRUNSTING,	§	NUMBER	FOUR (4)	OF
DECEASED	§	HARRIS	COUNTY,	TEXAS

ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS

3930 (b)  
EFF 9-1-83

The foregoing Inventory, Appraisalment and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this 4 day of April, 2013.

*Cristine Bonin*  
\_\_\_\_\_  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: *Bobbie G. Bayless*  
\_\_\_\_\_  
*Dalia B. Stokes*

*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

2013 APR -5 AM 10:01  
FILED  
*Star*  
CLERK  
HARRIS COUNTY, TEXAS

APR 05 2013

UNOFFICIAL COPY

04052013:1322:PO115

**DROP**

NO. 412.249

**PROBATE COURT 4**

IN THE ESTATE OF

Nelva E. Brunsting

§

IN THE PROBATE COURT

§

NUMBER FOUR OF

DECEASED

§

HARRIS COUNTY, TEXAS

**DROP ORDER**

On this day, it having been brought to the attention of this Court that the above entitled and numbered estate should be dropped,

**IT IS THEREFORE ORDERED** that the Clerk drop said estate from the Court's active docket.

**IT IS FURTHER ORDERED** that any costs incident to this order are hereby waived.

SIGNED this 4 day of April, 2013.

Christine Butts  
JUDGE CHRISTINE BUTTS  
PROBATE COURT NO. FOUR

COPY

FILED  
2013 APR -5 AM 10:01  
Sta. [Signature]  
COUNTY CLERK  
HARRIS COUNTY TEXAS

04052013:1322:P0115

**DROP**

NO.

412.249

**PROBATE COURT 4**

IN THE ESTATE OF

Nelva E. Brunsting

§

IN THE PROBATE COURT

§

NUMBER FOUR OF

DECEASED

§

HARRIS COUNTY, TEXAS

**DROP ORDER**

On this day, it having been brought to the attention of this Court that the above entitled and numbered estate should be dropped,

**IT IS THEREFORE ORDERED** that the Clerk drop said estate from the Court's active docket.

**IT IS FURTHER ORDERED** that any costs incident to this order are hereby waived.

SIGNED this 4 day of April, 2013.

Christine Butts  
JUDGE CHRISTINE BUTTS  
PROBATE COURT NO. FOUR

COPY

2013 APR -5 AM 10:01  
FILED  
STEPHEN  
COUNTY CLERK  
HARRIS COUNTY TEXAS

PROBATE COURT 4

NO. 412.249

ESTATE OF § IN PROBATE COURT  
NELVA E. BRUNSTING, § NUMBER FOUR (4) OF  
DECEASED § HARRIS COUNTY, TEXAS

ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS

3930 (b)  
EFF 9-1-83

The foregoing Inventory, Appraisement and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this 4 day of April, 2013.

Christine B. Boren  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: Bobbie G. Bayless

*Bobbie G. Bayless*  
Bobbie G. Bayless  
State Bar No. 01940600  
*Dalia B. Stokes*  
Dalia B. Stokes  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

FILED  
2013 APR -5 AM 10:01  
Star Stewart  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

APR 05 2013

04052013:1322:PO115

RM

NO. 412.249-401

PROBATE COURT 4

04102013:0918:PO048

ESTATE OF § IN PROBATE COURT  
 §  
 NELVA E. BRUNSTING, § NUMBER FOUR (4) OF  
 §  
 DECEASED § HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, § IN PROBATE COURT  
 § individually and as independent  
 § executor of the estates of Elmer H.  
 § Brunsting and Nelva E. Brunsting

vs.

ANITA KAY BRUNSTING f/k/a §  
 ANITA KAY RILEY, individually, §  
 as attorney-in-fact for Nelva E. Brunsting, §  
 and as Successor Trustee of the Brunsting § NUMBER FOUR (4) OF  
 Family Living Trust, the Elmer H. §  
 Brunsting Decedent's Trust, the §  
 Nelva E. Brunsting Survivor's Trust, §  
 the Carl Henry Brunsting Personal §  
 Asset Trust, and the Anita Kay Brunsting §  
 Personal Asset Trust; §  
 AMY RUTH BRUNSTING f/k/a §  
 AMY RUTH TSCHIRHART, §  
 individually and as Successor Trustee §  
 of the Brunsting Family Living Trust, §  
 the Elmer H. Brunsting Decedent's Trust, §  
 the Nelva E. Brunsting Survivor's Trust, §  
 the Carl Henry Brunsting Personal §  
 Asset Trust, and the Amy Ruth Tschirhart §  
 Personal Asset Trust; §  
 CAROLE ANN BRUNSTING, individually §  
 and as Trustee of the Carole Ann §  
 Brunsting Personal Asset Trust; and §  
 as a nominal defendant only, §  
 CANDACE LOUISE CURTIS § HARRIS COUNTY, TEXAS

1 pers. in  
4/9/13

PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING,  
FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR  
INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES

APR 10 2013

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, CARL HENRY BRUNSTING, individually and as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting, filing his Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, together with Request for Disclosures, and in support thereof would show the Court as follows:

I.

**Discovery Control Plan**

1. Plaintiff intends to conduct discovery under Level 2 of the **Texas Rules of Civil Procedure.**

II.

**Parties**

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting (“Elmer”),<sup>1</sup> and his mother, Nelva E. Brunsting (“Nelva”).<sup>2</sup> These estates are collectively referred to herein as the “Estates.” In his individual capacity, Plaintiff is referred to herein as “Carl.” Carl was previously a successor trustee of the Brunsting Family Living Trust created on October 10, 1996 and restated on January 12, 2005 (the “Family Trust”). **Carl is a beneficiary of the Family Trust and the other trusts created by its terms.** Elmer was a trustee and a beneficiary of the Family Trust, and Nelva was also a trustee and beneficiary of the Family Trust and its successor trusts. The successor trusts of the Family Trust resulted pursuant to the terms of the

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<sup>1</sup>Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

<sup>2</sup>Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

Family Trust upon Elmer's death. Those successor trusts are the Elmer H. Brunsting Decedent's Trust ("Elmer's Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Those are sometimes collectively referred to herein as the "Successor Trusts." Carl is also the beneficiary, but not the trustee, of the Carl Henry Brunsting Personal Asset Trust ("Carl's Trust") which was created pursuant to the terms of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment signed on 8/25/10 (the "8/25/10 QBD"). As will be further discussed herein, Plaintiff believes the 8/25/10 QBD was the result of undue influence, was done when Nelva lacked capacity and/or was created by deception so that Nelva did not understand or consent to the document. In fact, it is far from clear what documents Nelva even signed or knew existed.

3. Defendant Anita Kay Brunsting f/k/a/ Anita Kay Riley is Carl's sister. It is believed that Anita's counsel will accept service, but, if not, Anita can be served with process at her home at 203 Bloomingdale Circle, Victoria, Victoria County, Texas 77904. In her individual capacity and when acting pursuant to the power of attorney purportedly executed by Nelva on August 25, 2010 ("8/25/10 POA"), this Defendant will be referred to herein as "Anita." Anita was named as a successor trustee under the terms of the tainted 8/25/10 QBD. Pursuant to the terms of that document, upon Nelva's death, Anita was to become co-trustee of the Family Trust and the Successor Trusts. On December 21, 2010, however, Nelva purportedly signed a resignation of her position as trustee and appointed Anita to be her successor even before her death. From that point until her mother's death on November 11, 2011, Anita acted as the sole trustee of the Family Trust and the Successor Trusts. As will be discussed herein, Plaintiff believes Anita convinced Nelva to resign from her trustee position and to appoint Anita as her replacement through improper means and for improper purposes. The terms of the tainted 8/25/10 QBD made Anita co-trustee of Carl's Trust.

Anita is also beneficiary and trustee of the Anita Kay Brunsting Personal Asset Trust ("Anita's Trust").

4. Defendant Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart ("Amy") is Carl's sister.

It is believed that Amy's counsel will accept service, but, if not, Amy can be served with process at her home at 2582 Country Ledge, New Braunfels, Comal County, Texas 78132. Pursuant to the terms of the tainted 8/25/10 QBD, Amy became a co-trustee of the Family Trust and the Successor Trusts upon Nelva's death. Anita and Amy in their capacity as trustees of the Family Trusts and the Successor Trusts are sometimes collectively referred to herein as the "Current Trustees". Amy is also the beneficiary and the trustee of the Amy Ruth Brunsting Personal Asset Trust ("Amy's Trust"). The terms of the tainted 8/25/10 QBD also made Amy co-trustee of Carl's Trust.

5. Defendant Carole Ann Brunsting ("Carole") is Carl's sister. Carole may be served with process either at her home at 5822 Jason St., Houston, Harris County, Texas 77074 or at her place of employment at Cameron's offices at 1333 West Loop South, Suite 1700, Houston, Texas 77027. Carole was named in Nelva's health care power of attorney and was made a joint signatory on Nelva's bank account when Anita took over as trustee. Carole is also the beneficiary and trustee of the Carole Ann Brunsting Personal Asset Trust ("Carole's Trust").

6. Candace Louise Curtis ("Candy") is Carl's sister. Candy is named in this action only because these claims impact her rights as a beneficiary of various trusts. Plaintiff does not seek to recover any damages from Candy, and it is anticipated that Candy will waive service of process. Candy and Carl were the only Brunsting siblings whose right to be trustees of their own trusts after Nelva died were extinguished by the changes implemented in the tainted 8/25/10 QBD. Candy is the beneficiary of the Candace Louise Curtis Personal Asset Trust ("Candy's Trust") of which Anita and Amy are the co-trustees.



III.

Jurisdiction

7. Plaintiff brings this cause of action pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code. More specifically, Plaintiff brings this proceeding to:

- (a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;
- (b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;
- (c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;
- (d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;
- (e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

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IV.

Venue

8. Venue in this cause is in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all, or substantially all, of the acts giving rise to Plaintiff's claims occurred in Harris County, Texas.

V.

Background Facts

9. On October 10, 1996, Elmer and Nelva established the Family Trust. The Family Trust was restated on January 12, 2005. The Family Trust was initially revocable, but only until the death of either Elmer or Nelva. Thus, when Elmer died on April 1, 2009, the Family Trust became irrevocable. At that point, the Family Trust's assets were to be divided between Elmer's Decedent's Trust and Nelva's Survivor's Trust pursuant to Article VII of the Family Trust.

10. At some point, Anita and Amy implemented a plan to take over their parents' remaining assets and divide the spoils. That plan was made feasible when Carl became seriously ill with encephalitis in July, 2010. Carl had been an obstacle to Anita and Amy's plans, so they seized the opportunity to become even more aggressive in controlling their mother's actions. Carole's initial resistance to Anita and Amy's scheme was apparently eliminated through transfers of assets to which she was not entitled.

11. Anita and Amy carried out their plan of replacing their mother's wishes with their own with the help of Nelva's own legal counsel. The result was the tainted 8/25/10 QBD. Through bullying and deception, that document was executed without regard to Nelva's capacity and notwithstanding Nelva's apparent lack of understanding, knowledge, or consent to what was occurring. The 8/25/10 QBD removed Carl from his successor trustee roles. At that time all prior

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powers of attorney were revoked and replaced with one giving Anita control of her mother's affairs. During the same period, Nelva's safe deposit box to which Carl had access was closed and a new one opened giving Anita access instead. Anita and Amy apparently determined which documents would be prepared, regardless of whether Nelva agreed with or even knew what they were doing. The only document which Anita and Amy wanted but seem to have been unsuccessful in implementing was a document intended to exclude Carl's daughter and granddaughter from inheriting through Nelva.

12. Perhaps because it became too difficult to even pretend to be obtaining Nelva's signature on documents needed to take all the steps Defendants wanted to take, or because Anita, Amy, and Carole did not want to wait for Nelva's death to begin using her assets for their own purposes, other steps were taken to obtain complete control of Nelva's assets, however held. Anita and Amy's continued efforts resulted in Nelva's purported resignation as trustee and purported appointment of Anita as substitute trustee of the Family Trust and the Successor Trusts on December 21, 2010. Thereafter, Anita used her position as trustee to repeatedly transfer assets for her own benefit and that of her children, for Amy's benefit and the benefit of Amy's children, and for Carole's benefit. Anita disregarded the terms of the Family Trust as she saw fit. For example, Anita began paying herself an exorbitant trustee's fee. Anita also began paying her own credit card bills, as well as other personal expenses, such as payments for her children's automobiles and educational expenses, from the Family Trust and Successor Trusts' accounts.

13. On December 31, 2010, an account was established, allegedly for Nelva's benefit to be used on day to day expenses but on which Carole was a signatory. Over the next year, more than \$150,000 was transferred from trust accounts by Anita and spent by Carole on what appears to be predominantly items for Carole's own benefit. At the same time, Anita was draining the other

accounts owned by Elmer's estate, Nelva, or the Successor Trusts, at least in part for her own purposes and/or other improper purposes.

14. On March 24, 2011, Anita divided the more than 4,000 shares of Exxon Mobile stock purportedly owned by the Family Trust between Elmer's Decedent's Trust and Nelva's Survivor's Trust. Then on May 9, 2011, Anita transferred 1,120 shares of that stock from Nelva's Survivor's Trust to Amy. On June 13, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to herself, and on June 15, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to Candy. An finally, on June 15, 2011, Anita transferred 1,325 shares from Elmer's Decedent's Trust to Carole. No shares were transferred to Carl, despite Anita's knowledge of Carl's serious health crisis and large medical expenses. In fact, Carl's family was not even informed of the transfers of stock and did not learn about them until after Nelva's death.

15. On June 14, 2011, Anita also transferred 135 shares of Chevron stock purportedly owned by Nelva's Survivor's Trust to each of her two children and to each of Amy's two children. No similar gift was made to either Carl's daughter or granddaughter or to Candy's two sons. Moreover, Carl's entire family was excluded from conversations addressing the status of the Brunsting estate, changes in the trusts, and Nelva's removal from involvement with and control over the trusts. Instead of assisting with Carl's medical bills, it is believed that trust assets were used to hire investigators to follow Carl's wife of 30 years and that a GPS tracking device was even placed on Carl's wife's car without her consent, at the apparent direction of Anita and Amy.

16. On Nelva's death on November 11, 2011, Amy joined Anita as co-trustee of the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust. Assets were to be divided equally into separate trusts for each of the Brunsting children upon Nelva's death. Until the tainted 8/25/10 QBD, each of the Brunsting children would have been trustee of their own trusts, but in the

tainted 8/25/10 QBD, both Carl and Candy were removed as trustees of their own trusts. Instead, Anita and Amy were named co-trustees of both Carl's Trust and Candy's Trust.

17. Of course, by the time of Nelva's death, the remaining assets had already been plundered. Indeed, two days before Nelva died, Anita even closed the safe deposit box used by Nelva and no inventory of its contents have ever been provided although it had been where valuable items and documents had been kept. A number of valuable items remain unaccounted for after Nelva's death, such as a significant amount of savings bonds which it is believed either Anita, Amy, or Carole have not admitted they discovered and kept. Likewise, no effort was made to value, preserve, inventory, and properly divide personal property.

18. Of course, many things have not been accounted for or properly shared with Plaintiff. Plaintiff has not, for example, been provided with a copy of the lease of the most valuable asset his parents owned, a multimillion dollar farm in Iowa. To the extent information has been provided because Plaintiff has sought it and even filed a pre-suit discovery action to obtain it, that information has made it clear the plundering started long ago and only court intervention or complete dissipation of the assets will stop it. Apparently the Current Trustees believe the division of assets should be made based on the terms of the tainted 8/25/10 QBD, and without taking into consideration what Anita, Amy & Carole have already taken.

## V.

### **Construction of Trust and Suit for Declaratory Judgment**

19. The 8/25/10 QBD contains a broad *in terrorem* clause providing that a party forfeits their interest in the resulting trust if contesting its provisions. Plaintiff asserts that the *in terrorem* clause is overly broad and void as against public policy because it prohibits the trust beneficiaries

from questioning any of the circumstances surrounding the Current Trustees' improper actions in this case, thereby preventing them from protecting their interests.

20. In addition, Plaintiff seeks declaratory relief construing the validity, terms, responsibilities, and obligations of the various documents signed or purportedly signed by Elmer and Nelva. In other words, Plaintiff also asks this Court to determine Plaintiff's rights and Defendants' responsibilities.

21. If the Court fails to find that the *in terrorem* clause is void as against public policy to the extent it prohibits beneficiaries from questioning the actions resulting in the QBDs and the actions supposedly taken under its terms, Plaintiff asks, in the alternative, that the Court construe the documents at issue herein and declare that Plaintiff's actions in filing and pursuing this action do not violate the *in terrorem* clause.

22. Plaintiff, in fact, seeks to determine and enforce his partents' intent and to further the purposes of that intent. In doing so, Plaintiff was required to bring this action requesting declaratory relief and an accounting. Such actions would not constitute a contest even if the provision were not void because it is against public policy.

23. Plaintiff further asserts that he had just cause to bring this lawsuit and that he has brought the action in good faith. Therefore, no forfeiture should result from the action.

## VI.

### **Demand for Trust Accounting**

24. Defendants have provided insufficient, conflicting, and unsupported information to Plaintiff accounting for the assets and transactions concerning the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust.

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25. The Texas Trust Code and the trust indentures require the Current Trustees to keep complete and accurate books of account with regard to the trusts, trust property and all transactions pertaining thereto and to provide the appropriate information to the beneficiaries, but they have failed to do so. Plaintiff, therefore, requests that this Court order Defendants to account for the administration of all the trusts.

## VII.

### Breach of Fiduciary Duties

26. Defendants have breached their duties as fiduciaries, both because of their formal positions as trustees of the various trusts, as agents for Nelva, and/or because of their family relationship to their parents and their brother. Carole also had fiduciary duties to Plaintiff, particularly after becoming a signatory on Nelva's account. Not only is the family relationship one involving a high degree of trust, influence, and confidence, but in this particular case, the fiduciary obligations were magnified because of the dominance on the part of the fiduciaries and the weakness and dependence on the part of the parties to whom Defendants owed fiduciary duties. They have breached their responsibilities by, among other things, transferring valuable property without receiving appropriate consideration and taking assets for their own benefit and use and in violation of their duties and the trust instruments themselves. Breaches of fiduciary duty by Defendants include, but are not limited to, the following:

- a. failing to keep and provide clear, regular, accurate, and complete accountings of assets;
- b. resisting accountings of property and transactions;
- c. failing to abide by the terms of the various trust instruments;
- d. failing to preserve property and to prevent losses of property;

- e. conveying property in ways which were detrimental and in violation of their obligations;
- f. entering into transactions which were not in the best interests of persons and trusts to whom they owed fiduciary obligations;
- g. becoming involved in matters in which Anita, Amy, and Carole represented interests which conflicted with those of their parents, Carl, and the trusts and their beneficiaries, including Nelva;
- h. failing to be loyal to their family members and the trust beneficiaries and to take actions based upon the best interests of Nelva, Carl, and the trusts;
- i. failing to deal impartially, fairly, and equally with Nelva, Carl, and the trusts;
- j. failing to prevent transfers, gifts, or removal of assets;
- k. failing to make appropriate and equal distributions;
- l. failing to adequately inform the beneficiaries about assets and transactions and beneficiaries' rights;
- m. misrepresenting or allowing misrepresentations concerning assets and transactions and beneficiaries' rights;
- n. failing to prevent transactions which were detrimental to their family members and the trusts;
- o. allowing the payment of inappropriate amounts from assets they purportedly held as fiduciaries; and
- p. failing to follow and otherwise enforce the terms of the trust instruments.

27. In connection with actions by Defendants with regard to transactions involving self-dealing, Defendants, acting in a fiduciary capacity have the burden of establishing the propriety of



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those transactions. Defendants must prove those transactions were fair and equitable to Plaintiff, and the transactions at issue in this case clearly were not.

28. As a result of Defendants' various actions described herein, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

29. Because Defendants' actions were committed willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

### VIII.

#### Conversion

30. Defendants' actions constitute conversion of property to which Plaintiff had a superior right, and as a result of such conversion, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

31. Because Defendants' conversion was committed willfully and maliciously, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

### IX.

#### Negligence

32. Defendants had a duty to Plaintiff to use reasonable care to protect his interests in the capacities specified herein. Defendants failed to exercise such reasonable care, in that they allowed assets rightfully belonging to Elmer's estate, Nelva, and the various trusts of which Plaintiff was a beneficiary to be wrongfully removed, thereby improperly taking them or preventing their distribution to Plaintiff. As a result of Defendants' negligence, Plaintiff has been damaged in amounts in excess of the minimum jurisdictional limits of this Court.

33. Defendants' actions constituted gross negligence in that Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to Plaintiff's rights. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

**X.**

**Tortious Interference with Inheritance**

34. Defendants' actions constitute tortious interference with Carl's inheritance rights.

35. As a direct and proximate result of Defendants' tortious interference with Carl's inheritance rights, Carl has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

36. Defendants' various actions were committed willfully, maliciously, and with the intent to conceal the true nature of the estate and the trusts to Carl's detriment. Accordingly, Carl requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

**XI.**

**Constructive Trust**

37. Plaintiff seeks the imposition of a constructive trust over the assets to which he is entitled, including all property improperly transferred by Anita and Amy, including, but not limited to, the property received by Anita, Amy, Carole, and their insiders or related entities, as well as the profits Defendants received as a result of the transfer of those assets. Plaintiff also seeks the imposition of a constructive trust over the assets of Anita, Amy, and Carole's Trusts to the extent needed to reverse the improper transfers. Plaintiff thus requests a distribution of those assets in the

amount lawfully due the Plaintiff, together with all interest accrued from the time such distribution should have been made.

## **XII.**

### **Civil Conspiracy**

38. Defendants combined to accomplish the unlawful objectives of facilitating the breach of duties to Plaintiff, as well as the commission of fraud and fraudulent concealment. Such actions by Defendants amount to a civil conspiracy.

39. As a direct and proximate result of the civil conspiracy between the Defendants, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

40. Defendants' actions in furtherance of the civil conspiracy were taken willfully and maliciously, all to the detriment of Plaintiff. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of the Court.

## **XIII.**

### **Fraudulent Concealment**

41. Plaintiff was not aware of Defendants' wrongful actions. That is because Defendants took affirmative steps to deceive Nelva and Plaintiff and to conceal their wrongful actions from Nelva and Plaintiff. As a result of this affirmative deception by Defendants and Nelva and Plaintiff's reasonable reliance on that deception, Plaintiff did not know of these claims in this action until well after his mother's death on November 11, 2011, and, in fact, Plaintiff still does not know the full extent of his claims.

XIV.

**Discovery Rule**

42. Plaintiff affirmatively pleads the discovery rule and asserts that his claims have been brought within the required periods from the date when he knew, or reasonably should have known, that his claims had accrued.

XV.

**Tolling of Limitations**

43. Tex. Civ. Prac. & Rem. Code Ann. §16.062 tolls the limitations period for Plaintiff because of Elmer and Nelva's deaths.

XVI.

**Conditions Precedent**

44. All conditions precedent to the recovery of the relief sought hereunder have occurred or have been performed. Plaintiff is prosecuting this action in good faith and with just cause for the purpose of determining and protecting the assets of the trusts.

XVII.

**Prejudgment Interest**

45. Plaintiff is also entitled to prejudgment interest on his claims.

XVIII.

**Request for Attorneys' Fees**

46. Plaintiff requests that he be allowed to recover his fees and expenses for this action pursuant to Tex. Civ. Prac. Rem. Code Ann. §37.009. Plaintiff further requests that this Court award Plaintiff his costs and reasonable and necessary attorney's fees which had to be incurred prior to and

in connection with this matter pursuant to Tex. Prop. Code Ann. §114.064. Plaintiff also seeks awards for any appellate fees that may be required in connection with this action.

**XIX.**

**Request for Injunctive Relief**

47. Plaintiff also seeks injunctive relief. The expedited consideration of this request is essential due to the need to preserve the information concerning these trusts and the assets in these trusts. Plaintiff asks for an Order preventing Defendants and their agents from destroying, hiding or transferring the records and assets of the Family Trust, the Successor Trusts, and any trust created pursuant to the terms of the 8/25/10 QBD, or taking any other steps normally afforded to parties in Defendants' purported positions with regard to such trusts or the property Defendants have received which would result in a loss or secretion of the property, which would remove property from this Court's jurisdiction or control, or which would frustrate this Court in its exercise of jurisdiction or control, or thwart the purposes of the trust instruments by depriving Plaintiff of his rights.

48. Plaintiff further requests the Court direct Defendants to refrain from conducting any business or entering into any transactions on behalf of the trusts without the prior written consent of Plaintiff during the pendency of this action.

49. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with the assets of the trust to which he is entitled, and that unless appropriate orders are issued by this Court, Defendants will make additional transfers to avoid Plaintiff's rights and this Court's authority. Plaintiff will suffer irreparable harm, damage, and injury unless Defendants, their relatives, partners, agents, servants, attorneys, accountants, employees, assigns, representatives and those persons in active concert or in participation with them are ordered by this Court to secure and preserve all documents and other information concerning the trusts wherever it

may now be located. Plaintiff requests that Defendants be further ordered to refrain from taking any action with regard to the assets formerly or presently owned by Elmer, Nelva, or any of the trusts, moving or transferring any such assets, changing any positions of authority or exercising any powers or rights afforded to them as a result of the trusts, or applicable law. If orders are not entered as requested, Plaintiff will be irreparably harmed because assets can be further transferred, secreted or otherwise disbursed, and Defendants' prior actions while in control of these assets indicates they will indeed take those steps because they have already taken similar steps.

50. Plaintiff has no adequate remedy at law to preserve the assets at issue, and the loss of assets would be irreparable because if the assets are transferred or sold, the cash received in such a transaction could be even more easily be lost, hidden, or removed from this Court's control by Defendants, or if spent, will be lost to Plaintiff.

51. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with assets or income from the Trust, and Defendants and those acting in concert with them will continue to transfer assets in an attempt to avoid Plaintiff's rights. Unless appropriate orders are issued by this Court, nothing will prevent Defendants and those acting in concert with them will from continuing with their prior course of improper conduct. Therefore, Plaintiff will suffer irreparable harm, damage, and injury unless Defendants and their relatives, partners, agents, attorneys, employees, and those persons in active concert or in participation with them are ordered by this Court to cease all disbursements and transfers of assets from Elmer, Nelva, and the trusts, as well as from the assets they have already taken from Elmer, Nelva, and the trusts.

XXI.

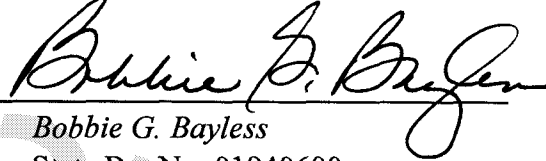
**Plaintiff's Requests for Disclosures to Defendants**

52. Pursuant to Rule 194, T.R.C.P., the Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (1).

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that the parties listed above be cited to appear and answer, and that on final hearing this Court declare the rights, duties and liabilities of the parties to the Trust and enter a judgment as sought by Plaintiff and for such other and further relief to which Plaintiff may show himself justly entitled.

Respectfully submitted,

BAYLESS & STOKES

By: 

*Bobbie G. Bayless*

State Bar No. 01940600

2931 Ferndale

Houston, Texas 77098

Telephone: (713) 522-2224

Telecopier: (713) 522-2218

bayless@baylessstokes.com

*Attorneys for Plaintiff*

VERIFICATION

STATE OF TEXAS §

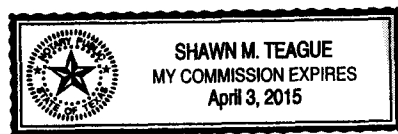
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COUNTY OF HARRIS §

BEFORE ME, the undersigned Notary Public, on this day personally appeared CARL HENRY BRUNSTING, who, being by me duly sworn on oath deposed and said that he is the Plaintiff in this action; that he has read the foregoing pleading and that every statement contained in that document is within his knowledge and is true and correct.

*Carl Henry Brunsting*  
CARL HENRY BRUNSTING

SUBSCRIBED AND SWORN TO BEFORE ME on the 8<sup>th</sup> day of April, 2013, to certify which witness my hand and official seal.



*Shawn M. Teague*  
Notary Public in and for the  
State of T E X A S  
Printed Name: Shawn M. Teague  
My Commission Expires: 4-3-2015



**Data Entry  
Pick Up This Date**

CAUSE NO. 412,249-401

**PROBATE COURT 4**

IN RE: ESTATE OF  
NELVA E. BRUNSTING,  
DECEASED

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§  
§  
§

IN THE PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

MOTION TO ENTER TRANSFER ORDER

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candace Louis Curtis and files this Motion to Enter Transfer Order, and in support thereof would respectfully show as follows:

I. BACKGROUND

Plaintiff filed an Original Petition in the Federal Court for the Southern District of Texas against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. She subsequently sought and was granted leave to amend her pleading to include necessary parties Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting. Although necessary, the addition of these two new parties destroyed federal diversity jurisdiction. Because similar issues of fact and law are currently pending before this Court, the Federal Court entered an order remanding Plaintiff's Federal Case to this Court. *See Ex. A, Order of Remand.*

II. TRANSFER

Pursuant to Texas Estates Code Sections 32.005, 32.006 and 32.007, this Court has jurisdiction over the parties and the claims alleged in Plaintiff's First Amended Petition. Accordingly, Plaintiff requests that this Court enter an order accepting the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*

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III. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) accept the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/*Sain*

A limited Liability Partnership

BY: 

JASON B. OSTROM

(TBA #24027710)

jason@ostromsain.com

NICOLE K. SAIN THORNTON

(TBA #24043901)

nicole@ostromsain.com

5020 Montrose Blvd., Ste. 310

Houston, Texas 77006

713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

06052014:0759:P0099

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 28 day of May, 2014:

Ms. Bobbie Bayless  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith  
1401 McKinney, 17<sup>th</sup> Floor  
Houston, Texas 77010  
713.752.8640  
713.425.7945 (Facsimile)

Mr. George W. Vie III  
1021 Main, Suite 1950  
Houston, Texas 77002  
713.225.0547  
713.225.0844 (Facsimile)

  
Jason B. Ostrom

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,

Plaintiffs,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

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CIVIL ACTION NO. 4:12-CV-592

**ORDER GRANTING PLAINTIFF'S MOTION TO REMAND**

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15<sup>th</sup> day of May, 2014.



Kenneth M. Hoyt  
United States District Judge

06052014:0759:P0101

CAUSE NO. 412,249-401

IN RE: ESTATE OF  
NELVA E. BRUNSTING,  
DECEASED

§  
§  
§  
§  
§

IN THE PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

ORDER OF TRANSFER

On this day came to be considered the Motion to Enter Transfer Order filed by Plaintiff Candace Curtis, seeking to have this Court accept the Order to Remand entered by the Federal Court for the Southern District of Texas and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.* The Court is of the opinion that it has jurisdiction over the parties and claims pending under Cause Number 4:12-CV-00592 finds that the Motion to Enter Transfer Order should be granted. It is, therefore,

ORDERED that the Order of Remand entered by the Federal Court for the Southern District of Texas in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, is hereby accepted. It is further,

ORDERED that the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, be and hereby are transferred to this Court to be held under Cause Number 412,249-401.

SIGNED on this 3 day of June, 2014.

*Christine Boush*  
JUDGE PRESIDING

*Stan Stewart*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

FILED  
2014 JUN -4 AM 10:35

06052014:0759:P0102

06052014:0759:P0108

APPROVED AS TO FORM:

OSTROM/*Sain*

A limited Liability Partnership

BY:



JASON B. OSTROM

(TBA #24027710)

NICOLE K. SAIN THORNTON

(TBA #24043901)

5020 Montrose Blvd., Ste. 310

Houston, Texas 77006

713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

UNOFFICIAL COPY

412249

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Nelva Brunsting, Deceased

CANDACE LOUISE CURTIS, *et al*,

Plaintiffs,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§

CIVIL ACTION NO. 4:12-CV-592

**ORDER GRANTING PLAINTIFF'S MOTION TO REMAND**

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.



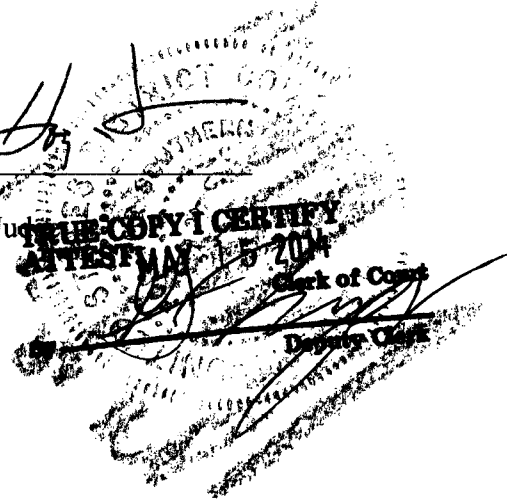
It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15<sup>th</sup> day of May, 2014.



Kenneth M. Hoyt  
United States District Judge



FILED  
2014 MAY 22 PM 2:11  
Star Stewart  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

**DATA-ENTRY  
PICK UP THIS DATE**

CAUSE NO. 412,249-401

PROBATE COURT 4

ESTATE OF § IN PROBATE COURT  
NELVA E. BRUNSTING, §  
DECEASED § NUMBER FOUR (4) OF  
§ HARRIS COUNTY, TEXAS  
§

CARL HENRY BRUNSTING, § IN PROBATE COURT  
Individually and as Independent Executor of §  
the Estates of Elmer H. Brunsting and Nelva §  
E. Brunsting §

v. §

ANITA KAY BRUNSTING f/k/a ANITA § NUMBER FOUR (4) OF  
KAY RILEY, Individually, as Attorney-in- §  
Fact for Nelva E. Brunsting, and as Successor §  
Trustee of the Brunsting Family Living Trust, §  
the Elmer H. Brunsting Decedent's Trust, the §  
Nelva E. Brunsting Survivor's Trust, the Carl §  
Henry Brunsting Personal Asset Trust, and §  
the Anita Kay Brunsting Personal Asset §  
Trust; §  
AMY RUTH BRUNSTING f/k/a AMY RUTH §  
TSCHIRHART, Individually and as Successor §  
Trustee of the Brunsting Family Living Trust, §  
the Elmer H. Brunsting Decedent's Trust, the §  
Nelva E. Brunsting Survivor's Trust, the Carl §  
Henry Brunsting Personal Asset Trust, and §  
the Amy Ruth Tschirhart Personal Asset §  
Trust; §  
CAROLE ANN BRUNSTING, Individually §  
and as Trustee of the Carole Ann Brunsting §  
Personal Asset Trust; and as nominal §  
Defendant only; §  
CANDACE LOUISE CURTIS § HARRIS COUNTY, TEXAS

**AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING  
DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY  
MEDIATOR'S FEE**

TO THE HONORABLE JUDGE:

CARL HENRY BRUNSTING, ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, AMY  
RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, CAROLE ANN BRUNSTING, and  
CANDACE LOUISE CURTIS file this "Agreed Motion to Distribute Funds from the Elmer H. Brunsting

07/30/2014 15:20:17

Decedent's Trust and the Nelva F. Brunsting Survivor's Trust to Pay Mediator's Fee" and show as follows:

**BACKGROUND**

1. Elmer H. Brunsting and Nelva E. Brunsting had five children, CARL HENRY BRUNSTING, ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, CAROLE ANN BRUNSTING, and CANDACE LOUISE CURTIS.
2. Elmer and Nelva created the Brunsting Family Trust in 1996 and amended the trust in 2005. Elmer and Nelva were the initial trustees.
3. Elmer died in April of 2009, and Nelva served as sole trustee.
4. Sometime after Elmer's death, the Brunsting Family Trust was divided into two trusts, the Elmer H. Brunsting Decedent's Trust and the Nelva F. Brunsting Survivor's Trust.
5. Elmer died in April of 2009, and Nelva served as sole trustee until her resignation on December 21, 2010. Anita began serving as Trustee.
6. Nelva died in November of 2011. Upon the death of Nelva, Amy was appointed to serve as co-Trustee with Anita.
7. Candy filed suit in federal court against Amy and Anita on February 27, 2012 in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting, et. al.*
8. Judge Hoyt entered an order prohibiting the distribution of trust assets without a court order.
9. Carl filed this suit in April of 2013.
10. Pursuant to Candy's request, on May 15, 2014, Judge Hoyt entered an order transferring the federal matter to this Court to be held under Cause Number 412,249.
11. The federal order prohibiting the distribution of trust assets without a court order remains in effect.
12. The parties agreed to mediate this matter with William Miller of Andrews Kurth LLP on August 14, 2014.
13. Miller's mediation fee for a nine hour mediation is \$6,500.

**RELIEF REQUESTED**

14. The parties agree that the \$6,500 fees should be paid as follows: one-half from the Elmer H. Brunsting Decedent's Trust - Bank of America Checking acct: xxxxxxxx3536 and one-half from the Nelva F. Brunsting Survivor's Trust - Bank of America Checking acct: xxxxxxxx3523.
15. The parties agree that should the mediator require an additional fee to extend the mediation, if all parties agree in writing to any additional fees, such additional fees should be paid one-half from the trusts as noted in the paragraph above.

THEREFORE, CARL HENRY BRUNSTING, ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, CAROLE ANN BRUNSTING, and CANDACE LOUISE CURTIS, request this Court permit Trustees to pay Andrews Kurth LLP's mediation fee of \$6,500 plus any agreed upon mediation fee.

Respectfully submitted,

Mills Shirley L.L.P.

By: \_\_\_\_\_  
Maureen Kuzik McCutchen  
State Bar No. 00784427  
2228 Mechanic, Ste 400  
P.O. Box 1943  
Galveston, Texas 77553-1943  
Phone: (409) 763-2341  
Facsimile: (409) 763-2879  
[mmccutchen@millsshirley.com](mailto:mmccutchen@millsshirley.com)

*Attorneys for Anita Kay Brunsting and  
Amy Ruth Brunsting*

Ostrom /Sain

By: \_\_\_\_\_  
Jason B. Ostrom  
State Bar No. 24027710  
5020 Montrose Blvd., Suite 310  
Houston, TX 77006  
Phone: (713) 863-8891  
Facsimile: (713) 863-1051  
[jason@ostromsain.com](mailto:jason@ostromsain.com)

*Attorney for Candace Louise Curtis*

BAYLESS & STOKES

By: \_\_\_\_\_  
Bobbie G. Bayless  
State Bar No. 01940600  
2931 Ferndale  
Houston, Texas 77098  
Phone: (713) 522-2224  
Facsimile: (713) 522-2218  
[bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)

*Attorneys for Carl Henry Brunsting*

CRAIN, CATON & JAMES,  
A Professional Corporation

By: \_\_\_\_\_  
DARLENE PAYME SMITH  
State Bar No. 18643525  
[dsmith@craincaton.com](mailto:dsmith@craincaton.com)  
LORI A. WALSH  
State Bar No. 24084038  
[lwalsh@craincaton.com](mailto:lwalsh@craincaton.com)  
1401 McKinney, Suite 1700  
Houston, Texas 77010-4035  
(713) 658-2323  
(713) 658-1921 (Facsimile)

*Attorneys for Carole Ann Brunsting*

#### CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of this document has been sent in the appropriate manner to all known counsel of record on this the \_\_\_\_ day of July, 2014.


Respectfully submitted,

Mills Shirley L.L.P.

By:   
Maureen Kuzik McCutchen  
State Bar No. 00784427  
2228 Mechanic, Ste 400  
P.O. Box 1943  
Galveston, Texas 77553-1943  
Phone: (409) 763-2341  
Facsimile: (409) 763-2879  
[mmccutchen@millsshirley.com](mailto:mmccutchen@millsshirley.com)

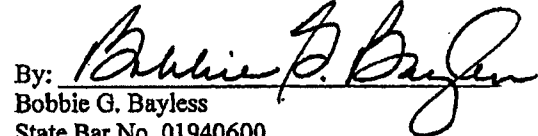
*Attorneys for Anita Kay Brunsting and  
Amy Ruth Brunsting*

Ostrom /Saip

By:   
Jason B. Ostrom  
State Bar No. 24027710  
5020 Montrose Blvd., Suite 310  
Houston, TX 77006  
Phone: (713) 863-8891  
Facsimile: (713) 863-1051  
[jason@ostromsain.com](mailto:jason@ostromsain.com)

*Attorney for Candace Louise Curtis*

BAYLESS & STOKES

By:   
Bobbie G. Bayless  
State Bar No. 01940600  
2931 Ferndale  
Houston, Texas 77098  
Phone: (713) 522-2224  
Facsimile: (713) 522-2218  
[bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)

*Attorneys for Carl Henry Brunsting*

CRAIN, CATON & JAMES,  
A Professional Corporation

By: \_\_\_\_\_  
DARLENE PAYNE SMITH  
State Bar No. 18643525  
[dsmith@craincaton.com](mailto:dsmith@craincaton.com)  
LORI A. WALSH  
State Bar No. 24084038  
[lwalsh@craincaton.com](mailto:lwalsh@craincaton.com)  
1401 McKinney, Suite 1700  
Houston, Texas 77010-4035  
(713) 658-2323  
(713) 658-1921 (Facsimile)

*Attorneys for Carole Ann Brunsting*

**CERTIFICATE OF SERVICE**

By my signature above, I hereby certify that a true and correct copy of this document has been sent in the appropriate manner to all known counsel of record on this the 30 day of July, 2014.

CAUSE NO. 412,249-401

ESTATE OF § IN PROBATE COURT  
NELVA E. BRUNSTING, §  
DECEASED § NUMBER FOUR (4) OF  
§ HARRIS COUNTY, TEXAS  
§

CARL HENRY BRUNSTING, § IN PROBATE COURT  
Individually and as Independent Executor of §  
the Estates of Elmer H. Brunsting and Nelva §  
E. Brunsting §

v. §

ANITA KAY BRUNSTING f/k/a ANITA § NUMBER FOUR (4) OF  
KAY RILEY, Individually, as Attorney-in- §  
Fact for Nelva E. Brunsting, and as Successor §  
Trustee of the Brunsting Family Living Trust, §  
the Elmer H. Brunsting Decedent's Trust, the §  
Nelva E. Brunsting Survivor's Trust, the Carl §  
Henry Brunsting Personal Asset Trust, and §  
the Anita Kay Brunsting Personal Asset §  
Trust; §  
AMY RUTH BRUNSTING f/k/a AMY RUTH §  
TSCHIRHART, Individually and as Successor §  
Trustee of the Brunsting Family Living Trust, §  
the Elmer H. Brunsting Decedent's Trust, the §  
Nelva E. Brunsting Survivor's Trust, the Carl §  
Henry Brunsting Personal Asset Trust, and §  
the Amy Ruth Tschirhart Personal Asset §  
Trust; §  
CAROLE ANN BRUNSTING, Individually §  
and as Trustee of the Carole Ann Brunsting §  
Personal Asset Trust; and as nominal §  
Defendant only; §  
CANDACE LOUISE CURTIS § HARRIS COUNTY, TEXAS

**ORDER APPROVING AGREED MOTION TO DISTRIBUTE FUNDS FROM THE MOTION  
TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND  
THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY MEDIATOR'S FEE**

Before the Court is CARL HENRY BRUNSTING, ANITA KAY BRUNSTING f/k/a ANITA  
KAY RILEY, AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, CAROLE ANN  
BRUNSTING, and CANDACE LOUISE CURTIS' "Agreed Motion to Distribute Funds from the Elmer  
H. Brunsting Decedent's Trust and the Nelva F. Brunsting Survivor's Trust to Pay Mediator's Fee"

07912014: 1520: P0129

It is, therefore, ORDERED that the Trustees have authority to pay, and shall pay, the following:

- Andrews Kurth LLP mediation fee of \$6,500.00; and
- any additional Andrews Kurth LLP mediation fees agreed to in writing by CARL HENRY BRUNSTING, ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, CAROLE ANN BRUNSTING, and CANDACE LOUISE CURTIS.

One half of the fees shall be paid out of the Elmer H. Brunsting Decedent's Trust - Bank of America Checking acct: xxxxxxxx3536 and one-half out of the Nelva F. Brunsting Survivor's Trust - Bank of America Checking acct: xxxxxxxx3523.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_ 2014.

\_\_\_\_\_  
Presiding Judge



REPORTER'S RECORD

VOLUME 1 OF 1

COURT CAUSE NO. 412.249-401

APPELLATE NO. \_\_\_\_\_

5	THE ESTATE OF:	)	IN THE PROBATE COURT
6	NELVA E. BRUNSTING,	)	NUMBER 4 (FOUR) OF
6	DECEASED	)	HARRIS COUNTY, TEXAS

\* \* \* \* \*

MOTIONS HEARING

\* \* \* \* \*

On the 9th day of December, 2014, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable Christine Butts Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand

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

Mr. Neal E. Spielman  
Griffin & Matthews  
Attorney at Law  
SBN 00794678  
1155 Dairy Ashford  
Suite 300  
Houston, Texas 77079  
281.870.1124  
ATTORNEY FOR:  
AMY BRUNSTING

Mr. Jason B. Ostrom  
Attorney at Law  
SBN 24027710  
5020 Montrose Blvd.  
Suite 310.  
Houston, Texas 77006  
713.863.8891  
ATTORNEY FOR:  
CANDACE CURTIS

Ms. Bobbie G. Bayless  
Bayless & Stokes  
Attorney at Law  
SBN 01940600  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
ATTORNEY FOR:  
CARL H. BRUNSTING

Ms. Darlene Payne Smith  
Crain, Caton & James  
Attorney at Law  
SBN 18643525  
Five Houston Center  
1400 McKinney St.  
Suite 1700  
Houston, Texas 77010  
713.658.2323  
ATTORNEY FOR:  
CAROLE ANN BRUNSTING

Mr. Brad Featherston  
The Mendel Law Firm, L.P.  
Attorney at Law  
SBN 24038892  
1155 Dairy Ashford  
Suite 104  
Houston, Texas 77079  
281.759.3213  
ATTORNEY FOR:  
ANITA K. BRUNSTING

VOLUME 1  
(MOTIONS HEARING)

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1 December 9, 2014

2 PROCEEDINGS

3 THE COURT: Calling to order Cause Number  
4 412.249 in the 401.

5 We're here on The Estate of Nelva  
6 Brunsting. And if you would, perhaps, starting with Ms.  
7 Smith, just make announcements - your name, who you  
8 represent, and we'll just go along counsel table.

9 MS. SMITH: Darlene Payne Smith for Carole  
10 Brunsting, and Carole Brunsting is present.

11 MS. BAYLESS: Bobbie Bayless on behalf of  
12 Carl Brunsting.

13 MR. OSTROM: Jason Ostrom on behalf of  
14 Candy Curtis.

15 MR. SPIELMAN: Neal Spielman on behalf of  
16 Amy Brunsting.

17 MR. FEATHERSTON: Brad Featherston on  
18 behalf of Anita Brunsting.

19 THE COURT: And, I'm sorry, you're  
20 representing Amy?

21 MR. SPIELMAN: Yes, Your Honor. In fact,  
22 we filed our notice of appearance yesterday afternoon.  
23 And when I left the office, we had the fax cover page to  
24 everybody, but we hadn't gotten the e-file confirmation  
25 yet.

1 THE COURT: Okay. And it didn't make it  
2 to my file so. Well welcome. And what is your name?

3 MR. SPIELMAN: Neal Spielman.

4 THE COURT: Okay. Will you spell your  
5 last name for me?

6 MR. SPIELMAN: S-P-I-E-L-M-A-N.

7 THE COURT: Okay. We're here on three  
8 things:

9 Number one, Candace's motion for  
10 distribution of trust funds.

11 Number two, Carl Brunsting's motion for  
12 distribution of trust funds.

13 And finally, Carl Brunsting's motion to  
14 modify preliminary injunction.

15 And so, I guess it makes sense to start  
16 with Mr. Ostrom.

17 ARGUMENT BY MR. OSTROM:

18 MR. OSTROM: Sure, Your Honor, I'll be  
19 happy to approach.

20 Your Honor, I want to give the Court some  
21 procedural background.

22 We really have two proceedings in front of  
23 you right now as counsel sitting here at this table.  
24 The first proceeding, I was not involved in; and this  
25 was an action brought by Ms. Bayless' client in relation

1 to the estate and in relation to these trusts that form  
2 part of this estate. Ms. Bayless' client is the  
3 executor of Ms. Brunsting's estate, and she has brought  
4 claims against Anita and Amy alleging various breaches  
5 on their part in relation to the trust that we're  
6 discussing today.

7           The other proceeding was a proceeding that  
8 was filed in federal court. This was a proceeding  
9 initiated by my client, pro se, in federal court. In  
10 that lawsuit, my client sued Anita and Amy for breaches  
11 of trust relating to some sub trusts that were created  
12 as a result of -- or should have been created as a  
13 result of Nelva's death and that she was a beneficiary  
14 of. In that action, the federal judge filed a -- or  
15 signed an order transferring that cause to this court.

16           My understanding, from trying to work  
17 within the Clerk's Office here and the Clerk's Office in  
18 federal court, is that the physical file has not landed  
19 on your desk yet. And we are still trying to work  
20 through that process. In essence, what we're being  
21 told, because the two systems cannot speak  
22 electronically to each other, they can't just transfer  
23 the file. I physically have to request documents that  
24 they certify. Then I have to go file it with the clerk  
25 here to view the file. And we're talking about a case

1 that has a long history, and it actually went up to the  
2 Fifth Circuit. Judge Hoyt was reversed and came back  
3 down and is pending in front of him.

4 In that proceeding, the judge issued a  
5 preliminary injunction. And I don't know if this  
6 Court's seen that injunction. I've got copies here if  
7 you'd like to see it. It was attached to one of Ms.  
8 Bayless' files. That injunction removed all the power  
9 from the trustees to make any financial decisions  
10 regarding the trust. The specific language, so that  
11 there was no confusion, it says, "In essence, all  
12 transactions of financial nature shall require  
13 preapproval of the Court pending a resolution of  
14 disputes between the parties in this case." That's the  
15 language that --

16 THE COURT: And what page was that?

17 MR. OSTROM: That's on the fifth page of  
18 the Memorandum And Order Of Preliminary Injunction.  
19 And, in essence, the Court has stopped the trustees from  
20 taking any action. This is important because of one of  
21 the objections that was asserted to our motion  
22 requesting fees which is the Di Portanova case. I want  
23 to use this language to point out the distinction with  
24 Di Portanova.

25 Di Portanova involved a court substituting

1 discretion for the trustees when the trustees aren't  
2 given the ability to exercise discretion. That's not  
3 what's happened here.

4           What's happened here is the Court has made  
5 preliminary findings that Amy and Anita had failed to  
6 act in accordance with the trust. They need to be  
7 prohibited from taking any further action with regards  
8 to the trust until such time the case is resolved.

9           So, we didn't seek approval from Anita or  
10 Amy to allow our client to receive a distribution from  
11 the trust; in fact, the parties - and Mr. Featherston is  
12 aware of this - but the parties had already developed a  
13 process with prior counsel going to the Court and asking  
14 for attorneys fees.

15           Judge Hoyt has already entered an order  
16 once providing a 5,000-dollar attorney fee advance to my  
17 side along with a 5,000-dollar attorney fee advance to  
18 the trustee. The -- and then you had the experience of  
19 being in front of the trustee's prior counsel, Maureen  
20 McCutchen, when she asked you to go ahead and make a  
21 ruling allowing a distribution to pay the taxes  
22 associated with the real estate and enter into this  
23 lease arrangement on the Iowa farm property.

24           So, the parties have already begun and  
25 consented to this order and taking actions in this order



1 in both of the cause numbers even though this order was  
2 only entered in my case. I don't believe this Court has  
3 entered an order to this effect as related to Ms.  
4 Bayless' case.

5 So, we have two actions. And my client is  
6 here asking, now, pursuant to this order, for relief  
7 which is the payment of her attorney's fees.

8 Since that 5,000-dollar payment, we  
9 received no additional payments for attorney's fees.

10 Aside from -- we've been to mediation, and  
11 we couldn't get the case resolved in mediation.

12 Aside from a claim that my client's  
13 lawsuit is a violation of the intererim clause, which  
14 I'll address, there is no other grounds to suggest that  
15 my client should not be entitled to the benefits of the  
16 trusts that were created for her and her siblings.

17 The intererim clause, I think, is a  
18 grasping-at-straws prohibition.

19 This Court is probably very familiar with  
20 the law surrounding intererim clauses.

21 An intererim clause only appears in what  
22 I'm going to call the "QBD". It does not appear in the  
23 initial trust instrument that my client is not objecting  
24 to or the initial trust instrument that sets up the sub  
25 trust that my client's beneficiary of.

1           The intererim clause only appears in the  
2 document that my client wishes to challenge. The  
3 document that my client wishes to challenge is  
4 referenced as a "QBD". This is -- this was, in our  
5 position, an attempt to amend a trust that was otherwise  
6 irrevocable.

7           THE COURT: You're calling it a "QBD"; is  
8 that an acronym for --

9           MR. OSTROM: Qualified Beneficiary  
10 Designation.

11          THE COURT: Okay. And so what about the  
12 no-contest of our trust clause in the restatement?

13          MR. OSTROM: We don't challenge that  
14 trust. So, that trust -- we've got no complaints about  
15 the original trust, the restated trust or the sub trusts  
16 that were created by the restated trust. All the  
17 actions that Nelva and Elmer took together during their  
18 lifetime, we don't have complaints of -- over; it is  
19 what happens after Elmer passes away. After he dies,  
20 it's our position that that trust becomes irrevocable,  
21 and it's only certain things that any of the grantor  
22 and/or trustee can do at that stage.

23                 What happens is after Elmer's death, this  
24 Qualified Beneficiary Designation was done which  
25 purports to execute the disclaimer language in the

1 trust. They're trying to say this is a disclaimer.  
2 That's going to be their legal position. It's our  
3 position that this isn't a disclaimer - it's a wholesale  
4 amendment of the trust. It changes dispositive schemes,  
5 it adds intererim clauses, it appoints a trust protector  
6 that wasn't found in the original trust agreement. In  
7 fact, it contains language that speaks in the terms of  
8 an amendment to the trust.

9 THE COURT: I don't have any of that in my  
10 file.

11 MR. OSTROM: Your Honor, you don't because  
12 that is part of the file that we're trying to get over  
13 to you. These are arguments that I've raised in a  
14 declaratory judgment action in relation to this  
15 document, okay. But it is, it is an issue I wanted to  
16 discuss because that's the sole basis of our intererim  
17 challenge is - are we in violation of the terms of the  
18 trust by challenging this document that we believe,  
19 legally, doesn't have -- isn't grounded? I bring this  
20 up because that's the only basis to deny any relief for  
21 my client as it relates to this trust. She's not been  
22 accused of stealing or improperly managing these assets.  
23 She wasn't in charge of any of these assets.

24 Mainly, what we're trying to do is get her  
25 some relief on these attorneys fees that she's now

1 obligated to pay.

2           The said Article 10 Section 10 in the  
3 trust that we have not challenged, not the QBD  
4 amendment, but the Article 10 Section F and the trust  
5 says that there is going to be "no limitations are to be  
6 placed upon the beneficiary regarding withdrawals from  
7 his respective trust shares."

8           And further on in Section 10, it's  
9 creating those sub trusts. There is no language in  
10 there that puts in place a spend thrift provision. I  
11 don't think that a spend thrift provision is applicable  
12 because this is my client requesting a distribution of  
13 these funds to pay her attorney. This isn't me as a  
14 creditor coming after the trust trying to force the  
15 trust to pay when my client won't. We are doing this on  
16 behalf of our client so that she will have the funds  
17 necessary to pursue these actions that at least a  
18 federal court judge believed had some merit and  
19 authorized, on prior occasion, the distribution of  
20 attorneys fees.

21           So, for that -- for those reasons, we'd  
22 ask that this Court continue the practice that was  
23 started by Judge Hoyt, review our attorneys fees as  
24 submitted - I think we submitted some billing statements  
25 in camera - and make a fair and equitable decision as to

1 the distribution of those fees.

2 Your Honor, we would ask that if the  
3 Court's uncomfortable, it could just reserve how that's  
4 allocated at this point. I mean, I think you're going  
5 to hear from other counsel that these fees ultimately  
6 are going to be allocated somewhere at the end of this  
7 day.

8 Now, if the Court is uncomfortable  
9 allocating it to any one party - that's fine - or if the  
10 Court can allocate it to Candy's trust, the provision,  
11 and we're comfortable with that as well. But we believe  
12 that the Court does have the authority to do this in  
13 keeping with Judge Hoyt's prior order. And we'd ask for  
14 an award of the attorney fees as we previously  
15 submitted.

16 THE COURT: Okay. Let me read Judge  
17 Hoyt's order carefully again.

18 It specifically carves out income received  
19 for the benefit of the trust beneficiary. Does that --  
20 are those income distributions being made directly to  
21 the beneficiary or simply deposited into the trust  
22 account?

23 MR. OSTROM: They're just being deposited  
24 into -- they should be, according to this order,  
25 deposited into a trust account that's allocated for the

1 beneficiaries. I think right now, all they're doing is  
2 being deposited in a trust account; is that right,  
3 Bobbie?

4 MS. BAYLESS: As far as I know.

5 MR. OSTROM: My understanding.

6 THE COURT: One of my concerns is  
7 characterizing these attorney fees as somehow the  
8 health, education, maintenance and support of the  
9 beneficiary. That's the HEMS standard, and all the  
10 distributions need to meet that standard, right?

11 MR. OSTROM: You know, I don't -- I didn't  
12 see that in their respective trusts. So, in their sub  
13 trusts, I didn't pick up a HEMS standard. The language  
14 that I was regarding on is that there weren't going to  
15 be limitations placed on beneficiaries regarding  
16 withdrawals from their respective shares. And I  
17 don't -- I'm sorry, I don't have the trust instrument in  
18 front of me right now. I'll be happy to go back and  
19 check that standard. The -- I think this is clearly for  
20 the benefit and support of Ms. Curtis.

21 If this lawsuit is not brought or if she  
22 doesn't bring these claims and challenge this QBD, the  
23 Qualified Beneficiary Designation, it would, in essence,  
24 take the control of the trust away from her, put it with  
25 Anita and Amy as her trustees, individuals who have --

1 who the court-appointed master in federal court have  
2 already found have unequivocally distributed properties.

3           So, the master's finding in federal court  
4 went through what Anita and Amy did as trustees -- or  
5 really, not Amy - Amy hadn't taken any action yet as  
6 trustee - what Anita did as a trustee. And there were  
7 irregularities in her disbursements of those funds. She  
8 paid, she paid her personal credit cards with trust  
9 assets. She made distributions to her children for  
10 education and a vehicle. That was on top of trust fund  
11 fees that she was paying to herself and distributions of  
12 stock shares that came out of the trust that she had no  
13 authority under the trust instrument to make.

14           So, if Carole -- if my client isn't  
15 permitted to obtain funds to free herself from the  
16 control of Anita and Amy as trustees, she's, in essence,  
17 not able to defend, one, the wrongs that have occurred  
18 to her trust and protect her own -- the use of this  
19 property moving forward because they will, in essence,  
20 be her trustees.

21           THE COURT: Okay. Well I'm still -- I  
22 mean, I understand that, and I believe that's, you know,  
23 may be true - she has no other resources of -- she has  
24 no other resources. But I'm still bound by the language  
25 of the trust which -- I mean, the way I read it, and you

1 can correct me, and I'll hand you this trust, but it, it  
2 really sets out, clearly, that distributions are to be  
3 made to Candace for her health, education, maintenance  
4 and support. It does give her a general testamentary  
5 power of appointment where she has a lot more freedom,  
6 but that's only when she passes away.

7           And the other thing that's a sticking  
8 point for me is the no-contest clause which, though I'm  
9 not necessarily reading this as a contest to this  
10 particular trust, it's a contest to a subsequent  
11 amendment or disclaimer, whatever you're calling it; but  
12 it still says that founders do not -- and, founders, I  
13 guess they mean by "founders" or "settlers" or  
14 "trustors" "do not want to burden this trust with the  
15 cost of a litigated proceeding to resolve questions of  
16 law or fact unless the proceeding is originated by the  
17 trustee or with the trustee's written permission."

18           So, I mean, I just -- it's really clear  
19 Mom and Dad are saying, we don't want our kids to fight,  
20 and we're not going to allow our estate to be fettered  
21 away by paying for that fight.

22           MR. OSTROM: And I don't disagree that  
23 that's what Mom and Dad would like to have had happened,  
24 but I'm almost certain that Mom and Dad weren't going to  
25 consent to \$300,000 worth of Exxon stock being sent



1 without following the terms of the trust.

2 I'm certain that Mom and Dad didn't  
3 believe that Amy -- or that Anita would not follow the  
4 terms of the trust. And they couldn't have foreseen in  
5 their, at least Elmer couldn't have, in that no-contest  
6 provision, that after he dies, and this trust is  
7 supposed to be irrevocable, that they decide to go enter  
8 into new agreements.

9 Elmer, who is the grantor under that  
10 initial no-contest provision would have been -- couldn't  
11 have foreseen what his wife would do to make an  
12 otherwise irrevocable trust to change it.

13 Additionally, while those are noble  
14 intentions, Your Honor, you and I both know that whether  
15 we prevail or not, we can be relieved of our obligations  
16 under violation of the no-contest clause just by showing  
17 a good faith in our position as it relates to  
18 challenging the instrument.

19 THE COURT: And I'm not even getting that  
20 far down the road. I'm just -- I'm looking at -- this  
21 sentence just has -- happened to be in the intererim  
22 clause in this trust. And so I'm not even questioning  
23 whether or not this violates that clause. But what I am  
24 saying is that as part of that clause, then -- I mean,  
25 just to be clear, we'll call them, "Mom and Dad." They

1 said that they don't want any of the trust assets to be  
2 used unless the trust -- to pay attorney fees unless the  
3 trustee consents to that.

4           So, for me, that's, that's a problem. And  
5 everyday-people are faced -- I mean, one of the biggest  
6 problems with the American judicial system is that  
7 people are often unable to pursue wrongdoings against  
8 them because they can't afford to hire a lawyer, and  
9 this is one of those cases. And I'm not sure that going  
10 against what the trustee or what the trust terms are and  
11 allowing your client to pay their lawyer, that puts -- I  
12 mean, if it was an advance, you know, and you can make  
13 an argument that it was for her health, education,  
14 maintenance and support --

15           MR. OSTROM: Going back to the maintenance  
16 issue, I think it absolutely is. She's going to use  
17 resources, one way or another, trying to pay me. Those  
18 are her resources. If she can't pay the -- if she can't  
19 pay the light bills, the food, the shelter, the -- those  
20 other items, it's not telling her she can't hire a  
21 lawyer. It's not saying she can't have that part of  
22 what she has to do to protect her assets. And this is  
23 her asset. She is the beneficiary of this trust. She  
24 invested with a beneficiary interest in this trust.  
25 It's hers.

1                   What's basically -- what I'm hearing is  
2 that, yes, you have this interest in this trust; you're  
3 the beneficiary; the trustee is the one that owes you  
4 the fiduciary obligation, but you can't use this money  
5 to protect yourself. You can't use this money as  
6 maintenance or support to make sure that the trustee who  
7 owes you the fiduciary obligations actually conforms  
8 with those fiduciary obligations. That's what --  
9 that's -- it's not just they can't redress the wrong,  
10 it's saying there is no way that makes or support, which  
11 I think it does, contemplates the need to use those  
12 resources to help protect this asset.

13                   And I would posit to this Court that she  
14 should be able to use these resources - her funds and  
15 her share of this estate - to hold her fiduciaries  
16 accountable. And I think that's exactly what Judge Hoyt  
17 saw when he started initiating and allowing the  
18 attorney's fees to get paid.

19                   THE COURT: Let's keep all sidebar  
20 comments --

21                   MS. SMITH: I'm shocked that we're here on  
22 the same case that he's never been involved in, and it's  
23 misstating everything that happened.

24                   THE COURT: Well, you'll have your  
25 opportunity to speak. I just don't want -- you know,

1 we've got to keep a record here, and I want to keep it  
2 clean. Okay.

3 MR. OSTROM: That's all I have.

4 THE COURT: Okay. Thank you, Mr. Ostrom.  
5 Okay. I have a question.

6 I read the restatement of the trust, and I  
7 see where -- where was it? We had the trustees, and  
8 they were named: Carl and Amy. And somehow, Amy and  
9 Anita became trustees, and I never saw how that  
10 happened. Can someone answer that for me?

11 MR. OSTROM: Do you want to address that?

12 MS. BAYLESS: Sure.

13 Your Honor, when the Qualified Beneficiary  
14 Designation was signed shortly thereafter, Nelva  
15 resigned as Trustee, allegedly resigned as trustee, and  
16 appointed Anita as her successor trustee. And the  
17 Qualified Beneficiary Designation had changed the  
18 trustees to Anita and Amy once she was deceased.

19 My client became ill shortly before the  
20 Qualified Beneficiary Designation was signed and was not  
21 involved in a lot of what went on, but that's the  
22 chronology.

23 THE COURT: Okay. And so is the primary  
24 asset, in this estate, a qualified retirement plan?

25 MS. BAYLESS: I'm sorry?

1 THE COURT: Is the primary asset a  
2 qualified plan? So, this beneficiary -- Qualified  
3 Beneficiary Designation - I don't even know what that  
4 is.

5 MS. BAYLESS: Yeah, it's a nomenclature  
6 I'm not really familiar with it either, but it's what  
7 the trust said could be done. It's basically a power of  
8 appointment, I think you would call it, but they call it  
9 a Qualified Beneficiary Designation. But the primary  
10 asset is the Iowa farm.

11 THE COURT: I see. Okay. So, we have  
12 some objections. Who would like to voice their  
13 objection first?

14 ARGUMENT BY MS. BAYLESS:

15 MS. BAYLESS: Let me say this and save  
16 time, Your Honor.

17 I filed the request -- my understanding is  
18 that the federal case was transferred to this Court with  
19 its order in place. Had it not been, I would have been  
20 seeking, from this Court, injunctive relief to keep  
21 everything frozen as had happened in federal court. So,  
22 that's -- and now that's gotten complicated because that  
23 file is not over here, and I understand that. But there  
24 are orders which Judge Hoyt said would remain in place  
25 during the transfer.

1                   And my concern was that when Amy and Anita  
2 lost their last counsel, we had been led, and when I say  
3 "we," Mr. Ostrom and I, had been led to believe that  
4 they were in the process of obtaining counsel; and  
5 frankly, I was a little surprised there wasn't a  
6 substitution before the withdrawal.

7                   But my concern became when they didn't get  
8 counsel and didn't get counsel that we had two trustees  
9 floating around out here that were under injunctive  
10 orders that we couldn't really communicate with easily  
11 and that type of thing. So, that was the reason. And I  
12 didn't file a motion to remove them - I filed a motion  
13 to modify the injunctive relief so that we had somebody  
14 in control of the assets or in control of whoever was in  
15 control of the assets that could be monitored and we had  
16 a concern.

17                   Initially, Anita obtained a new counsel,  
18 but it wasn't until yesterday that Amy obtained counsel.  
19 But that was my concern, and so I don't intend --

20                   THE COURT: So, you wish to withdraw that?

21                   MS. BAYLESS: Yes.

22                   THE COURT: Okay. So, we're left, really,  
23 with any objections to Candace's motion for distribution  
24 of trust funds.

25                   MR. OSTROM: I think Ms. Bayless -- I

1 believe Ms. Bayless also requested a distribution as  
2 well.

3 THE COURT: And we'll hear that, I just  
4 wanted -- if you want to go ahead and make your case and  
5 then we can -- the objections can be made to both  
6 requests for distributions? I mean, do you have an  
7 objection to that?

8 MR. FEATHERSTON: Seems like a logical way  
9 to proceed, Your Honor.

10 THE COURT: Okay.

11 FURTHER ARGUMENT BY MS. BAYLESS:

12 MS. BAYLESS: And I can be very brief,  
13 Your Honor.

14 Frankly, my client has undertaken a number  
15 of steps -- undertook to pursue discovery, took  
16 depositions, obtained, personally, all of the trust  
17 records that we have now; initiated the probate  
18 proceedings so that there was a party that could proceed  
19 against the attorneys who prepared the documents. I  
20 mean, he's been doing a lot of stuff. He was not  
21 involved in the federal court case but watched as, both,  
22 Amy and Anita and Candy received the distribution for  
23 attorneys fees. So, at that point, we didn't know  
24 whether that would be a one-time distribution or whether  
25 it would be on an ongoing basis and be treated the same

1 way. It's obviously expensive litigation. And so to  
2 the extent parties are receiving distributions for base,  
3 and I don't question that that is -- may well be the  
4 proper thing to happen if this dispute is going to be  
5 sorted out properly, we didn't want to be continuing to  
6 stand on the sideline because he is belaboring more for  
7 much of what is going on, and he's not been doing that  
8 with trust resources.

9           So, when Mr. Ostrom filed another request  
10 for fees -- and, frankly, I told Mr. Ostrom when he did  
11 it the first time, that was going to be a bad precedent  
12 unless everybody was participating in that way. And so  
13 when he filed that again, I informed him that we were  
14 going to make a similar request because we didn't think  
15 one party alone should be receiving distributions for  
16 attorneys fees.

17           I'm not disputing that all of the parties  
18 probably need distributions for attorneys fees. And so  
19 rather than couching it as an objection to his request,  
20 I made my own request.

21           THE COURT: Okay. Well, let me just  
22 say -- I mean, in other fiduciary litigation cases that  
23 have involved trusts, we've always waited until the end  
24 to award attorney fees, and one of the reasons for that  
25 is because one of the factors that's required in making



1 an award of attorney fees is whether, you know, you kind  
2 of apply those fees to the, to the rules. And one of  
3 the tenants is those attorney fees have to be reasonable  
4 in relation to the, to the damages sought. And so here  
5 we're kind of flying blind. We've got attorney fees  
6 being requested, but we have -- I have no idea what the  
7 Iowa farm is, the value of it is. I have no idea what  
8 the damages could be. So, to say you're entitled to  
9 these fees without knowing all of those things, I just  
10 don't see how I can do that because I can do it at the  
11 end of the game when everything becomes clear, and I'm  
12 sitting there, you know, writing a decision. But until  
13 I know, I just feel like there are just a lot of things  
14 missing in my mind that would enable me to make a  
15 reasonable ruling as to the -- as to the reasonableness  
16 of the fees. Does that make any sense?

17 MS. BAYLESS: Sure. Makes a lot of sense.

18 I mean, I just think that the difficulty  
19 that this case faces is there are some very complicated  
20 issues. Many of them are legal issues, and we may be  
21 able to resolve them through motions for summary  
22 judgment in a fairly short order which, I say "short  
23 order," you know, in the nature of litigation, you know,  
24 not tomorrow, of course. But -- and that may help. It  
25 might also help the Court with the issue of what's

1 reasonable -- or even, for example, I think one of the  
2 issues is going to be enforceability of the no-contest  
3 clause. I mean, if we deal with some of the legal  
4 issues - that may help.

5 My point is, in the filing, it's sort of  
6 acknowledging - yes, it's expensive litigation; and,  
7 yes, there are assets there which will ultimately be  
8 divided among the siblings. And the idea that they  
9 can't get that sorted out because of the legal expenses  
10 being more than they can bear without what they're  
11 entitled to from the trust, is also sort of illogical.  
12 But I certainly understand the process. I just don't  
13 want to be the only one who is sitting over here  
14 watching that happen.

15 And so to the extent the Court decided,  
16 well, we've got to figure out a way to systematically  
17 maybe not pay the fees but contribute to them or  
18 something, I want to be in that line. My client needs  
19 to be in that line. And to the extent the Court says,  
20 I'm not going to do that until the end of the case, I  
21 certainly understand why that might occur also.

22 But I do think there are some -- they're  
23 not all legal issues, but there are a lot of legal  
24 issues that are complicated legal issues, but they are  
25 issues that can be resolved without a trial. And then

1 that might narrow everyone's focus, and maybe we could  
2 then get it resolved at a mediation. We're just kind of  
3 throwing up everything in the air in mediation. It was,  
4 it was not a pretty sight. So, it might help to narrow  
5 some of those as well.

6 THE COURT: Well, is it -- would it be  
7 possible -- I'm completely sympathetic with this  
8 litigation going forward and attorneys being paid as it  
9 goes forward. I mean, I'm very sympathetic to your  
10 cause, Mr. Ostrom, it's just that I don't -- I would  
11 feel -- I would feel like I wasn't going out on a limb  
12 if everyone needs attorney fees, and you guys came up  
13 with some sort of way to agree on how those would be  
14 paid as the trust litigation progresses. I mean, I  
15 would be open to something like that.

16 MS. BAYLESS: Right. I sort of thought  
17 that was the direction we would head in because,  
18 frankly, when Mr. Ostrom got paid \$5,000 before, Amy and  
19 Anita's counsel got paid \$5,000 before. So, I sort of  
20 assumed - that was different counsel - and rather than  
21 the objections, I sort of assumed we were all going to  
22 be working in some cooperative spirit for something that  
23 was helpful but wasn't doing everything because  
24 obviously then you're determining the case but determine  
25 the case. I get that. But I don't think there is any

1 question that there are five siblings here who are going  
2 to end up with trust assets at the end of the day. And  
3 so, you know, you can, you can hope for things to be  
4 agreed upon or worked out. That doesn't mean that  
5 happens. But I certainly think that there is a middle  
6 ground there considering the assets in the trust that --  
7 the Iowa farm is worth in excess of \$2 million. So,  
8 it's also not liquid, but there are liquid assets in the  
9 trust.

10 But, you know, the Iowa farm is kind of  
11 the curse and the blessing in the case. It can't go  
12 anywhere so it's preserved, but it's also not liquid.  
13 And because there are some other liquid assets, you  
14 know, minimal distributions, even if it's two off the  
15 beneficiaries, would be helpful in that regard in moving  
16 the case toward a resolution as opposed to what else can  
17 we fight about?

18 THE COURT: I think that's a good point  
19 too. I think it would make it more possible to make --  
20 rather than make it, obviously, to pay attorney fees,  
21 but just simply distributions to all five beneficiaries  
22 in equal amounts. I mean, of course, we would  
23 absolutely be open to something like that, and that  
24 would enable the beneficiaries to fund, you know, any --  
25 or pursue the causes of action that they -- to defend

1 the cause of action that result from all this.

2 MR. OSTROM: Your Honor, and to your  
3 point, we agreed to the payment of attorneys fees for  
4 their counsel, previously. That was an order that Judge  
5 Hoyt entered. And so, I've done that in the past.

6 When we filed our application for our  
7 motion for payment of attorneys fees, the trustees were  
8 not represented. It was just Anita. And I fully  
9 expected that we would get down here, and we could  
10 attempt to work out a deal because if Anita's complying  
11 with this temporary injunction, her attorneys aren't  
12 getting paid either. And the same should be true for  
13 Amy, that I don't believe any one client has a whole  
14 bunch of expendable resources outside of the trust to  
15 pay the attorneys fees.

16 So, I would be willing to work out an  
17 agreement in that regard as well, but we are met with  
18 objections like Ms. Bayless said.

19 THE COURT: Well, I'm just not, I'm not --  
20 I just don't feel like I can -- I don't feel like that,  
21 under the terms of the trust and pursuant to the terms  
22 of the trust, I can allow attorney fees to be paid at  
23 this time. I think I could absolutely make a  
24 distribution to all five beneficiaries if everyone  
25 agreed to that. And to me, that seems like the most

1 plausible solution to this rather than talk about  
2 attorney fees at all.

3 I mean, make a distribution and let each  
4 beneficiary decide whether that's a good use of their  
5 money to spend on the litigation, to spend that  
6 distribution on litigation.

7 MR. OSTROM: And, Your Honor, not opposed  
8 to that. What I don't know is that we have all the  
9 information we need right today because we came at this  
10 from the attorney fee angle. I don't know what that  
11 looks like, like what would be a fair partial  
12 distribution. 'Cause what we're talking about, in  
13 essence, would be a partial distribution out of the  
14 trust, and what that partial distribution looked like,  
15 what assets we would pick from, how much income is  
16 thrown off from the Iowa farm. There's some issues that  
17 counsel and I would have to work through if we are going  
18 to get to that resolution today.

19 COURT'S RULING

20 THE COURT: I'm not asking you to get to a  
21 resolution. I'm just saying, I don't feel comfortable  
22 awarding attorney fees at this time -- or that's not  
23 really the right language, but allowing the trustees to  
24 make a distribution for the purpose of paying attorney  
25 fees; however, if -- I'm just trying to soften that

1 blow, Mr. Ostrom, by saying if you guys present to me an  
2 agreed order that sets out a plan for a partial  
3 distribution, I would absolutely be open to that.  
4 That's, that's all I'm saying.

5 MR. OSTROM: Okay. Thank you.

6 THE COURT: So, I think that we can get to  
7 where your clients need to be, easily, if you can all  
8 agree to a partial distribution.

9 MR. OSTROM: Okay.

10 THE COURT: But I don't know what the  
11 assets are. I don't know what the liquidity is. I  
12 mean, I'm flying blind, and so that's why you guys will  
13 have to work on that without me and then present it.

14 MR. OSTROM: So, is it safe to say that my  
15 request for attorney's fees is denied at this time? It  
16 sounds like that's where we're at.

17 THE COURT: I mean, it is. I hate to say  
18 that because I'm so sympathetic to your problem and your  
19 client's problem; but on the other hand, you know, I've  
20 got, you know, Mom and Dad on my shoulder telling me,  
21 through this restatement of trust, I can't do it as much  
22 as I want to, you know. I can feel sympathy all day  
23 long, but the terms of the trust don't allow me to go  
24 there. But I am telling you where the trust terms allow  
25 me to go and that's in the direction of allowing a

1 partial distribution.

2 MR. OSTROM: Okay. Very good, Your Honor.

3 MS. SMITH: Do you mind if I speak because  
4 I got dragged down here on an attorneys fees motion?

5 THE COURT: Sure.

6 ARGUMENT BY MS. SMITH:

7 MS. SMITH: My client, Carole, who doesn't  
8 get mentioned and always gets left out, has had to sit  
9 in court, in Judge Hoyt's court, not being a party but  
10 coming to observe, and she has had to watch, as Candace,  
11 who you have sympathy for but shouldn't, pro se, would  
12 stand up at the stand. And when you get the file, you  
13 will understand my frustration. And I apologize for  
14 anything that was sidebar, but I've had to sit and watch  
15 this and watch what has happened to Carole through a  
16 very non-sympathetic Candy.

17 She filed this in federal court. She has  
18 literally cost the trust, through this ridiculous cause  
19 of action, more money than the master's report found was  
20 even irregular.

21 Judge Hoyt is a very nice man. I had  
22 never seen him before. I'm a probate lawyer. I don't  
23 find myself in that jurisdiction. She would stand at  
24 the podium and read DTPA pleadings for hours on end.  
25 And my client, Carole, would sit there realizing, at



1 some point in life, she would have to be paying for  
2 stuff Candace's boyfriend wrote. It was horrible. It  
3 was a nightmare to be there.

4 So, at some point, Judge Hoyt, who had had  
5 enough, and I can't say anything because if I make an  
6 appearance for Carole, she's paying attorney's fees in  
7 federal court and for the pleasure of getting sued by  
8 her brother in this court. So, I just have to sit there  
9 and watch. And at some point Judge Hoyt said, "I'm  
10 done. Find a lawyer."

11 Never happened.

12 We have these resets and these resets and  
13 these resets. "Find a lawyer."

14 And at one point she comes and says, "I  
15 don't have any money to pay a retainer."

16 So, for Mr. Ostrom to come in your court  
17 and say the ridiculous statement that some pattern had  
18 been set by Judge Hoyt, he just wanted this woman to  
19 stop reading at a fast pace that his court reporter  
20 could probably, at sometimes, not even keep up with this  
21 diatribe. And all the while, me and my client are  
22 sitting in the back going, "Oh, my gosh. You have to  
23 pay for this."

24 And then she gets this master appointment  
25 who, again, I'm sure was a very nice person. It would

1 have been really nice if they had a probate auditor's  
2 idea of what a trust should look like or what an  
3 accounting should look like, but it cost, again, my  
4 client, Carole, being one of the beneficiaries, an arm  
5 and a leg. It was awful. And at the end of the day,  
6 the bill would choke a goat. It was horrid. And I kept  
7 thinking to myself, I'm not in this. I would come to  
8 every third or fourth hearing just to see what was going  
9 on. And I was watching my client's inheritance slipping  
10 away due to Candace's frivolous and just-crazy  
11 proceeding.

12                   Now, am I saying that Amy and Anita have  
13 been perfect trustees? I never got to see the master's  
14 report, so I don't know. I have no idea. I do know  
15 that what part of it, I did get from Maureen McCutchen,  
16 the prior, a statement of what went on - is that we  
17 spent more in litigation costs and fees and paying him  
18 than the irregularities by -- and I don't know that to  
19 be true. So, I don't want to make a mistake to this  
20 Court 'cause I don't have it. I don't have the report  
21 that was so expensive that I had to sit down when Judge  
22 Hoyt announced how much this man was going to be paid.  
23 I've never been so shocked in my life. I've had  
24 receivers that have run businesses on less money than  
25 this cost.

1                   And so, to say that you're sympathetic - I  
2 know you don't know the case - but I promise, Carole has  
3 no sympathy. And she just sees her inheritance draining  
4 away while to try to pay me, unbeknownst to me, she's  
5 selling a horse she loves just to try to pay part of her  
6 attorney's fees. So, I don't have any sympathy.

7                   So, if you're looking to me for an  
8 agreement on a partial distribution, you're not going to  
9 get it.

10                  And then we go to the case that's in this  
11 court.

12                  My client, without counsel, drug all of  
13 her power of attorney stuff and said, "I'm here. I  
14 don't need a lawyer. Let me out. Here's all the stuff.  
15 Look at it. Take it. Do whatever you want." And they  
16 still won't let her go. And I can't even get the  
17 executor to go file a missing bonds report after he's  
18 been appointed for a gazillion years just to get the  
19 final hopeful little inkling so they might release her.

20                  So, if you're looking for sympathy from me  
21 or any agreement from me, I feel like my client's head  
22 has been stomped on, and she gets to sit in the back  
23 corner and ignored.

24                  Notice, nobody said anything about what  
25 was important for her. It's all about paying somebody

1 else's attorney's fees while she sits back there and  
2 watches what her mom and dad worked so hard for in a  
3 case she's not involved in. And I've warned her: "You  
4 get in - you're stuck with this crazy woman reading all  
5 this stuff, and you're going to have to pay me to sit  
6 there and argue it."

7           And then with the injunction she got in  
8 place, just to pay taxes of \$300, cost attorneys fees of  
9 a thousand. I'm not talking about me. I wasn't in it.  
10 So, to pay \$300 costs a thousand dollars.

11           So, I know I should not have spoken out of  
12 turn, and I'm sorry, but I am really pissed. And I'm  
13 just beyond angry that we're still doing this. I don't  
14 believe either one of their clients went to mediation in  
15 good faith. At all. I only wish I could have gotten  
16 the mediator to cite so that we might have gotten some  
17 sanctions for it. But my client is the person who sat  
18 in the back and sits there and watches her whole  
19 inheritance being spent.

20           So, if you think I'm going to be  
21 sympathetic to a distribution so they can pay hundreds  
22 of thousands of attorneys fees, I'm not.

23           Thank you.

24           THE COURT: Well, in response to that, I  
25 mean, you painted a pretty ugly picture of what happened

1 over in federal court, and I don't want that to happen  
2 here. And so to me, that's just -- to me that's one  
3 more argument to make sure that Candace is represented  
4 by an attorney here because she can, honestly, she can  
5 pursue her case pro se here because she's not, she's not  
6 acting as a fiduciary. And so that just is one more  
7 reason why a partial distribution might be a good idea  
8 because with her represented by counsel, it will -- you  
9 presumably save everyone some time.

10 But, number two, and I'm not trying to  
11 argue at all - I'm just trying to bring you guys to the  
12 table and realize how a partial distribution might be  
13 beneficial for everyone.

14 And the second reason why it might be  
15 beneficial to Carole is that, you know, she's worried  
16 that her inheritance would be fettered away with  
17 attorney fees. And if she can receive a partial  
18 distribution that she doesn't have to pay out to  
19 attorney fees, at least she can start preserving those  
20 distributions. And she's getting, you know, something  
21 meaningful, whereas, you know, if this continues for  
22 five years, there may be nothing left.

23 So, those are two arguments in favor of  
24 that, you know, that might cause Carole to agree to a  
25 partial distribution. Perhaps, I don't know, but I

1 don't feel like that -- and I'm not necessarily  
2 sympathetic to any of the parties - I'm sympathetic,  
3 honestly, to the attorneys. I mean, I've been in Mr.  
4 Ostrom's shoes where I needed to pursue something that  
5 was, you know, what I felt was a good transaction, and I  
6 wasn't getting paid. So, those are my thoughts.

7 I've already ruled. And I just wish you  
8 guys the best in pursuing some other avenues for  
9 solutions.

10 MS. SMITH: Thank you.

11 MR. OSTROM: Thank you, Your Honor.

12 THE COURT: Does anyone have a proposed  
13 order on this?

14 MR. FEATHERSTON: I do.

15 MR. OSTROM: I have no objections.

16 MS. SMITH: It's fine.

17 MS. SPIELMAN: No objection.

18

19 \* \* \* \* \*

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25

1 The State of Texas )  
2 County of Harris )  
3

4 I, Hipolita Lopez, Official Court Reporter in and  
5 for the Probate Court Number Four of Harris County,  
6 State of Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription of  
8 all portions of evidence and other proceedings requested  
9 in writing by counsel for the parties to be included in  
10 this volume of the Reporter's Record, in the  
11 above-styled and numbered cause, all of which occurred  
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
14 truly and correctly reflects the exhibits, if any,  
15 admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$244.00  
18 and was paid by MS. CANDANCE L. CURTIS

19 WITNESS MY OFFICIAL HAND this the 21st day of  
20 June, 2016.

21  
22 /s/ Hipolita G. Lopez  
23 HIPOLITA G. LOPEZ, Texas CSR #6298  
24 Expiration Date: 12-31-16  
25 Official Court Reporter  
Probate Court Number Four  
Harris County, Texas  
201 Caroline, 7th Fl.  
Houston, Texas 77002

**DATA ENTRY**  
**PICK UP THIS DATE**

NO. 412,249-401

ESTATE OF § IN PROBATE COURT  
NELVA E. BRUNSTING, §  
DECEASED § NUMBER FOUR (4) OF  
§ HARRIS COUNTY, TEXAS  
§

CARL HENRY BRUNSTING, et al §  
v. §  
ANITA KAY BRUNSTING, et al §

**ORDER DENYING CANDACE CURTIS'  
MOTION FOR DISTRIBUTION OF TRUST FUNDS &  
CARL BRUNSTING'S MOTION FOR  
DISTRIBUTION OF TRUST FUNDS**

Before the Court are Candace Curtis' Motion for Distribution of Trust Funds and Carl Brunsting's Motion for Distribution of Trust Funds. After considering the motions, responses, objections, replies, arguments of counsel, and other matters on filed with the Court, the Court finds the motions should be DENIED. It is, therefore,

ORDERED that Candace Curtis' Motion for Distribution of Trust Funds is DENIED. It is further,

ORDERED that Carl Brunsting's Motion for Distribution of Trust Funds in DENIED.

SIGNED December 9, 2014.

FILED

2014 DEC -9 PM 4:09

Stan Stamer  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

Christine Bontu  
JUDGE PRESIDING

12102014:121B:P0076



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REPORTER'S RECORD

VOLUME 1 OF 1

COURT CAUSE NO. 412.249-401

APPELLATE NO. \_\_\_\_\_

THE ESTATE OF:	)	IN THE PROBATE COURT
NELVA E. BRUNSTING,	)	NUMBER 4 (FOUR) OF
DECEASED	)	HARRIS COUNTY, TEXAS

\* \* \* \* \*

MOTION FOR PARTIAL DISTRIBUTION

MOTION FOR CONTINUANCE

\* \* \* \* \*

On the 18th day of February, 2015, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable Christine Butts Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand

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

1  
2 Mr. Neal E. Spielman  
3 Griffin & Matthews  
4 Attorney at Law  
5 SBN 00794678  
6 1155 Dairy Ashford  
7 Suite 300  
8 Houston, Texas 77079  
9 281.870.1124  
10 ATTORNEY FOR:  
11 AMY BRUNSTING

Mr. Jason B. Ostrom  
Attorney at Law  
SBN 24027710  
5020 Montrose Blvd.  
Suite 310.  
Houston, Texas 77006  
713.863.8891  
ATTORNEY FOR:  
CANDACE CURTIS

8 Ms. Bobbie G. Bayless  
9 Bayless & Stokes  
10 Attorney at Law  
11 SBN 01940600  
12 2931 Ferndale  
13 Houston, Texas 77098  
14 713.522.2224

Ms. Darlene Payne Smith  
Crain, Caton & James  
Attorney at Law  
SBN 18643525  
Five Houston Center  
1400 McKinney St.  
Suite 1700  
Houston, Texas 77010  
713.658.2323  
ATTORNEY FOR:  
CAROLE ANN BRUNSTING

12 ATTORNEY FOR:  
13 CARL H. BRUNSTING

14 Mr. Brad Featherston  
15 The Mendel Law Firm, L.P.  
16 Attorney at Law  
17 SBN 24038892  
18 1155 Dairy Ashford  
19 Suite 104  
20 Houston, Texas 77079  
21 281.759.3213

19 ATTORNEY FOR:  
20 ANITA K. BRUNSTING

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VOLUME 1  
(MOTION FOR PARTIAL DISTRIBUTION/MOTION FOR CONTINUANCE)

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1 February 18, 2015

2 PROCEEDINGS

3 THE COURT: We're here on Cause Number  
4 412.249, The Estate of Nelva Brunsting. And we're here  
5 on, I guess, the 402 as well.

6 We've got a motion for distribution that  
7 was filed by Candace that will be heard today and also a  
8 motion for continuance.

9 So, let's start with Mr. Ostrom.

10 MR. OSTROM: Yes, Your Honor. Which  
11 one -- I want to bring up the motion for continuance  
12 first. I think this is probably the easier one for us  
13 to discuss.

14 MOTION FOR CONTINUANCE

15 ARGUMENT BY MR. OSTROM:

16 MR. OSTROM: We have filed our motion for  
17 continuance seeking to move our trial date. Our trial  
18 date is currently in March, and I have a variety of  
19 reasons why.

20 First, we had delays in trying to get the  
21 case transferred from federal court to this court.  
22 You'll notice that only recently we were able to get  
23 documents to file within the 402. The 402 has now been  
24 created.

25 When we entered into that docket control

1 order, unbeknownst to me but was brought up to my  
2 attention by Mr. Featherston, we're not technically in  
3 the 401. So, even though I signed on that docket  
4 control order, my client is not a party to the 401. And  
5 Brad and I have exchanged some voicemails and discussed  
6 how to fix that. I think we have this now fixed and now  
7 we have the 402, but we don't have a docket control  
8 order as it relates to the 402. Instead of leaving that  
9 out there and not being part of the 401, my initial  
10 suggestion is we move the current trial setting and  
11 amend it so that we can try, both, the 401/402 together.  
12 They have a lot of the same claims. Now, they're not  
13 the same clients. Candace's lawsuit can stand on its  
14 own un-impacted by the lawsuit that Ms. Bayless brought  
15 against Anita and Amy, but it's going to involve a lot  
16 of the same witnesses, the same discovery; so, it makes  
17 more sense to combine them.

18           The second reason we were talking about a  
19 continuance is Ms. Anita and Amy did not have counsel  
20 for a period of time when Ms. McCutchen withdrew, and a  
21 lot of stuff didn't get done. When -- and that was  
22 after we had already agreed to that March trial date.

23           When Mr. Featherston appeared in the case  
24 and we started discussing the current docket control  
25 order, I think early on, we acknowledged - and I don't

1 know if he had discussions with Darlene or Bobbie - but  
2 as between he and I, in December, we acknowledged that  
3 we needed to rework the current deadlines because they  
4 weren't, they weren't workable. We submitted and asked  
5 for permission from the parties to enter into a new  
6 docket control order that was objected to; and so, we  
7 moved forward with our continuance.

8           The -- mainly, I think what we're going to  
9 have to address in this litigation is a level of legal  
10 inquiry this Court has to make as to the validity of  
11 these documents and then a decision regarding whether  
12 there were any factual breaches of fiduciary duty that  
13 we'd ultimately try to a fact finder.

14           Given the current status of both the  
15 pleadings and the fact that no summary judgments have  
16 been filed, I think trying this case to a fact finder  
17 right now in March would be premature because we have  
18 to -- there has to be a legal determination as to the  
19 validity of some of the documents executed by Ms.  
20 Brunsting.

21           And then lastly, and I don't -- we've not  
22 raised this in our motion for continuance, but it's been  
23 raised by Ms. Smith and in correspondence I received  
24 this week is there's some concern that the current  
25 executor of the estate whose party is -- has

1 experiencing diminished capacity. And Ms. Bayless and I  
2 have spoken. We will be moving forward with an  
3 application to appoint a successor. The line of  
4 successors under the will are Ms. Bayless' client, Amy,  
5 who we believe is disqualified because of the gifts she  
6 received out of the trust and then my client. And so  
7 we're going to be seeking the appointment of my client  
8 as the successor executor to step in the shoes of that  
9 litigation.

10 So, we don't really have a party we can  
11 go to trial with right now as it relates to the estate.

12 So, for all those reasons, we'd ask that  
13 the Court grant our continuance, allow the parties to  
14 enter into a docket control order that allows us to deal  
15 with, both, the legal issues and then ultimately, a  
16 trial on the merit.

17 THE COURT: Does anyone oppose the motion  
18 for continuance?

19 MS. SMITH: Originally, Your Honor, I did  
20 until I spoke with my client.

21 My main reason for the opposition is that  
22 this case is not getting better with age - it is getting  
23 worse, and the fees are mounting, and that makes no  
24 sense to me. And my client was not originally sued by  
25 Candy and now has been. And my thought is if we were

1 ready to go, having been added, then everybody should be  
2 able to -- it doesn't look like the case is doing  
3 anything or going anywhere except incurring attorneys  
4 fees. And that just makes no sense to me, that Carole  
5 has now been sucked in by Candy, sued by her on the same  
6 issues that she was sued before and yet no one's doing  
7 any discovery; nobody's doing anything; but then here we  
8 are saying give us some more time to do nothing and  
9 incur some more attorneys fees. And so -- but I talked  
10 to Carole, and she did not want to oppose it, but at the  
11 same time, at some point, she has to get some relief in  
12 this. And Carole is present today.

13 THE COURT: Thank you.

14 Ms. Bayless?

15 MS. BAYLESS: Yes, Your Honor?

16 THE COURT: Do you have an objection to  
17 the motion for continuance?

18 MS. BAYLESS: Do I have a what?

19 THE COURT: Do you have an objection to  
20 the motion?

21 MS. BAYLESS: No. No, I don't. And, in  
22 fact, my client will be resigning as executor. So, that  
23 does raise the issues that Mr. Ostrom brought up in  
24 addition to what's in his motion.

25 THE COURT: Mr. Featherston?



1 MR. FEATHERSTON: No objection, Your  
2 Honor.

3 THE COURT: And Mr. Spielman?

4 MR. SPIELMAN: I feel a lot of pressure  
5 now to give no objection. No objection to the  
6 continuance, Judge.

7 THE COURT: Okay.

8 MS. BAYLESS: I do have one question,  
9 though, Your Honor.

10 I guess I've been completely unaware of  
11 this 402/401 issue because I haven't seen the 402  
12 numbers on anything that's been -- being filed. So, I  
13 didn't know we were really dealing with two different  
14 cases. I'm not sure my client is party in Mr. Ostrom's  
15 case, and I don't know how we can deal with these issues  
16 without all the beneficiaries involved. So, I don't --  
17 we may need to think some about how we're dealing with  
18 that. I mean, I'd hate for everyone to have to do  
19 double filings in the 401 and the 402 - that doesn't  
20 make any sense.

21 MS. SMITH: As I understand it, it was a  
22 random filing - a random filing in the sense it was a  
23 new case in the same cause. And it seems to me that if  
24 we did an agreed motion for consolidation -- an agreed  
25 order, maybe we wouldn't even require a motion that we

1 could all get in the same case.

2 I totally disagree with Jason that his  
3 case could stand alone. That's ridiculous. He should  
4 know that's ridiculous. It's almost like a  
5 cut-and-paste of the same lawsuit as it relates to  
6 Carole. So, I mean, literally almost the same words.  
7 And so I can't imagine how he thinks it's only partially  
8 related.

9 My understanding is that causes of action  
10 alleged by both of these parties, one of whom, in my  
11 opinion, has always been incapacitated and not able to  
12 raise the issues - have always been the same.

13 MR. OSTROM: Your Honor, and just by way  
14 of background, 'cause I don't think this Court is aware.

15 We attempted -- when you signed the order  
16 accepting this litigation into this court, that it was  
17 signed so that it could go into the 401. They, the  
18 Clerk's Office, is the one that required the 402. They  
19 rejected our filings as we moved them in and just kicked  
20 them, and we had to refile.

21 So, as we move these things back in, the  
22 Clerk's Office said, "File it in 402."

23 I agree that I don't think Candace is a  
24 party in the 401, but we wouldn't oppose a  
25 consolidation. I think we need to consolidate them for

1 that very reason because, like Mr. Featherston pointed  
2 out, I wasn't a party, and we're going to have the same  
3 witnesses and send real discovery for purposes of  
4 litigation.

5 THE COURT: Okay. Well, if you guys can  
6 get us an agreed order to consolidate the 401 and the  
7 402, we will sign it happily because, you know, it's  
8 really confusing for us to have the three files sitting  
9 up here and --

10 MR. OSTROM: We will get that done.

11 THE COURT: Okay.

12 MS. SMITH: Is the "we" you?

13 MR. OSTROM: Yeah, the "we" is me.

14 THE COURT: By "we" you mean?

15 MR. OSTROM: I will.

16 THE COURT: Okay.

17 MR. SPIELMAN: Judge, I'm sorry, this  
18 seems like the appropriate time to bring it up before we  
19 transition, formally, into the application for the  
20 partial distribution.

21 I just, for the record, wanted to make  
22 note of the fact that I don't know if it has to do with  
23 the 402/401 issue, but somehow or another, I/my office  
24 never got the official notice of today's hearing. And  
25 I've read Mr. Featherston's response on behalf of Anita,

1 and I've read Ms. Payne Smith's response on behalf of  
2 Carole. I think they can, more than appropriately,  
3 provide the Court the reasons to deny the motion. But I  
4 just wanted the Court to understand that there is a  
5 reason that I haven't formally responded and that's  
6 because I didn't know about it before I had this  
7 conversation with Mr. Featherston yesterday, I wouldn't  
8 even be here.

9 THE COURT: Well, hopefully with that  
10 consolidation you will get notice.

11 MR. SPIELMAN: And I'm not saying it's  
12 anybody's fault - it could have just even been --  
13 because I've been getting -- it seems like I've been  
14 getting everything else. So, it could be something that  
15 just got hung up in terms of our internal server.  
16 However it happened, I didn't know about this until a  
17 phone call yesterday so.

18 COURT'S RULING ON MOTION FOR CONTINUANCE:

19 THE COURT: Okay. Well, so it sounds like  
20 the continuance will be an agreed continuance. And  
21 along with that, I'd like, I'd like if you guys could  
22 remain here for a little while and fill out a new docket  
23 control order, and that docket control order will apply  
24 to both cases as I'm, you know -- we're anticipating  
25 that they'll be combined.

1 MR. OSTROM: Yes, Your Honor. And I think  
2 that's very helpful because we've discussed that there's  
3 some time tables we'll need to meet. I think Mr.  
4 Featherston has some other legal issues he wants to  
5 raise.

6 THE COURT: And have you guys been to  
7 mediation yet? I forget.

8 MR. OSTROM: We have -- well, counsel  
9 for -- current counsel for Anita and Amy have not.

10 THE COURT: Oh, okay.

11 MR. OSTROM: We all went to mediation.  
12 Amy and Anita went under their former counsel. So, with  
13 present counsel, there's been no mediation.

14 THE COURT: Okay. And just to be clear, I  
15 know you were supposed to by September of last year, but  
16 I just want to make sure that, you know, it actually  
17 happened.

18 MS. SMITH: Oh, it happened.

19 MR. OSTROM: And, Your Honor, I'll be  
20 submitting, then, an order on the continuance, agreed  
21 order on the continuance.

22 THE COURT: Okay. And just to save, like  
23 just as a matter of efficiency, if you want to go ahead  
24 and submit the order on the continuance, you don't have  
25 to circulate it necessarily and get everyone's signature

1 unless you guys want to sign. And you don't have to  
2 call it an "agreed order" - we'll just see from the  
3 record that there was no opposition.

4 MR. OSTROM: Well, I have an order on the  
5 continuance today, it's just not an agreed. I mean,  
6 I'll be happy to circulate this order so we can --

7 MS. SMITH: It just says it's granted.

8 MR. OSTROM: -- it just says "Granted" and  
9 it has a date for a trial.

10 THE COURT: Well, we've got it on the  
11 record that there is no opposition, and so I don't mind  
12 just signing that.

13 MS. SMITH: Yeah, I think it was attached.  
14 Don't you have it, Judge? I thought --

15 MR. OSTROM: It was. It was attached.

16 THE COURT: Okay.

17 MR. OSTROM: The other motion we're here  
18 down on, I think is a little bit more complicated, Your  
19 Honor. When you're ready, I'll begin.

20 THE COURT: Okay. I'll go ahead and sign  
21 this order now, and then we'll make copies for everyone.  
22 Now it asks me to set a date.

23 MS. SMITH: And we desperately need to do  
24 that because we'll never agree. I promise you.

25 MR. OSTROM: I think after the hearing, if

1 we're all going to stay and work on the agreed order,  
2 agreed docket control order, I think we can pick the  
3 date. But if you want to give us a date right now,  
4 that's fine too.

5 MS. SMITH: That would be awesome.

6 MR. OSTROM: Let's talk about -- and, Your  
7 Honor, if you don't mind, I'd like to talk and get some  
8 weigh-in from counsel on what I see is what we're going  
9 to need to do to move forward.

10 I believe that we're going to -- parties  
11 have designated some experts. Mr. Featherston has not  
12 been able to designate, really, an accounting expert  
13 because there's been no accounting, before, prepared by  
14 Mr. Bayless -- Ms. Bayless' expert, and I haven't  
15 designated an expert. So, at some point, there will be  
16 a accounting tracing report and exercise done with  
17 competing experts. That - we can almost guarantee.

18 We anticipate that there is going to be  
19 summary judgments as to the legal effect of certain  
20 gifts and then summary judgment as to a legal effect of  
21 certain amendments as it relates to the trust. So, we  
22 needed a briefing schedule that would allow the parties  
23 to adequately brief those and set those and have those  
24 heard. I don't anticipate there's anymore discovery  
25 relating to those briefs; but, again, since Mr.

1 Featherston and Mr. Spielman weren't present, they may  
2 have some additional discovery they want answered before  
3 we get to those summary judgments.

4 I also anticipate that there is going to  
5 be a legal challenge to the temporary injunction that's  
6 presently in place as to whether it can stay in place in  
7 this court. And we're going to need some time and  
8 briefing on that, on that injunction and maybe a  
9 separate hearing on getting a new injunction in place.

10 Additionally, depositions, for the most  
11 part, I don't think depositions have been taken. I  
12 think -- and Bobbie is going to correct me if I'm wrong  
13 on this, but I've not participated in any depositions of  
14 any parties in this litigation. There may have been  
15 some depositions taken as related to the other  
16 litigation in district court, but in this proceeding, I  
17 don't think we've taken any party depositions, expert  
18 depositions, fact-witness depositions at all. So, you  
19 know, I think we have, still, we've exchanged written  
20 discovery, but I think we have a lot of work still to  
21 do. And, frankly, I think June is probably aggressive.  
22 And I welcome any response --

23 MS. BAYLESS: Well, and I can make it  
24 easier because I have three trial settings already the  
25 first week in June. So, that's no reason to set one



1 then that could conceivably add to that.

2 MR. OSTROM: I guess I'd like some  
3 feedback - what y'all think you're going to need.

4 MR. SPIELMAN: So, my feedback at this  
5 point is basically two points:

6 One is, my client is out of town and a  
7 school teacher. And so I sort of like the idea of a  
8 summer setting because hopefully that makes her a little  
9 bit more accessible and available for a trial. It can  
10 be June and maybe one of the other summer months.

11 The other thing -- I don't want to speak  
12 out of turn because I don't know a whole lot about the  
13 other district court lawsuit that Ms. Bayless is working  
14 on; but as I understand it, in quotes, that lawsuit is a  
15 case against the law firm that drafted the trust  
16 documents that are at issue in this case. And I think  
17 the allegation is that that law firm committed  
18 malpractice in drafting those documents which, in one  
19 form or fashion, seems sort of similar to what's being  
20 dealt with in this case as to whether or not those  
21 documents are invalid and enforceable.

22 In my little, tiny, lawyer brain, it seems  
23 to me that if that malpractice case is successful then  
24 the damage model that would be built as to those lawyers  
25 probably encompasses a good portion of what Carl and

1 Candy may be suing Amy and Anita and possibly Carole  
2 for. So, I think maybe we need to figure out what the  
3 time line is for that other district case, the district  
4 court case, so that we don't find out, butting heads  
5 with it, and winding up with two different judges making  
6 determinations on the enforceability of some documents  
7 that credit as one case or the other.

8 I don't know enough to know if that's  
9 going to, you know, be like the plane dropping the hand  
10 grenade in the middle of the room, but it seems like  
11 those are some issues that somebody needs to think  
12 about.

13 MS. SMITH: Well, first of all, that  
14 lawsuit has lost its plaintiff because I never thought  
15 Carl had the capacity to bring it in the first place.  
16 But now that he's stepping down, it's lost its only  
17 possible plaintiff and the only person who could  
18 possibly sue Mr. Baseck (sic) for anything. And so it  
19 doesn't have a plaintiff. So, it's not going anywhere  
20 without a plaintiff.

21 And the other thing is I don't know why  
22 it's not in this court in the first place. I have no  
23 idea why it wouldn't have been in this court in the  
24 first place, and I think it needs to be brought in.

25 MS. BAYLESS: Well, this has been the

1 matter of some discussion with counsel in the other  
2 case. Their position is that this case needs to run its  
3 course because that will determine their damages if, in  
4 fact, there are any damages, and they can be recovered  
5 in this case - it obviously has an impact on their  
6 damages. So, they think just the opposite of what Mr.  
7 Spielman says - that this case needs to go forward first  
8 before that case is really ripe for trial. And that is  
9 pretty typical of malpractice cases if there are still  
10 issues that might affect the damage model. It really  
11 doesn't make no sense to proceed --

12 THE COURT: But isn't it the  
13 chicken-and-the-egg-sort-of-deal where we have to  
14 determine the validity of the document?

15 MS. BAYLESS: And that part is the same  
16 and --

17 THE COURT: Well then, I mean, that's the  
18 perfect case to be tried here because all of that can  
19 be -- if we -- each of those issues is co-dependent upon  
20 the other; so, it really does seem like that case would  
21 belong here.

22 MS. BAYLESS: Well, frankly, my client  
23 will not be driving the bus in that case. There will  
24 be -- I mean, there is a request that will be made when  
25 the resignation is actually filed for a successor, and

1 that successor will have to deal with that. But there  
2 is also a whole set of counsel that's not in this room  
3 that would have something to say about that. I don't  
4 know whether they would have a positive response or a  
5 negative response --

6 MS. SMITH: I'd just pick up the phone and  
7 call her and ask her.

8 THE COURT: Well, why don't we -- I mean,  
9 it's -- you know, we'll be happy to hear that if someone  
10 wants to do a motion to transfer, we'll be happy to hear  
11 the motion. And it sounds like the exact type of case  
12 that we would pull over here. So --

13 MS. BAYLESS: I'm happy to broach that  
14 subject. And I'm not saying, you know, one way or the  
15 other, that it would be a contentious matter or it would  
16 be an agreement. I don't know.

17 THE COURT: Right. It's just something to  
18 do which is impacting on the date in which we go to  
19 trial.

20 So, it sounds to me -- what if we do this.  
21 What if we plan for an August date, and then we, just  
22 with the understanding that we're kind of penciling it  
23 so it's on our calendar, and we can go if we're ready,  
24 but with the understanding that we know there's a lot to  
25 do before we get to trial, and we may not get it all

1 done before that August trial date.

2                   So, but honestly, I think it's good. It's  
3 better to set it earlier than later 'cause sometimes --  
4 well, things get done if you have, if you have a date  
5 certain, and it's sooner on the calendar.

6                   How does that sound? Anybody object to  
7 that?

8                   MR. OSTROM: Your Honor, I have no  
9 objections to that. I've never dealt with the counsel  
10 there on the personal injury or the malpractice  
11 proceeding, and I would suggest that what we would need  
12 to do is do a -- try to organize a conference call with  
13 them, with all counsel together. Their interest will  
14 likely be on the participation or briefing of any  
15 summary judgments that are filed. That's what I'm --  
16 I'm guessing, to the extent we're going to do something  
17 jointly with those attorneys as opposed to trying the  
18 case, they're going to want to weigh in on whatever  
19 deadlines we set for purposes of briefing and responding  
20 to MS Chase (sic).

21                   MS. SMITH: No, they won't because it is  
22 the chicken and the egg. We probably won't be trying  
23 them together. It's the chicken and the egg. I mean, I  
24 don't know how you can try a malpractice case in the  
25 middle of a trust breach of fiduciary duty case. I

1 don't think the two are the same. The only reason I  
2 think they need to be here is because I think that it is  
3 a probate attorney that did all these documents, and  
4 district courts don't typically deal with them. And the  
5 other reason is, is because if that Court rules one way  
6 and you rule another, you're guaranteeing - you, not  
7 you - but the proverbial courts are guaranteeing us  
8 years of appeal with still nobody getting their  
9 inheritance. That's crazy.

10 THE COURT: Yeah.

11 MS. SMITH: I mean, it's crazy to think  
12 there'll be a ruling in another court that might totally  
13 conflict with your reading of the trust documents or a  
14 jury's reading of the trust documents and then have two  
15 exactly opposite rulings which guarantees a reversal in  
16 one way or the other on appeal. But I don't think you  
17 can try them together. I think that the reality is  
18 there would be a 401 and a 402, and the malpractice case  
19 will go to the 402. I think it will be up to this Court  
20 as to which one got tried first.

21 MS. BAYLESS: If I could just make a  
22 suggestion, Your Honor, before we spend a lot of time  
23 arguing about trial dates.

24 If maybe what we did is determined whether  
25 the Toxico (sic) people have any problem with moving the

1 case here. And I don't know the answer to that one way  
2 or the other. But if they don't, then I don't even care  
3 if Ms. Smith calls Zanders Foley and asks her, but if we  
4 know the answer --

5 MS. SMITH: We're not buddies. We have a  
6 case against each other. She can't stand me --

7 MS. BAYLESS: I can vouch for that.

8 MS. SMITH: -- but she will, in fact,  
9 answer the phone.

10 MS. BAYLESS: But the point I was going to  
11 make is that I do think that everybody's right about  
12 this. There are very common issues. It would also make  
13 no sense to try the cases together, but it might make  
14 sense to make the legal determinations of both at the  
15 same time and then you know what will be tried, and you  
16 can determine when those should be tried.

17 And so maybe what we need to be doing is  
18 establishing a date to deal with those legal issues. I  
19 mean, you may not even need nearly as much trial time.  
20 Once you deal with the legal issues, you may not have a  
21 trial; you may have a long trial; you may have two  
22 trials, and you may want to do them back to back. But  
23 right now we're sort of -- we don't know what we're  
24 dealing with. But I do think that the legal issues are  
25 going to be preliminary matters to both and make huge

1 differences in what's left and what's dealt with -- the  
2 way it's dealt with. So, if they're okay with moving it  
3 over here --

4 MS. SMITH: She doesn't really hate me, I  
5 was just kidding. I just took her policy limits on a  
6 malpractice case. She's just a little pissed off but  
7 not a lot.

8 But I'm just saying that I never talked to  
9 her about this case other than she told me that Carl was  
10 incapacitated. So, I've never had another discussion  
11 with her about the merits or anything else, but I'm  
12 happy to walk outside and say, do you have the  
13 authority? She probably doesn't. She probably has to  
14 go to the carrier. I don't think they ever make  
15 decisions. I think the carrier does. I think they  
16 don't let their lawyers make very many decisions. And  
17 so, at least I can call her or you could. It doesn't  
18 have to be me and say, we're considering this. If I  
19 rule, the district court won't have any choice, but it  
20 be nice to do it by agreement and get her moving because  
21 my understanding is these malpractice insurance  
22 companies do everything by committee. And I'm not being  
23 facetious. On our case, I could never get her -- she  
24 was very responsive; her client was never responsive.  
25 And so it would take two and a half weeks to get the



1 answer to a simple, "yes" or "no."

2 MS. BAYLESS: Which is probably why it  
3 doesn't make any sense to just call her and think we can  
4 get the answer, but --

5 MS. SMITH: We can get it moving.

6 MS. BAYLESS: Yeah. Or maybe what we  
7 could do, we all recognize that we've agreed to move the  
8 case that is now set. Maybe we set a status conference  
9 in two weeks or a week or something and we find out,  
10 give her an opportunity, find out how long it's going to  
11 be for her to let us know that, and then she can  
12 participate in scheduling what needs to happen in terms  
13 of determining these legal issues. I think she's going  
14 to feel the same way. Why not see if that resolves her  
15 case or balloons her case or leaves it the same. I  
16 don't think that's going to be a controversy, but I can  
17 certainly see why she might not like somebody else  
18 scheduling the briefing on something like that. And she  
19 might -- maybe she doesn't care. I mean, I don't care.  
20 So, maybe that's -- and I don't mind contacting her and  
21 letting her know this is going on. I don't mind if  
22 Darlene does it. I don't care who does it. But I think  
23 we need the input, and it seems like a lot of  
24 unnecessary effort to move beyond that issue until we  
25 know the answer to that issue.

1                   Now, you know, if you're going to move it  
2 over here anyway, I guess that's one thing she needs to  
3 be told - whether you agree to it or not - I mean, I'm  
4 not saying that's what you're --

5                   THE COURT: Well that would be an advance,  
6 you know, ruling, and I can't do that. But, I mean --

7                   MS. BAYLESS: No. No. I understand. But  
8 I think Zanders is a very reasonable person, and I agree  
9 with Darlene - she's responsive. I don't think this  
10 will be anything that will be hard, but I do think she  
11 can't just, when you call her, off the top of her head,  
12 say, yes, let's do this drastic thing.

13                   MS. SMITH: The only reason that I was  
14 thinking you call her, and we're so belaboring a point,  
15 is that she's not a probate lawyer. She's very bright.  
16 I'm not taking away from it at all. But a lot of people  
17 don't realize -- I'm not saying that you're making a  
18 predetermination of your ruling. I didn't mean to  
19 insinuate that. What I meant is a lot of people don't  
20 realize you have the power. They don't realize that  
21 they don't have to consent if you make a determination  
22 that it is appertaining an incident to and belongs in  
23 here and we're not forum shopping. I don't think that  
24 this has never come up in our other case, and it was  
25 probate-related. And so, she may have the Estates Code

1 right in front of her and realize that you have the  
2 power to do that - I'm betting that.

3 So, I'm not saying that the reason you  
4 should speak to her is to say what your advance ruling  
5 is - I just think that one of us needs to tell her you  
6 have the power to do it - not that you told us that you  
7 would because a lot of people would just say, no. No,  
8 we're happy where we are. We don't want to start over  
9 with another judge, and they don't realize all the  
10 pleadings moved too. So, they see it as this giant  
11 morass when it doesn't really have to be. So, that's  
12 it. I'm not saying you've already ruled.

13 THE COURT: No. No. I know.

14 My thought is, what if I give you guys  
15 just time to sort this out, visit with the other counsel  
16 and, you know, file a motion to transfer if that's what  
17 you want to do or just file an agreed order. We don't  
18 even need a motion necessarily. But what if we have a  
19 scheduling conference in a month and just reconvene and  
20 talk about this issue and see where it's headed. And  
21 then we've still got our trial date in place, but if the  
22 other attorneys are participating need to make changes  
23 to our docket control order, then, you know, we'll do  
24 that at the status conference which will be in a month.  
25 But at least we'll have something in our file.

1 MS. SMITH: In place.

2 THE COURT: Right.

3 MS. BAYLESS: Whatever the Court wants to  
4 do.

5 THE COURT: Well, it was your suggestion,  
6 right --

7 MS. BAYLESS: Well --

8 THE COURT: -- to have a conference in a  
9 month?

10 MS. BAYLESS: That was my suggestion. My  
11 suggestion was to have a status conference in a month  
12 about dealing with the preliminary legal issues before  
13 establishing a trial date, but --

14 THE COURT: Well that's, I mean, that's  
15 sort of what it would be except we would have penciled  
16 in a trial date just so we don't get, we don't get -- we  
17 don't lose those dates to someone else.

18 MS. BAYLESS: Right. Right. Well, maybe  
19 what would make sense is to pencil in the trial date,  
20 have -- set the status conference for three weeks or a  
21 month or whatever the Court wants to do and get the  
22 other people here and then have the more formal docket  
23 control order happen and that status conference; is that  
24 what you were saying? Maybe you said that and --

25 THE COURT: Well, I want a formal docket

1 control order today. I just want -- I want -- but we'll  
2 be open to changing it if the other attorneys -- I mean,  
3 if the other attorneys need to make changes, we'll be  
4 open to that. I just want something on paper.

5 MS. BAYLESS: Okay. Well, yeah, I'm sure  
6 they would want input. That's the main reason I brought  
7 it up but that's fine.

8 THE COURT: Okay. So, in a month.  
9 Today's the 18th. So, March 18, we've got spring break  
10 in there so y'all want to say the end of March? Will  
11 that work for you guys?

12 MR. OSTROM: Your Honor, I can't do it  
13 between the 5th and 15th of March. I'll be out of the  
14 country.

15 THE COURT: Okay.

16 MS. SMITH: Your kids cannot have a spring  
17 break that is that long. That is physically impossible.

18 THE COURT: So, do we have any dates for  
19 the end of March and late March?

20 MS. SMITH: Some of us don't work our  
21 phones, Judge, quite as quickly.

22 MS. BAYLESS: Some of us have a flip  
23 phone.

24 MR. SPIELMAN: It's easy for me. I'm not  
25 allowed to leave for spring break anyway.

1 MS. SMITH: The 23rd is fine. I just  
2 couldn't read all the little print.

3 MS. BAYLESS: What time are you talking  
4 about?

5 THE COURT: Say, 1:30?

6 MS. SMITH: What are we calling this? I  
7 got lost in the what we're calling this.

8 MR. SPIELMAN: Status conference.

9 MS. SMITH: I just want to know what's  
10 expected of me on that day. That's all I want to know.  
11 You can call it a "pig". I don't care. I just need to  
12 know what I need to bring and what I need to be ready to  
13 address.

14 MS. BAYLESS: Well and I guess -- okay. I  
15 mean, I will let -- I guess part of the issue is what  
16 has been worked out by agreement, what hasn't, what's  
17 still being pushed. So, it's -- I don't know what to  
18 call it other than a status conference assuming that we  
19 can add things as needed if there's some, you know, a  
20 hearing that is raised by the discussions in the  
21 meantime, just have that block set aside.

22 THE COURT: Well, I mean, so if you're  
23 talking about developing an agenda, which is what I'm  
24 hearing, then, I mean, the first item on the agenda is  
25 the status of the case in the district court.

1 MS. BAYLESS: Right.

2 THE COURT: Whether that's transfer,  
3 whether -- you know, it's already transferred, whether a  
4 motion has been filed. Just getting those attorneys  
5 involved would be the first item of the agenda. And  
6 then the second would be if those attorneys have any  
7 objections to the docket control order that's in place,  
8 that would be in place today. And then I guess you guys  
9 will add items as you wish.

10 MS. BAYLESS: On this one, I do need to go  
11 call my office, Your Honor, because I'm supposed to be  
12 out of town in August. I don't remember when.

13 THE COURT: Okay.

14 MS. BAYLESS: It will take a second.

15 THE COURT: Sure. Take the time you need.

16 (Off the record)

17 MS. BAYLESS: Okay. The difficulty is  
18 that I have to be out of town right up until that point  
19 which makes it very hard to be ready for an August 17.

20 THE COURT: And what about the next week?

21 MS. SMITH: That's when I leave for New  
22 Jersey.

23 THE COURT: Okay. So, let's look into  
24 September.

25 MS. SMITH: What is this a trial sitting?

1 THE COURT: Yes.

2 MS. SMITH: I got lost in the scheduling.

3 THE COURT: So, how about the first week  
4 in September?

5 MR. OSTROM: Which is Labor Day.

6 MS. SMITH: No, it's not. The second one  
7 is --

8 MR. OSTROM: Yeah, that's right. The  
9 first full week of September is Labor Day beginning on  
10 the 7th. I didn't know if that was the Monday you want  
11 us to start.

12 MR. SPIELMAN: My birthday is on the 2nd  
13 of September and it's usually -- Labor Day is usually  
14 right before it.

15 MS. SMITH: It doesn't ever change, Honey.  
16 Maybe your birthday does, but Labor Day doesn't really  
17 ever change.

18 MS. BAYLESS: I thought you said September  
19 20th.

20 THE COURT: No, that was July.

21 MS. BAYLESS: What date in September?

22 JUDGE COMSTOCK: September, any week in  
23 September.

24 MS. SMITH: Can we do the 14th?

25 MR. OSTROM: That's fine with me.



1 MS. BAYLESS: Yes.

2 MR. SPIELMAN: It's just the issue that  
3 I'm going to have with my client's availability but, you  
4 know, you're in a lawsuit. Eventually, you'll have to  
5 find a way to make yourself available. So, if we're  
6 just penciling it in so we can make some progress being  
7 made, then let's get it penciled in. I think I  
8 understand what the Court's saying on that. And if it  
9 becomes a problem as we get closer, we'll figure it out.

10 THE COURT: Okay. So, September 14th?  
11 The whole week and then we can pare it back if we want.

12 MS. BAYLESS: So, what time on that day?

13 JUDGE COMSTOCK: It's a Friday. So, early  
14 afternoon? 1:30.

15 MS. SMITH: Is the morning, like, not an  
16 option?

17 JUDGE COMSTOCK: Morning is a possibility.  
18 Do you prefer morning?

19 MS. BAYLESS: 10:00.

20 THE COURT: We have no preference.

21 JUDGE COMSTOCK: 10:00 a.m.

22 MS. BAYLESS: That's fine.

23 THE COURT: I need to take just like two  
24 minutes because I told someone I would call them at 3,  
25 and I need to email them, and I need to let them know

1 I'm busy. Be right back.

2 (Off the record)

3 THE COURT: Are we ready to take up the  
4 application for partial distribution?

5 MR. OSTROM: I am, Your Honor.

6 MS. SMITH: Judge Comstock handed me the  
7 DCO and said, later before we leave, we should finish  
8 it.

9 THE COURT: Okay. Terrific.

10 MOTION FOR PARTIAL DISTRIBUTION

11 ARGUMENT BY MR. OSTROM:

12 MR. OSTROM: Your Honor, you may recall  
13 that we originally came down here on an application as  
14 an award for attorneys fees or application to release  
15 funds.

16 At that hearing, as opposed to asking for  
17 attorneys fees, what we got permission from our client  
18 to do was to allow for her to seek a distribution from  
19 this trust - the trust that her parents had established  
20 for her under the restatement of the Brunsting Family  
21 Living Trust. This restatement was done in 2005, and it  
22 calls for after both the grantors/founders passed away,  
23 the division of the assets into a trust for the  
24 children. It's undisputed that my clients were  
25 beneficiaries of this trust. There is a question as to

1 who is trustee under this instrument. And I may give  
2 this Court a little bit of background before I explain  
3 why I think it's appropriate.

4           The restatement of the trust was done in  
5 January 2005. Elmer, one of the grantors passes away in  
6 April of 2009. After Elmer's death, the trustee of this  
7 trust is Nelva, of the 2005 trust.

8           In June of 2010, which you don't have in  
9 front of you, but I have a copy here if this Court would  
10 like to see - Nelva does a Qualified Beneficiary  
11 Designation. She doesn't change any provisions on the  
12 trust other than to say, "I want there to be  
13 advancements." So, to the extent the beneficiaries got  
14 property during their life, I want those to be treated  
15 as advancements. That's the first Qualified Beneficiary  
16 Designation. And she, she purports to use, both, her  
17 general power of appointment under this 2005 instrument  
18 and her limited power of appointment.

19           She then does, in August of 2010, a new  
20 Qualified Beneficiary Designation that was attached as  
21 an exhibit to a response. In this -- it's our  
22 contention, as a wholesale amendment of the trust. It's  
23 not a three-page exercise.

24           The August has no revocation language. It  
25 doesn't revoke prior designations; it doesn't undo prior

1 designations. We believe one of the legal issues you'll  
2 face, going forward, is that the exercise in June  
3 prohibits the exercise in August because it wasn't  
4 revoked/undone; it was a testamentary division, and we  
5 know that the only way you can undo a testamentary  
6 division is you have to revoke it in writing, execute  
7 with live formalities.

8                   So, but Counsel is right - the QBD of  
9 August of 2010 removes or appoints Anita and Amy as  
10 trustees of Candace's trust. It also severely limits  
11 Candace's right to receive funds out of that trust, but  
12 it still has language in there to suggest that the  
13 beneficiary should be given a liberal use of these  
14 assets. And, you know, even in this document that we've  
15 objected to, it says, "The terms, 'support' and  
16 'maintenance' may include but are not limited to  
17 investment, a family business, purchase, primary  
18 residence, entry into a business, vocation, profession  
19 commensurate with Beneficiaries' abilities, interest,  
20 recreational or educational travel, expenses incident to  
21 marriage or child birth and for the reasonable comfort  
22 but not luxurious support of the beneficiaries."

23                   Very broad.

24                   There is no dispute that she's not  
25 received a single distribution out of this trust. In

1 fact, the federal court, in granting the injunction  
2 indicated that one of the reasons why they granted the  
3 injunction was that Anita and Amy never funded these  
4 trusts.

5           The Decedent passed away in November 11,  
6 2011. The Court signs its injunction order in April of  
7 2013, April 19, 2013; and Judge Hoyt, relying on the  
8 fact that, one, they haven't provided county records  
9 plan like they were supposed to; and two, they didn't  
10 fund this trust within -- once the judge signed this  
11 order, it still hadn't been funded.

12           So, there's no dispute my client hasn't  
13 received any distributions even though she's allowed to.

14           It's our position that as soon as the  
15 Court entered this injunction, the discretion ability of  
16 Anita and Amy stopped as it relates to -- as it relates  
17 to making distributions out of that trust. The Court  
18 specifically says that you're not supposed to do  
19 anything, and I'm going to weigh in, and you coming to  
20 me if you want to make a distribution. We believe that  
21 removes that discretionary ability and puts it squarely  
22 on the shoulders of the judge who is enforcing that  
23 injunction.

24           It's our position that, Your Honor, you're  
25 the judge enforcing that injunction. This injunction is

1 now down in front of you under the 402. We have filed a  
2 notice of filing of the injunction, and we filed the  
3 various lawsuits that the injunction arose out of in the  
4 402.

5           What we're asking for today is a  
6 disbursement of \$40,000 to our client. It's to give her  
7 some use and benefit of this trust. She was being  
8 supported by Mom, and there is no dispute that Mom would  
9 routinely support her during her life. That was the  
10 reason why one of the QBDS was done - was to treat as a  
11 advancement to monies paid. That has now stopped.  
12 There's been no support, and she should be entitled to  
13 that - some modicum of income and support from these  
14 trusts for that period of time. I mean, it's been well  
15 over four years that we're, now, in this talking about  
16 having not gotten any benefit from the trusts that the  
17 parents clearly intended for her to receive the benefit  
18 from.

19           So, we're asking you to authorize a  
20 disbursement of \$40,000 from the trust to my client.  
21 What she does with that funds is up to her, and we're  
22 not asking you to authorize to pay as our fees. We're  
23 not asking you have it paid directly to our firm. It's  
24 a disbursement that will go to our client for her, for  
25 her benefit and support. She does owe us monies. And

1 if, you know, just like any client which you hand cash  
2 out to them, if she chooses to pay my fee then I'll be  
3 grateful. But I don't want any ties to bind or require  
4 her to make that payment because I agree with Counsel -  
5 I don't think that a creditor can compel a beneficiary  
6 to make payments.

7           The -- an important place to note is that  
8 all the objections seem to stem from this idea that  
9 she's going to use these funds to pursue this  
10 litigation. We are in this litigation, and we're going  
11 to pursue this litigation whether the funds get paid or  
12 not. But I don't believe that it's equitable for any of  
13 the beneficiaries in this trust not to get use of  
14 that -- of those funds for their other maintenance or  
15 needs during the course of this litigation. I think the  
16 beneficiary should have the ability to come ask for what  
17 the purpose of that trust was there to deal with.

18           We're asking that the 40 come out her  
19 share. We're not asking that it be taxed against any  
20 other beneficiary's share of the trust.

21           There is an argument that suggests that,  
22 while you can't do this because the actions of Candace  
23 violate the no-contest clauses within the instrument,  
24 the lawsuit that Candace has alleged against Amy and  
25 Anita relate to -- or against Anita, relate to transfers

1 that she made as trustee of the Brunsting Family Living  
2 Trust at that time. This is while Momma was still  
3 alive. These are trusts that aren't authorized by the  
4 trust instrum -- or distributions not authorized by the  
5 trust instrument that she has complained of. It doesn't  
6 impact a challenge to the trust instrument - just the  
7 trustee's performance under this instrument. So, I  
8 don't believe that we are walking on thin ice as to the  
9 enforceability of the no-contest language that's found  
10 in Exhibit 1, the 2005 restated trust.

11 With regard to Exhibit 2, this is the QBD  
12 that was done last in time, the August 2010 QBD. It  
13 does have varying expansive, no-contest language. We  
14 are challenging this document, not for a breach on the  
15 part of Amy and Anita under this document, just as to  
16 its judicial effectiveness. It's a dec action. And  
17 this Court is well aware that a declaratory judgment  
18 action as to rights and the enforcement of documents is  
19 typically cut out and removed from contest provisions.

20 So, I think it's important to understand  
21 the litigation if they're going to rely on that to say  
22 that somehow we're going to forfeit our request.

23 The challenges against Anita relate to  
24 transfers made prior to this QBD ever being done in  
25 relation as to 2005 as her conduct as a fiduciary.



1 Obviously, holding a fiduciary accountable is something  
2 this Court is well aware of.

3           The challenges to this QBD that was done  
4 in 2010 are declaratory in nature. The respective  
5 rights of Candace under this document that was, one,  
6 that never terminates an earlier QBD; two, is done after  
7 the death of the other grantor and the actions are the  
8 trust had become irrevocable at that time.

9           So, I believe we're well within safe  
10 footing as it relates to the other contest and the  
11 forfeiture; but again, we're only asking for the \$40,000  
12 to be taxed against her side. I believe this Court,  
13 relying on the injunction, can exercise that discretion.

14           THE COURT: Is your client disabled?

15           MR. OSTROM: She's, Your Honor, she's not  
16 disabled. She -- no, she's not disabled.

17           THE COURT: Well, to say that she receives  
18 support from her aging parents before they passed away  
19 is not compelling at all to support the argument that  
20 she should receive a portion of her inheritance at this  
21 point prior to litigation being settled. So, that's the  
22 first -- my first thought on it.

23           MR. OSTROM: Your Honor, I don't know why  
24 Mom was sending her checks. That was a --

25           THE COURT: Well, I mean, that's between

1 them, but it's not compelling to me. I'm not going to  
2 continue to enable Candace for whatever -- you know, I'm  
3 not saying enable in the context of, you know, that's  
4 necessarily bad; but it's just -- I'm not going to  
5 continue that pattern because that would violate the  
6 trust terms because this money is supposed to be -- it's  
7 got to have some sort of standard for distribution.

8 MR. OSTROM: Well --

9 MS. SMITH: It does.

10 MR. OSTROM: -- it has a standard for  
11 distribution, but there has to be a deans testing of  
12 that standard. It's not just, you know -- and again,  
13 that's, I think, that's where we're getting into -- when  
14 we talk about support and maintenance under the trust  
15 instrument - it's very broad. And --

16 THE COURT: Is it HEMS? I mean, Health  
17 Education, Support, Maintenance?

18 MS. SMITH: No, ma'am. It's a very, very  
19 very, modified HEMS. It's not broad at all. It is so  
20 narrow that it almost chokes you. It even discusses the  
21 character of the person at issue.

22 THE COURT: Okay.

23 MR. OSTROM: Your Honor, I read the  
24 support language right off the trust. I mean, it was --  
25 she can take trips if she wanted to, you know. If

1 what --

2 THE COURT: Just as long as it wasn't  
3 luxurious, right?

4 MR. OSTROM: Well, no, she couldn't do a  
5 luxurious lifestyle. Yeah, she's supposed to be  
6 supported up to the level she's accustomed to and not  
7 this luxurious lifestyle.

8 THE COURT: But, I mean, the point for me,  
9 though, is if she's not disabled, the first point she  
10 made was she received these checks from Mom. We would  
11 imagine they'd be support checks. And that that --  
12 she's been without those checks for four years, and we  
13 need to make those up in the form of a distribution, and  
14 I'd be open to that idea if all of the other  
15 beneficiaries were open to that -- to receiving a like  
16 distribution.

17 So, that's the first issue.

18 The second is that the other beneficiaries  
19 are making sacrifices, I would imagine. I know that  
20 Carole has. The last time we were here, she talked  
21 about how it was brought up that she had to sell a horse  
22 in order to pay her attorney. And the -- I'm really  
23 nervous about making any kind of distribution at this  
24 point unless it's for the benefit of all of the  
25 beneficiaries. Like, we allow distributions for the

1 payment of taxes, I think, at some point, didn't we? Or  
2 is that this case?

3 MR. OSTROM: We did but that was violated.  
4 You know, we allowed -- we were here -- and to these,  
5 both these points, I think these are critical issues in  
6 the case.

7 Candace and Carl didn't receive the assets  
8 the other beneficiaries did. We're talking about  
9 hundreds of shares of stock that came out in 2011, both,  
10 Exxon and Chevron stock, that have gone to these  
11 respective beneficiaries and their kids. We're talking  
12 about cash that came out of bank accounts of the trust  
13 while Momma was alive that have gone to people who  
14 weren't Carl and Candy. So, I think it's --

15 THE COURT: But Candace received an  
16 on-going stream of payments from her mother, right?

17 MR. OSTROM: Right. But what the -- and  
18 you'll look at the master's report. It details how much  
19 people received.

20 Candace and Carl are clearly on the  
21 back-end of that. Carl for sure; he receives zero.  
22 Candace is the next least. Then Anita, Amy and Carole  
23 because the master went through, identified payments  
24 that were taken out of the trust, identified stock they  
25 received, identified --

1 THE COURT: Were any of these after Mom  
2 passed away?

3 MR. OSTROM: No, these were all during  
4 Mom's lifetime while Anita was trustee.

5 So, I think it's -- it's not that they are  
6 just sacrificing. I mean, we're apparently here in this  
7 litigation because my client didn't get benefit of the  
8 trust, Carl didn't get benefit of the trust, and these  
9 other clients, the other beneficiaries did, to a  
10 disproportionate amount.

11 Moreover, I think it's, it's one thing to  
12 say we need to find some balance amongst the  
13 beneficiaries, and you're uncomfortable to make this  
14 distribution. But there is no evidence that any income  
15 has been paid under these trusts to any beneficiaries.  
16 It's not that, okay, maybe we have a stringent HEMS  
17 standard. The evidence is, and you won't hear anybody  
18 object otherwise, that there have been zero  
19 distributions other than a request for attorneys fees  
20 that I made in the federal proceeding that have come out  
21 of this trust for the benefit of Candace. Even though  
22 she's entitled to this income, we're offering a zero  
23 amount. So, it's not, well, maybe 2000 is appropriate,  
24 maybe 1000 is appropriate. There's not even a  
25 reasonable amount that's allocated to her right now.

1           So, whatever that reasonable amount should  
2 be, it should be something. It can't be zero in  
3 relation to, in relation to her right to receive the  
4 benefit of this trust that was set up to help her.

5           And to the last point.

6           Yes, Your Honor, we've come here and asked  
7 for distributions out of the trust, and Maureen did that  
8 for the taxes. And I objected to it saying I didn't  
9 think we should do this because it required other  
10 things.

11           Your Honor, you signed an order that  
12 allowed for the payment of taxes.

13           We have since found out that pursuant to  
14 that order, Anita also paid the releasing fees or  
15 commission to the brokers, to the CPA there in Iowa,  
16 even though, at the hearing, I specifically objected to  
17 that.

18           Now what I've been told by Mr. Featherston  
19 is -- sorry, I wasn't the lawyer at the hearing. I just  
20 read the order. It wasn't clear in the order. Maybe  
21 that was something -- and I didn't make clear in this  
22 order; nonetheless, her client, Anita, has spent money  
23 that wasn't authorized by the Court.

24           THE COURT: After the injunction was in  
25 place --

1 MR. OSTROM: That was after the  
2 injunction.

3 THE COURT: She made distributions that  
4 were not --

5 MR. OSTROM: It was a payment; it wasn't a  
6 distribution. It was a payment to -- it was a leasing,  
7 a reletting payment. The lease on the land had expired.  
8 The trustee wasn't supposed to do anything in relation  
9 to the property.

10 The CPS who also does the accounting and  
11 the tax filings, the broker for these leases, okay.  
12 When they sought application -- when Maureen sought  
13 application to this court regarding that lease, we  
14 objected. One of our reasons for objecting is that we  
15 didn't want to relet by that broker at some discounted  
16 price. The Court overruled our objections, said, "I'm  
17 going to let them pay the CPA's fees. I'm not letting  
18 them pay the brokerage fee even though it's the same  
19 company, the same person." And actually, those fees did  
20 get paid.

21 MS. BAYLESS: If I can interrupt just one  
22 second.

23 I just looked at this order today. The  
24 Court or somebody interlineated that accounting fees  
25 could be paid so long as they related to the preparation

1 of tax returns. That's interlineated in the order.  
2 It's very clear. It's not ambiguous at all. And fees  
3 have been paid to this accounting firm that do not  
4 relate to the preparation of tax returns.

5 MR. OSTROM: My point being that people  
6 seem to still be using the trust not directed by any  
7 restrictions of this injunction, but my client doesn't  
8 have that ability and is the one who is in the  
9 litigation trying to get access to her trust.

10 THE COURT: But that's a reason -- I mean,  
11 it's a reasonable mistake; it's not something that was  
12 done on purpose and it probably did -- it was paid in  
13 violation of the order, or the injunction, because it  
14 wasn't specifically mentioned in the order. And I think  
15 I remember that. I think I'm the one who interlineated  
16 that language, and it was based on your objection, you  
17 know, that we want to make sure that, you know, that, I  
18 guess, the payments were tax-related but...

19 Is it well-settled that gifts, prior to  
20 Nelva's death, would be factored in and accounted for  
21 and go to reduce the ultimate inheritance passing to the  
22 beneficiaries?

23 MR. OSTROM: Is it well-settled? I don't  
24 think it is. The, the Qualified Beneficiary Designation  
25 that allowed for that issue that my client acknowledges,



1 allowed for this offset, requires it to be done in a  
2 certain way. It requires it to be a writing sent to the  
3 trustee saying here's what you need to withhold.

4 In all our discovery thus far, I haven't  
5 seen a single writing. I don't know if that ever  
6 really --

7 THE COURT: So, we don't know if this is  
8 going to be divided up into five equal shares or if it's  
9 going to go in a manner such that all gifts prior to  
10 death and after death are -- all gifts prior to death  
11 and all bequests after death ultimately place each child  
12 in the same position. We don't know which way it's  
13 going to go, right?

14 MR. OSTROM: Well, I guess we do because  
15 there were no more -- the gifts that we're talking about  
16 were gifts that Mom was making out of her personal  
17 funds, okay, that she had access to a bank account where  
18 she'd write a check for a thousand dollars here or two  
19 thousand dollars here, whatever it may be. So, they  
20 weren't really gifts out of the trust.

21 The trust, the estate itself, doesn't  
22 contemplate that gifting other than for tax benefits or  
23 purposes. So, the trust itself divides up five ways.  
24 Most of all the assets we're talking about divide up  
25 equally five ways.

1           The -- when we talk about a reallocation,  
2 it's limited by a time period so it doesn't go all the  
3 way back. And that may be helpful for this Court to  
4 understand that there were two older children and two  
5 younger children. And so it picked up gifts to the  
6 younger children, but it doesn't go all the way back to  
7 gifts that would have occurred decades before.

8           So, to the extent it makes an advancement,  
9 it's advanced during her lifetime after June 1st, 2010.  
10 So, it cuts off what our lot of advancements that took  
11 place prior to that point in time, if that helps answer  
12 your question, Your Honor.

13           THE COURT: But is it -- I mean, so the  
14 advancements made after June 1st, 2010, is it  
15 well-settled that those advancements go against the  
16 future inheritance?

17           MS. SMITH: No.

18           MR. OSTROM: I don't know if it's  
19 well-settled. My client's position has been, and she's  
20 never deviated from this, is that to the extent she  
21 receives money, she's willing to take that as an  
22 advancement. The numbers that she -- that we've  
23 discussed and I've discussed with her, we've discussed  
24 at mediation, those numbers that we're talking about are  
25 relatively small compared to the overall value of the

1 estate. So, even if you were to go from 2010-onward,  
2 we're talking about a thousand dollars a month for a  
3 year as opposed to several hundred thousands of dollars.  
4 And so her position is, no, she wants that applied  
5 across the board. She thinks everybody got something -  
6 she better be putting it back.

7 THE COURT: Well, she got the second least  
8 amount, so of course that's going to be her position,  
9 right?

10 MR. OSTROM: She's been consistent,  
11 though. She's not saying, no, that doesn't apply to me.

12 COURT'S RULING ON MOTION FOR PARTIAL DISTRIBUTION:

13 THE COURT: Okay. Well, unless it's  
14 well-settled, I mean, I'm not willing to make a  
15 distribution to bring her up to an amount or put all  
16 beneficiaries on the level of having as if they had  
17 received the exact same as of the date of death. I  
18 mean, I think we look at the date of death, and you have  
19 to assume -- well, I don't know. I don't know. I think  
20 I'm going to -- I don't think I'm making sense here at  
21 this -- with this line of thought.

22 But I will say that I just don't feel  
23 comfortable allowing a distribution to be made unless  
24 we're making a distribution to all five children. I'd  
25 be fine if everyone wanted to receive a distribution; I

1 just don't see making a distribution to Candace and no  
2 one else because...

3 MR. OSTROM: Your Honor, I know I'm the  
4 only one asking and maybe that's --

5 MS. SMITH: And I object. And I believe  
6 that, at the end of the day, your client won't be  
7 entitled to anything.

8 MR. OSTROM: And maybe that's the  
9 problem - is that I'm the only one asking. And if  
10 that's the case, that's the case, Your Honor; and, you  
11 know, I do want it clear, though, that no one should be  
12 using this trust. I mean, it's one thing my client  
13 doesn't get the benefit of it, but no one should at all.  
14 And I think, you know, if that's what's going on, then  
15 if that's the way this Court is expressing her concern  
16 to me, then I think that -- then I understand. We won't  
17 be asking for anymore distributions.

18 THE COURT: Well, and you can, of course,  
19 you can bring a motion to show cause and show cause the  
20 trustees to answer why they made payments outside of the  
21 order if you wanted to do that. You know, I mean, there  
22 are fixes and ways to address payments made, you know,  
23 that were not court-ordered. So, I'm not concerned  
24 about that because I know we have a room full of  
25 attorneys watching out, making sure that something is

1 brought to the Court's attention. But, I mean, this  
2 isn't to say I wouldn't consider, later on, a  
3 distribution. If everybody needs a distribution, I'm  
4 open to that. But, at this point, I feel very  
5 uncomfortable making a distribution or allowing a  
6 distribution to be made to only one of the  
7 beneficiaries.

8 MS. SMITH: I attached an order to my  
9 opposition.

10 THE COURT: I'll have to find it.

11 MS. SMITH: I have an extra copy here.  
12 I'm sorry, I didn't want to do something that isn't  
13 stamped.

14 THE COURT: Do you want me just to sign  
15 this?

16 MS. SMITH: It just says, "denied." Did  
17 you all get it?

18 MR. OSTROM: I'm sure I did.

19 THE COURT: Anything else we need to talk  
20 about before you guys start working on the docket  
21 control order?

22 MR. OSTROM: I don't believe so, Your  
23 Honor.

24 MS. BAYLESS: Your Honor, I do have one  
25 request of Mr. Featherston.

1                   I don't believe, part of that order that  
2 we've been talking about, was that we were supposed to  
3 receive the tax filings as in a relatively short period  
4 of time after they've been done. I don't believe I have  
5 received, and it may be because of the gap in  
6 representation, but I haven't received any of the 2013  
7 tax filings.

8                   THE COURT: Okay. I think it's important  
9 to look at those, and I don't know what kind of income  
10 this trust is generating, but I will say this:

11                   I think distributions actually may be  
12 necessary to avoid a higher income tax rate because if  
13 no distributions to the beneficiaries are being made,  
14 that income is being taxed at the highest possible rate  
15 to the trust where as if distributions were made to the  
16 beneficiaries of that income, then they would be taxed  
17 the beneficiary's rate. So, I just want to bring that  
18 issue up - that I think distributions, to the extent  
19 there's income, would be more favorable as far as income  
20 taxes go and would be -- and the trustees would be  
21 abiding closely to their fiduciary duty by making such  
22 distributions.

23                   MS. SMITH: Your Honor, the last tax  
24 return that I remember seeing, there wasn't that much  
25 income at all. I don't think that taxes were a big

1 issue.

2 THE COURT: Okay. Well good. Well  
3 then --

4 MS. BAYLESS: I'm not sure if that's the  
5 case, but if we got a tax return --

6 MS. SMITH: Look at 2011.

7 THE COURT: If the amount is over \$8,000  
8 then that's the threshold when it becomes an issue, so  
9 FYI. And I know you know that already - I just, you  
10 know, have to state it for my own peace of mind.

11 Okay. Anything else?

12 MR. OSTROM: I don't believe so, Your  
13 Honor.

14 THE COURT: All right. It's nice to see  
15 everyone.

16 MR. OSTROM: Thank you.

17 MR. SPIELMAN: Thank you, Judge.

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25

1 The State of Texas )

2 County of Harris )

3

4 I, Hipolita Lopez, Official Court Reporter in and  
5 for the Probate Court Number Four of Harris County,  
6 State of Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription of  
8 all portions of evidence and other proceedings requested  
9 in writing by counsel for the parties to be included in  
10 this volume of the Reporter's Record, in the  
11 above-styled and numbered cause, all of which occurred  
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
14 truly and correctly reflects the exhibits, if any,  
15 admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$346.00  
18 and was paid by Ms. Candace Curtis.

19 WITNESS MY OFFICIAL HAND this the 30th day of  
20 June, 2016.

21

22 /s/ Hipolita G. Lopez  
23 HIPOLITA G. LOPEZ, Texas CSR #6298  
24 Expiration Date: 12-31-16  
25 Official Court Reporter  
Probate Court Number Four  
Harris County, Texas  
201 Caroline, 7th Fl.  
Houston, Texas 77002



No. 412,249-401

ESTATE OF	§	PROBATE COURT
<u>Nelva E. Brunsting,</u>	§	
<u>Deceased</u>	§	NUMBER FOUR (4) OF
	§	
	§	HARRIS COUNTY, TEXAS

**AGREED DOCKET CONTROL ORDER**

The following docket control order shall apply to this case unless modified by the Court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. N/A **JOINDER.** All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THE SCHEDULING ORDER AT THE TIME OF SERVICE
2. ↓ **EXPERT WITNESS DESIGNATION.** Expert witness designations are required and must be served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6:
  - (a) 7/1/15 Experts for parties seeking affirmative relief.
  - (b) 8/1/15 All other experts.
3. **DISCOVERY LIMITATIONS.** The discovery limitations of Rule 190.2, if applicable, or otherwise, of Rule 190.3, apply, unless changed below:
  - (a) By Rules Total hours per side for oral depositions.
  - (b) By Rules Number of interrogatories that may be served by each party on any other party.
4. **ALTERNATIVE DISPUTE RESOLUTION.** ADR conducted pursuant to the agreement of the parties must be completed by this date. If the parties do not agree on a date and/or facilitator for ADR, the Court may sign an order compelling ADR and appointing a mediator for same.
5. 8/4/15 **DISCOVERY PERIOD ENDS.** All discovery must be completed before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial.
6. **DISPOSITIVE MOTIONS AND PLEAS.** Must be heard as follows:
  - (a) 8/3/15 Dispositive motions or pleas subject to an interlocutory appeal must be heard by this date.
  - (b) 8/3/15 Summary Judgment motions not subject to an interlocutory appeal must be heard by this date.
  - (c) 6/1/15 Rule 166a(i) motions may not be filed before this date.
7. 9/1/15 **CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.
8. 8/4/15 **PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.

02202015:1134:P0007

02202015:1134:PO008

9. Sept. 4, 2015 Noon JOINT PRETRIAL ORDER. Parties shall provide to the Court, by fax, email, or delivery to our offices, a copy of the signed Joint Pretrial Order by this date. Parties shall bring the original Agreed Joint Pretrial Order to the Pretrial Conference.

10. Sept. 11, 2015 10:00 AM PRETRIAL CONFERENCE. Parties shall be prepared to discuss all aspects of trial with the Court at this time. Parties shall file and exchange (if jury trial) proposed jury charge questions, instructions and definitions at this conference. Parties should be prepared to mark exhibits. Failure to appear will be grounds for dismissal for want of prosecution.

11. Sept. 14-18, 2015 TRIAL.

Signed this 19 day of February, 2015.

C. Auld  
Judge Presiding

Stan Stewart  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

2015 FEB 20 AM 8:49

FILED

Party: Carole Brunsting Party: Andy Brunsting

Counsel Name: Darlene Payne Smith Counsel Name: Jason B. Ostrom  
SBN: 18643525 SBN: 24027710

Counsel Signature: [Signature] Counsel Signature: [Signature]  
Firm: Crain, Cator, James Firm: Ostrom Morris, PLLC  
Address: 1401 McKinney Address: 6363 Woodway Dr., Suite 300  
St 1700, Houston, TX 77010 Houston, TX 77056  
Phone: 713-752-8640 Phone: 713-863-8891  
Fax: 713-658-1921 Fax: 713-863-1051  
Email: dsmith@craincator.com Email: jason@ostromorris.com

Party: Amy Brunsting Party: Carl Brunsting

Counsel Name: Neal Spielman Counsel Name: Bobbie G. Bayless  
SBN: 00794678 SBN: 01940600

Counsel Signature: [Signature] Counsel Signature: [Signature]  
Firm: Griffin & Matthews Firm: Bayless + Stokes  
Address: 1155 Dairy Ashford, Suite 300 Address: 2931 Ferndale  
Houston, TX 77079 Houston, TX 77098  
Phone: 281-870-1124 Phone: 713-522-2224  
Fax: 281-870-1647 Fax: 713-522-2218  
Email: nspielman@grifmatlaw.com Email: bayless@baylessstokes.com

PARTY: Anita Brunsting  
COUNSEL: Brad Featherston (24038892) 37  
The Mendel Law Firm  
1155 Dairy Ashford suite 104, Houston, TX 77079  
(0) 281-759-3213 (F) 281-759-3214 Email- brad@mendellawfirm.com

DATA ENTRY  
PICK UP THIS DATE

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

\*\*\*\*\*

CAUSE No. 412,249 - 402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Clemence Bates  
JUDGE PRESIDING

03092015:0815:P0002

03092015:0815:P0003

APPROVED AS TO FORM:

ostrommorris, PLLC

BY: 

JASON B. OSTROM  
(TBA #24027710)  
jason@ostrommorris.com  
R. KEITH MORRIS, III  
(TBA #24032879)  
keith@ostrommorris.com  
6363 Woodway, Suite 300  
Houston, Texas 77057  
713.863.8891  
713.863.1051 (Facsimile)

Attorneys for Candace Curtis

BY: 

BOBBIE BAYLESS  
(TBA #01940600)  
bayless@baylessstokes.com  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
713.522.2218 (Facsimile)

Attorney for Drina Brunsting, Attorney in Fact  
for Carl Brunsting

BY: \_\_\_\_\_

DARLENE PAYNE SMITH  
(TBA #18643525)  
dsmith@craincaton.com  
1401 McKinney, 17<sup>th</sup> Floor  
Houston, Texas 77010  
713.752.8640  
713.425.7945 (Facsimile)

Attorney for Carole Brunsting

APPROVED AS TO FORM:

ostrommorris, PLLC

BY: 

JASON B. OSTROM  
(TBA #24027710)  
jason@ostrommorris.com  
R. KEITH MORRIS, III  
(TBA #24032879)  
keith@ostrommorris.com  
6363 Woodway, Suite 300  
Houston, Texas 77057  
713.863.8891  
713.863.1051 (Facsimile)

Attorneys for Candace Curtis

BY: \_\_\_\_\_

BOBBIE BAYLESS  
(TBA #01940600)  
bayless@baylessstokes.com  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
713.522.2218 (Facsimile)

Attorney for Drina Brunsting, Attorney in Fact  
for Carl Brunsting

BY: 

DARLENE PAYNE SMITH  
(TBA #18643525)  
dsmith@craincaton.com  
1401 McKinney, 17<sup>th</sup> Floor  
Houston, Texas 77010  
713.752.8640  
713.425.7945 (Facsimile)

Attorney for Carole Brunsting

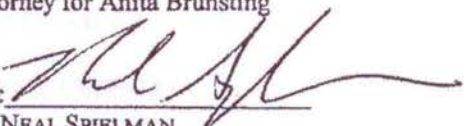
03092015:0815:P0004

03092015:0815:P0005

BY: 

BRADLEY FEATHERSTON  
(TBA #24038892)  
brad@mendellawfirm.com  
1155 Dairy Ashford Street, Suite 104  
Houston, Texas 77079  
281.759.3213  
281.759.3214 (Facsimile)

Attorney for Anita Brunsting

BY: 

NEAL SPIELMAN  
(TBA #00794678)  
nspielman@grifmatlaw.com  
1155 Dairy Ashford, Suite 300  
Houston, Texas 77079  
281.870.1124  
281.870.1647 (Facsimile)

Attorney for Amy Brunsting



412249	4/2/2012	Purported Will		12	<a href="#">PBT-2012-274046</a>
412249	4/2/2012	Case Initiated - Original Will	PPURPORTED WILL	12	<a href="#">PBT-2012-122649</a>
412249	8/15/2012	Application to Probate Will and Issuance of Letters	PW-LTPOSTDOD 04 01 2009RETURN DATE AUGUST 27 2012	2	<a href="#">PBT-2012-274039</a>
412249	8/15/2012	Civil Case Information Sheet		1	<a href="#">PBT-2012-274050</a>
412249	8/15/2012	Receipt# 998812 generated for the amount of \$ 248.00		0	
412249	8/16/2012	PW-LT-Posting		2	<a href="#">PBT-2012-274144</a>
412249	8/27/2012	Citation Returned	SERVED CITATION ON APPLICATION FOR PROBATE OF LAST WILL BY POSTING	2	<a href="#">PBT-2012-285513</a>
412249	8/28/2012	Proof of Misc. Types	OF DEATH AND OTHER FACTS, DRINA BRUNSTING	2	<a href="#">PBT-2012-287033</a>
412249	8/28/2012	Admitted Will	TO PROBATE	12	<a href="#">PBT-2012-287034</a>
412249	8/28/2012	Order Admitting Will and Issuance of Letters Testamentary	ORDERED WILL ADMITTED TO PROBATE, LETTERS TESTAMENTARY TO CARL HENRY BRUNSTING, WHO IS APPOINTED INDEPENDENT EXECUTOR, W/O BOND, APPRAISERS WAIVED, SIGNED AUGUST 28, 2012	2	<a href="#">PBT-2012-287037</a>
412249	8/28/2012	Letter Application		1	<a href="#">PBT-2012-286998</a>
412249	8/28/2012	Letter Application		2	<a href="#">PBT-2012-286999</a>
412249	8/28/2012	Oath		1	<a href="#">PBT-2012-287012</a>



412249	9/5/2012	Notice to Creditors		1	<a href="#">PBT-2012-296279</a>
412249	11/26/2012	Application for Extension		2	<a href="#">PBT-2012-383707</a>
412249	11/26/2012	Affidavit	PERSONAL REPRESENTATIVE'S AFFIDAVIT OF COMPLIANCE WITH NOTICE REQUIREMENTS UNDER SECTION 128A, TEXAS PROBATE CODE	16	<a href="#">PBT-2012-383709</a>
412249	11/26/2012	Conform Copies		0	
412249	11/26/2012	Receipt# 1014109 generated for the amount of \$ 1.00		0	
412249	11/26/2012	Receipt# 1014110 generated for the amount of \$ 2.00		0	
412249	12/5/2012	Order to Extension	ORDERED DATE FOR FILING INVENTORY EXTENDED TO MARCH 26, 2013, SIGNED 11/30/12	1	<a href="#">PBT-2012-396204</a>
412249	12/26/2012	Misc. Notice	NOTICE OF APPEARANCE OF COUNSEL- MAUREEN KUZIK	2	<a href="#">PBT-2012-413506</a>
412249	3/26/2013	Inventory (Indep.)		7	<a href="#">PBT-2013-99449</a>
412249	4/5/2013	Order on Inventory (Indep.)	ORDERED INVENTORY, APPRAISEMENT AND LIST OF CLAIMS APPROVED, SIGNED APRIL 4, 2013	1	<a href="#">PBT-2013-111081</a>
412249	4/5/2013	Drop Order	SIGNED APRIL 4, 2013, D OCKET DROP	1	<a href="#">PBT-2013-111083</a>
412249-401	4/9/2013	Case Initiated - Application		0	

412249-401	4/9/2013	Declaratory Judgement (Indep.)	PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES1 PERS IN-CAROLE ANN BRUNSTING	20	<a href="#">PBT-2013-115617</a>
412249-401	4/9/2013	Civil Case Information Sheet		1	<a href="#">PBT-2013-115629</a>
412249-401	4/9/2013	Receipt# 1034269 generated for the amount of \$ 143.00		0	
412249-401	4/10/2013	LAWSUIT Personal - Out / Private	CAROLE ANN BRUNSTING, 1333 W LOOP S., STE. 1700, HOU., TX 77027	2	<a href="#">PBT-2013-116956</a>
412249-401	4/16/2013	Citation Returned	SERVED PERSONAL CITATION TO CAROLE ANN BRUNSTING ON 4/15/13	2	<a href="#">PBT-2013-124419</a>
412249-401	4/16/2013	Receipt# 1035412 generated for the amount of \$ 16.00		0	
412249-401	4/17/2013	LAWSUIT Personal - Out / Private	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, 203 BLOOMINGDALE CIRCLE, VICTORIA, VICTORIA COUNTY, TEXAS 77904	1	<a href="#">PBT-2013-124969</a>
412249-401	4/17/2013	LAWSUIT Personal - Out / Private	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, 2582 COUNTRY LEDGE, NEW BRAUNFELS, COMAL COUNTY, TEXAS 78132	1	<a href="#">PBT-2013-125034</a>

412249-401	4/22/2013	Waiver	CANDACE LOUISE CURTIS	3	<a href="#">PBT-2013-130579</a>
412249-401	5/3/2013	CounterClaim to Declaratory Judgement (Indep.)	CAROLE ANN BRUNSTING'S SPECIAL EXCEPTIONS AND SUBJECT THERETO ORIGINAL ANSWER AND COUNTERCLAIM	16	<a href="#">PBT-2013-146160</a>
412249-401	5/6/2013	Receipt# 1038324 generated for the amount of \$ 120.00		0	
412249-401	5/6/2013	Receipt# 1038345 generated for the amount of \$ 120.00		0	
412249-401	5/8/2013	Affidavit	PETER DOWDLE	1	<a href="#">PBT-2013-151607</a>
412249-401	5/8/2013	Affidavit	JOHN KASPAR	1	<a href="#">PBT-2013-151609</a>
412249-401	5/13/2013	Answer	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR	5	<a href="#">PBT-2013-154977</a>

412249-401	5/13/2013	Answer	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT. FOR AN	5	<a href="#">PBT-2013-154981</a>
412249-401	5/29/2013	Certificate	CERTIFICATE OF WRITTEN DISCOVERY	3	<a href="#">PBT-2013-174241</a>
412249-401	5/31/2013	Amended	AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHARD, INDIVIDUALLY AND AS SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THE NELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE AMY RUTH TSCHIRHART PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL	6	<a href="#">PBT-2013-176474</a>

412249-401	5/31/2013	Amended	ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY, INDIVIDUALLY, AS ATTORNEY-IN-FACT FOR NELVA E. BRUNSTING, AS A SUCCESSOR TRUSTEE OF THE BRUNSTING FAMILY LIVING TRUST, THE ELMER H. BRUNSTING DECEDENT'S TRUST, THENELVA E. BRUNSTING SURVIVOR'S TRUST, THE CARL HENRY BRUNSTING PERSONAL ASSET TRUST, AND THE ANITA KAY BRUNSTING PERSONAL ASSET TRUST'S FIRST AMENDED ORIGINAL ANSWER TO PLAINTIFF'S PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR	6	<a href="#">PBT-2013-176480</a>
412249-401	6/7/2013	Amended	FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, AND FOR IMPOSITION OF A CONSTRUCTIVE TRUST	18	<a href="#">PBT-2013-185898</a>
412249-401	6/26/2013	Certificate	OF WRITTEN DISCOVERY	3	<a href="#">PBT-2013-207728</a>
412249-401	11/27/2013	Certificate	OF WRITTEN DISCOVERY FILE AS IS PER ATTY	3	<a href="#">PBT-2013-385311</a>

412249	5/22/2014	Miscellaneous Order	GRANTING PLAINTIFF'S MOTION TO REMAND SIGNED ON 5/15/2014 BY UNITED STATES DISTRICT JUDGE	2	<a href="#">PBT-2014-170812</a>
412249-401	5/28/2014	Application of Miscellaneous kind	MOTION TO ENTER TRANSFER ORDER	7	<a href="#">PBT-2014-176707</a>
412249-401	5/28/2014	ELECTRONIC FILING FEE		0	
412249-401	5/29/2014	Receipt# 1110857 generated for the amount of \$ 4.00		0	
412249-401	6/4/2014	Miscellaneous Order	ORDER OF TRANSFER, SIGNED JUNE 3, 2014	7	<a href="#">PBT-2014-184792</a>
412249	6/6/2014	Miscellaneous Order	ORDER GRANTING PLAINTIFF'S MOTION TO REMAND, SIGNED MAY 15, 2014	2	<a href="#">PBT-2014-188311</a>
412249-401	7/2/2014	Agreed Order	DOCKET CONTROL ORDER NOT ENTERED	3	<a href="#">PBT-2014-218797</a>
412249-401	7/2/2014	ELECTRONIC FILING FEE		0	
412249-401	7/3/2014	Receipt# 1119560 generated for the amount of \$ 2.00		0	
412249-401	7/9/2014	Agreed Order	DOCKET CONTROL ORDER SIGNED 7/8/14	3	<a href="#">PBT-2014-225383</a>
412249-401	7/30/2014	Application of Miscellaneous kind	AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H BRUNSTING DECEDENT TRUST AND	7	<a href="#">PBT-2014-250085</a>

412249-401	7/30/2014	ELECTRONIC FILING FEE		0	
412249-401	7/31/2014	Receipt# 1126023 generated for the amount of \$ 2.00		0	
412249-401	8/5/2014	Order to Withdraw Funds	ORDER APPROVING AGREED MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SURVIVOR'S TRUST TO PAY MEDIATOR'S FEE IT IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY ANDREWS KURTH LLP MEDIATION FEE OF \$6,500.00 AND	7	<a href="#">PBT-2014-256006</a>
412249-401	8/26/2014	ELECTRONIC FILING FEE		0	
412249-401	8/27/2014	Notice of Hearing	ORAL HEARING SEPTEMBER 4, 2014 AT 10:30 AM	2	<a href="#">PBT-2014-280737</a>
412249-401	8/27/2014	Receipt# 1132159 generated for the amount of \$ 2.00		0	
412249-401	8/27/2014	ELECTRONIC FILING FEE		0	

412249-401	8/27/2014	Application of Miscellaneous kind	MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING DECEDENT'S TRUST AND THE NELVA F. BRUNSTING SUTVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM	8	<a href="#">PBT-2014-281213</a>
412249-401	8/27/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS - ORDER NOT ENTERED	2	<a href="#">PBT-2014-281217</a>
412249-401	8/27/2014	Receipt# 1132233 generated for the amount of \$ 2.00		0	
412249-401	9/4/2014	Miscellaneous Order	ORDER APPROVING MOTION TO DISTRIBUTE FUNDS FROM THE ELMER H. BRUNSTING SURVIVOR'S TRUST TO PAY FEDERAL INCOME TAXES, IOWA STATE INCOME TAXES, AD-VALOREM TAXES AND ACCOUNTANTS' FEES IT IS ORDERED THAT THE TRUSTEES HAVE AUTHORITY TO PAY, AND SHALL HAVE AUTHORITY TO PAY WITHOUT FURTHER ORDER OF THIS COURT AND THAT ALL PAYMENTS REGARDING THE ELMER H. BRUNSTING DECEDENT'S TRUST SHALL BE PAID	2	<a href="#">PBT-2014-288833</a>
412249-401	9/9/2014	Notice of Hearing		3	<a href="#">PBT-2014-293662</a>
412249-401	9/9/2014	ELECTRONIC FILING FEE		0	



412249-401	9/9/2014	Receipt# 1134700 generated for the amount of \$ 2.00		0	
412249-401	9/9/2014	Application to Withdraw as Attorney of Record		7	<a href="#">PBT-2014-294428</a>
412249-401	9/9/2014	ELECTRONIC FILING FEE		0	
412249-401	9/9/2014	Receipt# 1134842 generated for the amount of \$ 2.00		0	
412249-401	9/17/2014	ELECTRONIC FILING FEE		0	
412249-401	9/17/2014	AFFIDAVIT OF NOTICE		8	<a href="#">PBT-2014-303915</a>
412249-401	9/17/2014	Receipt# 1136799 generated for the amount of \$ 2.00		0	
412249-401	9/18/2014	Order to Withdraw as Attorney of Record	ORDER GRANTING MOTION FOR WITHDRAWAL OF COUNSEL FOR ANITA KAY BRUNSTING F/K/A ANITA KAY RILEY AND AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHARTIT IS ORDERED THAT MAUREEN KLIZIK MCCUTCHEM AND	2	<a href="#">PBT-2014-305816</a>
412249	10/17/2014	Letter Application		1	<a href="#">PBT-2014-339026</a>
412249	10/17/2014	Letter Application		2	<a href="#">PBT-2014-339027</a>
412249	10/20/2014	Application of Miscellaneous kind	PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS	4	<a href="#">PBT-2014-342716</a>

412249	10/20/2014	ELECTRONIC FILING FEE		0	
412249	10/21/2014	Receipt# 1144056 generated for the amount of \$ 2.00		0	
412249	10/28/2014	ELECTRONIC FILING FEE		0	
412249	10/28/2014	Notice of Hearing	ON THURSDAY, NOVEMBER 6, 2014 AT 9:30 AM	2	<a href="#">PBT-2014-351308</a>
412249	10/29/2014	Receipt# 1145819 generated for the amount of \$ 2.00		0	
412249	11/3/2014	ELECTRONIC FILING FEE		0	
412249	11/3/2014	Amended	NOTICE OF HEARING - RESCHEDULED FOR MONDAY, NOVEMBER 17, AT 2:00 PM	2	<a href="#">PBT-2014-357957</a>
412249	11/4/2014	Receipt# 1147120 generated for the amount of \$ 2.00		0	
412249	11/4/2014	Miscellaneous Order	GRANTING PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS THIS INSTRUMENT RETURN UNSIGNED BY JUDGE'S OFFICE	1	<a href="#">PBT-2014-358733</a>
412249-401	11/7/2014	Responses	PLAINTIFFS RESPONSE TO CANDACE LOUISE CURTIS MOTION FOR DISTRIBUTION OF TRUST FUNDS	3	<a href="#">PBT-2014-363907</a>

412249-401	11/7/2014	Application of Miscellaneous kind		6	<a href="#">PBT-2014-363911</a>
412249-401	11/7/2014	ELECTRONIC FILING FEE		0	
412249-401	11/7/2014	ELECTRONIC FILING FEE		0	
412249-401	11/7/2014	Application of Miscellaneous kind	CARL BRUNSTING MOTION TO MODIFY PRELIMINARY INJUNCTION	16	<a href="#">PBT-2014-363923</a>
412249-401	11/7/2014	ELECTRONIC FILING FEE		0	
412249-401	11/7/2014	ELECTRONIC FILING FEE		0	
412249-401	11/7/2014	Notice of Hearing	NOVEMBER 17, 2014 AT 2:00 PM	2	<a href="#">PBT-2014-363941</a>
412249-401	11/7/2014	Notice of Hearing	OF ORALON 11/17/2014 AT 2:00 PM	2	<a href="#">PBT-2014-363948</a>
412249-401	11/7/2014	ELECTRONIC FILING FEE		0	
412249-401	11/10/2014	Receipt# 1148402 generated for the amount of \$ 4.00		0	
412249-401	11/10/2014	Receipt# 1148437 generated for the amount of \$ 2.00		0	
412249-401	11/10/2014	Receipt# 1148454 generated for the amount of \$ 4.00		0	

412249-401	11/10/2014	Receipt# 1148603 generated for the amount of \$ 2.00		0	
412249-401	11/13/2014	Objection	OBJECTION TO PLAINTIFFS MOTION FOR DISTRIBUTION OF TRUST FUNDS	7	<a href="#">PBT-2014-369853</a>
412249-401	11/13/2014	Demand for a Jury		3	<a href="#">PBT-2014-369857</a>
412249-401	11/13/2014	ELECTRONIC FILING FEE		0	
412249-401	11/13/2014	Receipt# 1149430 generated for the amount of \$ 24.00		0	
412249-401	11/14/2014	Designation	NOTICE OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL	3	<a href="#">PBT-2014-371437</a>
412249-401	11/14/2014	ELECTRONIC FILING FEE		0	
412249-401	11/17/2014	Receipt# 1149853 generated for the amount of \$ 2.00		0	
412249-401	11/17/2014	ELECTRONIC FILING FEE		0	
412249-401	11/17/2014	Notice of Hearing	AMENDED NOTICE OF ORAL HEARING	2	<a href="#">PBT-2014-373927</a>
412249-401	11/17/2014	Amended	AMENDED NOTICE OF ORAL HEARING DECEMBER 09, 2014 AT 3:00 P.M.	2	<a href="#">PBT-2014-373944</a>
412249-401	11/17/2014	ELECTRONIC FILING FEE		0	

412249	11/17/2014	Amended	SECOND AMENDED NOTICE OF HEARING NOVEMBER 17, 2014 AT 2:00PM	2	<a href="#">PBT-2014-374213</a>
412249	11/17/2014	ELECTRONIC FILING FEE		0	
412249-401	11/18/2014	Receipt# 1150357 generated for the amount of \$ 2.00		0	
412249-401	11/18/2014	Receipt# 1150420 generated for the amount of \$ 2.00		0	
412249	11/18/2014	Receipt# 1150347 generated for the amount of \$ 2.00		0	
412249-401	12/1/2014	ELECTRONIC FILING FEE		0	
412249-401	12/1/2014	Declination to Serve	CARL HENRY BRUNSTING'S EXPERT WITNESS DESIGNATION	10	<a href="#">PBT-2014-387708</a>
412249-401	12/1/2014	Designation	OF EXPERT WITNESSES	15	<a href="#">PBT-2014-385649</a>
412249-401	12/1/2014	ELECTRONIC FILING FEE		0	
412249-401	12/1/2014	Witness List	PLAINTIFFS DESIGNATION OF EXPERT WITNESS	9	<a href="#">PBT-2014-387901</a>
412249-401	12/1/2014	ELECTRONIC FILING FEE		0	

412249-401	12/1/2014	Receipt# 1152526 generated for the amount of \$ 2.00		0	
412249-401	12/2/2014	Receipt# 1152785 generated for the amount of \$ 2.00		0	
412249-401	12/2/2014	Receipt# 1152800 generated for the amount of \$ 2.00		0	
412249-401	12/5/2014	ELECTRONIC FILING FEE		0	
412249-401	12/5/2014	Instrument Over 25 Pages		0	
412249-401	12/5/2014	Responses	TO CANDACE'S MOTION FOR DISTRIBUTION OF TRUST FUNDS & RESPONSE TO CARL'S MOTION FOR DISTRIBUTION OF TRUST FUNDS	156	<a href="#">PBT-2014-393808</a>
412249-401	12/5/2014	Responses	TO CARL'S MOTION TO REMOVE TRUSTEES	3	<a href="#">PBT-2014-393812</a>
412249-401	12/5/2014	ELECTRONIC FILING FEE		0	
412249-401	12/8/2014	ELECTRONIC FILING FEE		0	
412249-401	12/8/2014	Misc. Notice	OF APPEARANCE AND DESIGNATION OF LEAD COUNSEL FOR AMY RUTH BRUNSTING	3	<a href="#">PBT-2014-395795</a>

412249-401	12/8/2014	Responses	AMY RUTH BRUNSTING'S REPOSE TO CARL HENRY BRUNSTING'S MOTION TO REMOVE TRUSTEE	4	<a href="#">PBT-2014-395809</a>
412249-401	12/8/2014	ELECTRONIC FILING FEE		0	
412249-401	12/8/2014	Receipt# 1153933 generated for the amount of \$ 29.00		0	
412249	12/8/2014	ELECTRONIC FILING FEE		0	
412249	12/8/2014	Instrument Over 25 Pages		0	
412249	12/8/2014	Responses	REPLY TO REPOSE TO MOTION FOR DISTRIBUTION OF TRUST FUNDS	39	<a href="#">PBT-2014-395429</a>
412249-401	12/9/2014	Objection	TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS	7	<a href="#">PBT-2014-396928</a>
412249-401	12/9/2014	Miscellaneous Order	ORDER DENYING CANDACE CURTIS' MOTION FOR DISTRIBUTION OF TRUST FUNDS AND CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS;	1	<a href="#">PBT-2014-396930</a>
412249-401	12/9/2014	Receipt# 1154295 generated for the amount of \$ 4.00		0	
412249-401	12/9/2014	Objection	OBJECTION TO CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS	7	<a href="#">PBT-2014-396326</a>

412249-401	12/9/2014	ELECTRONIC FILING FEE		0	
412249-401	12/9/2014	Receipt# 1154438 generated for the amount of \$ 2.00		0	
412249	12/9/2014	Responses	RESPONSE TO OBJECTION TO PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS	4	<a href="#">PBT-2014-396779</a>
412249	12/9/2014	ELECTRONIC FILING FEE		0	
412249	12/9/2014	Receipt# 1154262 generated for the amount of \$ 27.00		0	
412249	12/10/2014	Receipt# 1154538 generated for the amount of \$ 2.00		0	
412249	2/5/2015	ELECTRONIC FILING FEE		0	
412249	2/5/2015	Application of Miscellaneous kind	PLAINTIFFS APPLICATION FOR PARTIAL DISTRIBUTION	10	<a href="#">PBT-2015-41286</a>
412249	2/6/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER	51	<a href="#">PBT-2015-42743</a>
412249	2/6/2015	ELECTRONIC FILING FEE		0	
412249	2/6/2015	Instrument Over 25 Pages		0	



412249	2/6/2015	Receipt# 1166121 generated for the amount of \$ 4.00		0	
412249	2/9/2015	ELECTRONIC FILING FEE		0	
412249	2/9/2015	Motion Pertaining to Lawsuits Only		601	<a href="#">PBT-2015-45555</a>
412249	2/9/2015	Application for Continuance		5	<a href="#">PBT-2015-46081</a>
412249	2/9/2015	ELECTRONIC FILING FEE		0	
412249	2/9/2015	Receipt# 1166586 generated for the amount of \$ 27.00		0	
412249-402	2/9/2015	Case Initiated - Petition		0	
412249-402	2/9/2015	Motion Pertaining to Lawsuits Only	NOTICE OF FILING OF PLAINTIFF'S ORIGINAL PETITION	601	<a href="#">PBT-2015-47608</a>
412249-402	2/9/2015	Receipts	RECEIPT #1166739 CHARGED \$182.00 FOR ENVELOPE #4075218	1	<a href="#">PBT-2015-47611</a>
412249-402	2/9/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTERFILED PREVIOUSLY ON 2/6/15	51	<a href="#">PBT-2015-47630</a>
412249-402	2/9/2015	Receipts	RECEIPT# 1166586 CHARGED \$27.00 FOR ENVELOPE NUMBER 40506979	1	<a href="#">PBT-2015-47634</a>

412249	2/10/2015	Receipt# 1166739 generated for the amount of \$ 182.00		0	
412249	2/10/2015	Receipt# 1166892 generated for the amount of \$ 4.00		0	
412249-402	2/10/2015	Amended	NOTICE OF FILING OF PLAINTIFFS FIRST AMENDED PETITION	12	<a href="#">PBT-2015-47716</a>
412249-402	2/10/2015	ELECTRONIC FILING FEE		0	
412249-401	2/11/2015	Subpoena Returned		1	<a href="#">PBT-2015-65011</a>
412249-402	2/11/2015	ELECTRONIC FILING FEE		0	
412249-402	2/11/2015	Notice of Hearing		2	<a href="#">PBT-2015-48491</a>
412249-402	2/11/2015	Receipt# 1167156 generated for the amount of \$ 2.00		0	
412249-401	2/12/2015	Certificate	OF WRITTEN DISCOVERY	2	<a href="#">PBT-2015-49926</a>
412249-401	2/12/2015	ELECTRONIC FILING FEE		0	
412249	2/12/2015	ELECTRONIC FILING FEE		0	
412249-402	2/12/2015	ELECTRONIC FILING FEE		0	
412249-402	2/12/2015	Demand for a Jury		0	
412249-402	2/12/2015	Amended	PLAINTIFF'S SECOND AMENDED PETITION	8	<a href="#">PBT-2015-49977</a>

412249-402	2/12/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER	51	<a href="#">PBT-2015-50259</a>
412249-402	2/12/2015	ELECTRONIC FILING FEE		0	
412249-402	2/12/2015	Receipt# 1167371 generated for the amount of \$ 2.00		0	
412249-402	2/12/2015	ELECTRONIC FILING FEE		0	
412249-402	2/12/2015	Application for Continuance		5	<a href="#">PBT-2015-50464</a>
412249-401	2/13/2015	Receipt# 1167703 generated for the amount of \$ 2.00		0	
412249-402	2/13/2015	Receipt# 1167788 generated for the amount of \$ 4.00		0	
412249-402	2/13/2015	Receipt# 1167789 generated for the amount of \$ 25.00		0	
412249-402	2/13/2015	Receipt# 1167800 generated for the amount of \$ 24.00		0	
412249-402	2/13/2015	ELECTRONIC FILING FEE		0	

412249-402	2/13/2015	Receipt# 1168038 generated for the amount of \$ 2.00		0	
412249-401	2/17/2015	Misc. Notice	NOTICE OF SUBSTITUTION OF PARTY	2	<a href="#">PBT-2015-56642</a>
412249-401	2/17/2015	ELECTRONIC FILING FEE		0	
412249	2/17/2015	ELECTRONIC FILING FEE		0	
412249	2/17/2015	Objection	<b>OBJECTION TO PLAINTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION FILED IN BASE DOCKET BY REQUEST OF CARLINDA COMSTOCK PROBATE COURT 4</b>	133	<a href="#">PBT-2015-55734</a>
412249-402	2/17/2015	ELECTRONIC FILING FEE		0	
412249-402	2/17/2015	Misc. Notice	CHANGE OF NAME AND ADDRESS	2	<a href="#">PBT-2015-56703</a>
412249-401	2/18/2015	Receipt# 1169006 generated for the amount of \$ 2.00		0	
412249	2/18/2015	Instrument Over 25 Pages		133	<a href="#">PBT-2015-55917</a>
412249	2/18/2015	ELECTRONIC FILING FEE		0	
412249	2/18/2015	Receipt# 1168722 generated for the amount of \$ 2.00		0	

412249	2/18/2015	Receipt# 1168783 generated for the amount of \$ 27.00		0	
412249-402	2/18/2015	Receipt# 1168909 generated for the amount of \$ 2.00		0	
412249-401	2/19/2015	Miscellaneous Order	ORDER DENYING PLAINTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION; SIGNED 2/18/15	2	<a href="#">PBT-2015-58239</a>
412249	2/19/2015	Order for Continuance	ORDERED TRAIL IS RESET TO SEPTEMBER 14, 2015. SIGNED	1	<a href="#">PBT-2015-58243</a>
412249	2/19/2015	Application to Resign	CARL HENRY APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE LOUISE CURTIS APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE	4	<a href="#">PBT-2015-57597</a>
412249	2/19/2015	ELECTRONIC FILING FEE		0	
412249	2/19/2015	Receipt# 1169110 generated for the amount of \$ 4.00		0	
412249-401	2/20/2015	Agreed Order	AGREED DOCKET CONTROL ORDER; SIGNED 2/19/15	2	<a href="#">PBT-2015-59154</a>
412249-401	3/5/2015	Order to Consolidate	ORDER NOT ENTERED	4	<a href="#">PBT-2015-76288</a>
412249-401	3/5/2015	ELECTRONIC FILING FEE		0	
412249-401	3/5/2015	Conform Copies		0	

412249-401	3/6/2015	Receipt# 1172835 generated for the amount of \$ 4.00		0	
412249-401	3/10/2015	ELECTRONIC FILING FEE		0	
412249-401	3/10/2015	Objection	<b>OBJECTION TO CANDACE CURTIS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE</b>	16	<a href="#">PBT-2015-79533</a>
412249-401	3/10/2015	Receipt# 1173418 generated for the amount of \$ 2.00		0	
412249-401	3/11/2015	ELECTRONIC FILING FEE		0	
412249-401	3/11/2015	Application to Compel (Indep.)	CARL & CANDACE TO RESPOND TO DISCLOSURES	31	<a href="#">PBT-2015-81853</a>
412249-401	3/11/2015	Receipt# 1173827 generated for the amount of \$ 2.00		0	
412249	3/12/2015	ELECTRONIC FILING FEE		0	
412249	3/12/2015	Application to Appoint Successor Executor	<b>AMY RUTH BRUNSTING APPLICATION TO BE NAMED SUCCESSOR EXECUTOR RESPONSE TO CARL BRUNSTING APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS APPLICATION FOR APPOINTMENT AS</b>	9	<a href="#">PBT-2015-84166</a>

412249	3/13/2015	Receipt# 1174307 generated for the amount of \$ 4.00		0	
412249	3/17/2015	ELECTRONIC FILING FEE		0	
412249	3/17/2015	Responses	RESPONSE TO OBJECTIONS TO APPLICATION FOR APPOINTMENT AND OBJECTION TO AMY BRUNSTING'S APPLICATION FOR APPOINTMENT	4	<a href="#">PBT-2015-89757</a>
412249	3/18/2015	Receipt# 1175347 generated for the amount of \$ 2.00		0	
412249-401	3/20/2015	ELECTRONIC FILING FEE		0	
412249-401	3/20/2015	Amended	FIRST SUPPLEMENT TO PLAINTIFF'S FIRST AMENDED PETITION	4	<a href="#">PBT-2015-94015</a>
412249-401	3/23/2015	Order to Compel (Dep.)	CARL AND CANDACE TO REpond TO DISCLOSURES; SIGNED 3/23/15	2	<a href="#">PBT-2015-95392</a>
412249-401	3/23/2015	Objection	OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR	4	<a href="#">PBT-2015-95444</a>
412249-401	3/23/2015	Receipt# 1176060 generated for the amount of \$ 2.00		0	
412249-401	3/23/2015	ELECTRONIC FILING FEE		0	

412249	3/23/2015	ELECTRONIC FILING FEE		0	
412249	3/23/2015	Responses	RESPONSE TO MOTION TO COMPEL DISCLOSURES	2	<a href="#">PBT-2015-95797</a>
412249-401	3/24/2015	Responses	RESPONSE TO ANITA BRUNSTING'S MOTION TO COMPEL CARL BRUNSTING TO RESPOND TO	43	<a href="#">PBT-2015-97461</a>
412249-401	3/24/2015	Instrument Over 25 Pages		0	
412249-401	3/24/2015	ELECTRONIC FILING FEE		0	
412249-401	3/24/2015	Receipt# 1176512 generated for the amount of \$ 2.00		0	
412249	3/24/2015	Receipt# 1176351 generated for the amount of \$ 2.00		0	
412249-401	3/25/2015	Receipt# 1176817 generated for the amount of \$ 27.00		0	
412249	3/30/2015	ELECTRONIC FILING FEE		0	
412249	3/30/2015	Application to Withdraw		8	<a href="#">PBT-2015-103496</a>
412249-401	3/31/2015	Order to Compel (Dep.)	THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE	43	<a href="#">PBT-2015-105354</a>





# **Exhibit E**

No. 412,249

IN THE ESTATE OF § PROBATE COURT  
NELVA E. BRUNSTING § NUMBER FOUR (4)  
DECEASED § HARRIS COUNTY, TEXAS

ORDER APPOINTING TEMPORARY ADMINISTRATOR PENDING CONTEST  
PURSUANT TO TEXAS ESTATES CODE 452.051

On March 23, 2015, the Court heard and approved Carl Henry Brunsting's Application to Resign as Independent Executor. On July 21, 2015 the Court heard and considered CARL HENRY BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE LOUISE CURTIS' APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE; Anita Kay Brunsting's OBJECTION TO CANDACE CURTS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE; AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR, RESPONSE TO CARL BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS'S APPLICATION FOR APPOINTMENT AS SUCCESSOR EXECUTOR; Carl Brunsting's OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR; and Candace Curtis' RESPONSE TO OBJECTIONS TO APPLICATION FOR APPOINTMENT AND OBJECTION TO AMY BRUNSTINGS APPLICATION FOR APPOINTMENT.

The Court finds that the Court has jurisdiction and venue over Decedent's Estate; that it is in the best interest of the Estate that a personal representative be immediately appointed; and that the parties have reached an agreement regarding the appointment of a Temporary Administrator Pending Contest with limited powers, which was announced on the record at said hearing, the terms of which are substantially as follows:

1. GREG LESTER would be a suitable temporary representative, is not disqualified from acting as such, and should be appointed Temporary Administrator

Pending Contest of this Estate with limited powers to evaluate all claims filed against 1) Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC, 2) Anita Kay Brunsting f/k/a Anita Kay Riley, Individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Anita Kay Brunsting Personal Asset Trust; and 3) Amy Ruth Brunsting f/k/a Amy Ruth Tschirhart, Individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Tschirhart Personal Asset Trust; and 4) Carole Ann Brunsting, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust. Greg Lester, Temporary Administrator Pending Contest will report to the Court regarding the merits of these claims on or before the expiration of this Order. This Order shall expire 180 days after the date that it is signed.

2. Amy Brunsting and Anita Brunsting, as the Successor Co-Trustees of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, and the Nelva E. Brunsting Survivor's Trust agree to advance funds to the Estate of Nelva E. Brunsting (the "Estate") to pay all court approved fees and expenses of the Temporary Administrator Pending Contest.

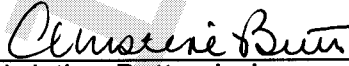
3. The Temporary Administrator Pending Contest has the authority to seek a continuance in the "District Court Case" in which the Estate is a plaintiff, of the hearing on the Motion for Summary Judgment current scheduled for July 31, 2015 and to seek continuance of the October, 2015 trial setting in that matter.

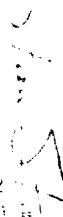
4. Amy Brunsting and Candace Louise Curtis each agree to a qualified declination to serve as Successor Independent Executor of the Estates of Nelva E. Brunsting and Elmer H. Brunsting, pursuant to the respective wills filed in each Estate, during the pendency of the Temporary Administration of this Estate.

07242015:1343:P004B

IT IS THEREFORE ORDED that Greg Lester is hereby appointed Temporary Administrator Pending Contest of this Estate and shall give a cash Bond in the amount of \$100.00 (On Hundred Dollars), conditioned as required by law; that the Temporary Administration shall continue until the expiration of 180 days after the date of this Order, or as may be further ordered by this court; that the Clerk of this Court shall issue Letters of Temporary Administration when the Temporary Administrator has qualified according to law; and that the Temporary Administrator shall have the powers enumerated by the agreement of the parties as restated above.

Signed July 23, 2015.

  
\_\_\_\_\_  
Christine Butts, Judge  
Harris County Probate Court No. 4

  
COUNTY CLERK  
HARRIS COUNTY TEXAS

2015 JUL 24 AM 10:35

FILED

COPY

**STAN STANART**  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
PROBATE COURTS DEPARTMENT

THE STATE OF TEXAS           §     DOCKET NO. 412249  
  §  
COUNTY OF HARRIS           §     ESTATE OF:  
  §  
PROBATE COURT NO. Four (4)   §     NELVA E BRUNSTING, DECEASED

**NOTICE TO PROBATE JUDGE OF DEPOSIT INTO REGISTRY OF COURT  
OF CASH IN LIEU OF CORPORATE BOND**

COMES NOW, STAN STANART, County Clerk and Clerk of the Probate Courts of Harris County, Texas, giving notice to the Honorable Probate Court of Harris County, Texas, of the receipt by said County Clerk on July 27, 2015 from GREG LESTER of the sum of \$ 100.00, (In Lieu of Corporate Bond). Said cash has been received as directed by Section 305.101 and 1355.001 of the Texas Estates Code and has been deposited in the Registry of the Court Account of the County Clerk in the official County Depository for Registry of the Court Funds.

SAID funds shall remain in the Registry of the Court pending further orders from the Court.

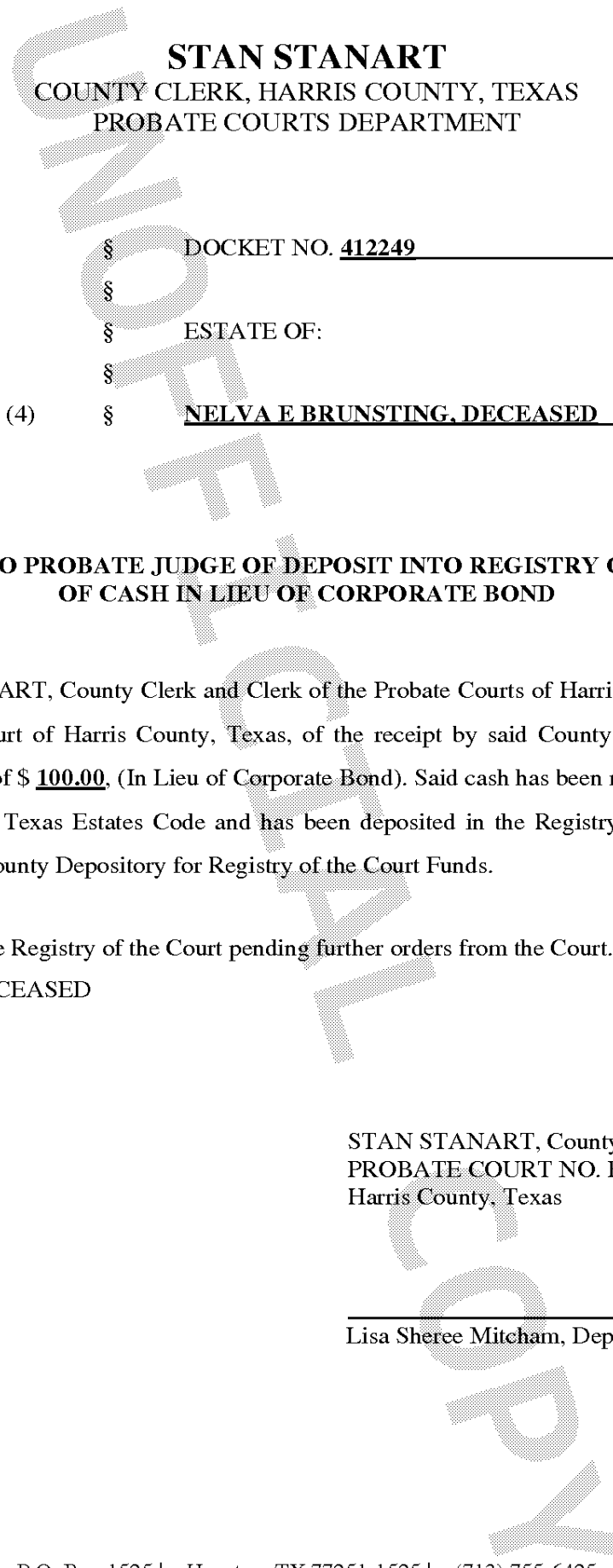
NELVA E BRUNSTING, DECEASED

Signed: July 27, 2015,

STAN STANART, County Clerk,  
PROBATE COURT NO. Four (4)  
Harris County, Texas

\_\_\_\_\_  
Lisa Sheree Mitcham, Deputy Clerk

PBT-2015-242977



CARL H. BRUNSTING

1 CAUSE NO. 2013-05455  
2 CARL HENRY BRUNSTING, ) IN THE DISTRICT COURT OF  
INDEPENDENT EXECUTOR OF )  
3 THE ESTATES OF ELMER H. )  
BRUNSTING AND NELVA E. )  
4 BRUNSTING, )  
) )  
5 Plaintiffs, )  
) )  
6 V. ) HARRIS COUNTY, TEXAS  
) )  
7 CANDACE L. KUNZ-FREED )  
AND VACEK & FREED, PLLC )  
8 F/K/A THE VACEK LAW )  
FIRM, PLLC, )  
9 )  
Defendants. ) 164TH JUDICIAL DISTRICT

10  
11 REPORTER'S CERTIFICATION  
ORAL AND VIDEOTAPED DEPOSITION OF CARL H. BRUNSTING  
12 FEBRUARY 3, 2015  
13

14 I, Stephanie M. Harper, a Certified Shorthand  
15 Reporter in and for the State of Texas, hereby certify  
16 to the following:

17 That the witness, CARL H. BRUNSTING, was duly sworn  
18 by the officer and that the transcript of the oral  
19 deposition is a true record of the testimony given by  
20 the witness;

21 That the deposition transcript was submitted on  
22 2.13, 2015, to the witness, or to the attorney  
23 for the witness, for examination, signature, and return  
24 to U.S. Legal Support, Inc., by 3.8, 2015;

25 That the amount of time used by each party at the

177755

1 deposition is as follows:

2 MS. ZANDRA E. FOLEY - 02:22

3 MS. BOBBIE G. BAYLESS - 00:00

4 That pursuant to information given to the  
5 deposition officer at the time said testimony was  
6 taken, the following includes counsel for all parties  
7 of record:

8 MS. BOBBIE G. BAYLESS,  
ATTORNEY FOR PLAINTIFFS.

9 MS. ZANDRA E. FOLEY,  
ATTORNEY FOR DEFENDANTS.

10 I further certify that I am neither counsel for,  
11 related to, nor employed by any of the parties or  
12 attorneys in the action in which this proceeding was  
13 taken, and further that I am not financially or  
14 otherwise interested in the outcome of the action.

15 Further certification requirements pursuant to Rule  
16 203 of TRCP will be certified to after they have  
17 occurred.

18 Certified to by me this 13 of FEBRUARY, 2015.

19  
20 *Stephanie M. Harper*  
21  
22



23 STEPHANIE M. HARPER

TEXAS CSR NO. 7433

Expiration Date: 12-31-16

24  
25 JOB NO. 177755



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FURTHER CERTIFICATION UNDER RULE 203 TRCP

The original deposition was X was not returned to U.S. Legal Support, Inc., on March 5<sup>th</sup>, 2015.

If returned, the attached Corrections and Signature page contains any changes and the reasons therefor;

If returned, the original deposition was delivered to MR. ZANDRA E. FOLEY, Custodial Attorney;

That \$ 794.15 is the deposition officer's charges to the Attorney for Defendants, MR. ZANDRA E. FOLEY, Texas Bar No. 24032085, for preparing the original deposition transcript and any copies of exhibits;

That the deposition was delivered in accordance with Rule 203.3, and that a copy of this certificate was served on all parties shown herein on 3/20/15 and filed with the Clerk.

Certified to by me this 19<sup>th</sup> day of March, 2015.

Stephanie M. Harper *BSA*  
STEPHANIE M. HARPER  
TEXAS CSR NO. 7433  
Expiration Date: 12-31-16

U.S. Legal Support, Inc.  
Firm Registration No. 122  
363 North Sam Houston Parkway East,  
Suite 1200  
Houston, Texas 77060  
(713) 653-7100

JOB NO. 177755

CARL H. BRUNSTING

2/3/2015

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WITNESS CORRECTIONS AND SIGNATURE

Please indicate changes on this sheet of paper, giving the change, page number, line number and reason for the change. Please sign each page of changes.

PAGE/LINE                  CORRECTION                  REASON FOR CHANGE

SEE ATTACHED STATEMENT.

Unofficial Copy Office of Chris Daniel District Clerk

CARL H. BRUNSTING

CARL H. BRUNSTING

2/3/2015

123

1 I, CARL H. BRUNSTING, solemnly swear or affirm  
 2 under the pains and penalties of perjury that the  
 3 foregoing pages contain a true and correct transcript  
 4 of the testimony given by me at the time and place  
 5 stated herein, except as noted on the previous  
 6 correction page(s), and that I am signing this before a  
 7 Notary Public.

SEE ATTACHED STATEMENT

CARL H. BRUNSTING

8  
 9 STATE OF T E X A S \*

10 COUNTY OF \_\_\_\_\_ \*

11  
 12 Before me, \_\_\_\_\_,  
 13 on this day personally appeared CARL H. BRUNSTING,  
 14 known to me, or proved to me under oath, to be the  
 15 person whose name is subscribed to the foregoing  
 16 instrument and acknowledged to me that they executed  
 17 the same for the purposes and consideration therein  
 18 expressed.

19  
 20 Given under my hand and seal of office on  
 21 this, the \_\_\_\_\_ day of \_\_\_\_\_, 2015.

22  
 23 \_\_\_\_\_  
 24 NOTARY PUBLIC IN AND FOR THE  
 25 STATE OF TEXAS

My Commission Expires: \_\_\_\_\_

JOB NO. 177755

**STATEMENT CONCERNING WITNESS CORRECTIONS AND SIGNATURE  
FOR DEPOSITION OF CARL H. BRUNSTING DATED FEBRUARY 3, 2015**

Although it had not been apparent through other phases of the litigation, under the stress of giving his deposition, the effects remaining from Carl Brunsting's encephalitis in 2010 surfaced and tainted his entire deposition. The memory problems resulting from encephalitis are apparently exacerbated in stressful and demanding setting such as Mr. Brunsting's deposition. Attached as Exhibit 1 is an explanation of the memory problems associated with Mr. Brunsting's condition as a survivor of encephalitis.

The memory issues experienced by Mr. Brunsting at the deposition resulted in inaccurate answers about himself and his own medical treatments, as well as about issues involved in the litigation. It would be impossible to correct the deposition in any way which would allow it to remain meaningful testimony. By way of example, at several points in the deposition Mr. Brunsting was asked about Doctors he has seen since his illness and said there were none or that he could not remember any. In fact, Mr. Brunsting had at least 83 appointments with doctors, physical therapists or other healthcare providers in 2011 alone, as well as 9 days as an inpatient at the St. Luke's Hospital ICU unit and 4 days of inpatient care on the St. Luke's Hospital rehabilitation floor in 2011. He also had 5 days of inpatient rehabilitation at Mentis in 2011. Although he has not been hospitalized since 2011, Mr. Brunsting has had almost 70 medical appointments in the years after 2011.

After the deposition, Mr. Brunsting was evaluated by Dr. C. George Kevorkian. His letter dated February 12, 2015 concerning that evaluation is attached as Exhibit 2. Based on that evaluation, Mr. Brunsting has filed an application to resign as executor of the estates of his parents. Mr. Brunsting was excluded from the actions on which this case is based so he had no personal knowledge of what occurred anyway. Mr. Brunsting is the Plaintiff in this case only in his capacity as executor and the new executor will be substituted as the Plaintiff in the case once appointed. For that additional reason, it appears that the relevance of Mr. Brunsting's deposition to this action, even if it contained accurate testimony, is further diminished. Mr. Brunsting will not be providing the vast number of corrections needed to make the testimony accurate. Indeed such an exercise, even if it could be done, would result in virtually a completely new deposition. Mr. Brunsting will also be unable to provide a signature verifying the accuracy of the very inaccurate deposition. Instead, this statement with its attachments is being provided to be attached to the deposition.

Unofficial Copy Office of Chris Daniel District Clerk

# **Exhibit 1**

March 4, 2015

To whom it may concern:

Re: Encephalitis -- an acquired brain injury

My name is Wendy Station. I am President of Encephalitis Global, Inc., a U.S.A. 501(c)(3) non-profit organization formed in 2005. I am not a medical professional. I am an encephalitis survivor, sharing information, support and research internationally for 15 years. In 2004 I was invited (escorted by my husband, all expenses paid) by the Committee on Government Reform House of Representatives to testify at a Hearing in Washington DC on the impact and current challenges of encephalitis. (<http://www.gpo.gov/fdsys/pkg/CHRG-108hhrg98485/html/CHRG-108hhrg98485.htm>)

Memory issues post-encephalitis can be a challenge. The survivor of an acquired brain injury can struggle with this invisible disability as society tells them that "they look okay... they must be okay." Studies show that if the situation arises where a survivor must interact in a situation away from their comfortable home, her/his response may be very different to the response she or he submits in a calm and familiar setting. The swiftest agreeable answer may not be accurate... but it's the easiest one to deliver. The following resources may help to further understand the impact of an acquired brain injury.

The Alberta Health Services "Coping With Brain Injury" research confirms that,

- "Loss of the ability to make new memories can be the most disabling deficit. **The person may make up convincing stories to fill memory gaps; this is not intentional lying.**"
- The injured person may have difficulty sizing up a situation and figuring out what response is appropriate and relevant. He may be unable to delay his first impulses. His thinking style may be inflexible. Once he has an idea or solution, it may be hard for him to consider alternatives. Because of poor judgement, a frequent outcome of brain injury, he may not make decisions in his best interest.
- As a result of the brain injury, self-awareness may be impaired. The person may lack awareness of deficits and limitations. This is not typically intentional, rather, it is a common phenomenon following traumatic brain injury in particular. He may have an inaccurate self-image or self-perception, which may lead him to overestimate his abilities and underestimate his problems.
- To help communicate, **"Establish an easy, non-demanding atmosphere, where the injured person feels free to communicate without feeling he is under pressure to perform."**

(From THE BRAIN INJURY BOOK - A GUIDE FOR PATIENTS AND THEIR FAMILIES

Created by the Patient and Family Education Working Group, Calgary

Brain Injury Strategy, 2012

Glenrose Rehabilitation Hospital in Edmonton, Alberta

<http://www.albertahealthservices.ca/hp/if-hp-cbi-pf-coping-brain-injury-booklet.pdf>

The Powell River Brain Injury Society confirms that the brain injury survivor **"May make up stories and information to fill in gaps."**

<http://braininjuriesociety.com/information/acquired-brain-injury/help-family-or-friend-with-abi/>

Speaking of brain injury survivors, the Model Systems Knowledge Translation Center (MSKTC) --states, "They may have problems remembering entire events or conversations. Therefore, the mind tries to "fill in the gaps" of missing information and recalls things that did not actually happen. Sometimes bits and pieces from several situations are

remembered as one event. These false memories are not lies. - See more at: <http://www.msktc.org/tbi/factsheets/Cognitive-Problems-After-Traumatic-Brain-Injury#sthash.FedDuIXZ.dpuF>

In psychiatry, confabulation is defined as, "the replacement of a gap in a person's memory by a falsification that he or she believes to be true."

Thomas Novack, Ph.D. writes, "Confabulation is often associated with an injury to the frontal area of the brain. This area focuses attention, directs and organizes thoughts and behaviors, and controls impulsiveness. Confabulation occurs when the frontal areas do not provide direction and organization to the memory system. Too often, confabulation is mistakenly perceived as the person lying or having delusional thoughts. By better understanding how information is stored in memory and later retrieved, users gain an understanding of what happens when this system breaks down. As a consequence, a person who is confabulating will recall events out of sequence, mismatch people and events, and give too much information." <http://www.lapublishing.com/brain-injury-confabulation/>.

In closing I wish to confirm that stress in an unfamiliar environment can create havoc on the normally mellow personality of a brain injury survivor. Dealing with strangers who appear to be authority figures demanding answers would be very, very upsetting. It would be very typical for the survivor to choose the simplest actions... actions which meet with the approval of the people around them.

Please do not hesitate to contact me if I may be of further assistance.

Sincerely,  
Wendy Station, survivor, HSE 1999  
Founder and President of  
Encephalitis Global, Inc.  
[www.encephalitisglobal.org](http://www.encephalitisglobal.org)  
[admin@encephalitisglobal.org](mailto:admin@encephalitisglobal.org)



Encephalitis Global, Inc. aims to share information and support between survivors, caregivers, loved ones, and people who seek to understand, to raise awareness among relevant professionals and the wider public about the condition and subsequent problems and to promote research into encephalitis. Encephalitis Global, Inc. is a 501(c)(3) public charity, USA Tax Exempt ID # 75-3173679

**ENCEPHALITIS GLOBAL INC.**

[encephalitisglobal.org](http://encephalitisglobal.org)  
[encephalitis.ca](http://encephalitis.ca)

Website administrators  
Ingrid Guerel - New York, USA  
Wendy Station - Vancouver Canada

**Exhibit 2**

Unofficial Copy Office of Chris Daniel District Clerk



BOBBIE GRACE BAYLESS  
BOARD CERTIFIED CIVIL TRIAL LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION  
NATIONAL BOARD OF TRIAL ADVOCACY  
bayless@baylessstokes.com

**BAYLESS & STOKES**  
ATTORNEYS AT LAW  
2831 FERNDALE  
HOUSTON, TEXAS 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

DALIA BROWNING STOKES  
BOARD CERTIFIED ESTATE PLANNING & PROBATE LAW  
TEXAS BOARD OF LEGAL SPECIALIZATION  
stokes@baylessstokes.com

March 5, 2015

Sent via Email and Telecopier

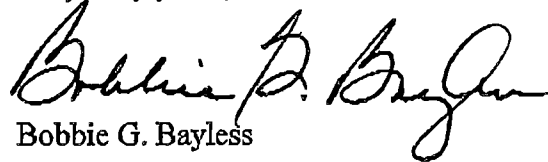
Ms. Alicia Cordova  
U.S. Legal Support  
363 N. Sam Houston Parkway East, Suite 1200  
Houston, Texas 77060

Re: Cause No. 2013-05455; *Carl H. Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC*; In the 164<sup>th</sup> Judicial District Court of Harris County, Texas

Dear Ms. Cordova:

Enclosed please find a Statement Concerning Witness Corrections and Signature for Deposition of Carl H. Brunsting Dated February 3, 2015 in lieu of the original errata sheet and signature page for Mr. Brunsting's deposition in the above-referenced case.

Very truly yours,

  
Bobbie G. Bayless

cc: Ms. Zandra Foley

Unofficial Copy Office of Chief Daniel District Clerk

C. George Kevorkian, M.D.



Chief, Physical Medicine and Rehabilitation

6624 Fannin, Suite 2330  
O'Quinn Medical Tower  
Houston, Texas 77030  
Tel (713) 798-4061  
Fax (713) 796-0978

Associate Professor  
Department of  
Physical Medicine  
and Rehabilitation

February 12, 2015

RE: Carl Brunsting/ DOB: 07-13-1957

To Whom It May Concern,

Mr. Carl Brunsting is a patient of mine. Mr. Brunsting has memory and cognition problems as a result of contracting encephalitis in July of 2010.

These issues make it difficult for him to sue and defend a lawsuit. However, he understands the purpose of a Power of Attorney and understands that this document allows another person to act on his behalf.

He is aware of his situation & he trusts his wife, Drina, to make decisions on his behalf. He is capable of making a decision to sign a Power of Attorney, both for financial matters and medical issues.

Thank you for your interest in this matter.

Please call my office if you have any questions or concerns.

Sincerely,

C. George Kevorkian, M.D  
Physical Medicine and Rehabilitation

District Clerk

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**TRIAL COURT NO. 412,249-401**

IN THE MATTER OF : THE PROBATE COURT OF  
THE ESTATE OF :  
  
: HARRIS COUNTY, T E X A S  
  
NELVA E. BRUNSTING, : PROBATE COURT NO. 4  
DECEASED  
- \* - \* - \* - \* - \* - \* - \* - \* - \* - \* - \* - \* -

**COURT REPORTER'S RECORD**

**MOTION FOR PROTECTIVE ORDER**

**VOLUME 1 OF 1 VOLUMES**

- \* - \* - \* - \* - \* - \* - \* - \* - \* - \* - \* - \* -  
MORNING SESSION  
August 3, 2015

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**TRIAL COURT NO. 412,249-401**

IN THE MATTER OF : IN THE PROBATE COURT OF  
THE ESTATE OF

: HARRIS COUNTY, T E X A S

NELVA E. BRUNSTING, : PROBATE COURT NO. 4  
DECEASED

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BE IT REMEMBERED THAT UPON THIS,  
the 3rd day of August, 2015, the above entitled and  
numbered cause came on for Hearing on Carol  
Brunsting's Motion for Protective Order before the  
HONORABLE CHRISTINE BUTTS, Judge of Probate Court  
No. 4 of Harris County, Texas; and all parties  
appearing in person and/or by counsel, all preliminary  
matters having been disposed, and proceedings had, the  
following was heard, viz.:

**A P P E A R A N C E S**

**COUNSEL FOR DRINA BRUNSTING, AS ATTORNEY IN FACT FOR**

**CARL BRUNSTING:**

Bobbie G. Bayless, Esq.

TBA #01940600

**BAYLESS & STOKES**

2931 Ferndale

Houston, TX 77098

713-822-2224

713-822-2218 FAX

**COUNSEL FOR DEFENDANT, AMY BRUNSTING:**

Neal Evan Spielman, Esq.

TBA #00794678

**GRIFFIN & MATTHEWS**

1155 Dairy Ashford, Suite 300

Houston, TX 77079

281-870-1124

281-870-1647 FAX

**COUNSEL FOR DEFENDANT, ANITA BRUNSTING-RILEY:**

Bradley Earl Featherston, Esq.

TBA #24038892

**Attorney at Law**

1155 Dairy Ashford, Suite 104

Houston, TX 77079

281-759-3213

281-759-3214 FAX

**COUNSEL FOR DEFENDANT, CAROLE BRUNSTING:**

Kathleen Tanner Beduze, Esq.

TBA #24052205

**CRAIN, CATON & JAMES, P.C.**

1401 McKinney, Suite 1700

Houston, TX 77010

713-658-2323

713-658-1921 FAX

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**REPORTED BY:**

Judith J. Kulhanek, CSR #598  
Deputy Official Court Reporter  
Harris County Probate Court No. 4  
P. O. Box 1633  
Waller, TX 77484  
(713) 681-6071  
(713) 515-0221 (c)

## MORNING SESSION

1  
2 August 3, 2015

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4 THE COURT: We are here in Cause  
5 No. 412,249-401, the Estate of Nelva E. Brunsting,  
6 Deceased.

7 We're here on Carl Henry Brunsting's  
8 motion for protective order. And present are -- my  
9 docket sheet says Neal Spielman for Amy Brunsting --

10 MR. SPIELMAN: Yes, Your Honor.

11 THE COURT: And Brad Featherston for  
12 Anita Brunsting-Riley.

13 MR. FEATHERSTON: Present, Your Honor.

14 THE COURT: And then Stephen Mendel --

15 MR. FEATHERSTON: He's with my firm,  
16 Your Honor.

17 THE COURT: Okay. I'm sorry. He is  
18 not present.

19 And Bobbie Bayless is here for Carl  
20 Brunsting and also for Drina Brunsting.

21 MS. BAYLESS: Yes, Your Honor.

22 THE COURT: Candace Curtis is pro se,  
23 and I don't see her in the courtroom.

24 And then --

25 MS. BEDUZE: Kathleen Beduze for Carole

1 Brunsting, Darlene Smith left.

2 THE COURT: Kathleen Beduze is here for  
3 beneficiary, Carole Brunsting who is here?

4 MS. BEDUZE: Correct. And we joined in  
5 the response.

6 THE COURT: Thank you.

7 MS. BEDUZE: We jointly filed that.

8 THE COURT: Okay.

9 MR. SPIELMAN: Response?

10 THE COURT: I haven't found -- we don't  
11 have a response.

12 MR. SPIELMAN: Well, that would  
13 probably be my problem, Judge.

14 My office filed it on Friday afternoon.  
15 At the very least, I have confirmation pages that it  
16 went to the attorneys.

17 THE COURT: Okay. Did Ms. Bayless --  
18 did you receive a copy of the response?

19 MS. BAYLESS: I did. I didn't ever  
20 receive any notification it was filed, but I did  
21 receive a fax.

22 MR. SPIELMAN: I can step out while you  
23 guys get going and call my office and see if we have  
24 the confirmation.

25 THE COURT: Well, we can check if it



1 has been filed.

2 (SHORT DELAY IN PROCEEDINGS.)

3 MR. SPIELMAN: Judge, I don't know --  
4 we have an envelope number, and I can tell you the  
5 envelope number was 6316359, and it was I guess put  
6 into the system, whatever the proper terminology is,  
7 at 4:08 p.m. on 7/31/15 which would be last Friday,  
8 and it says that it is submitted is the terminology  
9 there.

10 THE COURT: So --

11 MR. SPIELMAN: Yeah, but, I mean, I  
12 think hopefully the most important part for the  
13 purposes of our hearing, with all due respect to the  
14 Court, but the attorneys at least all have it. So  
15 nobody on this side of the Bench at least is surprised  
16 by it.

17 THE COURT: Okay. All right.

18 Ms. Bayless?

19 MS. BAYLESS: Your Honor, we're here on  
20 a -- what my motion was termed a motion for protective  
21 order. It actually goes beyond the issues of  
22 pre-trial discovery.

23 And you will see from the defendant's  
24 response they kind of deal with it as just a typical  
25 motion for protective order involving pre-trial

1 discovery issues.

2           As to background, which is set forth in  
3 my motion, but basically is that back in 2012, the  
4 plaintiff didn't have very much information on what  
5 had occurred -- we did a pre-suit discovery action --  
6 asked for recordings, both video and audio, got  
7 nothing.

8           The defendants in this case have gone  
9 through several counsel. They said they were going to  
10 produce everything, and that person was fired. I  
11 don't know what happened, I'm not sure. But since  
12 Mr. Spielman and Mr. Featherston have been in there,  
13 there have been several supplemental responses.

14           And then suddenly on July 1st, I get  
15 this envelope in the mail that had what is obviously  
16 recordings that my clients did not know about or  
17 consent to, and audio recordings obviously made while  
18 Carl was at his mother's home and had telephone  
19 conversations with his wife and video recordings from  
20 Carl's ICU hospital room.

21           I tried to communicate -- I don't think  
22 I had a conversation with anybody but Mr. Featherston  
23 in fairness -- but I tried to -- because he's the  
24 person who produced them. I called him up and tried  
25 to get an explanation from him for why these weren't

1 illegal recordings, and what we were going to do about  
2 that, and stressed that -- he I think sort of had the  
3 impression, well, Drina is mad about this. And I  
4 tried to explain to him this was a big deal to  
5 everyone concerned, including me.

6 We were going to continue to talk about  
7 it. He wanted to see the motion for protective order  
8 before he wanted to -- me to discuss any up front.

9 So I said, well -- we had -- at that  
10 time, we didn't yet have our third-party administrator  
11 and our temporary administrator, and so I just felt  
12 the need to get it on file.

13 Subsequently, what he did say to me in  
14 that conversation that is set forth in their response  
15 is that these came from an answering machine. I do  
16 not want to go into the substance of the conversations  
17 for the very reason that they are, in my view, illegal  
18 wiretap conversations, but they are not from an  
19 answering machine.

20 There is no answering machine answering  
21 these recordings. They are clearly edited in some  
22 instances because they stop in the middle of a  
23 sentence. There is no dating on -- other than looking  
24 at the property of the recordings that were sent to  
25 me, which in and of itself is interesting, because

1 these recordings occurred back in March of 2011. The  
2 video recordings occurred in May of 2011.

3 And so clearly were edited in February  
4 of this year. We were down here having hearings in  
5 February of this year about this temporary  
6 administration issue.

7 The other interesting thing is that I  
8 believe they were mailed to me on the same day that  
9 the defendants filed their no evidence motion for  
10 summary judgment suggesting that there had been plenty  
11 of time for discovery on that period since 2012, I  
12 think a total of 38 months, when these documents were  
13 sent to me the same day they filed that motion.

14 You know, under normal circumstances,  
15 that would be a long time for discovery. But it takes  
16 two to tango, as they say, and these documents had not  
17 been previously provided.

18 Now, when I talked to Mr. Featherston,  
19 I think Mr. Featherston called me, I guess Thursday,  
20 about an extension on discovery responses, requests  
21 for production, that are due today from the  
22 defendants.

23 And when I got these recordings -- just  
24 so you understand the background there -- when I got  
25 these recordings, I got them on July 1st in the mail,

1 then there's the July 4th holiday, I really didn't  
2 even look at what I got, frankly, until after that.

3           But I knew that there was a discovery  
4 deadline, and I knew there were recordings in there,  
5 so obviously, they -- I guess they would say they were  
6 responding to the pre-suit discovery which, frankly, I  
7 think is proper, but it should have been done back in  
8 the pre-suit discovery.

9           So I didn't want there to be a question  
10 about whether they were supposed to be providing  
11 things in this litigation. And we had a discovery  
12 cutoff at that time for, again, a docket control  
13 order, which required me to send out discovery  
14 responses that day before I really even knew what was  
15 going on.

16           And so here is what they were, but I  
17 knew I had to get those documents out or I would be  
18 hearing, well, you haven't even requested anything in  
19 this case, so that's why you didn't get them.

20           The obvious reason I got them is  
21 because they intended to use them in these  
22 proceedings, and they know they wouldn't be able to do  
23 that if they didn't provide them in some fashion.

24           So when Mr. Featherston talked -- we  
25 said we would talk again. He called me about an

1 extension on those requests because they didn't know  
2 what the Court would want to have happen, since I  
3 filed this motion for protective order indicating that  
4 I didn't want anybody else to receive these  
5 recordings.

6           And I gave Mr. Featherston, when we  
7 talked the first time, the cite from the civil wiretap  
8 statute and for the Penal Code provision. So they  
9 filed a response that says they don't know what the  
10 authority is for this, but we talked about that.

11           I told him that I was not inclined to  
12 agree to any kind of an extension on these things.  
13 And they've had them since March of 2011, and now  
14 we're getting dribbles.

15           And, by the way, during that same  
16 period of time, there would have been recordings, I  
17 understand, between Candace -- from Candace Curtis and  
18 her mother about all of these issues that are at issue  
19 in this. You know, those probably would not have had  
20 any more consent than the ones I'm here about. But  
21 the point is, they have been very selective about what  
22 they provided.

23           Clearly, the recording equipment was  
24 purchased by the caregiver. The receipt is in the  
25 production I believe attached to the motion, and he

1 got reimbursed. I mean, it is just so clear what was  
2 going on.

3                   So Mr. Featherston and I talked, and he  
4 said that he wanted to put this -- the responses off  
5 two weeks so that the Court could make a determination  
6 on this.

7                   I mean, recognizing that there could be  
8 some suggestion, there always seems to be a suggestion  
9 that I have not done something I'm supposed to do to  
10 make something happen, so -- or I have done something  
11 incorrectly procedurally, whatever.

12                   So I sent an e-mail to all the counsel  
13 in the case, and said I don't want there to be any  
14 confusion that notwithstanding my request for  
15 production, that is a request that those items be  
16 produced to me and me only.

17                   While normal practice may be that you  
18 send it to everybody in the case, these recordings are  
19 not to be sent to everybody in the case. And if you  
20 do it, I cite it again, the Penal Code Section, you do  
21 it at your own peril.

22                   So I get a response on Friday afternoon  
23 from all the defendants, and their position now --  
24 they still believe the answering machine-thing -- and  
25 their position is that Carl consented to these

1 conversations.

2           The Court will note that I attached to  
3 my motion for protective order e-mails of the same  
4 time period where these defendants are planning and  
5 plotting ways to obtain a guardianship over Carl, so  
6 there is no way that he consented.

7           And he was quite ill at the time and  
8 there is no question about that.

9           The recordings done in May of 2011, the  
10 video recordings, are in an ICU room at St. Luke's,  
11 and he was definitely in an altered mental state,  
12 because of medications he was receiving.

13           But you can't -- you can't say, okay,  
14 Carl -- they even say in their response that Carl  
15 hooked up this equipment.

16           Well, I mean, there is no way. I  
17 couldn't even hook up that equipment. It is digital  
18 equipment that requires menus and submenus to program.  
19 The model that the caregiver purchased -- as indicated  
20 on the receipt, I've got the manual for it here --  
21 there is no way that a person that was needing a  
22 guardianship, as these people have admitted from their  
23 e-mails, would be able to do that.

24           And there is no -- the position in  
25 their response is this: We have to prove a negative,



1 that we have to prove there was not consent.

2 Well, if they say there is consent,  
3 that is an affirmative defense and the burden of proof  
4 is on them to show that. And in light of their own  
5 e-mails, I don't see how they are going to do that,  
6 but the burden is not on me to negate this stuff. The  
7 burden is on them to show that there was a consent.

8 So the other -- I mean, it always seems  
9 to go this way. I try to work these things out, and  
10 it's just the case where nothing gets worked out, and  
11 I think that's unfortunate for everyone.

12 But what I filed this morning, because  
13 they don't seem to understand that these statutes both  
14 say on their face that you're entitled to injunctive  
15 relief to prevent the further disclosure and use of  
16 these illegal recordings.

17 So they say in response they don't know  
18 what my authority is for this relief that I'm  
19 requesting. So I was not planning on filing it this  
20 morning, but I did file the third supplemental  
21 petition which alleges these causes of action and  
22 seeks the injunctive relief that those causes of  
23 action allow you.

24 And, you know, as usual, had we  
25 received all the information and disclosures in the

1 pre-suit discovery action, been able to deal with  
2 those issues and work those out, maybe we would have  
3 never been in this court. And maybe the lawyers in a  
4 district court would have never been sued if they had  
5 agreed to continue the tolling agreement until we  
6 worked this dispute out.

7           Nothing I suggest seems to work and --  
8 maybe that's me. I'm not -- been called out at any  
9 direction other than I've been ineffective in  
10 resolving disputes in this case. And I have thought  
11 surely this was one in which, perhaps, Amy, Anita and  
12 Carole did not realize what they were doing. They are  
13 not lawyers. Maybe they didn't know you were not  
14 supposed to tape people's private conversations  
15 without their permission.

16           And that surely when the lawyers, even  
17 though they probably should not have even been given  
18 the information according to the stuff I read about  
19 it, that surely we would be able to resolve it.

20           Instead, I've now had to file a  
21 supplemental petition just in order to protect my  
22 client's rights on this incredibly offensive issue.

23           THE COURT: You also mention in the  
24 protective order the report from --

25           MS. BAYLESS: Yes, right. I mean,

1 there are e-mails. Again, I attached to the motion  
2 where they are talking about the -- what happened,  
3 both -- the reason we know much of anything is because  
4 Candy at one time thought everybody was trying to  
5 protect Carl.

6 When she figured out that was not what  
7 was happening, we suddenly got a boatload of e-mails  
8 which covered the gamut.

9 And her ex-husband -- I guess it's an  
10 ex-husband -- anyway, somebody she knows, had been  
11 asked for the name of an investigator. And she knew  
12 that a GPS tracking device without Drina's consent had  
13 been placed on her car.

14 There are e-mails in here talking about  
15 reports from the investigator. We have asked for that  
16 again since 2012. We have not received anything.

17 THE COURT: Do you claim that those  
18 reports still fall into the same category as the  
19 recording devices? In other words, were those reports  
20 obtained illegally with information at some stages of  
21 those reports?

22 MS. BAYLESS: It's really impossible to  
23 know without seeing the report, but I think they  
24 certainly contain information using the GPS tracking  
25 device.

1                    THE COURT:    Wouldn't you need for those  
2 reports to be produced in a motion to compel as  
3 opposed to a motion for protective order?

4                    MS. BAYLESS:    Yes.    Again, this is part  
5 of why I did the new request for production in this  
6 case, because I felt if I filed a motion to compel, I  
7 would hear what she tried to compel.    There has not  
8 been a request in this case.    Even though since 2012,  
9 Anita has been acting to some extent under that  
10 initial request by supplementing these bank records,  
11 occasionally; and the tax returns, we've asked for  
12 them; stuff like that.

13                    But, still, I didn't think I was in a  
14 position yet to seek a motion to compel, but the  
15 responses are due today.

16                    THE COURT:    Okay.    Well, I think what  
17 we'll do is table the issue with regard to the  
18 investigator report.    I just don't think that a  
19 decision on that with regard to a protective order is  
20 ripe yet.    I don't think that -- we don't have what we  
21 don't so -- but on the recordings, I think that is a  
22 different story.    So we'll address them, the  
23 recordings, today.

24                    MS. BAYLESS:    Okay.

25                    THE COURT:    Mr. Spielman or --

1                   MR. FEATHERSTON: Briefly, Your Honor.

2                   THE COURT: Okay.

3                   MR. FEATHERSTON: When Bobbie called, I  
4 said what do you want? And really, at the end of the  
5 day, that's kind of how I am: What do you want?

6                   And so the relief that she is seeking  
7 here I think are three things that we've outlined in  
8 our response.

9                   The first one looks like it is some  
10 sworn testimony from all of our clients, from Anita,  
11 Amy and Carole. And to me, that is best accomplished  
12 by deposition.

13                   Depositions haven't got off the ground  
14 yet in this particular case because it always seems  
15 like there is some procedural impairment, one or the  
16 other.

17                   We have Greg Lester now, and it looks  
18 like now we're in a position where depositions can  
19 move forward. The impediment there might be whether  
20 or not Mr. Lester thinks the claims are even worthy of  
21 him sitting through depositions or participating in  
22 those depositions.

23                   So that is kind of the first thing she  
24 is looking for, and that's why I have criticisms of  
25 what's -- you know, this is nothing like I have ever

1 seen in a motion for protective order.

2           A motion for protective order  
3 ordinarily is someone serves discovery, and the other  
4 party says, no, I find that discovery offensive, and  
5 so I need protection from the Court.

6           Here, someone may be served discovery,  
7 and the documents are being produced in the course of  
8 the litigation.

9           And so, that's kind of the point is  
10 under the Rules of Procedure when someone propounds  
11 discovery to me or if I think I have discovery that is  
12 responsive -- admittedly, Your Honor, I don't even pay  
13 attention to the people -- I ask for it specifically or  
14 not. If I get stuff, I produce it. And, you know, I  
15 do that with good reason.

16           And so a long story short here, but  
17 when I produce it, I have to produce it under the  
18 Rules of Procedure. It has to go to all other  
19 counsel, and that's what I have done.

20           To the extent that there are -- so  
21 walking through what she wants, No. 1: These  
22 affidavits, I have never seen anywhere you can compel  
23 somebody to create an affidavit. That's something  
24 that should be done by deposition, and she will have a  
25 full and fair opportunity to depose these clients at

1 some point, and it should be sooner rather than later.

2           So that kind of takes care of the first  
3 issue of, you know, tell me what you want. Let's go  
4 from there.

5           The next issue I think that she's  
6 asking for is that all the recordings and everything  
7 be collected and given solely to her. And presumably,  
8 I can understand why she wants that.

9           These recordings, Your Honor -- and I  
10 don't think you have had the opportunity to hear  
11 them -- you can tell they come from an answering  
12 machine. "Hello, hello, hello." That's the type of  
13 recordings -- how these recordings start off.

14           And my understanding is that the  
15 decedent had her answering machine set to pick up at  
16 number -- on the second ring. And so these might have  
17 been recorded -- might have been caught by the  
18 answering machine to another recording device, and  
19 then on to someone's I-phone and then on to someone's  
20 computer and transferred like digital files often do,  
21 transferred from one component to the next, to the  
22 next, to the next, to the next, and on down the line.

23           But my understanding is that all of  
24 these come from an answering machine.

25           And so the relief that she's seeking

1 here is, I want you to record -- I want you to  
2 download all this evidence so you can give it solely  
3 to me, and I will be the sole arbiter of whether or  
4 not this is something that should be admissible or  
5 not. And that's just not the way it works.

6 I think the Court has to hear these  
7 recordings. And if the Court finds based on the  
8 recordings that, okay, these recordings appear like  
9 there is some huge conspiracy in some recording  
10 equipment where you illegally wiretap and all this  
11 other -- all these other allegations, then the Court  
12 is in a position to make that decision.

13 But without hearing the recordings or  
14 without developing the evidence, right now all we've  
15 got is allegations.

16 I don't have any affidavits from Drina  
17 saying I didn't consent to that recording. I didn't  
18 hear any answering machine when I called on that  
19 particular day. I don't have any affidavits from Carl  
20 whose capacity seems to come in and out, depending  
21 upon when it is convenient for them.

22 And I don't have any affidavits from  
23 Carl saying, no, you know, if we were going through a  
24 divorce at that time, but at that time, no, that's --  
25 you know, I didn't consent to those recordings,



1 because it makes perfect sense.

2 I don't know if you've ever dealt with  
3 any divorce clients. They record the heck out of each  
4 other immediately when they are going through a  
5 divorce. That's typically what -- the first thing  
6 lawyers say is tape record your conversations with  
7 your soon-to-be ex.

8 And so I don't have any -- there is no  
9 evidence before the Court that Carl didn't consent.  
10 And this idea of, well, Carl didn't have capacity,  
11 she's berating him on several of these recordings  
12 claiming you've got capacity.

13 You're chewing on your shirt because  
14 that's what you've got; is that right?

15 MS. BAYLESS: Your Honor, I'm going to  
16 object to him going into the substance of these  
17 recordings. I mean, if the Court wants to do  
18 something to make a determination about their  
19 illegality, that's one thing; but he is disclosing,  
20 again, the contents of illegal recordings.

21 THE COURT: And I think that's  
22 defendants arguing at this point, so let's --

23 MR. FEATHERSTON: Fair enough,  
24 Your Honor.

25 Well, then, the issue ultimately turns

1 down to this: Who makes the decision regarding  
2 whether these are illegal recordings or not, Bobbie or  
3 the Court? And I think the Court is in a much better  
4 position than Bobbie is.

5           And so this idea of let's gather up all  
6 the recordings and give them to Bobbie, that doesn't  
7 work for me. Let's gather them up and submit them for  
8 in-camera inspections, that is fine. Doing an agreed  
9 protective order like -- and that's what I have  
10 proposed in the past is -- I could see if these are  
11 being posted on Facebook or posted on some blog or  
12 sent out there to the general public, but for purposes  
13 of this litigation and that's, to my knowledge, the  
14 only way these have been used, and that's the only way  
15 I have used them is disclosing them in this  
16 litigation.

17           If they want to do some agreed  
18 protective order -- I have done several of them in  
19 trade secret cases where you basically come in and  
20 it's like, look, you don't file this with the Court,  
21 you don't do a transcript and file it for public  
22 record. If it is these particular recordings that are  
23 going to be filed with the Court, that is okay. We  
24 can submit them for in-camera inspection. I'm okay  
25 with that.

1           Doing a joint agreed protective order  
2 where, look, guys, the stuff we're disclosing in this  
3 particular case, we all think it's privileged and  
4 confidential and we don't think it should be disclosed  
5 anywhere else, that's what I proposed.

6           We intended to attach it as to  
7 exhibits, but it wasn't. We have got several copies  
8 of that. But doing a joint agreed protective order in  
9 this particular case that says, look, what happens in  
10 the courtroom stays in the courtroom with respect to  
11 these things, and they're not going to be hearing our  
12 grievances or recordings or things anywhere else, I'm  
13 okay with that.

14           So -- but just giving them to Bobbie  
15 and, okay, saying how do clients react, I have never  
16 seen anyone even ask for that type of relief, and I  
17 don't think it is anything that is contemplated under  
18 any of these statutes. I certainly have not seen  
19 anything under any of these statutes that says that's  
20 the relief that she's entitled to.

21           I think there was one other thing that  
22 she was asking for other than that they all be -- oh,  
23 the last thing she is asking for is for you to make a  
24 ruling on the evidence. It's a rule that this  
25 evidence is inadmissible.

1           And so I don't think the Court is in  
2 any position as we sit here today with the lack of  
3 evidence actually before the Court to make an  
4 evidentiary ruling.

5           And so, you know, to me, I think we can  
6 get maybe two-thirds of the way here with just a --  
7 with continuing discovery in this case and doing a  
8 joint agreed protective order that says we're not  
9 sending it out to the rest of the world.

10           But for purposes of this case, if you  
11 want to submit it to the Court, don't file it as a  
12 public record, submit it in-camera, things of that  
13 nature. Mark it "confidential". Have Bobbie -- if I  
14 produce something and she thinks it's confidential,  
15 mark it "confidential." Send that in the letter. We  
16 can create a running list. It makes much more sense  
17 than what's being asked for and the relief that's  
18 being asked for in this particular motion.

19           I've just never seen it before. I  
20 don't see any rules. I don't see any authority.

21           THE COURT: Well, I think that -- I  
22 think that that proposal makes a lot of sense to me.  
23 No. 1, requiring an affidavit, I think you would be  
24 better off proposing that because requiring the  
25 affidavit to me is awfully one-sided. I think that

1 the interaction would be beneficial for you and for,  
2 you know, the person being deposed or the affiant.

3 MS. BAYLESS: The key, Your Honor, is  
4 that there would be some type of sworn presentation to  
5 how this was done, when it was done, who did it, that  
6 kind of says all of it.

7 THE COURT: Well, I think the  
8 deposition would be better suited for that.

9 And then on the -- as far as the  
10 illegality of these recordings, I think that that has  
11 to be explored before you launch into collecting all  
12 of this and delivering it, because I'm not convinced  
13 that it is illegally obtained, and I'm not convinced  
14 either way.

15 I think that if you guys could hold the  
16 issue in abeyance until depositions can be taken and  
17 more evidences is gathered, and then perhaps we have a  
18 hearing or perhaps these recordings are submitted  
19 in-camera, I think that's a better way to go about  
20 this as opposed to, essentially, you know, ruling  
21 today that they are inadmissible, that they were  
22 illegally obtained, and then require the defendants to  
23 offer an affidavit. Because I think that the  
24 affidavit he receives, you know, may not satisfy, you  
25 know, what you're trying to do.

1           So I think that giving the deposition,  
2 we can dig a little deeper and you can get a little  
3 more clarification. So I like the idea of a joint  
4 agreed protective order.

5           MS. BAYLESS: Well, the problem is --  
6 Judge, the problem is, I'm not comfortable consenting  
7 on my client's behalf or having my clients consent  
8 that these can be disclosed any further than they  
9 already have been.

10           I mean, I think if I'm right -- and I  
11 understand that the Court doesn't want to  
12 pre-determine that -- but if I'm right, there have  
13 already been problems in that they have been disclosed  
14 to other parties. And to say, oh, I agree that can  
15 keep going on while we sort through this --

16           THE COURT: No, I think -- I wouldn't  
17 envision that. I mean, I would envision that these  
18 recordings would be protected. I mean, that's why I  
19 imagine it would be called a joint agreed protective  
20 order, because it would protect that from further  
21 dissemination. Am I right?

22           MR. FEATHERSTON: I think the  
23 discrepancy -- and let me just connect the dots -- I  
24 think what she's saying is I can't produce it to Amy  
25 and Carole. And Carole can't produce items to Anita

1 and Amy. And so that's what I think Bobbie is really  
2 arguing for is she doesn't want us to be able to talk  
3 amongst ourselves -- or she doesn't want us to be able  
4 to exchange those among ourselves. She wants them to  
5 go solely to her and -- is that a fair statement?

6 MS. BAYLESS: Well, I think there are  
7 two kinds of recordings here. There are the  
8 recordings where that's already happened, and it is a  
9 little bit harder to put that horse back in the barn.  
10 And, frankly, they probably all have what they each  
11 have, but I don't know. And I don't want somebody  
12 to -- on down the road say, well, of course, we  
13 exchanged those things because you -- that was part of  
14 our agreed protective order.

15 So to the extent that's already been  
16 done and those recordings have been sent and these  
17 people have them, that is just something they are  
18 going to have to deal with.

19 To the extent there are other  
20 recordings -- and, see, this applies literally to the  
21 deposition. I don't know who has gotten what from  
22 whom at what time. And so to say, well, yeah, you  
23 know, spread those all around now. They will be  
24 saying, well, that was done during the protective  
25 order period and that kind of thing.

1           So that's why I'm saying if there are  
2 other recordings -- and I have asked for all of the  
3 recordings and the original media that they were  
4 recorded on so we can see what has been done without  
5 the editing -- then I'm saying those should not be  
6 disseminated even to the other parties in this case  
7 until this issue is addressed.

8           THE COURT: You know, I think I agree  
9 with that, and so I think that makes sense. So if the  
10 recordings have already been disseminated among the  
11 defendants, you know, before today, there is no way  
12 to, as you say, put that horse back in the barn. But  
13 in the future, until there is a determination as to  
14 the legality of those recordings, I don't think that  
15 they should be disseminated among the attorneys.

16           MR. FEATHERSTON: So, Your Honor, I  
17 guess the issue I have with that is how do I know?

18           THE COURT: Right.

19           MR. FEATHERSTON: I mean, basically,  
20 what your ruling is is now I'm in jeopardy for all  
21 recordings, because now like -- how do I say, you  
22 know, hey, Neal, do you have this recording or -- you  
23 know, that's where there is a disconnect.

24           There is no way for me to be able to --  
25 because then when I disclose -- I mean, you're going



1 to find out whether or not someone has a recording.  
2 Have you heard this particular recording? I mean,  
3 that seems like a dangerous ground to me.

4           And so I think the ability to sit here  
5 and, you know, exchange within this group, I think  
6 that's okay. I mean, I don't know that any other  
7 lawyer is going to be out there disclosing anywhere  
8 else because the lawyers are subject to the joint  
9 protective order as well.

10           And so I don't see the harm while  
11 you're in litigation -- and there's a bunch of, you  
12 know, litigation privileges that are associated with  
13 it, I'd have to go back to my office and find some of  
14 them, but I'm sure I could -- I don't know how I could  
15 find out has this been disclosed on your side or not.

16           And it certainly puts us at a  
17 disadvantage. I mean, it just -- that doesn't seem  
18 like a workable solution.

19           Essentially, what your ruling would be  
20 is, any recordings you got, you need to, one, assume  
21 that they are illegal; and two, not produce them to  
22 anybody else. And I can't do that.

23           I mean, there is no showing that these  
24 are illegal. And if I feel like there is one that is  
25 illegal, then maybe at that point I will, you know,

1 tread more carefully.

2 But at this point, I think I need to be  
3 able to communicate effectively with the other defense  
4 counsel, as well as the plaintiff's counsel and the  
5 pro se plaintiff we have in this case, and produce  
6 those documents or risk, you know, not being able to  
7 use what the Court finds later that, oh, no, it's not  
8 illegal, these are okay.

9 Now, all the other defendants are at a  
10 disadvantage just because maybe my client keeps better  
11 records than theirs do.

12 THE COURT: Well, and that makes sense  
13 to me, you know, so --

14 MS. BAYLESS: Well, all he has to do,  
15 Your Honor, is not give them to anyone else. We know  
16 what he sent around to everybody else, and frankly,  
17 Ms. Curtis turned those copies over to me because she  
18 was not comfortable even having them.

19 THE COURT: But I guess what he is  
20 saying is going forward if he receives something, then  
21 he's not able to really supplement his discovery  
22 either.

23 MS. BAYLESS: Well, when are we really  
24 going to try this case? I mean, we don't even get --  
25 the temporary administrator has six months to look at

1 it. I am not suggesting that he's going to miss a  
2 deadline or something if we deal with this issue.

3           And in the interim, he doesn't  
4 disseminate these recordings, whatever he may get, it  
5 would be fine with me. And if he doesn't, he can  
6 possibly not disseminate them to me, either. I mean,  
7 I have not had them for 38 months. I got them a month  
8 ago so, you know, that's not hard. I don't see that  
9 it is hard at all.

10           He's already sent around these. We  
11 know that he sent those around. If he is saying that  
12 he's been busily, since he got my motion, sending them  
13 to everybody that he could so that they would already  
14 be out there, then I guess we will have to sort that  
15 out.

16           But if it is a question of he is not  
17 supposed to give them to any other third parties until  
18 a determination is made about this, then I don't see  
19 what's hard about that, that isn't putting him at any  
20 kind of a disadvantage.

21           It is not suggesting what can or cannot  
22 be admitted in trial because we're not near a trial.  
23 We're not -- I mean, I know we have a docket control  
24 order, which no longer has much meaning or anything.  
25 We're supposed to be here today on a deadline on

1 summary judgment, so we are not.

2 So it seems like a simple matter to  
3 say, okay, I've got to put the brakes on anybody else  
4 receiving these recordings until we get to the bottom  
5 of the nature of the recordings.

6 MS. BEDUZE: Your Honor, I just want to  
7 make sure I'm understanding.

8 It is my understanding that these  
9 recordings have not been disseminated to any third  
10 party. They have been disseminated to counsel and --  
11 but to these five individuals and their respective  
12 clients.

13 THE COURT: Right.

14 MS. BEDUZE: So any suggestion to  
15 otherwise, I would take issue with.

16 And we do not believe -- it would be  
17 very perfect for us to try to agree to a protective  
18 order that protects the dissemination of the  
19 recordings that have already been exchanged, produced,  
20 pursuant to part of discovery, and any additional  
21 recordings that may come to light that, you know,  
22 through the act of discovery.

23 And, I mean, in order to conduct the  
24 discovery, in order to take different depositions,  
25 which Ms. Bayless is wanting to take certain

1 depositions in lieu of the affidavit that she was  
2 originally requesting in front of you today, these  
3 recordings will need to be produced so that everyone  
4 can know and properly prepare for those depositions in  
5 which the recordings will be -- the information and  
6 the details of the recordings will be further delved  
7 into.

8           And so that end, my client, before  
9 retaining Crain, Caton & James, she did, in fact, give  
10 her deposition. And it is my understanding she  
11 responded as a pro se individual to over 300  
12 production requests.

13           So the fact that discovery has not gone  
14 forward, and the fact that information has not been  
15 given freely, that's false with respect to my client,  
16 Carole, in that she has responded to that discovery,  
17 and we have supplemented when we have information.

18           But, again, Carole is only in this  
19 lawsuit as the beneficiary of the trust. She is not a  
20 trustee. And so, you know, it is the role of all the  
21 parties, no matter which side they're on, is to freely  
22 exchange information. And to hinder -- and I believe  
23 that stopping the recordings from being exchanged by  
24 all parties would hinder the ability to move  
25 forward -- to move this case forward.

1 I know they were down here two weeks  
2 ago, and I believe getting Mr. Lester appointed will  
3 further move this case forward. But in order to deal  
4 with things, we need to have a free exchange of  
5 information.

6 THE COURT: Okay. I have a meeting at  
7 12:15, so I've got to get going. And I apologize, I  
8 should have said that earlier.

9 But let's work on an agreed protective  
10 order. I think it is difficult to restrain only the  
11 dissemination of these recordings among the attorneys.

12 And future recordings that have not  
13 already been disseminated, it might be a good idea for  
14 the attorneys just to have a hearing on it and get a  
15 determination whether or not it should be disseminated  
16 at that point. I don't know how many recordings there  
17 are, but --

18 MS. BAYLESS: I don't either.

19 THE COURT: What's that?

20 MS. BAYLESS: I don't know either.

21 Let me just say, Judge, I'm not going  
22 to enter into an agreed order that says those  
23 recordings can be disclosed to anyone. I just don't  
24 think I can do that.

25 THE COURT: Well, when you say third

1 parties, you're referring to anyone but the attorney  
2 who is in the suit as a legal attorney. I mean, third  
3 parties mean other than the defendants' attorneys and  
4 defendants?

5 MS. BAYLESS: Other defendants'  
6 attorneys in this case and other defendants, yes,  
7 that's what I mean. I don't mean other than those. I  
8 mean, those who are --

9 THE COURT: I'm just trying to clarify  
10 because Ms. Beduze said, you know, she took issue with  
11 the suggestion that these videos and recordings were  
12 being disseminated to third parties. I think that  
13 there was a missed communication about those third  
14 parties --

15 MS. BEDUZE: Correct. I will use the  
16 term "third parties" to be, you know, outside of the  
17 individuals involved in the lawsuit.

18 MS. BAYLESS: You know, I have  
19 absolutely no idea.

20 THE COURT: Well, let's work on a  
21 draft. Can we get the draft of a joint agreed  
22 protective order started, and see if you guys can come  
23 up with some sort of an agreement?

24 Otherwise, I mean, is there something I  
25 can rule on right now? I mean, is there something you

1 want guidance for other than this issue of how to deal  
2 with these recordings, because I don't have the answer  
3 to that. I don't know if there are even -- we could  
4 be displacing our findings cause all of the recordings  
5 have been produced, I don't know.

6 MS. BAYLESS: I think that's unlikely,  
7 Your Honor. But the problem -- here is the problem.  
8 While we explore these issues in depositions or  
9 however we explore them, if there is no constraint on  
10 their providing these documents -- of these recordings  
11 to other people, whether it is Carole sending her  
12 video recordings to Anita and Amy as she already did,  
13 and that's -- and so if Anita produced them, Carole  
14 didn't. She says Carole has provided all this  
15 discovery. Carole didn't provide those.

16 So unless there is some kind of  
17 constraint that there is to be no disclosure other  
18 than if -- other than Mr. Featherston talked about, he  
19 might be able to get a list of whom they have been  
20 provided to and when and that kind of thing. But  
21 without knowing, there may be -- the size of this  
22 recorder, there could be hundreds of hours of  
23 recordings.

24 And so without knowing what there is,  
25 without having the original means, without knowing any



1 of that, and until we know that, there is nothing  
2 preventing them from passing this around everywhere.

3           They obviously are not concerned about  
4 the statutes that prohibit it. And so unless this  
5 Court directs that those are not to go anywhere until  
6 we make a determination, and we establish a time  
7 period to make that determination, I just -- I  
8 cannot --

9           THE COURT: Okay. I think this is  
10 what -- this is my solution, I think, the best that we  
11 can come up with, sign a temporary order on it until  
12 an agreed protective order can be entered.

13           MS. BAYLESS: And the temporary order  
14 will --

15           THE COURT: It will expire at some  
16 point, and then we'll have a hearing when it expires,  
17 you know, the sooner the expiration date of the  
18 protective order or the date that a joint agreed  
19 protective order is entered. Does that make sense?

20           MS. BAYLESS: And the terms of this  
21 temporary order will be what?

22           THE COURT: I don't know that. I would  
23 have to go work on it. And then I'm assuming you guys  
24 can review and comment, and then I would enter it.  
25 And then, hopefully, you can come up with an agreed

1 order that would be better suited for the case. But  
2 until then, that's the only solution I can think of.

3 MR. SPIELMAN: Judge, if I may, I think  
4 whether it's in the temporary order or whether it's  
5 something that we can work on after that point, it can  
6 be maybe a stair step.

7 But I think what counsel has been  
8 saying about the need for the attorneys to be able to  
9 exchange so that, in theory, we can prepare our  
10 clients for, one, we can make sure that there are not  
11 any other recordings other than those that have  
12 already been exchanged. We need that part.

13 And then, two, I think what I heard a  
14 little bit of if -- if the concern is that, well, did  
15 Carl consent? Well, was Carl competent? That could  
16 be the second stage of people that need to hear these  
17 recordings.

18 I don't know how you determine his  
19 competency back then, but perhaps it is a professional  
20 who can hear the recordings and make some kind of  
21 determination.

22 I'm not saying that's the direction  
23 this goes, but it seems if the excuse -- if the  
24 defense is going to be that Carl was incompetent, and  
25 therefore, could not consent, we cannot have our hands

1 tied behind our back with regard to who can assist in  
2 either -- in evaluating that --

3 THE COURT: Okay. Well, that may be  
4 appropriate for the agreed protective order, so -- but  
5 as far as my temporary order is concerned, I'm not  
6 going to make it that complicated. So I don't -- I  
7 really don't know what I'm going to do at this point,  
8 but I'm going -- I will draft something up and you  
9 guys can comment on it. I don't want to mess things  
10 up for you, but I do think that it is appropriate to  
11 protect the dissemination of this information in the  
12 meantime so that we can get the issue resolved.

13 MS. BEDUZE: And, Your Honor, if you  
14 would -- I do believe we have a copy if you would like  
15 to see or hear the recordings that is --

16 THE COURT: Not yet.

17 I've got to go. I'm already late.

18 (CONCLUSION OF PROCEEDINGS.)

19

20

21

22

23

24

25

1 STATE OF TEXAS ::

2 COUNTY OF HARRIS ::

3 I, JUDITH J. KULHANEK, Deputy  
4 Official Court Reporter in and for Probate Court No. 4  
5 of Harris County, Texas, do hereby certify that the  
6 foregoing contains a true and correct transcription of  
7 all portions of evidence and other proceedings  
8 requested by counsel for the parties to be included in  
9 this volume of the Court Reporter's Record in the  
10 above-styled and numbered cause, all of which occurred  
11 in open court or in chambers and were reported by me.

12 I further certify that this Court  
13 Reporter's Record does not include any exhibits as  
14 none were offered and/or admitted.

15 I further certify that the cost  
16 for the preparation of this Court Reporter's Record is  
17 \$ 260.00, paid by plaintiff, CARL BRUNSTING.

18 WITNESS MY OFFICIAL HAND on this,  
19 the 18th day of August, 2015.

20

21

22 /s/ JUDITH J. KULHANEK  
23 JUDITH J. KULHANEK, CSR #598  
Deputy Official Court Reporter

24 MY COMMISSION EXPIRES:  
25 DECEMBER 31, 2016

REPORTER'S RECORD

VOLUME 1 OF 1

COURT CAUSE NO. 412.249-401

APPELLATE NO. \_\_\_\_\_

5	THE ESTATE OF:	)	IN THE PROBATE COURT
6	NELVA E. BRUNSTING,	)	NUMBER 4 (FOUR) OF
	DECEASED	)	HARRIS COUNTY, TEXAS

\* \* \* \* \*

MOTION TO TRANSFER

STATUS CONFERENCE

MOTION FOR CONTINUANCE

\* \* \* \* \*

On the 9th day of March, 2016, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable Clarinda Comstock Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand

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

Mr. Neal Spielman  
Griffin & Matthews  
Attorney at Law  
SBN 00794678  
1155 Dairy Ashford  
Suite 300  
Houston, Texas 77079  
281.870.1124

Ms. Candace L. Curtis  
218 Landana Street  
American Canyon, California  
94503  
925.759.9020

ATTORNEY FOR:  
AMY RUTH BRUNSTING

MOVANT, PRO SE

Ms. Bobbie G. Bayless  
Bayless & Stokes  
Attorney at Law  
SBN 01940600  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224

Ms. Carole Ann Brunsting

ATTORNEY FOR PLAINTIFF,  
CARL H. BRUNSTING

RESPONDENT, PRO SE

Mr. Stephen A. Mendel  
The Mendel Law Firm, L.P.  
Attorney at Law  
SBN 13930650  
1155 Dairy Ashford  
Suite 104  
Houston, Texas 77079  
281.759.3213

Mr. Cory S. Reed  
Thompson, Coe, Cousins &  
Irons, L.L.P.  
Attorney at Law  
SBN 24076640  
One Riverway; Suite 1400  
Houston, Texas 77056  
713.403.8210

ATTORNEY FOR  
ANITA K. BRUNSTING

ATTORNEY FOR VACEK & FREED  
CANDACE L. KUNZ-FREED

ALSO PRESENT:

Mr. Gregory Lester  
955 N. Dairy Ashford  
#220  
Houston, Texas 77079  
281.597.300

FORMER TEMPORARY ADMINSTRATOR

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VOLUME 1  
(MOTION TO TRANSFER/STATUS CONFERENCE/  
MOTION FOR CONTINUANCE)

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1 March 9, 2016

2 PROCEEDINGS

3 THE COURT: Okay. So, calling Cause  
4 Number 412.249 in the 409, Nelva E. Brunsting, Deceased.

5 We have several matters to address in this  
6 file today.

7 We were asked to consider a motion to  
8 transfer consolidate -- motion to transfer cause in  
9 district court to Probate Court 4 which is what was  
10 originally set in this case. I now have a motion for  
11 continuance in that matter or for continuance of that  
12 motion.

13 Zandra Foley, the attorney representing  
14 Candace Kunz-Freed and Vacek & Freed; is anyone here  
15 from that firm today?

16 MR. REED: I am, Your Honor. Cory Reed  
17 for Thompson, Coe.

18 THE COURT: Thank you. I'm sorry, tell me  
19 your name again.

20 MR. REED: Cory Reed.

21 THE COURT: How do you spell your last  
22 name?

23 MR. REED: Reed, R-E-E-D.

24 THE COURT: Say it again.

25 MR. REED: R-E-E-D.



1 THE COURT: Thank you. You speak very  
2 quickly.

3 Okay. Why don't we start with  
4 announcements. We've heard from Mr. Reed, could we  
5 start with you, Mr. Spielman.

6 MR. SPIELMAN: Yes, Judge. Neal Spielman  
7 representing Amy Brunsting.

8 MR. MENDEL: Steve Mendel representing  
9 Anita Brunsting.

10 MS. BRUNSTING: And I'm Carole Brunsting,  
11 and I'm now pro se. Darlene Payne Smith was my attorney  
12 but now I'm pro se.

13 THE COURT: Thank you.

14 MR. LESTER: I'm Greg Lester. I was  
15 temporary administrator and now I'm, I'm observer, I  
16 guess, participant.

17 THE COURT: Thank you.

18 MS. CURTIS: Candace Curtis, pro se.

19 MS. BAYLESS: Bobbie Bayless on behalf of  
20 Drina Brunsting as Attorney In Fact for Carl Brunsting.

21 THE COURT: Thank you.

22 Is anyone here inclined to stand up and  
23 begin this proceeding or should I?  
24  
25

1                    MOTION TO TRANSFER

2                    ARGUMENT BY MS. CURTIS:

3                    MS. CURTIS:    Okay.    So, I guess the first  
4 thing that we're talking about is my motion to transfer  
5 the district court case into Probate Court Number 4.

6                    And there's been a response with an  
7 objection saying that they are not the same questions in  
8 both courts; and so basically, all equitable claims  
9 related to the estates of our parents belong in this  
10 court.   All equitable remedy belongs before this Court.

11                    The causes of action in Curtis v.  
12 Brunsting are equitable.   They are not legal causes of  
13 action.   In other words, they do not sound in tort or  
14 contract actions in law.   That distinction must be  
15 maintained --

16                    THE COURT:    Ms. -- I don't mean to -- I'm  
17 sorry.   I feel a little pressured for time because I'm  
18 running so far behind today --

19                    MS. CURTIS:    This is real short.

20                    THE COURT:    Okay.

21                    MS. CURTIS:    So, Ms. Foley refers to the  
22 district court action as a legal malpractice action, but  
23 legal malpractice shows up in the district court case as  
24 many times as to actual theories pending in the district  
25 court case, appear in her objection.   She refers to the

1 district court case as a legal malpractice action 42  
2 times in her response. But the complaint in the  
3 district court never mentions "malpractice." So, the  
4 causes of action are the same in the district court as  
5 they are here with the exception of the Deceptive Trade  
6 Act. And there is a negligence, and those causes appear  
7 zero times in Ms. Foley's objection.

8           So, I just -- I don't think that there is  
9 representation in the district court for any of the  
10 matters in this court. And so, they need to come over  
11 here so that we can discuss all of the things that are  
12 the same in both cases and decide the facts. And they  
13 want to go back and deal with malpractice in the  
14 district court - that's fine.

15           THE COURT: Okay. Would you like to  
16 respond?

17           MR. REED: I'll let you finish and see if  
18 I still need to say anything.

19           THE COURT: I'm disinclined because the  
20 motion for continuance was filed. I'm, I guess, I'm  
21 disinclined to make a ruling on that motion today; but I  
22 have to say that it seems to me like all of these --  
23 like you're correct - that these matters would best be  
24 handled in the probate court.

25           I'm hesitant because it seems to me that

1 if everyone were in one venue, that it would be easier  
2 to come to some sort of resolution in this case. And I  
3 think that this case is begging for some kind of  
4 resolution, perhaps, outside of a ruling by one of the  
5 courts that's involved.

6 Having said that, I didn't want to waste  
7 your time, Ms. Curtis; I know that you've come from  
8 California, and I wanted to give you all the opportunity  
9 you needed to voice your concerns on that issue, and I  
10 want to go forward with the status conference today and  
11 get as much accomplished as we can.

12 I'm happy to hear the motion for  
13 continuance. I'm happy to continue the motion to  
14 transfer until a later date so that we could hear from  
15 your firm. I don't know whether you or Ms. Foley is the  
16 more appropriate person to respond to that motion. I  
17 was hopeful that we might be able to get a response from  
18 you today about the substance; are you still wanting to  
19 continue that?

20 MOTION FOR CONTINUANCE

21 ARGUMENT BY MR. REED:

22 MR. REED: Yes, Your Honor, our client  
23 would prefer Ms. Foley to argue it so we would continue  
24 our -- or seek to continue today's hearing. I mean, if  
25 you have any specific questions -- I mean, one of your

1 concerns seems to be that it makes more sense to have  
2 everyone here for resolution like it's not even adding  
3 this -- the malpractice case is not going to help this  
4 case get resolved at all. It is going to take a ruling  
5 from the district court or this case to resolve this  
6 matter.

7           Having monitored this case for the past  
8 two years, it's going to take a ruling from the Court to  
9 resolve the case. So, I just, you know, would implore  
10 the Court not to bring over the malpractice case, let us  
11 get a ruling in that court, be done with that case, and  
12 you guys continue on with what's going on here.

13           THE COURT: Well I'm interested to hear  
14 from you or from Ms. Foley about you think those issues  
15 are better addressed in the district court than in the  
16 probate court where, you know, so much -- such similar  
17 issues are pending.

18           MR. REED: And I guess that's where we  
19 disagree on the "similar issues are pending."

20           In our mind, the only thing that's at  
21 issue is whether our -- the firm drafted the documents  
22 as requested by Ms. Brunsting. So, all these issues,  
23 whether she had capacity at the time, whether there was  
24 conspiracies or what not, that has no bearing, really,  
25 on the ultimate outcome of the malpractice case. The

1 only determination that would be made in our case is, is  
2 whether the lawyers acted like a reasonable lawyer  
3 should or would have done under similar circumstances.

4 THE COURT: Is that the meat of your  
5 summary judgment over in the district court is whether  
6 your client drafted the documents as requested?

7 MR. REED: The meat of our no-evidence  
8 motion is you have no evidence of any of the claims that  
9 have been brought against us. So and the point being  
10 there, at the time Carl Brunsting was the executor, he  
11 made, you know, a 30-page-plus of claims, took his  
12 deposition, had no facts to support any of it. I don't  
13 think anyone else in this room could step into that  
14 chair and have facts that could support the conduct they  
15 made in the malpractice case.

16 So, again, just bringing us over here is  
17 just going to delay us, and it's definitely not going to  
18 help resolve the malpractice claims.

19 THE COURT: Okay. Ms. Curtis?

20 MS. CURTIS: Can somebody explain to me  
21 how the claims in district court are malpractice claims?  
22 That's what I just can't see. They don't say,  
23 "malpractice." The only thing that could possibly be  
24 malpractice is maybe negligence, but never once is  
25 "malpractice" stated in the claims. Never.

1 THE COURT: There are lots of ways of  
2 drafting things, and I'm not familiar with the pleadings  
3 over in the district court to that extent; so, I'm  
4 not -- I'm really not the appropriate person to respond  
5 to that for you. There are a lot of lawyers, although  
6 they seem to be dropping, there are a lot of lawyers  
7 still involved in this case who might be able to better  
8 address that for you.

9 I would like to hear from everyone. Now  
10 that Mr. Lester has provided his report to the Court, I  
11 would like to hear from everyone about where you think  
12 we stand and how you feel this case ought to progress.  
13 Does somebody want to volunteer to go first?

14 STATUS CONFERENCE

15 ARGUMENT BY MR. MENDEL:

16 MR. MENDEL: We'd like you to order these  
17 parties to mediation, designate who the mediator is,  
18 give us a time frame to get it done. That was  
19 recommended in a report, and I think that would be an  
20 effective use of the parties' time.

21 THE COURT: Okay. Ms. Curtis, do you have  
22 a response to that?

23 MS. CURTIS: We've been to mediation  
24 already in this case. It was shortly after my case was  
25 remanded to the probate court --

1 THE COURT: Who was the mediator on that?

2 MS. BAYLESS: Bill Miller.

3 THE COURT: Sorry?

4 MS. BAYLESS: Bill Miller.

5 MS. CURTIS: And nothing was resolved.

6 And I'm not going to go to mediation again because we've  
7 already been there once. The only issue that really was  
8 discussed were how the attorneys were going to get paid,  
9 and that doesn't matter to me.

10 I want my summary judgment motions heard,  
11 and if we can do that without bringing the district  
12 court case over here, then we should go ahead and do it.  
13 But that's my purpose for coming here today - is to get  
14 the summary judgment motions set for hearing. And I'm  
15 not going to go to mediation, again, because there is no  
16 point.

17 MR. SPIELMAN: Judge -- were you going to  
18 say something?

19 THE COURT: Please proceed.

20 STATUS CONFERENCE

21 ARGUMENT BY MR. SPIELMAN:

22 MR. SPIELMAN: We all, collectively, the  
23 parties and their counsel at the time, we all agreed to  
24 Mr. Lester taking the role that he was taking. And Ms.  
25 Curtis, herself, I believe, on the record, spoke of



1 having done her due diligence into every person that was  
2 suggested by any attorney that was in this room to serve  
3 in Mr. Lester's role, and it was Ms. Curtis' opinion  
4 that only Mr. Lester can serve in that role.

5 We all, as attorneys or as pro se parties,  
6 agreed that what the function that was designated to Mr.  
7 Lester was important, was necessary, and that we were  
8 going to live by and abide by the report that he wrote.

9 The problem that I see right now, and one  
10 of the reasons I suspect why Mr. Mendel suggested that  
11 we go to mediation is in deference to and with respect  
12 for what Mr. Lester said in his report and what he seems  
13 to be trying to suggest to the parties as to what the  
14 future of this lawsuit might hold.

15 I think that what we're seeing now is an  
16 effort to backtrack from the direction that Mr. Lester  
17 tried to set us on and some of the conclusions or  
18 recommendations that he made as to what some of these  
19 claims, particularly the ones that Ms. Curtis is  
20 attempting to bring forward in summary judgment, are  
21 going to actually look like.

22 I think the effort to backtrack from what  
23 Mr. Lester was instructed to do/ordered to do and what  
24 he did, in retrospect, you have to wonder what was the  
25 point of even having done that if the parties, or a

1 party, is now going to try to back away from the impact  
2 of what that was done?

3           One of the reasons we thought that  
4 mediation, like Mr. Lester suggested that mediation  
5 might work, is that the right mediator, he talked to --  
6 talked about the idea of using a former judge - I think  
7 we talked about that in the courtroom last time - that  
8 the right mediator might help to explain, to educate, to  
9 unentrench anybody - whether that be me, whether that  
10 be Mr. Mendel, whether that be Ms. Bayless, whether that  
11 be Ms. Brunsting, Ms. Curtis, whomever. I think Mr.  
12 Lester saw the wisdom in mediation. I think we see the  
13 wisdom in mediation. But the consternation or the  
14 concern at this point, again, is this issue that Ms.  
15 Curtis seems to be unwilling to appreciate, adapt,  
16 recognize, embrace what Mr. Lester concluded or  
17 recommended in his report; and if that's the case, then  
18 I wonder if, if spending the money that it takes to go  
19 to mediation makes sense.

20           Frankly, Judge, the most interesting thing  
21 that I heard Ms. Curtis say was on the issue of  
22 attorneys fees and that that doesn't matter to her; and  
23 that is exactly part of the point. I think you were in  
24 the courtroom, Judge, the last time when Carole  
25 Brunsting made a very impassioned plea or explanation to

1 the Court about how Ms. Curtis' pro se status and her,  
2 her need to be a lawyer and her failure to appreciate  
3 what it costs, what the costs of this lawsuit are, is  
4 never going to lead to this being resolved. I may have  
5 lost my train of thought there for a second.

6 But the point here, Judge, is there seems  
7 to be no accountability on Ms. Curtis' behalf for the  
8 amount of money that is being spent in this case.  
9 Parties have, in the past, suggested, oh, let's not  
10 worry about the attorneys fees because that will all  
11 even out at the end of the story when everybody decides  
12 to divide by five, the corpus of the trust, and the  
13 winning parties or the prevailing parties can --  
14 everything can be adjusted through the division of that  
15 estate.

16 But, Your Honor, if you look at what Mr.  
17 Lester recommended/suggested/reported in his report,  
18 there's now the very real possibility that there isn't  
19 going to be a divide-by-five scenario because of the  
20 no-contest clauses that are recognized as being properly  
21 drawn by the Vacek & Freed Law Firm. And if that  
22 happens, Judge, then the trust is now spending its own  
23 money from those people, whether it be three or four,  
24 that are still going to get a portion of the estate, a  
25 portion of the trust proceeds when this is all said and

1 done.

2 I'm rambling just a bit only because it's  
3 such a circular discussion - is how do we get this case  
4 finished, given, given the backtracking from everybody's  
5 willingness to vest Mr. Lester with the authority to  
6 proceed, and now the one person who doesn't like what he  
7 said, after she filed motions for summary judgment that  
8 are direct contradiction to the conclusions that he  
9 reached. The very constant of having to come down here  
10 and respond to those, to those motions for summary  
11 judgment, the amount of money that that will waste is  
12 insulting, is offensive to the parties.

13 I'd love to come up with a creative idea  
14 to create some accountability, perhaps, if it comes in  
15 the form of a sanction or perhaps it comes in the form  
16 of some kind of bond being posted so that if it turns  
17 out that one of the parties who is blowing things up as  
18 it were and creating this increased attorneys fees, no  
19 longer has an interest in the estate with which we can  
20 even that out by the end of the day. Perhaps if Ms.  
21 Curtis is ordered to post a bond against her claims or  
22 to protect against the ability -- our ability to recover  
23 fees from her if, as and when she loses her case,  
24 perhaps then we can move forward with additional  
25 hearings, additional motions and so forth.

1                   Keep in mind, Judge, that it's not  
2 simply -- it's not as simple as getting a date for Ms.  
3 Curtis' summary judgment motions. There's been no  
4 discovery, in terms of depositions done in this case,  
5 not the least of which will be depositions from,  
6 perhaps, even from the lawyers in the other district  
7 court case who drafted the documents that can explain  
8 what all went into those documents, what Nelva  
9 Brunsting's state of mind was at the time. There's no  
10 way to respond to those summary judgment motions right  
11 now without the full weight of the discovery process  
12 moving forward and all of the money that that's going to  
13 cost.

14                   So, you wanted my thoughts on what to do  
15 and on one hand, you know, I'm still of the belief that  
16 mediation with the right mediator should work, but  
17 beyond that, I'm also of the opinion that I'm not really  
18 sure what the next thing is.

19                   THE COURT: Okay. Well, and I appreciate  
20 your argument, and I share in many of your concerns. I  
21 haven't heard from you, yet, Ms. Bayless.

22                   MOTION TO TRANSFER

23                   ARGUMENT BY MS. BAYLESS:

24                   MS. BAYLESS: No, that's true. Trying to  
25 maintain a low profile, it's hard sometimes.

1           But I think that you've heard some things  
2 that the risk of going back to the motion to transfer  
3 that make it the obvious one - all the cases need to be  
4 together so that everything can be resolved at one time.

5           My client desperately wants to get this  
6 case settled, but I do not -- I share Mr. Spielman's  
7 concerns, and I have some others. I don't know how  
8 we're going to find a mediator who is thrilled about pro  
9 se parties. Many mediators won't take a case that has  
10 pro se parties. So, we have to deal with that issue.  
11 You -- maybe he knows one.

12           I will say this: That Mr. Miller, God  
13 love him, and I know him well, and he's mediated many  
14 cases for me, but he is not the mediator for this case.

15           THE COURT: And I was not considering  
16 sending you back to Mr. Miller.

17           MS. BAYLESS: Okay, good.

18           It really, really does cry out for some  
19 kind of a resolution. I don't think this suggestion of  
20 bond is particularly workable, and it's needed. I mean,  
21 there is valuable real estate in this estate that can be  
22 used to do whatever sanction-wise, division-wise,  
23 whatever he thinks he can prove. We don't have to go  
24 outside this case to resolve this case. I mean, we  
25 don't have to be making the case more complicated to get

1 the case resolved, in my view.

2 Now there may well be parties who don't  
3 want to resolve it, for whatever reason, you know and  
4 want to have a trial. I heard Mr. Reed say that and,  
5 you know, that it's going to require a Court decision.  
6 You know, but frankly, the whole no-contest issue that  
7 Mr. Lester raised in his report, and I assume if we  
8 don't work out some settlement procedure, we'll be  
9 filing responses to his report and dealing with that.

10 The whole no-contest clause violates the  
11 Trust Code and the Probate Code in its very language;  
12 and frankly, to prosecute a no-contest clause, you have  
13 to have a trial. You have to see whether it was filed  
14 and there was good cause in the filing and whether the  
15 case was prosecuted in good faith.

16 So, you're necessarily, to get to that  
17 issue, you're necessarily going to have to have a trial.

18 You could rule all day long that you  
19 believe it to be a valid clause notwithstanding the  
20 fact that its very language violates the Trust Code and  
21 the Probate Code -- or the Estates Code, excuse me, but  
22 you're still going to have to have a trial about what  
23 that means. So, we need some mechanism that doesn't  
24 make us have to have a trial.

25 And now we've got two pro se parties, and

1 I just don't know a strong mediator that is going to  
2 deal with two pro se parties. Maybe there is one, but  
3 it is going to require someone strong if you go that  
4 route.

5 If Ms. Curtis is saying she's absolutely  
6 not going to go, I mean, I don't know what we do about  
7 that. And for all I know, Carole Brunsting may say  
8 she's not going to go. We haven't heard from her  
9 either.

10 You know, everybody else maybe could work  
11 out a resolution. My client wants very much to resolve  
12 the case, but I don't know how you resolve it piecemeal  
13 when you're talking about a trust that has five  
14 beneficiaries. I mean, maybe somebody's smarter than I  
15 and could figure that out and you can come up with some  
16 kind of a, some kind of a design that says this happens,  
17 you know, if X, Y and Z falls into place and it says  
18 that. It's very -- it's a very problematic situation,  
19 and I don't think, you know, right now we don't even  
20 have a personal representative of the estate. So, I  
21 don't know how -- I think, frankly, that the district  
22 court case, there is some advantage being taken of an  
23 unfortunate situation relating to my client's, obviously  
24 capacity, unexpected incapacity in deposition. I get  
25 that. They're trying to zealously represent their



1 client. But the reality is if they go and dispose of  
2 that case without a personal representative when the  
3 Court has been notified of that, that is going to come  
4 back so fast from the court of appeals.

5           And, you know, they, today, before we came  
6 down here, they filed a motion for sanctions. You know,  
7 it's all about pressure in that case to maybe make that  
8 go away. And I think we sort of see the same problem in  
9 this case that, although people try to punch pressure  
10 buttons, nobody -- there's no structure, as frustrating  
11 as it is for me to say this, there's no structure where  
12 everybody is on board. And so, you know, we don't have  
13 a way to get these five beneficiaries separated from  
14 each other and separated from these courts and on down  
15 the road short of forcing someone to do something they  
16 don't want to do.

17           These are all strong-willed people. I  
18 don't know what happens if you force someone to do  
19 something that they don't want to do. You know, maybe  
20 they get there and they realize, well, there is some  
21 merit to this, but I agree, it's a waste of money if  
22 that isn't what happens.

23           And, I mean, I know there's some great  
24 mediators in town. We can go to Alice All [sic] to  
25 repair it. Maybe she would deal with pro se parties, I

1 don't know but I --

2 THE COURT: Well I want to explore that.  
3 You know, in my mind, every puzzle has a solution even  
4 if it feels a little bit like a Rubik's Cube, and I  
5 think that that's true of this case.

6 I feel like it does need to go back to  
7 mediation. I feel like any other direction at this  
8 point is, is going to -- it's just not going to advance  
9 the ball. This has been dragging on for so long and  
10 stalled out for so long, we really need to get it  
11 moving. And I feel in my heart that the best way to try  
12 to move this forward is to have it go to mediation. We  
13 do need a strong mediator. I have someone in mind who I  
14 haven't contacted yet, but I wanted to hear from  
15 everyone here, first, about their suggestions.

16 You have your hand up, but I want to hear  
17 from Carole first.

18 MR. MENDEL: Could I make one quick  
19 comment?

20 THE COURT: Uh-huh.

21 STATUS CONFERENCE

22 ARGUMENT BY MR. MENDEL:

23 MR. MENDEL: In fairness to Mr. Miller,  
24 the case was probably not right for mediation at early  
25 on in the case, but a lot has transpired since then that

1 I think makes it ripe for mediation.

2 I would agree oftentimes that a second  
3 mediation could be a waste of time, but not in this  
4 case. I think this case screams for a second mediation.

5 THE COURT: I agree.

6 MR. MENDEL: In terms of answering the  
7 Court's question - I think it should be a forceful  
8 personality; I think it should be a judge. I would like  
9 to see Judge Davidson be appointed to serve as the  
10 mediator in this case.

11 MR. SPIELMAN: That was actually going to  
12 be my suggestion, Judge. I know Judge Davidson would  
13 not have an issue with pro se elements in the case. I  
14 know, as a judge, he's certainly aware of the dynamics  
15 that that brings to the table.

16 I can say that Judge Davidson, having gone  
17 to a mediation with Judge Davidson in which I, because  
18 of his forcefulness, was forced to completely reevaluate  
19 the entire case that we came in there with. I know that  
20 he is the type of forceful personality that can  
21 unentrench people, that can and will do his own research  
22 and bring issues to the table that, perhaps, the parties  
23 walking in the mediation haven't even considered yet. I  
24 could not more strongly recommend Judge Davidson as  
25 being somebody that fits the bill for what this case is

1 needing; and, of course, everybody is welcome to do  
2 their due diligence to see the types of cases that he's  
3 presided over in the past, to see the docket that he  
4 carries now in the multi-district litigations. I would  
5 be as flabbergasted as flabbergasted could be if people  
6 walked away not thinking that he was the right person to  
7 make a try at this.

8 MS. BAYLESS: Just one question, I'm  
9 sorry. Just one question.

10 Do you know for sure? I have absolutely  
11 no problem with Judge Davidson. I think he's a great  
12 resolver of problems, but do you know that he would do  
13 a -- have you had a situation where there was a pro se  
14 party?

15 MR. SPIELMAN: I'm going to go with I'm 95  
16 percent sure, but I'll be happy to make that phone call.

17 MS. BAYLESS: Anyway, that's my only --

18 THE COURT: I know Judge Davidson. And I,  
19 you know, similarly, I think that he could probably get  
20 the job done quite well. We could contact him and see  
21 how he feels about pro se parties.

22 MS. CURTIS: I also have a quick question  
23 about mediation.

24 Is there any reason why all of the  
25 siblings and their representatives can't be in the same

1 room to talk about it? Because I think that's where it  
2 fell down. The mediator came in one room and talked for  
3 a few minutes and then went to the next room and then  
4 the next room and then came back and told us what these  
5 other people said --

6 THE COURT: And that's how mediations  
7 often go. The mediator often makes a decision at the  
8 beginning of the day about whether he thinks it will be  
9 productive or not to bring everyone together. Often,  
10 you start out all in the same room. Sometimes, if  
11 things are going well, you get back together in the same  
12 room towards the end. And I would rely on the mediator  
13 to make that call because sometimes the parties are so  
14 far apart and antagonistic to one another, that putting  
15 them in the room, just escalates things. And so that's  
16 what -- that's why, you know, we leave that to the  
17 mediator, to kind of make that call. And hopefully, you  
18 know, if everybody is civil and can sit around the table  
19 and reasonably and constructively discuss the issues,  
20 then maybe that's the direction the mediation will go.  
21 There's nothing saying that you can't get together.

22 MS. CURTIS: And that's, if we could,  
23 then, yes, I would consider mediation; but I can't go  
24 through the mediation like we had before.

25 THE COURT: Okay. And, you know, and

1 there's some indication that there are a lot of reasons  
2 why that mediation was not successful. And maybe, you  
3 know, maybe if you got together for mediation now, your  
4 entire family would have a kumbaya experience and find  
5 one another. And I know that there is some head-shaking  
6 and things, but I need you, and frankly, everyone here,  
7 everyone involved in this, needs you to try to keep an  
8 open and forgiving mind going into mediation. And I'm  
9 not saying that you're going to, you know, walk away and  
10 forgive everything that's happened but at least see that  
11 there is some benefit to that, to some level of  
12 forgiveness going forward, so that you can get this  
13 resolved because being here in this building is not  
14 helping you. Ultimately, it's not helping anyone  
15 involved in this case. And so, that's why I feel that  
16 it's, you know -- I need you to go to mediation.

17           It sounds like you're coming around which  
18 I'm glad to hear, on some level, because even if you  
19 don't come around, I think I'm going to have to get to  
20 the point where I order you to go. And, you know, I  
21 mean, we don't like ordering people to do things that  
22 they don't want to do, but I think that it's in the best  
23 interest of everyone to go ahead and get to mediation.

24           If Judge Davidson doesn't pan out, the  
25 other name that came to my mind was John Coselli. I

1 hear that he's been doing some very good mediations  
2 recently, and I know that he's not -- well, I don't  
3 know. I don't think that his focus is probate, but I  
4 understand that he's very quick to come up to speed on  
5 the issues and has been quite effective in getting  
6 things done. So, that's another name that if Mr.  
7 Davidson doesn't pan out, we might look at.

8 Let's see...

9 Ms. Brunsting, did you have something you  
10 wanted to add?

11 MS. BRUNSTING: Well, I mean, I hear the  
12 word "pro se," and it's almost like it's a bad word in  
13 this court --

14 THE COURT: It is not a bad word in this  
15 court.

16 STATUS CONFERENCE

17 ARGUMENT BY MS. BRUNSTING:

18 MS. BRUNSTING: I've never been through  
19 anything like this before. I thought that it was in my  
20 best interest to get an attorney. And Darlene Payne  
21 Smith, while she's a very, very good attorney, she's a  
22 very expensive attorney. I finally just had to make the  
23 decision because I don't know if this is going to drag  
24 out another month or another 10 years. But I don't want  
25 it -- it's upside down, and so I had to just make the

1 decision, as I kind of talked about last year, to try to  
2 stop the bleeding. I had to just stop my own bleeding  
3 because otherwise what's going to happen is there may  
4 not be anything left to divide, but I'm going to end up  
5 having to go into my retirement savings to pay this bill  
6 now. So, I'm just having to make some life-decisions  
7 here. And, unfortunately, one of the things I had to do  
8 which is terminate my relationship with Darlene Payne  
9 Smith. It's nothing against her, but I just had to make  
10 a financial decision on my own because right now I'm  
11 faced with this huge bill that I'm going to pay because  
12 I try to live my life debt-free. It's going to take me  
13 a long time to pay it because I hadn't planned on having  
14 this bill.

15                   But I guess my other concern is, and I  
16 heard some of the other attorneys make it is I feel like  
17 what Candy asked for, everybody tries to give to her.  
18 And we paid \$42,000 for this accounting when we were in  
19 Judge Hoyt's [sic] court and that wasn't good enough.  
20 And now we've all agreed to Greg Lester, and that's not  
21 good enough. And so it just seems like it's going to go  
22 on forever, that whatever everybody tries to do to try  
23 to make Candy happy, we're always going to just end up  
24 straying away from that.

25                   And so it's just like I'm hearing with



1 mediation, and I think the rest of us are willing to go  
2 to mediation, it's going to be, yes, I'll go to  
3 mediation but only if. What if everybody else doesn't  
4 agree to that? It is we all agree to go to mediation if  
5 we all agree to go sit in the same room, I'm thinking  
6 well -- that's why I'm shaking my head. I'm thinking, I  
7 doubt that will happen.

8 THE COURT: Well, as I said, you know, we  
9 need to leave that up to the mediator because the  
10 mediator controls how the mediation proceeds. And, you  
11 know, I encourage you to consider that if it looks like  
12 it's going to be constructive. She's not putting  
13 limitations on the mediation by any stretch of the  
14 imagination. We're going to go forward. We're going to  
15 go to mediation. We need to find an appropriate  
16 mediator, and that's going to happen. So, I want you to  
17 feel --

18 MS. BRUNSTING: But in the last mediation,  
19 I just felt like everybody was kind of blindsided  
20 because I sat in a room for probably three and four  
21 hours before -- just waiting and really had no idea what  
22 was going to happen. And then somebody comes in -- I  
23 mean, a mediator came in and just put a piece of paper  
24 in front of me and I go, "What is this?" "Well this is  
25 what they want." And, I mean, it was just ridiculous.

1 And then after that, we waited another few hours. And  
2 then what we were asked to give up was even bigger than  
3 that. And so, it was so ridiculous and I saw no attempt  
4 at anybody trying to mediate the system. Nobody knew  
5 what was going on.

6 So, I had actually talked to Mr. Lester  
7 about before -- I think before anybody's going to agree  
8 to mediation, everybody is going to have to be convinced  
9 that it's much better organized. The mediator's already  
10 talked to everybody to see what the real expectations  
11 are because if they're not realistic going in, we're  
12 going to be right back where we were before.

13 THE COURT: Okay. Thank you.

14 I want to comment about Mr. Lester. He's  
15 here today. He's not, my understanding is, he's not  
16 billing for his time today, so we're very grateful that  
17 you're here. I asked him to be here in case there are  
18 any questions about his report.

19 I think that the accounting that was done  
20 previously in the federal court, as well as the report  
21 that Mr. Lester provided, is helpful in this case  
22 because I think it gives the Court and it gives all the  
23 parties some insight into how the claims are viewed by  
24 an independent person. And I hope that you'll look at  
25 his report and consider his conclusions going forward.

1 I'm not making any rulings about whether  
2 his conclusion are right or wrong, but I think they're  
3 quite informative. And so I think that it's useful and  
4 sort of leading up to mediation.

5 How -- my next concern about mediation is  
6 how are we going to pay for it? I know that the parties  
7 are motivated to get this resolved, mostly; and in the  
8 past, the -- I've always looked to this end of the table  
9 to fund things, and I'm not sure that I'm going to do  
10 anything different this time.

11 Do you have some opinions about how the  
12 mediator should be paid?

13 MR. SPIELMAN: My opinion is simply that  
14 the parties should pay the mediator's cost as the  
15 parties.

16 Now, again, remember, Judge Comstock, my  
17 client and Anita as the current co trustees are actually  
18 the only ones who should be having their lawsuit defense  
19 financed by the Trust but they have not --

20 MS. CURTIS: Excuse me. Objection.

21 MR. SPIELMAN: Okay.

22 THE COURT: Let him finish, and I'll give  
23 you a chance to respond --

24 MS. CURTIS: But this is --

25 THE COURT: I know.

1 MS. CURTIS: -- incorrect information that  
2 he's saying.

3 THE COURT: You'll have a chance to  
4 respond as soon as he finishes.

5 STATUS CONFERENCE

6 FURTHER ARGUMENT BY MR. SPIELMAN:

7 MR. SPIELMAN: The point, though, Judge,  
8 is because I know that there is not an agreement on that  
9 point currently, that is why my opinion is each party  
10 should pay their own mediation cost.

11 One -- again, I can't make a  
12 representation for Judge Davidson, but I suspect, as he  
13 has done for mediations in the past, maybe, Ms. Bayless,  
14 you've experienced this with him before, I think he will  
15 see a way to not necessarily say, you pay a fee; you pay  
16 a fee; you pay a fee; you pay a fee and you pay a fee.  
17 I think he will probably find some way to structure it  
18 by people that have common interests on one side or the  
19 other or something like that. We can certainly talk to  
20 him about that. I'm happy to talk -- it's my interest  
21 to find a way to convince him to charge as little as  
22 possible for this as much as it's to the benefit of  
23 everybody else here. So, I'm happy to do that.

24 If the Court would like to be the one that  
25 reaches out to Judge Davidson to sort of explain a

1 little bit of the back story, maybe that's appropriate  
2 that would make people feel more comfortable, we will  
3 all have a chance to present our view of the case to  
4 Judge Davidson in advance of the mediation because he  
5 asks for premediation briefing material, premediation  
6 statement. I know he would take phone calls from folks  
7 if they would rather handle it that way.

8 I think that all of the issues that are  
9 being expressed as concerns about the mediation process,  
10 all of them have solutions, and perhaps the attorneys  
11 are more aware of this just by the nature of what we do.

12 But particularly with Judge Davidson, he  
13 has seen and done it all in his time on the bench. As  
14 difficult as this case has been for people particularly  
15 on an emotional level, he would have seen this level  
16 before, and he will know how to massage everybody's  
17 concerns and the law and the facts.

18 Again, I can't say strongly enough -- even  
19 if it's not to my client's benefit when it's all said  
20 and done, that I think he has the ability to get  
21 everybody, you know, on the straight and narrow.

22 STATUS CONFERENCE

23 ARGUMENT BY MS. BAYLESS:

24 MS. BAYLESS: Judge, I agree. The  
25 question was how do we pay for it? And I don't see how

1 it makes sense to create another controversy among  
2 everybody to not want it, those who don't want it to  
3 begin with to think it may be a waste of time. I don't  
4 understand why -- I'm not even sure why Mr. Spielman  
5 makes this suggestion. I would think that we would have  
6 the Trust pay for it, and it can be divided as cost as  
7 may need to be part of the settlement just like we dealt  
8 with Mr. Lester. I don't know why this is -- that was,  
9 frankly, I viewed, anyway, an attempt by the Court to  
10 move everything in the direction of trying to work  
11 toward a resolution. I don't think the mediation is  
12 even more so that way, and I don't know why it's going  
13 to be probably less money. I don't know why it should  
14 be controversial to deal with it as a cost of getting  
15 this case resolved and deal with that and the  
16 resolution, but that's just my two cents.

17 THE COURT: Well, I like the suggestion  
18 that if Judge Davidson is amenable to that, to let him  
19 kind of work that out as part of the mediation, and  
20 perhaps that's the route we need to go.

21 Ms. Curtis, you have -- you wanted to  
22 speak?

23 STATUS CONFERENCE

24 FURTHER ARGUMENT BY MS. CURTIS:

25 MS. CURTIS: Basically, I just -- people

1 are formulating their opinions by talking to parties in  
2 the case, and it's fairly obvious that no one has read  
3 everything starting with the original petition in the  
4 federal court.

5 I sent my sisters a couple of demand  
6 letters after my mother passed away, and I gave them  
7 every opportunity to cure and save face. And I told  
8 them, "If you don't give me an accounting which has been  
9 owed for weeks now," and then I gave them 60 days, that  
10 I'd have no alternative, and that I reserve the right to  
11 file suit against them.

12 And here we are, almost five years later.  
13 Vacek & Freed sold my parents' peace of mind and then  
14 betrayed them because my sister, Anita, developed a  
15 relationship with Candace Freed. And there is evidence  
16 in the record now that shows that. And I'm willing to  
17 come to a conclusion, but we can't have all these  
18 attorneys. Amy and Anita are on their third attorneys  
19 now. And so, how much longer do my brother, Carl, and I  
20 have to spend, money, time and emotional stress to get  
21 what our parents gave to us to begin with? And that's  
22 all they want - not a penny more/not a penny less.

23 THE COURT: Well, often when things get to  
24 this point when you're five years down the road in  
25 litigation and people are in the positions that you find

1 yourselves today, often what it takes is going to a good  
2 mediator and getting everyone in the same room or at  
3 least the same building and really looking at the issue,  
4 perhaps, with fresh eyes, and finding the reality that  
5 there's a better way to resolve this whole game.

6 MS. CURTIS: I want to look at my sisters  
7 and my brother in the eye in the same room. I mean,  
8 it's just -- I've been able to talk to Carole until she  
9 got an attorney and then I couldn't speak to her  
10 anymore. I can't talk to Amy and Anita. I tried to  
11 call them early on. I just -- this is a family. We  
12 don't need these outside people in here paying money for  
13 them to draw conclusions when they don't know what's  
14 going on. And so I just --

15 THE COURT: And I appreciate your bringing  
16 that emotional side of it because I think that's what  
17 all of this sometimes comes down to is, the emotions  
18 that are involved. And if, you know -- I'm glad that  
19 you're saying this here today. All of these attorneys,  
20 I'm sure, are hearing you, are hearing your position;  
21 and I know that they're aware of the emotions -- the  
22 emotional responses from their own clients. And  
23 perhaps, perhaps your wish will come true. Perhaps  
24 we'll get to mediation, and you'll be able to sit in a  
25 room and reach some kind of understanding.



1 I don't have a problem calling Judge  
2 Davidson if nobody has a problem with my doing so. So,  
3 I'll put a call into him. I know him. He was the scout  
4 master of my son's scout troop. So, I'll put a call  
5 into him, and we'll see if we can move that piece  
6 forward.

7 STATUS CONFERENCE

8 FURTHER ARGUMENT BY MR. MENDEL:

9 MR. MENDELL: I would just like to add,  
10 besides Judge Davidson, I don't have any problem with  
11 Judge Coselli. I've been in front of Judge Coselli when  
12 he was a mediator before he got on the bench. He's  
13 excellent.

14 In terms of the fee, I'm open to how the  
15 mediator would want to handle it. But the vast majority  
16 of mediators, as the Court is aware, expect people to  
17 have some sort of an investment, and a great investment  
18 is to come out of pocket and pay for it. So, I would  
19 oppose that the Trust pays for everybody's pro rata  
20 share. Everybody needs to get out their checkbook and  
21 pay the mediator regardless of how the fee is  
22 structured.

23 THE COURT: Okay. I understand.

24 MS. CURTIS: I can't do that. I work full  
25 time. I have no retirement. I have to do without

1 things to come to Houston which I'm more than happy to  
2 do, but I don't have extra money to throw away on more  
3 wasted time. And that's why I didn't hire an attorney  
4 to begin with. My brother shouldn't have had to hire an  
5 attorney.

6 THE COURT: Well, Ms. Curtis, Ms. Curtis,  
7 please. Therein lies the rub. If this is a waste of  
8 time then why are we here? You know --

9 MS. CURTIS: To get resolution.

10 THE COURT: -- we need to move this case  
11 forward, and most of the people in this room feel like  
12 this is the best way to move it forward.

13 MS. CURTIS: I'd like to move it forward  
14 by scheduling the summary judgments.

15 COURT'S RULING

16 THE COURT: Okay. We're going to go to  
17 mediation first. And so I'm going to contact Judge  
18 Davidson. I'll get information about his fees, and I'll  
19 explain the issues and --

20 MS. CURTIS: Okay. I have a personal  
21 friend in Houston that I've known for 30 years. He is  
22 also a mediator, I understand now; is that a conflict if  
23 I suggest that we contact him as well?

24 THE COURT: I don't want to get into what  
25 we've had in prior hearings with everyone objecting to

1 people who are suggested. I think that Judge Davidson  
2 is a good choice. He's going to be a strong mediator,  
3 and I don't want to take lightly the choice of mediator  
4 in this case because I don't want to waste your time. I  
5 want to get to a mediation with somebody who can make  
6 things happen. And I'm not saying that your buddy, your  
7 friend, can't make that happen, but I am concerned that  
8 there are, you know, you have several siblings who are  
9 going to stand up and object for the reasons that I just  
10 mentioned. And I know where that's going to go, and I  
11 don't think that it's a good idea to go down that road  
12 at this point. So, I'm going to call Judge Davidson and  
13 see how that will work out.

14 MS. BAYLESS: I just have a question on  
15 timing.

16 I'm assuming, and maybe I shouldn't say,  
17 that you will be dealing with the motion to transfer  
18 first so that that's part of what is being mediated and  
19 maybe that's not what you had in mind.

20 I think that there is some merit to having  
21 everybody in the room. I recognize Mr. Reed is going to  
22 stand up and say he doesn't want to be in the room, but,  
23 you know, we need to deal with that. And I think Judge  
24 Davidson could deal with all of these issues very well.  
25 And if that loose end is left out there, I don't know if

1 it will impact being able to get this case over. I have  
2 no -- I don't know.

3 THE COURT: That's a good point. I don't  
4 know that we need to transfer the case over here before  
5 that happens if we can get some buy-in from the folks  
6 involved in the district court case to be a part of that  
7 negotiations of the mediation. I don't know whether  
8 that's possible, but it seems like if we can get to  
9 mediation and get every piece of this resolved, that  
10 would be a lot more cost efficient than going through  
11 the transfer and getting all of that done.

12 What I'm saying is you guys don't all have  
13 to be in this court in order to negotiate a settlement.

14 Do you want to respond to that?

15 MS. BRUNSTING: This is something I spoke  
16 with Darlene about is because somehow my brother brought  
17 this suit against Vacek is somehow, I think all of us  
18 are party to it somehow but without our knowledge, we  
19 don't know how this case is going to impact the rest of  
20 us and so that's why I spoke with Darlene, and said I'm  
21 a bit concerned about going to mediation when I don't  
22 know the outcome of this case yet. And so well this  
23 case will have some impact on the rest of this. So,  
24 that is a valid concern that I have.

25 THE COURT: Mr. Reed, what's your position

1 about participating in a mediation?

2 MR. REED: I think the biggest issue that  
3 we have is you or someone has to be appointed or has to  
4 appoint someone on behalf of the estate. Right now, if  
5 I went to mediation, I would have no one to negotiate  
6 with. So, that's the problem by sending a malpractice  
7 case is I have, technically, five people I have to deal  
8 with that I really need -- I can only really deal with  
9 one person that's actually absent right now which is  
10 what's delaying the malpractice case from being  
11 dismissed.

12 So, I mean, if you send us to mediation,  
13 what you're going to have to do is appoint somebody for  
14 us to negotiate which means you're actually appointing  
15 someone on behalf of the estate. So, that creates to me  
16 a big issue that is, again, outside of, really, what we  
17 need to deal with today.

18 THE COURT: How do the rest of you -- how  
19 do the rest of the attorneys in the room feel about  
20 whether we can get to a resolution?

21 MR. MENDEL: I think we can get to a  
22 resolution. I mean, if everybody else on this -- in  
23 this particular case agrees to an outcome and a  
24 resolution for Mr. Reed, then, as I see it, we don't  
25 necessarily need to have someone appointed before they

1 come over to the mediation. I mean, if everybody is in  
2 agreement then it becomes a moot point.

3 THE COURT: And if you can reach an  
4 agreement that a resolution will be reached then you  
5 could, perhaps, agree to appoint a temporary  
6 administrator who could make decisions on behalf of the  
7 estate --

8 MR. SPIELMAN: And that's just the point,  
9 Judge. If you backtrack beyond Mr. Lester's  
10 appointment, the competing applications before the Court  
11 are from my client and from Ms. Curtis. So, if the  
12 mediation goes well, those two competing next in line,  
13 allegedly executors, can sign off on a deal that would  
14 then be able to resolve everything.

15 MR. REED: It's not that the deal can be  
16 worked out, it's, at mediation, I have to go to five  
17 different rooms to negotiate the deal. So, maybe his  
18 client says, okay, I give a million bucks to the  
19 estate - that's great; but Ms. Curtis wants \$2 million.  
20 So, then all of a sudden, I've got to deal with one of  
21 the four. Maybe I get four out of the five. And the  
22 point is you need one voice for the entire estate, and  
23 you're not going to get it with me trying to negotiate  
24 with five people at mediation.

25 THE COURT: Well, at some point, all five

1 of those people are going to have to negotiate something  
2 to move forward rather it's who's going to be the  
3 administrator or the executor going forward. I think  
4 that that negotiation is better to take place at the  
5 mediation than outside of it.

6 MR. REED: I think the problem you're  
7 sending us to mediation with is now we have one extra  
8 level, and we already have too many levels of things we  
9 need to negotiate. It's going to take almost the entire  
10 mediation, if it is successful, to deal with just the  
11 sibling issue, and now you're adding the malpractice  
12 case on top of that to see if, you know, whether all  
13 four or five or one or two agrees with how much money  
14 the malpractice case is worth defending at all.

15 So, I think you're adding too much to the  
16 puzzle to what's already going to be a difficult  
17 mediation.

18 THE COURT: I don't know that the  
19 mediation will be successful without that, though. And  
20 I think that I kind of like the complication that it  
21 has. You know, the more cards on the table, the more  
22 you can mix up the deck, am I wrong? It seems like  
23 everyone has an interest in going forward. Does anyone  
24 disagree with that other than, I'm sorry, Mr. Reed?

25 MS. CURTIS: I don't disagree. And, in

1 fact, it's Candace Freed who drew up these illegitimate  
2 papers - whether they were signed or not - she's the one  
3 that started this. All five of us have been damaged by  
4 what Candace Freed did.

5 I'm happy to let Amy be executor if Neal  
6 will represent the executor in this mediation and in the  
7 case against Vacek & Freed because it's not  
8 malpractice - it's breach of fiduciary. But I just  
9 wanted to get it moved along, okay. So, now you've got  
10 me convinced that mediation is maybe the way to go, but  
11 I don't want any more road blocks for one reason or  
12 another.

13 Why can't Amy be executor? No, let Neal  
14 take that ball and run with it and we'll all agree.

15 MS. BAYLESS: Well I don't know if my  
16 clients will agree to that today, but I don't think we  
17 have to do -- I don't think we have to go to that level.  
18 If we can reach an agreement, then we know we need a  
19 temporary person just for purposes of approving a  
20 settlement and, you know, moving forward. I don't  
21 think -- I don't see any reason why Judge Davidson can't  
22 deal with all of those issues. But if he doesn't deal  
23 with all of those issues, I don't think -- I think we  
24 run a greater risk of not getting the case resolved.

25 And, frankly, I would think that the law



1 firm would be delighted if the case could get resolved.

2 THE COURT: And I hate for you guys to  
3 reach a decision about all of your issues and then have  
4 to go to another mediation to resolve all the issues in  
5 the district court case, particularly, if, you know, if  
6 it's decided that it needs to be grabbed and transferred  
7 over here.

8 MR. REED: But it's taking longer, Your  
9 Honor, if the case is not settled at mediation. Isn't  
10 it somebody is still going to have to be appointed at  
11 that point to bring the claims, still, against the  
12 malpractice?

13 THE COURT: Which comes first, you know?

14 MR. REED: The point is that Mr. -- you  
15 know, if we go back to Mr. Lester's report who already,  
16 you know, looked at it, looked at the issues and said  
17 the writings were correct, we have the malpractice case  
18 that's been pending for three years that no one at this  
19 point has been able to prove any evidence of  
20 malpractice, whatever the claims would be. So, you're  
21 wanting us to go --

22 THE COURT: Well, I'm not sure that Mr.  
23 Lester's report says that you win.

24 MR. REED: I'm not saying that, Your  
25 Honor. What I'm saying is I think it's going to be too

1 difficult for a malpractice case to be negotiated at a  
2 mediation with the five siblings we have here without  
3 one voice --

4 MR. MENDEL: I see it that it needs to be  
5 a global deal, and if we can't work something out with  
6 Vacek & Freed, then the mediation fails. But I'm  
7 confident somebody like Judge Davidson can pull this  
8 thing together.

9 THE COURT: And I tend to agree. And, you  
10 know, I was -- I would hope that you and Ms. Foley would  
11 agree to participating in this mediation. And I'm still  
12 considering the motion to transfer, but I have to say if  
13 you guys are not willing to consider, that encourages me  
14 to grant the motion to transfer just to get everything  
15 over here so that we can try to get it settled.

16 MR. REED: And I don't want you to have a  
17 misvoid [sic] that we're not agreeable to going to  
18 mediation. My concern is more if I go to mediation, who  
19 am I negotiating with? And the problem is I am being  
20 sued -- my client is being sued by the estate. The  
21 estate right now doesn't have a representative.

22 So, my concern is, maybe I didn't express  
23 it well enough earlier, is not the mediation itself in  
24 going - it's who do I negotiate with because I'm dealing  
25 with five separate demands because the family can't

1 speak, and I think that's clear. They can't speak at  
2 this point as a whole.

3 THE COURT: I understand. And I think  
4 that Judge Davidson's qualified. He's capable of seeing  
5 the big picture and putting all those pieces together  
6 and dealing with that.

7 MS. BAYLESS: And, frankly, Judge, I think  
8 I'm going to have to provide the information that Judge  
9 Davidson needs about why the claims are filed to begin  
10 with. And it doesn't matter how many times you say  
11 there is no proof, there is no evidence - the point is,  
12 Judge Davidson is going to have to negotiate this thing.  
13 There is proof, there is evidence, and I can take the  
14 laboring of presenting some kind of summary to him so  
15 that he understands the case from its inception and can  
16 deal with that case.

17 The idea that, well, there is nobody right  
18 now because my client had resigned so there's nobody to  
19 deal with this. Let's jump in there and take advantage  
20 of it and everything says there is no way to prove this  
21 case, there is no way to do that. That's what Judge  
22 Davidson will be trying to deal with, and I can provide  
23 him with the information and the evidence that does  
24 inform him about the case. And it's out there, and they  
25 know it's out there. So, we can get past that.

1 I think it a lot more efficiently if they  
2 agree to deal with the mediation and everything can be  
3 dealt with that way, but I tend to agree - if they can't  
4 do that by agreement, then we're right back where we  
5 were in this suit about what do we do with that case  
6 because that case may very well keep us from resolving  
7 this case. Even a non lawyer in the room has said that  
8 today. So, you know, I think that's pretty obvious.

9 THE COURT: It sounds to me like everyone  
10 except Mr. Reed agrees with that.

11 Do you need to get back with Ms. Foley in  
12 order to get me an answer on whether you will  
13 voluntarily participate?

14 MR. REED: We'll voluntarily participate.  
15 I'm just expressing my concern of why it's not going to  
16 be successful.

17 THE COURT: And I appreciate that. And  
18 that's a level of, you know, difficulty that I think you  
19 will need to bring to the mediation and explain to Judge  
20 Davidson and have him address that. So, I mean,  
21 everyone has voiced complications today that need to  
22 come out on the table and need to be part of the  
23 mediation. So, I'm glad that you're all here and  
24 voicing those opinions.

25 So, I think we all agree that I'm going to

1 call Judge Davidson. Is there anything else that needs  
2 to be discussed today? Is there any -- is there any  
3 timing issues that I need to make Judge Davidson aware  
4 of?

5 MS. BAYLESS: Well there is a trial  
6 setting in May in the district court.

7 MR. MENDEL: I don't think that one is  
8 going to stick given the current posture --

9 MS. BAYLESS: Having gone through that  
10 argument before, I don't know that I would take that for  
11 granted.

12 MR. MENDEL: You're right.

13 MS. BAYLESS: That's pretty much upon us.  
14 We're talking. We may not be able to get in to Judge  
15 Davidson this month. I don't know what his schedule is  
16 but, you know, we're talking about then that does make  
17 it a little bit more important the issue of personal  
18 representative; in fact, if we're facing that many  
19 trials --

20 THE COURT: Okay. Do we need to reset the  
21 motion to transfer at this point? In other words, do I  
22 need to have another hearing to have to hear from Ms.  
23 Foley from that issue?

24 MR. REED: I think you should continue it  
25 until after the mediation.

1 THE COURT: And I think I can do that if  
2 you guys agree to participate.

3 MR. REED: Again, I think you're  
4 misunderstanding what I was saying.

5 THE COURT: No. No. No. I hear what  
6 you're saying - I'm just confirming it.

7 MR. REED: Yeah, I hear you loud and  
8 clear. And if you would prefer us at mediation, I will  
9 be there. I was just expressing to you I think the  
10 concerns that convolute the matter even worse, but I  
11 hear you loud and clear.

12 MS. BAYLESS: What's the trial date?

13 MR. REED: I think it's the 16th, but I  
14 will say this. The Court currently, while we're on the  
15 trial docket, I think they recognize that we can't go  
16 forward with it because we don't have a personal  
17 representative. I don't think that they officially  
18 debated it, but I think they somehow called us, I'm  
19 expressing this court involved them, Your Honor, but I  
20 would say -- well, I'll leave it like that.

21 MR. SPIELMAN: That being said, Judge,  
22 probably sooner is probably better than later, you know.

23 THE COURT: Of course. Yeah, I think  
24 everyone wants to get this moving.

25 MS. BRUNSTING: Because most of us work.

1 I think each night there's certain meetings that I just  
2 can't --

3 THE COURT: Of course. Why I'm not going  
4 to get involved with actually scheduling the day; I'm  
5 going to contact him. And I just wanted to know if  
6 there are any global problems, but I'll leave it to you  
7 guys to, you know, to contact him and find a date that's  
8 going to work for everyone. I know that you guys all  
9 have your emails and share your email addresses. So,  
10 I'm hoping that you can work together and find a date  
11 that will be convenient for everyone.

12 MS. BAYLESS: Speak of that, I don't know  
13 if an order has been signed yet. I've got Ms. Smith's  
14 withdrawal, but can we have some information  
15 about where to serve her like what address or  
16 fax --

17 MS. BRUNSTING: Darlene asked me if it was  
18 okay that she send information out, and I said, "Yes,  
19 that's okay," but she didn't send it out. I did send it  
20 out.

21 THE COURT: Can you send an email to  
22 everyone?

23 MS. BRUNSTING: We can talk about it.

24 THE COURT: Including me. I guess you  
25 sent me a letter so I got your contact information,

1 correct? It's on your letter? Ms. Brunsting?

2 MR. SPIELMAN: Her address, I think, just  
3 to be clear, I think what would be useful to everybody  
4 would be if you could just let us know your preferred  
5 email address, your preferred phone contact. If you do  
6 happen to have access to a fax machine for receiving  
7 things, that would work too. I think that that covers  
8 most of the ways that we can --

9 THE COURT: And if you could copy me on  
10 that as well, that would be helpful. Thank you.

11 Okay. Anything else?

12 MS. BAYLESS: One other thing.

13 I know we held some things, we just held  
14 some things while Mr. Lester was doing his thing, and I  
15 wonder if it would make some sense to revisit the order  
16 that appointed him and the stay provisions and continue  
17 those through the mediation date anyway or something or  
18 through the next hearing, motion to transfer?

19 THE COURT: What specifically --

20 MS. BAYLESS: It just hit me that we've  
21 done that. I'm looking at the order right now.

22 We had talked about it at the hearing that  
23 says that the order expires in 90 days. So, I guess --

24 THE COURT: It doesn't sound like to me  
25 that everybody is eager to jump out and do some



1 discovery and spend more money prior to going to  
2 mediation, am I right? So, let's just focus on getting  
3 to mediation unless someone needs something specific in  
4 writing.

5 MS. BAYLESS: If I find the order, I'll  
6 let --

7 THE COURT: Thank you everybody for being  
8 here, particularly Mr. Lester for coming.

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1 The State of Texas )

2 County of Harris )

3

4 I, Hipolita Lopez, Official Court Reporter in and  
5 for the Probate Court Number Four of Harris County,  
6 State of Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription of  
8 all portions of evidence and other proceedings requested  
9 in writing by counsel for the parties to be included in  
10 this volume of the Reporter's Record, in the  
11 above-styled and numbered cause, all of which occurred  
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
14 truly and correctly reflects the exhibits, if any,  
15 admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$334.00  
18 and was paid by Ms. Candace Curtis.

19 WITNESS MY OFFICIAL HAND this the 28th day of  
20 March, 2016.

21

22 /s/ Hipolita G. Lopez  
23 HIPOLITA G. LOPEZ, Texas CSR #6298  
24 Expiration Date: 12-31-16  
25 Official Court Reporter  
Probate Court Number Four  
Harris County, Texas  
201 Caroline, 7th Fl.  
Houston, Texas 77002



OFFICE OF STAN STANART
COUNTY CLERK, HARRIS COUNTY, TEXAS
PROBATE COURTS DEPARTMENT

CAUSE NO. 412,248

IN THE ESTATE/GUARDIANSHIP OF
NELVA E. BRUNSTING
[ ] INCAPACITATED PERSON
[ ] DECEASED
[ ] MINOR CHILD

§ IN PROBATE COURT
§§ NUMBER FOUR (4)
§§§ HARRIS COUNTY, TEXAS

Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

2011 NOV -9 PM 3:02

FILED

ORDER AUTHORIZING APPOINTEE FEES

On this day, the Court considered the application for payment of fees and expenses on behalf of

GREG LESTER

hereinafter referred to as "Appointee," who was appointed by Judge CHRISTINE BUTTS

on July 23, 2015 to serve in the capacity stated below.

The Court finds the requested fee in the amount of \$ 19,800.00 which represents an hourly rate of \$ 250.00 and hours worked being 79.2 and expenses in the amount of \$ 107.40

to be reasonable compensation and the services rendered to be necessary and that this request should be granted.

IT IS THEREFORE ORDERED that the fees and expenses are approved and taxed as costs in this case and that payment in the sum of \$ 19,907.40 shall be made to the appointee: [ ] by the personal representative from

funds of the estate; [ ] by the Treasurer of Harris County from county funds; or [X] other by the Estate of Nelva Brunsting by Successor Co-Trustees of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, and the Nelva E. Brunsting Survivor's Trust

Wiley of r&mb

The Court provides this information to the Harris County Clerk to assist with the reporting required by Texas Government Code Chapter 36:

Position of Appointee

- [ ] Attorney ad Litem
[ ] Guardian ad Litem
[ ] Guardian
[ ] Mediator
[ ] Competency Evaluator
[X] Other Temporary Administrator Pending Contest

Appointee's Relationship to Decedent or Proposed Ward

- [ ] Family member
[ ] Friend
[ ] Attorney
[ ] Public Guardianship Program
[ ] Private Professional Guardian
[X] Other

Signed this 8 day of November, 20 17

Christine Butts
Judge Presiding

NO. 412,249

ESTATE OF	§	IN THE PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

**ORDER AUTHORIZING PAYMENT OF ATTORNEY'S FEES AND EXPENSES  
FOR THE PERIOD AUGUST 1, 2015 THROUGH MAY 31, 2017**

On this day came on to be considered the Application of Gregory A. Lester, Temporary Administrator Pending Contest of the Estate of Nelva E. Brunsting, Deceased, for authority to pay attorney's fees and expenses incurred on his behalf with respect to the Estate of Nelva E. Brunsting, Deceased; and it appearing to the Court that the Estate of Estate of Nelva E. Brunsting, Deceased is indebted to MacIntyre, McCulloch, Stanfield & Young, LLP, for legal services rendered to and expenses incurred on behalf of Applicant for the period of August 1, 2015 Through May 31, 2017 in the amount of \$ 10,620.73, as listed and set forth in Exhibit "A2" which is attached to the Attorney's Fees Affidavit of Jill W. Young attached to said Application; and that these legal fees and expenses were necessary and reasonable and should be paid. It is accordingly,

ORDERED, ADJUDGED and DECREED that the above fees and expenses are approved and that payment in the sum of \$ 10,620.73 shall be made to MacIntyre, McCulloch, Stanfield & Young, LLP out of the assets of the Estate, and any holder of funds of the Estate is hereby directed to pay such sum upon presentment of this signed Order.

SIGNED this 8 day of ~~October~~ November, 2017.

Christine Butts  
JUDGE PRESIDING

**FILED**  
**NOV -9 PM 3:02**  
*Stan Stanant*  
 COUNTY CLERK  
 HARRIS COUNTY, TEXAS

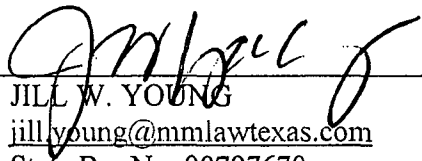
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NOV 09 2017

APPROVED:

MacINTYRE, McCULLOCH, STANFIELD  
& YOUNG, LLP

By: \_\_\_\_\_



JILL W. YOUNG  
[jill.young@mmlawtexas.com](mailto:jill.young@mmlawtexas.com)  
State Bar No. 00797670  
2900 Wesleyan, Suite 150  
Houston, Texas 77027  
(713) 572-2900  
(713) 572-2902 (Fax)

ATTORNEYS FOR APPLICANT

UNOFFICIAL COPY

**RECORDER'S MEMORANDUM:**  
At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

Conformed Copy

NOV 09 2017

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. \_\_\_\_\_

THE ESTATE OF: ) IN THE PROBATE COURT  
 NELVA E. BRUNSTING, ) NUMBER 4 (FOUR) OF  
 DECEASED ) HARRIS COUNTY, TEXAS

\* \* \* \* \*

MOTION FOR PARTIAL SUMMARY JUDGMENT  
 & JOINT MOTION FOR CONTINUANCE

\* \* \* \* \*

On the 5th day of September, 2018, the following  
 proceedings came to be heard in the above-entitled and  
 numbered cause before the Honorable Clarinda Comstock  
 Associate Judge of Probate Court No. 4, held in Houston,  
 Harris County, Texas:

Proceedings reported by Machine Shorthand

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

1  
2 ATTORNEY FOR APPLICANT, CARL BRUNSTING, IE:

3 Ms. Bobbie G. Bayless  
4 Attorney at Law  
5 SBN 01940600  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224

6 ATTORNEY FOR, ANITA KAY BRUNSTING-RILEY:

7 Mr. Stephen A. Mendel  
8 Attorney at Law  
9 SBN 13930650  
10 Mr. Timothy J. Jadloski  
11 Attorney at Law  
1155 Dairy Ashford  
Suite 104  
Houston, Texas 77079  
281.759.3213

12 CAROLE A. BRUNSTING, PRO SE:

13 5822 Jason Street  
Houston, Texas 77074  
cbrunsting@sbcglobal.net

14 ATTORNEY FOR DEFENDANT, AMY BRUNSTING:

15 Mr. Neal E. Spielman  
16 GRIFFIN & MATTHEWS  
17 Attorney at Law  
18 SBN 00794678  
1155 Dairy Ashford  
Suite 300  
Houston, Texas 77079  
281.870.1647

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VOLUME 1  
(Motions Hearing)

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1 September 5, 2018

2 PROCEEDINGS:

3 THE COURT: So, we are here on Cause  
4 Number 412249 in the 401, The Estate of Nelva E.  
5 Brunsting, Deceased.

6 And my understanding is we are here on  
7 Carl Henry Brunsting's motion for partial summary  
8 judgment; it was filed in July of 2015.

9 And also, the Defendants - Anita Brunsting  
10 and Amy Brunsting - have filed a joint motion for  
11 continuance regarding that partial summary judgment.

12 We have a lot of people in the room. If  
13 we could have announcements for the record, I'd  
14 appreciate that.

15 MR. MENDEL: Steve Mendel and Tim Jadloski  
16 for Anita Brunsting.

17 MR. SPIELMAN: Neal Spielman for  
18 Defendant, Amy Brunsting.

19 MS. BAYLESS: Bobbie Bayless for Carl  
20 Brunsting.

21 MS. CAROLE BRUNSTING: Carole Brunsting,  
22 Pro Se.

23 MS. BAYLESS: And, Judge, I filed some  
24 things yesterday - I don't know if they've made it to  
25 your desk. I brought copies.

1 THE COURT: Please approach.

2 Thank you. Okay. So, I've been handed  
3 the Objection To Attachment of Exhibit A To Defendants'  
4 Joint Response To Plaintiff's Motion For Partial Summary  
5 Judgment, a Response To Defendant's Joint Motion For  
6 Continuance Regarding Carl Brunsting's Motion For  
7 Partial Summary Judgment and the Response To Candace  
8 Curtis' Plea In Abatement.

9 I'm not going to be addressing the plea in  
10 abatement today - it wasn't set for hearing as far as I  
11 know; so, I'm going to set that one aside.

12 Has everyone received the other two  
13 pleadings?

14 MR. MENDEL: Yes, ma'am.

15 THE COURT: Okay.

16 MR. SPIELMAN: This morning, yes, ma'am.

17 THE COURT: Okay. Well, I guess we ought  
18 to address the motion for continuance first.

19 Mr. Mendel, would you like to?

20 MOTION FOR CONTINUANCE

21 ARGUMENT BY MR. MENDEL:

22 MR. MENDEL: Yes, ma'am.

23 The -- well, as the Court is aware -- and  
24 I'd like to go back in time a little bit.

25 There was a status conference back in

1 March of 2016. The Court indicated everybody needs to  
2 go to mediation. Everybody agreed to go to mediation.  
3 Everybody agreed to go before Judge Davidson. That was  
4 set for July 12th.

5 On July 5th, Candace, Plaintiff, and her  
6 boyfriend/significant other filed the federal court  
7 case. That cancelled the mediation. And essentially,  
8 everything just stopped pending the outcome of the  
9 federal proceedings as the --

10 THE COURT: I'm sorry. Let me just  
11 interrupt really quickly.

12 Are we anticipating that she's going to  
13 make an appearance here today - Ms. Curtis?

14 MR. MENDEL: I'm not. We haven't heard  
15 from her.

16 THE COURT: Okay. I'm sorry to interrupt  
17 you.

18 MR. MENDEL: And so, anyway, it took a  
19 while for the district court to render its opinion, then  
20 it went up to the Fifth Circuit.

21 Long story short - on or about June 6th,  
22 the court of appeals for the Fifth Circuit rendered an  
23 opinion in favor of all of the defendants. The -- and  
24 so really -- and then Carl Brunsting, I guess, refiled  
25 the motion that had previously been filed. And so, it's



1 really, I guess, time to kind of like put this thing  
2 back on the docket. And so, procedurally, that's kind  
3 of where we are.

4           So, you might also recall that a temporary  
5 administrator was appointed in the case back in July of  
6 '15. One of the tasks that was associated with that -  
7 the temporary administrator's responsibilities - was to  
8 evaluate the documents, and he rendered an opinion in  
9 January of 2016. He actually issued a report - an  
10 amendment or a supplemental to it - indicating that he  
11 considers these documents to, both, the Qualified  
12 Beneficiary Designation and the trust agreements, to be  
13 valid and that Nelva Brunsting was within her rights to  
14 exercise the power of appointments that were not only in  
15 those documents but are very common in a lot of  
16 estate-planning instruments.

17           And so, right now we have no temporary  
18 administrator on the file with regard to -- for the  
19 probate side in the case that involves Vacek & Freed.  
20 And so, the -- we believe that the case should be  
21 continued so that we can:

22           a) Discovery can move forward because it's  
23 been put on hold.

24           Our side wants some sort of a definite  
25 trial date. We circulated -- we didn't really have a

1 chance to discuss, but we drafted something this morning  
2 that, have a conversation with our colleagues about; but  
3 let's get a trial date; let's back into the, what the  
4 other deadlines need to be; put this case back on track.  
5 And at a more appropriate time when there's been an  
6 opportunity for some discovery, Carl Brunsting can  
7 reassert his motion for summary judgment and be heard.  
8 But we think it's premature to do it today.

9 THE COURT: What sort of discovery remains  
10 to be done? I know that this case has been on file for  
11 quite some time and for a lot of reasons.

12 MR. MENDEL: Well, depositions among  
13 parties. There's also the issue of whether or not the  
14 Vacek case gets transferred from the district court.  
15 There's, to my recollection, there's been no particular  
16 ruling on that.

17 THE COURT: That's correct.

18 MR. MENDEL: And so, if they're going to  
19 be involved, then -- are you here on the Vacek group?

20 UNIDENTIFIED PERSON: Yeah, I'm their  
21 lawyer.

22 MR. MENDEL: Okay. All right.

23 THE COURT: Would you like to make an  
24 announcement?

25 UNIDENTIFIED PERSON: I'm not making an

1 appearance. Andrew Johnson on behalf of Vacek &  
2 Freed --

3 COURT REPORTER: Say your name again,  
4 please, sir.

5 UNIDENTIFIED PERSON: Andrew Johnson.

6 COURT REPORTER: Thank you.

7 MR. JOHNSON: Not making an appearance.

8 MR. MENDEL: He just wanted to watch.

9 MR. JOHNSON: That's right.

10 MR. MENDEL: And there needs to be a  
11 decision with regard to whether or not that case is  
12 going to come over because if that case is going to come  
13 over, there's a discovery component over there. There's  
14 also a summary judgment that's hanging out over there in  
15 the district court side. So, from our perspective, we  
16 will feel like there's some procedural issues and some  
17 discovery issues that need to be resolved.

18 But the biggest thing on discovery is we  
19 want to pin down just exactly -- I think it would be a  
20 fair statement to say that the Plaintiffs tend to be a  
21 little bit all over the map about what it is they want,  
22 and we want to pin down just exactly what they're  
23 complaining about and take -- everybody be given a  
24 reasonable opportunity to take whatever depositions they  
25 want to take to propound any further written discovery



1 they want to propound - there's things that we want to  
2 do - and then let's come back. And I think as part of  
3 this case, some of this case can be resolved in summary  
4 judgment, but I just think it's premature to do it  
5 today.

6 THE COURT: How much discovery has already  
7 taken place? Have we already had some depositions?  
8 Have we -- my memory is that some written discovery has  
9 been exchanged.

10 MR. MENDEL: I didn't go back and look at  
11 everything that's transpired. Our office has not been  
12 involved in any depositions and it's -- the case is ripe  
13 to do that notwithstanding, from our perspective,  
14 whatever it is Candace Curtis might do as her next  
15 pleading besides her plea in abatement. But we want to  
16 take some depositions. We want to update some of the  
17 written discovery, and we believe there are certain  
18 issues that lend themselves to be narrowed, and we want  
19 to do that. And we're going to want to come back with  
20 motions for summary judgment, certainly as to the  
21 Plaintiffs' claims. And we think this case can be  
22 narrowed on summary judgment at a later date, but let's  
23 wrap up some discovery.

24 THE COURT: Who here is best situated,  
25 except Mr. Johnson, to speak about what's going on in

1 the district court case? Anyone?

2 MR. MENDEL: I'm going to just -- I'm just  
3 going to tell you what I recall from the March hearing  
4 if that's all right?

5 THE COURT: Well, I remember the March  
6 hearing.

7 MR. MENDEL: I know, you were there.

8 THE COURT: I was there.

9 MR. MENDEL: Nothing new has transpired  
10 since -- nothing's transpired.

11 THE COURT: It's been completely on hold?

12 MR. MENDEL: Everybody's been on hold.  
13 Mr. Vacek, and I think Ms. Kunz, were part of the  
14 federal court case; and so, everybody just -- I think it  
15 was kind of unspoken - we're not going to do anything in  
16 this case until that's resolved because it wasn't clear:  
17 Are we going to be over in federal court? Are we going  
18 to be over here? So, it's my understanding, and my  
19 colleagues are welcome to correct me including Mr.  
20 Johnson, I don't think anything's going on.

21 MR. JOHNSON: And I don't mind stating as  
22 a factual matter - the Carl Brunsting's claims in  
23 district court against my client and they've now said  
24 he's completely incapacitated. So, there's no  
25 representative of the estate at this point. There's no



1 one to bring claims against our client in district  
2 court. So, yeah, necessarily it's on hold right now.

3 MS. BAYLESS: There's an absence of a  
4 party over there because there's no temporary  
5 administrator here now. There's no personal  
6 representative of the estate. So, that case, in fact, I  
7 think it's got a couple -- at least one trial setting  
8 that's just -- it just rolls over because they can't do  
9 anything 'cause there's no party there.

10 MR. MENDEL: And I think there's a summary  
11 judgment hanging out there as well.

12 MR. JOHNSON: I believe we have a motion  
13 for sanctions that's been pending for two years that's  
14 stalled the motion for sanctions.

15 THE COURT: Against?

16 MR. JOHNSON: Against the parties --  
17 against Mr. Brunsting.

18 MS. BAYLESS: And for -- and just so the  
19 Court understands - it's a motion for sanctions because  
20 a transfer was asked, was requested, that that case come  
21 from district court over here that prompted a motion for  
22 sanctions. I think there was also pending a motion for  
23 summary judgment when the absence of the party became an  
24 issue; and so, that's never been responded to, that's  
25 never been addressed; the motion for sanctions has not

1 been addressed once until like I said, a transfer  
2 request.

3 MR. JOHNSON: And for the record - the  
4 motion for sanctions is not based on a transfer request,  
5 is that when we took Mr. Brunsting's deposition in that  
6 case, he didn't have any factual knowledge whatsoever to  
7 base any of his claims at all and that a few days later,  
8 Ms. Bayless comes and says, "I think he was  
9 incapacitated at that time." Never brought that up  
10 during the deposition at all. So, that's our basis for  
11 sanctions in the district court case.

12 MS. BAYLESS: He's read a different motion  
13 than I have, Judge. But the point is the motion speaks  
14 for itself, but that's what's going on. That case is  
15 just sitting there.

16 THE COURT: Okay. And what's the status  
17 of -- I mean, are there pleadings on file regarding the  
18 appointment of a successor administrator or --

19 MS. BAYLESS: In that case? The district  
20 court case?

21 THE COURT: Well, no, I guess that would  
22 be here, wouldn't it?

23 MR. MENDEL: There's nothing on file; is  
24 that correct?

25 MR. SPIELMAN: I'm speaking off the top of

1 my head which is, as you know, never a great idea.

2 I thought we had some competing motions  
3 that were put on -- that may have led to the appointment  
4 of Mr. Lester, and then those competing motions have  
5 basically been on hold pending what turned out to be the  
6 report and the mediation instruction and then the --

7 MR. MENDEL: And his term expired. He was  
8 just a temporary. So, we have, as Ms. Bayless  
9 indicated, we don't have anybody there, and somebody  
10 needs to be there.

11 MS. BAYLESS: And I don't know -- I think  
12 he had -- I think the temporary administrator had some  
13 communications with the Vacek & Freed counsel, but I  
14 don't know that they were about the cases. But I don't  
15 know that he ever -- did he enter an appearance?

16 MR. JOHNSON: I don't know.

17 THE COURT: I'd be surprised if he did.

18 MS. BAYLESS: And I don't know that -- I  
19 think he just kind of put it on hold because he knew he  
20 was temporary, he wasn't going to be there long.

21 THE COURT: Well, my memory is that he had  
22 very limited authority.

23 MS. BAYLESS: Right.

24 THE COURT: I don't think he had authority  
25 to make an appearance in other litigation.



1 MR. SPIELMAN: I think -- but again, I  
2 think he was maybe given some instruction to evaluate  
3 the documents and then sort of subsumed in that  
4 evaluation was - perhaps should that district, state  
5 district court case proceed, and if so, how? Again, I'm  
6 a little cobwebbed on that, but I think it's in the  
7 Court's order appointing him.

8 MS. BAYLESS: But whatever his authority  
9 was, it expired. And to my knowledge, he didn't take  
10 any action.

11 THE COURT: Okay.

12 MS. BAYLESS: I mean, I still get the  
13 notices. I'm not involved in the process, but I still  
14 get the notices. So, I don't think he filed any type  
15 appearance, but I could be wrong.

16 THE COURT: Okay. So, with regard to  
17 what's set today, the motion for summary judgment filed  
18 by Carl Brunsting here in this 402 -- 401, who is acting  
19 on Carl's behalf? Does he have capacity?

20 MS. BAYLESS: Attorney-in-fact is his  
21 wife.

22 THE COURT: Has there been any objections  
23 raised to that?

24 MS. BAYLESS: No.

25 THE COURT: Okay. Okay. Well, you know,

1 when I read these pleadings -- I'm sorry. I haven't  
2 really given you a chance to respond to everything  
3 that's been said on this side.

4 ARGUMENT BY MS. BAYLESS:

5 MS. BAYLESS: Well, in terms of the  
6 continuance, this really is an issue about what's in the  
7 documents and what happened based on what the documents  
8 authorize. There's no discovery that's needed to  
9 address this motion for summary judgment.

10 I don't disagree that the case has a long,  
11 drawn-out history with a lot of delays, but, you know,  
12 it is what it is. And during those periods, whether  
13 there was actually an abatement or whether it just would  
14 make no sense to try to get any discovery done, it's  
15 really an academic discussion. But the point is, we are  
16 where we are and this -- we got to get something moving.

17 My client desperately needs to have his  
18 trust assets available to him, and nothing is happening;  
19 and so, now that we -- the federal case is behind us,  
20 this has been on file for quite some time; and so, it  
21 seemed like a good way to get the process going. It's a  
22 partial motion. It obviously doesn't dispose of the  
23 whole case. So, those issues that remain in the case  
24 that keep the whole case from being disposed of, need to  
25 be addressed. I'm not saying that they don't.

1           But this is a very narrow issue on what  
2 the documents say and whether the documents can be  
3 followed. And they say, "We need all the discovery for  
4 the case." I don't disagree, but they don't need the  
5 discovery for this motion. They don't point to one  
6 thing - now that they don't have available to them to  
7 address the motion - which is what the rule requires if  
8 they're going to seek a continuance saying they don't  
9 have the evidence they need to respond to the motion.  
10 And so, you can't just say - we need a bunch of  
11 depositions in the case so that then we can come back  
12 and deal with it; you have to say what you need to  
13 respond to this motion, and there isn't anything. And  
14 so, it's quite -- seems quite natural that they haven't  
15 pointed to anything 'cause I don't think there is  
16 anything.

17           This motion, in its very limited scope,  
18 can be decided based on what's before the Court. And if  
19 they had some witness that they thought would impact on  
20 that response that they need to make, they should have  
21 brought forward the specifics of what it is that they  
22 need, and I haven't seen any of that.

23           So, I think the continuance should be  
24 denied.

25           And as to the issue of -- well, we haven't



1 really gotten into the merits of the motion, I suppose;  
2 but if you want to take the continuance first, then I  
3 can respond to whatever he says about the motion.

4           But their reliance - I will just say  
5 quickly - that their reliance on the temporary  
6 administrator's report is obviously not going to be  
7 something that this Court can rely on for determining  
8 the legal issue. You don't take expert testimony on  
9 legal issues, and he made a cursory report based upon a  
10 short period of time he was in the case. So, he doesn't  
11 decide the case - the Court decides the case; and the  
12 Court has to decide the legal issues that determine the  
13 case.

14           So, you know, that's the one document that  
15 they have attached to their response, and that's my  
16 objection to that.

17           THE COURT: Okay. Did you want to  
18 respond?

19           FURTHER ARGUMENT BY MR. MENDEL:

20           MR. MENDEL: Real quick.

21           a) The Court is free to take judicial  
22 notice of its pleadings, and we attached that for the  
23 Court's convenience.

24           You know, Mr. Lester ought to be deposed.  
25 We go depose him, and we can come back here on her

1 summary judgment, and we can set a short timeframe to go  
2 do that. He's right down the street, at least down the  
3 street from me.

4 THE COURT: Well, I don't know that  
5 deposing Mr. Lester is really, you know -- I would have  
6 to go back and look at the order appointing Mr. Lester  
7 and refresh my memory about all of the reasons why we  
8 went down that road. And, you know, to some extent, I  
9 think Ms. Bayless is correct in terms of it's the  
10 Court's job to look at the documents and make a ruling.  
11 And our approach - or my approach - to these types of  
12 motions for summary judgment that involve a heavy review  
13 of estate-planning documents is - I usually review the  
14 pleadings, come out for the hearing, listen to whatever  
15 argument is given, and then go back and really dig into  
16 the documents and see if I can make any determinations  
17 that don't involve fact issues, you know, regarding  
18 those documents and the issues that are pled.

19 So, I did not intend to make a ruling  
20 today on the partial motion for summary judgment because  
21 I would have to go back, and of course, Judge Butts  
22 would get involved in that review; and she is the one in  
23 this court with a lot of experience with the  
24 estate-planning angle; and she, ultimately, would be the  
25 one reviewing those documents and ruling on a summary



1 judgment related to them.

2           And looking at the pleadings that have  
3 been filed, and I just make a cursory review of your  
4 response because I haven't had time, really, to look at  
5 it thoroughly. It does seem like there are some fact  
6 issues involved in the motion and -- but I really, I  
7 really feel like it would be helpful for all of the  
8 litigation if somebody made a ruling on the documents.  
9 And it seemed like, you know, there was some tension  
10 between which Court was going to do that, and maybe Mr.  
11 Johnson can chime in about how the district court feels  
12 about this. But I don't know if the district court  
13 would prefer to have the probate court rule on that  
14 issue? I don't know if they have a preference one way  
15 or the other.

16           MR. JOHNSON: I'm unaware of one.

17           THE COURT: Okay. In my mind, it makes  
18 sense to have a probate court rule on the documents to  
19 the extent that it can, and I think a summary judgment  
20 is the appropriate vehicle to get that done. But I want  
21 to be cognizant of the fact issues, and I want to be  
22 able to determine what the fact issues are; and so, if  
23 you could, Mr. Mendel, if you can give me a little bit  
24 more feedback about what discovery needs to be done  
25 before we can rule, specifically, about the issue that's

1 been raised in the partial motion for summary judgment,  
2 that would help me.

3 ARGUMENT BY MR. SPIELMAN:

4 MR. SPIELMAN: Well, Your Honor, can I  
5 chime in real quick just 'cause I want to make sure that  
6 we're all on the same page.

7 I'm looking at the motion for partial  
8 summary judgment that Ms. Bayless filed on Carl's  
9 behalf, filed 7-9, 20-something. My eyes can't --

10 THE COURT: 2015.

11 MR. SPIELMAN: 2015. And it says on Page  
12 2, it identifies two summary judgment issues - one of  
13 them is what seems to be predominantly part of our  
14 discussion so far which is Ms. Bayless' or Carl's  
15 position that the Qualified Beneficiary Designation is  
16 null and void.

17 But the second issue that's pending in the  
18 summary judgment - if whether the disbursements in 2011  
19 of Exxon Mobile stock and Chevron stock were improper  
20 distributions. And I think that's raised in the joint  
21 response, but that is certainly an issue for which there  
22 are significant factual disputes for which there is a  
23 need to conduct significant discovery to determine the  
24 context of what happened, how it happened, who gave the  
25 instruction, why the instruction was given, so forth and



1 so on. And in that regard, that issue implicates  
2 virtually every single party to this case because you  
3 have people that received the distributions who, my  
4 recollection, is Ms. Carole Brunsting, my client, Amy  
5 Brunsting, and I don't remember specifically back, I  
6 think maybe even Anita, I'm not sure; and then you have  
7 the complaint that sort of underlies part of this case  
8 from Carl Brunsting and -- from Carl Brunsting that he  
9 didn't get what others got, and that is part of what  
10 this is all about.

11 So, as far as what additional discovery is  
12 needed to be done to deal with this motion, at least as  
13 to that second point - all of it needs to be done.  
14 There is not one single fact witness deposition unless  
15 you, perhaps, could use the Carl Brunsting deposition  
16 from the district court if you are allowed to do that  
17 procedurally, but that's now burdened by Ms. Bayless'  
18 description of Mr. Brunsting's condition at that  
19 deposition. So, we're nowhere.

20 In terms of whether Mr. Lester gets  
21 deposed or doesn't get deposed and whether or not his  
22 opinion in the report controls the outcome of issue  
23 number one, I mean, grant it, I'm not, you know, here in  
24 the probate court every day, but, you know, I submit  
25 summary judgment motions and summary judgment responses

1 that are based on expert reviews and expert testimony  
2 all the time. And while they may not be able to render  
3 an opinion on the specific legal issues, so for example,  
4 they couldn't say, "X" was negligent - they can  
5 certainly say all of the things that create the elements  
6 of negligence. And I'm using that as just an example,  
7 not that there's negligence pending in this particular  
8 case.

9                   And to that point, Judge, I think we can  
10 examine Mr. Lester to get, as an expert, if you want to  
11 call him an expert, as a appointee of the Court, to get  
12 his perspective on what he saw that led to his ultimate  
13 conclusions so that the Court can know what direction he  
14 went in.

15                   And to that point as well, I suspect there  
16 is also some information that can be obtained from the  
17 Vacek & Freed lawyers about what was going on at the  
18 time that Qualified Beneficiary Designation was prepared  
19 and entered that might speak to the issues about whether  
20 it's null and void, whether it was done in violation of  
21 other sections of the trust agreement, et cetera, et  
22 cetera.

23                   So, to speak to the specifics of what  
24 discovery is needed - again, Mr. Mendel has said it  
25 eloquently, but I'll say it specifically - all of it.

1 There has been some written discovery. My recollection  
2 is, is that some of the written discovery was issued to  
3 Candace Curtis, and I don't believe that's been properly  
4 responded to at all. And so, to the extent that we need  
5 information from that piece of the puzzle, we have none  
6 or at least we have none pending a hearing on whether or  
7 not her written discovery responses are proper or  
8 improper.

9                   And so, I'll just say that I don't think  
10 that this case is positioned for a ruling on any of the  
11 summary judgment issues; although, I would agree that  
12 that would be a useful ruling to make at the appropriate  
13 time. And I think the one thing that we can probably  
14 all agree to - or agree on - is that in some form or  
15 fashion, we can be inspired by today's proceeding to get  
16 some structure to this case where there is none.

17                   THE COURT: I would love to have some  
18 structure to this case. This case has been pending a  
19 very long time, and I would really like to get it  
20 moving.

21                   So, you seem to think that every  
22 deposition needs to be taken. Have any depositions been  
23 taken other than Carl Brunsting's deposition in the  
24 other case?

25                   MR. SPIELMAN: No, Your Honor, not unless



1 they were taken before we were involved.

2 FURTHER ARGUMENT BY MS. BAYLESS:

3 MS. BAYLESS: Well, Carole Brunsting has  
4 been deposed in a pre-suit deposition, but that's it.

5 And if I could respond a bit, Your Honor,  
6 to the suggestion that because in the motion for summary  
7 judgment also deals with some transfers that we allege  
8 were improper, that that requires a bunch of discovery.

9 The point of this motion - there are lots  
10 of other reasons why the transfers were improper in my  
11 mind that deal with a lot of fact issues - but this  
12 particular reason is because it violates the terms of  
13 the trust. Assets were paid to people other than the  
14 "survivor of the founders", as they're called in the  
15 documents.

16 One of the trusts said that that was for  
17 her benefit. These trusts were paid to other people --  
18 I mean, these amounts were paid to other people.

19 And then as to the second trust, the  
20 asset -- the principal of the trust was even paid out  
21 which was not to be paid out, and the income from that  
22 trust was to go to the surviving founder.

23 So, again, it's a document issue. It's  
24 not - what do these people have in their mind when they  
25 did this or didn't do that. That may well be an issue

1 that needs to be explored at some point in time. I'm  
2 not saying that it isn't - I'm suggesting that it is.  
3 But this particular issue is not based upon those kinds  
4 of things. It's no defense to the fact that they paid  
5 assets out of the trust that were unauthorized to  
6 payments because they had a good attitude about it or  
7 because they thought they needed to. The written  
8 discovery says that Anita pay these assets because her  
9 mother told her to. Her mother was not the trustee at  
10 that point; she was the trustee. So, they have to  
11 follow the terms of the trust. And this motion is all  
12 about that they did not do that. It doesn't have  
13 anything to do with the factual breach of fiduciary  
14 issues - it has to do with violating the document breach  
15 of fiduciary issues.

16 So, you know, I just -- I think if the  
17 Court reviews the motions -- reviews the motion, it will  
18 be pretty clear that it is limited to the question of  
19 whether the trust instruments were followed in these  
20 specific things that are covered by the motion.

21 Again, the broader case is a different  
22 issue, and I'm not arguing with you that there isn't a  
23 lot that needs to be done in the broader case. But as  
24 far as dealing with this particular issue, these  
25 particular issues, I think the Court has everything it

1 needs. And I don't really think that any of the things  
2 that these counsel have been saying are needed, are  
3 needed for this motion. They are needed in the case,  
4 yes; and the case will be going forward. But this  
5 motion is a motion that the Court can deal with based  
6 upon what is before it. It's all about the documents.

7 THE COURT: I'm not sure that that's  
8 really true. I do have concerns about whether -- I will  
9 need to look back at the documents. As I said, I've  
10 looked at them, but I really need to hone down and make  
11 a decision about whether that is true. But my sense,  
12 right now, is that there may well be some fact issues  
13 related to the trustee, what her, you know, how she was  
14 to get her direction from Nelva Brunsting, if at all,  
15 and what Nelva's rights were as a beneficiary under the  
16 trust, you know, in terms of those distributions. So, I  
17 need to look more closely at that.

18 MS. BAYLESS: I understand.

19 THE COURT: I am concerned jumping  
20 straight back into this after it's been on hiatus for so  
21 long. I'm concerned about getting it amped up again,  
22 ramped up again and getting things moving. I would kind  
23 of like to get a docket control order if we could get  
24 one signed today; is that a possibility? Can we talk  
25 about --



1 MR. MENDEL: I did a draft and circulated  
2 it to colleagues.

3 THE COURT: Do you have our form docket  
4 control order?

5 MR. MENDEL: No. No, Judge. We tarp --

6 a) Because there are people out of town,  
7 Anita Brunsting is out of town, Amy Brunsting's out of  
8 town, Candace Curtis is out of town - I would  
9 respectfully suggest it would be great if we could have  
10 a preferential setting. I was suggesting that we go the  
11 last two weeks of June and then back-up into what the  
12 deadlines need to be from there.

13 MS. BAYLESS: Can I address one issue?

14 THE COURT: You may, yes.

15 MS. BAYLESS: I'm a little bit concerned  
16 about the current status of who the parties are in the  
17 sense that the case that Candy filed in -- the original  
18 case that Candy filed in federal court, and this is  
19 dealt with in my response to their plea in abatement,  
20 which was remanded to this court and eventually was  
21 consolidated in this case.

22 THE COURT: I was going to confirm that  
23 with you guys today. That was my understanding, too;  
24 does anyone have a different understanding?

25 MS. BAYLESS: Yes, that is. In the

1 documents relating to that, are attached to that  
2 response I filed.

3           But the problem is we don't -- so, they're  
4 Plaintiffs. Candy is a Plaintiff; Carl is a Plaintiff;  
5 the estate, presumably, is a Plaintiff if it has a  
6 representative. But in particular, as between Carl's  
7 case and Candy's case - we don't agree on everything.  
8 And so, when they talk about the Plaintiffs did this and  
9 the Plaintiffs did that - I don't really know, you know,  
10 if that's something I'm supposed to respond to, if  
11 that's something Candy is supposed to respond to. So, I  
12 don't exactly know how to deal with that procedurally.

13           THE COURT: Well, if it makes you feel any  
14 better, I don't think of you two as the same party.

15           MS. BAYLESS: That makes me feel a lot  
16 better.

17           THE COURT: I mean, it's been clear to me  
18 that you guys have a somewhat different take on things;  
19 and so, I do consider you both to have your individual  
20 claims, if that helps.

21           MS. BAYLESS: Okay. I don't know, as we  
22 go forward, exactly how we're going to do that unless  
23 maybe we just all need to agree that we're going to call  
24 people by their names or something as opposed to  
25 "Plaintiffs" because otherwise, I'm not going to know

1 if they're accusing me of something or --

2 THE COURT: Well, I do think that it would  
3 be helpful if we refer to people -- there are just too  
4 many claims going in different directions not to refer  
5 to people by their names, and you know, they're good  
6 names, so let's use them. And you can refer to them as,  
7 you know, "Carl Plaintiff" or however.

8 MS. BAYLESS: Okay.

9 MR. MENDEL: I'd like to say that I would  
10 love nothing better than to leave here with a docket  
11 control order to the extent that it can be worked out  
12 with the Court now - that would be great.

13 THE COURT: We don't have -- I guess  
14 Candace Curtis is the only one we're missing. Usually,  
15 my -- our docket control orders are agreed, but under  
16 the circumstances, I mean, I can't force someone to come  
17 to court and participate. I don't mind, in a case like  
18 this, going ahead and setting a trial date just by way  
19 of management of our docket. And I think we do have  
20 some time available the end of June - it's actually  
21 about where I'm setting trials right now. I'm assuming  
22 this is going to be a jury trial; what do you think?  
23 And I'll preface that by saying:

24 Remember, we don't really have a  
25 courtroom. We're still sharing this courtroom with the



1 criminal court. We get, weeks like this, we get three  
2 days of having our courtroom while they're over in the  
3 criminal courthouse doing their jail docket; and so,  
4 it's very challenging for us to put together a courtroom  
5 for a jury trial. So, I would imagine that no matter  
6 what decision we make, there's somebody missing from the  
7 table, and that person can always chime in and say that  
8 they want a jury trial; is that fair?

9 MR. MENDEL: Fair.

10 MS. BAYLESS: There may already have been  
11 a jury demand made, Your Honor, I just can't remember.

12 THE COURT: Okay. Well, I have to treat  
13 this, then, as though it's going to be a jury trial.  
14 With that in mind, how much time do you think this case  
15 will need to be tried?

16 MR. MENDEL: A week.

17 MS. BAYLESS: He's an optimistic, Your  
18 Honor.

19 MR. MENDEL: You're right. With regard to  
20 the California Plaintiff, I'm not sure how quickly they  
21 can put on their side, but if we follow the rules --

22 THE COURT: I think --

23 MR. MENDEL: -- we got to get it.

24 THE COURT: -- I think that a case like  
25 this doesn't deserve more than a week, frankly. I think

1 it needs -- it's going to take some effort to control  
2 this case in a jury trial, and I think we're just going  
3 to have to make that effort. If we let it go for more  
4 than a week, we're going to have an angry jury and an  
5 angry courtroom and a lot of trouble finding space to do  
6 it. So, I'm going to limit it to a week, at least  
7 that's what I'm going to reserve; and so, maybe the last  
8 week of June would be a good time. How -- if we're  
9 going to set this the end of June, when do you think is  
10 proper for a deadline for motions for summary judgment?  
11 Because I want to get to the dispositive motions, and  
12 clearly, you can file them anytime. You can reset. And  
13 I haven't ruled on the continuance, but I think you know  
14 where I'm going. How soon do you think we can get back  
15 to that issue?

16 MR. MENDEL: Well, may I approach again?

17 THE COURT: Sure.

18 MR. MENDEL: This was a draft for talking  
19 purposes. We had set -- or we had proposed that a  
20 no-evidence motion for summary judgment not be filed  
21 until February 4th. You could file motions for summary  
22 judgment sooner. We had suggested that April 19th be  
23 the final day that they have to be heard. What we  
24 should probably do for purposes of today is pick what's  
25 the earliest date people can start filing their motions

1 for summary judgment.

2 THE COURT: Well, we already have motions  
3 on file, and I would, you know -- I mean, if we can get  
4 to a place where a ruling makes sense on a very narrow  
5 issue like the validation of this QBD, then I would like  
6 to get that done. Those are my main concerns up front  
7 or, you know, getting a ruling maybe on that and then  
8 getting a clear answer to the question of Carl's  
9 Brunsting's authority and status as the administrator.  
10 And I don't know -- you know, I'm going to have to rely  
11 on you guys to bring that --

12 MS. BAYLESS: Well, he's resigned, Your  
13 Honor.

14 THE COURT: Oh, he has resigned?

15 MS. BAYLESS: Yes. That is what prompted  
16 the fight over who would succeed him which then resulted  
17 in the temporary administrator being appointed. He is  
18 no longer -- that's why I'm not involved --

19 THE COURT: That's right.

20 MS. BAYLESS: -- in the district court  
21 case.

22 THE COURT: I'm remembering that now.

23 MS. BAYLESS: He's resigned.

24 THE COURT: Okay. Well, we need to work  
25 out -- because none of this can really go forward



1 without an administrator, can it?

2 MS. BAYLESS: Right. Well, I mean, it  
3 could go forward, but then a temporary administrator,  
4 whoever it is, is going to have to rely on what  
5 everybody else did or we're going to have to start over.  
6 So, I mean --

7 THE COURT: And then we're going to get  
8 back to the issue of how we're going to get that person  
9 paid because it's going to need to be a third party, and  
10 who in the world would want to jump into this?

11 MS. BAYLESS: Right. And I think that's  
12 partly what had you, I believe, sending us to mediation  
13 before there was a federal RICO case filed which stopped  
14 all that mediation; but frankly, as much as -- I mean,  
15 I'm here; I'm the one who set this motion. As much as I  
16 want this case to move forward, it has moved forward in  
17 the right way. And to just come in and say - well,  
18 okay, we're going to go to trial in June when we have no  
19 temporary administrator, we don't know what the status  
20 is of transfer or not transfer of that case, and that  
21 case needs to be dealt with by the temporary  
22 administrator and is going to probably impact their  
23 ability to do things under the time table that's set for  
24 this case, I mean, it's another -- anyway...

25 THE COURT: There are a whole bunch of

1 bright lawyers in this room; what is your suggestion for  
2 dealing with someone to have authority on behalf of the  
3 estate?

4 MR. MENDEL: I think we need to get a  
5 temporary administrator on board. I think the Court  
6 needs to make a decision about the district court case -  
7 either they're going to stay over there in district  
8 court or it's going to come over here. So, maybe what  
9 we ought to do is come back in two weeks and argue that  
10 motion. Mr. Johnson and his colleagues can come over,  
11 and this side can come back. We can final-lock it. If  
12 they're going to be in the case, finalize a docket  
13 control order on that date, reset, and maybe we can  
14 reach out. I don't know if Mr. Lester would come back,  
15 but we can inquire as to who might express an interest  
16 in possibly serving as an administrator and try and  
17 resolve all of that in two weeks.

18 THE COURT: The last time we went through  
19 this discussion, we got locked up on who is going to pay  
20 the administrator.

21 MR. MENDEL: I think the trust should pay  
22 the administrator.

23 MR. SPIELMAN: I was just going to mention  
24 that while I was reading, I may have missed everyone  
25 saying it.



1                   On Page 8 of Mr. Lester's report, he says:

2                   "A motion to transfer the district court  
3 matter to the probate court where both estates are  
4 pending, has also been filed but not yet ruled upon."  
5 So, I don't know if that's what you guys were talking  
6 about while I was reading, but it looks like there's  
7 something in this courtroom that hasn't --

8                   THE COURT: That's right.

9                   MR. MENDEL: It was here in March.

10                  THE COURT: That's what we were hearing in  
11 March, I think and --

12                  MR. MENDEL: That's correct; that was part  
13 of it. It was a status conference.

14                  MS. BAYLESS: It was sort of like this,  
15 Judge; we started out doing one thing, and we ended up  
16 covering a whole bunch of things. And, you know,  
17 unfortunately, then we come back, and we're kind of at  
18 the same place --

19                  THE COURT: Would you guys like to sit  
20 down?

21                  MS. CAROLE BRUNSTING: If I can say  
22 something, too.

23                  I'm Carole Brunsting. I'm Pro Se. I'm  
24 one of the beneficiaries.

25                  But I guess my concern as well is - it

1 just sounds like we're going to restart; we're going to  
2 go right down the same path.

3           If you really look at what's being fired  
4 [sic] her, we're going to surpass that, I know, in legal  
5 fees. And I've actually done my best to try to be a  
6 mediator to some of the parties just to find out - what  
7 would it take for you to just stop doing this or drop  
8 this part of it or what is it you want? I've even tried  
9 that; unfortunately, I've been unsuccessful not because  
10 of the Plaintiffs but just because I never seem to get  
11 what it is they're asking for. And so, this has just  
12 become a little frustrating because from my point of  
13 view, my parents put this trust in place so we could  
14 avoid probate court, and we've been here for seven,  
15 eight years now. And I lose track of what we're  
16 fighting over. And I guess I really don't understand  
17 who is it that can decide if this QBD is null and void.  
18 There's got to be someone, but it seems to be in my  
19 mind - I'm an accountant - seems to be very black and  
20 white; but it seems like it's a gray area, and I'm not  
21 sure I understand that because from my parents' point of  
22 view - this was very black and white for them because  
23 they talked about it all the time. So, I'm really  
24 struggling trying to figure out why some of these things  
25 can not be ruled on so we can just move on because it

1 sounds like we're getting ready to go right down that  
2 same rabbit hole we've been down three or four times,  
3 and there's a cost to that.

4 THE COURT: Yeah. Well I'm, you know, I  
5 would like to, as you said, put some structure to this  
6 case. I would like to be able to address that specific  
7 issue regarding the QBD early on if possible because I  
8 do think that that would help move things along.

9 MS. BAYLESS: You have my motion, Judge.

10 THE COURT: Yeah, but I struggle a little  
11 bit with whether or not I can go forward on the motion  
12 when I don't really have -- Carl's not really here, is  
13 he?

14 MS. BAYLESS: Well, and he wasn't involved  
15 in the document.

16 THE COURT: You don't have to stand.

17 MS. BAYLESS: Oh, okay. It's a force of  
18 habit. I mean, yes, he's -- I'm not sure what you mean  
19 about, "he's not really here."

20 THE COURT: Well, I mean, he's filing this  
21 as his role as administrator of the estate --

22 MS. BAYLESS: No. My motion is filed for  
23 him, individually, through his attorney-in-fact. There  
24 is not an estate issue. I'm not doing anything, and  
25 Carl's not doing anything on behalf of the estate. He



1 has resigned. He's not administrator. This is his  
2 issue as beneficiary.

3 THE COURT: Individually.

4 MS. BAYLESS: So, I mean, I can't -- it  
5 seems to me there are a couple of things. Even if a  
6 determination is made that there is a fact issue, you  
7 know, it seems like there could be some direction given  
8 in an order what those fact issues are so that the  
9 parties can focus on that, perhaps, and then bring back  
10 to the Court what is needed to try to resolve that  
11 issue. It may be that it can't be resolved. If you  
12 truly think there are fact issues that are going to  
13 require testimony from witnesses, that's normally going  
14 to mean a trial. I mean, how many times do you resolve  
15 something like that in a summary judgment? Even if you  
16 have the deposition, somebody's going to say something  
17 else in the deposition. So, you know, if you determine  
18 that this really can't be done on the face of the  
19 documents without testimony from fact witnesses - and  
20 Carl wouldn't be one of those anyway because he was not  
21 involved - then I don't -- you know, we're going to be  
22 trying that issue. But I guess if everybody knows  
23 that --

24 THE COURT: Well, it sounds like the other  
25 side, and I don't want to put words in your mouth, but

1 has indicated that that's something that can be decided  
2 on summary judgment, ultimately; is that fair?

3 MR. MENDEL: Ultimately. But my  
4 recollection of the pleadings is that there's been a  
5 challenge as to Nelva's capacity which would call into  
6 question whether or not what she -- whether the QBD was  
7 valid at the time of inception. And we still have the  
8 empty chair with regard to who is going to fill in the  
9 administrator's role and --

10 MS. BAYLESS: Can I? I mean, maybe this  
11 is crazy, Judge, but I hate to bring up the "M" word  
12 again but, you know, people have now waited -- I mean,  
13 Carole is an example. Carl certainly needs his trust.  
14 Carole needs -- I would assume Amy and Anita need their  
15 trust. I don't know what Candy needs other than to  
16 fight with everybody. But, you know, maybe --

17 THE COURT: You know, I said back at that  
18 status conference in March that it would be really nice  
19 if everybody could get together and try to reach an  
20 agreement through mediation, and if you had the right  
21 mediator, maybe you could get there. I'm now a little  
22 reluctant to get anyone else involved who might become a  
23 target through this litigation.

24 MS. BAYLESS: Right.

25 MR. MENDEL: Judge, I don't -- I'm fine

1 with a mediation. You know, I think the Court strongly  
2 suggested, and everybody took the hint, that we needed  
3 to go do this. I think it needs to be a flat-out court  
4 order with a dropdead - this is your mediator; this is  
5 your deadline to get it done.

6 MS. CAROLE BRUNSTING: I disagree.

7 THE COURT: Why do you disagree?

8 MR. MENDEL: But -- let me add the other  
9 part to that.

10 I still want a trial date because we  
11 didn't have a trial date back then; and so, if that  
12 mediation is not successful, I don't want to come back  
13 down here and get a trial date. I want us to define  
14 what, as you said, the structure of moving forward; and  
15 if it doesn't settle - it doesn't settle, but we're  
16 going to go propound the discovery we want, seek the  
17 testimony that we want with or without the mediation. I  
18 mean, so we can have a fall mediation date; I'm totally  
19 fine with that, but I still want a date.

20 MS. BAYLESS: I mean, Carole has just said  
21 she's been trying to kind of mediate with people and get  
22 this moving forward, but now she's saying she doesn't  
23 want. So, can you explain?

24 MS. CAROLE BRUNSTING: My concern with  
25 mediation is I have such a bad taste in my mouth with



1 the mediation that took place four or five years ago and  
2 because of all of the parties involved. If you were  
3 talking maybe two or three people, you might have a  
4 chance. Because you're talking five, and because nobody  
5 really knows -- and I guess the way that they're set up  
6 to where everybody's separated and nobody knows what the  
7 other one is talking about. And, really, people in my  
8 family are fairly intelligent, and I think they kind of  
9 figured that out. But it's just, in my mind, I'm  
10 sitting there, and I'm thinking I don't even know why  
11 I'm there because I'm struggling with understanding even  
12 why we're here and what my role is in all of this. And  
13 but to me, too, because, again, everything is kind of  
14 black and white - nothing seems to ever get ruled on  
15 here, so I can never resolve anything in my own mind  
16 because I'm like -- I'm the kind of person, I'm  
17 thinking - okay, if the QBD is null and void, okay, that  
18 tells me how to go forward. If it's not null and void,  
19 that tells me how to proceed because I'm trying to be  
20 right not wrong.

21                   And the same thing with these  
22 distributions that took place in 2011 because I received  
23 one. When I found out that it was possibly it was done  
24 improperly, but I've been told by the mediator - mine  
25 was not; mine was done differently. But I offered to

1 return it. I was going to just return it. If it was  
2 done improperly, fine, I didn't have a problem with just  
3 returning it so we can move on because I was afraid that  
4 after reading books about what can happen in cases like  
5 this that go on and on and on where people end up with  
6 nothing, I was just trying to mediate it from the  
7 beginning of --

8 THE COURT: Well, so you have a bad taste  
9 from the last mediation and therefore you don't want to  
10 try that again.

11 MS. CAROLE BRUNSTING: I'm afraid to try  
12 it again.

13 THE COURT: So, if you put yourself and  
14 all of your siblings in one room, what do you think  
15 would happen?

16 MS. CAROLE BRUNSTING: One room might be  
17 better than separating everyone because after speaking  
18 with some of them afterwards, I found out that people  
19 were being told different things and --

20 THE COURT: Well, I've seen some of the  
21 emails that have gone back and forth between the  
22 parties, and they're not nice.

23 MS. CAROLE BRUNSTING: No, they're not.

24 THE COURT: So, I can see where a mediator  
25 might have problems putting everybody together to try to



1 have a different structure to mediation. And I'm not  
2 saying, you know, I'm not going to control how a  
3 mediator handles their mediation. I know that a lot of  
4 mediators have different styles, and some styles work  
5 with certain parties and some don't; and in a case like  
6 this, I would want to have -- and that's why I suggested  
7 Judge Davidson because he has a very strong personality,  
8 and he would have control, I guess, of the mediation.

9 MS. CAROLE BRUNSTING: But I think the  
10 sticking point is people want to know - is it valid? Is  
11 it not valid? Before you can agree to anything. What  
12 am I agreeing to? Because if it's not valid, then  
13 that's one thing, and that's what they want to know. If  
14 we've gone this far in fighting all these points --

15 THE COURT: And I get that it's real black  
16 and white to you, and you have your opinion about how,  
17 you know, that should be ruled upon; but procedurally,  
18 if we don't jump through the hoops that we need to jump  
19 through to get that decision made, then it's going to go  
20 up on appeal, and it's going to be an ongoing fight. I  
21 mean, that might be the destiny of this case anyway. I  
22 don't know. But I think that we have to jump through  
23 some procedural hoops to get to that ruling, and I'd  
24 like to have as clean a ruling as possible. I do think  
25 that we could get to a summary judgment ruling on a very

1 narrow issue related to those documents. And I'd like  
2 to, you know, look at that.

3 COURT'S RULING:

4 THE COURT: I'm at the end of the hour  
5 that I slotted in this case. As I recall, this case  
6 always takes a lot of time.

7 And so, I need to -- I think what I'd like  
8 to do is go ahead and grant the continuance. I want to  
9 give us a little more time, but I don't want to put this  
10 issue off forever. So, let's try to continue your work  
11 to try to get dates pinned down for a docket control  
12 order. And I'm happy to address that on submission.  
13 Even if you can't get an agreement from everybody, I  
14 think that we need to get a trial date set. So, if you  
15 would work with your co-counsel and include Ms. Curtis.  
16 I know that she's not here today. But if you could let  
17 her -- make her aware that we're circulating a docket  
18 control order. It won't be agreed. Don't call it,  
19 "agreed," and we'll get it on the docket, and then you  
20 know, we need a starting point.

21 I'm sort of inclined to push it out a  
22 little further than June, and that's just because I want  
23 to be able to get, you know, make sure we have courtroom  
24 space and that we have sufficient time to get everything  
25 done and we're not resetting it and punting it further



1 down the line. Does anyone disagree with that?

2 MR. SPIELMAN: The only thing I would say,  
3 Judge, and of course, I'd have to consult with my client  
4 as well, but I don't -- she's a -- she has been a school  
5 teacher. I know she does some year-round work, too; so,  
6 I don't know that one month is better than the other.  
7 But I know that in the past, she has told me that a  
8 summer setting would be better for her.

9 THE COURT: Got it. Okay. Well, if you  
10 want to do -- if you want to shoot for the last week of  
11 June, I believe that's open, and we can do that. So,  
12 work together and try to backup some dates from that.  
13 Try to come with a date when we can reset this motion  
14 for summary judgment; and in the meantime, I'll be  
15 looking at this and talking to Judge Butts about it and  
16 see if we can narrow it to an issue that maybe we can  
17 get a ruling on. I want --

18 With regard to the discovery, do we need  
19 to put anymore stringent deadlines in place other than  
20 just the discovery deadline or do you think you're going  
21 to be able to move forward and get the discovery done  
22 that's necessary?

23 MR. MENDEL: There needs to be a deadline.

24 THE COURT: On the DCO, there will be a  
25 deadline, but I mean, some cases require a little

1 more --

2 MR. MENDEL: A little more structure? I  
3 guess we should visit about that.

4 One of the things that's going to impact  
5 that, which I would still like to come back in a couple  
6 of weeks, is to address that motion to transfer. I  
7 think that needs to be resolved because that's going to  
8 impact the case.

9 THE COURT: Is it fair to call the  
10 district court case a "malpractice case"?

11 MR. JOHNSON: I guess so. Our position  
12 would be - it would make more sense to get the estate  
13 representative appointed first who can very well step in  
14 and say - that case is frivolous; dismiss it anyway  
15 before it gets transferred.

16 THE COURT: We need an administrator.

17 MR. MENDEL: That's the second point. So,  
18 why don't we come back in two weeks with the Court's  
19 permission and address the issue of the administrator,  
20 and I guess that administrator can evaluate whether or  
21 not that district court case goes forward. We have an  
22 empty chair we need fill.

23 MS. BAYLESS: I guess the other, unless --  
24 well, that didn't accomplish much before. I realize it  
25 needs to be done, but the other way, I guess, to deal

1 with that so that the case can continue moving forward,  
2 be to sever the estate's claims in this case. And then  
3 if some of these people -- if stuff gets flushed out in  
4 discovery, or whatever, we come back with motions that  
5 relate to the beneficiaries' claims, we leave the estate  
6 out of it...

7 THE COURT: Who filed the motion to  
8 transfer?

9 MS. BAYLESS: I think I did.

10 THE COURT: And who is opposed to it?

11 MS. BAYLESS: They are.

12 THE COURT: You're the only one opposing  
13 it? Nobody else is -- are you guys in agreement that it  
14 should be transferred?

15 MS. BAYLESS: I think Candy may have also  
16 filed a motion to transfer.

17 MR. MENDEL: I think it should be in the  
18 case. I think it should be here.

19 MS. BAYLESS: I think they're opposed.  
20 Even if it's transferred, they're opposed to it being in  
21 the same case, am I right?

22 MR. JOHNSON: I don't know off the top of  
23 my head.

24 THE COURT: I think it would be  
25 transferred as a different sub docket.



1 MS. BAYLESS: Anyway, it could be that the  
2 estate's -- again, that might weigh in favor of the  
3 severance of the estate's claims into a different action  
4 or with that action. I don't know. But I don't see how  
5 we get a trial setting without an administrator if the  
6 estate is still in this case.

7 THE COURT: Okay. I want a trial setting  
8 just because I need a deadline.

9 MS. BAYLESS: I understand the point.

10 COURT'S FURTHER RULING:

11 THE COURT: So, let's go ahead and get it  
12 set for trial just so that we have something out there  
13 to target. I don't want to set the hearing yet on the  
14 transfer; I want to be able to talk to Judge Butts about  
15 it first or regarding the administrator. So, let me  
16 visit with Judge Butts about that, and I'll circle back  
17 with you guys and see when we can get those issues  
18 scheduled.

19 And in the meantime, if you could work on  
20 a DCO and some deadlines with that last week of June in  
21 mind, I would appreciate that. The pretrial would need  
22 to be probably the prior week. We can do it the  
23 prior -- I think we can do it the prior Monday at 2:30.

24 MS. BAYLESS: Is June the only -- with the  
25 idea of a little bit more time to sort some of these

1 issues out, is there like an August date?

2 THE COURT: I don't know what time she'd  
3 be going back to class, it's probably mid-August; would  
4 that be fair? I have some teachers that start like the  
5 second week of August.

6 MS. BAYLESS: Or July.

7 MR. SPIELMAN: It's San Antonio, so I'm  
8 not sure.

9 MR. MENDEL: The last week of July starts  
10 on the 29th and runs through August 2nd.

11 THE COURT: How much time do you think  
12 pretrial would take in this case? I probably need to  
13 give you a full afternoon for pretrial.

14 MS. BAYLESS: I predicted an hour for this  
15 hearing, so don't ask me.

16 THE COURT: Okay.

17 MR. MENDEL: I'm deeply concerned about  
18 the last week of July because if this case rolls over  
19 into the following week, I've already paid money for a  
20 vacation with my wife.

21 THE COURT: Okay. We're not going to do  
22 that. Then let's -- can we back it up to two weeks  
23 prior to that?

24 MR. MENDEL: That's fine with me.

25 THE COURT: Anybody else have a problem

1 with that?

2 MS. BAYLESS: Sometime in mid-July?

3 THE COURT: Yeah. I don't want to back it  
4 up too far because then we're going to be into the 4th  
5 of July holiday.

6 MR. MENDEL: What if we had a setting the  
7 week of the 15th and pretrial on the 8th?

8 THE COURT: Okay. I don't want to put you  
9 in on a 2:30 setting; I'm afraid we'll be here 'til  
10 midnight. So, let's do it on the 11th, 9 a.m. So, it's  
11 July 11th, '19, 9 a.m. for pretrial. And then your  
12 pretrial order would be due the Friday before that which  
13 is --

14 MS. BAYLESS: The 4th.

15 MR. MENDEL: The 5th. Why don't we move  
16 it to the 8th so that we're not into the 4th of July.

17 THE COURT: Okay. That's fine. So, let's  
18 just say by noon.

19 MR. MENDEL: That's fine. And then  
20 pretrial conference on 7-11 at 9 a.m.

21 THE COURT: And then 7-15 was our trial  
22 date.

23 What I've been doing with these cases is  
24 calling the parties about a month out. I think I'm  
25 going to have a better chance of actually logging down a



1 courtroom if I can, if I can announce the case is  
2 trial-ready 30 days prior to the setting so keep that in  
3 mind. I'm going to be calling five weeks prior to and  
4 asking if we're going to be trial-ready because if I can  
5 make that announcement, I have a pretty good chance of  
6 getting a courtroom. So, work with me on that.

7 MS. BAYLESS: So, are you just going to go  
8 ahead and issue a docket control order based on this  
9 date -- I mean, don't you have what you need to --

10 THE COURT: For the DCO? No, I need all  
11 of the discovery dates.

12 MR. MENDEL: This is to help us start.  
13 We'll fill this in and start circulating it.

14 MS. BAYLESS: Okay.

15 THE COURT: So, how long do you think you  
16 need to sort out these dates and get that back to me?

17 MR. MENDEL: Is a week okay?

18 THE COURT: That's fine. So, by the end  
19 of -- let's just say by the end of next week, you can  
20 email that document to me; I'll confirm all the dates  
21 and get it on the calendar and get it signed. And like  
22 I said, you know, circulate it to everyone.

23 And consider mediation. You know, I'm  
24 going to need a mediation deadline. So, I know that you  
25 don't want to go down that route but --

1 MS. CAROLE BRUNSTING: I'm not saying  
2 that, it's just you can't just say go to mediation. I  
3 really think if you had it spelled out that this is what  
4 mediation is because last time we were just tossed in a  
5 room, somebody came to me, shoved a number in my face  
6 and that was my mediation. And nothing's explained;  
7 nothing was organized. It was just -- and also, the  
8 mediator seemed to have already made up his mind as to  
9 who he liked/he didn't like, and I was like, "this is  
10 mediation?" So, I think if it was a bit more structured  
11 and people knew a little bit of what was going on and  
12 people were talked to in advance, we'd have a better  
13 idea maybe so; but I'm just basing everything off of  
14 what happened the last time.

15 THE COURT: Okay. Well, maybe what we  
16 need is an order to mediate as you guys have suggested,  
17 and if you can maybe, I don't know, talk about some  
18 rules if you want to put some guidelines in your order,  
19 I can consider that. But as I've said, I don't want to  
20 put a whole lot of restrictions on our mediator because  
21 mediators have different styles. And if you need us  
22 to -- I mean, probably, you're not going to reach an  
23 agreement again regarding the mediator; does anyone  
24 object to going back to Judge Davidson if he will now  
25 agree to handle it?

1 MR. SPIELMAN: Well, Judge Davidson was  
2 not the first mediator that did the mediation.

3 THE COURT: I know. But he was the one  
4 that we suggested and --

5 MR. SPIELMAN: I think everybody had  
6 agreed to Judge Davidson back then, so I wouldn't see --

7 MR. MENDEL: We had a date.

8 MR. SPIELMAN: -- I wouldn't see a need to  
9 reopen that issue.

10 THE COURT: Okay.

11 MR. SPIELMAN: But I would ask -- I want  
12 to get a quick clarification.

13 If we're going to try to get the DCO  
14 worked out by the end of the week, and if we can't reach  
15 consensus, we're emailing it in, are we putting it on a  
16 submission docket if there's no consensus or just  
17 emailing?

18 THE COURT: No, you're just emailing it  
19 in. I do not anticipate that there's going to be  
20 consensus. I'm giving you some latitude to not have  
21 conflicts with your schedules, and I'm just going to  
22 have to order it.

23 MR. SPIELMAN: Okay. Thank you.

24 COURT'S FURTHER RULING:

25 THE COURT: Okay. Should I sign -- I'm



1 going to go ahead and sign the order granting the  
2 continuance for today's hearing. And as you guys talk  
3 about your deadlines, if you would get back to me with  
4 some suggestions. And I'm not saying that we're going  
5 to accept them.

6           If you can provide some suggestions for  
7 when we can get this back on our calendar, I'd  
8 appreciate that. And if it has to be in the DCO, just  
9 shoot me your ideas by email, and we'll think about  
10 that; fair enough?

11           MS. BAYLESS: Shoot you our ideas by email  
12 about what?

13           THE COURT: About when we can get the  
14 motion for summary judgment back on the calendar. How  
15 long do you think we're going to need to be ready to  
16 make a ruling on some of that.

17           MR. MENDEL: Okay.

18           THE COURT: Okay. I'm going to strike the  
19 language regarding the dispositive motions in the docket  
20 control order, and I'm just going to leave that open  
21 and wait to hear back from you; is that fair or?

22           MR. MENDEL: That's fine, Judge. You're  
23 striking the last sentence?

24           THE COURT: Uh-huh. I don't want to be  
25 limited to whatever we put into the docket control

1 order; I want to be able to address it when we're ready  
2 to address it.

3 MR. MENDEL: That's fine.

4 THE COURT: Okay. Have you had a chance,  
5 Ms. Bayless, to see this order? It's pretty  
6 straightforward. It just continues. I've stricken the  
7 last sentence. Fair enough?

8 MS. BAYLESS: That's fine.

9 THE COURT: Okay. And stay in touch with  
10 me, and let's try and get this moving.

11 MR. MENDEL: Okay. Thank you, Judge.

12 THE COURT: Anything else we need to  
13 address today?

14 MR. MENDEL: No.

15 THE COURT: Okay. Thank you.

16

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1 The State of Texas )  
 2 County of Harris )

3  
 4 I, Hipolita Lopez, Official Court Reporter in and  
 5 for the Probate Court Number Four of Harris County,  
 6 State of Texas, do hereby certify that the above and  
 7 foregoing contains a true and correct transcription of  
 8 all portions of evidence and other proceedings requested  
 9 in writing by counsel for the parties to be included in  
 10 this volume of the Reporter's Record, in the  
 11 above-styled and numbered cause, all of which occurred  
 12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
 14 truly and correctly reflects the exhibits, if any,  
 15 admitted by the respective parties.

16 I further certify that the total cost for the  
 17 preparation of this Reporter's Record is \$370.50  
 18 and was paid by Ms. Candace Curtis.

19 WITNESS MY OFFICIAL HAND this the 23rd day of  
 20 September, 2018.

21  
 22 /s/ Hipolita G. Lopez  
 HIPOLITA G. LOPEZ, Texas CSR #6298  
 23 Expiration Date: 12-31-18  
 Official Court Reporter  
 Probate Court Number Four  
 24 Harris County, Texas  
 201 Caroline, 7th Fl.  
 25 Houston, Texas 77002

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. \_\_\_\_\_

5	THE ESTATE OF:	)	IN THE PROBATE COURT
6	NELVA E. BRUNSTING,	)	NUMBER 4 (FOUR) OF
7	DECEASED	)	HARRIS COUNTY, TEXAS

\* \* \* \* \*

MOTION TO COMPEL THE DEPOSITION OF CANDACE  
KUNZ-FREED/MOTION TO QUASH/MOTION FOR PROTECTION

\* \* \* \* \*

18 On the 24th day of January, 2019, the following  
19 proceedings came to be heard in the above-entitled and  
20 numbered cause before the Honorable James Horwitz  
21 Associate Judge of Probate Court No. 4, held in Houston,  
22 Harris County, Texas:

24 Proceedings reported by Machine Shorthand



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

1  
2 ATTORNEY FOR APPLICANT, CARL BRUNSTING, IE:

3 Ms. Bobbie G. Bayless  
4 Attorney at Law  
5 SBN 01940600  
6 2931 Ferndale  
7 Houston, Texas 77098  
8 713.522.2224

9 ATTORNEY FOR, AMY BRUNSTING:

10 Mr. Neal Spielman  
11 Attorney at Law  
12 SBN 00794678  
13 Griffin & Matthews  
14 1155 Dairy Ashford, Suite 300  
15 Houston, Texas 77079  
16 281.870.1124

17 ATTORNEY FOR ANITA BRUNSTING:

18 Mr. Timothy J. Jadloski  
19 The Mendel Law Firm, L.P.  
20 Attorney at Law  
21 SBN 24085994  
22 1155 Dairy Ashford, Suite 104  
23 Houston, Texas 77079  
24 281.759.3213

25 CAROLE A. BRUNSTING, PRO SE:

5822 Jason Street  
Houston, Texas 77074  
cbrunsting@sbcglobal.net

ATTORNEY FOR CANDACE KUNZ-FREED:

Ms. Zandra Foley  
Thompson, Coe, Cousins & Irons, LLP  
Attorney at Law  
SBN 24032085  
One River Way, Suite 1400  
Houston, Texas 77056  
713.403.8210



VOLUME 1

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1 January 24, 2019

2 PROCEEDINGS:

3 THE COURT: So, today in Case Number  
4 412,249 in the 401, The Estate of Nelva E. Brunsting.

5 We have Anita Brunsting's motion to compel  
6 the deposition of Candace Kunz-Freed and Candace  
7 Kunz-Freed's motion to quash and the motion for  
8 protection.

9 So, what I'd like to do in this proceeding  
10 is first hear the motion to compel; who would like to  
11 speak on that behalf?

12 MR. JADLOSKI: I can, Your Honor.

13 THE COURT: All right. Go right ahead,  
14 sir.

15 MOTION TO COMPEL

16 ARGUMENT BY MR. JADLOSKI:

17 MR. JADLOSKI: We filed -- first of all,  
18 Your Honor, we asked for a deposition of Ms. Kunz-Freed.  
19 She is the attorney who prepared the QBD - the Qualified  
20 Beneficiary Designation, a trust document - that would  
21 be the focus of this deposition that we requested. And,  
22 essentially, Your Honor, she was, both, the attorney who  
23 drafted the document and the notary on the document.  
24 So, she would be the only one that could testify as to,  
25 both, the sort of the validity of the document, why the

1 document was drafted the way it was, and would also be  
2 the only one to testify as to the decedent's capacity at  
3 the time that she signed the documents.

4           So, our basic position is that she's not  
5 only the best witness for this information - she's the  
6 only witness for this information; and we have to have  
7 that information in order to respond to Carl Brunsting's  
8 argument that the QBD is not enforceable.

9           So, that, in a nutshell, is our reason  
10 that we need the deposition, Your Honor.

11           THE COURT: All right. Do you have a  
12 response?

13                           ARGUMENT BY MS. FOLEY:

14           MS. FOLEY: Yes, Your Honor.

15           I'm Zandra Foley; I represent Ms. Freed  
16 who is the non-party witness that they're trying to  
17 compel.

18           And if I could give you a little  
19 background about the case, 'cause it's kind of long, and  
20 I'm not sure how much you've been able to read.

21           THE COURT: I'm kind of -- been trying to  
22 catch up. It is intertwined with other matters.

23           MS. FOLEY: It is. So, I'll keep this  
24 brief.

25           THE COURT: You take as much time as you



1 need, Counsel. Please feel free to sit.

2 MS. FOLEY: I actually do better when I  
3 stand 'cause I'm a hand-talker.

4 Okay. January 29th, 2013 - that's when my  
5 client was originally sued. She was sued in district  
6 court, and that was when Carl Brunsting was the executor  
7 of the estate at that point in time represented by Ms.  
8 Bayless. They chose to file that lawsuit in district  
9 court, the 164th, and they proceeded to litigate that  
10 lawsuit for two years. And in August of 2013, we did  
11 the written discovery, got verified responses to  
12 interrogatories from Mr. Brunsting --

13 THE COURT: Now, excuse me for  
14 interrupting you. But the subject matter of that was a  
15 malpractice claim?

16 MS. FOLEY: Malpractice claim. But  
17 essentially, similar to the claims being made in the  
18 probate matter regarding whether or not Ms. Brunsting  
19 had capacity; however, the allegation against my client  
20 is that she should have, in that lawsuit, that she  
21 should have known she did not have capacity and as a  
22 result breached various duties, you know, duties for  
23 negligence, breach of fiduciary duty, DTPA, et cetera.

24 So, we litigate that case. We're doing  
25 written discovery. They designate experts.

1                   And then in February of 2015, we decide to  
2 take Mr. Brunsting's deposition as the executor. We go  
3 to that deposition on February 3rd. He is deposed for  
4 three hours.

5                   THE COURT: Which year of February, 3rd?

6                   MS. FOLEY: 2015.

7                   THE COURT: Okay.

8                   MS. FOLEY: So, it's 2015, February 3rd.

9 He is deposed for three hours. I asked him every  
10 question related to: What are your claims? What  
11 evidence do you have of these claims? What did you see?  
12 Hear? What can you tell me? And he, essentially, said,  
13 "Nothing." That was generally the answers. He didn't  
14 have any evidence to backup any of these claims. After  
15 that deposition was over, sometime later, I get a call  
16 from Ms. Bayless telling me, "Oh, you know what - I  
17 don't think Mr. Brunsting had capacity when he said all  
18 that stuff to you."

19                   Now, my guess is already -- I'm trying to  
20 come up with my motion for summary judgment 'cause I'm  
21 trying to get this case dismissed for my client because  
22 there is no evidence to backup any of these claims.

23                   And then later, once we get the return  
24 from the -- they returned their deposition, the errata  
25 sheet, instead of being changes or corrections, what we



1 get is a letter from Ms. Bayless basically saying - yes,  
2 I don't think he had any capacity. He really didn't  
3 know anything and basically this deposition has no  
4 value. She says that having not made a single objection  
5 during that deposition, not saying anything about - oh,  
6 I think he may not have capacity of anything; as a  
7 matter of fact, said that he was, in fact, the executor  
8 and that he could give his deposition. So, when we're  
9 trying to gear up to get the case dismissed, then all of  
10 a sudden in March of 2015, she's - after she sends this  
11 letter - she let's us know what she's going to do now is  
12 have him resign as the executor. So, she files that in  
13 this court which, again, my client is not a party to  
14 this case - we're in district court - and then has the  
15 Court here remove him as the executor. And, now, of  
16 course, what happens in my case, it comes to a  
17 screeching halt. We can't do anything as a result of  
18 that because there is no executor to pursue the claim.

19 So, now, 2019, we've been through two  
20 presidents, and my client is still a party in that  
21 lawsuit - not this one - not able to do anything about  
22 trying to move her case along, to make efforts to get it  
23 dismissed, and to do anything to even just have a trial  
24 on the merits.

25 There was a motion that was filed in this

1 court to consolidate our case here, but again --

2 THE COURT: Who filed that motion?

3 MS. FOLEY: I believe Ms. Bayless filed it  
4 initially and maybe others then jumped in. But the deal  
5 was, again, based on what happened in my case from our  
6 standpoint, this was just a tactical move to prevent  
7 dismissal of the claim in district court. So, now  
8 we're --

9 THE COURT: So, are you opposing that  
10 motion for consolidation?

11 MS. FOLEY: We did oppose that motion.  
12 And as a result, there was no ruling.

13 Now, at some point there was a temporary  
14 executor who was appointed --

15 THE COURT: The administrator?

16 MS. FOLEY: Administrator - I'm sorry,  
17 Your Honor - to evaluate all the claims. So that  
18 happened. But now there is no one, and it's been that  
19 way for some time. And even though in the reply there's  
20 some accusations that that's somehow our fault - Ms.  
21 Freed is not party to this case and has no power to  
22 compel an executor to be appointed or administrator to  
23 be appointed or not.

24 So, the point is, is even though we're  
25 here now with no executor of the estate, no



1 administrator or anything, the first argument is that  
2 because she was the lawyer for Ms. Brunsting, there is  
3 an attorney-client privilege that she ethically has to  
4 protect. And just because they're all the siblings and  
5 the children of the -- of Ms. Brunsting, that does not  
6 give them a right for us to waive that privilege. That  
7 privilege is owed to the estate. And because there is  
8 no administrator or executor - who is the estate - that  
9 can direct whether or not those privileges can be  
10 waived, she cannot be subjected to that position.

11 I would argue that on top of that - if  
12 they're talking about taking a deposition in this case,  
13 in the probate case, with no administrator or executor -  
14 you don't even have all the necessary parties to take a  
15 deposition. So, that would also be incorrect.

16 And then lastly, it's just fundamentally  
17 unfair that we're going to now take Ms. Freed's  
18 deposition in this case knowing that there's another  
19 case pending, and she is in a situation where she can do  
20 nothing about it but sit there, not have due process to  
21 do the things any defendant would want to do to try to  
22 either move their case along to get to resolution or get  
23 it dismissed, but yet has to come into this case where  
24 there is still no administrator or executor, sit for a  
25 deposition and, essentially, she'd have to assert the



1 privilege every time.

2 THE COURT: Let me ask you a question.

3 MS. FOLEY: Yes, Your Honor.

4 THE COURT: In the other case, the  
5 district court case, your position is there's no  
6 representative of the estate at this time --

7 MS. FOLEY: Yes, Your Honor.

8 THE COURT: -- and therefore there is no  
9 one to request the deposition of Ms. Freed in that case.

10 MS. FOLEY: No, not exactly. There is no  
11 one to do anything because that case is now abated by  
12 result of -- there was a resignation. So, we can't do  
13 anything.

14 THE COURT: Resignation of the temporary  
15 administrator?

16 MS. FOLEY: Yes, Your Honor

17 THE COURT: And no one to replace that  
18 person?

19 MS. FOLEY: Right. And so, we're,  
20 essentially, frozen.

21 THE COURT: Okay. I'm sorry to interrupt  
22 you; I just needed to get that clear.

23 MS. FOLEY: No, that's okay.

24 And then on top of that, obviously -- I  
25 know we're not here on a consolidation, but just so you

1 understand why we were opposing it is, first of all,  
2 obviously, we litigated in the other court for two  
3 years. And to me, I felt like they're trying to undo  
4 things because it didn't go their way when she's, you  
5 know, set for a deposition.

6           Second of all, obviously, there's all  
7 kinds of other sorts of parties and claims over here  
8 that we believe would prejudice us with respect to the  
9 lawsuit against Ms. Freed in the other court mainly  
10 because it's just one party, and she's suing Ms. Freed  
11 and her firm against whoever is going to be representing  
12 the estate. And so therefore, our ability to quickly  
13 move through the system in order to get to a  
14 resolution - whether it be, you know, by trial or what  
15 not - would be impacted if we are then put into this  
16 case with all of these other issues that really have  
17 nothing to do with the claims against my client. And  
18 I'm specifically talking about the claims. I understand  
19 that some of the facts intersect, but the claims against  
20 my client - nobody's ever going to find in that case  
21 whether or not Ms. Brunsting had capacity or not; that's  
22 not the question that will be asked. The questions will  
23 be: Was my client negligent? Did my client breach a  
24 fiduciary duty? Did she violate the DTPA? Because  
25 she's the only party in that case, meaning none of the

1 children are in that particular case; it is just the  
2 estate versus the lawyer and the law firm, then there  
3 will be no impact on whatever the findings are in this  
4 court with regard to the probate of estate. There won't  
5 be. The only thing that will be determined is whether  
6 or not my client breached a duty.

7                   And so, for all of those reasons - yes,  
8 there is no -- either we don't have all the necessary  
9 parties, even if you wanted to do a deposition at this  
10 point, but on top of that, because there is not one,  
11 there is nobody who can waive any privilege that my  
12 client has with the estate at this time.

13                   And so therefore, we are opposing or  
14 resisting presenting for a deposition at this time.

15                   THE COURT: Okay. Go ahead.

16                   MR. SPIELMAN: Your Honor, my name is Neal  
17 Spielman, and I represent one of the trustees or one of  
18 the apparent trustees of the estate - Amy Brunsting.

19                   Can I ask the Court, just because of the  
20 way things have gone on in this case, can I ask the  
21 Court to notice which parties and which counsel are here  
22 because there is a party that isn't here who we may want  
23 to --

24                   THE COURT: I think that's a good idea.  
25 Why don't you go ahead and give your name and who you



1 represent to the court reporter.

2 MS. FOLEY: Hello. My name is Zandra,  
3 Z-A-N-D-R-A, Foley with Thompson Coe, and I represent  
4 Candace Kunz-Freed and Vacek & Freed.

5 MS. CAROLE BRUNSTING: My name is Carole  
6 Brunsting; I'm a beneficiary; and I'm a pro se litigant.

7 MR. SPIELMAN: As I mentioned, my name is  
8 Neal Spielman, and I represent Amy Brunsting.

9 MR. JADLOSKI: My name is Tim Jadloski,  
10 and I represent Anita Brunsting.

11 MS. BAYLESS: My name is Bobbie Bayless; I  
12 represent Carl Brunsting.

13 MR. SPIELMAN: Okay. Thank you. And the  
14 party that's not here is Candace Curtis who is another  
15 one of the Brunsting siblings. She is also a Pro Se  
16 Plaintiff.

17 THE COURT: Okay.

18 ARGUMENT BY MR. SPIELMAN:

19 MR. SPIELMAN: Your Honor, you know, as  
20 you're learning this case, there are some unique things  
21 to it - it's got a very long history and multiple  
22 different issues and pending motions that have been  
23 heard but not yet ruled upon overtime.

24 One of the things that's unique, in my  
25 mind, with respect to what I'd like talk to you about is

1 that I find myself arguing against Ms. Foley as it  
2 pertains to today's limited issue of - should we be able  
3 to proceed forward with her client's deposition, but I  
4 will likely be arguing in conjunction and with Ms. Foley  
5 when it comes to the concept of whether or not the  
6 documents that Ms. Freed drafted were properly drafted,  
7 are enforceable, and things like that. So, it's a  
8 little unique to be arguing against somebody that, in  
9 the bigger picture, you're probably going to wind up  
10 being allied with.

11 The issue, Judge, with respect to Ms.  
12 Foley is that -- so there's a couple of things that she  
13 left out.

14 The district court case - at least as I  
15 understand it - based on what I have perceived or  
16 determined or believed to be the live pleading, I  
17 believe Ms. Foley left out that there is an aiding and  
18 abetting claim in which her clients are accused of  
19 aiding and abetting improper activities by the trustees,  
20 one of whom is my client, the other --

21 MR. JADLOSKI: The other is my client,  
22 Anita Brunsting.

23 MR. SPIELMAN: Either of our clients are  
24 parties or have ever been parties to the district court  
25 case. And both of our -- both, Anita and Amy, are

1 accused of or have fiduciary breach claims pending  
2 against them in this court --

3 THE COURT: Filed by the?

4 MR. SPIELMAN: Filed by Carl Brunsting and  
5 Candace Curtis.

6 THE COURT: And Carl is now presumed to  
7 be -- well, let me say this: He's resigned as the  
8 representative of the estate; is that correct?

9 MR. SPIELMAN: Now has his wife, Drina  
10 Brunsting, acting within the confines of this lawsuit,  
11 the probate court lawsuit as, I believe they call her,  
12 the "Attorney in Fact," I think is what --

13 MS. BAYLESS: Yes, she's operating under  
14 power of attorney, Your Honor, as to this case.

15 THE COURT: Is your client still the  
16 executor?

17 MS. BAYLESS: No, Your Honor.

18 THE COURT: In what way did he cease to be  
19 the executor?

20 MS. BAYLESS: He resigned. Let me give  
21 you just a little bit --

22 THE COURT: No, I'll let you speak at a  
23 time.

24 MS. BAYLESS: Okay. Yes, he resigned.

25 THE COURT: I don't want to interrupt too



1 much his flow.

2 MR. SPIELMAN: If he did resign, that  
3 was -- there was a proceeding in this courtroom that had  
4 to do -- my recollection -- it was anonymous, the  
5 resignation, and two competing applications to be named  
6 the -- I might be using the wrong words, but the  
7 "replacement executor". That process, I believe,  
8 resulted in the Court's appointment of Mr. Lester as the  
9 temporary administrator whose specific mandate was to  
10 evaluate the merits of both the claims pending in this  
11 case and the claims pending in the district court case.

12 Mr. Lester prepared and submitted to this  
13 Court a comprehensive report for which the estate was  
14 required to pay him upwards of - I believe it was  
15 10-if-not-closer to - \$11,000.

16 In his report, he mentions to the Court or  
17 concludes that the documents that are at issue in the  
18 case were properly drafted and enforceable as written.  
19 He didn't address the issue about whether or not Nelva  
20 Brunsting had capacity at the time they were signed  
21 which again speaks to why it's important to get  
22 information from Ms. Freed about capacity... Sorry, I'm  
23 trying to keep this constrained, but I, myself, have now  
24 gotten twisted up in how complicated this is.

25 THE COURT: Join the club.

1 MR. SPIELMAND: There is also a conspiracy  
2 claim in the district court case in which it's alleged  
3 that the Vacek & Freed Law Firm conspired with the  
4 co-trustees, Amy and Anita. Those causes of action - I  
5 don't see how they can ever be addressed in the district  
6 court case until we have first resolved the issues that  
7 are pending in this case, at least the issues that  
8 relate to the drafting of these documents, the Qualified  
9 Beneficiary Documents, and other documents that were  
10 drafted and executed during a period of time in which I  
11 believe it is Carl's position and Candace Curtis'  
12 position that they were drafted in violation of the  
13 trust documents which would have been irrevocable and  
14 not subject to change at that point in time.

15 So, either we are going to be persuaded by  
16 Mr. Lester's report and find that those allegations or  
17 those contentions are - right now as they exist - false,  
18 incorrect, and capable of being dismissed or, we need to  
19 move forward with the deposition of Ms. Freed, the  
20 drafter of those documents, so that we can begin to  
21 evaluate whether or not those documents were properly  
22 drafted, are compliant with the law as it relates to  
23 Qualified Beneficiary Designations versus irrevocable  
24 language in trust documents, and the capacity and undue  
25 influence issues. I believe that's where Amy and



1 Anita's positions will sort of dovetail into Ms. Foley's  
2 client's positions and ultimately result in a resolution  
3 of the majority of what is at issue in the case, and I  
4 would expect all of what is at issue in the district  
5 court case.

6 I think, while my client did not file the  
7 consolidation, as we were now in 2019 and given the  
8 twists and the turns that this whole case has taken and  
9 the need to now address Ms. Bayless' summary judgment, I  
10 think the need for Ms. Freed's deposition is very  
11 important at this time.

12 We can -- I guess the Court can bring that  
13 case over and still keep it separate through a 403  
14 designation but then consolidate it for discovery  
15 purposes.

16 As to the privilege, I think that's,  
17 frankly, Ms. Foley's strongest argument, one which I  
18 could see myself making if our situations were reversed;  
19 but the Court has ways to solve that problem by either  
20 simply ruling that the privilege doesn't apply, in which  
21 case, there is protection for Ms. Freed to speak about  
22 what would otherwise be privileged issues; or, the  
23 Brunsting siblings could agree to collectively waive the  
24 privilege which, frankly, I'm not so sure we could  
25 expect; or, we could take the example of using a

1 temporary administrator to evaluate and waive the  
2 privilege specific to allow the deposition to proceed.

3 My client has an application to be the  
4 replacement administrator, which is what the Will  
5 documents call for.

6 There is also a pending, similar motion by  
7 Candace Curtis. Those motions have, again, they've been  
8 argued; they haven't been ruled on. They are, I guess,  
9 pending. But I think that to the extent that there  
10 might be a conflict between who should take that role in  
11 a more permanent way - a temporary, finite-defined  
12 appointment - to waive the privilege and allow the  
13 deposition to proceed solves -- I think is another  
14 mechanism by which the attorney-client privilege can be  
15 solved and resolved.

16 The bottom line, Judge, is that if you  
17 really do sort of look at the evolution of the cases  
18 together - not necessarily the evolution, but the issues  
19 of the cases together - I can't see any sort of  
20 methodical, logical approach that says that evaluating  
21 what's going on in this case shouldn't take precedence  
22 over evaluating Ms. Freed's conduct or the law firm's  
23 conduct but with respect to the drafting. Those things  
24 are intertwined. And before we can know whether or not  
25 malpractice was committed or conspiracy was engaged in



1 or there was an aiding and abetting and breaching of  
2 fiduciary duties - we have to know if the documents  
3 themselves will hold up under a factual, legal analysis.

4 Mr. Lester says that at least on the legal  
5 analysis, they do; on a factual analysis, we have, at  
6 the very minimum, Ms. Curtis suggesting that her mother  
7 was incompetent or unduly influenced. And again, I  
8 think, as we've said, the best way to start getting to  
9 the bottom of that is with this deposition in talking to  
10 Ms. Freed about her interactions with Nelva Brunsting in  
11 the ramp-up to drafting of and execution of both the  
12 documents that are at issue in this case.

13 THE COURT: Do you see any value in the  
14 deposition if Ms. Freed were to utilize the  
15 attorney-client privilege and the work-product  
16 privilege? And if that existed, do you see much value  
17 in taking her deposition?

18 MR. SPIELMAN: Well, Judge, I suppose it  
19 may come down to the way the questions are asked; but at  
20 least with respect to the issues of capacity and  
21 influence - if the allegations in this case are that  
22 Nelva Brunsting was unduly influenced to execute those  
23 documents, I suspect we'll be talking to Ms. Freed about  
24 what her involvement -- not involvement, what her  
25 observations were with respect to potential issues of

1 undue influence, who may have been at different meetings  
2 with Nelva Brunsting, if anybody - in which case, by the  
3 way, I don't know that the attorney-client privilege  
4 would apply - what were the circumstances that went on  
5 with respect to Nelva Brunsting's execution of the  
6 documents the day she literally came to, I believe - I  
7 don't know this for sure; I assume - that she went to  
8 the law -- lawyer's office to execute the documents,  
9 what was their execution meeting like? What was Ms.  
10 Brunsting's state of mind? What did it appear to be?  
11 What did Ms. Freed do, if anything, to evaluate that  
12 state of mind on that particular day which I believe  
13 starts to speak to some of the issues about whether  
14 somebody is competent or incompetent, has capacity or  
15 lacks capacity on the day of execution? I believe these  
16 are all things that are very relevant to our 401/402  
17 proceeding that can be addressed even if the  
18 attorney-client privilege might apply all the way.

19 I will tell you that I think that Ms.  
20 Freed can only benefit herself by talking about what  
21 happened in attorney-client circumstances in the broader  
22 picture. And I think that giving her the way out,  
23 allowing her to talk about those things without  
24 violating the privilege - I expect that that will  
25 ultimately benefit her whether her case moves forward in



1 the district court or gets brought over and is dealt  
2 with in totality with everything else we've got here or  
3 just as a 403.

4 THE COURT: Okay. And I'd like you to  
5 address an issue which, if I understand it correctly,  
6 the party that initiated this 401 suit isn't available  
7 or present to respond to the motion to compel, is  
8 that -- am I correct in that assumption?

9 MR. SPIELMAN: I don't know if that's  
10 exactly correct, but it's also --

11 THE COURT: We don't have a representative  
12 of the estate at this point

13 MR. SPIELMAN: Well, it's not exactly --  
14 there's more to it.

15 THE COURT: All right.

16 MR. SPIELMAN: Now, I wasn't involved when  
17 this whole thing started, but I believe that it all  
18 started in February of 2012 when Candace Curtis filed a  
19 lawsuit in federal court alleging many of the same  
20 things that were then issued -- or that then became at  
21 issue when this 401 proceeding was initiated by Carl in  
22 April of 2013.

23 The federal lawsuit filed by Candace  
24 Curtis is what eventually has become recognized as the  
25 402 in this court which has been consolidated with the

1 401. So, while it's true that Carl has brought  
2 claims... I'm stopping, Judge, because I'm noting that  
3 in my file that I have in front of me, I use, "et al"  
4 all the time, and I don't know, then, if Carl brought  
5 his claims in an individual capacity or just as the  
6 executor of the estate. I think he brought them in his  
7 individual capacity which means he is represented  
8 through Ms. Bayless by virtue of a power of attorney.  
9 So, whether there is -- my recollection -- and I know  
10 someone will correct me if I'm wrong. My recollection  
11 is that the estate is not actually a party to this 401  
12 proceeding even though this 401 proceeding is  
13 subordinate to or ancillary to the base case. I'm not a  
14 hundred percent sure about that.

15 THE COURT: Okay.

16 MR. SPIELMAN: But that also does speak to  
17 the issue that Ms. Foley raised which is, you don't --  
18 if I'm right, you don't need an estate representative to  
19 proceed with the deposition in this case because the  
20 estate isn't in this case or whatever that, whatever  
21 that adds to the story.

22 THE COURT: Anything else?

23 MR. SPIELMAN: Just whatever more  
24 questions you have for me.

25 THE COURT: All right. I'd like to hear

1 from Ms. Bayless, please.

2 MS. BAYLESS: Thank you, Your Honor. I'm  
3 going to sit, if it's okay.

4 THE COURT: Sure. Absolutely.

5 MS. BAYLESS: Although, I'm tempted by Ms.  
6 Foley's argument that it's better to stand. I agree  
7 with her.

8 THE COURT: You can stand and sit at all  
9 different times. Whatever you want.

10 ARGUMENT BY MS. BAYLESS:

11 MS. BAYLESS: A lot of ground has been  
12 covered. I hope I pick up on all of the issues that  
13 have been brought up.

14 As Mr. Spielman just said, you know, he  
15 says that he doesn't believe the estate is a party to  
16 this action. That's not true. The action was brought  
17 when my client was executor on behalf of the estate and  
18 himself, individually. So, there is a party, the party  
19 that holds the privilege that can't - Ms. Foley is  
20 right - can't deal with that issue. I don't think that  
21 issue is solved by saying - well, let's appoint somebody  
22 for five minutes to say, okay, we waive the privilege.  
23 The siblings certainly can't get together and say -  
24 okay, we'll waive the privilege. It's not their  
25 privilege. So, that is an issue, and it's an issue that



1 when -- there's a lot of things that led us to this.

2 I will tell you that I don't know if  
3 the Court has ever represented a party who has suffered  
4 from encephalitis before, but I had no idea this was an  
5 issue until Ms. Foley took my client's deposition. In  
6 my interactions with him - there was no issue. But  
7 under the stress of a deposition, a video-taped  
8 deposition, the symptoms of his encephalitis came  
9 rushing back.

10 THE COURT: When was the approximate date  
11 of that deposition?

12 MS. BAYLESS: I think Ms. Foley said --

13 THE COURT: 2015?

14 MS. FOLEY: February 3rd, 2015.

15 MS. BAYLESS: And so, immediately, I took  
16 steps to get him out as executor because it was clear it  
17 was not appropriate for him to have that role.

18 Where we've tumbled since then is a long  
19 and windy road. We've been to federal court. Many of  
20 us - I guess everybody at this table - is a defendant in  
21 a RICO action in federal court filed by one of the other  
22 parties in the case. So, the malpractice case -- and  
23 let me get back to the beginnings of that --

24 THE COURT: Let me ask you one more  
25 question, quickly.



1 MS. BAYLESS: Sure.

2 THE COURT: When did you obtain your power  
3 of attorney?

4 MS. BAYLESS: Well, there was a power of  
5 attorney that predated all of this action.

6 Subsequently, there was an evaluation done and even  
7 another power of attorney has been done under the  
8 guide -- under the guidance of medical professionals.

9 THE COURT: All right. Go ahead.

10 MS. BAYLESS: And, again, I don't know if  
11 the Court's had any involvement with encephalitis  
12 victims, but there are many things about -- many  
13 functioning things that Mr. Brunsting does just fine.  
14 What he can't deal with is the stress that is brought on  
15 by confrontation with strangers under, you know,  
16 basically what all of us would call nerve-racking  
17 situations. Apparently, he didn't have any of that with  
18 me; and so, until his deposition, these problems didn't  
19 surface. But since then -- and we have an affidavit  
20 from his physician about some of these issues and about  
21 the power of attorney and his ability to, you know,  
22 enter into a power of attorney at various stages and  
23 that kind of thing. We can go into that in an  
24 evidentiary hearing if the Court wishes.

25 The way we got to this spot, though, is

1 that initially when all of this controversy came up, we  
2 had a tolling agreement - Ms. Foley's client and I had  
3 a -- and my client had a tolling agreement - because we  
4 saw that there was overlap between these issues among  
5 the trustees and the beneficiaries. And, frankly, I  
6 envision that we would be able to resolve these issues -  
7 crazy me - at some point in time, and the malpractice  
8 issues might not be needed or they might go away because  
9 the issues could be resolved among the beneficiaries.

10 So, initially, we had a tolling agreement. They didn't  
11 want to continue the tolling agreement as was their  
12 right; and so, at that point, there wasn't really  
13 anything to do other than file the action or it would be  
14 lost to limitations.

15 So, you know, regardless of how we got --  
16 regardless of who may have made the better decision or  
17 the worse decision - that's how we got where we are. We  
18 tried to prolong that. We tried to put that off, and it  
19 didn't work; and so, now we are where we are.

20 Subsequently, it's come to light that my  
21 client is not a proper party to pursue a lawsuit. He  
22 may be able to do other things, but he's not the proper  
23 party to pursue a lawsuit on behalf of the estate. And  
24 since then, there's been so much fighting about who  
25 should do that, who should jump into that role that



1 we're still mired in this mess that allowed us to also  
2 get taken over to federal court; had to go to the Fifth  
3 Circuit to get back over here to try and sort things  
4 out.

5 Yes, there's been a temporary  
6 administrator who was assigned one task which was to  
7 make a recommendation to the Court about some issues.  
8 I'm not sure he really even addressed the issues he was  
9 asked to address, but he doesn't resolve those issues.

10 I tend to agree with Ms. Foley on this  
11 question, and I've tried to make that clear to the  
12 parties who want to take her deposition, and I don't  
13 think this is a very good exercise of time, anybody's  
14 time, on where the case should be going right now to get  
15 it back on track.

16 I have a motion for partial summary  
17 judgment on file which does not deal with the issue of  
18 capacity at all; it is based upon the structure and  
19 construction of the Trust instrument and whether it's  
20 enforceable. It is based upon some other transfers from  
21 the Trust and whether they violated the Trust. It  
22 doesn't have anything to do with capacity. I don't  
23 think that - and the parties are not here, and I  
24 hesitate greatly to speak for them because half the time  
25 I don't know what they're saying - but I don't think

1 they've claimed incapacity in any of their issues. I'm  
2 not saying at some point in time it may not be necessary  
3 to talk to Ms. Freed. I think it probably will be  
4 unless we can get all this resolved which some of us  
5 have been trying to do without much success. But I  
6 don't think this is the time for that. I don't think  
7 the right parties are engaged or even exist at this  
8 moment, and I think there are other things, other  
9 issues, that need to be resolved that can be resolved  
10 that don't have anything to do with what ultimately  
11 would be a very complicated, factually-intense question  
12 of capacity and undue influence. I don't even know,  
13 frankly, if Ms. Foley's client would have the expertise  
14 to address capacity. I don't even know if she would be  
15 the proper witness to addressing capacity. Point is - I  
16 don't know why we're dealing with those issues when  
17 there's so many other issues that need to be addressed  
18 that might lead us in the direction of a resolution.

19           There's a farm in Iowa that is worth a lot  
20 of money that is just sitting there that has to be  
21 divided among these family members, and nobody can even  
22 get to the point of addressing that.

23           So, I find myself aligned with Ms. Foley  
24 as Mr. Spielman had said he thought it was strange that  
25 he was opposing her in this situation. I find it



1 strange. I'm aligned with her. I don't think this is  
2 the right time to take her client's deposition. Will  
3 that time come? Maybe. Maybe not. I don't know the  
4 answer to that right now, but I do know that if they're  
5 saying - this is what they said when we last had a  
6 hearing before Judge Butts - that they needed this  
7 deposition in order to defend my motion for summary  
8 judgment. There is not a single shred of anything in my  
9 motion about capacity or undue influence. So, I don't  
10 think they need it to address my motion.

11 Now, my motion is a partial motion for  
12 summary judgment; I'm not suggesting that that ends the  
13 case, but the point is - we don't ever deal with  
14 anything. We deal with more sometimes than we do at  
15 other times. But to take this deposition, get bogged  
16 down in - what do we do with the privilege with a  
17 witness that I don't think makes any difference on the  
18 issues that are currently before the Court, seems like  
19 to me, you know, a little bit of a wrong-headed  
20 direction.

21 THE COURT: Do you have any opinion on who  
22 might represent the estate?

23 MS. BAYLESS: I will tell you that I don't  
24 think any of these siblings can agree on that. I mean,  
25 some may agree with others, but there's always somebody

1 who doesn't agree. I mean, we had a big fight just over  
2 Mr. Lester, but I think I almost feel like it has to be  
3 a third party. Sorry to have to say that, but I  
4 think --

5 THE COURT: Do you think your client has  
6 capacity to agree to a person should we find somebody  
7 that's suitable to everybody else?

8 MS. BAYLESS: Well, I think that my client  
9 is -- he's represented by his wife through a power of  
10 attorney, and she certainly has capacity. So, yes, I  
11 think, I think that there is not a problem in terms of  
12 my party in this case agreeing to someone. I don't  
13 believe he has the capacity to be that person.

14 THE COURT: Ms. Candace Curtis? Is that  
15 you?

16 MS. CAROLE BRUNSTING: No, I'm Carole  
17 Brunsting.

18 THE COURT: You're Carole, I apologize.  
19 We haven't heard from you. Do you want to -- I think  
20 maybe she should be sworn.

21 (Ms. Carole Brunsting sworn)

22 THE COURT: Would you like -- please be  
23 seated. Would you like to opine on any of these matters  
24 in regard to who might be somebody that can be appointed  
25 to represent the estate and -- well, let's talk about

1 that first.

2 MS. CAROLE BRUNSTING: I really -- first,  
3 I really appreciate you asking me that question.

4 THE COURT: Sure.

5 ARGUMENT BY MS. CAROLE BRUNSTING:

6 MS. CAROLE BRUNSTING: And I would like to  
7 be considered as the person that fills that role only  
8 because -- or one of the reasons is because I have  
9 attended every single hearing. I have been extremely  
10 involved in this case. I was there with my parents from  
11 beginning to end. I've done my best to reach out to all  
12 my siblings to the best of my ability. And, I mean, I  
13 have a vested interest in getting this resolved. So,  
14 and also, too, I really feel like I'm a very fair and  
15 balanced person - at least I try to be. So, I would  
16 like to be considered as a possible person to take the  
17 contact role.

18 THE COURT: Thank you for that statement.

19 Have you talked to your siblings about  
20 that as a possibility?

21 MS. CAROLE BRUNSTING: I have done my  
22 best. My siblings will not speak with me. I have done  
23 my best to try and re-establish some type of a  
24 relationship because I find myself -- I feel like I'm  
25 always kind of in the middle, and I'm trying not to take



1 sides; and honestly - and you may not believe me - I  
2 have not taken a side. I see both sides, and I struggle  
3 with that; but I also keep in mind all the time that I  
4 spent with my parents and all the time that my father  
5 talked about this Trust and what it meant to him; and I  
6 know my siblings, and I know that they need for this to  
7 be resolved because of a lot of things that have  
8 happened over the past eight or nine years. And I also  
9 have a vested interest and really want to see this over  
10 and done with.

11                   So, like I said, I take this extremely  
12 seriously. And that is why I leave work and I come  
13 here. I've never missed a hearing. I read as much as I  
14 possibly can. I reread the Trust and I reread the QBD.  
15 I do my best to understand as much language as possible.  
16 I understand that in that role, that that person would  
17 have to hire an attorney, and I understand that. But, I  
18 really want to see this moving forward, and it's  
19 something that if I needed to try to reach out to my  
20 siblings, I would be willing to do. I really feel like  
21 I could make a good case for that. I can try.

22                   THE COURT: All right. Does anybody else  
23 have any concluding comments? Please. You raised your  
24 hand first.

25



1                   FURTHER ARGUMENT BY MR. JADLOSKI:

2                   MR. JADLOSKI: Thank you, Judge.

3                   Just to sort of get back to why I feel --  
4 and it's very important that we've gone through all of  
5 the sorted history of this case, and it's complicated.

6                   MS. BAYLESS: Not all.

7                   MR. JADLOSKI: No, not all of it, but a  
8 very good portion of it so I think, Judge, you have some  
9 idea of what's happened here as much as anyone can.  
10 It's a little bit of a mess.

11                   But I think if we can get back to the  
12 issue at hand here which is - does my client, does Mr.  
13 Spielman's client, have the right to take this  
14 deposition at this time? I think the important thing to  
15 consider there is, there's two issues that we are being  
16 asked to respond to; but yet, if we're not allowed to  
17 take this deposition, we can't get the information that  
18 we need.

19                   One is, Mr. Brunsting, Carl Brunsting, has  
20 raised the issue of whether or not the QBD is, in fact,  
21 enforceable; and the second issue is whether or not  
22 Nelva Brunsting, Decedent, had the capacity to sign the  
23 QBD when she signed it, and that's at least been raised  
24 by Ms. Curtis in her pleadings even though she hasn't  
25 filed a motion for summary judgment or anything like

1 that, but it's been raised in the pleadings. The one  
2 issue comes from the pleading, and the other one comes  
3 from the summary judgment that's on file.

4 If you look at those two issues, Your  
5 Honor, I'm not entirely sure that either one of them  
6 actually implicates the attorney-client privilege and  
7 I'll tell you why.

8 First of all, Judge, when it comes to the  
9 capacity issue - there is a rule in the Texas Rules of  
10 Evidence, Texas Evidence 503(d)4, which deals with  
11 precisely these kinds of issues, a situation where you  
12 have an attorney who is -- who drafted a document and,  
13 essentially, also functioning as a witness on that  
14 document. I think that's what happened here,  
15 essentially, because you have Ms. Kunz-Freed who  
16 drafted -- who drafts the QBD. And then there's the one  
17 who is there who notarizes Nelva's signature on the QBD.  
18 And as far as we understand, Your Honor, she was the  
19 only one who was there on the date that she signed the  
20 document, and that's the date that's important for  
21 capacity because as you know, she could have capacity on  
22 that day and not have it on another day or vice versa.  
23 And so, it's really important - the only person who was  
24 there to observe her and able to comment on the kinds of  
25 observations that a lay witness would typically make



1 regarding capacity is Ms. Kunz-Freed.

2 Now, there's also case law, Your Honor,  
3 that deals with a -- there's a -- I believe it's the  
4 Cochron v. Cochron which is in the Houston Court of  
5 Appeals that deals with the situation where an attorney  
6 is also a witness. So, you're seeing that application,  
7 you're seeing that application of rule -- I'm sorry.  
8 You're seeing that application of the Rule 503 exception  
9 being applied to an attorney who was also a witness on a  
10 document.

11 And then if you look - and these are all  
12 cited in our response, Your Honor - there's also the  
13 case of In Re: Estate of Kam which was in the El Paso  
14 Court of Appeals in which was citing to Brown versus  
15 Traylor which was a Houston opinion that talks about a  
16 situation which a notary is allowed to testify -- was  
17 allowed to testify, again, as to capacity that's -- and  
18 because the note -- in the same way that a witness  
19 typically would be.

20 Now, if you look at, if you look at,  
21 again, coming back to this situation. Ms. Kunz-Freed  
22 was, both, the attorney and the notary; and therefore,  
23 even if she couldn't testify about capacity as the  
24 attorney because of the attorney-client privilege, she  
25 could certainly testify about capacity as the notary who

1 observed the person when they signed their signature.

2 Now, moving on to the second issue which  
3 is the issue of whether or not Ms. Kunz-Freed could  
4 testify about the drafting of the QBD itself so we could  
5 get to whether or not the terms of the QBD are valid.

6 In her response to our motion to compel  
7 and also in her motion for protection and to quash, Ms.  
8 Kunz-Freed raised the idea that, you know - well, Judge,  
9 maybe there's another source that we could get that  
10 information from her. Have we exhausted all of the  
11 possible sources from which we could determine whether  
12 or not those documents are valid? And, frankly, Judge,  
13 there is no other source. She is the only source. So,  
14 asking us to exhaust the sources before we depose Ms.  
15 Kunz-Freed is really -- there are no other sources to  
16 exhaust. She was the one who drafted the document. She  
17 was the one who witnessed who was there on the day that  
18 Ms. Brunsting signed the document.

19 And so, frankly, Your Honor, I just don't  
20 see how we can do this deposition without asking  
21 questions that even touch upon the attorney-client  
22 privilege. And if you're uncomfortable with that, Your  
23 Honor, then I would say that you have the power under  
24 Rule of Civil Procedure 192.4 to specifically limit us  
25 to those issues which the Court is comfortable saying

1 are not part of the -- would not be covered by the  
2 attorney-client privilege.

3 So, I believe, Judge, so in essence,  
4 Judge, I believe:

5 1. Because of the pleadings and the  
6 motion for summary judgment that are on file, we do need  
7 to answer these questions so that my client can respond  
8 to the claims relating to the QBD and;

9 2. I really don't think that there is  
10 a -- I really don't think there's an attorney-client  
11 privilege issue here; and if there is, there is a  
12 procedural work-around that the Court could utilize.

13 THE COURT: Thank you for that. Let me  
14 ask you a question.

15 MR. JADLOSKI: Yes, Your Honor.

16 THE COURT: In Ms. Freed's response, she  
17 talks about that there's other witnesses present when  
18 the QBD was executed. I'm just curious. Is that a fact  
19 that you contest? Are you aware that there are other  
20 witnesses?

21 MR. JADLOSKI: We are not -- we're not --  
22 no, Your Honor, we're not aware of witnesses --

23 THE COURT: Wait. I didn't understand  
24 that.

25 MR. JADLOSKI: We are not aware that there



1 were any witnesses.

2 THE COURT: I just wanted to know that.

3 All right. Anybody else? Yes? Go ahead,  
4 ma'am.

5 FURTHER ARGUMENT BY MS. CAROLE BRUNSTING:

6 MS. CAROLE BRUNSTING: I just want to make  
7 one more comment as far as to my mother's capacity.

8 I was her care giver per my parents' --

9 THE COURT: I appreciate your wanting to  
10 say that. I don't know that that's on point for what I  
11 have to deal with today.

12 MS. CAROLE BRUNSTING: Well, it is because  
13 it talks to capacity, and I'm thinking that there is a  
14 lot of information I have; and perhaps I need to be  
15 deposed because it does impact this QBD because I was my  
16 mother's care giver. I was there. And, I mean, I was  
17 one of the ones taking care of my mother, and she spoke  
18 with me about a lot of things, and then things were  
19 going on. So, it's really hard to hear all this going  
20 on when I'm thinking - okay, I have a lot of facts that  
21 may pertain to this.

22 THE COURT: All right. Thank you.

23 MS. FOLEY: If I may respond, Your Honor?

24 THE COURT: Yes, ma'am.

25

1                    FURTHER ARGUMENT BY MS. FOLEY:

2                    MS. FOLEY:    Okay.    So, nobody's going to  
3 remember this because me and Bobbie were the only ones  
4 there.    She has been deposed in the other case.    I don't  
5 know if you remember that.    It was a long time ago.

6                    MS. CAROLE BRUNSTING:    I do.

7                    MS. FOLEY:    She was present at some of the  
8 meetings between my client and Ms. Brunsting because she  
9 brought her there.    So, yes, there are other sources of  
10 that information, number one.

11                    Number two, what I hear from these parties  
12 is that - hey, you've got to let us take just part of  
13 her deposition so we can move our case forward.    And  
14 nobody's really considering what my client is going to  
15 have to deal with which means if you take her  
16 deposition, and she only has to answer, you know,  
17 questions that aren't privilege, that means that at some  
18 point, she's going to have to sit again for another  
19 deposition.

20                    So, my thing is, if we're going to compel  
21 her deposition, why not get somebody put in place so my  
22 client only has to sit once and answer whatever  
23 questions that need to be answered.

24                    The other thing I want to point out is  
25 that there are cases out there where - and this comes

1 with the problem of who is going to be the administrator  
2 or the executor - but there are cases out there where  
3 lawyers are compelled by a trial judge, for whatever  
4 reason, to waive that privilege. They sit. They waive  
5 that privilege. And then later on get sued because they  
6 didn't appeal it. And I don't want to put my client in  
7 that position given what the fighting has been between  
8 these siblings. And so, I ask that we not be put in  
9 that position. And I think it solves it if the Court  
10 would just appoint someone to be the executor or the  
11 administrator; and then if people want to take a  
12 deposition - I get it; that's fine; we'll have to sit  
13 for that, but it doesn't put my client in a precarious  
14 position when having to deal with the privilege issues  
15 of what comes next after that. And then, obviously,  
16 too, it makes my day because my client now has somebody  
17 that's there in her lawsuit so she can be able to move  
18 that along.

19                   But, then the last point I want to make is  
20 that based on what everybody has said about this  
21 capacity issue, it sounds like nobody really thinks that  
22 there is really an issue there anyway. There is no  
23 evidence whatsoever. And the thing is, is that all  
24 these allegations that were made in that lawsuit against  
25 my client, had to do with that - that she somehow was



1 duped because she did not have capacity; yet, when she  
2 sends her letter saying, oh --

3 THE COURT: When you say your client was  
4 duped --

5 MS. FOLEY: I'm sorry. They're saying  
6 about Ms. Brunsting. My client's client. My client's  
7 client was duped by Ms. Freed into signing off on  
8 documents. She made these allegations. She had her  
9 client verify interrogatories before she declared to be  
10 incapacitated saying that - yes, all this stuff is true,  
11 and then sends a letter saying, "Well, he had no  
12 personal knowledge. He was never there. He doesn't  
13 know anything. It's all useless information now." So,  
14 the question is - well, then where did all that come  
15 from? Somebody filed those claims. Somebody made those  
16 allegations. Somebody is saying that is a fact; yet,  
17 there is not a single person, based on what you've heard  
18 so far, that has any knowledge of that whatsoever.

19 So, you know -- and, yes, there was a  
20 tolling agreement in place that was filed because we  
21 were led to believe that it was actually a 202  
22 deposition that was requested initially of us. So, we  
23 thought we were given documents to help you decide  
24 whatever your probate issue is. And then once we  
25 figured out this does not seem right, we went ahead and

1 said - no, we're not extending any tolling. And you  
2 heard her just say, "So, we went ahead and filed a  
3 lawsuit," and it's because there was no due diligence  
4 done, no investigation as to any of these claims. It  
5 was simply - just let me file that lawsuit to get those  
6 claims out there so we can have somebody to go blame and  
7 seek money from. There is absolutely no evidence of any  
8 of these claims. I know I'm harping on the wrong thing,  
9 but I just wanted to point that out based on what you  
10 said everybody agrees, really, is what you heard. The  
11 others aren't really capacity, is not an issue. Well  
12 then, if that's the case, why is my client even sued in  
13 the first place?

14 But, anyways, so I would just say in  
15 closing:

16 If we're going to make my client sit for a  
17 deposition, I'd like for her to only have to sit once,  
18 and I'd like for her to not have to be put in a position  
19 to where she's going to be just requested to waive  
20 privilege like they suggested with no basis and then  
21 have to deal with what to do after that. Should we sit  
22 there and wait for privilege or do we have a duty to  
23 make sure we protect it until somebody - meaning a  
24 representative of the estate - gives us some direction  
25 on that?

1 Thank you, Your Honor.

2 FURTHER ARGUMENT BY MS. BAYLESS:

3 MS. BAYLESS: Judge, since I heard my  
4 letter paraphrased several times now by Ms. Foley, that  
5 is not at all what it said.

6 But the point is what I am saying here  
7 today -- well, first of all, we had lots of  
8 documentation. We had lots of evidence about these  
9 claims. Did that mean that we didn't want to try to  
10 continue a tolling agreement so that we can fight the  
11 fight with the siblings and get that resolved so that we  
12 didn't have to file more lawsuits? That's what I was  
13 saying. I wasn't saying there was no due diligence,  
14 that capacity wasn't an issue. I'm not saying that  
15 capacity isn't an issue. At some point - I'm saying in  
16 my motion that is pending before this court - capacity  
17 is not an issue. And if somebody heard me say  
18 otherwise, let me correct it right now.

19 What I'm talking about today is what the  
20 Court has in front of it that's been on file since  
21 before the RICO case and all the Fifth Circuit travels  
22 and all of that kind of stuff. That has been on file  
23 for sometime now. It's a motion that does not go to the  
24 capacity issue in any form. And so, the issue always, I  
25 think, has been how splintered this thing gets, and we




1 go off on this rabbit trial and that rabbit trail, and I  
2 think that's what taking this deposition at this time  
3 does - is it takes us down another rabbit trail. This  
4 case needs to get on track for everybody's benefit so  
5 that it can be resolved in total.

6 And I think anybody who thinks taking Ms.  
7 Freed's deposition is going to do that, is just not  
8 thinking through what the issues are. That's my point.  
9 And even if the Court denied my motion for summary  
10 judgment, it wouldn't be because they didn't have the  
11 evidence to address the capacity issue because capacity  
12 is not an issue in that motion. That's all I was trying  
13 to say.

14 THE COURT: All right.

15 FURTHER ARGUMENT BY MR. SPIELMAN:

16 MR. SPIELMAN: Judge, I'm sorry; if you  
17 can indulge me just a minute.

18 We've talked a lot about a lot, and that's  
19 what happens. Judge Comstock will tell you. Everything  
20 about this case, once you start talking about it,  
21 something, some other layer of it gets unpeeled. I  
22 think the one thing that everybody will ultimately agree  
23 with is that we do need the Court's help in getting us  
24 moving. Anita and Amy believe that the way to get us  
25 moving is through this deposition. 

1 The reason, while capacity is a point in  
2 this lawsuit, to be specific -- start over.

3 Amy and Anita filed a no-evidence summary  
4 judgment against Candace Curtis and the claims that she  
5 has brought in this lawsuit.

6 Candace Curtis' claims include the  
7 capacity issue, or at the very least, her response to  
8 our no-evidence summary judgment raises the capacity  
9 issue.

10 So, with respect to our ability to try to  
11 get this case moving by dismissing Candace Curtis'  
12 portion of the case, we are precluded from doing so  
13 because of the issues that she has brought up in her  
14 response. That motion has not yet been heard because we  
15 now need to address what she says is evidence of  
16 capacity and would like to do that through Ms. Foley's  
17 client. That is the full story now on why capacity is  
18 being discussed in the broader sense of this litigation.

19 Ms. Bayless says that capacity doesn't  
20 relate to her MSJ. I can't remember its contents. If  
21 she says it doesn't - it doesn't. But let's be very  
22 clear what her motion does say.

23 She is seeking, from this Court, summary  
24 judgment on the issue that the documents drafted by Ms.  
25 Foley's client were drafted improperly, contrary to law,



1 and in violation of other portions of the primary trust  
2 documents. That is the very issue that is pending in  
3 the district court case. If she is - I assume - that  
4 Ms. Foley would not want this Court doing anything about  
5 that issue in this case for fear of how that might then  
6 show up in the district court case. It is my belief,  
7 and it is Anita's belief - or my client's belief and  
8 Anita's belief, the lawyers' belief - that the way to  
9 deal with and learn more about the circumstances  
10 pertaining to the drafting and the creation of the  
11 documents is by examining the person, the lawyer, who  
12 drafted them. We want to know why she drafted them,  
13 what were the circumstances behind why they were  
14 drafted, how does their drafting not violate other  
15 aspects of the prior-in-time trust documents; and from  
16 that information, we hope to be able to, not only resist  
17 multiple causes of action brought by Candace Curtis and  
18 Carl Brunsting, but also put together a comprehensive,  
19 fair, balanced, accurate response to the motion for  
20 summary judgment. And that's what I have to say about  
21 that.

22 THE COURT: Counsel, for the two  
23 trustees - do you have an opinion as to her request to  
24 be named as a temporary administrator or administrator  
25 for this estate? Can you speak on behalf of your

1 clients as to that?

2 MR. SPIELMAN: I can do so -- yes, I can.

3 So, two things, Judge.

4 If we do that, then we are - and I don't  
5 mean this disrespectfully - then we are putting a person  
6 in that position who is the only person who was never  
7 considered for that position amongst all of the  
8 Brunsting siblings. So, we are now going far afield of  
9 what - at least on paper - Elmer Brunsting and Nelva  
10 Brunsting wanted with respect to the succession of their  
11 executors. That's one concern in the global picture.

12 In the smaller picture - if I understand  
13 the position of Candace Curtis correctly - the  
14 reason she wants to be named as the replacement executor  
15 is because she thinks that my client, Amy, is  
16 disqualified because of the fact that Amy is a defendant  
17 in this 401 and 402. If that is the reason for  
18 disqualifying Amy, then Carole Brunsting is likewise  
19 disqualified because - with all due respect while Ms.  
20 Carole Brunsting describes herself as, "in the middle  
21 and not taking a side" - she is absolutely a defendant  
22 in claims asserted by, both, Carl and Candy: Money  
23 hadn't received, conversion, breach of fiduciary duty.  
24 They are abs -- Carl and Candy, separately but in  
25 conjunction through the pendency of this lawsuit, are



1 absolutely trying to get into Carole Brunsting's pocket  
2 unless she has worked out a deal with them that the rest  
3 of us don't know about.

4           So, my point for that is - if Amy  
5 Brunsting, who is the next in line, is disqualified  
6 because she is a litigant, a defendant, then Carole is  
7 disqualified and we're nowhere.

8           If Carole is not disqualified, then  
9 neither is Amy, and let's do what the Will says and let  
10 Amy Brunsting take over as the executor of the two  
11 estates and all of these problems are solved.

12           THE COURT: So, in short, you believe your  
13 client would object?

14           MR. SPIELMAN: Yes.

15           THE COURT: Okay. And how about you,  
16 Counsel?

17           MR. JADLOSKI: I believe my client would  
18 object, but to know for sure, Judge, I'd have to discuss  
19 it with her.

20           THE COURT: Okay. I appreciate everybody  
21 coming in. It's very persuasive. I am going to take  
22 this under -- go right ahead if you'd like to say one  
23 more thing.

24           FURTHER ARGUMENT BY MS. CAROLE BRUNSTING:

25           MS. CAROLE BRUNSTING: Yeah, Mr. Spielman



1 keeps talking about Candy's case about the 402. It was  
2 never consolidated. So, it's my understanding that that  
3 case went away.

4 THE COURT: Okay.

5 MS. CAROLE BRUNSTING: So, it's the 401  
6 but it was supposed to be brought over from the federal  
7 court, consolidated with the 401 - that never happened.  
8 So, it's my understanding that Candy's case is no more,  
9 and that's why she never takes much involvement with  
10 what happens in the probate court.

11 FURTHER ARGUMENT BY MR. SPIELMAN:

12 MR. SPIELMAN: Judge, that's, first of  
13 all, that's -- let me say this.

14 One, I believe that the various docket  
15 sheets will prove that that's absolutely incorrect.  
16 However, if the Court would like to put an order in the  
17 case that says that Ms. Candace Curtis' claims in this  
18 case have been non suited, I wouldn't object to that  
19 either, but I don't believe that what Ms. Brunsting just  
20 said about there not being a consolidation order as to  
21 the 402 to the 401 is correct.

22 And I think, Judge, if you look in the  
23 Court's file around May of 2014-ish, I think that would  
24 be where you would look to see that the 402 was  
25 opened -- no, actually the 402 wasn't opened until

1 February of 2015. But in May of 2014, the Court's file  
2 reflects the federal court sending Candace Curtis'  
3 claims to Probate Court 4 where they were always  
4 discussed. There are multiple motions that were filed  
5 by Ms. Curtis and her attorney at the time within the  
6 401 that ultimately led to the opening of the 402. And  
7 I'm quite positive that there was an order consolidating  
8 the 402 and the 401. However, I would be equally happy  
9 with an order dismissing Ms. Curtis' claims.

10 THE COURT: All right. Thank you.

11 FURTHER ARGUMENT BY MS. BAYLESS:

12 MS. BAYLESS: If I could just raise one  
13 other point.

14 This came up when Mr. Lester was  
15 appointed, and that's the issue of how a temporary  
16 administrator gets paid. And there was a lot of  
17 discussion about the fact that the money in the case is  
18 in Trust, and I think Ms. Curtis was one of the big  
19 objectors to the appointment of temporary administrator  
20 resulting in fees that would have to be paid by the  
21 Trust and that that was not appropriate, and I think  
22 some other -- I don't know, Carole, did you object to  
23 that?

24 MS. CAROLE BRUNSTING: Did [sic].

25 MS. BAYLESS: So, I just say that so that

1 the Court has that in mind in trying to formulate a plan  
2 that that is also an issue that would seem to have been  
3 able to overcome it with Mr. Lester, but frankly, I  
4 don't remember how we did now.

5 COURT'S RULING:

6 THE COURT: All right. Well, I think that  
7 as often in cases like this, people tend to try to put a  
8 lot of different food in their mouth at one time and  
9 choke when it probably is best resolved by taking a bite  
10 at a time.

11 And I'm going to take this matter for the  
12 motion to compel the deposition and the contravening  
13 motion to quash under consideration. I'll give you an  
14 answer by tomorrow.

15 So, thank you for your time.

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1 The State of Texas )  
2 County of Harris )

3  
4 I, Hipolita Lopez, Official Court Reporter in and  
5 for the Probate Court Number Four of Harris County,  
6 State of Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription of  
8 all portions of evidence and other proceedings requested  
9 in writing by counsel for the parties to be included in  
10 this volume of the Reporter's Record, in the  
11 above-styled and numbered cause, all of which occurred  
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
14 truly and correctly reflects the exhibits, if any,  
15 admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$351.00.  
18 and was paid by Ms. Candy Curtis.

19 WITNESS MY OFFICIAL HAND this the 6th day of  
20 February, 2019.

21  
22 /s/ Hipolita G. Lopez  
23 HIPOLITA G. LOPEZ, Texas CSR #6298  
24 Expiration Date: 12-31-20  
25 Official Court Reporter  
Probate Court Number Four  
Harris County, Texas  
201 Caroline, 7th Fl.  
Houston, Texas 77002

No. 412,249-401

IN RE: ESTATE OF	§	PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

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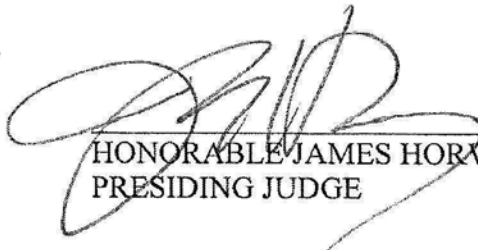
**ORDER GRANTING MOTION TO COMPEL DEPOSITION OF NON-PARTY WITNESS  
CANDACE KUNZ-FREED**

On this day came on to be heard: 1) Non-Party Witness Candace Kunz-Freed's Motion to Quash Anita Brunsting's Notice of Intent to Take the Oral Deposition of Candace Kunz-Freed; 2) Non-Party Witness's Motion for Protection; and 3) Anita Brunsting's Motion to Compel the Deposition of Candace Kunz-Freed. Upon consideration of the Motions, all Responses on file, and applicable law, the Court is of the opinion that the Motion to Compel should be GRANTED IN PART and that the Non-Party Witness's Motion for Protection should be GRANTED IN PART. It is therefore,

ORDERED that Non-Party Witness Candace Kunz-Freed shall appear and give her deposition in Cause No. 412,249-401 at a mutually agreeable time to be scheduled prior to March 30, 2019. Such deposition may be coordinated with the Court's calendar to be taken in the Courtroom of Probate Court Four for ease of obtaining rulings regarding the applicability of objections based upon attorney/client and other relevant privileges which may be asserted, if desired by counsel. It is further,

ORDERED that Non-Party Witness Candace Kunz-Freed may assert any relevant objections based upon the attorney/client or other relevant privileges to prevent disclosure of any core work product or privileged information during the deposition, which privileges shall not be waived.

Signed on the 24 day of January, 2019.

  
HONORABLE JAMES HORWITZ  
PRESIDING JUDGE

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

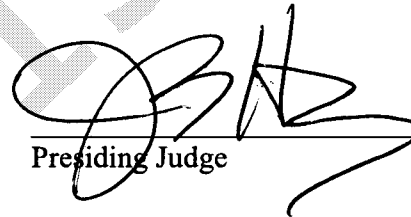
CARL HENRY BRUNSTING, et al	§
V.	§
ANITA KAY BRUNSTING, et al	§

**Order Granting Appraisal**

Defendant and Co-Trustee Anita Brunsting's motion to obtain an appraisal is GRANTED.

It is further ORDERED that she may obtain an appraisal(s) provided that the fees for same do not exceed \$4,500.00.

*Signed March 7, 2019*



\_\_\_\_\_  
Presiding Judge

ENTRY REQUESTED:

Stephen A. Mendel (13930650)  
 Timothy J. Jadloski (24085994)  
 The Mendel Law Firm, L.P.  
 1155 Dairy Ashford, Suite 104  
 Houston, TX 77079  
 O: (281) 759-3213  
 F: (281) 759-3214  
 E: [steve@mendellawfirm.com](mailto:steve@mendellawfirm.com)  
 Attorneys for Defendant,  
 Anita Brunsting

*Diane Trautman*  
 COUNTY CLERK  
 HARRIS COUNTY, TEXAS

2019 MAR -7 PM 15

FILED

CAUSE NO. 412,249-401

ESTATE OF ) IN THE DISTRICT COURT  
 )  
 NELVA E. BRUNSTING, ) NUMBER FOUR (4) OF  
 )  
 DECEASED ) HARRIS COUNTY, TEXAS

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CARL HENRY BRUNSTING, )  
 et al. )  
 )  
 vs. )  
 )  
 ANITA KAY BRUNSTING, )  
 et al. )

ORAL DEPOSITION

CANDACE KUNZ-FREED

MARCH 20, 2019

ORAL DEPOSITION OF CANDACE KUNZ-FREED, produced as a witness at the instance of the Defendant Anita K. Brunsting and duly sworn, was taken in the above-styled and numbered cause on March 20, 2019, from 9:21 a.m. to 5:01 p.m., before Melinda Barre, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Harris County Civil Courthouse, 201 Caroline, 7th Floor, Houston, Harris County, Texas, pursuant to the Texas Rules of Civil Procedure and the provisions stated on the record or attached hereto.

**Candace Kunz-Freed**

2	4
<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR PLAINTIFF CARL HENRY BRUNSTING:</p> <p>4 Ms. Bobbie G. Bayless</p> <p>5 BAYLESS &amp; STOKES</p> <p>6 2931 Ferndale</p> <p>7 Houston, Texas 77098</p> <p>8 Telephone: 713.522.2224</p> <p>9 E-mail: bayless@baylessstokes.com</p> <p>10</p> <p>11 FOR DEFENDANT ANITA BRUNSTING:</p> <p>12 Mr. Stephen A. Mendel</p> <p>13 Mr. Timothy J. Jadloski</p> <p>14 THE MENDEL LAW FIRM, L.P.</p> <p>15 1155 Dairy Ashford, Suite 104</p> <p>16 Houston, Texas 77079</p> <p>17 Telephone: 281.759.3213</p> <p>18 E-mail: info@mendellawfirm.com</p> <p>19</p> <p>20 FOR DEFENDANT AMY BRUNSTING:</p> <p>21 Mr. Neal Spielman</p> <p>22 GRIFFIN &amp; MATTHEWS</p> <p>23 1155 Dairy Ashford, Suite 300</p> <p>24 Houston, Texas 77079</p> <p>25 Telephone: 281.870.1124</p> <p>E-mail: nspielman@grifmatlaw.com</p> <p>FOR WITNESS CANDACE KUNZ-FREED:</p> <p>Mr. Cory S. Reed</p> <p>THOMPSON COE</p> <p>One Riverway, Suite 1400</p> <p>Houston, Texas 77056</p> <p>Telephone: 713.403.8210</p> <p>E-mail: creed@thompsoncoe.com</p>	<p>1 INDEX</p> <p>2</p> <p>3 PAGE</p> <p>4 Examination by Mr. Mendel .....7</p> <p>5 Examination by Ms. Carole Brunsting .....106</p> <p>6 Examination by Ms. Candace Curtis .....120</p> <p>7 Examination by Ms. Bayless .....139</p> <p>8 Signature Page .....257</p> <p>9 Court Reporter's Certificate .....259</p> <p>10</p> <p>11 EXHIBITS</p> <p>12 EXHIBIT DESCRIPTION PAGE</p> <p>13 Exhibit 1 1996 Brunsting Family Living 9</p> <p>14 Trust</p> <p>15 Exhibit 2 2005 Restatement of the 9</p> <p>16 Brunsting Family Living Trust</p> <p>17 Exhibit 3 2007 First Amendment to The 10</p> <p>18 Restatement to The Brunsting</p> <p>19 Family Living Trust</p> <p>20 Exhibit 4 2008 Appointment of Successor 10</p> <p>21 Trustees</p> <p>22 Exhibit 5 June 2010 Qualified Beneficiary 10</p> <p>23 Designation and Exercise of</p> <p>24 Testamentary Powers of</p> <p>25 Appointment Under Living Trust</p> <p>Agreement</p> <p>Exhibit 6 August 2010 Qualified 11</p> <p>Beneficiary Designation and</p> <p>Exercise of Testamentary Powers</p> <p>of Appointment Under Living</p> <p>Trust Agreement</p>
3	5
<p>1 APPEARANCES</p> <p>2</p> <p>3 PRO SE DEFENDANT:</p> <p>4 Ms. Candace Louise Curtis</p> <p>5 218 Lanadana Street</p> <p>6 American Canyon, California 94503</p> <p>7 E-mail: occurtis@sbcglobal.net</p> <p>8 PRO SE DEFENDANT:</p> <p>9 Ms. Carole Ann Brunsting</p> <p>10 5822 Jason Street</p> <p>11 Houston, Texas 77074</p> <p>12 E-mail: cbrunsting@sbcglobal.net</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 EXHIBITS (cont.)</p> <p>2 EXHIBIT DESCRIPTION PAGE</p> <p>3 Exhibit 7 2010 Appointment of Successor 11</p> <p>4 Trustees</p> <p>5 Exhibit 8 12/21/10 Resignation of 12</p> <p>6 Original Trustee and Acceptance</p> <p>7 by Successor Trustee</p> <p>8 Exhibit 9 2016 Report of Temporary 12</p> <p>9 Administrator Pending Contest</p> <p>10 (Lester Report)</p> <p>11 Exhibit 10 2016 Plaintiff's Original 13</p> <p>12 Petition, Complaint and</p> <p>13 Application for Ex-Parte</p> <p>14 Temporary Restraining Order,</p> <p>15 Asset Freeze, Temporary and</p> <p>16 Permanent Injunction (Federal</p> <p>17 Court)</p> <p>18 Exhibit 11 2016 Verified Complaint for 13</p> <p>19 Damages of Candace Curtis</p> <p>20 (Federal Court)</p> <p>21 Exhibit 12 2015 Plaintiff's Second Amended 13</p> <p>22 Petition (Candace Curtis)</p> <p>23 (Probate Court 4)</p> <p>24 Exhibit 13 2013 First Amended Petition for 14</p> <p>25 Declaratory Judgment, for an</p> <p>Accounting, for Damages, and</p> <p>for Imposition of a</p> <p>Constructive Trust (Carl</p> <p>Brunsting) (Probate Court 4)</p> <p>Exhibit 14 March 2015 First Supplement to 14</p> <p>Plaintiff's First Amended</p> <p>Petition (Carl Brunsting)</p> <p>(Probate Court 4)</p> <p>Exhibit 15 July 2015 Second Supplement to 14</p> <p>Plaintiff's First Amended</p> <p>Petition (Carl Brunsting)</p> <p>(Probate Court 4)</p>



Candace Kunz-Freed

6

1 EXHIBITS (cont.)

2 EXHIBIT DESCRIPTION PAGE

3 Exhibit 16 August 2015 Third Supplement to 15

4 Plaintiff's First Amended

5 Petition and Request for

6 Injunctive Relief (Carl

7 Brunsting) (Probate Court 4)

8 Exhibit 17 Notes/History 143

9 Exhibit 18 Notes/History 143

10 Exhibit 19 PM Trust Review Meeting 7/30/10 238

11 Exhibit 20 October 7, 2010 Notes 238

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1 Q. Okay. Then the other thing that I think

2 everyone sometimes forgets is -- please let me try and

3 finish the question, I'll try and let you finish the

4 answer, because it makes it challenging for her to write

5 down what both people are saying if we're talking at the

6 same time.

7 **A. Sure.**

8 Q. Okay. We put together a notebook that we put

9 in front of you, and I want to run through those --

10 we're going to be talking about one or more of those

11 documents during the course of the day. I just want to

12 run through those documents and get you to identify

13 them. Bear with me a second.

14 The first document is the 1996 Brunsting

15 Family Living Trust. I brought today what we have a

16 copy of in our file, and our copy is unsigned.

17 Do you recognize this document?

18 **A. I do.**

19 Q. And I realize you don't have an opportunity to

20 read it word for word or go through every page, but do

21 you have any reason to believe that this may not be the

22 1996 document that was, in fact, signed by Elmer and

23 Nelva Brunsting?

24 **A. I have no reason to believe that it is not.**

25 Q. And I guess -- would some sort of a signed copy

7

1 CANDACE KUNZ-FREED,

2 having been first duly sworn, testified as follows:

3 EXAMINATION

4 QUESTIONS BY MR. MENDEL:

5 Q. Ms. Kunz-Freed, my name is Steve Mendel. I

6 represent Anita Brunsting in this matter. You had

7 indicated earlier it would be okay to call you

8 Ms. Freed.

9 **A. (Witness nods head affirmatively.)**

10 Q. So I appreciate that.

11 Have you ever given a deposition before?

12 **A. No, I have not.**

13 Q. Okay. Have you ever testified on attorneys'

14 fees by way as an expert?

15 **A. No.**

16 Q. I'm assuming you had an opportunity to visit

17 with Mr. Reed and learn about the deposition process.

18 **A. Yes.**

19 Q. So one of the things we want to try and do for

20 the court reporter is speak our answers because that's

21 all she can do, is write it down.

22 **A. Correct.**

23 Q. And we want to try and avoid uh-huh and huh-uh

24 because it's not really clear who's saying what.

25 **A. I understand.**

9

1 still be with Mr. Vacek, or do you know where a signed

2 copy might be?

3 **A. There may be a scanned copy somewhere, but it**

4 **was my understanding there was a restatement done. And**

5 **typically when a document is restated in its entirety,**

6 **then there may not be a hard copy anymore.**

7 Q. Okay. So what we have marked as tab 1, we're

8 just going to refer to that as Exhibit 1. Okay?

9 (Exhibit 1 marked.)

10 Q. (By Mr. Mendel) Let's go to tab 2. That's the

11 restated instrument of the Brunsting family trust back

12 in 2005. This one is a signed copy.

13 Do you recognize that document?

14 **A. I do.**

15 Q. Just based on your quick thumb-through, does

16 that appear to be a true and correct copy of the 2005

17 restatement?

18 **A. It does.**

19 Q. So we'll treat that as Exhibit No. 2.

20 (Exhibit 2 marked.)

21 Q. (By Mr. Mendel) And under tab No. 3, we're

22 going to treat that as Exhibit No. 3, a 2007 First

23 Amendment to The Restatement to The Brunsting Family

24 Living Trust.

25 Do you recognize that?

Candace Kunz-Freed

<p style="text-align: right;">10</p> <p>1       <b>A. Yes.</b> 2       Q. Does that appear to be a true and correct copy 3 of Exhibit No. 3? 4       <b>A. It does.</b> 5       <b>(Exhibit 3 marked.)</b> 6       Q. (By Mr. Mendel) And under tab No. 4, we're 7 going to treat that as Exhibit No. 4. And that's a 2008 8 Appointment of Successor Trustees. 9       Do you recognize that document? 10      <b>A. I do.</b> 11      Q. And does that appear to be a true and correct 12 copy of that instrument? 13      <b>A. It does.</b> 14      <b>(Exhibit 4 marked.)</b> 15      Q. (By Mr. Mendel) And then under tab 5, which 16 will be Exhibit 5, is what appears to be a June 2010 17 Qualified Beneficiary Designation and Testamentary 18 Powers of Appointment. 19      Do you recognize that document? 20      <b>A. I do.</b> 21      Q. Does that appear to be a true and correct copy? 22      <b>A. It does.</b> 23      <b>(Exhibit 5 marked.)</b> 24      Q. (By Mr. Mendel) And then under tab 6, which 25 we're going to refer to as Exhibit 6, is a Qualified</p>	<p style="text-align: right;">12</p> <p>1       Q. (By Mr. Mendel) Do you recognize that 2 instrument, and does that appear to be a true and 3 correct copy? 4       <b>A. It does.</b> 5       Q. And then under tab 8 we have another instrument 6 that was executed in December of 2010, the Resignation 7 of Original Trustee. And that will be Exhibit 8. 8       (Exhibit 8 marked.) 9       Q. (By Mr. Mendel) Do you recognize that exhibit, 10 and does that appear to be a true and correct copy? 11      <b>A. It does, along with the acceptance behind it.</b> 12      Q. Okay. Under No. 9, which will be Exhibit 9, is 13 the Report of Temporary Administrator that Mr. Lester 14 put together back in 2016. 15      Have you seen this document? 16      <b>A. I think I did at some point. I believe I did</b> 17 <b>through counsel.</b> 18      <b>Actually, I don't know that I saw this</b> 19 <b>entire report; but if it was filed of record, I did.</b> 20      <b>(Exhibit 9 marked.)</b> 21      Q. (By Mr. Mendel) All right. No. 10, we get 22 into some pleadings. No. 10 is a February 2012 federal 23 court complaint filed by Candace Curtis, something we 24 pulled down from the court's website. 25      Have you seen this particular document?</p>
<p style="text-align: right;">11</p> <p>1 Beneficiary Designation and Exercise of Testamentary 2 Powers of Appointment Under Living Trust Agreement. 3       Do you recognize that agreement? 4       <b>A. I do.</b> 5       Q. Does that appear to be a true and correct copy? 6       <b>A. It does.</b> 7       <b>(Exhibit 6 marked.)</b> 8       Q. (By Mr. Mendel) I think it's just going to be 9 easier -- I'm going to refer to that particular 10 document, being Exhibit No. 6, as the QBD. So can we 11 have the agreement that if we're talking about the QBD, 12 we're talking about Exhibit No. 6? 13      <b>A. And not the one that was qualified beneficiary</b> 14 <b>designation before that?</b> 15      Q. And not No. 5. 16      <b>A. Okay. Yes.</b> 17      Q. For the record, Exhibit 5 was executed in June 18 of 2010 and Exhibit 6 was executed in August of 2010? 19      <b>A. Correct.</b> 20      Q. Under tab 7 we're going to have what's Exhibit 21 No. 7, which was an instrument that was executed in 22 December of 2010 where we have an Appointment of 23 Successor Trustees? 24      <b>A. Uh-huh.</b> 25      <b>(Exhibit 7 marked.)</b></p>	<p style="text-align: right;">13</p> <p>1       <b>A. I'm sure I have.</b> 2       Q. We're going to call that Exhibit 10. 3       (Exhibit 10 marked.) 4       Q. (By Mr. Mendel) Under tab 11, which is going 5 to be Exhibit 11, another document that we would have 6 pulled from the court's website, is a 2016 federal court 7 Complaint filed by Candace Curtis. 8       Are you familiar with this instrument? 9       <b>A. Yes, I am.</b> 10      <b>(Exhibit 11 marked.)</b> 11      Q. (By Mr. Mendel) No. 12, which we're going to 12 refer to as Exhibit 12, this is an instrument that was 13 filed by Candace Curtis in 2015 entitled Plaintiff's 14 Second Amended Petition. 15      Have you ever seen this instrument? 16      Again, something we would have pulled from the court's 17 website. 18      <b>A. I'm sure I would have seen it at some point if</b> 19 <b>it was on the website.</b> 20      <b>(Exhibit 12 marked.)</b> 21      Q. (By Mr. Mendel) No. 13, something that we 22 would have also obtained from the court's website, which 23 will be Exhibit 13, is something that was filed in 2013. 24 It would be Carl Brunsting's First Amended Petition. 25 This was filed in the probate court.</p>

14

1 Are you familiar with this instrument?

2 **A. Vaguely, yes.**

3 **(Exhibit 13 marked.)**

4 Q. (By Mr. Mendel) Tab 14, which is Exhibit 14,

5 another instrument filed by Mr. Brunsting, Carl

6 Brunsting, in March of 2015. It would be his First

7 Supplement to Plaintiff's First Amended Petition,

8 something we would have obtained from the court's

9 website.

10 Are you familiar with this instrument?

11 **A. I have seen it before, yes.**

12 **(Exhibit 14 marked.)**

13 Q. (By Mr. Mendel) Under tab 15, now Exhibit 15,

14 is a July 2015 instrument filed by Carl Brunsting

15 entitled Second Supplement to Plaintiff's First Amended

16 Petition.

17 Are you familiar with this instrument?

18 **A. Yes.**

19 **(Exhibit 15 marked.)**

20 Q. (By Mr. Mendel) And then I've got under

21 tab 16, which we'll refer to as Exhibit 16, an

22 August 2015 instrument filed by Carl Brunsting, the

23 Third Supplement to Plaintiff's First Amended Petition

24 and Request for Injunctive Relief.

25 Are you familiar with this instrument?

15

1 **A. I'm sorry. What was the date on the**

2 **instrument?**

3 Q. August of 2015.

4 **A. Okay. Yes.**

5 **(Exhibit 16 marked.)**

6 Q. (By Mr. Mendel) Have you reviewed any

7 documents in preparation for your deposition?

8 **A. I did.**

9 Q. I'm sorry. You did?

10 **A. I did.**

11 Q. Would you give us a general understanding; or

12 if you recall the specific instrument, would you tell us

13 what it is you reviewed?

14 **A. I reviewed my notes, my attorney notes.**

15 Q. Did you review anything other than your

16 attorney notes?

17 **A. No.**

18 Q. Okay. And the attorney notes that you're

19 making reference to, would those be the documents that

20 you recently turned over to your lawyer and that were

21 released to the parties?

22 **A. Uh-huh.**

23 Q. Is that a "yes"?

24 **A. Yes. I'm sorry. It is.**

25 Q. It's my understanding that the primary focus of

16

1 your practice is estate planning and estate

2 administration. Would that be correct?

3 **A. That's correct.**

4 Q. So would you tell the jury a little bit about

5 what is the nature of your practice in terms of estate

6 and trust planning and in terms of estate and trust

7 administration?

8 **A. Currently or nine years ago?**

9 Q. Well, currently. We'll go back and talk in a

10 minute.

11 **A. So currently I continue to do estate planning.**

12 **I do wills, trusts. I do estate administration, probate**

13 **work.**

14 Q. Okay. And so when did you first start with the

15 Vacek firm?

16 **A. I believe it was March of 2007.**

17 Q. I tell you what. Let's back up before that.

18 Let's just take your education real quick, starting with

19 your undergraduate degree and jumping up to law school.

20 **A. Sure.**

21 Q. Undergraduate background?

22 **A. BBA from Southwest Texas State University in**

23 **marketing.**

24 Q. Okay.

25 **A. And then that was -- graduated from there in**

17

1 **2000.**

2 Q. Okay.

3 **A. From 2000 to 2003, Saint Mary's law school in**

4 **San Antonio. I graduated in 2003; I started practicing**

5 **in November of 2003.**

6 Q. Okay. And then just briefly, who did you go --

7 you indicated you started with the Vacek firm in --

8 **A. In '07.**

9 Q. -- March of 2007. So who did you go to work

10 for in 2003?

11 **A. So I was an attorney for LMI and did**

12 **business -- just business practice for him in**

13 **San Marcos, Texas.**

14 Q. What is LMI?

15 **A. It was Love Lady Management.**

16 MS. BAYLESS: Can you speak up just a

17 little bit?

18 THE WITNESS: Love Lady Management.

19 Q. (By Mr. Mendel) What did they do?

20 **A. He held various business practices, at one**

21 **point was building a marina in Costa Rica.**

22 Q. And then when did you move to a new position

23 after that?

24 **A. In 2007, when I went to work for the Vacek law**

25 **firm.**

18

1 Q. And at the time that you started with the Vacek  
2 law firm, were you an associate attorney?  
3 **A. Yes.**  
4 Q. Tell us a little bit about what you did,  
5 starting in 2007 and coming forward.  
6 **A. Sure. I started out, 2007, in the area of**  
7 **planning. I then moved over to the administration**  
8 **department about a year into it and started running the**  
9 **administration department a couple of years after that.**  
10 Q. Okay.  
11 **A. So it was just a natural progression.**  
12 Q. And when did you start your own firm?  
13 **A. In 2015, September 2015.**  
14 Q. And so from March of 2007 until you started  
15 your own firm, you were employed continuously with the  
16 Vacek firm?  
17 **A. That's correct.**  
18 Q. And then at some point in there, you became a  
19 partner?  
20 **A. Never.**  
21 Q. Never?  
22 **A. I was never a partner at the law firm.**  
23 Q. It's my recollection it said Vacek & Freed.  
24 **A. Yes, it did.**  
25 Q. Okay.

19

1 **A. I was always an associate attorney, never a**  
2 **partner.**  
3 Q. It's my understanding that in addition to being  
4 a member of the State Bar of Texas, you're a member of  
5 the American Bar Association?  
6 **A. I am.**  
7 Q. And you're affiliated with the real estate,  
8 probate and trust departments of both organizations?  
9 **A. That is correct.**  
10 Q. And I understand you're affiliated with a group  
11 called Disability and Elder Law?  
12 **A. I had been; yes, that's correct.**  
13 Q. What do they do?  
14 **A. DELA is more geared towards guardianship and**  
15 **prevention of guardianship.**  
16 Q. You say you had been affiliated. So you're no  
17 longer affiliated?  
18 **A. I have not been an attending member for the**  
19 **last four years or five years.**  
20 Q. Okay. You indicated that you hadn't given a  
21 deposition before; but let me just, I guess, get a  
22 clarification for my own purposes.  
23 **A. Sure.**  
24 Q. Have you ever testified as an expert in court  
25 about a will or a trust or an administration?

20

1 **A. No, I have not.**  
2 Q. Would it be fair to say, in light of your legal  
3 training through law school and your legal training  
4 working at the Vacek firm and even now in your own firm,  
5 that in terms of assisting the judge or the jury, you  
6 possess special skills with regard to estates and  
7 trusts?  
8 **A. Sure.**  
9 MS. BAYLESS: Objection, form.  
10 Q. (By Mr. Mendel) Would it be fair to say that  
11 you have special knowledge in the area of estates and  
12 trusts?  
13 MS. BAYLESS: Objection, form.  
14 **A. I guess it would be. I mean, my area of**  
15 **practice has been focused in that area. So I would say**  
16 **yes.**  
17 Q. (By Mr. Mendel) So if you were meeting with a  
18 new client, what would you indicate to them, some of the  
19 skills that you bring to the client's issues and some of  
20 the knowledge that you bring to the process of estate  
21 and trust planning and probate and trust administration?  
22 **A. I'm sorry. Could you ask that again.**  
23 Q. Yeah. If you were meeting with a client and  
24 they were asking about your background and experience,  
25 what would you share with them about skills and

21

1 knowledge in the area of trust and estate planning and  
2 trust and estate administration?  
3 **A. I suppose I would say that that's where my**  
4 **practice is focused and that I don't dabble in other**  
5 **areas of the law. So that's where my training has been**  
6 **over the years.**  
7 Q. So to help a layperson understand, what does an  
8 estate and trust attorney do? What would be some of the  
9 things that they might seek your advice for?  
10 **A. Estate planning, to get their stuff where they**  
11 **want it to go, to determine who's going to be in charge**  
12 **of their stuff if they become incapacitated, who's going**  
13 **to take care of them if they become incapacitated.**  
14 **Estate tax planning if there are tax issues involved. I**  
15 **mean, that's ...**  
16 Q. Fair enough. And then what would be some of  
17 the things that you might share with them about -- if  
18 they ask, well, what's a probate administration or  
19 what's a trust administration, what would you share with  
20 them generally, what that's about?  
21 **A. Probate is a will going to court and a judge**  
22 **blessing the will, saying that, yes, this is, in fact,**  
23 **the last will; and then the executor is appointed to**  
24 **carry out those duties and assistance in making sure**  
25 **that their fiduciary responsibilities are ...**

22

1 Q. And so what would a layperson need to  
 2 understand as part of the probate process? So, you  
 3 know, the will is written, it's admitted to probate,  
 4 it's approved or admitted by the Court.  
 5 What kind of happens next in terms of the  
 6 process of, okay, probate's been opened; at some point  
 7 it's going to end. What happens in between?  
 8 **A. Again, what their responsibilities are as far  
 9 as being an executor or a personal representative or, in  
 10 the case of a trust, a trustee; an accounting being set  
 11 up; taking control or possession of assets; making sure  
 12 that they are preserved and getting them to the place  
 13 they need to be; and the tax returns are filed.**  
 14 Q. And what about evaluating liabilities and  
 15 things like that?  
 16 **A. Of course. I mean, that goes without saying.**  
 17 Q. Okay. Would those be -- the steps that you've  
 18 just described for a probate administration, would those  
 19 be very similar for a trust administration?  
 20 **A. Absolutely, yes.**  
 21 Q. What's the focus of your continuing education  
 22 programs in terms of keeping your license current?  
 23 **A. So I continue to go to the Advanced Estate  
 24 Planning each year that the Texas Bar puts on. I'm a  
 25 member of the State Bar College.**

23

1 **So I've always exceeded the amount of CLE  
 2 that I'm required to do. Maintaining wealth -- I'm a  
 3 member of Wealth Council. So I attend Wealth Council  
 4 meetings twice a year.**  
 5 Q. As a result of the extra continuing education,  
 6 don't you also hold a designation for State Bar of  
 7 College -- or State Bar College?  
 8 **A. Yes.**  
 9 Q. So in addition to the extra continuing  
 10 education programs that you just described, do you have  
 11 any other special training in the area of estates and  
 12 trusts or planning or estate and trust administration  
 13 other than doing the work?  
 14 **A. Special training, no. I mean, not other than  
 15 just the practice.**  
 16 Q. When you do work for clients -- so let's talk  
 17 about the planning work versus the administration work.  
 18 Back when you were working on the  
 19 Brunsting matter, were y'all doing things on an hourly  
 20 rate, a flat rate, some combination?  
 21 **A. Typically estate planning issues were done on a  
 22 flat rate.**  
 23 Q. Okay.  
 24 **A. And estate administration was done on an hourly  
 25 rate. We reserve the right to go to an hourly rate if**

24

1 **for some reason the planning seemed to exceed what we  
 2 thought.**  
 3 Q. Okay.  
 4 **A. But typically they were flat fee.**  
 5 Q. So during the period that the Vacek firm was  
 6 working on the Brunsting matter -- and I assume the  
 7 rates probably increased over time to account for  
 8 inflation and things like that.  
 9 **A. Uh-huh.**  
 10 Q. Do you have a general recollection of what the  
 11 hourly rates were for you and for Mr. Vacek?  
 12 **A. I do not recall what those were, but they did  
 13 increase over time. I do recall that.**  
 14 Q. Do you recall what they were at the time that  
 15 you left?  
 16 **A. 225 an hour. And I'm making a guess. I don't  
 17 remember, honestly. That was a long time ago.**  
 18 Q. Would that have been your rate or his rate or  
 19 both rates?  
 20 **A. Oh, his would have been higher, I'm sure.**  
 21 Q. Okay. Any reasonable idea of what his rate  
 22 might have been?  
 23 **A. Typically he did estate planning versus  
 24 administration. So his was -- I don't know what his  
 25 hourly rate was because that wasn't -- he wasn't in that**

25

1 **area of the firm.**  
 2 Q. So from your perspective, is there anything  
 3 unreasonable about hourly rates between, say, 200 and  
 4 \$400 an hour?  
 5 **A. No.**  
 6 Q. What would you consider to be a reasonable  
 7 hourly rate for someone that might be doing a probate  
 8 administration or even a trust administration?  
 9 MR. REED: Objection, form.  
 10 **A. An hourly rate?**  
 11 Q. (By Mr. Mendel) Yes, ma'am.  
 12 **A. I don't know what a reasonable -- I mean,  
 13 that's ...**  
 14 Q. Well, if a client asked for a recommendation  
 15 from you of -- I have to pick someone to be my successor  
 16 trustee when I'm not here anymore. I want them to be  
 17 compensated -- what would the conversation be like in  
 18 terms of recommendations that you might make to the  
 19 client?  
 20 MS. BAYLESS: Objection, form.  
 21 **A. On the rate a trustee would charge or the  
 22 attorney? I'm not sure of your question.**  
 23 Q. (By Mr. Mendel) The trustee.  
 24 **A. Okay. So I typically will tell trustees that  
 25 it's a thankless job, that they -- if they take a fee,**

26

1 what's reasonable and customary for the job that they're  
 2 doing, depending on what they're actually doing. I give  
 3 them an idea of what a corporate trustee would charge,  
 4 and I also tell them that they are held to a higher  
 5 fiduciary standard if they take a fee.  
 6 Q. And so what is your understanding of what is a  
 7 reasonable corporate trustee fee in Harris County?  
 8 A. Currently?  
 9 Q. Yes, ma'am.  
 10 A. My understanding is 1.2 to 1.3 percent for the  
 11 first million, plus a minimum. And as the trust gets  
 12 higher in value, the percentage is reduced typically.  
 13 Q. And so, as an example, is there any reason to  
 14 believe that a fee of 75 basis points for the next  
 15 couple of million -- would that be reasonable or  
 16 unreasonable?  
 17 MR. REED: Objection, form.  
 18 A. I don't understand 75 basis points. I'm sorry.  
 19 Q. (By Mr. Mendel) .75 of 1 percent.  
 20 A. Oh, sure. I think that would be -- I mean, it  
 21 depends on what the corporate trustees are charging.  
 22 They're all about the same.  
 23 Q. Okay. Any material difference, from your  
 24 perspective, for a trust administration currently, which  
 25 you indicated might be 1.2 to 1.3 percent -- what is

27

1 your understanding of what those rates might be back  
 2 when Anita and Amy Brunsting were performing or had been  
 3 performing an administration in this case?  
 4 A. I would think they were about the same. I  
 5 mean, I'm sure they get adjusted for inflation, and  
 6 different corporate trustees charge a minimum. I  
 7 haven't looked at what they are now.  
 8 Q. But from your perspective, no material  
 9 difference?  
 10 A. Over a ten-year period there probably is some  
 11 difference, but ...  
 12 Q. But going back to 2011, 2012, 2013 --  
 13 A. That was about the going rate.  
 14 Q. Okay.  
 15 A. From what I recall.  
 16 Q. On the administrations, whether they're probate  
 17 or trusts, have you gotten involved on the litigation  
 18 side of those kinds of cases?  
 19 A. I do not.  
 20 Q. Do you provide assistance -- I guess -- do you  
 21 refer those kinds -- the litigation matters to someone  
 22 else?  
 23 A. I would.  
 24 Q. But, yet, you continue to provide some sort of  
 25 assistance to the client and/or the other attorney?

28

1 A. I would.  
 2 Q. From your perspective, would you consider  
 3 litigation to be very time-consuming?  
 4 A. I would.  
 5 Q. Would you consider discovery to be time-  
 6 consuming?  
 7 A. I would.  
 8 Q. Would you consider situations like today,  
 9 preparing and attending a deposition, to be time-  
 10 consuming?  
 11 A. Yes, I would.  
 12 Q. Preparing and attending hearings?  
 13 A. Yes, I would.  
 14 Q. You believe it's reasonable for those who  
 15 participate in that process to be compensated for their  
 16 time for all of that. Would you agree with that?  
 17 MR. REED: Object to form.  
 18 A. I would agree.  
 19 Q. (By Mr. Mendel) I want to talk a little bit  
 20 about -- well, let me back up for a second.  
 21 I want to talk about how the Vacek firm  
 22 handles its client consultations with respect to estate  
 23 planning and what are sort of the steps.  
 24 So we know that Elmer and Nelva Brunsting  
 25 had this 1996 trust. So if they want to get some sort

29

1 of an update -- it's been referred to as a  
 2 restatement -- how does that process work? How do you  
 3 get from your original trust to the restated trust?  
 4 A. Are you asking me about the Brunstings  
 5 specifically, or are you asking about any other client  
 6 that --  
 7 Q. I just want kind of a quick overview of just  
 8 about any client, and then I want to focus in particular  
 9 on the Brunstings.  
 10 A. So Mr. Vacek had clients that already had  
 11 trusts dating back to 1990, 1991. As the tax laws  
 12 change over time, clients are offered three-year  
 13 reviews, to come in.  
 14 When they come in, we would talk to them  
 15 about whether or not they needed any changes based on  
 16 the changes in the tax law, whether there were any  
 17 desired changes that they wanted to make. And at that  
 18 time the client would decide whether or not they wanted  
 19 to amend, restate or their trust was fine as is.  
 20 Q. Okay. So when you sit down to restate the  
 21 trust, what are sort of the common events -- or is there  
 22 such a thing as common changes that a client might  
 23 implement with regard to going from an original trust to  
 24 a restated trust?  
 25 MS. BAYLESS: Objection, form.

1 MR. REED: Objection, form.

2 **A. Tax law changes, familial changes. There would**

3 **also be changes in homestead laws, changes in HIPAA**

4 **laws, updates of medical powers of attorney, updates of**

5 **durable general powers of attorney.**

6 Q. (By Mr. Mendel) Okay. Do you have a

7 recollection of what Mr. and Mrs. Brunsting had -- why

8 they decided to do a restated trust?

9 **A. I do not. I was not involved with the**

10 **restatement, as it was before -- I believe it was before**

11 **I worked at the law firm.**

12 Q. That's '07?

13 **A. I started in '07.**

14 Q. Okay. All right.

15 So now let's move forward and talk about

16 the QBD. Apparently something got signed under --

17 Exhibit 5 is an instrument that was signed in June of

18 2010 related to the QBD.

19 What is your recollection of what brought

20 Nelva Brunsting to the office to make some changes?

21 **A. You have to forgive me because this was a long**

22 **time ago already, nine years ago or almost nine years**

23 **ago. But my recollection of this particular one, in the**

24 **trust document it stated that the trust or the trustee**

25 **could make gifts, and it was not an advance on their**

1 trust share.

2 **But Ms. Brunsting had an occasion where**

3 **two of her children needed some funds, and she wanted to**

4 **make those gifts; but she did not -- she wanted to keep**

5 **it equal amongst her children. So that necessitated**

6 **amending the trust.**

7 Q. And those two children would be who?

8 **A. Carole Brunsting and Candy Curtis.**

9 Q. And your understanding of why Carole was

10 receiving gifts was what?

11 **A. I honestly --**

12 MR. REED: Form.

13 **A. -- don't recall what the purpose of that was.**

14 **I mean, that's between Mom and her children.**

15 Q. (By Mr. Mendel) Okay. Do you have a

16 recollection of the nature or the purpose of the gifts

17 with regard to Candy Curtis?

18 **A. I don't.**

19 Q. In or about July 2010, Carl Brunsting became

20 ill from -- which is my understanding in looking at

21 documents -- with encephalitis. And then it appears

22 that there may have been some discussions about amending

23 the QBD again?

24 **A. That's correct.**

25 Q. So what is your recollection of discussions

1 with Nelva Brunsting with regard to why she wanted to

2 amend again?

3 **A. Because Carl was listed as a co-trustee and**

4 **first on some documents, and she wasn't sure that he was**

5 **going to actually live.**

6 Q. **I think Candy Curtis was also listed as either**

7 **a trustee or a successor trustee on some instruments,**

8 **and she was removed or not permitted to be a successor**

9 **trustee.**

10 **Do you have a recollection as to why that**

11 **change was made?**

12 **A. She was listed as a co-trustee, I believe, with**

13 **Carl Brunsting. Typically I don't recommend -- if a**

14 **family member is outside the state of Texas, it makes it**

15 **more difficult logistically to operate and handle trust**

16 **administration or trust work.**

17 **Nelva and Mr. Brunsting, Elmer, always had**

18 **listed co-trustees throughout their documents. I**

19 **believe it was just a check and balance on their**

20 **children just to make sure that there was two of them.**

21 **Candy was removed at that time. And two**

22 **co-trustees were more local, one in Victoria and one in**

23 **New Braunfels, I believe.**

24 Q. Okay. When you're engaged in conversations

25 with clients in doing this kind of planning, what

1 attention do you give to the issue of testamentary

2 capacity?

3 **A. Well, I mean, I usually can spot if there's an**

4 **issue. If someone has not given me any indication that**

5 **there's an incapacity issue, then I really don't worry**

6 **about it.**

7 **I would look at what they're asking me to**

8 **do. Is it totally out of character? Is it a major**

9 **change?**

10 **I mean, you're asking me whether or not I**

11 **give thought to it. I do, but I don't assume that**

12 **they're incapacitated every time they walk into my**

13 **office.**

14 Q. **And that's fine. I just wanted to get a**

15 **general sense of, in particular for the time frame of**

16 **June of 2010 to August of 2010, with regard to**

17 **Exhibits 5 and 6, which are QBD-related, that you at**

18 **least had a comfort level that Nelva Brunsting had the**

19 **capacity to sign these instruments.**

20 **A. Yes, absolutely. I mean, nothing indicated to**

21 **me that she didn't.**

22 Q. And so when you say nothing indicated to you

23 that she didn't, is that based on your conversations and

24 your observation of her demeanor and information that's

25 provided to you by her?

34

1           **A. That's correct. You know, does she drive**  
 2 **herself there?**  
 3           Q. Which is a great point.  
 4           **A. Uh-huh.**  
 5           Q. Did she drive herself there?  
 6           **A. Yes, uh-huh.**  
 7           MR. REED: Is that a "yes"?  
 8           THE WITNESS: That's a "yes."  
 9           Q. (By Mr. Mendel) And so for these meetings for  
 10 Exhibit 5 and Exhibit 6, did any of the other children  
 11 attend those meetings?  
 12           **A. No, not that I recall.**  
 13           Q. With regard to Exhibit 6, which is a longer  
 14 instrument in terms of pages and more detail as compared  
 15 to Exhibit 5, what sort of process -- I mean, the client  
 16 would indicate to you what it is they wanted, and you  
 17 would prepare the instrument?  
 18           **A. That's correct.**  
 19           Q. Okay. And then what sort of a discussion would  
 20 you have with the client, and in particular Nelva  
 21 Brunsting, to help her, at least at the time that she  
 22 signed the instruments, to have an appreciation for what  
 23 they say?  
 24           **A. What would I say to the client to make sure she**  
 25 **had an appreciation of what it said?**

35

1           Q. Yes, ma'am.  
 2           **A. I would explain what the trust that they have**  
 3 **says currently, what changes they're wanting to make,**  
 4 **what changes are in the document, to follow their**  
 5 **instructions on which they desire to make on the things**  
 6 **that they wanted to change, and how that would work if**  
 7 **they were to pass away right now, as signed.**  
 8           Q. Okay. And with regard to Exhibit 5 and  
 9 Exhibit 6, the -- is that the kind of conversation that  
 10 you, in fact, would have had with Nelva Brunsting?  
 11           **A. Oh, absolutely, yes.**  
 12           Q. And would it be fair to say that after having  
 13 that conversation with her, from your perspective, she  
 14 had an appreciation for the essence of what that  
 15 instrument was about?  
 16           MS. BAYLESS: Objection, form.  
 17           **A. Of course.**  
 18           Q. (By Mr. Mendel) Would it be fair to say, from  
 19 your perspective, that -- you've probably heard the  
 20 phrase "the objects of her bounty."  
 21           Did she understand who her family members  
 22 were?  
 23           **A. Definitely.**  
 24           Q. Did she have a general understanding of the  
 25 nature of her assets?

36

1           **A. Yes.**  
 2           Q. Did she have a general understanding of how she  
 3 wanted those assets to be managed when she wasn't here?  
 4           **A. Yes.**  
 5           Q. When I say a general understanding of assets,  
 6 I'm talking about liquid assets as well as the farm that  
 7 was up in Iowa.  
 8           **A. Sure, yes.**  
 9           Q. Did you have discussions with her about those  
 10 assets?  
 11           **A. Yes.**  
 12           Q. At any time in the June to August time frame,  
 13 did she, from your perspective, exhibit -- act  
 14 irrationally or exhibit some sort of irrational  
 15 behavior?  
 16           **A. June to August of what year?**  
 17           Q. 2010.  
 18           MR. REED: What was the question?  
 19           MR. MENDEL: Did Nelva Brunsting ever show  
 20 any sort of irrational behavior during that time period.  
 21           MS. BAYLESS: Objection, form.  
 22           **A. Not that I'm aware.**  
 23           Q. (By Mr. Mendel) On the day that she signed  
 24 these instruments, as you recall -- if I understood your  
 25 testimony correctly a moment ago, none of the adult

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1 children came to any of these meetings.  
 2           **A. You asked me about these two.**  
 3           Q. Exhibits 5 and 6.  
 4           **A. Yes. I do not recall any of her children**  
 5 **coming. I believe she drove herself.**  
 6           Q. Not only to the meetings, but she drove herself  
 7 for the signing?  
 8           **A. To sign them as well.**  
 9           Q. And no children were present at those signings?  
 10           **A. No, they were not.**  
 11           Q. Okay. And in your interactions with  
 12 Ms. Brunsting, I mean, I guess, what was sort of her --  
 13 from her outward expression, did she seem relieved by  
 14 getting these things done? Upset?  
 15           What was your perception of how she felt  
 16 about making these changes?  
 17           MS. BAYLESS: Objection, form.  
 18           **A. I believe that she was concerned about her son,**  
 19 **Carl, and making sure that somebody would be able to**  
 20 **handle things if something happened to her. And I**  
 21 **believe those were eliminated by the signing of those --**  
 22 **that concern was eliminated by the signing of the**  
 23 **documents.**  
 24           Q. (By Mr. Mendel) Okay.  
 25           Now, you served as the notary on these



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1 instruments, at least on --  
 2 **A. Yes, I did.**  
 3 Q. -- Exhibit 6. There's been the suggestion --  
 4 or based on everything that I've seen in the documents,  
 5 there seems to be the suggestion that Exhibit 6 was  
 6 forged.  
 7 Given that you were the notary, would you  
 8 have participated in any sort of a situation where that  
 9 exhibit might be forged?  
 10 **A. Absolutely not.**  
 11 Q. Okay. And I don't see your name on Exhibit 5,  
 12 but do you have any reason to believe that -- as far as  
 13 you're concerned, is there any evidence whatsoever that  
 14 Exhibit 5 was forged?  
 15 **A. No.**  
 16 Q. Any evidence whatsoever that you're aware of  
 17 that Exhibit 6 was forged?  
 18 **A. Absolutely not.**  
 19 Q. Sometimes people will sign multiple originals  
 20 like in duplicate or in triplicate. Did that occur  
 21 here?  
 22 **A. It was a common, usual, everyday practice at**  
 23 **the law firm.**  
 24 Q. Okay. And what do you see or what is the  
 25 benefit to the client of multiple original executions?

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1 **A. The client always leaves with -- or would**  
 2 **always leave with a binder that was original;**  
 3 **blue-backed originals, which was another set, that was**  
 4 **supposed to be stored in a fire safe or safe deposit**  
 5 **box.**  
 6 **And then for amendments only and medical**  
 7 **documents, we would sign a third one; and the law firm**  
 8 **kept those because sometimes both the originals and the**  
 9 **ones that were kept at home would disappear. So we**  
 10 **started keeping a third set.**  
 11 Q. And that would have been your practice back in  
 12 June and August of 2010 -- when I say "your practice,"  
 13 the law firm's practice -- with regard to the Brunsting  
 14 matter?  
 15 **A. Yes. And it's still my practice today.**  
 16 Q. So is it your experience that there can be  
 17 slight variations of a signature from one original  
 18 execution to the second set, to the third set?  
 19 **A. Absolutely. My signature has slight**  
 20 **variations.**  
 21 Q. Does that make anything forged just because  
 22 there's some slight differences?  
 23 **A. Absolutely not.**  
 24 Q. And in terms of testamentary capacity, any  
 25 reason you felt -- in June or August of 2010, when

40

1 Exhibits 5 and 6 were signed, any reason whatsoever that  
 2 you felt Nelva Brunsting lacked capacity?  
 3 **A. Not that I recall.**  
 4 Q. From your perspective, was there any indication  
 5 that she was being coerced to sign these documents?  
 6 **A. No.**  
 7 Q. From your perspective, was there any indication  
 8 that she was under duress in terms of signing Exhibits 5  
 9 and 6?  
 10 **A. No.**  
 11 MS. BAYLESS: I'm sorry. I didn't hear.  
 12 THE WITNESS: That was a "no."  
 13 Q. (By Mr. Mendel) Was there any indication that  
 14 Nelva Brunsting was fraudulently induced to sign  
 15 Exhibits 5 and 6?  
 16 **A. As a legal -- no, no. Nothing to indicate that**  
 17 **to me.**  
 18 Q. There's been the suggestion that maybe Nelva  
 19 Brunsting was unduly influenced to sign these  
 20 instruments. Given that one of the co-trustees lived in  
 21 Victoria, which is about a hundred miles away, and  
 22 another one lived in New Braunfels, which is about  
 23 160 miles away, do you have any reason to believe that  
 24 either Amy or Anita Brunsting endeavored to unduly  
 25 influence their mother to sign the June and August 2010

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1 instruments which are marked as Exhibits 5 and 6?  
 2 MS. BAYLESS: Objection, form.  
 3 **A. I do not.**  
 4 Q. (By Mr. Mendel) What facts would be important  
 5 to you as to whether or not somebody might be exercising  
 6 undue influence over a trustor or over a testator?  
 7 **A. I'm sorry. Can you rephrase your question?**  
 8 Q. I'm just wondering what facts you would  
 9 consider that might be important to get a sense of or  
 10 come to a decision that maybe somebody was exercising  
 11 undue influence.  
 12 So, as an example, it would seem to me,  
 13 being close in proximity would be important; but if  
 14 you're between 100 and 150 miles away and you don't even  
 15 come to the meetings, how do you exercise undue  
 16 influence in those situations?  
 17 MS. BAYLESS: Objection, form.  
 18 **A. I believe that would be very difficult.**  
 19 Q. (By Mr. Mendel) Did Ms. Nelva Brunsting ever  
 20 indicate to you that someone said she should not seek  
 21 the advice of Vacek & Freed?  
 22 **A. Did she ever indicate to me that she should not**  
 23 **come to us?**  
 24 Q. Uh-huh.  
 25 **A. No.**

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1 Q. Did she ever indicate to you that someone was  
 2 trying to influence her to go see some other law firm?  
 3 **A. Not that I am aware.**  
 4 Q. During the period June 2010 to August of 2010,  
 5 did you feel like the process of putting together the  
 6 QBDs, whether it's Exhibit 5 or Exhibit 6 -- did you  
 7 feel like that whole process was being rushed?  
 8 **A. I feel like there was a sense of urgency from**  
 9 **Ms. Brunsting due to Carl's current situation; but other**  
 10 **than that, no.**  
 11 Q. Does the mere fact that there was a sense of  
 12 urgency mean that the process of meeting, creating,  
 13 explaining, executing -- did that process seem rushed?  
 14 MS. BAYLESS: Objection, form.  
 15 **A. Not that I recall.**  
 16 Q. (By Mr. Mendel) A minute ago we were talking  
 17 about whether or not Ms. Brunsting might have exhibited  
 18 any irrational behavior, and you said no.  
 19 From your perspective, during this process  
 20 of explaining things to her, did she seem confused?  
 21 **A. No.**  
 22 Q. In particular, on the day and at the time that  
 23 these instruments were signed, these instruments being  
 24 Exhibits 5 and Exhibit 6, as I understand your  
 25 testimony -- and correct me if I'm wrong -- she had

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1 capacity, no irrational behavior, no confusion at the  
 2 time the instruments were signed?  
 3 **A. That's correct.**  
 4 Q. I have seen some commentators suggest that if  
 5 there's undue influence, it usually is an indication  
 6 that one beneficiary probably got more and another one  
 7 got less as a result of the undue influence.  
 8 Would that be a fair statement about the  
 9 effects of undue influence on an estate plan?  
 10 MS. BAYLESS: Objection, form.  
 11 **A. I think it would be fair.**  
 12 Q. (By Mr. Mendel) Given that Ms. Brunsting  
 13 treated all of the children equally from a distribution  
 14 standpoint, given that fact alone, do you see any way  
 15 that she could be unduly influenced in the execution of  
 16 that document?  
 17 MR. REED: Objection, form.  
 18 **A. I really don't know how to answer that. I**  
 19 **mean, she didn't make a material change to the**  
 20 **documents.**  
 21 Q. (By Mr. Mendel) Well, that's my point. All of  
 22 these children were in for 20 percent of the estate at  
 23 the time of the restatement. All of these children were  
 24 in for 20 percent of the estate at the time the  
 25 Exhibit 6 August 2010 instrument was executed.

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1 So was anybody treated unfairly, from your  
 2 perspective?  
 3 **A. No.**  
 4 Q. Who has the ultimate right to pick a trustee?  
 5 **A. The settlor.**  
 6 Q. Which would be Nelva Brunsting?  
 7 **A. Uh-huh.**  
 8 Q. And so is there anything unfair about removing  
 9 Carl as a trustee?  
 10 **A. No. I think it was prudent to do so.**  
 11 Q. And given that Candace Curtis resided out of  
 12 state and it's your recommendation that co-trustees or  
 13 trustees be local, is there anything unfair about  
 14 removing Candace Curtis as a trustee?  
 15 **A. No.**  
 16 Q. Would that fall under the category of prudent?  
 17 **A. Yes.**  
 18 Q. I want to talk a little bit about -- so at some  
 19 point later in the year, later in the year being 2010,  
 20 Nelva Brunsting elected to resign as a trustee, and  
 21 that's where her daughters Amy and Anita stepped in.  
 22 Do you recall that?  
 23 **A. I do.**  
 24 Q. And at that time, being back in or about  
 25 December of 2010 and moving into 2011, did the Vacek

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1 firm provide assistance for Amy and Anita Brunsting?  
 2 **A. We provided assistance to Mrs. Brunsting.**  
 3 Q. Mrs. Brunsting being Nelva?  
 4 **A. Yes.**  
 5 Q. But wasn't some -- was any advice and counsel  
 6 being provided to Amy and Anita Brunsting?  
 7 **A. With Ms. Brunsting's permission, yes.**  
 8 Q. And even though Mrs. Brunsting, Nelva  
 9 Brunsting, was coming to the Vacek firm -- and it  
 10 appears that you were probably the lead person to  
 11 provide assistance and advice -- was Mr. Vacek involved  
 12 in this case back starting in June of 2010 and moving  
 13 forward?  
 14 **A. I conferred with Mr. Vacek and Mrs. Vacek.**  
 15 Q. Would it be fair to say that with Nelva  
 16 Brunsting's permission, advice -- just so I'm clear,  
 17 Nelva Brunsting granted permission to the Vacek firm to  
 18 provide advice to Amy and Anita?  
 19 **A. That's correct.**  
 20 Q. And there's nothing wrong with attorneys  
 21 providing advice to trustees?  
 22 **A. No, there is nothing wrong with that.**  
 23 Q. And is there anything wrong with the client  
 24 relying on the advice of their counsel, no matter how  
 25 much some of the other beneficiaries or parties might

46

1 object?

2 **A. No. I believe they should be able to rely on**

3 **counsel.**

4 Q. Is there anything wrong with Anita and Amy

5 Brunsting relying on the advice of the Vacek firm, no

6 matter how much some of the other beneficiaries might

7 object?

8 **A. No.**

9 MS. BAYLESS: Objection, form.

10 Q. (By Mr. Mendel) Are you aware that some of the

11 other beneficiaries do object to everything that was

12 going on?

13 **A. I am aware.**

14 Q. I want to talk a little bit about some of the

15 transfers that would have been made to one or more of

16 the beneficiaries. Okay?

17 And so during Nelva Brunsting's life, as a

18 creator, a trustor and as a beneficiary, what rights

19 does she get to decide who ultimately might get

20 something from her?

21 **A. It's the golden rule: The woman with the gold**

22 **makes the rules. I mean, she can decide whatever she**

23 **wants. It's her stuff.**

24 Q. So if she has five children and she elects to

25 make distributions to one or two people now and one or

47

1 two different people later, is there anything wrong with

2 that?

3 MS. BAYLESS: Objection, form.

4 **A. Are you asking me for my personal opinion or my**

5 **legal opinion, my recommendation?**

6 Q. (By Mr. Mendel) I'm interested in your legal

7 opinion.

8 Did anyone violate the trust instruments

9 because Nelva Brunsting wanted to make -- or wanted to

10 see assets transferred to one or more of her children?

11 **A. No, she did not.**

12 Q. And so if Anita or Amy made transfers

13 consistent with what Nelva Brunsting wanted, would that

14 be a breach of fiduciary duty?

15 **A. No.**

16 MS. BAYLESS: Objection, form.

17 Q. (By Mr. Mendel) You know what a breach of

18 fiduciary duty is.

19 **A. I do.**

20 Q. There's been the suggestion that some transfers

21 were made out of the decedent's trust, and maybe those

22 transfers should have been made out of the survivor's

23 trust. Are you aware of that?

24 **A. I am not.**

25 Q. Well, just assume with me that that allegation

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1 is being made.

2 **A. Okay.**

3 Q. If that's what -- if Nelva Brunsting wanted an

4 asset transfer, regardless of which trust it came from

5 and if the net result in terms of estate value would be

6 the same after the transfer, is that any sort of breach

7 of fiduciary duty?

8 MS. BAYLESS: Objection, form.

9 **A. It could be.**

10 Q. (By Mr. Mendel) In what way?

11 **A. A distribution from a decedent's trust or a**

12 **credit shelter, bypass trust is a distribution and not a**

13 **gift. Anything that comes out of the survivor's trust**

14 **is considered a gift unless it's otherwise noted, and a**

15 **gift tax return would have to be filed.**

16 Q. But the net value of the estate -- when you add

17 the decedent's trust and the survivor's trust, the total

18 net value of the estate hasn't changed, has it?

19 **A. I disagree with that also.**

20 Q. Share why.

21 **A. Because the decedent's trust had a basis when**

22 **it went in. So an asset that came out of the decedent's**

23 **trust may not have the same value as the survivor's**

24 **trust because of the basis that was set. So when a**

25 **beneficiary tries to sell the asset, there's a capital**

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1 **gain or a loss, depending on when they buy or sell.**

2 Q. But that's a tax issue, is it not?

3 **A. It is.**

4 Q. Okay. So if on the date of the transfer the

5 total value of all of the assets would be hypothetically

6 a million dollars --

7 **A. Okay.**

8 Q. -- and you transferred \$10,000.

9 **A. Uh-huh.**

10 Q. At the end of that transaction, the net value

11 of the estate, regardless of the tax issues, is still

12 \$990,000, is it not?

13 MS. BAYLESS: Object to form.

14 **A. No.**

15 Q. (By Mr. Mendel) It's not?

16 **A. I disagree with the valuation. If you had to**

17 **sell an asset to create the cash, then you've created a**

18 **tax for the trust. So I guess where -- I get hung up on**

19 **the taxes because that's what I do.**

20 **If you're talking about there's cash in**

21 **both and you distribute and the beneficiaries are**

22 **exactly the same, then I would agree with you; yes, it's**

23 **the same.**

24 Q. Okay.

25 **A. But typically we're not dealing with the same**

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1 **exact assets.**

2 Q. Fair statement. So let's break it down. So if

3 what was transferred was cash, then the net value of the

4 estate is essentially unchanged?

5 MS. BAYLESS: Objection, form.

6 Q. (By Mr. Mendel) I mean, you take out -- so a

7 million dollars with a \$10,000 gift of cash --

8 **A. Uh-huh.**

9 Q. -- you would expect the net value of the estate

10 to be \$990,000?

11 **A. I would.**

12 Q. Okay. And let's assume that maybe the transfer

13 was intended to be some stock, not sell the stock but

14 just transfer 100 shares of, say, Exxon.

15 **A. Uh-huh.**

16 Q. Isn't the net value of the estate still the

17 same after the transfer?

18 MS. BAYLESS: Objection, form.

19 **A. No.**

20 Q. (By Mr. Mendel) You didn't sell the stock; you

21 just transferred the stock.

22 **A. But what was the value on the day you**

23 **transferred it?**

24 Q. Same hypothetical, million dollars. You

25 transferred 100 shares, and let's say that's worth

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1 \$10,000.

2 **A. Is the stock paying dividends?**

3 **I mean, do you see what I'm getting at**

4 **here?**

5 Q. No, I understand.

6 **A. Okay.**

7 Q. But that's a tax issue. The net value of the

8 estate the moment after the transfer is just the total

9 value of the estate less the gift. Nothing's really

10 changed, has it?

11 MS. BAYLESS: Objection, form.

12 **A. No, I guess not.**

13 Q. (By Mr. Mendel) Nelva Brunsting died, as I

14 understand it, on November 11th of 2011.

15 **A. That's correct.**

16 Q. And so at that point the trust would have moved

17 into, I guess, a post-death administration process. Is

18 that a fair statement?

19 **A. That's correct.**

20 Q. And would you describe for the jury in this

21 case what are some of the assets -- or what are some of

22 the steps or the process that you would follow in terms

23 of assisting Anita and Amy Brunsting with an

24 administration either of the restated trust or the QBDs?

25 MS. BAYLESS: Objection, form.

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1 **A. We would sign an engagement letter to assist --**

2 **what our duties are as a firm. Sit down and have a**

3 **meeting with the trustee or co-trustees or whoever is in**

4 **charge. Outline what their duties are, what they need**

5 **to do. Set up an accounting, valuation of assets.**

6 **Their duty to ensure that the assets are not squandered**

7 **or lost due to fluctuations in the market, if they need**

8 **to be moved to safer investments. Their duty to file a**

9 **tax return, to assess whether an estate tax return is**

10 **required to be filed and the steps to make distribution**

11 **once all the liabilities are paid.**

12 Q. (By Mr. Mendel) Does the impact of real

13 estate, I guess, add more time to that process?

14 **A. Sure. It's illiquid.**

15 Q. Okay. From your experience, what additional

16 steps are associated for the administration of the

17 estate when you're dealing with a farm up in Iowa?

18 **A. Well, one, you're dealing with out-of-state**

19 **laws. We had to do some -- we had to get an opinion**

20 **letter, as I recall, from an Iowa attorney as to whether**

21 **or not crops could be put in -- crop land could be put**

22 **into an irrevocable trust and still maintained whatever**

23 **exemptions it received under state law.**

24 Q. What was the outcome of that inquiry?

25 **A. Although the State of Iowa had an -- no crop**

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1 **land could be owned by an irrevocable trust. There were**

2 **several listed exceptions to that, and one of them was**

3 **the decedent's -- a credit shelter, bypass trust**

4 **qualified for that.**

5 Q. And so given that Ms. Brunsting, Nelva

6 Brunsting, died near the holiday period, and given all

7 the things that you've described in terms of, I guess,

8 identifying assets, valuing assets, is that something

9 that would take six or more months to complete?

10 **A. Oh, of course. Sure.**

11 Q. Okay. From your perspective, what would be a

12 reasonable time frame that you would expect to go by, at

13 least at a minimum, to determine the assets, value the

14 assets, look at liabilities, reach out to this lawyer in

15 Iowa, get these opinions, deal with this out-of-state

16 real estate?

17 MS. BAYLESS: Objection, form.

18 **A. At the very least, 15 months.**

19 Q. (By Mr. Mendel) 15 months?

20 MS. BAYLESS: I'm sorry. I didn't hear

21 your answer.

22 MR. MENDEL: She said 15 months.

23 THE WITNESS: 15 months.

24 Q. (By Mr. Mendel) And if during that process

25 someone files a lawsuit, what impact -- like in this

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1 particular case, Candy Curtis filed a lawsuit. What  
 2 impact would a lawsuit like that have on a potential  
 3 delay of the administration process?  
 4 MS. BAYLESS: Objection, form.  
 5 **A. It would be exponential.**  
 6 Q. (By Mr. Mendel) When you say "exponential,"  
 7 what do you mean by that?  
 8 **A. Well, everything comes to a grinding halt when**  
 9 **a lawsuit is filed.**  
 10 Q. I don't know about you but I like to take a  
 11 break about every hour and we're up on the hour.  
 12 **A. I'm good with that.**  
 13 Q. Why don't we take --  
 14 **A. Stretch my legs. I keep shifting in my chair.**  
 15 Q. Five to ten minutes tops, and we'll regroup?  
 16 **A. Sure. Thank you.**  
 17 **(Recess taken.)**  
 18 Q. (By Mr. Mendel) Ms. Freed, I want to talk a  
 19 little bit about some of the instruments that have been  
 20 filed, in particular the pleadings and a motion for  
 21 summary judgment that's been filed.  
 22 I think I'd like to start with Exhibit  
 23 No. 13, which is a pleading that was filed by Carl  
 24 Brunsting. So I just want to go through and get your  
 25 feedback on some things that are said in this particular

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1 instrument.  
 2 I would call your attention to page 3 of  
 3 Exhibit 13. And to the extent that some of my questions  
 4 might be a little duplicative, I'm going to apologize in  
 5 advance because, for example, we've touched on undue  
 6 influence and we've touched on capacity; but they're  
 7 specifically referenced in this pleading, so I want to  
 8 kind of just march through what's here.  
 9 At the bottom of that first paragraph, it  
 10 talks about the "QBD was the result of undue influence,  
 11 was done when Nelva lacked capacity and/or was created  
 12 by deception so that Nelva did not understand or consent  
 13 to the document."  
 14 As someone who was very much involved in  
 15 the creation of the QBD, is there any evidence -- and I  
 16 want to break these down. Is there any evidence that  
 17 there was undue influence regarding the creation and/or  
 18 execution of Exhibit 5 or Exhibit 6?  
 19 **A. No.**  
 20 MS. BAYLESS: Objection, form.  
 21 Q. (By Mr. Mendel) Is there any evidence that  
 22 Nelva lacked capacity with regard to the execution of  
 23 Exhibits 5 or 6?  
 24 MS. BAYLESS: Objection, form.  
 25 **A. No.**

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1 MR. MENDEL: What's your objection?  
 2 MS. BAYLESS: Form.  
 3 MR. MENDEL: Form. And the specific --  
 4 MS. BAYLESS: You asked is there any  
 5 evidence. You didn't ask her if she had any. You asked  
 6 her if there's any evidence. I just think that's an  
 7 improper question and answer.  
 8 THE WITNESS: I have no evidence, if that  
 9 helps.  
 10 Q. (By Mr. Mendel) Okay. So when I'm asking is  
 11 there any evidence, it's going to be based on what you  
 12 know, what you saw, what you heard.  
 13 **A. Yes.**  
 14 Q. **So do you have any evidence that the QBD was**  
 15 **created by deception?**  
 16 **A. I do not.**  
 17 Q. **Do you have any evidence that Nelva did not**  
 18 **understand or consent to the document that was created?**  
 19 **A. I do not.**  
 20 Q. When I say "the document," I'm talking about  
 21 Exhibits 5 and 6.  
 22 **A. I understand.**  
 23 MS. BAYLESS: Are you talking about both  
 24 in the same question?  
 25 MR. MENDEL: I'll break them down if you

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1 want.  
 2 MS. BAYLESS: Well, it's your deposition.  
 3 If you're going to talk about two documents in one  
 4 question, I'm going to object.  
 5 MR. MENDEL: I'll break them down.  
 6 Q. (By Mr. Mendel) Let's go back. With regard to  
 7 Exhibit 5, and then we'll talk about Exhibit 6, do you  
 8 have any evidence that Exhibit 5 was the result of undue  
 9 influence?  
 10 **A. I do not.**  
 11 Q. **Do you have any evidence that Nelva Brunsting**  
 12 **lacked capacity to execute Exhibit 5?**  
 13 **A. I do not.**  
 14 Q. Do you have any evidence that Exhibit 5 was  
 15 created by deception in that she did not understand what  
 16 she was signing?  
 17 **A. I do not.**  
 18 Q. Do you have any evidence that Nelva Brunsting  
 19 did not consent to the creation and/or execution of  
 20 Exhibit 5?  
 21 **A. I do not.**  
 22 Q. With regard to Exhibit 6, which was the  
 23 August 2010 QBD, do you have any evidence that that  
 24 instrument, Exhibit 6, was the result of undue  
 25 influence?

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1       **A. I do not.**  
 2       Q. Do you have any evidence that Nelva Brunsting  
 3       lacked capacity to execute Exhibit 6?  
 4       **A. I do not.**  
 5       Q. Do you have any evidence that Exhibit 6 was  
 6       created by deception so that she did not understand what  
 7       it was about?  
 8       **A. I do not.**  
 9       Q. Do you have any evidence that Exhibit 6 -- that  
 10       Nelva Brunsting did not consent to the nature of  
 11       Exhibit 6?  
 12       **A. I do not.**  
 13       Q. Moving down to the bottom of page 3 of  
 14       Exhibit 13, there is a statement that plaintiff --  
 15       MS. BAYLESS: I'm sorry. What page?  
 16       MR. MENDEL: I'm on page 3.  
 17       MS. BAYLESS: Okay.  
 18       MR. MENDEL: Or still on page 3.  
 19       MS. BAYLESS: Okay.  
 20       Q. (By Mr. Mendel) "The plaintiff," which would  
 21       be Carl Brunsting, "believes Anita convinced Nelva to  
 22       resign from her trustee position and to appoint Anita as  
 23       her replacement through improper means and for improper  
 24       purposes."  
 25       What is your recollection of what was

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1       going on in or about November/December of 2010 with  
 2       regard to Nelva Brunsting's health?  
 3       **A. I believe she was undergoing treatments, if the**  
 4       **time frame I'm thinking of is correct. She had a spot**  
 5       **on her liver maybe or on her lungs. I can't remember**  
 6       **what it was. I don't recall. She was going through**  
 7       **treatments for something and had pneumonia at some**  
 8       **point, but I don't recall the time frame. I'm sorry.**  
 9       Q. Were you in discussions with Anita Brunsting  
 10       and/or other family members during the November/  
 11       December 2010 time period with regard to Nelva  
 12       Brunsting's health?  
 13       **A. With regard to her health. I don't recall. I**  
 14       **may have been, but I don't recall.**  
 15       Q. Did you have conversations or rather  
 16       communications, whether they were oral or written, with  
 17       Anita Brunsting during the November/December 2010 time  
 18       period?  
 19       **A. I may have. I don't recall a specific**  
 20       **conversation, but I may have.**  
 21       Q. Do you have any evidence or are you aware of  
 22       any evidence that Anita Brunsting convinced her mother  
 23       to resign as the trustee?  
 24       **A. I do not.**  
 25       Q. Do you have any evidence or are you aware of

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1       any evidence that Anita Brunsting sought replacement  
 2       through an improper means or an improper purpose?  
 3       **A. No.**  
 4       Q. Based on what you know as you sit here today,  
 5       from your perspective, is there anything improper about  
 6       Nelva Brunsting appointing Anita Brunsting to be the  
 7       trustee?  
 8       **A. No. It would have been my recommendation, most**  
 9       **likely.**  
 10       Q. Okay. Exhibit 13, page 4. There is this  
 11       consistent reference, if you look through Exhibit 13,  
 12       that the August QBD is tainted.  
 13       From your perspective, was there anything  
 14       wrong or improper about the creation of Exhibit 6, being  
 15       the August 2010 QBD?  
 16       **A. No.**  
 17       Q. Anything about Exhibit 6 where it was  
 18       improperly created or executed?  
 19       **A. No.**  
 20       MS. BAYLESS: Objection, form.  
 21       Q. (By Mr. Mendel) At the bottom of page 4 for  
 22       Exhibit 13, there's a sentence that talks about Candy,  
 23       being Candy Curtis, and Carl, being Carl Brunsting, were  
 24       the only Brunsting siblings whose right to be trustees  
 25       of their own trusts after Nelva died were extinguished

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1       by the changes implemented in the tainted August QBD.  
 2       I'm just paraphrasing.  
 3       If I understood your testimony earlier,  
 4       there's nothing wrong with removing someone as a  
 5       trustee.  
 6       **A. No.**  
 7       Q. And so is there anything wrong -- given that it  
 8       was Nelva's decision, anything wrong with Nelva  
 9       Brunsting appointing Anita and Amy Brunsting to be  
 10       co-trustees of Candy Curtis' personal asset trust?  
 11       MS. BAYLESS: Objection, form.  
 12       **A. No.**  
 13       Q. (By Mr. Mendel) From your perspective and  
 14       based on your involvement, is there anything wrong with  
 15       Anita or Amy Brunsting being co-trustees of Carl  
 16       Brunsting's personal asset trust?  
 17       **A. No.**  
 18       Q. Let's move to page 6, Exhibit 13.  
 19       **A. (Witness complies.)**  
 20       Q. Paragraph 10 on page 6 of Exhibit 13 talks  
 21       about "At some point Anita and Amy implemented a plan to  
 22       take over their parents' remaining assets and divide the  
 23       spoils."  
 24       Based on your dealings with Anita and Amy  
 25       Brunsting, do you have any evidence to indicate that

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<p>1 there was some alleged plan to take over the assets and 2 divide the spoils? 3 <b>A. I do not.</b> 4 Q. Also in paragraph 10 there's an indication that 5 they, Anita and Amy Brunsting, became more aggressive in 6 controlling their mother's actions. 7 Based on your dealings with Nelva 8 Brunsting, certainly in the June to August 2010 time 9 period, did you see any indication or are you aware of 10 any evidence that would indicate that Anita Brunsting 11 was seeking to control her mother's actions? 12 <b>A. No.</b> 13 Q. Do you have -- for the same time period, do you 14 have any evidence or are you aware of any evidence that 15 would indicate that Amy Brunsting was trying to control 16 her mother's actions? 17 <b>A. No.</b> 18 Q. Exhibit 13, page 6, paragraph 11, there's this 19 statement in here that Anita and Amy carried out their 20 plan of replacing their mother's wishes with the help of 21 Nelva's own legal counsel. 22 Now, this paragraph doesn't identify who 23 Nelva's own legal counsel was; but on the assumption 24 that they're suggesting that you were assisting in 25 carrying out the plan, have you at any time assisted</p>	<p>1 Q. (By Mr. Mendel) From your perspective as a 2 lawyer? 3 <b>A. No.</b> 4 Q. Given the nature of the encephalitis and other 5 healthcare conditions, would you have made that 6 recommendation? 7 <b>A. I would.</b> 8 Q. Paragraph 11, still page 7, Exhibit 13. 9 There's a reference that Anita and Amy Brunsting 10 apparently determined which documents would be prepared. 11 Based on your dealings with Nelva 12 Brunsting in the June to August 2010 time period, did 13 Anita or Amy Brunsting have any input on what documents 14 were going to be prepared? 15 <b>A. No.</b> 16 Q. Paragraph 12, page 7, Exhibit 13, makes 17 reference to Nelva Brunsting's purported resignation as 18 trustee. 19 Exhibit No. 8 is the resignation of Nelva 20 Brunsting and includes the acceptance by Anita 21 Brunsting. Do you see that? 22 <b>A. Uh-huh.</b> 23 Q. Is there anything about Exhibit 8 that makes 24 that instrument ineffective? 25 <b>A. No.</b></p>
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<p>1 Anita Brunsting with trying to circumvent or subvert the 2 intent of Elmer and Nelva Brunsting's testamentary 3 desires? 4 <b>A. No.</b> 5 Q. Have you at any time attempted to subvert Elmer 6 and Nelva Brunsting's testamentary desires in terms of 7 helping Amy Brunsting? 8 <b>A. No.</b> 9 Q. Also in paragraph 11, page 6 of Exhibit 13, 10 there's a reference that through bullying and deception, 11 the document was executed without regard to Nelva 12 Brunsting's capacity. 13 Do you have any evidence or are you aware 14 of any facts that would indicate there was bullying and 15 deception going on in the June to August 2010 time 16 period? 17 <b>A. I do not.</b> 18 Q. On page 7, at the top of page 7, Exhibit 13, it 19 talks about that Nelva Brunsting's safe deposit box, to 20 which Carl had access, was closed and a new one opened, 21 giving Anita Brunsting access. 22 Is there anything wrong with that 23 transaction? 24 MS. BAYLESS: Objection, form. 25 <b>A. No.</b></p>	<p>1 MS. BAYLESS: Objection, form. 2 Q. (By Mr. Mendel) From your perspective, is 3 that -- would that exhibit be enforceable? 4 <b>A. Yes.</b> 5 Q. At the bottom of page 7, paragraph 13, 6 Exhibit 13, there's a statement in here about "more than 7 \$150,000 was transferred from accounts by Anita and 8 spent by Carole." 9 If Nelva Brunsting said it was okay to 10 transfer money over to Carole Brunsting, is there 11 anything wrong with Anita carrying out that wish? 12 MS. BAYLESS: Objection, form. 13 <b>A. No.</b> 14 Q. (By Mr. Mendel) Exhibit 13, page 8, 15 paragraph 14, there is a reference -- during the period 16 in which Nelva was alive, there's a reference that Anita 17 transferred shares of stock from Nelva's survivor's 18 trust in May, June -- twice -- three times in June. 19 Any transfers from the survivor's trust by 20 Anita to anyone, if that was with Nelva's knowledge and 21 consent, is there anything wrong with that? 22 <b>A. No.</b> 23 MS. BAYLESS: Objection, form. 24 Q. (By Mr. Mendel) Let's break it down. Still on 25 page 8, paragraph 14, Exhibit 13. If it was with Nelva</p>



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1 Brunsting's consent, would that May 9th transfer from  
 2 Anita from the survivor's trust be permissible?  
 3 MS. BAYLESS: Objection, form.  
 4 **A. Yes.**  
 5 Q. (By Mr. Mendel) With regard to the June 13th,  
 6 2011 transfer from the survivor's trust, if that was  
 7 with Nelva's knowledge and consent, would that be  
 8 permissible?  
 9 **A. Yes.**  
 10 MS. BAYLESS: Objection, form.  
 11 Q. (By Mr. Mendel) In either of those two cases,  
 12 would it be a breach of fiduciary duty to make a  
 13 transfer that was with the knowledge and consent of  
 14 Nelva Brunsting?  
 15 MS. BAYLESS: Objection, form.  
 16 **A. I don't believe it would be, no.**  
 17 Q. (By Mr. Mendel) On June 15th there's a  
 18 complaint about Anita makes a transfer of shares from  
 19 Nelva's survivor's trust to Candy Curtis.  
 20 If that was done with Nelva Brunsting's  
 21 knowledge and consent, would there be anything wrong  
 22 with that?  
 23 MS. BAYLESS: Objection, form.  
 24 **A. No.**  
 25 Q. (By Mr. Mendel) Would that be a breach of

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1 fiduciary duty?  
 2 MS. BAYLESS: Objection, form.  
 3 **A. No.**  
 4 Q. (By Mr. Mendel) Further down in paragraph 14  
 5 it makes reference that "no shares were transferred to  
 6 Carl despite Anita's knowledge of Carl's serious health  
 7 crisis and large medical expenses."  
 8 If Nelva Brunsting doesn't want Carl to  
 9 get any shares, is it okay for Anita to not make any  
 10 transfer of shares?  
 11 MS. BAYLESS: Objection, form.  
 12 **A. Yes.**  
 13 Q. (By Mr. Mendel) Then there's a complaint in  
 14 the last part of paragraph 14, page 8 of Exhibit 13,  
 15 that Carl's family was not even informed of the  
 16 transfers until after the death.  
 17 Was anyone obligated to tell Carl when  
 18 anything happened inside of this trust?  
 19 MS. BAYLESS: Objection, form.  
 20 **A. Obligated or recommended?**  
 21 Q. (By Mr. Mendel) Was there a duty to advise  
 22 Carl and his family every time there was a stock  
 23 transfer during the period in which Nelva Brunsting was  
 24 alive?  
 25 MS. BAYLESS: Objection, form.

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1 **A. No.**  
 2 Q. (By Mr. Mendel) There were other references to  
 3 other transfers during the period in which Nelva  
 4 Brunsting was alive and with regard to the survivor's  
 5 trust.  
 6 So just to be clear, if Nelva Brunsting,  
 7 with knowledge and consent, said it was okay to make a  
 8 transfer out of the survivor's trust to either Anita,  
 9 Amy, to Carole or even Candy, and exclude Carl, is there  
 10 anything wrong with that?  
 11 MS. BAYLESS: Objection, form.  
 12 **A. No.**  
 13 Q. (By Mr. Mendel) In paragraph 15, page 8,  
 14 Exhibit 13, there's a reference about trust assets: "It  
 15 is believed that trust assets were used to hire  
 16 investigators to follow Carl's wife."  
 17 Are you aware of anything regarding that  
 18 allegation?  
 19 **A. I have heard the allegation. I am not aware if  
 20 that occurred or did not occur.**  
 21 Q. And what is your understanding of the  
 22 allegation?  
 23 **A. That the allegation was made. But there are a  
 24 lot of allegations that are made throughout these  
 25 documents, so ...**

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1 Q. So other than someone said it or wrote it, you  
 2 don't have any other information?  
 3 **A. I do not.**  
 4 Q. And other than someone saying or writing that  
 5 there might have been a GPS tracking device, do you know  
 6 anything else about the GPS tracking device that's  
 7 referenced in that last sentence of paragraph 15,  
 8 page 8, Exhibit 13?  
 9 **A. I do not.**  
 10 Q. On Exhibit 13, page 9, paragraph 17, there's  
 11 this allegation that the remaining assets -- by the time  
 12 of Nelva Brunsting's death, the remaining assets had  
 13 already been plundered.  
 14 Do you have any knowledge of any facts  
 15 from any person that would suggest that assets had been  
 16 plundered?  
 17 **A. Other than what is alleged, no. I have no  
 18 personal knowledge of any plundering of assets.**  
 19 Q. Alleging it doesn't make it so?  
 20 **A. That's correct.**  
 21 Q. Also with Exhibit 13, page 9, paragraph 17,  
 22 there's an allegation that "no effort was made to value,  
 23 preserve inventory and properly divide personal  
 24 property."  
 25 If I understood your testimony correctly a

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1 little bit earlier, I understood you to say you could  
 2 expect to spend 15 months going through that process.  
 3 Would that be a fair statement?  
 4 MS. BAYLESS: Objection, form.  
 5 **A. Sure.**  
 6 Q. (By Mr. Mendel) And that if someone initiated  
 7 litigation in or about February of 2012 -- my  
 8 recollection was you said it would grind all of this to  
 9 a halt.  
 10 **A. It would.**  
 11 MS. BAYLESS: Objection, form.  
 12 Q. (By Mr. Mendel) So to the extent that someone  
 13 may have initiated litigation, and in particular  
 14 Candy Curtis initiating litigation, that impairs what  
 15 the co-trustees need or are trying to do, does that mean  
 16 that they, the co-trustees, breached some fiduciary  
 17 duty?  
 18 MS. BAYLESS: Objection, form.  
 19 **A. I'm not sure I know how to answer that.**  
 20 Q. (By Mr. Mendel) Hard to do your job when  
 21 people interfere?  
 22 **A. Well, I would agree with that, absolutely.**  
 23 MS. BAYLESS: Objection, form.  
 24 Q. (By Mr. Mendel) There's a reference to -- in  
 25 Exhibit 13, page 9, to the in terrorem clause, what some

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1 people call the no-contest clause. I'm going to come  
 2 back to that in a few minutes. So I don't want you to  
 3 think I'm skipping it.  
 4 On page 10 of Exhibit 13, paragraph 20,  
 5 there's this suggestion that Elmer purportedly signed  
 6 some documents.  
 7 Are you aware of any facts that would  
 8 suggest that Elmer Brunsting did not sign any of the  
 9 instruments that were prepared and/or being held by the  
 10 Vacek law firm?  
 11 **A. Okay. First, I'm not sure where you're at,  
 12 what you're looking at that states that.**  
 13 Q. I'm sorry. Are you on page 10?  
 14 **A. I am on page 10.**  
 15 Q. Page 10, paragraph 20, second line of  
 16 paragraph 20 talks about --  
 17 **A. Okay.**  
 18 Q. -- seeking declaratory relief construing  
 19 various documents signed or purportedly signed by Elmer  
 20 and Nelva Brunsting.  
 21 Do you see that?  
 22 **A. I do see that now. Thank you.**  
 23 Q. So we've already talked about the execution by  
 24 Nelva. From your perspective, based on your review of  
 25 the file and anything that you may have seen in the file

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1 or even discussed with Elmer Brunsting, are you aware of  
 2 any documents that Elmer Brunsting's signature was  
 3 forged?  
 4 **A. No.**  
 5 Q. On page 11, Exhibit 13, paragraph 26, does the  
 6 mere existence of a familial relationship create some  
 7 sort of a fiduciary obligation between siblings?  
 8 MS. BAYLESS: Objection, form.  
 9 **A. No.**  
 10 Q. (By Mr. Mendel) Let's go over to page 12,  
 11 Exhibit 13, still on paragraph 26. There's a series of  
 12 subparagraphs. Subparagraph A talks about "failing to  
 13 keep and provide clear, regular, accurate and complete  
 14 accountings of assets."  
 15 Is the dissemination of account statements  
 16 for Exxon stock and Chevron stock produced on a monthly  
 17 basis or if they are issued on quarterly basis -- would  
 18 you agree that the production of those statements is an  
 19 acceptable accounting practice?  
 20 MS. BAYLESS: Objection, form.  
 21 **A. Just those statements or as part of an overall?**  
 22 Q. (By Mr. Mendel) As part of an overall  
 23 disclosure of information regarding assets and  
 24 liabilities.  
 25 MS. BAYLESS: Objection, form.

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1 **A. I would agree that that's acceptable.**  
 2 Q. (By Mr. Mendel) And if the trustees or  
 3 co-trustees provided evidence of checks that were  
 4 written with regard to the accounts, would that be part  
 5 of an acceptable accounting process in the context of an  
 6 overall accounting?  
 7 **A. Yes.**  
 8 MS. BAYLESS: Objection, form.  
 9 Q. (By Mr. Mendel) And if the co-trustees  
 10 produced tax returns in addition to showing checks and  
 11 in addition to producing these statements of all of  
 12 these various stock accounts, would that be an  
 13 acceptable accounting process?  
 14 **A. Yes.**  
 15 MS. BAYLESS: Objection, form.  
 16 Q. (By Mr. Mendel) And with regard to  
 17 paragraph B, the production of tax returns and showing  
 18 some checks and producing brokerage statements or some  
 19 sort of stock statements over a period of several years,  
 20 if you knew that somebody was producing those kinds of  
 21 accounting records, would you say that the co-trustee is  
 22 resisting an accounting?  
 23 MS. BAYLESS: Objection, form.  
 24 **A. I would not.**  
 25 Q. (By Mr. Mendel) Approximately when did you

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<p>1 stop providing advice on the administration of the</p> <p>2 trust?</p> <p>3 <b>A. I believe it was shortly after the lawsuit was</b></p> <p>4 <b>filed and they were referred out to litigation counsel.</b></p> <p>5 Q. When you say "the lawsuit," are we talking</p> <p>6 about the initial lawsuit that was filed in February of</p> <p>7 2012 by Candace Curtis?</p> <p>8 <b>A. I believe that's correct. I conferred with</b></p> <p>9 <b>litigation counsel, but ...</b></p> <p>10 Q. Well, during the period that you were providing</p> <p>11 assistance or the Vacek firm was providing assistance,</p> <p>12 are you aware of any facts that would suggest that the</p> <p>13 co-trustees failed to preserve property?</p> <p>14 MS. BAYLESS: Objection, form.</p> <p>15 <b>A. I am not personally aware, no.</b></p> <p>16 Q. (By Mr. Mendel) And are you aware of any facts</p> <p>17 that would suggest that the co-trustees failed to</p> <p>18 prevent alleged losses of property?</p> <p>19 <b>A. I am not aware of that personally.</b></p> <p>20 Q. Are you aware of any losses of property?</p> <p>21 <b>A. You mean other than right now?</b></p> <p>22 Q. Well, when you say "right now," what do you</p> <p>23 mean?</p> <p>24 <b>A. Well, I'm -- no. I am not aware at that time</b></p> <p>25 <b>that there was any losses.</b></p>	<p>1 conflicted with the trust and the beneficiaries that are</p> <p>2 the subject matter of this dispute?</p> <p>3 <b>A. No.</b></p> <p>4 Q. And are you aware of any facts or evidence that</p> <p>5 would indicate that Anita, Amy and Carole Brunsting --</p> <p>6 well, I'll withdraw that. It's covered in the earlier</p> <p>7 question.</p> <p>8 Moving on to subparagraph H, still</p> <p>9 Exhibit 13, page 12. Are you aware of any facts or</p> <p>10 evidence that would indicate that Anita or Amy Brunsting</p> <p>11 failed to be loyal to the family?</p> <p>12 <b>A. I don't know what "loyal to the family" means.</b></p> <p>13 <b>Sorry.</b></p> <p>14 Q. Are you aware of any facts that would indicate</p> <p>15 that -- still on subparagraph H. Are you aware of any</p> <p>16 facts or evidence that would indicate that the</p> <p>17 co-trustees failed to take actions based upon the</p> <p>18 interest of Nelva Brunsting?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Failed to take actions upon the interest of</p> <p>21 Carl Brunsting?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Failed to take actions upon the interest of the</p> <p>24 trust?</p> <p>25 <b>A. No.</b></p>
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<p>1 Q. Paragraph E, are you aware of any facts or</p> <p>2 evidence that would indicate the co-trustees conveyed</p> <p>3 property in ways that were detrimental and in violation</p> <p>4 of their obligations?</p> <p>5 <b>A. I am not personally aware of that, no.</b></p> <p>6 Q. Subparagraph F, are you aware of any facts or</p> <p>7 evidence that indicates that the co-trustees entered</p> <p>8 into transactions which were not in the best interests</p> <p>9 of persons and trusts to whom they owed fiduciary</p> <p>10 obligations?</p> <p>11 <b>A. I personally am not aware, no.</b></p> <p>12 Q. Well, when you say you're personally not aware,</p> <p>13 are you aware of anyone else that would know anything?</p> <p>14 <b>A. I'm not.</b></p> <p>15 Q. Subparagraph G, are you aware of any facts or</p> <p>16 evidence that would indicate that Anita, Amy and Carole</p> <p>17 Brunstings' interest conflicted with those of their</p> <p>18 parents?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Are you aware of any facts or evidence that</p> <p>21 would indicate that Anita, Amy and Carole's interests</p> <p>22 conflicted with those of their brother, Carl Brunsting?</p> <p>23 <b>A. No.</b></p> <p>24 Q. Are you aware of any facts or evidence that</p> <p>25 would indicate that Anita, Amy and Carole's interests</p>	<p>1 Q. Subparagraph I, are you aware of any facts or</p> <p>2 evidence that would indicate that the co-trustees failed</p> <p>3 to deal impartially, fairly and equally with Nelva</p> <p>4 Brunsting?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Are you aware of any facts or evidence that</p> <p>7 would indicate that the co-trustees failed to deal</p> <p>8 impartially, fairly and equally with Carl Brunsting?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Are you aware of any facts or evidence that</p> <p>11 would indicate that the co-trustees failed to deal</p> <p>12 impartially, fairly and equally with the trust?</p> <p>13 <b>A. No.</b></p> <p>14 Q. Subparagraph J, are you aware of any facts or</p> <p>15 evidence that would indicate that the co-trustees failed</p> <p>16 to prevent transfers of assets?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Failed to prevent gifts of assets?</p> <p>19 <b>A. No.</b></p> <p>20 Q. Failed to remove assets?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Subparagraph K talks about failing to make</p> <p>23 appropriate and equal distributions.</p> <p>24 <b>A. "Appropriate" is subjective.</b></p> <p>25 Q. Is equal required under the trust documents?</p>

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1       **A. It is not.**  
 2       Q. So if it's not required to make an equal  
 3 distribution, then one couldn't violate this allegation  
 4 regarding equal distributions?  
 5       **A. Well, I think the time frame you have to --**  
 6 **once Ms. Brunsting died, then I think things were set in**  
 7 **stone as to whether they were equal or not equal. But**  
 8 **prior to her death, no.**  
 9       Q. Are you aware of any facts or evidence -- I'm  
 10 now down to subparagraph 11 -- I mean L, L.  
 11       Are you aware of any facts or evidence  
 12 that would indicate that the co-trustees failed to  
 13 adequately inform the beneficiaries about assets?  
 14       **A. I'm not.**  
 15       Q. Are you aware of any facts or evidence that  
 16 would indicate the co-trustees failed to adequately  
 17 inform the beneficiaries about transactions?  
 18       **A. I'm not.**  
 19       Q. Are you aware of any facts or evidence that  
 20 would indicate that the co-trustees failed to adequately  
 21 inform the beneficiaries of their rights?  
 22       **A. I am not.**  
 23       Q. We'll go to Exhibit 13, page 13,  
 24 subparagraph M. Are you aware of any facts or evidence  
 25 that would indicate that the co-trustees misrepresented

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1 or allowed misrepresentations regarding assets?  
 2       **A. I am not.**  
 3       Q. Regarding transactions?  
 4       **A. No.**  
 5       Q. Regarding the beneficiaries' rights?  
 6       **A. No.**  
 7       Q. Subparagraph N, are you aware of any facts or  
 8 evidence that would indicate that the co-trustees failed  
 9 to prevent transactions that were allegedly detrimental  
 10 to family members?  
 11       **A. No.**  
 12       Q. Are you aware of any facts or evidence that  
 13 would indicate that the co-trustees failed to prevent  
 14 transactions that were allegedly detrimental to the  
 15 trust?  
 16       **A. No.**  
 17       Q. Subparagraph O, are you aware of any facts or  
 18 evidence that would indicate that the co-trustees  
 19 allowed the payment of inappropriate amounts from assets  
 20 they purportedly held as fiduciaries?  
 21       **A. I am not.**  
 22       Q. Subparagraph P, are you aware of any facts or  
 23 evidence that would indicate that the co-trustees failed  
 24 to follow or otherwise enforce the terms of the trust  
 25 instruments?

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1       **A. I am not personally aware, no. And I'm not**  
 2 **aware of anybody else.**  
 3       MS. BAYLESS: I'm sorry. I didn't hear  
 4 the end.  
 5       THE WITNESS: And I'm not aware of anybody  
 6 else.  
 7       Q. (By Mr. Mendel) So, you know, my questions  
 8 with regard to paragraph 26 of Exhibit 13, going through  
 9 these subparagraphs, talked about co-trustees, plural.  
 10       **A. Uh-huh.**  
 11       Q. But with regard to these subparts, did either  
 12 co-trustee, not just jointly but individually, from your  
 13 perspective, engage in misconduct?  
 14       **A. Not that I am aware.**  
 15       Q. Okay. So Exhibit 13, page 13, paragraph 29,  
 16 Carl Brunsting claims that he owned, possessed or had  
 17 the right of possession of certain personal property,  
 18 including stock, accounts at financial institutions,  
 19 contents of a safe deposit box, and saving bonds over  
 20 which defendants wrongfully exercised dominion and  
 21 control.  
 22       Are you aware of any personal property  
 23 that either co-trustee allegedly deprived him of?  
 24       **A. Of Carl's property?**  
 25       Q. Carl's personal property.

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1       **A. No.**  
 2       Q. Are you aware of any stock that Carl owned that  
 3 he was deprived of by either of the co-trustees?  
 4       **A. I am not.**  
 5       Q. Are you aware of any financial account or any  
 6 accounts at financial institutions that either  
 7 co-trustee deprived him of?  
 8       **A. No.**  
 9       Q. Are you aware of any contents of a safe deposit  
 10 box that either co-trustee allegedly exercised wrongful  
 11 dominion or control?  
 12       **A. No.**  
 13       Q. Are you aware of any exercise of wrongful  
 14 dominion and control by either co-trustee over any  
 15 assets?  
 16       **A. Could you repeat the question? I'm sorry.**  
 17       Q. Are you aware of any facts or evidence that  
 18 would indicate that either co-trustee exercised wrongful  
 19 dominion and control over any assets?  
 20       **A. No.**  
 21       Q. I'm still on Exhibit 13. We're now up to  
 22 page 15, or that's where I want to go to next.  
 23       On paragraph 34 are you aware of any facts  
 24 or evidence that either co-trustee made material, false  
 25 representations to Nelva Brunsting regarding action

82	<p>1 taken of Nelva Brunsting's assets?</p> <p>2 <b>A. No.</b></p> <p>3 Q. Are you aware of any facts or evidence that</p> <p>4 either co-trustee allegedly misled Nelva Brunsting about</p> <p>5 the impact of the QBDs on the trust plan?</p> <p>6 <b>A. I am not.</b></p> <p>7 Q. Are you aware of any facts or evidence that</p> <p>8 Nelva Brunsting relied on any representations, other</p> <p>9 than the advice and counsel of the Vacek &amp; Freed firm,</p> <p>10 with regard to the estate and trust planning that was</p> <p>11 performed?</p> <p>12 <b>A. Not that we -- the Vacek firm was not aware of.</b></p> <p>13 Q. Exhibit 13, page 15, paragraph 36, are you</p> <p>14 aware of any facts or evidence that would indicate that</p> <p>15 either co-trustee was engaged in some sort of a</p> <p>16 conspiracy against Carl Brunsting?</p> <p>17 <b>A. No.</b></p> <p>18 Q. Are you aware of any facts or evidence that</p> <p>19 would indicate that either Carole Brunsting or</p> <p>20 Candy Curtis were involved in some sort of a conspiracy</p> <p>21 against Carl Brunsting?</p> <p>22 <b>A. No.</b></p> <p>23 Q. Still on Exhibit 13, page 16, paragraph 38.</p> <p>24 There's the allegation that -- are you aware of any</p> <p>25 facts or evidence that would indicate that either</p>	84	<p>1 <b>A. Correct.</b></p> <p>2 MS. BAYLESS: Objection, form.</p> <p>3 Q. (By Mr. Mendel) And she understood -- she,</p> <p>4 Nelva Brunsting, understood what she was signing with</p> <p>5 regard to Exhibit 6, which was the August 2010 QBD?</p> <p>6 MS. BAYLESS: Objection, form.</p> <p>7 <b>A. Agree.</b></p> <p>8 Q. (By Mr. Mendel) And did Nelva Brunsting</p> <p>9 understand what she, Nelva Brunsting, was signing with</p> <p>10 regard to her resignation as a trustee back in December</p> <p>11 of 2010?</p> <p>12 <b>A. Yes.</b></p> <p>13 MS. BAYLESS: Objection, form.</p> <p>14 Q. (By Mr. Mendel) And did she understand the</p> <p>15 nature of how things would work with the appointment of</p> <p>16 successor trustees?</p> <p>17 <b>A. Yes.</b></p> <p>18 MS. BAYLESS: Objection, form.</p> <p>19 Q. (By Mr. Mendel) I want to move over to</p> <p>20 Exhibit 15, which is Carl Brunsting's Second Supplement</p> <p>21 to Plaintiff's First Amended Petition, another</p> <p>22 allegation about a stock transfer from the survivor's</p> <p>23 trust during the period in which Nelva Brunsting was</p> <p>24 alive.</p> <p>25 If that transfer was made with Nelva</p>
83	<p>1 co-trustee took affirmative steps to deceive Nelva</p> <p>2 Brunsting about the trust estate?</p> <p>3 <b>A. No, I'm not.</b></p> <p>4 Q. Are you aware of any facts or evidence that</p> <p>5 would indicate that either co-trustee deceived or</p> <p>6 attempted to deceive Carl Brunsting about the trust</p> <p>7 estate?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Also in paragraph 38 there is a reference</p> <p>10 that -- and I'm paraphrasing -- that Nelva Brunsting</p> <p>11 didn't understand what she was being asked to sign, why</p> <p>12 she was asked to sign it, what would happen if she</p> <p>13 signed it and the status of her assets.</p> <p>14 I want to break that down into a couple of</p> <p>15 categories.</p> <p>16 <b>A. Okay.</b></p> <p>17 Q. In terms of the QBD -- and as I understood your</p> <p>18 testimony earlier -- and you tell me if I'm right or</p> <p>19 wrong, but did Nelva Brunsting understand what she was</p> <p>20 signing?</p> <p>21 <b>A. Yes.</b></p> <p>22 MS. BAYLESS: Objection, form.</p> <p>23 Q. (By Mr. Mendel) And when I say "what she was</p> <p>24 signing," I'm talking about specifically Exhibit 5,</p> <p>25 which was one of the QBD instruments.</p>	85	<p>1 Brunsting's knowledge and consent, is there anything</p> <p>2 wrong with that transfer?</p> <p>3 MS. BAYLESS: Objection, form.</p> <p>4 <b>A. No.</b></p> <p>5 Q. (By Mr. Mendel) I want to move on to</p> <p>6 Exhibit 16, which is Carl Brunsting's Third Supplement</p> <p>7 to Plaintiff's First Amended Petition and Request for</p> <p>8 Injunctive Relief.</p> <p>9 There's this allegation that the</p> <p>10 defendants, plural -- which would be Anita Brunsting,</p> <p>11 Amy Brunsting, Carole Brunsting and Candace Curtis --</p> <p>12 wiretapped their mother.</p> <p>13 Are you aware of any facts or evidence</p> <p>14 that would indicate that any of Carl's siblings</p> <p>15 wiretapped their mother?</p> <p>16 <b>A. No.</b></p> <p>17 Q. Do you consider a message left or a recording</p> <p>18 on an answering device to be a wiretap?</p> <p>19 MS. BAYLESS: Objection, form.</p> <p>20 <b>A. Like a home answering machine?</b></p> <p>21 Q. (By Mr. Mendel) Yes, ma'am.</p> <p>22 <b>A. No.</b></p> <p>23 Q. In assuming that a tape on a home answering</p> <p>24 machine constitutes some sort of an intercept of a</p> <p>25 communication, if it was done with Nelva's equipment and</p>

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1 impliedly Nelva's knowledge and consent, anything wrong  
 2 with that?  
 3 MS. BAYLESS: Objection, form.  
 4 **A. Well, it's subjective. I mean, I'm not really**  
 5 **qualified to make that -- I see -- personally I see no**  
 6 **problem with it, but ...**  
 7 Q. (By Mr. Mendel) I want to talk about --  
 8 MR. MENDEL: We hit the hour. I thought  
 9 we'd keep going if everybody's up to that. Okay.  
 10 Q. (By Mr. Mendel) Bear with me. I want to talk  
 11 a little bit about Carl Brunsting's -- he's got a motion  
 12 for summary judgment, and I want to go through and talk  
 13 about some of the issues that are raised by that motion.  
 14 One of the complaints, as I understand  
 15 that motion, is that stock distributions made from the  
 16 survivor's trust are improper because they were made at  
 17 Nelva Brunsting's direction rather than for her benefit.  
 18 MS. BAYLESS: Objection, form.  
 19 Q. (By Mr. Mendel) Is there really a difference  
 20 between implementing with her, Nelva Brunsting's  
 21 knowledge and consent -- if she agrees that it should be  
 22 distributed straight to someone, does it really matter?  
 23 MS. BAYLESS: Objection, form.  
 24 **A. Does what matter?**  
 25 Q. (By Mr. Mendel) Well, is it fair to say that

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1 if Nelva Brunsting directs a transfer of an asset during  
 2 her life out of her survivor's trust, isn't that in some  
 3 way, shape or form for her benefit, as far as you know?  
 4 MS. BAYLESS: Objection, form.  
 5 **A. Well, I guess she could have the pleasure of**  
 6 **making the gift, I guess. I mean, I guess you could do**  
 7 **it that way.**  
 8 Q. (By Mr. Mendel) Then another way to look at it  
 9 would be possibly, well, in lieu of making the gift over  
 10 to Nelva so that she could turn around and make the gift  
 11 over to one of the children, doesn't it just make sense  
 12 to make the gift straight to the end recipient?  
 13 MS. BAYLESS: Objection, form.  
 14 **A. Yes.**  
 15 Q. (By Mr. Mendel) There's an allegation that  
 16 stock distributions, if they're going to be made, should  
 17 give some consideration to the beneficiary most in need  
 18 of assistance. And in particular, Carl Brunsting is  
 19 complaining that given his encephalitis -- and I'm  
 20 paraphrasing my interpretation of what I think he's  
 21 saying, but --  
 22 MS. BAYLESS: Objection, form.  
 23 Q. (By Mr. Mendel) -- given his encephalitis and  
 24 his other health issues, he claims that the trustee is  
 25 mandated to make distributions to those with needs

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1 greater than those of his mother or siblings.  
 2 Would that be a true statement?  
 3 MS. BAYLESS: Objection, form.  
 4 **A. I am not aware of any words in the trust that**  
 5 **state that.**  
 6 Q. (By Mr. Mendel) In fact -- and you're welcome  
 7 to look at the trust. But as I look through the trust,  
 8 it appears that a predominant theme of the trust is that  
 9 the trustee is to exercise discretion with regard to  
 10 distributions. Would that be a fair statement?  
 11 MS. BAYLESS: Object to form.  
 12 **A. Trustee of what trust?**  
 13 Q. (By Mr. Mendel) Any trust. QBD.  
 14 **A. There are mandatory distributions required**  
 15 **under the decedent's trust, and the spouse is required**  
 16 **to receive the income. That's not discretionary.**  
 17 Q. Well, with regard to the context of Carl  
 18 Brunsting, is it mandated that the trustee must make  
 19 distributions to Carl Brunsting?  
 20 **A. No.**  
 21 Q. As I understand the words of the trust, the  
 22 trustee can make equal distributions. That's one  
 23 outcome?  
 24 **A. Correct.**  
 25 Q. Unequal distributions?

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1 **A. Correct.**  
 2 Q. No distributions?  
 3 **A. Correct, except the decedent's trust.**  
 4 Q. With regard to income to the surviving spouse?  
 5 **A. That's correct.**  
 6 Q. So given those facts about discretion to make  
 7 equal distributions, unequal distributions, no  
 8 distributions, set aside the issue of income to spouse,  
 9 it would seem Carl Brunsting has no standing to  
 10 challenge those provisions?  
 11 MS. BAYLESS: Objection, form.  
 12 **A. I would agree.**  
 13 Q. (By Mr. Mendel) There's an allegation that no  
 14 distributions from the decedent's trust should occur  
 15 until there is an exhaustion of the survivor's trust.  
 16 And we can look at the language. I think it's 9-2. It  
 17 talks about the trustee.  
 18 While it's preferred to exhaust the  
 19 survivor's trust --  
 20 **A. That's correct.**  
 21 Q. -- I interpret that language, and you tell me  
 22 if you disagree -- given that it's preferred, it's not  
 23 mandatory?  
 24 **A. That's correct.**  
 25 Q. The motion for summary judgment also speaks to

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1 that the QBD is not a valid exercise of the powers of  
 2 appointment.  
 3 Would you agree or disagree with that?  
 4 MS. BAYLESS: Objection, form.  
 5 **A. I disagree.**  
 6 Q. (By Mr. Mendel) Please share with us why you  
 7 disagree.  
 8 **A. Because the trust explicitly states that powers  
 9 of appointment are granted to the surviving settlor and  
 10 the initial settlor and that they should be in writing  
 11 and in the form of a qualified beneficiary designation.**  
 12 Q. And is that the process that you recommended to  
 13 Nelva Brunsting?  
 14 **A. Yes, because Elmer had already predeceased.**  
 15 Q. And from your perspective, that was all  
 16 properly followed?  
 17 **A. Necessary and properly, yes, if you're going to  
 18 make any beneficiary change.**  
 19 Q. Now, there's the contention, as I understand  
 20 it, under the restated trust, which is Exhibit 2 -- and  
 21 if you look at 3-1 -- 3-1, Exhibit 2, section B, in that  
 22 first paragraph it says, "When one of us dies, this  
 23 trust shall not be subject to amendment except by a  
 24 court of competent jurisdiction."  
 25 **A. I agree.**

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1 Q. Then in the very next paragraph it talks about  
 2 "each of us may provide for a different disposition of  
 3 our share in the trust by using a qualified beneficiary  
 4 designation, as we define that term in this agreement,  
 5 and the qualified beneficiary designation will be  
 6 considered an amendment to this trust as to that  
 7 Founder's share or interest alone," which seems to imply  
 8 the survivor?  
 9 **A. Yes, because it says "our share in the trust."**  
 10 Q. Okay. And so the fact that maybe one trust is  
 11 no longer subject to amendment, does that preclude an  
 12 amendment -- this sentence in section B, on 3-1, does  
 13 that preclude Nelva Brunsting from putting together a  
 14 qualified beneficiary designation?  
 15 **A. No.**  
 16 MS. BAYLESS: Objection, form.  
 17 Q. (By Mr. Mendel) It's my understanding or from  
 18 my reading of Carl Brunsting's pleadings and/or motion  
 19 for summary judgment that there may be some sort of a  
 20 contradiction in Article III, section B, and then the  
 21 exercise of the power of appointment.  
 22 Do you see a contradiction?  
 23 **A. I don't.**  
 24 MS. BAYLESS: Objection, form.  
 25 Q. (By Mr. Mendel) And you don't see a

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1 contradiction because?  
 2 **A. This is talking about the family trust. The  
 3 disposition of each survivor's and decedent's trust and  
 4 how those are administered and handled are within those  
 5 sections; and the survivor's trust allows amendment to  
 6 her share and a qualified beneficiary designation or  
 7 limited or general power of appointment, however you  
 8 want to call it, for each one.**  
 9 Q. And so the QBD --  
 10 **A. Uh-huh.**  
 11 Q. -- in particular, Exhibit 6, executed in August  
 12 of 2010, is a valid and enforceable agreement?  
 13 **A. Yes.**  
 14 Q. I want to talk about the -- well, let me ask  
 15 you one other thing. I want to talk about the  
 16 in terrorem, or the no contest, provision.  
 17 **A. Of the trust or the QBD?**  
 18 Q. Both.  
 19 **A. Okay.**  
 20 Q. You wrote the no-contest provisions for the  
 21 restated trust, which is Exhibit 2, and the QBD that's  
 22 in large part the subject of this dispute, being  
 23 Exhibit 6, right?  
 24 **A. Well, I personally did not write that because  
 25 the restatement was done before I even got to the firm.**

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1 Q. I'm sorry. My apologies. The Vacek firm wrote  
 2 these things?  
 3 **A. Yes.**  
 4 Q. And you put those provisions in there -- when  
 5 those provisions were put in there, do you consider them  
 6 to be valid and enforceable?  
 7 MS. BAYLESS: Objection, form.  
 8 **A. To the extent that they are allowable under the  
 9 law, yes.**  
 10 Q. (By Mr. Mendel) Okay. And your understanding  
 11 of the enforceability of in terrorem, or no-contest,  
 12 provisions, is what?  
 13 **A. That they are a deterrent. And if somebody  
 14 brings a claim in good faith and it's found to be in  
 15 good faith, then it won't apply. But otherwise, it  
 16 could be enforced if you bring a suit in bad faith.**  
 17 Q. Okay. Let's talk about 11-2.  
 18 **A. Of?**  
 19 Q. Of Exhibit 2.  
 20 MS. BAYLESS: Are you meaning page 11-2?  
 21 MR. MENDEL: Yes.  
 22 MS. BAYLESS: All right.  
 23 Q. (By Mr. Mendel) So Exhibit 2, page 11-2.  
 24 **A. Okay.**  
 25 Q. At the very top it talks about instituting "a



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1 judicial proceeding to construe or contest this trust  
 2 instrument." Do you see that?  
 3 **A. Uh-huh.**  
 4 Q. Would you agree that a declaratory judgment is  
 5 an action to construe a trust instrument?  
 6 MS. BAYLESS: Objection, form.  
 7 **A. Would I agree that it's the only way?**  
 8 Q. (By Mr. Mendel) Well, we're going to go  
 9 through all of these.  
 10 **A. Okay.**  
 11 Q. But one way to be in conflict or to violate the  
 12 in terrorem clause is to initiate a proceeding to  
 13 construe or contest this trust instrument?  
 14 **A. That's what it states, yes.**  
 15 MS. BAYLESS: Objection, form.  
 16 Q. (By Mr. Mendel) And a second way, in addition  
 17 to initiating something that seeks the construction of  
 18 the trust instrument, is some sort of a claim in the  
 19 nature of reimbursement?  
 20 **A. Yes. That's what it says.**  
 21 Q. And a third way to be in violation of the  
 22 in terrorem, or no contest, provision, is to seek a  
 23 constructive or resulting trust?  
 24 **A. Yes. That's what it states.**  
 25 Q. And you would agree that if that occurred,

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1 those would be violations of the in terrorem clause?  
 2 MS. BAYLESS: Objection, form.  
 3 **A. They would be in violation of what it says**  
 4 **here, yes.**  
 5 Q. (By Mr. Mendel) And another way to violate the  
 6 in terrorem clause would be a proceeding that seeks to  
 7 enlarge a claimant's interest in the trust?  
 8 **A. Yes.**  
 9 Q. So one way to violate that would be if Nelva  
 10 properly authorized during her lifetime gifts from the  
 11 survivor's trust, that an effort to seek the return of  
 12 those assets so as to increase the trust estate and  
 13 increase somebody's 20 percent share would be in  
 14 violation of the in terrorem clause, would it not?  
 15 MS. BAYLESS: Objection, form.  
 16 **A. I could see how you could construe it that way,**  
 17 **yes.**  
 18 Q. (By Mr. Mendel) You wouldn't disagree?  
 19 MS. BAYLESS: Objection, form.  
 20 **A. No. A claim is a claim.**  
 21 Q. (By Mr. Mendel) Okay. And then the other  
 22 thing is that you spoke a moment ago about claims made  
 23 in good faith?  
 24 **A. Correct.**  
 25 Q. This trust, however, specifically says in the

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1 next paragraph, these directions, speaking to the  
 2 directions above, shall apply even if the judicial  
 3 proceeding is in good faith and with probable cause.  
 4 **A. Yes.**  
 5 Q. And so you would -- that wasn't added by  
 6 accident, right?  
 7 **A. No. I'm sure it wasn't.**  
 8 Q. Those words were put in there intentionally?  
 9 **A. Correct.**  
 10 Q. So it doesn't matter if someone brings  
 11 something in good faith. If it falls within these four  
 12 categories that we just spoke about, then they're in  
 13 violation, good faith or bad faith?  
 14 MS. BAYLESS: Objection, form.  
 15 **A. Yes. I mean, according to what it says, yes.**  
 16 Q. (By Mr. Mendel) Okay. And even some sort of  
 17 an interpretation or a challenge with regard to the  
 18 in terrorem, or no-contest, provision is a violation of  
 19 the in terrorem provision?  
 20 **A. That's what it says, yes.**  
 21 MS. BAYLESS: Objection, form.  
 22 Q. (By Mr. Mendel) And so just looking at the  
 23 restated trust --  
 24 **A. Exhibit 2.**  
 25 Q. -- Exhibit 2 from 2005 -- I'm just going to run

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1 through a series of -- we can go back and look at the  
 2 pleadings if necessary, if you think it's necessary.  
 3 But I'm just going to ask if some of these things that  
 4 have been alleged violate the --  
 5 **A. The language in the trust?**  
 6 Q. The language in the trust.  
 7 **A. Sorry.**  
 8 Q. And let me ask you this, if you know. Based on  
 9 your practice or your understanding of the case law and  
 10 maybe the statutes, this language about even if brought  
 11 in good faith, that's an enforceable provision?  
 12 MS. BAYLESS: Objection, form.  
 13 **A. That is not my understanding.**  
 14 Q. (By Mr. Mendel) And why not?  
 15 **A. Because this was done in 2005, and case law has**  
 16 **probably modified that over time.**  
 17 Q. You say "probably modified," so you don't  
 18 really know?  
 19 **A. Most likely. I do not know.**  
 20 Q. Okay. So you're just surmising?  
 21 **A. Yes.**  
 22 Q. But if it turns out the case law indicates that  
 23 good faith can be written as provided here, if that's  
 24 still the law in some way, shape or form, then Carl  
 25 Brunsting may have violated the in terrorem clause?

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1       **A. Sure.**  
 2       MS. BAYLESS: Objection.

3       **Q.** (By Mr. Mendel) Candy Curtis may have violated  
 4 the in terrorem clause?  
 5       MS. BAYLESS: Objection, form.

6       **A. Yes.**  
 7       **Q.** (By Mr. Mendel) And so working from the  
 8 restated trust that has these four topics and has the  
 9 specific language about even if brought in good faith  
 10 and with probable cause, Exhibit 13, 14, 15 and 16, if  
 11 Carl Brunsting brought some sort of a suit for  
 12 declaratory judgment or to construe the trust, that  
 13 would violate the in terrorem clause?  
 14       MS. BAYLESS: Objection, form.

15       **A. As it's stated here, yes.**  
 16       **Q.** (By Mr. Mendel) Allegations with regard to  
 17 breach of fiduciary duty and conversion, those would  
 18 violate the in terrorem clause?  
 19       **A. They would.**  
 20       MS. BAYLESS: Objection, form.

21       **Q.** (By Mr. Mendel) Allegations of negligence  
 22 would violate the in terrorem clause.  
 23       MS. BAYLESS: Objection, form.

24       **A. Yes.**  
 25       **Q.** (By Mr. Mendel) Allegations of tortious

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1 interference, which I think was struck down by the Texas  
 2 Supreme Court, would violate the in terrorem clause?  
 3       **A. Yes.**  
 4       MS. BAYLESS: Objection, form.

5       **Q.** (By Mr. Mendel) Seeking a constructive trust  
 6 would violate the in terrorem clause?  
 7       MS. BAYLESS: Objection, form.

8       **A. Yes.**  
 9       **Q.** (By Mr. Mendel) Allegations of civil  
 10 conspiracy would violate the in terrorem clause?  
 11       MS. BAYLESS: Objection, form.

12       **A. Yes.**  
 13       **Q.** (By Mr. Mendel) Allegations of fraudulent  
 14 concealment would violate the in terrorem clause?  
 15       MS. BAYLESS: Objection, form.

16       **A. Yes.**  
 17       **Q.** (By Mr. Mendel) Would allegations with regard  
 18 to the removal of -- or the liability of the  
 19 beneficiaries violate the in terrorem clause?  
 20       MS. BAYLESS: Objection, form.

21       **A. I'm sorry. The liability of the beneficiaries?**  
 22       **Q.** (By Mr. Mendel) Here, let me rephrase it.  
 23       Let's jump to allegations regarding  
 24 removal of trustee. Seeking the removal of trustees  
 25 would violate the in terrorem clause?

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1       MS. BAYLESS: Objection, form.

2       **A. Yeah, it could.**  
 3       **Q.** (By Mr. Mendel) Seeking a receivership over  
 4 the trust would violate the in terrorem clause?  
 5       MS. BAYLESS: Objection, form.

6       **A. Yes.**  
 7       **Q.** (By Mr. Mendel) Allegations regarding  
 8 self-dealing from the survivor's trust while Nelva  
 9 Brunsting was alive would violate the in terrorem  
 10 clause?  
 11       MS. BAYLESS: Objection, form.

12       **A. Yes.**  
 13       **Q.** (By Mr. Mendel) Allegations of a criminal  
 14 wiretap would violate the in terrorem clause?  
 15       MS. BAYLESS: Objection, form.

16       **A. I'm not sure what that has to do with the**  
 17 **trust, but ...**  
 18       **Q.** (By Mr. Mendel) Seeking injunctive relief,  
 19 would it violate the in terrorem clause?  
 20       MS. BAYLESS: Objection, form.

21       **A. Yes, as it's written here.**  
 22       **Q.** (By Mr. Mendel) With regard to Candy Curtis'  
 23 claims, I'm going to suggest to you certain claims that  
 24 I believe she's made; and I want to know if you believe  
 25 that those claims violate the in terrorem clause as

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1 written in Exhibit 2 on page 11-2 --  
 2       **A. Okay.**  
 3       **Q.** -- of the restated trust.  
 4       Allegations regarding breach of fiduciary  
 5 duty?  
 6       **A. Yes.**  
 7       **Q.** Allegations regarding extrinsic fraud?  
 8       **A. Yes.**  
 9       **Q.** Allegations regarding constructive fraud?  
 10       **A. Yes.**  
 11       **Q.** Allegations regarding intentional infliction of  
 12 emotional distress?  
 13       **A. Yes.**  
 14       **Q.** Allegations of money had and received?  
 15       **A. Yes.**  
 16       **Q.** Allegations of conversion?  
 17       **A. Uh-huh, yes.**  
 18       **Q.** She also alleges allegations of tortious  
 19 interference with inheritance rights. Assuming that was  
 20 even a valid claim, that would violate the in terrorem  
 21 clause?  
 22       **A. Yes.**  
 23       **Q.** Seeking modifications of QBD would be a  
 24 violation of the in terrorem clause?  
 25       **A. Yes.**

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1 Q. Allegations of unjust enrichment would be a  
 2 violation of the in terrorem clause?  
 3 **A. Yes.**  
 4 Q. Allegations of conspiracy would be a violation  
 5 of the in terrorem clause?  
 6 **A. Yes.**  
 7 Q. Any sort of request for a declaratory judgment  
 8 related to the trust would be a violation of the  
 9 in terrorem clause?  
 10 **A. Yes.**  
 11 Q. I want to talk about Exhibit 6, August 2016,  
 12 QBD. Go up to like page 23. Okay.  
 13 Now, this is a slightly different --  
 14 **A. Yes.**  
 15 Q. -- in terrorem clause?  
 16 **A. Yes**  
 17 Q. And there's no language, as I understand it,  
 18 with regard to the QBD, that overrides or supersedes the  
 19 in terrorem clause in the 2005 restated trust.  
 20 Would you agree with that?  
 21 MS. BAYLESS: I'm sorry. Ask your  
 22 question again.  
 23 Q. (By Mr. Mendel) Is there any language in the  
 24 August 2010 QBD in terrorem provisions that overrides  
 25 the in terrorem provisions that are expressed in the

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1 2005 Restated Trust?  
 2 **A. Not that I'm aware of.**  
 3 Q. I would bring to your attention on page 23 item  
 4 No. 1, that an unsuccessful challenge to the appointment  
 5 of a trustee or seeking to remove a trustee can be a  
 6 violation of the QBD in terrorem clause?  
 7 **A. Yes, it would.**  
 8 Q. And under paragraph 2, as long as the trustee  
 9 acts in good faith, any sort of a challenge to the good  
 10 faith of a trustee can be a violation of the QBD  
 11 in terrorem clause?  
 12 **A. That's correct.**  
 13 Q. And then in paragraph 3, there is an objection  
 14 to any construction or interpretation of this trust  
 15 agreement or any amendment that is adopted or proposed  
 16 in good faith by the trustee would be a violation of the  
 17 in terrorem clause?  
 18 **A. Yes.**  
 19 Q. And you would agree, would you not -- or if you  
 20 disagree, tell me -- actions for declaratory judgment  
 21 seeking construction or construing the trust could be a  
 22 violation of paragraph 3?  
 23 MS. BAYLESS: Objection, form.  
 24 **A. It could be.**  
 25 Q. (By Mr. Mendel) Jumping down to -- let's see.

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1 Paragraph 4, page 23 of Exhibit 6 talks about claims  
 2 entitlement to or an interest in any asset alleged by  
 3 the trustee to belong to the estate.  
 4 Let me move to No. 7: "In any other  
 5 manner contest this Trust or any amendment to it  
 6 executed by the trustor."  
 7 Based on your understanding of the  
 8 pleadings, as put forth by Carl Brunsting, has he  
 9 violated the in terrorem clause as set forth in the  
 10 August 2010 QBD?  
 11 **A. Yes.**  
 12 MS. BAYLESS: Objection, form.  
 13 Q. (By Mr. Mendel) Based on your understanding of  
 14 the claims that have been alleged by Candy Curtis, has  
 15 she violated the no contest, or the in terrorem,  
 16 provisions in the August 2010 QBD?  
 17 **A. Yes.**  
 18 Q. And it's also your understanding, with regard  
 19 to the trust, that fees and expenses incurred by lawyers  
 20 in the defense of the trustees and defense of the  
 21 trust -- there are provisions to provide for  
 22 compensation to the lawyers. Is that true?  
 23 MS. BAYLESS: Objection, form.  
 24 **A. That is true.**  
 25 MR. MENDEL: I'm going to pass the

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1 witness.  
 2 MR. REED: My suggestion is we just take  
 3 lunch.  
 4 MR. MENDEL: Okay.  
 5 MR. REED: Then whoever next can start up  
 6 fresh.  
 7 (Luncheon recess.)  
 8 Q. (By Mr. Mendel) Ms. Freed, I wanted to get a  
 9 clarification. On some of the questions that I asked, I  
 10 think I phrased it in such a way as did Nelva Brunsting  
 11 understand.  
 12 So short of her actually stating to you,  
 13 yes, I understand, what I ultimately intend is, based on  
 14 your interaction and based on your dealings with her,  
 15 did you believe that she understood the nature of the  
 16 discussions that you were having?  
 17 **A. Yes.**  
 18 Q. That's all I've got.  
 19 MR. MENDEL: Carole, she said it would be  
 20 better if we switched. So do you want to come sit over  
 21 here?  
 22 MS. CAROLE BRUNSTING: And I apologize in  
 23 advance because I'm pro se. If I tend to ramble, I'm  
 24 trying to keep that -- I'll try not to, but I can't make  
 25 any promises. I've never done this before.

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1 MS. BAYLESS: Speak up.  
 2 EXAMINATION  
 3 QUESTIONS BY MS. CAROLE BRUNSTING:  
 4 Q. Just based on a couple of questions I had  
 5 coming in here and then some of the things that we  
 6 talked about this morning, there's just a couple of --  
 7 just a few questions that I would like to ask.  
 8 The checking account that was set up for  
 9 my mother once she stopped writing checks off of the  
 10 trust account, how did that come about?  
 11 A. How did --  
 12 Q. Who made that decision that it would be a good  
 13 idea to set up that checking account for my mother so  
 14 all the household expenses would go through that and she  
 15 would no longer be writing checks out of the trust?  
 16 A. As I recall, it was my recommendation that a  
 17 checking account be set up so that your mom could still  
 18 write checks to go get her hair done, to church, all  
 19 those things that she normally does, to pay her medical  
 20 bills because it was my understanding that you were the  
 21 agent under medical power of attorney. So you would  
 22 accompany her to the doctor and you were here in Houston  
 23 and that needed to have something proper to do that.  
 24 Q. And then why was it set up as a right of  
 25 survivor account? Who made that decision?

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1 A. It should have been a convenience account, was  
 2 the recommendation, with a payable-on-death to the  
 3 trust.  
 4 Q. Okay.  
 5 A. That was the recommendation.  
 6 Q. Somehow it was set up as a right of survivor  
 7 account.  
 8 A. In who?  
 9 Q. When I closed it out at the bank and asked for  
 10 the final check, she said, This is a right-of-survivor  
 11 account. You don't have to give this money back.  
 12 I mean, I did; but I had nothing to do  
 13 with -- I just took my mother to the bank and we signed  
 14 some paperwork and that was my entire involvement in all  
 15 of this.  
 16 A. I don't know how it ended up as a right-of-  
 17 survivorship account.  
 18 Q. I didn't have anything to do with setting the  
 19 account up. That was all done, I'm assuming, by your  
 20 firm.  
 21 A. No.  
 22 Q. I just drove my mother to the bank, and she  
 23 signed -- actually I think they had to go out to the car  
 24 because she wasn't in a condition to go in. The people  
 25 at the bank knew her.

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1 A. Yeah. My firm, just for clarification, doesn't  
 2 ever set up accounts. We just make recommendations to  
 3 clients on what type of accounts they should set up, and  
 4 then it's up to them to do it.  
 5 Q. Well, maybe Anita set it up, then; because like  
 6 I said, all we did was go to the bank, sign some things  
 7 and that was it.  
 8 Do you recall when you explained -- or  
 9 reached out to me to explain how this account was being  
 10 set up and my mother's involvement and how I was going  
 11 to be involved with this account?  
 12 A. I do not.  
 13 Q. Okay. Because it was a conversation, I mean,  
 14 where I was told about this account; but because I  
 15 tended to never be involved with anything having to do  
 16 with money with this family, I declined getting involved  
 17 with it in the beginning. And I told my mother that I  
 18 didn't think it was a very good idea.  
 19 After a week or so, she called me -- and  
 20 Anita called me as well -- and said, Everything's going  
 21 to be fine. It's all -- there won't be any problems.  
 22 And, yet, I'm being sued over this.  
 23 So I just wanted to kind of clarify how  
 24 the decision of -- where the recommendation came to set  
 25 up this checking account.

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1 A. The recommendation, as I recall, was a  
 2 convenience account in Nelva's name, with you as a  
 3 convenience signer, with a payable-on-death to the  
 4 trust. That is our usual recommendation.  
 5 Q. Well -- and the balance of it did go back to  
 6 the trust. I did not keep it.  
 7 You mentioned -- I think we talked about  
 8 once my mother passed away, that they had -- Amy and  
 9 Anita had 15 months to settle the trust and the assets  
 10 and things like that.  
 11 A. No. I don't believe that's what I said. I  
 12 said that's a reasonable time.  
 13 Q. Oh, okay. Okay. But within the first --  
 14 within a month of my mother passing away, they put the  
 15 house on the market. I was wondering where that  
 16 direction came from because I was trying to convey to  
 17 both of them that we really needed to have a discussion  
 18 amongst the five of us to figure out if maybe one of us  
 19 wanted the house in lieu of something else because at  
 20 that point no one was suing anybody.  
 21 But that was a discussion that they  
 22 refused to have. Because I work 2 miles from that  
 23 house, and it would have been so convenient for me, had  
 24 I given up maybe part of my trust in another area, to  
 25 retain the house. But they just completely ignored me,

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1 put the house on the market and sold it.  
 2 So that direction wouldn't have come from  
 3 you, then, to liquidate assets just as quickly as  
 4 possible?  
 5 **A. I don't recall making any kind of**  
 6 **recommendation as to liquidation of assets.**  
 7 Q. The other note I made was -- I wasn't involved  
 8 with anything having to do with the trust. I never had  
 9 any fiduciary responsibilities to the trust because I  
 10 was never -- that wasn't my role. So I never got  
 11 involved with the finances of what was in the trust and  
 12 what was in the various accounts and things like that.  
 13 But as we went into 2011 -- and I wasn't  
 14 aware of the gifting, necessarily the gifting going on  
 15 and things like that. But I remember Anita telling me  
 16 that my mother's side was running out of money. So I  
 17 had to reduce the salaries of the caregivers -- because  
 18 my mother had 24-hour caregivers. Then I picked up the  
 19 Sundays where I was working for free just to help reduce  
 20 cost.  
 21 I guess that was a concern, that I was --  
 22 then when I found out about some of the gifting that  
 23 took place, could she not have converted some of the  
 24 stock into cash so that my mother could have continued  
 25 to have more cash in the account, or she wasn't allowed

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1 to sell the stock at that time?  
 2 **A. There's no prohibition to selling stock, but I**  
 3 **was not involved with those decisions --**  
 4 Q. Oh, okay.  
 5 **A. -- so I do not know. I can't speak to it.**  
 6 Q. Because early on I had a lot of concerns  
 7 because when all of this happened -- my brother got sick  
 8 and my mother got a cancer diagnosis almost the same  
 9 week -- my mother was really focused on her -- the  
 10 diagnosis of cancer.  
 11 When Carl got ill, my mother went to go  
 12 see him. We all went to go see him in the hospital, and  
 13 it appeared that he was going to recover just fine.  
 14 They thought it was a stroke at the time. Unfortunately  
 15 it did turn into encephalitis. But I just don't ever  
 16 recall my mother ever expressing concern that my brother  
 17 was in any danger of passing away.  
 18 I think there was maybe a 24-hour period  
 19 where, because they didn't know what it was and things  
 20 like that, we thought that he could be in danger.  
 21 Because they hadn't diagnosed it at the time, so they  
 22 didn't know what they were treating.  
 23 But then once they made the diagnosis, my  
 24 mother was really optimistic that he was going to be  
 25 okay because my dad's cousin had encephalitis. My

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1 mother knew her at the time, and she made a full  
 2 recovery in six months.  
 3 I knew that Anita was extremely concerned  
 4 at that point about the trust and what was going to  
 5 happen because my brother was sick and then my mother  
 6 was sick. But the only thing I heard my mother talk  
 7 about was the possibility of my mother maybe setting up  
 8 a medical trust for my brother, and maybe she would be  
 9 the trustee until my brother recovered.  
 10 So then when I saw where Anita was  
 11 starting to make a lot of phone calls and things like  
 12 that -- I had lunch with my mother pretty much on a  
 13 regular basis because I only worked a few miles down the  
 14 road, and I went over there most every day for lunch.  
 15 I just don't ever recall her having this  
 16 sense of -- that my brother was going to -- that he was  
 17 in any danger of passing away.  
 18 And just knowing my mother, my mother  
 19 hated paperwork or making more of it. So I just  
 20 couldn't see where she would just jump into the trust  
 21 and want to make so many changes. So I did have a  
 22 concern.  
 23 And because Anita was so concerned about  
 24 things with Carl and his life, red flags kept going up  
 25 for me. So that's why I guess I was seeing some of the

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1 other side of things that were going on that you may not  
 2 have known anything about.  
 3 And my mother tended to be somebody that  
 4 hated conflict, and so she a lot of times would just  
 5 agree just to shut people up and try to go along with  
 6 things.  
 7 But when it came to the gift that I got,  
 8 it was something my mother spoke to me about because at  
 9 the time we were thinking that there was a possibility  
 10 that my brother may come to live with me. So we thought  
 11 we needed to make the house ready for a wheelchair,  
 12 things like that. What my mother talked about was just  
 13 give me enough cash to where I could just make that  
 14 happen quickly if the need arose.  
 15 Well, time went by and Anita called me and  
 16 said that my mother was ready to make this gift. I was  
 17 like okay.  
 18 But I told her, I said, I need to make  
 19 sure every I is dotted, every T is crossed because I  
 20 never want anybody to think that I got this under some  
 21 kind of suspicious circumstances. I knew that at the  
 22 time Anita seemed to be shopping for answers between you  
 23 and our cousin in Iowa to try and find out, is this  
 24 okay, is this okay, is this okay?  
 25 That's why I told her I need to know

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1 a hundred percent for sure that what money I get, that  
 2 there's something in writing where my mother has said, I  
 3 am giving this to Carole for this intended purpose; and  
 4 it's notarized and everything is fine. I said, I need  
 5 to know that because I know how this family can be.  
 6 She said, No, no, no, it's all taken care  
 7 of. It's all fine, it's all fine.  
 8 But our mother didn't have to say in  
 9 writing that she was okay with these gifts?  
 10 MR. REED: Objection, form.  
 11 MR. SPIELMAN: Form.  
 12 **A. There is no requirement in the trust that**  
 13 **requires her to do that.**  
 14 Q. (By Ms. Carole Brunsting) Because then what I  
 15 found out also, that it came out of the decedent's  
 16 trust -- I remember staying with my father because at  
 17 the time, for some reason I remember that they would go  
 18 to meetings with Vacek in Clear Lake City. I think that  
 19 it was a different person, before you. I know that the  
 20 person wasn't at the office where you were.  
 21 My father was explaining to me that the  
 22 way he set it up was the decedent's trust, no one could  
 23 take that money unless my mother ran out of money,  
 24 because should my mother marry again, he wanted to make  
 25 sure that the farm was protected for his children and

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1 that you couldn't pull assets out of there. And I  
 2 remember my father clearly explaining all that to me.  
 3 So when I found out that, number one, this  
 4 wasn't cash; but, number two, it was stock out of my  
 5 father's side, and I questioned it, and like, No, no.  
 6 That's fine, it's fine.  
 7 The problem I was having with it --  
 8 because I'm an accountant and I do a little bit -- is  
 9 this stock generates dividends. So, number one, I  
 10 thought it would be foolish to cash it. But, number  
 11 two, I didn't want a tax hit. And, number three, at the  
 12 time, enough time had passed, and it wasn't given to  
 13 me -- I mean, the reason it was being given to me was no  
 14 longer for its intended purpose. So I never felt right  
 15 about accepting it because I no longer needed to modify  
 16 my house.  
 17 So I kind of just ended up with it, and I  
 18 still have it all. I have never cashed it in, ever. I  
 19 kept trying to give it back, but I was told, No, no.  
 20 Just hang on to it, hang on to it.  
 21 But now I don't know what's going to  
 22 happen to it now that I have it, and I don't want to  
 23 take some tax hit. I've tried to -- do I divide it five  
 24 ways? I don't know what to do with it now because even  
 25 though I've tried to give it back, I have never been

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1 successful; and I don't really know what to do.  
 2 **A. Are you asking me a question?**  
 3 MR. SPIELMAN: Objection, form.  
 4 Q. (By Ms. Carole Brunsting) Well, I don't know.  
 5 I've gotten five different answers.  
 6 MR. REED: What I would say is I don't  
 7 think she can give you any advice on that --  
 8 MS. CAROLE BRUNSTING: Oh, okay.  
 9 MR. REED: -- in this context. So I guess  
 10 that would be the answer to what you're looking for.  
 11 Q. (By Ms. Carole Brunsting) Well, anyway, but I  
 12 guess it was the two conversations that I had regarding  
 13 money with Anita of please do not get me involved with  
 14 something that is going to get me in trouble with the  
 15 rest of the family.  
 16 Because I never asked, What is everybody  
 17 else getting? I never asked that, because it was none  
 18 of my business.  
 19 But the two things I got involved with I'm  
 20 being sued for. So that's where I kind of thought that  
 21 there would be something in writing saying that this  
 22 checking account that my mother set up would be -- this  
 23 is how it came about or this was the intended purpose of  
 24 this gift. And then when it didn't happen, I never  
 25 spent it.

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1 I just don't know what to do with this.  
 2 But also, too, it sounds like now there is nothing in  
 3 writing or maybe it was never required that my mother --  
 4 I thought she had to fill something out or agree to make  
 5 a distribution like that because she was no longer the  
 6 trustee. It was Anita that was. So I just assumed that  
 7 my mother had to sign something and notarize it so I  
 8 could show everybody that this is what she wanted. So I  
 9 never had anything to back it up. So everybody decided  
 10 that I was being bought off, and that's where it  
 11 couldn't be further from the truth.  
 12 MR. REED: Form.  
 13 Q. (By Ms. Carole Brunsting) Okay.  
 14 MR. SPIELMAN: Objection, form.  
 15 MS. CAROLE BRUNSTING: I'm pro se, so this  
 16 is what you get.  
 17 MR. SPIELMAN: Move on.  
 18 Q. (By Ms. Carole Brunsting) Oh, the other thing,  
 19 too, that was kind of a bit of a red flag when some of  
 20 these changes took place was, when my mother would talk  
 21 about the trust, she would say, I don't care what --  
 22 y'all can fight as much as you want, but Carl will  
 23 always be trustee. He's the only boy. Your dad and I  
 24 have agreed he will always be trustee. No matter what,  
 25 he will always be trustee.

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1           So that was a bit of another red flag when  
 2 I asked my mother, I said, Why would you have removed  
 3 him?  
 4           She said, Oh, no, don't worry. It's a  
 5 temporary thing. This is just temporary.  
 6           So that's why I really got the impression  
 7 maybe she didn't understand exactly what happened  
 8 because it was her understanding that he was going to go  
 9 back on there at some point, and she expected him to  
 10 fully recover.  
 11           And also, I thought there was already a  
 12 safety net in place that even if Carl couldn't serve, it  
 13 would just go to the next person; and then there was  
 14 already something in place. I just honestly don't know  
 15 that my mother would have thought through that hard or  
 16 put that much thought into this document because, like I  
 17 said, she hated paperwork and hated all the --  
 18           I mean, she -- the trust was really more  
 19 my dad's thing; it wasn't really hers. So that was  
 20 another bit of a red flag, that my mother was adamant  
 21 about Carl always being the trustee. And she really  
 22 didn't seem to be that concerned about his health at the  
 23 time.  
 24           And also, too, I knew that there was a  
 25 question about Amy and Anita's own financial stability

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1           at the time. So that was the other red flag. I'm an  
 2 accountant, so this is what I do for a living. So  
 3 there's a lot of red flags for me here, and that was a  
 4 red flag for me as well.  
 5           There wasn't anything I could do about it  
 6 because I had no power to do anything about it. But  
 7 there were red flags that I was really concerned about,  
 8 how all of a sudden we had all these large changes  
 9 taking place. And from the conversations I was having  
 10 with my mother, none of this ever really, really sat  
 11 well with me. And as a result, now I'm part of two  
 12 lawsuits.  
 13           MR. SPIELMAN: Objection, form.  
 14 Q. (By Ms. Carole Brunsting) So that's it. I'm  
 15 done.  
 16           MR. REED: Can we take a 30-second break  
 17 real quick?  
 18           MR. SPIELMAN: Sure.  
 19           (Recess taken.)  
 20  
 21  
 22  
 23  
 24  
 25

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1           EXAMINATION  
 2 QUESTIONS BY MS. CANDACE CURTIS:  
 3 Q. Okay. So I just want to kind of go over the  
 4 history of the trust from the very beginning just real  
 5 quickly.  
 6           So in 1996 there was The Brunsting Family  
 7 Living Trust; and Anita was the first trustee, Carl the  
 8 second and Amy was third. The money was to be divided  
 9 five ways and given to the beneficiaries, not in trust.  
 10 And if those three ended up not being able to serve,  
 11 then Frost Bank would have taken over that position.  
 12           I know because he told me that the reason  
 13 he chose those three is because they were the youngest  
 14 and would probably be more likely to live longer than  
 15 the older kids.  
 16           So we had the 1996 trust. At some point  
 17 before 1999, Anita got divorced. And so my dad gave her  
 18 a hundred thousand dollars to pay her house off, and he  
 19 filed a lien against her house. I don't know what  
 20 happened to make him have to take the lien off; but he  
 21 went to Mr. Vacek and said that if there is a debt that  
 22 was forgiven by Anita Kay Riley -- if it was her debt  
 23 that was forgiven, it would come out of her share of the  
 24 trust.  
 25           So I have never seen the hundred thousand-

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1           dollar accounts receivable anywhere in the accounting.  
 2 We have my accounts receivable for \$20,000; and later on  
 3 when Anita borrowed shares of stock, we have that  
 4 accounts receivable.  
 5           But what happened to that hundred  
 6 thousand-dollar accounts receivable? Because it was a  
 7 trust asset which should have transferred within the  
 8 trust when the trust was restated.  
 9           MR. SPIELMAN: Form.  
 10           MR. REED: Let me just ask you, What time  
 11 period are you asking? I'm not familiar with it.  
 12           MS. CANDACE CURTIS: Okay. So it was in  
 13 1999 that he gave her the money to pay her house off and  
 14 filed the lien.  
 15           MR. REED: Uh-huh.  
 16           MS. CANDACE CURTIS: And then it was in --  
 17           MR. MENDEL: Was this in Victoria?  
 18           MS. CANDACE CURTIS: Yes, it was in  
 19 Victoria, Texas.  
 20           MR. REED: The reason I'm asking as you're  
 21 looking is we were only asked to produce documents from  
 22 a certain time period. So I'm just wondering if the  
 23 documents we produced --  
 24           MS. CANDACE CURTIS: You didn't produce  
 25 those two. You produced the amendment --



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1 MR. REED: Okay.  
 2 MS. CANDACE CURTIS: -- to the trust.  
 3 MR. REED: So you're asking why someone  
 4 else hasn't produced documents?  
 5 MS. CANDACE CURTIS: No. I'm asking --  
 6 because this is an amendment to the trust that says if  
 7 the loan was forgiven, that it would come out of her  
 8 trust share, that became -- at that point when it was  
 9 forgiven, that became an asset of the trust because it  
 10 was due back from her.  
 11 So we move along in time and we come to  
 12 the 2005 restatement, and at that point they had to  
 13 gather what all the assets were. And that just  
 14 disappeared, and it was a valid accounts receivable of  
 15 The Brunsting Family Living Trust.  
 16 MR. REED: Yeah. And I appreciate that --  
 17 MR. SPIELMAN: Form. I'm not sure what's  
 18 happening with questions and not questions, but just a  
 19 bunch of "objection, forms."  
 20 MR. REED: I'm trying to understand what  
 21 the question is. I think the period you're saying is --  
 22 I think the answer is she's not going to be able to  
 23 offer any testimony because she wasn't there until 2007.  
 24 MS. CANDACE CURTIS: No, I understand  
 25 that. But when she came there in 2007, there were

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1 several accountings prepared. The first one was when my  
 2 dad passed away. So it should have been listed on the  
 3 assets of the trust. And it was a Vacek product in  
 4 1996. So I would think that would still be in the file,  
 5 in the amendment, because these amendments and these  
 6 trusts I got out of your production.  
 7 MR. REED: I'm with you, following you.  
 8 MS. BAYLESS: Wait just a second. Can I  
 9 ask what amendment we're talking about?  
 10 MS. CANDACE CURTIS: It's the first  
 11 amendment to the 1996 Brunsting Family Living Trust.  
 12 MS. BAYLESS: Does it have a number?  
 13 MS. CANDACE CURTIS: V&F 000808.  
 14 MR. MENDEL: Is there a date?  
 15 MS. CANDACE CURTIS: April 30th, 1999.  
 16 MS. BAYLESS: Can you give me the number  
 17 one more time.  
 18 MR. MENDEL: V&F 000808.  
 19 MS. BAYLESS: Thank you.  
 20 MR. REED: Okay. I don't know if we're  
 21 following you. Go ahead.  
 22 MR. MENDEL: April 30th, 1999 amendment.  
 23 MS. CANDACE CURTIS: It's part of the  
 24 estate plan.  
 25 MR. REED: Okay.

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1 MR. SPIELMAN: I'm sorry. I know I'm just  
 2 as bad as everybody else now.  
 3 Are you referencing the amendment that was  
 4 made to the original trust document --  
 5 MS. CANDACE CURTIS: Yes.  
 6 MR. SPIELMAN: -- prior to the execution  
 7 of the restatement?  
 8 MS. CANDACE CURTIS: Yes, I am.  
 9 MR. SPIELMAN: Does everybody now  
 10 understand better what we're talking about?  
 11 THE WITNESS: Yes. Thank you.  
 12 Q. (By Ms. Candace Curtis) Okay. So now we're  
 13 coming to the restatement, and that was done in 2005.  
 14 So my only question really is why that  
 15 wasn't continued to be carried as an asset --  
 16 MR. SPIELMAN: Objection, form.  
 17 Q. (By Ms. Candace Curtis) -- but it's a little  
 18 different.  
 19 Okay. So now we're at the 2005  
 20 restatement. And this was something that was supplied  
 21 that is not part of the trust; but this is the plan,  
 22 this is the estate plan. And I don't have the one that  
 23 came in the Vacek & Freed -- I don't have the number,  
 24 but it is in the Vacek & Freed production.  
 25 MR. MENDEL: So for everyone, you're

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1 saying "this," which when you read this record, nobody  
 2 knows what that means. So why don't we give them this  
 3 number.  
 4 MS. CANDACE CURTIS: Okay. That would be  
 5 fine. I just don't know what the Vacek & Freed number  
 6 is.  
 7 MR. MENDEL: So Ms. Curtis is making  
 8 reference to a document that's Bates-labeled Brunsting  
 9 000535.  
 10 Q. (By Ms. Candace Curtis) Okay. And so when  
 11 you're looking at Article III of the 2005 restatement --  
 12 which we've already gone over -- where section B says,  
 13 "We May Amend Our Trust," it says it "may be amended by  
 14 us in whole or in part in a writing signed by both of us  
 15 for so long as we both shall live. Except as to a  
 16 change of trust situs, when one of us dies, this trust  
 17 shall not be subject to amendment except by a court of  
 18 competent jurisdiction."  
 19 The second paragraph says, "Each of us may  
 20 provide for a different disposition of our share in the  
 21 trust by using a qualified beneficiary designation, as  
 22 we define that term in this agreement, and the qualified  
 23 beneficiary designation will be considered an amendment  
 24 to this trust as to that Founder's share or interest  
 25 alone."

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1 Well, can you explain to me why this  
 2 didn't have to be done before our father passed away?  
 3 MR. REED: Objection, form.  
 4 What didn't have to be done?  
 5 MS. CANDACE CURTIS: The qualified  
 6 beneficiary designation from June of 2010 and/or the  
 7 qualified beneficiary designation of August 2010.  
 8 MR. REED: Form.  
 9 **A. So the reason why it didn't have to be done**  
 10 **before your father died is because each person has the**  
 11 **right to determine which, where, how, what form that**  
 12 **disposition could take for their own or grant their**  
 13 **spouse, even after they are deceased, a limited right to**  
 14 **do that, which your parents did.**  
 15 Q. (By Ms. Candace Curtis) There is the limited.  
 16 **A. Yes.**  
 17 Q. That's in Article IX.  
 18 **A. Yes.**  
 19 Q. That's the testamentary power, which doesn't  
 20 occur until after someone dies.  
 21 **A. Till after someone dies, correct.**  
 22 Q. But you can't -- she could only amend it as to  
 23 her share alone. Okay?  
 24 **A. No. I disagree.**  
 25 Q. Okay. That's fine. Because it's considered an

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1 amendment to that founder's share or interest alone. So  
 2 how does that mean that she can do that for the  
 3 decedent's trust?  
 4 **A. Because she was granted a limited power of**  
 5 **appointment over the decedent's trust assets. That is**  
 6 **in Article X.**  
 7 Q. Article X. Okay. Then that answers my  
 8 questions. Even though this little flow chart says that  
 9 she has complete control of all the assets and the right  
 10 to give away assets in A, which is her revocable  
 11 survivor's trust, she can't take anything more out of  
 12 the decedent's trust and give it away.  
 13 MR. SPIELMAN: Can you refer to it -- is  
 14 this the flow chart?  
 15 MS. CANDACE CURTIS: It's a spreadsheet.  
 16 MR. REED: So at the very bottom. That's  
 17 the one she was talking about earlier.  
 18 MR. MENDEL: That's the one that ends in  
 19 535.  
 20 MR. SPIELMAN: Oh, this is the 535. Okay.  
 21 MR. REED: Can I just see this real quick.  
 22 MR. SPIELMAN: Sorry.  
 23 MS. BAYLESS: Wait just a second. When  
 24 you just referred to that document, you were referring  
 25 to the one that is No. Brunsting 0000535, right?

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1 MS. CANDACE CURTIS: Yes.  
 2 MS. BAYLESS: Okay.  
 3 (Discussion off the record.)  
 4 Q. (By Ms. Candace Curtis) Okay. So then the  
 5 qualified beneficiary designation from June of 2010  
 6 basically says any money that anybody gets from any  
 7 trust comes out of their share. And that's what my  
 8 mother did when I needed \$20,000 and when Carole needed  
 9 \$20,000. She came to you, and you advised her what to  
 10 do.  
 11 So that QBD, even though I still don't  
 12 think applies to the decedent's trust, is a valid  
 13 document. So any money that anybody got after that date  
 14 comes out of their inheritance. Would you agree?  
 15 MR. SPIELMAN: Form.  
 16 MR. REED: Form.  
 17 Q. (By Ms. Candace Curtis) Correct?  
 18 **A. If it was documented as such by your mother as**  
 19 **a distribution rather than a gift, then, yes, that would**  
 20 **be true.**  
 21 Q. Okay. Do gifts have to be documented?  
 22 MS. BAYLESS: Hang on just a second. Are  
 23 we now talking about Exhibit 5?  
 24 THE WITNESS: Yes.  
 25 MR. MENDEL: 6.

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1 THE WITNESS: I believe she was referring  
 2 to 5.  
 3 MS. CANDACE CURTIS: Yes, the June  
 4 qualified beneficiary --  
 5 MS. BAYLESS: Exhibit 5. Okay.  
 6 Q. (By Ms. Candace Curtis) And so she could also  
 7 do it to the decedent's share?  
 8 MR. REED: "She" being Nelva?  
 9 MS. CANDACE CURTIS: Nelva.  
 10 MR. REED: Form.  
 11 **A. What's the question?**  
 12 Q. (By Ms. Candace Curtis) That she could have  
 13 done a qualified beneficiary designation to other than  
 14 her share alone?  
 15 **A. Yes.**  
 16 Q. Okay. So then let's talk about accountings.  
 17 According to these in terrorem clauses, no matter what  
 18 happens, we can't argue with it.  
 19 So when we've had to ask for accountings  
 20 every single time, what is a beneficiary supposed to do  
 21 to protect their beneficial interest?  
 22 MR. REED: Objection, form.  
 23 MR. SPIELMAN: Form.  
 24 **A. Are you asking for legal advice? Or is it a**  
 25 **rhetorical question? I'm not sure --**

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1 Q. (By Ms. Candace Curtis) You represented my  
 2 mother --  
 3 **A. I did.**  
 4 Q. -- in her estate planning. Okay? And so you  
 5 also represented my sister Anita when she took over as  
 6 trustee for my mother.  
 7 So was Anita required to account to my  
 8 mother periodically, as the trust called for?  
 9 **A. Yes.**  
 10 MR. REED: Objection, form.  
 11 Q. (By Ms. Candace Curtis) Did she?  
 12 MR. REED: Objection, form.  
 13 **A. I have no idea whether she did or did not.**  
 14 Q. (By Ms. Candace Curtis) Okay. Were you  
 15 advising her how to do her fiduciary duties as a trustee  
 16 when she was your client at the same time as my mother  
 17 was?  
 18 MR. REED: Objection, form.  
 19 **A. If she requested advice, advice was given.**  
 20 Q. (By Ms. Candace Curtis) If my mother or Anita  
 21 requested advice. Okay. So what advice was she  
 22 requesting with all of these?  
 23 **A. I don't recall. I'm sorry. It's nine years**  
 24 **ago.**  
 25 Q. Okay. Well, let's go in another direction,

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1 then. So we're back to the accounting, and someone said  
 2 that she just totally drained the survivor's account. I  
 3 forget what the terminology was.  
 4 But we do have an accounting prepared by  
 5 Vacek & Freed; and it's got the December 2010 values of  
 6 the Edward Jones account for Nelva Brunsting, which was  
 7 \$191,205.  
 8 MS. BAYLESS: Excuse me, but is this  
 9 numbered or something?  
 10 MS. CANDACE CURTIS: This is also in the  
 11 Vacek & Freed production, but that's not the copy that I  
 12 have.  
 13 MS. BAYLESS: Okay.  
 14 Q. (By Ms. Candace Curtis) This other copy, the  
 15 March 30th, 2012, is V&F 000201, where that Edward Jones  
 16 account has \$1.05. So between December of 2010 and  
 17 March 30th of 2012, the \$191,200 just flowed out of that  
 18 account; and we do know where some of it is.  
 19 Did Anita ask you how she was supposed to  
 20 get her trustee compensation?  
 21 MR. SPIELMAN: Objection, form.  
 22 MR. REED: Form.  
 23 **A. I believe that -- I don't recall a specific**  
 24 **conversation about it, but my usual response is what is**  
 25 **reasonable and customary.**

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1 Q. (By Ms. Candace Curtis) Okay. So would she  
 2 have written herself a check from the trust account  
 3 every month or however often she was to be paid trustee  
 4 compensation?  
 5 MR. SPIELMAN: Objection, form.  
 6 MR. REED: Objection, form.  
 7 **A. I do not know that. That is not something I**  
 8 **would be aware of or know.**  
 9 Q. (By Ms. Candace Curtis) Did you calculate what  
 10 her trustee compensation would be?  
 11 **A. That is not something that I was hired to do.**  
 12 MS. BAYLESS: I'm sorry.  
 13 Q. (By Ms. Candace Curtis) But you did it.  
 14 MS. BAYLESS: Hang on. I didn't hear your  
 15 answer.  
 16 THE WITNESS: That was not something that  
 17 I was hired to do, provide an accounting or write  
 18 checks.  
 19 Q. (By Ms. Candace Curtis) How did she determine  
 20 that 2 percent of the trust assets were due for trustee  
 21 compensation?  
 22 MR. SPIELMAN: Objection, form.  
 23 MR. REED: Form.  
 24 **A. I do not know.**  
 25 Q. (By Ms. Candace Curtis) Okay. Then we'll go

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1 back, I guess. So in August of 2010 there was a second  
 2 QBD. Can someone have two of those?  
 3 **A. Yes.**  
 4 Q. Okay. And so Anita called on July 20th for  
 5 Candace Freed, calling on behalf of Mom Nelva, and she  
 6 wanted you to give her a call. This is V&F 001197.  
 7 Candace returned call to Nelva's daughter  
 8 Anita, asking how she was doing.  
 9 She is feeling okay. "She has cancer on  
 10 the liver, but it's the lungs that she has issues with.  
 11 Worse over, her brother Carl has encephalitis and is in  
 12 the hospital. Three weeks now. She is concerned for  
 13 several reasons. Not sure what the outcome for the  
 14 brother is going to be or if he will recover. This may  
 15 be problematic in that they are not certain his wife  
 16 will not take off with the money or actually use it for  
 17 his care."  
 18 "Comments from SIL" -- which I finally  
 19 figured out is sister-in-law -- "(Carl's wife) to  
 20 Nelva." This is coming from Anita -- "was that she  
 21 wished she would go on and distribute Elmer's share of  
 22 the trust since Carl had said he wanted her to have  
 23 something; and then if Carl dies, then his daughter  
 24 would get it all."  
 25 "I suggested the following but that it

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1 needed to come from Nelva."  
 2 So this is where the QBD and the  
 3 certificates of trust and how Nelva can make unlimited  
 4 gifts to Carl of doctors bills.  
 5 So I can't find anywhere in here where it  
 6 came from Nelva, and there is no entry between  
 7 August 17th, 2010 and September 2nd of 2010, when she  
 8 came in to sign the documents on August 25th.  
 9 So why was that not in here when  
 10 everything else is in your notes?  
 11 MR. SPIELMAN: Objection, form.  
 12 MR. REED: Objection, form.  
 13 **A. I don't know.**  
 14 Q. (By Ms. Candace Curtis) Okay. Then since  
 15 we're not getting anywhere with this stuff ...  
 16 MR. REED: Objection, sidebar.  
 17 MS. CANDACE CURTIS: Pardon me?  
 18 MR. REED: I objected to your sidebar.  
 19 MS. CANDACE CURTIS: Okay. Excuse me.  
 20 Q. (By Ms. Candace Curtis) So now, since I felt  
 21 that my only course of remedy was to file suit after I  
 22 had written the appropriate demand letters to my sisters  
 23 to account and they hadn't, we have Bernard Matthews,  
 24 who was a staff attorney with Vacek & Freed,  
 25 representing -- who represented Amy and Anita when they

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1 took over as trustees. Now we have him representing Amy  
 2 and Anita under a Green & Matthews letterhead.  
 3 Now, is this a conflict?  
 4 MR. SPIELMAN: Objection, form.  
 5 MR. REED: Objection, form. I'm not going  
 6 to allow her to answer that question.  
 7 MS. CANDACE CURTIS: Okay.  
 8 MR. SPIELMAN: What document was that?  
 9 MS. CANDACE CURTIS: This is a law firm  
 10 copy of something. I don't know. It's not labeled.  
 11 MR. SPIELMAN: And you're reading from a  
 12 letterhead that says what and Matthews?  
 13 MS. CANDACE CURTIS: Green & Matthews.  
 14 MR. REED: What's that bottom number,  
 15 though?  
 16 MS. CANDACE CURTIS: That's an exhibit  
 17 that I had.  
 18 MR. REED: It's an April 5th, 2012 letter.  
 19 At the bottom it says P12146 through 12147. I'm not  
 20 sure what that came from.  
 21 MR. SPIELMAN: Which case?  
 22 MR. REED: Yeah.  
 23 MS. CANDACE CURTIS: "I represent Anita  
 24 and Amy Brunsting in their capacity as successor  
 25 trustees of The Brunsting Family Living Trust."

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1 So it is a letter that came to Carole,  
 2 myself, and it went to Carl via Bobbie Bayless.  
 3 MS. BAYLESS: I'm sorry. What was the  
 4 question that you didn't allow her to answer?  
 5 MR. REED: Whether it's a conflict for  
 6 Mr. Matthews.  
 7 MS. BAYLESS: Oh, okay.  
 8 MR. SPIELMAN: Who, by the way, for the  
 9 clarity of the record, has no connection to my law firm  
 10 Griffin & Matthews even though that --  
 11 MS. CANDACE CURTIS: It says Green.  
 12 MR. SPIELMAN: Right. I just want to make  
 13 sure that there's a distinction being made between the  
 14 letter you're referring to, which is Green & Matthews,  
 15 and my law firm, who are attorneys of record for Amy  
 16 Brunsting, which is Griffin & Matthews.  
 17 MS. CANDACE CURTIS: Okay.  
 18 Q. (By Ms. Candace Curtis) So I guess you can't  
 19 answer this question either. But how did Anita -- okay.  
 20 Did you counsel Anita at all about her fiduciary duties  
 21 as a trustee?  
 22 **A. Of course.**  
 23 Q. Okay. And did you talk about self-dealing?  
 24 **A. I don't recall talking to her about that.**  
 25 Q. Did you talk about commingling funds?

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1 **A. I believe that's in our engagement letter.**  
 2 Q. Okay. So when Anita determined that she was  
 3 due all of this money as trustee compensation, instead  
 4 of writing a check to herself, which would have caused  
 5 the accountant to have to send her a 1099 for trustee  
 6 compensation, she just paid her personal credit card  
 7 bills directly out of my mother's trust account.  
 8 So that's why I was asking if you know if  
 9 she ever provided an accounting to Mother, because I  
 10 don't think Mother would have agreed to that. But we'll  
 11 never know now. So when you're counseling somebody to  
 12 be a trustee, you need to explain to them that that was  
 13 commingling, plain and simple.  
 14 Then she wrote checks to pay off her son's  
 15 car, and she wrote checks to pay off her daughter's car.  
 16 This is all out of the survivor's trust account.  
 17 So I don't know if my mother knew about  
 18 that or not.  
 19 MR. SPIELMAN: Objection, form.  
 20 MR. REED: There's no question.  
 21 Q. (By Ms. Candace Curtis) So did she ever ask  
 22 you if she could pay her credit card bills out of the  
 23 survivor's trust account?  
 24 **A. I do not recall -- sorry.**  
 25 MR. SPIELMAN: Form.

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1       **A. I do not recall ever being asked that question.**  
2       Q. (By Ms. Candace Curtis) But she did ask you a  
3       lot of questions about gifting.  
4       MR. REED: Objection, form.  
5       Q. (By Ms. Candace Curtis) When my mother  
6       resigned as trustee, was she allowed to continue  
7       gifting?  
8       **A. "She"?**  
9       Q. My mother?  
10       **A. Yes.**  
11       Q. When she was no longer trustee, just a mere  
12       beneficiary?  
13       MR. SPIELMAN: Objection, form.  
14       MR. REED: Objection, form.  
15       Q. (By Ms. Candace Curtis) Okay. I guess I'm  
16       done.  
17       MR. REED: Who's next?  
18       MS. BAYLESS: Let's go off the record for  
19       a second.  
20       (Recess taken.)  
21  
22  
23  
24  
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1                                   EXAMINATION  
2       QUESTIONS BY MS. BAYLESS:  
3       Q. Ms. Freed, I'm Bobbie Bayless. I represent  
4       Carl Brunsting. Do you understand that?  
5       **A. I do.**  
6       Q. Okay. I want to ask a couple of questions that  
7       go back to earlier today.  
8       **A. Uh-huh.**  
9       Q. What law school did you attend? I couldn't  
10       hear that. You may have answered it.  
11       **A. St. Mary's.**  
12       Q. Okay. And you graduated when?  
13       **A. 2003.**  
14       Q. How was it that you ended up being employed at  
15       the Vacek firm? How did you meet them?  
16       **A. I applied for an associate position.**  
17       Q. Okay. And you said that you never were a  
18       partner there?  
19       **A. That's correct.**  
20       Q. So why was your name in the firm name?  
21       **A. It was just something that they did.**  
22       Q. Okay.  
23       **A. They changed names over the years. That was**  
24       **just the way they did it.**  
25       Q. Okay. Did they ask you to do that?

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1       **A. I'm sure they did.**  
2       Q. Okay. When you left the Vacek firm, what was  
3       the reason that you left?  
4       **A. I went on to -- on my own.**  
5       Q. Just --  
6       **A. Private practice.**  
7       Q. I mean, you just wanted to?  
8       **A. Sure, uh-huh.**  
9       Q. Did you leave on friendly terms?  
10       **A. Yeah.**  
11       Q. Do you still do any work with them, work on  
12       cases with them or anything?  
13       **A. With them, no, because they are not in business**  
14       **any longer.**  
15       Q. Oh, they're not?  
16       **A. No.**  
17       Q. When did that happen?  
18       **A. I don't know. I've been gone since 2015,**  
19       **so ...**  
20       Q. Okay.  
21       **A. I don't know when they officially shut their**  
22       **doors.**  
23       Q. When you left, did you know that they were  
24       getting ready to shut their doors?  
25       **A. Did not.**

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1       Q. Did they shut the doors --  
2       **A. That was four years after.**  
3       Q. I'm sorry?  
4       **A. It's been four years, so I ...**  
5       Q. Okay. So sometime after you left, they closed,  
6       but you don't know when?  
7       **A. I don't know when their official date was, no.**  
8       Q. Okay. Are you board-certified in estate  
9       planning and probate?  
10       **A. I am not.**  
11       Q. Have you ever taken that exam?  
12       **A. I have.**  
13       Q. When did you take that exam?  
14       **A. I don't recall. I think it may have been 2013**  
15       **maybe.**  
16       Q. Okay. And do you have plans to take it again?  
17       **A. Currently, no.**  
18       Q. So you only took it one time?  
19       **A. I sat for it one time; that's correct, yes.**  
20       Q. In connection with the documents that were  
21       done -- now, you weren't there when the restatement was  
22       done. You obviously weren't there when the first,  
23       original trust was done. So you didn't have anything to  
24       do with either of those documents?  
25       **A. Correct.**

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1 Q. In terms of -- there was an amendment done, I  
 2 believe, in -- did you have any occasion to be involved  
 3 in an amendment of the trust prior to what we're calling  
 4 the QBDs?  
 5 A. Yes.  
 6 MR. SPIELMAN: Objection, form. Which  
 7 trust?  
 8 MS. BAYLESS: The restated trust.  
 9 A. Yes.  
 10 Q. (By Ms. Bayless) And do you recall what the  
 11 nature of the amendment was that you did?  
 12 A. May I look at it?  
 13 Q. Sure, absolutely.  
 14 MR. SPIELMAN: Exhibit 3 in the binder.  
 15 A. It appears it was to change successor trustees.  
 16 Q. (By Ms. Bayless) Okay. And that's Exhibit 3  
 17 in the binder, right?  
 18 A. Yes, that's correct.  
 19 Q. So this would, I assume, have been your first  
 20 involvement with this estate plan?  
 21 A. I was the notary. So that's most likely. It's  
 22 not necessarily that I met with them. I just may have  
 23 notarized the document.  
 24 Q. All right. One of the things that I'm going to  
 25 want to go through with you some are your notes, what

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1 are called Notes/History.  
 2 A. I don't have those.  
 3 Q. Let me get you a set.  
 4 (Exhibits 17 and 18 marked.)  
 5 Q. (By Ms. Bayless) All right. So we have marked  
 6 as Exhibit 17 what is numbered at the bottom V&F 001176  
 7 through 1197. Does that look right?  
 8 A. Those are the numbers on the bottom.  
 9 Q. I'm sorry?  
 10 A. Those are the numbers that appear at the  
 11 bottom.  
 12 Q. Okay. And then we have marked as Exhibit 18 --  
 13 let's just go ahead and identify that -- the document  
 14 that was just produced yesterday -- part of the  
 15 documents that were produced yesterday, that begin with  
 16 the numbers V&F 002168 and go through 2183. Is that  
 17 correct?  
 18 A. Yes, that's correct.  
 19 Q. So these are documents that your attorney  
 20 produced, and they say at the top that they are  
 21 Notes/History.  
 22 Would you tell me exactly where these come  
 23 from?  
 24 A. So at any given time when a client comes in or  
 25 calls in, we jot down notes in the system so that the

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1 next time a client calls in or comes in, we know what  
 2 was done the last time, who spoke with them and what  
 3 needed to be done.  
 4 Q. When you say "the system," what particular  
 5 software are you using?  
 6 A. It's called Act!  
 7 Q. A-c-t?  
 8 A. A-c-t.  
 9 Q. Is that like a lawyer management system, or  
 10 what is that?  
 11 A. I would describe it as a database.  
 12 Q. Okay. And so the person making the entry --  
 13 well, first of all, do you still use this system at your  
 14 firm?  
 15 A. I do not.  
 16 Q. So you only used this at the Vacek firm?  
 17 A. This was specific to the law firm, yes.  
 18 Q. Did they use this system the entire time that  
 19 you were there?  
 20 A. To the best of my knowledge, yes.  
 21 Q. So were you trained on how to use it?  
 22 A. Not -- I mean, yes, as you went along. There  
 23 was no formal training, but yes.  
 24 Q. And were you given instructions as to what was  
 25 to go into the notes or the history?

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1 A. I'm sure at some point we were.  
 2 Q. Okay. Well, looking, if you would, at  
 3 Exhibit 17 first, I think you have to -- I'm using it  
 4 this way because this is the way it was numbered when it  
 5 was provided. But to find the beginning of this  
 6 document, you have to go to V&F 001183, I think.  
 7 A. Okay.  
 8 Q. So the entries on this page begin in 2003. So  
 9 that's obviously before you were there.  
 10 A. Yes.  
 11 Q. Who maintained this database?  
 12 MR. REED: Object to form.  
 13 A. I don't know what you're asking.  
 14 Q. (By Ms. Bayless) I'm not sure I do either.  
 15 If you -- well, this says that this  
 16 document, first of all, was created -- if you look at  
 17 the very bottom, it says it was created March 22nd,  
 18 2012.  
 19 A. Okay.  
 20 Q. Now, I assume that means when it was printed?  
 21 A. Probably. That would be my guess.  
 22 Q. Did everyone have access to the database at the  
 23 office, everyone at the office?  
 24 A. Every employee, yes.  
 25 Q. And so it was networked on everyone's

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1 computers?

2 **A. It was on a server, uh-huh.**

3 Q. So if you look at this page 1183 -- I'm going

4 to just refer to them by the last numbers if that's

5 okay. If you look at 1183 and you see the 2-1-2003

6 entry. Then there's not another entry until 2005.

7 Do you see that?

8 **A. Uh-huh.**

9 Q. And it says on January 12th, 2005, they came in

10 to sign a restatement.

11 So we're going to assume that that's the

12 restatement that is Exhibit 2.

13 **A. Okay.**

14 Q. Do you think that's in all likelihood the case?

15 **A. Probably.**

16 Q. Okay. Now, there aren't any entries in here

17 about what was going to be in that document, in that

18 restatement, Exhibit 2, right?

19 **A. I don't see any.**

20 Q. And, to your knowledge, did anybody ever go in

21 and take out entries after they were put in?

22 **A. I don't believe so. I don't know why they**

23 **would.**

24 Q. Anybody wouldn't have that authority, that you

25 know of, right?

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1 MR. REED: Objection, form.

2 **A. I don't know.**

3 Q. (By Ms. Bayless) Okay. So then there's not

4 another appointment until 2007, and then there are just

5 some entries about scheduling appointments.

6 Then on September 19th, 2007, there

7 appears to be an entry where Nelva called and talked

8 about Elmer's dementia.

9 So were you helping them at the time that

10 Elmer developed dementia? Do you recall?

11 MR. SPIELMAN: Form.

12 **A. Yes.**

13 Q. (By Ms. Bayless) And how did you first learn

14 about that?

15 **A. In meeting with Nelva.**

16 Q. And when you met with Nelva initially, did you

17 meet with her by yourself? Did you meet with her with

18 Mr. or Ms. Vacek, or do you recall how any of that

19 happened?

20 **A. I don't recall. I don't.**

21 Q. So at some point adjustments had to be made to

22 how the trust was being administered because of Elmer's

23 dementia, correct?

24 **A. I suppose that that was the case, yes.**

25 Q. So were you not involved in any of the

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1 administration of the trust at that point?

2 **A. Well, you'd have to define "administration."**

3 **Clients don't have me do their trusts when they're still**

4 **living. They administer their own trusts.**

5 Q. So you didn't do anything -- you didn't

6 transfer property into the trust for them?

7 **A. No.**

8 Q. Did you tell them how to do that?

9 **A. Well, I'm sure they were told how to do that**

10 **and did that on their own when they initially did the**

11 **trust.**

12 Q. But it wouldn't have involved you?

13 **A. No. That would have been years before I was**

14 **there.**

15 Q. Well, you said you were sure, but you're just

16 assuming that that's what happened?

17 MR. REED: Objection, form.

18 **A. If it's in the trust's name, somebody**

19 **transferred it into the name of the trust, their assets.**

20 Q. (By Ms. Bayless) Okay. So when you learned of

21 Elmer's dementia, it didn't change your relationship or

22 anything that you were involved in?

23 **A. No.**

24 Q. You heard Carole earlier say that her mother

25 wasn't a paperwork person. Was that your experience in

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1 dealing with her?

2 **A. Yes.**

3 Q. Okay. So there was an amendment that you at

4 least notarized; whether you prepared it or not, you

5 notarized it in 2007?

6 **A. Correct. I agree I notarized it. I don't know**

7 **if I prepared it.**

8 Q. And then what is the next thing that you recall

9 you did for these folks, for Nelva or Elmer?

10 **A. I don't recall. I'm sorry.**

11 Q. That's all right. I don't recall what I had

12 for breakfast a couple days ago.

13 But if you remembered anything or if you

14 did anything, you don't remember at this point?

15 **A. Correct.**

16 Q. Now, I notice over to the right on this

17 Notes/History that it has a name, typically, to the

18 right of an entry. And I assume that's who made the

19 entry?

20 **A. Typically, yes. But the system was limited.**

21 **So I'm going to point out that a lot of times you will**

22 **see my initials, CLF, at the end of a paragraph.**

23 Q. Okay.

24 **A. And that lets me know I actually put that in.**

25 **Because they had plenty of employees that came and went**



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1 over time. Due to the limitations on the system, you  
 2 can only have so many names. So they would change  
 3 somebody's name to mine, and then it would go back  
 4 through the system and change it all the way back.  
 5 So I learned to put my initials at the end  
 6 of everything very quickly, because when they added a  
 7 new name, it caused the names on the right to be  
 8 changed. It was just a limitation on the database  
 9 system.  
 10 Q. You have completely lost me on that, though.  
 11 A. Sorry. Sorry I'm confusing --  
 12 Q. It's a fine explanation. I just don't really  
 13 understand it.  
 14 You said that if they put another name in,  
 15 it would knock you off. Is that it basically?  
 16 A. No. When they wanted to add me when I started  
 17 working there --  
 18 Q. Yes.  
 19 A. -- the system only allowed six or seven names,  
 20 as I recall, to be people who could be a record manager.  
 21 And that means that people that already entered things,  
 22 they had to be removed and I had to be added. And when  
 23 that happened, whoever I was replaced with, if they had  
 24 notes in there, it replaced me, my name, with the record  
 25 manager even though I wasn't even at the firm yet.

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1 Q. Okay.  
 2 A. So I learned very quickly to put my initials at  
 3 the end of the paragraph so that I knew that it was  
 4 actually something that I typed.  
 5 Q. Okay.  
 6 A. You can usually tell I typed something because  
 7 I'm a horrible typist, and I would misspell things all  
 8 the time.  
 9 Q. So even if it says Candace Freed, it's better,  
 10 sounds like, to look at the end of the paragraph to see  
 11 your initials to know for sure that came from you?  
 12 A. That's correct.  
 13 Q. Now, would there have been entries that related  
 14 to you that someone else might have had responsibility  
 15 to put in?  
 16 A. Oh, of course.  
 17 Q. Who would have put entries in for you?  
 18 A. Not for me. I put my own notes in.  
 19 Q. Okay.  
 20 A. But if somebody else had conversations with  
 21 them, with any of the clients, or set up a meeting for  
 22 me, on my behalf, their names would appear there.  
 23 Q. Okay. They would be putting in an entry about  
 24 what they did?  
 25 A. Correct.

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1 Q. Was anybody ever authorized to put in an entry  
 2 about what you did?  
 3 A. Ever? I have no idea.  
 4 Q. Okay.  
 5 A. Typically it did not happen, but I can't say  
 6 never.  
 7 Q. Okay. So pretty much whoever performed the  
 8 task put the entry in?  
 9 A. Yes.  
 10 Q. To your knowledge, this situation that you  
 11 talked about where somebody gets added to the system and  
 12 then it messes the names up and the history of the  
 13 system, there isn't anything that affects these notes  
 14 about this particular case, that you know of, like that,  
 15 is there?  
 16 A. I don't know because I didn't go through and  
 17 match up the record manager with whether my initials  
 18 were at the end or not.  
 19 Q. Looking on page 1182 -- just because I'm still  
 20 trying to understand this database, looking at the  
 21 6-30-2018 entry?  
 22 A. 6 what?  
 23 Q. 6-30-2018, second entry up there. It says that  
 24 Nelva called to schedule an appointments with CLF.  
 25 I assume that's you?

153

1 A. That's correct.  
 2 Q. Once you started doing the work for them, were  
 3 you the only person that really dealt with them?  
 4 Attorney-wise, I mean.  
 5 A. With Ms. Brunsting, probably because she did  
 6 not like to be shifted around between attorneys. Over  
 7 the years we had attorneys coming and going, and she was  
 8 not a fan of that.  
 9 Q. Okay.  
 10 A. So once she met you, she wanted to stay. So I  
 11 would say typically, yes, that would be true.  
 12 Q. Okay. And it says after called to schedule  
 13 appointment with you --  
 14 A. Uh-huh.  
 15 Q. -- what is "4 appointment"?  
 16 A. A number 4 is a type of appointment so that I  
 17 know what I'm coming into.  
 18 Q. All right. And what type of appointment is  
 19 that?  
 20 A. A 4 would be a review appointment.  
 21 Q. How would we know what the various options are?  
 22 A. You wouldn't unless you worked there.  
 23 Q. Okay.  
 24 A. These were set before I even started working  
 25 there, and that was the way they did things.

154

1 Q. Okay.

2 A. **Sorry.**

3 Q. So 4 was a review?

4 A. **Uh-huh.**

5 Q. "Set for T." I assume that's the day of the

6 week?

7 A. **I guess.**

8 Q. "7-1 at 3:30." Then it's got "EM."

9 A. **That's probably e-mailed to me, probably**

10 **e-mailing me, letting me know that I have an appointment**

11 **that day.**

12 Q. So e-mailed to you?

13 A. **Yeah.**

14 Q. So your initials there don't mean you put it

15 in.

16 A. **That's correct.**

17 Q. The e-mail was to you.

18 A. **I can see the SK because my assistant learned**

19 **very quickly also that she better put her initials at**

20 **the bottom. Because look at -- the record manager says**

21 **Tanya Lyrock; and I see SK, which is Summer Kennan,**

22 **which was my assistant. So that's why.**

23 Q. Okay. So this may be one of those instances

24 where the name got changed?

25 A. **Exactly.**

155

1 Q. Who was Tanya Lyrock?

2 A. **A previous employee.**

3 Q. The name of your assistant was what?

4 A. **Her name was Summer Kennan; but she got married**

5 **in the interim, so it was Summer Peoples.**

6 Q. How do you spell the K?

7 A. **K-e-n-n-a-n.**

8 Q. Once she married, it changed to Peoples?

9 A. **And then you'll see SKP.**

10 Q. All right. Okay. So these entries around this

11 time period were relating to the fact that Elmer was no

12 longer really able to handle the financial affairs. Is

13 that fair?

14 A. **Which date?**

15 Q. Well, these dates in 2008 that we're looking at

16 on page 1182.

17 A. **It appears that way based off just what I'm**

18 **reading in here.**

19 Q. All right. In the very first line there, it

20 says, "Nelva, Elmer and one son came in for Nelva to

21 sign the new COT."

22 What does COT stand for?

23 A. **Certificate of trust.**

24 Q. All right. So if you go over to page 1181,

25 there is an entry at the very bottom. There are a

156

1 couple entries, but the bottom entry that is dated

2 April 3rd, 2009 indicates that -- it says, "CLF received

3 message from the AS that Nelva had called."

4 Now, what is the AS?

5 A. **Answering service.**

6 Q. Okay. I'm going to have to get up on my

7 acronyms.

8 A. **Well, it depends on who typed it and what day.**

9 **Just saying.**

10 Q. Okay. And so this is informing you that Elmer

11 had passed away on April 1st, 2009.

12 A. **It appears to be true, yes.**

13 Q. You probably don't have an independent

14 recollection, but you don't have any reason to believe

15 that's not the date of his death, do you?

16 A. **I do not.**

17 Q. So this looks like, even though you refer to

18 yourself, you said, "CLF received message"; you're the

19 one typing this entry --

20 A. **Uh-huh.**

21 Q. -- because it has your initials on there?

22 A. **Right. I believe that's fair to say.**

23 Q. Okay. All right. So after -- well, first,

24 before Elmer died, do you recall ever having any

25 conversation with Anita about any of these trust issues?

157

1 MR. SPIELMAN: Form.

2 A. **No, I do not.**

3 Q. (By Ms. Bayless) And before Elmer died, do you

4 remember having any conversations with Amy about any of

5 the trust issues?

6 MR. SPIELMAN: Form.

7 A. **I do not.**

8 Q. (By Ms. Bayless) After Elmer died, when was

9 the first conversation that you recall having with Anita

10 about trust issues?

11 MR. REED: Form.

12 A. **I would imagine it was around the time that**

13 **Carl fell ill.**

14 Q. (By Ms. Bayless) Okay. And is it your

15 recollection -- we'll go through some of these entries.

16 I'm not trying to force you --

17 A. **I understand. You're asking me to recall. I**

18 **can sit and read them to you.**

19 Q. Yeah, yeah. Is it your recollection that the

20 very first conversation you had with Anita about any of

21 this related to Carl's illness?

22 A. **Yes.**

23 Q. And when you had that first conversation with

24 Anita, was that how you learned that Carl had been ill,

25 or had you already learned that from Nelva?

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1       **A. I had known that already from Nelva.**  
 2       Q. And what is your recollection of what Nelva  
 3       said about Carl's illness?  
 4       **A. My recollection was that he was very ill and**  
 5       **she wasn't sure if he was going to make it. That's what**  
 6       **I recall.**  
 7       Q. Okay. And then do you know how -- I mean, did  
 8       she ask you to do anything at that point?  
 9       **A. Her concerns were he was listed on every single**  
 10       **document; and she had her own health issues, and how do**  
 11       **we resolve that if something happens to her --**  
 12       Q. All right.  
 13       **A. -- while Carl is sick.**  
 14       Q. Okay. And had you known before that call that  
 15       she was having health issues?  
 16       **A. No.**  
 17       Q. So you learned about both in the same  
 18       conversation?  
 19       **A. I learned about it when she came to visit me.**  
 20       Q. And do you know how long it was after?  
 21       **A. I don't recall. I'm sorry.**  
 22       Q. Have you ever had a conversation with Drina,  
 23       Carl's wife?  
 24       **A. Not that I recall.**  
 25       Q. Prior to the time that you had -- you had a

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1       conference call that we're going to talk about in some  
 2       detail, I think October 25th, 2010. I know Carole was  
 3       involved in that conference call, and I believe Candy  
 4       was involved in that conference call.  
 5       Prior to that conference call, had you had  
 6       conversations with either one of them?  
 7       **A. Either Candy or Carole?**  
 8       Q. Right.  
 9       **A. Not that I recall.**  
 10       Q. Going back again to the notes and history, what  
 11       was your practice in terms of what rose to the level of  
 12       being put in the notes and history?  
 13       **A. Put enough information in there so that if you**  
 14       **had to pick it up two weeks later, a month later, a year**  
 15       **later, you would know what you did and where you were on**  
 16       **it and that somebody else could come pick it up behind**  
 17       **you and be able to assess where you were, what you did**  
 18       **and where to go with it.**  
 19       Q. And basically any involvement that you had with  
 20       a client or somebody related to that client, you put in?  
 21       MR. SPIELMAN: Form.  
 22       **A. Yes. Typically we'd write notes.**  
 23       Q. (By Ms. Bayless) Did you typically do that  
 24       right at the time the event occurred?  
 25       **A. Yes.**

160

1       Q. Okay. Let's go back to this Notes/History and  
 2       looking at the page number that's 1179.  
 3       So starting with the 1-20-2010 entries,  
 4       you see that somebody has put in "Merlin Case" -- I  
 5       don't know. Is that --  
 6       **A. The receptionist.**  
 7       Q. -- has put in a notation that Nelva called for  
 8       an appointment, called for you and wants to make an  
 9       appointment. Then she said she e-mailed this to you,  
 10       and it says carbon copy -- who's the carbon copy to?  
 11       Who is TS?  
 12       **A. I don't recall unless that's time slips like**  
 13       **our billing software.**  
 14       Q. Okay.  
 15       **A. Although I don't know why she would.**  
 16       Q. Right.  
 17       **A. I don't know what that is.**  
 18       Q. Then it looks like that same day you called  
 19       her; and she was needing to know some information about  
 20       the family trust, right? Do you see that in the next  
 21       entry above?  
 22       **A. Uh-huh.**  
 23       Q. So she was asking about the tax ID number for  
 24       the family trust?  
 25       **A. Uh-huh.**

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1       Q. And it says, "I told her for now to use her  
 2       social."  
 3       **A. Uh-huh.**  
 4       Q. So there had been no tax ID number obtained for  
 5       the family trust at that point?  
 6       **A. No.**  
 7       Q. What was your practice on when you would  
 8       normally obtain a tax ID number for a trust?  
 9       **A. Typically on the first death, when the**  
 10       **decedent's trust was being funded, that would get a tax**  
 11       **ID number. The survivor's trust --**  
 12       Q. And until then --  
 13       **A. -- would get the social.**  
 14       Q. So everything just passed through to their tax  
 15       return?  
 16       **A. Uh-huh.**  
 17       Q. Correct?  
 18       **A. Right.**  
 19       Q. Okay. It says in that same entry "sending her  
 20       the AE."  
 21       **A. Asset list.**  
 22       Q. Okay.  
 23       **A. It's assets of the estate.**  
 24       Q. So whenever we see AE in here, that's what that  
 25       means?

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1       **A. Uh-huh.**  
 2       Q. Now, if you didn't help with setting up or  
 3 transferring these assets to the trust, how is it that  
 4 you would have the asset list?  
 5       **A. I have to rely on the client to provide the**  
 6 **statements. They are told that when someone dies, to**  
 7 **bring in the statement for the month of death. I had a**  
 8 **tax clerk that that's all she did, was data entry. She**  
 9 **entered the account number, calculated the value on date**  
 10 **of death; and that's what went into the AE.**  
 11       Q. So this is going to be an AE that had been  
 12 generated since Elmer died?  
 13       **A. Correct.**  
 14       Q. Based on information she had provided?  
 15       **A. That's correct.**  
 16       Q. So up until that point, up until she brought in  
 17 the statements, you didn't know what assets the trust  
 18 had?  
 19       **A. That's correct.**  
 20       Q. Were you ever involved in tax returns prior to  
 21 Elmer's death?  
 22       **A. Federal estate tax returns?**  
 23       Q. No. Income tax returns.  
 24       **A. For who?**  
 25       Q. Elmer or Nelva.

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1       **A. No.**  
 2       Q. So you just sent them off with the trust, but  
 3 they kept reporting everything on their individual  
 4 returns?  
 5       **A. No. That's not correct.**  
 6       Q. What's correct?  
 7       **A. Are you asking if they reported it to me?**  
 8       Q. No. I'm saying that's how they dealt with the  
 9 IRS.  
 10       MR. REED: Objection, form.  
 11       **A. I don't know how they dealt with the IRS.**  
 12 **Everybody files their own tax return. I assume that**  
 13 **that's what they do, but ...**  
 14       Q. (By Ms. Bayless) Okay. Do you recall having  
 15 any discussions with Nelva or Elmer about how they were  
 16 supposed to report income?  
 17       **A. No.**  
 18       Q. But as far as you're concerned, it didn't  
 19 change once the trust was formed until somebody died?  
 20       **A. That's correct.**  
 21       Q. The next entry up, January 21st, 2010, refers  
 22 to Rich -- I'm not sure the name is spelled right; but I  
 23 think you're talking about Rich Ridders from Iowa.  
 24 Right?  
 25       **A. Yes, uh-huh.**

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1       Q. I think he was probably the person that had  
 2 been doing the tax returns for Nelva. Do you know?  
 3       **A. I believe, yes, that's what she indicated to**  
 4 **me, that he prepared tax returns.**  
 5       Q. And so this entry where he says -- he's called  
 6 you apparently, called for you because he's working with  
 7 Nelva and has 1099s to issue to -- is that IT or LT?  
 8       **A. LT.**  
 9       Q. What is LT? Is that living trust?  
 10       **A. Living trust.**  
 11       **Q. The next entry is where you called him back on**  
 12 **the 25th of January, 2010; and you indicated at that**  
 13 **point that the trust had not been funded.**  
 14       So by that, are you meaning the survivor  
 15 and the decedent's trust?  
 16       **A. Most likely.**  
 17       Q. And there was a formula established for what  
 18 was supposed to go into each trust, right?  
 19       **A. That's correct.**  
 20       Q. Did you work out that formula? I mean, did you  
 21 determine what was going to go into each trust?  
 22       **A. The client does.**  
 23       Q. And do you help them with the formula? Well, I  
 24 don't mean to talk generally. In terms of Nelva, did  
 25 you help her make that calculation?

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1       **A. Yes.**  
 2       Q. So what part of that did you do?  
 3       **A. What part of ...**  
 4       Q. The process of funding the trust.  
 5       **A. So once we had all of the assets information**  
 6 **entered into our system, we determined, based on the**  
 7 **language in the trust, how much was supposed to go in**  
 8 **survivor's trust and decedent's trust; and we made that**  
 9 **recommendation. This is the maximum amount that can go**  
 10 **into decedent's trust without running afoul of the IRS**  
 11 **rules. It could be underfunded, but it couldn't be**  
 12 **overfunded.**  
 13       **She had fractional pick and choose aside**  
 14 **from his, Elmer's separate property, which had to go in**  
 15 **the decedent's trust. She had fractional pick and**  
 16 **choose of community property assets that could go into**  
 17 **either/or.**  
 18       Q. When you say "fractional pick and choose," you  
 19 mean she could decide how she got to this allocation?  
 20       **A. We had the number for her, but she could choose**  
 21 **the assets that she wanted to make up that number.**  
 22       Q. So long as it was not Elmer's separate  
 23 property?  
 24       **A. Correct.**  
 25       Q. And so you made that calculation and then said,

<p style="text-align: right;">166</p> <p>1 Here's your asset list. Decide what you want to go 2 where? 3 <b>A. Correct.</b> 4 <b>Q. And once you did that, was there anybody else 5 involved helping Nelva at that point with this, that you 6 know of?</b> 7 <b>A. No.</b> 8 <b>Q. Other than maybe this Rich Ridders? I don't 9 know. Do you know what his involvement was?</b> 10 <b>A. Actually in 2010 I don't know if she was -- I 11 don't think anybody was helping her.</b> 12 <b>Q. Okay.</b> 13 <b>A. I know after -- yeah. I don't know. I don't 14 know if anybody was helping her.</b> 15 <b>Q. This is going to involve transfers of stock 16 with medallion guarantees and all about -- the works.</b> 17 <b>Once you said, Here's your asset list and 18 here's the number that you're supposed to get to, figure 19 it out however you want to get there, then did you help 20 her with the transfer instruments themselves?</b> 21 <b>A. Yes.</b> 22 <b>Q. And what was your involvement in that?</b> 23 <b>A. We filled out as much of the paperwork as we 24 could for her, based on what she indicated she wanted to 25 go in which trust, and put "sign here" stickies on them</b></p>	<p style="text-align: right;">168</p> <p>1 <b>Q. Did she return copies to you so that you knew 2 that was done, or that was left up to her?</b> 3 <b>A. That was left up to her.</b> 4 <b>Q. Do you recall -- and you can consult these 5 notes if you want to. Were there issues where she had 6 to get back with you and say she didn't really 7 understand --</b> 8 <b>A. Yes.</b> 9 <b>Q. -- what she needed to do?</b> 10 <b>A. I don't recall if she didn't understand or she 11 didn't want to; but, yes, she did come back.</b> 12 <b>Q. So you had more than one encounter of getting 13 these transfers done?</b> 14 <b>A. Oh, yes.</b> 15 <b>Q. Okay. If you look on this page 1178, on 16 3-12-2010 there was a call from Anita regarding parents' 17 trust. Do you see that?</b> 18 <b>A. Uh-huh.</b> 19 <b>Q. And there's a life insurance policy in the -- I 20 assume LT is still living trust?</b> 21 <b>A. Uh-huh. Yes. Sorry.</b> 22 <b>Q. It says, "In fact, that is the only thing in 23 the trust. The kids have to sign a waiver each year, 24 waiving their right to any funds. Her sister wants to 25 take her share. Is this possible? Please call to</b></p>
<p style="text-align: right;">167</p> <p>1 <b>and said, Let's sit down and sign them.</b> 2 <b>Q. And how did you make a determination, backing 3 up for a minute, to the division of assets among the 4 decedent's trust and the survivor's trust?</b> 5 <b>What did you do to determine what was 6 separate property of Elmer's?</b> 7 <b>A. We had determined, well, where they lived, 8 community property estate. Presumption is everything's 9 community unless she advised otherwise or inception of 10 title. Iowa land was obvious. It came from Elmer's 11 side of the family, so it was separate property.</b> 12 <b>Q. And do you recall whether any of the stocks 13 were separate property?</b> 14 <b>A. I do not.</b> 15 <b>Q. Could have been. You just don't recall?</b> 16 <b>MR. SPIELMAN: Form.</b> 17 <b>A. Maybe they were; maybe they weren't. I don't 18 know. They were married for a long time.</b> 19 <b>Q. (By Ms. Bayless) Okay. So once these 20 documents were prepared to transfer stocks for sure, 21 which would have involved going to the bank and getting 22 the medallion guarantee, you didn't go with her to do 23 any of that. You just gave her the documents and left 24 that up to her?</b> 25 <b>A. That's correct.</b></p>	<p style="text-align: right;">169</p> <p>1 discuss." 2 <b>So this, again, is going to have been -- 3 is this your assistant who took this call?</b> 4 <b>A. It looks like it was the receptionist because 5 it says e-mailed, "EM to CLF."</b> 6 <b>Q. That's a different trust, right?</b> 7 <b>A. Yes. It's referring -- even though it says 8 "LT" it's an ILIT, irrevocable life insurance trust.</b> 9 <b>Q. Okay.</b> 10 <b>A. But the receptionist wouldn't know that.</b> 11 <b>Q. Yeah, sure. And maybe Anita didn't know that 12 either. But she might have called it the wrong trust. 13 Who knows.</b> 14 <b>A. Uh-huh.</b> 15 <b>Q. The point is she was talking about a separate 16 trust with life insurance. Do you know which sister she 17 was talking about that wanted to take her share?</b> 18 <b>A. I do.</b> 19 <b>Q. Which sister?</b> 20 <b>A. Candy.</b> 21 <b>Q. Okay. So ultimately you talked with her about 22 it, Anita about it?</b> 23 <b>A. Yes. Anita was the trustee of that trust.</b> 24 <b>Q. Okay. And what was done about that? Do you 25 recall?</b></p>

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1 **A. I don't recall.**  
 2 Q. I could have missed it because I'm capable of  
 3 missing something, but I don't think there's an entry in  
 4 here about your conversation with her. Is there?  
 5 **A. No. I see the next entry says I left -- or a**  
 6 **message was left that I -- "CLF," that's me, "deferred**  
 7 **this question to AEV," which was Al Vacek, which was my**  
 8 **boss, "and that he will advise her of response."**  
 9 Q. And why did you feel the need to do that?  
 10 **A. I don't know. I don't know.**  
 11 Q. Had you had any involvement with the life  
 12 insurance trust?  
 13 **A. Not that one in particular, no.**  
 14 Q. How many trusts would you say you have  
 15 prepared?  
 16 MR. REED: Object to form.  
 17 **A. I couldn't tell you.**  
 18 Q. (By Ms. Bayless) Do you have any rough guess  
 19 of how many of the types of trusts that the Brunsting  
 20 had -- how many you prepared while you were at Vacek's  
 21 firm?  
 22 **A. I don't know.**  
 23 Q. I'm assuming that you were working from his  
 24 form. Is that right?  
 25 **A. Are you asking me a question? You're making an**

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1 **assumption, and then you're asking me.**  
 2 Q. Well, it's sort of a combination of both.  
 3 While you were at his firm -- let me ask you this way:  
 4 When you went to work at his firm, you used his trust  
 5 form, right?  
 6 **A. I guess, yes.**  
 7 Q. You didn't --  
 8 **A. I didn't make any forms myself.**  
 9 Q. Okay. You hadn't developed a trust form of  
 10 your own?  
 11 **A. No, I have not.**  
 12 Q. And while you were working there, you continued  
 13 to use basically a form that was developed at that firm,  
 14 right?  
 15 **A. I mostly did trust administration and not trust**  
 16 **estate planning, so ...**  
 17 Q. Okay.  
 18 **A. Once somebody either died -- usually is when I**  
 19 **would get involved.**  
 20 Q. Okay. So in terms of the form itself, the  
 21 trust form itself, you didn't have that much involvement  
 22 with the trust form itself?  
 23 **A. Development-wise?**  
 24 Q. Right.  
 25 **A. No.**

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1 Q. Or modification-wise?  
 2 **A. Well, sure. If someone was a long-term client**  
 3 **and they came in for a modification and amendment, sure.**  
 4 **I would certainly help amend.**  
 5 Q. Okay. And that's kind of what you did in this  
 6 case, is you helped them amend in 2010?  
 7 MR. SPIELMAN: Form.  
 8 Q. (By Ms. Bayless) In June and then in  
 9 August 2010?  
 10 MR. SPIELMAN: Form.  
 11 Q. (By Ms. Bayless) I mean, you were involved in  
 12 that?  
 13 **A. In the qualified beneficiary designation?**  
 14 Q. Right.  
 15 **A. Yes.**  
 16 Q. Okay. So that's an example of maybe you were  
 17 helping her because you were administering --  
 18 **A. His estate.**  
 19 Q. -- his estate or his trust or whatever?  
 20 **A. Uh-huh.**  
 21 Q. But you were involved in that, and you didn't  
 22 send that to Al Vacek?  
 23 **A. No.**  
 24 Q. So was there a criteria for what you did versus  
 25 what Al Vacek did?

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1 **A. Al did estate planning. I was in charge of**  
 2 **estate administration.**  
 3 Q. So if somebody needed a new document ...  
 4 **A. They would probably go to Mr. Vacek.**  
 5 Q. But in this case that's not what happened?  
 6 MR. SPIELMAN: Form.  
 7 **A. In this case it was associated with the**  
 8 **administration of the trust. So if you're talking about**  
 9 **the qualified beneficiary designation, that is not**  
 10 **something that Mr. Vacek would have done. It would be**  
 11 **done after someone had died and, therefore, it would be**  
 12 **under mine.**  
 13 Q. (By Ms. Bayless) Okay. So you never had a  
 14 situation that you know of where somebody wanted to do a  
 15 qualified beneficiary designation while both spouses  
 16 were still alive?  
 17 **A. It would be unnecessary because they could**  
 18 **easily amend the entire trust or parts of it because**  
 19 **they're both alive.**  
 20 Q. Okay. So what did Susan Vacek do?  
 21 **A. Train me.**  
 22 Q. So did she do administration, or did she do  
 23 estate planning?  
 24 **A. She did administration.**  
 25 Q. So the planning was pretty much Al Vacek's

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1 bailiwick and the administration was Susan's? Is  
 2 that --  
 3 **A. That's correct.**  
 4 Q. Okay. I didn't notice any entries in this  
 5 document from Al Vacek.  
 6 **A. Yes. That's true.**  
 7 Q. So he wasn't prone to putting in notes?  
 8 MR. SPIELMAN: Form.  
 9 MR. REED: Objection, form.  
 10 If you know.  
 11 **A. I don't know what his ...**  
 12 Q. (By Ms. Bayless) So we can't, from looking at  
 13 this, know who he might have met with among this family  
 14 group, right?  
 15 **A. No.**  
 16 Q. Okay. Looking at the entry on 1-25-10 --  
 17 **A. What page is that?**  
 18 Q. 1179. So looking at that entry, which is where  
 19 you returned the call, now, this doesn't have your  
 20 initials at the end.  
 21 **A. I don't know. There's two entries for 1-25-10.**  
 22 **Which one are you talking about?**  
 23 Q. The second one.  
 24 MR. SPIELMAN: Which one is the second  
 25 one?

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1 MS. BAYLESS: The second one from the top.  
 2 **A. 11:54 a.m.?**  
 3 Q. (By Ms. Bayless) Yes, 11:54 a.m. Sorry.  
 4 The one that has your name out to the  
 5 right, do you think you put this entry in?  
 6 **A. Yes.**  
 7 Q. Even though it doesn't have your initials?  
 8 **A. It looks like something I would type.**  
 9 Q. Okay.  
 10 **A. Although there's no misspellings, so I'm not**  
 11 **sure.**  
 12 Q. You say in here that "the land was Elmer's and,  
 13 therefore, would likely be allocated to his decedent's  
 14 trust but that all income is required to be pushed out  
 15 to her."  
 16 So explain what you -- I assume you  
 17 explained this to Nelva?  
 18 **A. Yes. That's a good assumption.**  
 19 Q. Okay. Explain, as best you recall, what you  
 20 would have told her about how that would work.  
 21 MR. REED: Objection, form.  
 22 **A. I typically will tell the client that the trust**  
 23 **income is mandatory to them because it's a credit**  
 24 **shelter, bypass trust; and in order to qualify for the**  
 25 **marital deduction, that's why it pushes the income out.**

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1 **And they can have the principal for their**  
 2 **health, education, maintenance and support, that it's**  
 3 **easiest to put things on a sweep from the decedent's**  
 4 **trust account into the survivor's trust so it's fluid**  
 5 **and easy and they don't have to deal with paperwork.**  
 6 **And that the trust would have to file a**  
 7 **tax return, its own separate 1041, for the income,**  
 8 **showing that it was passed over to the survivor's trust**  
 9 **so that it pays the least amount of income tax.**  
 10 Q. (By Ms. Bayless) Okay. At this point I'm  
 11 assuming, since you haven't funded things, there's  
 12 probably not even a separate decedent's trust account  
 13 and survivor's trust account.  
 14 MR. SPIELMAN: Form.  
 15 **A. No. There typically would not be during**  
 16 **administration.**  
 17 Q. (By Ms. Bayless) Okay. So this idea that --  
 18 and this is an IRS-mandated thing, right, that all this  
 19 income has to go out to her to get the deduction?  
 20 **A. Yes.**  
 21 Q. Okay. So this is something -- did you give her  
 22 the logistics of how to set that up?  
 23 **A. Yes.**  
 24 Q. So you told her she needed a separate account  
 25 for each trust, and then she needed to pay all of the

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1 income from the decedent's trust to her own account?  
 2 **A. Yes, that's correct.**  
 3 Q. And it doesn't work to pay it to the survivor's  
 4 account, right? It has to go to her?  
 5 **A. No. The survivor's trust is her.**  
 6 Q. Okay. So it was enough if she made all the  
 7 payments from the decedent's trust into the survivor's  
 8 trust account?  
 9 **A. That's correct.**  
 10 Q. Okay. These are, I would say, kind of  
 11 intricate types of procedures to set up. Did you ever  
 12 have any feeling that Nelva didn't understand what you  
 13 were telling her?  
 14 MR. SPIELMAN: Form.  
 15 **A. At the time that it was given?**  
 16 Q. (By Ms. Bayless) Yes.  
 17 **A. No, I did not have that feeling that she did**  
 18 **not understand.**  
 19 Q. And from the interaction that you had with her  
 20 after you sent her off with a set of instructions -- you  
 21 said you'd talk to her some other time -- was it your  
 22 view that she was accomplishing these things that you  
 23 had set her off to accomplish?  
 24 **A. Some but not all.**  
 25 Q. Can you recall things that weren't getting



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1 done?

2 **A. There were some stock transfers that still**

3 **hadn't been done.**

4 Q. All right. Do you know why that was?

5 **A. No.**

6 Q. But the transfer documents themselves you had

7 prepared and just given them to her?

8 **A. Yes.**

9 Q. And she was going to send them to the transfer

10 agent, or was she going to bring them back to you to go

11 to the transfer agent?

12 **A. No. The client is responsible for getting**

13 **those to the transfer agent.**

14 Q. Okay. So once the papers go out of your door,

15 they're gone?

16 **A. (Witness nods head affirmatively.)**

17 Q. Did you notice a decline in Nelva's health

18 after Elmer died?

19 MR. SPIELMAN: Form.

20 **A. No.**

21 Q. (By Ms. Bayless) Or her activities?

22 **A. No.**

23 Q. Okay. So you didn't have any sense that there

24 might have been any issues with her mental capacity. Is

25 that right?

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1 MR. SPIELMAN: Form.

2 **A. No.**

3 Q. (By Ms. Bayless) Okay. Look on page 1178.

4 **A. (Witness complies.)**

5 Q. There's an entry on 2-24; and it says "CLF,"

6 which is you, "had 5/3 with Ms. Brunsting."

7 What does 5/3 mean?

8 **A. So a 5/3 is a type of meeting that after we've**

9 **allocated all of -- gotten the magic number that can**

10 **possibly go into decedent's trust and the client has**

11 **chosen which assets they want to go in the decedent's**

12 **trust and which the survivor's trust, then between the**

13 **5/2 and the 5/3 is when we prepare all the documents.**

14 **If the client requests our assistance with**

15 **it, we would contact brokers and get the forms and help**

16 **them fill them out so that they would be ready at 5/3**

17 **for them to sign in order to effectuate those transfers**

18 **and walk out with those documents to deliver.**

19 Q. And that's what you did in this case?

20 **A. Correct.**

21 Q. In talking about these transfers and the

22 interaction that you had with Nelva during that time

23 period, did she ever say anything to you about her

24 children?

25 MR. SPIELMAN: Form.

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1 **A. What interaction are you talking about? On**

2 **2-24?**

3 Q. (By Ms. Bayless) Well, any of these meetings

4 that you're having since Elmer died.

5 **A. Of course.**

6 Q. Tell me, if you can recall, what she expressed

7 to you about her children.

8 MR. SPIELMAN: Form.

9 Q. (By Ms. Bayless) Let's take it child by child.

10 **A. Okay.**

11 Q. Did she say anything to you about Carl?

12 MR. SPIELMAN: Form.

13 **A. Carl actually came into my office with her one**

14 **time.**

15 Q. (By Ms. Bayless) Okay.

16 **A. So I had already met Carl.**

17 Q. I'm sorry?

18 **A. I had already met Carl.**

19 Q. Okay. But in your conversations with her when

20 Carl wasn't there, did she comment one way or the other

21 about Carl?

22 **A. Not particularly.**

23 Q. Okay. How about Candy?

24 **A. Yes.**

25 Q. What did she say about Candy?

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1 **A. That she had gone to California and basically**

2 **married someone, and he left her high and dry. And**

3 **that's about all I knew.**

4 Q. Did she talk about concerns for her finances,

5 for Candy's finances?

6 **A. Of course.**

7 Q. And did she give you any indication of whether

8 she had been helping with Candy's finances?

9 **A. Ms. Brunsting indicated she helped multiple**

10 **children with their finances over time.**

11 Q. Okay. Candy being one of them?

12 **A. Sure.**

13 Q. Did she talk about any financial help to Carl?

14 **A. Not that I recall.**

15 Q. How about Carole?

16 **A. Probably, if I recall right -- this is so long**

17 **ago. I want to say maybe because Carole may have been**

18 **helping out when dad was kind of falling ill**

19 **dementia-wise, that Carole was very helpful during that**

20 **time, wanting to compensate her daughter for helping**

21 **her.**

22 Q. Okay.

23 **A. Instead of her being able to go out and get a**

24 **job, she was staying with Dad so that Ms. Brunsting**

25 **could go and still do her -- I believe it was**

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1 volunteering at the church. She liked to do that, and  
 2 it gave her an option to get out of the house.  
 3 Q. Okay.  
 4 A. So I do recall that.  
 5 Q. Okay. And how about Anita? Did she say  
 6 anything about Anita's finances?  
 7 A. No. I really didn't hear much about Carl,  
 8 Anita or Amy, for that matter, yeah.  
 9 Q. Okay.  
 10 A. She was rather private unless it was relevant  
 11 to what we were talking about at that moment.  
 12 Q. Okay. And I assume that things that she might  
 13 have said to you in a meeting or on a phone  
 14 conversation, if they didn't relate to what you were  
 15 doing, they don't show up in this.  
 16 A. That's correct.  
 17 Q. Yeah. Did you ever have any conversations  
 18 about the Iowa farm and what the plans were for that  
 19 after Elmer died?  
 20 A. With Nelva?  
 21 Q. Yes.  
 22 A. I don't recall having any conversations about  
 23 what would happen to it. It created income. So I don't  
 24 recall any specific conversations about what would  
 25 happen to it.

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1 Q. Do you recall any conversations about it with  
 2 any of the children?  
 3 A. At any given time?  
 4 Q. Right.  
 5 A. I believe there was discussion about what would  
 6 happen with the farm after Nelva passed away.  
 7 Q. And who did you discuss that with?  
 8 A. I believe it was the co-trustees, Anita and  
 9 Amy.  
 10 Q. And do you remember why the conversation came  
 11 up?  
 12 A. Probably -- I don't recall exactly, but most  
 13 likely because of the illiquidity of the asset itself  
 14 and being that it was family property, what are the  
 15 options with regard to how to divvy it up. Do we split  
 16 it, do we sell it and split the proceeds? Do you have  
 17 the option to buy -- to buy each other out in lieu of  
 18 using other assets?  
 19 There was an ILIT that created some cash  
 20 that was initially set up to pay estate tax. Since  
 21 there was none, maybe some of those funds could be used  
 22 to buy each other out. I mean, just options with regard  
 23 to that.  
 24 Q. When you say ILIT, you're talking about a life  
 25 insurance --

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1 A. Irrevocable life insurance trust with a  
 2 second-to-die policy.  
 3 Q. Did you sense that there was any disagreement  
 4 between Anita and Amy about the farm in Iowa, what  
 5 needed to be done with that; or were they just asking  
 6 for options?  
 7 MR. REED: Object to form.  
 8 A. I didn't sense any disagreement.  
 9 Q. (By Ms. Bayless) Did you at any time during  
 10 your dealings with Amy and Anita sense any disagreement  
 11 between them?  
 12 MR. SPIELMAN: Form.  
 13 A. No. They were told explicitly that if they  
 14 disagreed, I could represent no one; and it's in the  
 15 agreement they both signed.  
 16 Q. (By Ms. Bayless) Okay. Look at page 1177.  
 17 There's an entry at the very bottom. Now we're into  
 18 April of 2010, and it says you discussed this with SSV.  
 19 Is that Susan Vacek?  
 20 A. Yes.  
 21 Q. "There is not trust protector in this trust,  
 22 although Mrs. B can have some flexibility with the way  
 23 the kids get the trust assets and then add QBD with  
 24 PATs."  
 25 A. Uh-huh.

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1 Q. So there are a lot of acronyms in there.  
 2 A. Sure.  
 3 Q. Tell me what that entry basically is saying.  
 4 A. So when Elmer and Ms. Brunsting did their  
 5 restatement, it was before we had language regarding  
 6 trust protectors.  
 7 The concern for Carl and others were that  
 8 if they should get in a lawsuit and they're in charge of  
 9 their own trust, that the trust could not be secured for  
 10 them so that they -- to protect it, asset protection.  
 11 Q. Okay. Well, 4-1 of 2010 was before Carl was  
 12 sick.  
 13 A. Well, Carl, Amy --  
 14 Q. Anybody?  
 15 A. Any of the kids.  
 16 Q. Okay. And so this had come up because Nelva  
 17 had asked this question? Or why had this come up?  
 18 A. I don't know. I'd have to look at the entries  
 19 before that.  
 20 Q. Okay. Well, let's actually go back to the page  
 21 before 1178. Maybe this will help.  
 22 Look at the entry on 3-24. It indicates  
 23 that you talked to Nelva and advised her that Anita was  
 24 calling, told her it was best for Candace not to take a  
 25 distribution.

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1 So that's what you were saying before?

2 **A. That Candace, yes.**

3 Q. That does get confusing.

4 So this is the thing we talked about

5 earlier, that Anita had called saying that her sister

6 Candy wanted to take her distribution?

7 **A. Correct.**

8 Q. And I assume that this life insurance trust had

9 insurance for both Nelva and Elmer. Is that your

10 recollection?

11 **A. It was a second-to-die policy.**

12 Q. What does that mean?

13 **A. So that means you're insuring both lives, but**

14 **it doesn't actually pay out until the second one dies.**

15 Q. Okay. So at the time of Elmer's death, there

16 was no life insurance distribution going into the trust?

17 **A. Correct.**

18 Q. So what distribution was Candy seeking? Do you

19 know?

20 **A. So in order to pay the life insurance premiums,**

21 **Nelva had to gift to the trustee of that trust, and the**

22 **trustee would deposit those funds in the irrevocable**

23 **life insurance trust account.**

24 **There was a 30-day right to receive the**

25 **gift, their portion of the gift, the beneficiary. And**

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1 **after that 30 days had run and what we call a Crummey**

2 **letter was signed waiving the right to that, then the**

3 **proceeds were -- the gift was used to pay the premium on**

4 **the life insurance policy. If you don't pay the**

5 **premium, you lose it.**

6 Q. Okay. And so Candy was asking to be able to

7 get her part of the -- what was getting paid in to pay

8 the premium?

9 **A. Premium payment, yes.**

10 Q. Okay. And then in this entry you're basically

11 saying that you told her that that was not a good idea

12 and that she should just loan her money?

13 **A. Yes.**

14 Q. Tell me what your understanding is of the role

15 of a trust protector.

16 **A. A trust protector is there to pretty much do**

17 **exactly what you would think, and that is to lock down a**

18 **trust in the event that the beneficiary or trustee is**

19 **compelled to pay out due to a judicial requirement in a**

20 **litigation situation; to modify it for tax purposes**

21 **because it's now irrevocable, and the trustee is locked**

22 **into a tax situation that was not anticipated by the**

23 **grantors, the settlors before they died; to modify it in**

24 **the event that circumstances changed that weren't**

25 **anticipated by the grantors.**

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1 **I mean, there's a whole litany of reasons**

2 **why a trust protector would ...**

3 Q. And so who directs the trust protector in what

4 they're supposed to be doing?

5 MR. REED: Form.

6 **A. I don't know. They're a third party. So no**

7 **one really directs them.**

8 Q. (By Ms. Bayless) So they're not at the whim of

9 the settlor or the trustee?

10 **A. No.**

11 Q. They're a completely different beast?

12 **A. Completely autonomous.**

13 Q. You indicate on here that there is -- it says

14 "is not," but I assume you mean "is no trust protector."

15 **A. Uh-huh.**

16 Q. So were you contemplating at that point

17 implementing some type of a trust protector? Why is

18 that even coming up in your conversation?

19 **A. I would have to look at the trust as it was**

20 **restated, but I believe at that time there was no trust**

21 **protector in there. So if someone is in charge of their**

22 **own trust share and gets sued, there's no one to lock it**

23 **down for them. They can be compelled to pay it out.**

24 **So when you see situations where people**

25 **are needing money or being sued or they're at risk for**

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1 **being sued or they may need supplemental needs at some**

2 **point, you want to have that person there to be able to**

3 **flip it into a supplemental needs trust or lock it down.**

4 Q. And so as far as you know at this point, the

5 only issue was whether Candy would take a distribution

6 from the life insurance trust, right?

7 MR. REED: Form.

8 **A. I guess. I don't know. I'd have to read the**

9 **previous notes going back.**

10 Q. (By Ms. Bayless) Okay. Well, let's take a --

11 MS. BAYLESS: Can we take a short break?

12 MR. MENDEL: Sure.

13 Q. (By Ms. Bayless) Would you mind doing that,

14 just look and see? Because, I mean, I may have missed

15 something, but I didn't see --

16 **A. Sure.**

17 MR. MENDEL: Ten minutes.

18 (Recess taken.)

19 Q. (By Ms. Bayless) All right.

20 (The record was read as requested.)

21 Q. (By Ms. Bayless) So have you had an

22 opportunity to look at whatever you needed to look at to

23 see what you could remember about this?

24 **A. I did, and I did not see anything in the notes**

25 **that indicated a reason why I would make that change.**

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<p>1 <b>However, I did look at the trust agreement.</b></p> <p>2 Q. Okay.</p> <p>3 <b>A. And that is what I believe would be -- the way</b></p> <p>4 <b>that the trust was drafted when it was restated, it</b></p> <p>5 <b>appears that it stays in trust for the beneficiaries.</b></p> <p>6 Q. Okay.</p> <p>7 <b>A. But that's the reason why they had co-trustees,</b></p> <p>8 <b>because without co-trustees over the trust, the</b></p> <p>9 <b>beneficiary trust, there would be no asset protection in</b></p> <p>10 <b>these trusts. So the beneficiary would have to ask the</b></p> <p>11 <b>co-trustees in order to get a distribution.</b></p> <p>12 <b>So what I was starting to see was people</b></p> <p>13 <b>wanting money, and they were going to have to ask other</b></p> <p>14 <b>siblings for the money. So a trust protector would add</b></p> <p>15 <b>protection but allow them to be autonomous from each</b></p> <p>16 <b>other and allow them to be invested differently rather</b></p> <p>17 <b>than pooling their funds and having to rely on each</b></p> <p>18 <b>other to get permission to make distributions.</b></p> <p>19 Q. Now, how would a trust protector do that?</p> <p>20 <b>A. So a trust protector is fairly new in trust</b></p> <p>21 <b>law. And the way you achieved asset protection before</b></p> <p>22 <b>was you had co-trustees so that nobody could do anything</b></p> <p>23 <b>without the consent of the other, which meant people had</b></p> <p>24 <b>to agree; whereas, a trust protector being there would</b></p> <p>25 <b>allow the beneficiary to be in charge of their own</b></p>	<p>1 <b>attorney; it doesn't have to be a corporate trustee.</b></p> <p>2 <b>They just need to be some arbitrary third party that has</b></p> <p>3 <b>no stake, no skin in the game.</b></p> <p>4 Q. All right. So looking at this on page 1177,</p> <p>5 this entry at the very bottom.</p> <p>6 <b>A. Uh-huh.</b></p> <p>7 Q. You say there's not a trust protector in this</p> <p>8 trust, "although Mrs. B can have some flexibility with</p> <p>9 the way the kids get the trust assets and then add QBD</p> <p>10 with PATs." So what does that mean?</p> <p>11 <b>A. So it means that she has the ability to do a</b></p> <p>12 <b>qualified beneficiary designation and treat one child</b></p> <p>13 <b>differently than the other if she feels the need is</b></p> <p>14 <b>appropriate at any given time, based on that child's</b></p> <p>15 <b>needs at that given time.</b></p> <p>16 Q. All right. And it says and then add -- so</p> <p>17 let's break it down. It says she can have some</p> <p>18 flexibility --</p> <p>19 <b>A. Uh-huh.</b></p> <p>20 Q. -- with the way the kids get the trust assets.</p> <p>21 <b>A. Right.</b></p> <p>22 Q. What is that talking about?</p> <p>23 <b>A. Well, I don't recall exactly what my thoughts</b></p> <p>24 <b>were at that moment. But by adding personal asset</b></p> <p>25 <b>trusts for beneficiary, it creates autonomy for them so</b></p>
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<p>1 <b>trust. But if there was a problem that arose, he or she</b></p> <p>2 <b>or it was a mechanism to step in and lock down the trust</b></p> <p>3 <b>so that it could be asset-protected for the beneficiary</b></p> <p>4 <b>should a need arise later on down the road that was</b></p> <p>5 <b>unanticipated.</b></p> <p>6 Q. Are we talking about this in connection with</p> <p>7 the restated trust?</p> <p>8 <b>A. Yes.</b></p> <p>9 Q. That's what you were talking about on</p> <p>10 April 1st, in this entry on April 1st?</p> <p>11 <b>A. Oh, I can't -- I don't recall why.</b></p> <p>12 Q. Okay.</p> <p>13 <b>A. What that prompted me. But when you're looking</b></p> <p>14 <b>at the agreement as a whole and you are making changes,</b></p> <p>15 <b>it's just natural practice for me as an attorney to look</b></p> <p>16 <b>at the documents as they are. Is there anything that</b></p> <p>17 <b>you can do to tweak them to make them better or more</b></p> <p>18 <b>efficient for what the client needs.</b></p> <p>19 Q. Okay. Are there people who serve in this role</p> <p>20 as trust protector kind of like you'd have a corporate</p> <p>21 trustee? Are there corporate trust protectors?</p> <p>22 <b>A. Sure.</b></p> <p>23 Q. Who are some of these trust protectors?</p> <p>24 <b>A. Well, it could be anyone that is a third party</b></p> <p>25 <b>that would agree to do so. It doesn't have to be an</b></p>	<p>1 <b>that if one wants to invest in a llama farm and the</b></p> <p>2 <b>other one doesn't, they're not married at the hip and</b></p> <p>3 <b>they don't have to fight over how things are going to be</b></p> <p>4 <b>invested or who's going to get a distribution and who's</b></p> <p>5 <b>not. If they've all got their own little pot, then it's</b></p> <p>6 <b>easy.</b></p> <p>7 Q. Okay.</p> <p>8 <b>A. It's easy to account; it's easy to manage.</b></p> <p>9 Q. And is this something that you anticipated</p> <p>10 could be implemented before her death or at her death?</p> <p>11 <b>A. It would only -- a qualified beneficiary</b></p> <p>12 <b>designation only takes effect after someone is dead.</b></p> <p>13 Q. Okay. So this would be --</p> <p>14 <b>A. Only after she's gone.</b></p> <p>15 Q. -- for her future?</p> <p>16 <b>A. No. It was for the kids' future.</b></p> <p>17 Q. I mean in her future. She wouldn't be around</p> <p>18 to deal with it.</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. Okay. Then the next entry is on the 20th. Do</p> <p>21 you recall whether you had a -- let me back up, ask you</p> <p>22 one question at a time.</p> <p>23 Do you recall whether Susan Vacek thought</p> <p>24 this was a good idea or what the outcome of your</p> <p>25 conversation with her was?</p>

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1       **A. I don't.**  
 2       Q. And it doesn't look like -- there's at least  
 3 not a recorded entry where you had a conversation with  
 4 Nelva about it, right?  
 5       **A. Not that I documented. That doesn't mean that**  
 6 **I didn't have the conversation with her. It's just I**  
 7 **didn't feel the need to be documented.**  
 8       **This was something -- the personal asset**  
 9 **trust and the trust protector was something that you**  
 10 **would see across the firm as people came in, that if**  
 11 **they had pooled trusts for their beneficiaries, it was**  
 12 **something that we discuss with everyone just to give**  
 13 **them the opportunity. If they wanted to make that**  
 14 **change, they could.**  
 15       Q. Okay. So it wasn't something that you were  
 16 moving forward and implementing at that point?  
 17       **A. No.**  
 18       Q. Or you would have probably put an entry in  
 19 about it?  
 20       **A. Correct.**  
 21       Q. Okay. Then if you go up to the 21st, the  
 22 bottom entry on the 21st, the one that's at 10:53?  
 23       **A. Uh-huh.**  
 24       Q. It says that "Nelva called again and spoke with  
 25 Connie." Is that the receptionist?

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1       **A. That would actually be my mother.**  
 2       Q. Your mother?  
 3       **A. Yes. My mother worked there for a short time,**  
 4 **filling in.**  
 5       Q. Okay. What did she do?  
 6       **A. Took phone calls.**  
 7       Q. Okay. And then it says that you took the call?  
 8       **A. Correct.**  
 9       Q. And that she's having a difficult time and was  
 10 having you go over each packet prepared for her re: the  
 11 funding?  
 12       **A. Right.**  
 13       Q. "She seemed a little out of sorts and said she  
 14 wished she had not even done all this."  
 15       **A. Yes.**  
 16       Q. So earlier you had talked about that you just  
 17 gave her the packets, and she went off and did  
 18 everything; but that's not really how that worked in  
 19 this case, is it?  
 20       **A. Correct.**  
 21       Q. And so you told her you'd help her, but you'd  
 22 have to charge her for that?  
 23       **A. That's correct.**  
 24       Q. And she basically said she needed help, right?  
 25       **A. Yes.**

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1       Q. Okay. So then if you go up to the 23rd, you  
 2 met with her on April 23rd; and she was having some  
 3 health issues by that time and needed help with the  
 4 funding, right?  
 5       **A. Correct.**  
 6       Q. So before you had indicated that you first  
 7 heard about her health issues when you heard about  
 8 Carl's health issues. But this seems to indicate you  
 9 knew about that earlier, right?  
 10       **A. Depends on what health issues are. Cancer I**  
 11 **did not hear about until closer to Carl's issues.**  
 12       Q. Okay. Do you know what kind of health issues  
 13 this is talking about?  
 14       **A. I do not.**  
 15       Q. All right. And then if you go up to May 4th,  
 16 the entry at 1:56 p.m. This is an entry actually from  
 17 Summer. So she was --  
 18       **A. That appears to be so, yes.**  
 19       Q. Was she a legal assistant?  
 20       **A. Yes.**  
 21       Q. And it says, "I noticed that the Chevron  
 22 Corporation funding package to be mailed to BNY Mellon  
 23 Services was altered (DT EIN)" -- I assume that means  
 24 decedent's trust employee identification number?  
 25       **A. Uh-huh.**

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1       Q. -- "was crossed out and Nelva's Social Security  
 2 number was written in."  
 3       And then you say you -- apparently she  
 4 asked you, and you said you didn't do that.  
 5       **A. Uh-huh.**  
 6       Q. Okay. So then when she calls Nelva, she says  
 7 in her entry here that she "called Nelva, and she said  
 8 that she only signed the papers and didn't change  
 9 anything. The girl at the bank that stamped the  
 10 medallion guarantee must have done that."  
 11       And that seems unlikely, doesn't it?  
 12       MR. REED: Form.  
 13       **A. No. Nothing surprises me actually.**  
 14       Q. (By Ms. Bayless) At a bank?  
 15       **A. At a bank.**  
 16       Q. How would they know her Social Security number?  
 17       MR. REED: Form.  
 18       **A. She would have had to tell them. But I could**  
 19 **see somebody telling her, Oh, you don't need that number**  
 20 **on here. You need to put your Social.**  
 21       Q. (By Ms. Bayless) Okay.  
 22       **A. I've had plenty of financial advisors try to be**  
 23 **tax people and lawyers.**  
 24       Q. Uh-huh.  
 25       **A. Happens a lot actually.**

198	200
<p>1 Q. Okay. So she told her that she was going to</p> <p>2 change it back to the EIN number for the trust "by</p> <p>3 crossing through the handwritten Social Security number</p> <p>4 and writing in the DT EIN again." See that?</p> <p>5 <b>A. Okay.</b></p> <p>6 Q. And then she tells her the papers may get</p> <p>7 bounced back for her to sign them again, that they'll</p> <p>8 see what Mellon did.</p> <p>9 <b>A. Yes. Because you can't have white-out and you</b></p> <p>10 <b>can't have anything -- changes like that. They get real</b></p> <p>11 <b>sticky.</b></p> <p>12 Q. Do you know what happened with this?</p> <p>13 <b>A. I would imagine that if it got bounced back,</b></p> <p>14 <b>there would be another entry because we were pretty good</b></p> <p>15 <b>about doing that.</b></p> <p>16 Q. So at this point, at least by late April of</p> <p>17 2010 -- and this is about a year after Elmer has died,</p> <p>18 right, because he died April 1st of 2009. Does that</p> <p>19 sound right?</p> <p>20 <b>A. I'll have to take your word for it. I don't</b></p> <p>21 <b>recall.</b></p> <p>22 Q. Well, sometime in 2009.</p> <p>23 MS. CAROLE BRUNSTING: That's right.</p> <p>24 MS. BAYLESS: April 1st? Okay.</p> <p>25 Q. (By Ms. Bayless) Okay. So at least by this</p>	<p>1 trust, right?</p> <p>2 <b>A. Well, the opinion letter was based on whether</b></p> <p>3 <b>or not an irrevocable trust could own cropland in Iowa.</b></p> <p>4 <b>So, yes, that was okay.</b></p> <p>5 <b>I can't speak to whether or not it got</b></p> <p>6 <b>funded. I don't recall. A deed would have had to have</b></p> <p>7 <b>been prepared to get it in there.</b></p> <p>8 Q. But you guys did the deeds --</p> <p>9 <b>A. No.</b></p> <p>10 Q. -- or deed. You did not do the deed?</p> <p>11 <b>A. We are not licensed to practice in Iowa. We</b></p> <p>12 <b>couldn't do an Iowa deed.</b></p> <p>13 Q. Oh, okay. You had somebody in Iowa do the</p> <p>14 deeds?</p> <p>15 <b>A. We most likely would have, yes.</b></p> <p>16 Q. I think U.S. Deeds or something I saw in here.</p> <p>17 <b>A. Could be.</b></p> <p>18 Q. Okay. So looking at May 17th, it says, Darlene</p> <p>19 from the brokerage firm had called.</p> <p>20 This is an entry that you made. What</p> <p>21 brokerage firm are we talking about? Do you know?</p> <p>22 <b>A. I don't recall, but I'm guessing it was Edward</b></p> <p>23 <b>Jones because that's where Ms. Brunsting had a lot of</b></p> <p>24 <b>her stuff.</b></p> <p>25 Q. Okay. So they called and asked some questions</p>
199	201
<p>1 time you had become pretty hands-on in transferring</p> <p>2 these -- helping her transfer these stocks into the two</p> <p>3 trusts, right?</p> <p>4 <b>A. I and the staff, yes.</b></p> <p>5 Q. The Vacek firm?</p> <p>6 <b>A. Uh-huh.</b></p> <p>7 Q. And I'm assuming -- I think you said Susan</p> <p>8 Vacek did administration. Right?</p> <p>9 <b>A. Uh-huh.</b></p> <p>10 Q. But I'm assuming that if something came in from</p> <p>11 Nelva, it first went to you; and then if you wanted to</p> <p>12 bring Susan into the loop, you did.</p> <p>13 <b>A. Of course.</b></p> <p>14 Q. So you were pretty much the first person that</p> <p>15 they went to, right?</p> <p>16 <b>A. Yes. At Ms. Brunsting's request, yes.</b></p> <p>17 Q. Okay. Looking at the May 17th entry -- let me</p> <p>18 back up for just a second. On the Iowa property there</p> <p>19 was some kind of an issue about the transfer, about who</p> <p>20 could be an owner?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. But you got that worked out?</p> <p>23 <b>A. Yes. We got an opinion from Iowa counsel.</b></p> <p>24 Q. So there isn't any question in your mind that</p> <p>25 the Iowa farm is owned completely by Elmer's decedent's</p>	<p>1 about the setup for the decedent's trust?</p> <p>2 <b>A. Correct.</b></p> <p>3 Q. It says "CLF" -- that's you?</p> <p>4 <b>A. Me.</b></p> <p>5 Q. -- "answered her and reminded her that ST was</p> <p>6 the beneficiary of all the income and dividends."</p> <p>7 What is ST? Survivor's trust?</p> <p>8 <b>A. Survivor's trust.</b></p> <p>9 Q. Okay. She said she would see if that would be</p> <p>10 able to -- if she would be able to be set up -- if that</p> <p>11 would be able to be set up. Okay.</p> <p>12 So what was the problem in that setup? Do</p> <p>13 you recall?</p> <p>14 <b>A. Ms. Brunsting did not like paperwork. She did</b></p> <p>15 <b>not want to deal with paperwork. So I requested Edward</b></p> <p>16 <b>Jones set up sweep accounts either monthly or quarterly,</b></p> <p>17 <b>that any dividends and income that were payable in the</b></p> <p>18 <b>decedent's trust be swept into her survivor's trust</b></p> <p>19 <b>account at Edward Jones so that the funds were moved</b></p> <p>20 <b>over and she didn't have to worry about it at the end of</b></p> <p>21 <b>the year, trying to reconcile and get it out of the</b></p> <p>22 <b>decedent's trust, to ensure that the decedent's trust</b></p> <p>23 <b>did not pay the higher income tax rate on that money.</b></p> <p>24 Q. And did that eventually get set up, do you</p> <p>25 think?</p>

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1       **A. Uh-huh.**  
2       Q. So as far as you know, was that the case up  
3 through Nelva's death?  
4       **A. It should have been. But once a client leaves**  
5 **my office, if they change things, that would not be**  
6 **anything that I would know about.**  
7       Q. Okay. But the last you heard of it, that is  
8 how it was done?  
9       **A. That's how it was supposed to be done, yes.**  
10       Q. So any income that came into the decedent's  
11 trust was swept into the survivor's trust?  
12       **A. That's what was requested, yes.**  
13       Q. Okay. Looking at page 1176, on May 19th of  
14 2010, near the bottom. It's the 5:11 p.m. entry. It  
15 just says "Going to oncologist. They found spot on her  
16 liver. She said she would be out of pocket ... but that  
17 she agreed to having an opinion letter done by the  
18 attorney and to send her whatever she needs to sign."  
19           It doesn't have a name in there, but I  
20 assume you were talking directly with Nelva?  
21       **A. Yes. That would be my assumption as well.**  
22       Q. And she's talking to you about the opinion  
23 letter, meaning the attorney in Iowa?  
24       **A. Correct.**  
25       Q. So at least at this point you knew she was

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1       having cancer issues, right?  
2       **A. Yes. I mean, I assume by "oncologist," that**  
3 **that's what that meant.**  
4       Q. Well, and "spot on her liver."  
5           Did she say why she was going to be out of  
6 pocket? Was that for medical treatment?  
7       **A. I assume so. I don't recall.**  
8       Q. On 5-27-2010 there is an entry, "Merlin Case."  
9 Who is Merlin Case?  
10       **A. She's a receptionist.**  
11       Q. It said, Nelva called to give us permission to  
12 speak with her broker, Doug Williams, who had called  
13 earlier and left a voice message with his number  
14 regarding her trust.  
15       **A. Okay.**  
16       Q. Apparently sent an e-mail to you and carbon  
17 copy, I guess, to your assistant, Summer Peoples?  
18       **A. Correct.**  
19       Q. Did you have occasion to speak with Doug  
20 Williams about his concerns about Ms. Brunsting's health  
21 or activity on her accounts?  
22       **A. No.**  
23           MR. SPIELMAN: Form.  
24       Q. (By Ms. Bayless) He never talked with you  
25 about that?

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1       **A. Not that I recall.**  
2       Q. Okay. So do you know what this conversation  
3 was about? Do you have any recollection of that?  
4       **A. Only from what I read. It says regarding the**  
5 **decedent's trust account.**  
6       Q. Right.  
7       **A. Dividends and interest and how they're to be**  
8 **deposited.**  
9       Q. You think that's what it was?  
10       **A. That's what it says. So it says, "Is she**  
11 **unable to take principal? Is she required to take**  
12 **dividends?"**  
13       Q. Okay. We're looking at a different entry, I  
14 think.  
15       **A. Well, it's the same day, just 4:01 p.m.**  
16       Q. All right. So this, you think, was still part  
17 of the setup?  
18       **A. Uh-huh.**  
19       Q. And based on what you said earlier, it was  
20 dividends and interest?  
21       **A. Uh-huh.**  
22       Q. All right.  
23       **A. Ordinary interest and dividends.**  
24       Q. Okay. Ordinary interest as opposed to what  
25 kind of interest?

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1       **A. Or ordinary income. Sorry.**  
2       Q. I thought maybe there was a new kind of  
3 interest I didn't know about.  
4           All right. Then on June 3rd there's an  
5 entry where Summer Peoples has called Nelva to schedule  
6 5/3 and then in parentheses it says F.  
7       **A. Uh-huh.**  
8       Q. Is that different than just a regular 5/3?  
9       **A. It means it was the fifth time I had met with**  
10 **Ms. Brunsting regarding the funding.**  
11       Q. Okay. So 5/3 in this instance -- I thought you  
12 said -- well, tell me again what 5/3 is.  
13       **A. So 5/3 is the signing of all the funding**  
14 **documents, and they leave with them.**  
15       Q. Okay.  
16       **A. If they call me back and need another meeting,**  
17 **then it will show up as a 5/3B. I know I've already met**  
18 **with them, so I've got to go back and look at my notes.**  
19 **So we go C, D, E, F. We'll go all the way through the**  
20 **alphabet.**  
21       Q. Okay.  
22       **A. And that's the fifth time I met with her**  
23 **regarding funding.**  
24       Q. So does that sound like a lot of times?  
25       **A. It depends.**



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<p>1 MR. REED: Form.</p> <p>2 <b>A. I mean, it depends on the client. It depends</b></p> <p>3 <b>on their age; it depends on their health; it depends on</b></p> <p>4 <b>the assets and the types. So I can't say it was or</b></p> <p>5 <b>wasn't. It was what it was.</b></p> <p>6 Q. (By Ms. Bayless) Okay. So the meeting was set</p> <p>7 up for the 8th.</p> <p>8 <b>A. Uh-huh.</b></p> <p>9 Q. And you have an entry that you did on the 8th</p> <p>10 that says you visited with Nelva today?</p> <p>11 <b>A. Uh-huh.</b></p> <p>12 Q. "She has an appointment with her oncologist on</p> <p>13 Thursday, and she did indicate that she was not a</p> <p>14 candidate for chemo in that her lungs were not strong</p> <p>15 enough. Not sure what course of treatment she will</p> <p>16 have, and they will go over that on Thursday. She said</p> <p>17 that she was concerned about Candy, her daughter in</p> <p>18 California. Candy was adopted by them as a child. She</p> <p>19 went off to college in California and met a young man</p> <p>20 and married him. They both dropped out of college, and</p> <p>21 she has been there ever since. The man has now run out</p> <p>22 on her, and she has problems making ends meet. She</p> <p>23 would like to make an early distribution to Candy in the</p> <p>24 amount." And then it doesn't have an amount.</p> <p>25 <b>A. I don't recall what that was.</b></p>	<p>1 recollection that she drove herself there that day?</p> <p>2 <b>A. I do.</b></p> <p>3 Q. Did you guys talk about it?</p> <p>4 <b>A. No.</b></p> <p>5 Q. Had you had any discussion at that point about</p> <p>6 her needing to not drive?</p> <p>7 <b>A. No.</b></p> <p>8 Q. Do you know what her age was by this time?</p> <p>9 <b>A. No.</b></p> <p>10 Q. Okay. There's another entry, on June 10th, of</p> <p>11 a conversation with Doug Williams at Edward Jones. This</p> <p>12 looks like he talked to Susan Vacek. It says he called</p> <p>13 for Susan Vacek.</p> <p>14 <b>A. Uh-huh.</b></p> <p>15 Q. "Re question - left message." Is there any</p> <p>16 reason why he would be calling Susan about this?</p> <p>17 MR. REED: Object to form.</p> <p>18 <b>A. I have no idea.</b></p> <p>19 Q. (By Ms. Bayless) All right. So you returned</p> <p>20 the call. Is that because Susan told you to return the</p> <p>21 call?</p> <p>22 <b>A. I have no idea.</b></p> <p>23 Q. Okay. So you returned the call, and you're</p> <p>24 telling him that the income is mandatory in the</p> <p>25 decedent's trust?</p>
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<p>1 Q. Okay.</p> <p>2 <b>A. It looks like it drops off, too.</b></p> <p>3 Q. Yeah. Didn't finish that sentence. Okay.</p> <p>4 So she talks about at this time that she</p> <p>5 was having a hard time breathing. Did you notice by</p> <p>6 this -- now, this is before Carl is sick, right?</p> <p>7 MR. SPIELMAN: Objection, form.</p> <p>8 Q. (By Ms. Bayless) So by this time, had you</p> <p>9 noticed a deterioration in her health, or were you just</p> <p>10 hearing the story and you couldn't tell any difference?</p> <p>11 MR. REED: Form.</p> <p>12 <b>A. Just hearing it, and she drove herself to the</b></p> <p>13 <b>office that day. So she was by herself.</b></p> <p>14 Q. (By Ms. Bayless) Okay. And up until this</p> <p>15 point, there aren't any indications that anybody else</p> <p>16 had brought her to the office. But you wouldn't</p> <p>17 necessarily meet with somebody that brought her to the</p> <p>18 office, right?</p> <p>19 <b>A. No. But our office is small enough that if</b></p> <p>20 <b>somebody brought another person in, they were usually in</b></p> <p>21 <b>our space, fishbowl of a reception area.</b></p> <p>22 Q. So you think it would have been noted in your</p> <p>23 notes?</p> <p>24 <b>A. Not necessarily.</b></p> <p>25 Q. Okay. But you remember, you have independent</p>	<p>1 <b>A. Uh-huh.</b></p> <p>2 Q. "(includes interest and dividends) and</p> <p>3 principal for HEMS." What's "HEMS"?</p> <p>4 <b>A. Health, education, maintenance and support.</b></p> <p>5 Q. So that was the standard set forth in the</p> <p>6 trust, right --</p> <p>7 <b>A. Correct.</b></p> <p>8 Q. -- for a distribution?</p> <p>9 Now, earlier you talked about that the</p> <p>10 trustee could make a distribution without taking it --</p> <p>11 at least this was my impression of your testimony --</p> <p>12 without taking into consideration the standard required</p> <p>13 by the trust.</p> <p>14 Is that what you meant to say?</p> <p>15 MR. REED: Form.</p> <p>16 <b>A. If that's what was stated, then, no, that was</b></p> <p>17 <b>not my intent.</b></p> <p>18 Q. (By Ms. Bayless) Okay. Tell me how the</p> <p>19 standard works in this health, education, maintenance,</p> <p>20 support. How is that supposed to work in a trust like</p> <p>21 the Brunsting trust?</p> <p>22 <b>A. For which trust?</b></p> <p>23 Q. Well, let's start with the restated trust. How</p> <p>24 was it supposed to work?</p> <p>25 <b>A. Well, there is no -- they can freely put things</b></p>

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1 **in and take things out because they're both living. So**  
 2 **there is no standard.**  
 3 Q. Then where would it come up in the Brunsting  
 4 trust?  
 5 **A. So in the decedent's trust it would be income**  
 6 **mandatory to the spouse, principal for health, education**  
 7 **maintenance and support.**  
 8 **Survivor's trust, she can freely put**  
 9 **things in, take things out. There is no standard.**  
 10 Q. And the health, education, maintenance and  
 11 support means basically her health, her education, her  
 12 maintenance, her support, whatever she needs to support  
 13 her household?  
 14 **A. Uh-huh.**  
 15 Q. And support, is that different from  
 16 maintenance?  
 17 **A. It could be.**  
 18 Q. Okay.  
 19 **A. Maintenance is getting your hair done.**  
 20 **Maintenance is getting your nails done probably. Just**  
 21 **depends on what the standard of living is that you're**  
 22 **accustomed to.**  
 23 Q. Okay. And so earlier when you testified, you  
 24 were not meaning to say that that standard could just be  
 25 ignored?

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1 MR. REED: Form.  
 2 **A. In the decedent's trust?**  
 3 Q. (By Ms. Bayless) Yes. Let's talk about the  
 4 decedent's trust.  
 5 **A. No, it could not.**  
 6 Q. And once Nelva was no longer the trustee, the  
 7 person who was responsible for seeing that that standard  
 8 was applied was Anita?  
 9 **A. Whoever the successor trustee is; yes, that's**  
 10 **correct**  
 11 Q. First, Anita -- well, I guess Anita was the  
 12 only successor trustee until Nelva died. Right?  
 13 **A. That is correct.**  
 14 Q. Okay. So do you know -- I didn't see anything  
 15 in here -- and, again, I could have missed it. But I  
 16 didn't see anything in here that talked about when you  
 17 were first contacted about drafting the 6-15-2010 QBD,  
 18 which is, I believe, Exhibit 5.  
 19 So can you tell from these notes?  
 20 **A. No, I can't, other than I reviewed it after.**  
 21 **So I can only surmise because I don't recall that when**  
 22 **she came in on the 8th, we discussed it.**  
 23 Q. Okay. On June 8th?  
 24 **A. Uh-huh.**  
 25 Q. And probably, I guess, because you're talking

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1 about Candy --  
 2 **A. Correct.**  
 3 Q. -- and her financial needs, and that's what  
 4 that dealt with, that QBD?  
 5 **A. That's most likely correct.**  
 6 Q. So they're sort of tied in.  
 7 But in terms of what was supposed to go in  
 8 it or any of that, we don't have any notes here that  
 9 related to that meeting?  
 10 **A. And typically you wouldn't. I don't typically**  
 11 **make notes of everything that I'm going to put into a**  
 12 **document unless it's something that is specific that**  
 13 **sticks out.**  
 14 Q. Okay. I thought the purpose of the notes was  
 15 so that if you came back a week later, a month later,  
 16 you knew what you had last done or what you were  
 17 supposed to --  
 18 **A. Yeah. But there are other ways of doing that**  
 19 **as well.**  
 20 Q. Okay.  
 21 **A. Jotting it down on a piece of paper as soon as**  
 22 **I get out of a meeting and handing it to my assistant,**  
 23 **saying, Draft this, is perfectly fine for me recalling.**  
 24 Q. Okay. So you don't have any independent  
 25 recollection that prior to June 8th, you were

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1 contemplating doing this --  
 2 **A. Huh-uh.**  
 3 Q. -- June 15th? Okay.  
 4 Prior to the time that you had this  
 5 meeting on June 8th with Nelva, did she understand -- do  
 6 you believe, based on your conversation with her, that  
 7 she understood what an advance was as opposed to just a  
 8 gift?  
 9 **A. Yes, I believe she did.**  
 10 Q. So did she come in to you asking for that kind  
 11 of a mechanism to be set up?  
 12 **A. Yes.**  
 13 Q. All right. So then there's a call from Nelva  
 14 saying that she saw you last Tuesday -- this ties us  
 15 back in to June 8th -- "and thinks that she's supposed  
 16 to come in and sign some papers." Then it looks like  
 17 Summer returned that call and said that the signing was  
 18 to be tomorrow. Is that what TMRW is?  
 19 **A. I guess.**  
 20 Q. Okay. So at that point on June 8th -- I'm  
 21 sorry, June 15th, when that was signed -- and there's no  
 22 entry in here that she came in and signed it, but we  
 23 know that she signed it on June 15th?  
 24 **A. Yeah. My notary stamp is indication she did.**  
 25 Q. So at that point there was no indication that

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1 there was going to be any other QBD, right?

2 **A. I don't recall.**

3 Q. Okay.

4 **A. It may have been discussed; it may not have. I**

5 **don't recall.**

6 Q. Well, it wasn't discussed until Carl got sick,

7 was it?

8 MR. REED: Object to form.

9 **A. I don't recall.**

10 Q. (By Ms. Bayless) So you think it might have

11 been before then?

12 MR. REED: Objection, form.

13 **A. Based on the entry that's in here, I think it**

14 **was already being discussed.**

15 Q. (By Ms. Bayless) Okay. The entry --

16 **A. Because the one that said the PATs in the trust**

17 **protector, and that didn't have anything to do, I guess,**

18 **with Carl, per se, just amending the trust to provide**

19 **flexibility for the beneficiaries down the road.**

20 Q. So it was already, in your mind, in the works?

21 **A. Yeah, probably so.**

22 Q. Had you talked about it with Nelva at that

23 point?

24 **A. Probably.**

25 Q. All right. Now, I'm sorry to have to do this

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1 to you, but the next page datewise, you have to go to

2 the very back, and it's page 1197. So it picks up at

3 the bottom with June 25th.

4 **A. Uh-huh.**

5 Q. And then on July 1st, at 12:07 there's an entry

6 from Summer that says "received Vacek & Freed copy of

7 signed receipt and distribution from Candace Louise

8 Curtis. Filed in file."

9 So this is going to be documentation

10 pursuant to the June 15th QBD?

11 **A. No.**

12 Q. Okay. What is this?

13 **A. I believe that would have been if Ms. Brunsting**

14 **made a \$20,000 or whatever it was payment, that my**

15 **recommendation always to clients is, if you're going to**

16 **be advancing a distribution as opposed to making a gift,**

17 **you have the kids sign off on it, agreeing that they**

18 **acknowledge that it's an advance of their share and not**

19 **just a gift.**

20 Q. Okay.

21 **A. So that everybody knows what's going on.**

22 Q. Okay. But isn't that what the June 15th QBD

23 was about?

24 **A. The QBD itself just says anyone who receives,**

25 **as long as it's documented as an advance by**

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1 **Ms. Brunsting, that that is how it will be treated.**

2 Q. Okay. So --

3 **A. This would have been specific to the actual**

4 **payment and how much.**

5 Q. Okay. And it's basically what you wanted --

6 how you wanted her to document it, so that it would

7 trigger the provisions of the June 15th QBD?

8 **A. That's correct.**

9 Q. Okay. And that was not the practice, that you

10 know of, before that, was it?

11 **A. For Ms. Brunsting?**

12 Q. Yes.

13 **A. I don't know what her practice was. I can only**

14 **recommend -- based on what she's given to me at that**

15 **time, that this is how I recommend you do it.**

16 Q. Okay. Now, was it your practice at the Vacek

17 firm to do a new fee agreement each time you did a task?

18 MR. REED: Objection, form.

19 **A. No.**

20 Q. (By Ms. Bayless) Okay. How did you -- because

21 I notice that there are some instances in which -- in

22 the documents that you produced where it talks about you

23 needed to get a fee agreement and a retainer for a

24 specific task.

25 So how did you determine whether it

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1 required a new fee agreement?

2 **A. It depended on the client. If they were a**

3 **long-term client that I knew I didn't have to worry**

4 **about chasing after payment, if they called me and asked**

5 **me to do a document, I did not do a new fee agreement.**

6 **They would just come in and sign it, and we'd give them**

7 **an invoice at that time.**

8 **If we were being engaged by a separate**

9 **trustee for a task, then we did a new engagement.**

10 Q. So is it your recollection that you did not do

11 a bunch of new fee agreements for Nelva for these tasks

12 that you were performing?

13 **A. It would not have been my normal practice to**

14 **have done that.**

15 Q. So you didn't do one for like when you started

16 helping her with the funding of the trust?

17 **A. We did one at administration, at the very**

18 **beginning; and that was the agreement based on the fact**

19 **that somebody had died, and we were going to assist**

20 **funding the subtrusts. A new agreement is always done**

21 **at that time.**

22 Q. Okay.

23 **A. After that, we would not have done another one**

24 **with Nelva.**

25 Q. So when she came in and said she needed help,

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<p>1 you just did it; you didn't do another --</p> <p>2 <b>A. That's correct. The fee agreement we had in</b></p> <p>3 <b>place was still effective.</b></p> <p>4 Q. And when you did one of these QBDs, did you do</p> <p>5 a new fee agreement for those?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Not with Nelva, anyway, you're saying?</p> <p>8 <b>A. No.</b></p> <p>9 Q. Okay. Then when you began representing Anita</p> <p>10 as the successor trustee, you did a new fee agreement</p> <p>11 with her, right?</p> <p>12 <b>A. Yes. I believe that's correct.</b></p> <p>13 Q. And at that point -- was it contemplated that</p> <p>14 there would be a co-trustee arrangement at any point?</p> <p>15 <b>A. Yes.</b></p> <p>16 Q. What was contemplated about that?</p> <p>17 <b>A. The trust said that Anita and Amy were</b></p> <p>18 <b>co-trustees if Nelva resigned at that time.</b></p> <p>19 Q. All right. So initially Anita was the sole</p> <p>20 successor trustee?</p> <p>21 <b>A. No.</b></p> <p>22 Q. Okay. She was a co-trustee?</p> <p>23 <b>A. She was always a co-trustee.</b></p> <p>24 Q. Okay. So Nelva had been the sole trustee,</p> <p>25 right --</p>	<p>1 question. That's why I was asking the question.</p> <p>2 Q. (By Ms. Bayless) I'm not trying to trick you.</p> <p>3 It's easier to just show you the agreements.</p> <p>4 <b>A. That's fine. I would prefer that.</b></p> <p>5 Q. Okay. Now, is it your testimony that -- I just</p> <p>6 want to be sure I heard you right about this -- that</p> <p>7 prior to this -- we're talking now about, say, the</p> <p>8 June 15th QBD time or early July.</p> <p>9 But before Carl was sick, before he</p> <p>10 contracted his encephalitis, you didn't have</p> <p>11 communications with Anita on any kind of a regular basis</p> <p>12 about the trusts?</p> <p>13 <b>A. Not that I'm aware of, because most of my</b></p> <p>14 <b>conversations are documented.</b></p> <p>15 Q. So the only thing you think that you had talked</p> <p>16 with her about by that time was the life insurance</p> <p>17 trust?</p> <p>18 <b>A. The one in which she was the trustee, yes.</b></p> <p>19 Q. Did you have a separate fee agreement with her</p> <p>20 for that?</p> <p>21 <b>A. I just needed permission from Ms. Brunsting to</b></p> <p>22 <b>have conversation with her, that's all. So I didn't</b></p> <p>23 <b>have a fee agreement with her.</b></p> <p>24 Q. So you didn't bill that trust?</p> <p>25 <b>A. Probably not.</b></p>
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<p>1 <b>A. Yes.</b></p> <p>2 Q. -- until she resigned?</p> <p>3 <b>A. Correct. That's my recollection.</b></p> <p>4 Q. And so you had a fee agreement with Amy as</p> <p>5 well, right?</p> <p>6 MR. SPIELMAN: Objection, form.</p> <p>7 <b>A. It would have been as co-trustees.</b></p> <p>8 Q. (By Ms. Bayless) So you had one fee agreement</p> <p>9 with Anita and Amy?</p> <p>10 MR. REED: Form.</p> <p>11 MR. SPIELMAN: Objection, form.</p> <p>12 <b>A. That should have been the -- yes.</b></p> <p>13 MR. SPIELMAN: When are you asking? I</p> <p>14 mean, in the production there is a fee agreement between</p> <p>15 the law firm and Anita for a period of time.</p> <p>16 MR. MENDEL: Right.</p> <p>17 MR. SPIELMAN: And then after Nelva's</p> <p>18 death there is a fee agreement between the firm and Amy</p> <p>19 and Anita as co-trustees.</p> <p>20 MR. MENDEL: Right.</p> <p>21 Q. (By Ms. Bayless) We'll just go over the fee</p> <p>22 agreements at some point.</p> <p>23 <b>A. Okay.</b></p> <p>24 Q. I got sidetracked.</p> <p>25 MS. BAYLESS: But, yes, that was my</p>	<p>1 Q. And I guess Nelva gave you permission to talk</p> <p>2 with her?</p> <p>3 <b>A. Yes.</b></p> <p>4 Q. Did you have to ask that permission every time</p> <p>5 you talked with her, or you --</p> <p>6 <b>A. No. She had a power of attorney that allowed</b></p> <p>7 <b>me to talk. But just as a matter of practice, we</b></p> <p>8 <b>would -- like talking to the broker or whatever, unless</b></p> <p>9 <b>I had it written down in my file that I had permission</b></p> <p>10 <b>to talk to the CPA or from the client, we just made it a</b></p> <p>11 <b>practice to call the client and ask.</b></p> <p>12 Q. And this power of attorney that Anita had had,</p> <p>13 had she ever used that for any purpose that you know of?</p> <p>14 <b>A. I don't recall.</b></p> <p>15 Q. She hadn't talked with you about using it?</p> <p>16 <b>A. Not to my knowledge.</b></p> <p>17 Q. Okay. All right. So look on July 20th.</p> <p>18 <b>A. What page?</b></p> <p>19 Q. I'm sorry. 1197. We're now working from the</p> <p>20 back forward.</p> <p>21 <b>A. Okay.</b></p> <p>22 Q. So on July 20th at 11:58, it says that Anita</p> <p>23 called for you on behalf of her mother, Nelva, and wants</p> <p>24 you to give her a call. And then the entry above it</p> <p>25 is -- appears to be notes from your discussion -- you're</p>

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<p>1 calling her back, right?</p> <p>2 <b>A. That does appear, yes.</b></p> <p>3 Q. So at this point we have reached the stage</p> <p>4 where Carl is ill. You didn't know that until you had</p> <p>5 this conversation with Anita. Is that right?</p> <p>6 MR. REED: Object to form.</p> <p>7 <b>A. I don't recall.</b></p> <p>8 Q. (By Ms. Bayless) Okay. All right. So,</p> <p>9 anyway, it says you returned the call to Nelva's</p> <p>10 daughter Anita and asked how she was doing.</p> <p>11 "She" means Nelva?</p> <p>12 <b>A. Of course, yes.</b></p> <p>13 Q. And she, apparently Anita, reported that "she</p> <p>14 is feeling okay. She has cancer on the liver, but it's</p> <p>15 the lungs that she has issues with that keep her</p> <p>16 treatment of the liver cancer from being able to handle</p> <p>17 the treatments."</p> <p>18 Do you recall Nelva coming into your</p> <p>19 office and having any breathing issues that you could</p> <p>20 observe?</p> <p>21 MR. REED: Form.</p> <p>22 <b>A. At any time?</b></p> <p>23 Q. (By Ms. Bayless) Well, let's talk about up</p> <p>24 through this period.</p> <p>25 <b>A. Because I don't recall what time frame it was.</b></p>	<p>1 Q. And then the other issues are that he was the</p> <p>2 first agent under the power of attorney and that he's on</p> <p>3 the medical power of attorney for Nelva and that he's a</p> <p>4 co-trustee with Anita.</p> <p>5 So just from hearing that information, did</p> <p>6 you respond, that you recall, to Anita?</p> <p>7 MR. REED: Objection, form.</p> <p>8 <b>A. It says what my response was right here.</b></p> <p>9 Q. (By Ms. Bayless) Okay. Well, let's look at</p> <p>10 it. So skip -- well, first there's an interim paragraph</p> <p>11 that says -- I assume SIL is sister-in-law, "comments</p> <p>12 from" --</p> <p>13 <b>A. Probably.</b></p> <p>14 Q. Because it says Carl's wife in parentheses.</p> <p>15 <b>A. Uh-huh.</b></p> <p>16 Q. -- to Nelva was that she wished she would go on</p> <p>17 and substitute.</p> <p>18 <b>A. That's probably "distribute." It's my typing.</b></p> <p>19 Q. Okay. "Distribute Elmer's share of the trust</p> <p>20 since Carl had said he wanted her to have something; and</p> <p>21 if Carl dies, then his daughter would get it all."</p> <p>22 Now, this is what Anita told you that she</p> <p>23 is claiming that Nelva told her that Drina said, Carl's</p> <p>24 wife?</p> <p>25 <b>A. I guess so.</b></p>
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<p>1 <b>There was a time where I recall her having an oxygen</b></p> <p>2 <b>tank.</b></p> <p>3 Q. Okay.</p> <p>4 <b>A. But I don't remember what time frame that was.</b></p> <p>5 Q. Okay. And then she talks about -- it says</p> <p>6 "worse over." I'm not sure what that means, but "worse</p> <p>7 over, her brother Carl has encephalitis and is in the</p> <p>8 hospital. Three weeks now."</p> <p>9 And then she talks about concern. She</p> <p>10 says she is concerned for several reasons.</p> <p>11 Is "she" Nelva, or is "she" Anita?</p> <p>12 <b>A. I don't recall. It's difficult to say based on</b></p> <p>13 <b>how it's typed.</b></p> <p>14 Q. Okay. So first concern is what the outcome for</p> <p>15 the brother is going to be or if he will recover. And</p> <p>16 then she talks about that being a problem because</p> <p>17 they're not certain his wife will not take off with the</p> <p>18 money and actually use it for his -- or actually use it</p> <p>19 for his care.</p> <p>20 So what you're saying there -- I'm not</p> <p>21 sure from the way it's typed, but I assume what you're</p> <p>22 saying there is she expressed concern that they didn't</p> <p>23 want Carl's wife to have access -- it says "the money."</p> <p>24 Does that mean trust?</p> <p>25 <b>A. I don't know.</b></p>	<p>1 Q. So none of this is coming to you directly from</p> <p>2 Nelva, first of all, right?</p> <p>3 <b>A. Not in this conversation.</b></p> <p>4 Q. Okay. And none of it is coming to you from</p> <p>5 Carl's wife. You didn't hear from her, right?</p> <p>6 <b>A. No.</b></p> <p>7 Q. Have you ever had any conversation with Drina?</p> <p>8 <b>A. Not that I recall.</b></p> <p>9 Q. Okay. So then your suggestion -- you said, "I</p> <p>10 suggested the following but that it" would be -- "but</p> <p>11 that it needed to come from Nelva."</p> <p>12 <b>A. Okay. Sorry. Go ahead.</b></p> <p>13 Q. You probably know what I was going to ask you.</p> <p>14 <b>A. That's okay.</b></p> <p>15 Q. So why did you feel the need to tell her that</p> <p>16 it needed to come from Nelva?</p> <p>17 <b>A. Well, no. That Nelva had to make the changes.</b></p> <p>18 <b>That no one else could effectively change anything other</b></p> <p>19 <b>than Nelva.</b></p> <p>20 Q. And was Anita giving you the impression that</p> <p>21 she thought she could make the change?</p> <p>22 <b>A. No. It's just this would be something that</b></p> <p>23 <b>Nelva would have to do on her own.</b></p> <p>24 Q. Okay. Then it says, "I, appoint successor</p> <p>25 trustee, changing Carl out to another co-trustee with</p>

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<p>1 Anita."</p> <p>2 <b>A. Yes.</b></p> <p>3 Q. Now, wasn't there already a mechanism in the</p> <p>4 trust if one of the co-trustees couldn't serve?</p> <p>5 <b>A. Maybe. It depends on how it was worded. I</b></p> <p>6 <b>don't recall.</b></p> <p>7 Q. Okay. And when you answered this question, you</p> <p>8 didn't go look at it first?</p> <p>9 <b>A. No, no.</b></p> <p>10 Q. You were just pointing out that that's</p> <p>11 something that could be dealt with?</p> <p>12 <b>A. Correct.</b></p> <p>13 Q. All right. And then, No. 2, you say, "PAT QBD</p> <p>14 so the co-trustee can flip Carl's trust into a</p> <p>15 supplemental needs trust, have the co-trustees have the</p> <p>16 right to name their own successor trustee of Carl's</p> <p>17 trust should he fully recover."</p> <p>18 <b>A. Correct.</b></p> <p>19 Q. Explain that to me.</p> <p>20 <b>A. So if it's not the way the trust is drafted but</b></p> <p>21 <b>the way the QBD was done, a trust protector was added in</b></p> <p>22 <b>that allows the trustee of that trust to flip it into a</b></p> <p>23 <b>supplemental needs so that Carl can qualify for</b></p> <p>24 <b>government benefits and not be required to spend down</b></p> <p>25 <b>the trust. But if he makes a full recovery, the right</b></p>	<p>1 Q. Flip Carl's trust into a supplemental needs</p> <p>2 trust and have the co-trustees have the right to name</p> <p>3 their own successor.</p> <p>4 <b>A. Carl didn't have a trust because Nelva is still</b></p> <p>5 <b>alive.</b></p> <p>6 Q. Right.</p> <p>7 <b>A. So I guess the answer to your question would</b></p> <p>8 <b>be, no, Nelva couldn't do that because there was no</b></p> <p>9 <b>trust for Carl.</b></p> <p>10 Q. There couldn't be one set up?</p> <p>11 <b>A. Well, that is a totally different -- I mean, I</b></p> <p>12 <b>suppose she could do one, but that was not the</b></p> <p>13 <b>discussion.</b></p> <p>14 Q. Okay. And since Carl had these issues now,</p> <p>15 rather than when Nelva dies, wouldn't it make sense to</p> <p>16 be looking at some kind of a trust arrangement at the</p> <p>17 present, I mean on this date as opposed to what was</p> <p>18 going to happen when Nelva died?</p> <p>19 <b>A. I'm sorry. For clarification purposes, are you</b></p> <p>20 <b>asking me should Nelva have set up a trust for her son,</b></p> <p>21 <b>who was sick?</b></p> <p>22 Q. I'm asking you if that was discussed.</p> <p>23 <b>A. No.</b></p> <p>24 Q. And it was not discussed because Anita wasn't</p> <p>25 trying to go there, right?</p>
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<p>1 <b>for them to name their own successor, they could turn</b></p> <p>2 <b>around and name Carl as his own trustee again.</b></p> <p>3 Q. So when you say the co-trustee can flip Carl's</p> <p>4 trust into a supplemental needs trust, that is some kind</p> <p>5 of a change that would be provided -- you were</p> <p>6 suggesting to provide to -- when you say the</p> <p>7 co-trustee --</p> <p>8 <b>A. Uh-huh.</b></p> <p>9 Q. -- you're meaning somebody who would serve with</p> <p>10 Anita? Are you talking about Anita?</p> <p>11 <b>A. Or whoever was the co-trustee. It didn't</b></p> <p>12 <b>matter who the co-trustee was.</b></p> <p>13 Q. At this point were you talking about something</p> <p>14 that would only take effect on Nelva's death?</p> <p>15 <b>A. Correct.</b></p> <p>16 Q. So it couldn't be Nelva. It would have to be</p> <p>17 whoever was supposed to become the trustee after her</p> <p>18 death?</p> <p>19 <b>A. I'm not sure I understand your question. What</b></p> <p>20 <b>couldn't be Nelva?</b></p> <p>21 Q. One of the co-trustees or the trustee. At this</p> <p>22 point Nelva was the only trustee, right?</p> <p>23 <b>A. That's correct.</b></p> <p>24 Q. So you're saying Nelva couldn't do this?</p> <p>25 <b>A. Couldn't do what?</b></p>	<p>1 MR. REED: Objection, form.</p> <p>2 MR. SPIELMAN: Form.</p> <p>3 <b>A. I have no idea where she was trying to go. It</b></p> <p>4 <b>just was not discussed, or at least I didn't document it</b></p> <p>5 <b>as such.</b></p> <p>6 Q. (By Ms. Bayless) Okay. So the issues that you</p> <p>7 were dealing with in your suggestions were issues that</p> <p>8 would happen sometime in the future?</p> <p>9 <b>A. That's correct.</b></p> <p>10 Q. All right. And you just didn't talk about</p> <p>11 anything that could be done at the moment?</p> <p>12 <b>A. That's correct, not that I recall.</b></p> <p>13 Q. Okay. Then in No. 3 you did say that "Nelva</p> <p>14 can make unlimited gifts to Carl of doctor bills paid</p> <p>15 directly to the provider doctor or hospital gift</p> <p>16 tax-free"?</p> <p>17 <b>A. Correct.</b></p> <p>18 Q. So, in other words, as long as she paid the</p> <p>19 bills directly, there wouldn't be a gift tax</p> <p>20 implication?</p> <p>21 <b>A. Correct.</b></p> <p>22 Q. And did Anita have a response to that</p> <p>23 suggestion that you recall?</p> <p>24 <b>A. I don't recall.</b></p> <p>25 Q. This thing that you were suggesting, going back</p>

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1 to 2 again -- I'm sorry to hover over 2.  
 2 **A. That's okay.**  
 3 Q. The suggestion that if Carl got better, the  
 4 co-trustees would have a right to name their own  
 5 successor trustee so that they could give it back to  
 6 Carl basically, that was going to be -- the arrangement  
 7 you were suggesting, it would be dependent on them being  
 8 willing to do that, right?  
 9 **A. Well, I suppose that whoever -- the co-trustees**  
 10 **would have to be willing to do that.**  
 11 Q. Okay.  
 12 **A. But there's also other mechanisms where he**  
 13 **could get back in.**  
 14 Q. Okay. All right.  
 15 **A. That's just the path of least resistance.**  
 16 Q. Okay. Do you recall whether Anita had a  
 17 reaction to that?  
 18 **A. I do not.**  
 19 Q. Okay. Then the fourth one is just about  
 20 updating the medical power of attorney to add Anita and  
 21 take Carl off.  
 22 Now, Carole lives in Houston, right?  
 23 **A. Yes. I believe that's correct.**  
 24 Q. So why would you be thinking about putting a  
 25 medical power of attorney, giving that right to Anita

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1 when she lives in Victoria?  
 2 **A. I have no reason, rationale. At that point I**  
 3 **don't ...**  
 4 Q. Okay. You weren't promoting that one way or  
 5 the other?  
 6 **A. Huh-uh.**  
 7 Q. It's just you were --  
 8 **A. It could be any of the kids.**  
 9 Q. You were talking to Anita. All right.  
 10 And you said, "I recommended these be done  
 11 in a timely fashion since Ms. B is dealing with her own  
 12 health issues."  
 13 Now, how did you leave it with Anita in  
 14 that conversation?  
 15 **A. I don't recall.**  
 16 Q. All right. So you had told her, though, that  
 17 Nelva needed to make these changes?  
 18 **A. Yeah. No one else stood in the shoes to be**  
 19 **able to do that. So that was something that was**  
 20 **obvious --**  
 21 Q. Did you say --  
 22 **A. -- to me, not her.**  
 23 Q. Did you say, Go talk to Nelva? Or did you say,  
 24 Have Nelva call me?  
 25 **A. Well, I would not make any change without**

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1 **Nelva.**  
 2 Q. Okay. But you don't remember how that was left  
 3 with Anita?  
 4 **A. I do not.**  
 5 Q. Look at page 1196.  
 6 **A. Uh-huh.**  
 7 Q. The entry at the very bottom is a July 28th,  
 8 2010 entry.  
 9 **A. Uh-huh.**  
 10 Q. And it's Summer's entry; and it talks about  
 11 Nelva having paid for a bill that she had already paid  
 12 for, right? I mean, read that and see if I'm  
 13 characterizing it properly.  
 14 **A. That's what it looks like.**  
 15 Q. Do you know whether that was unusual or whether  
 16 that had happened before with Nelva?  
 17 **A. No.**  
 18 Q. Okay.  
 19 **A. I wouldn't even have seen that unless she --**  
 20 **well, she says she e-mailed me. So I probably saw it in**  
 21 **an e-mail.**  
 22 Q. Then if you notice, there is no other time  
 23 entry until February 15th, 2011.  
 24 MR. REED: Objection, form.  
 25 Q. (By Ms. Bayless) Do you see that? I say time

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1 entry. Notes/History entry.  
 2 **A. Yeah. Notes and history. So it may have been**  
 3 **in another section of that.**  
 4 Q. What's the other section? Oh, you mean of the  
 5 things that have been produced?  
 6 **A. Yeah. I mean, I don't --**  
 7 Q. Yeah, I can tell you there isn't. But feel  
 8 free. Look at it and see if you can find anything that  
 9 covers the time period between July 28, 2010 and  
 10 February 28th, 2011.  
 11 MR. REED: You're asking just strictly for  
 12 whether there's any notes?  
 13 MS. BAYLESS: Right, because these are out  
 14 of order.  
 15 MR. REED: Are you saying, though, there's  
 16 no billing entries for that time period; or you're just  
 17 saying notes?  
 18 MS. BAYLESS: Right now --  
 19 THE WITNESS: No, there is.  
 20 MS. BAYLESS: -- I'm talking about notes.  
 21 Q. (By Ms. Bayless) Okay. Did you find  
 22 something?  
 23 **A. Oh, wait. That's 2011. February, March,**  
 24 **March, March. Here's 2-14-11. So that's between those**  
 25 **two dates, 2-14-11.**



<p style="text-align: right;">234</p> <p>1 Q. All right. Let's say January 1st.</p> <p>2 <b>A. Here's January 2011, January 6th, January 3rd,</b></p> <p>3 <b>January 3rd. December, December, December of 2010.</b></p> <p>4 <b>They're here. They're just in a different</b></p> <p>5 <b>section.</b></p> <p>6 Q. Okay. What pages are you looking at?</p> <p>7 MR. REED: Exhibit 18.</p> <p>8 <b>A. Exhibit 18, 002182. It's just the way they</b></p> <p>9 <b>were printed because the system is not very friendly to</b></p> <p>10 <b>printing.</b></p> <p>11 Q. (By Ms. Bayless) I'm sorry. 21 -- what was</p> <p>12 the number?</p> <p>13 <b>A. 002182.</b></p> <p>14 MR. REED: Exhibit 18.</p> <p>15 Q. (By Ms. Bayless) 0021 -- there is no -- it's</p> <p>16 Exhibit 18, but what about the number of the page?</p> <p>17 <b>A. 15 of 38, if that helps.</b></p> <p>18 Q. Oh, 15. You're not looking at the Bates</p> <p>19 number. I see.</p> <p>20 <b>A. Well, the Bates number is 002182.</b></p> <p>21 Q. All right. So that picks up -- there's</p> <p>22 December. Okay. Looking at -- this is on Exhibit 18.</p> <p>23 These are the materials that were produced yesterday.</p> <p>24 In looking at 2183, does that seem to be</p> <p>25 where the gap -- where it fills in after July 28th,</p>	<p style="text-align: right;">236</p> <p>1 <b>move over to the new one, everything got kind of ...</b></p> <p>2 Q. Formatted weird and all that?</p> <p>3 <b>A. Yeah.</b></p> <p>4 Q. So between July 28, 2010, which was the entry</p> <p>5 about Nelva paying again for a bill she had already</p> <p>6 paid --</p> <p>7 <b>A. Uh-huh.</b></p> <p>8 Q. -- the next entry is September 2nd, 2010,</p> <p>9 right?</p> <p>10 <b>A. Uh-huh.</b></p> <p>11 Q. So there is no entry about conversations that</p> <p>12 you might have had with Nelva about the August 25th,</p> <p>13 2010 QBD, right?</p> <p>14 <b>A. I don't see any.</b></p> <p>15 Q. So we can't tell from looking at your notes --</p> <p>16 <b>A. Well, you can't tell from looking at the Act!</b></p> <p>17 <b>notes.</b></p> <p>18 Q. At these notes?</p> <p>19 <b>A. Correct.</b></p> <p>20 Q. -- who you talked with after July 20th when you</p> <p>21 talked to Anita.</p> <p>22 <b>A. I'm not sure why that is.</b></p> <p>23 Q. Okay.</p> <p>24 <b>A. Between -- I don't know.</b></p> <p>25 Q. And you're sure that you pulled all of these,</p>
<p style="text-align: right;">235</p> <p>1 2010?</p> <p>2 <b>A. Well, if you look up at the top on Exhibit 17,</b></p> <p>3 <b>on page Bates No. 001196.</b></p> <p>4 Q. Okay.</p> <p>5 <b>A. There's July 2010, July 29th, 2010,</b></p> <p>6 <b>August 2010, August 2010, August 2010, September 2010.</b></p> <p>7 Q. Well, okay. July 2004, then July 2010 through</p> <p>8 August 2010, those are all field changes where it talks</p> <p>9 about some marital status change or something like that.</p> <p>10 That's not meeting notes, right?</p> <p>11 <b>A. There's a September one at the top that says a</b></p> <p>12 <b>call came in from Nelva --</b></p> <p>13 Q. Okay.</p> <p>14 <b>A. -- regarding Carole, "who wants \$20,000</b></p> <p>15 <b>donation against her heritage."</b></p> <p>16 Q. Okay. So other than the -- it does look like</p> <p>17 the September meeting relates to an interaction with the</p> <p>18 client. The others are just somehow correcting</p> <p>19 something in the database?</p> <p>20 <b>A. Yeah. When we flip it over from one side to</b></p> <p>21 <b>the other -- and we did -- there was one time where we</b></p> <p>22 <b>had a change in the software.</b></p> <p>23 Q. Uh-huh.</p> <p>24 <b>A. It was the same software, but we hadn't kept</b></p> <p>25 <b>updating it. And so when we overhauled it and had to</b></p>	<p style="text-align: right;">237</p> <p>1 right?</p> <p>2 <b>A. Well, this was done in 2012.</b></p> <p>3 Q. Right.</p> <p>4 <b>A. And this was pulled by my assistant.</b></p> <p>5 Q. As far as you know, she pulled everything?</p> <p>6 <b>A. Yeah.</b></p> <p>7 Q. You weren't telling her only pull these dates?</p> <p>8 <b>A. No.</b></p> <p>9 Q. So that does seem unusual, doesn't it, that</p> <p>10 this --</p> <p>11 THE WITNESS: Do you have some? Yeah.</p> <p>12 <b>A. That's why. Remember when I said we don't</b></p> <p>13 <b>always make notes in here. If I have notes on paper,</b></p> <p>14 <b>that's in the file.</b></p> <p>15 Q. (By Ms. Bayless) Okay.</p> <p>16 <b>A. So it's either here or there.</b></p> <p>17 THE WITNESS: Thank you.</p> <p>18 MR. REED: Trust review meeting, which is</p> <p>19 V&amp;F 687, dated July 30th.</p> <p>20 MS. BAYLESS: What was the number, again?</p> <p>21 MR. REED: 687.</p> <p>22 MS. BAYLESS: I think I have that here.</p> <p>23 Hang on.</p> <p>24 MR. REED: Can we go off the record while</p> <p>25 we're looking at that?</p>

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<p>1 MS. BAYLESS: Sure.</p> <p>2 (Recess taken.)</p> <p>3 (Exhibits 19 and 20 marked.)</p> <p>4 Q. (By Ms. Bayless) Okay. So as you indicated</p> <p>5 earlier, sometimes you made notes in a way other than on</p> <p>6 this Notes/History computer database, right?</p> <p>7 <b>A. Uh-huh. That's correct.</b></p> <p>8 Q. So you're looking at what has been marked as</p> <p>9 Exhibit 19. First of all, what is that form?</p> <p>10 <b>A. This is a form that I would use sitting in a</b></p> <p>11 <b>meeting with Nelva.</b></p> <p>12 Q. Is it supposed to be -- it's sort of a</p> <p>13 check-off of what revisions or what the task is to be?</p> <p>14 <b>A. Correct.</b></p> <p>15 Q. Was that a standard Vacek form?</p> <p>16 <b>A. Yes.</b></p> <p>17 Q. When it says "PM trust review meeting," what</p> <p>18 does "PM" mean?</p> <p>19 <b>A. Do I really have to tell you?</b></p> <p>20 Q. You really do. I think I've seen too many</p> <p>21 initials.</p> <p>22 <b>A. It's postmortem.</b></p> <p>23 Q. Postmortem. Okay. All right.</p> <p>24 <b>A. I didn't say I liked it. That's what it was</b></p> <p>25 <b>when I got there.</b></p>	<p>1 <b>A. No.</b></p> <p>2 Q. And there is no indication on the notes and</p> <p>3 history around this time period that there even was a</p> <p>4 meeting?</p> <p>5 <b>A. No.</b></p> <p>6 Q. Or on this date that there even was a meeting.</p> <p>7 Now, when it says "signing date and</p> <p>8 time" --</p> <p>9 <b>A. That's what was scheduled.</b></p> <p>10 Q. Okay. So the documents that you're talking</p> <p>11 about on this form were going to be signed --</p> <p>12 <b>A. On that date.</b></p> <p>13 Q. -- on August 4th?</p> <p>14 <b>A. Uh-huh.</b></p> <p>15 Q. That's not actually what happened, right?</p> <p>16 <b>A. I don't know. I'd have to look at the</b></p> <p>17 <b>documents to see when they were actually signed.</b></p> <p>18 Q. Is this referring, you believe, to Exhibit 6?</p> <p>19 <b>A. Could be. I mean, it says "PAT QBD," and</b></p> <p>20 <b>that's what Exhibit 6 is. So I would assume yes.</b></p> <p>21 Q. And it's after the June 15th, so there's not</p> <p>22 one in between, right?</p> <p>23 <b>A. Correct.</b></p> <p>24 Q. Okay. So it just didn't end up happening then.</p> <p>25 Do you know if there was some difficulty that made the</p>
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<p>1 Q. Okay. Postmortem.</p> <p>2 <b>A. So somebody has died.</b></p> <p>3 Q. But at this point the only person who's died is</p> <p>4 Elmer?</p> <p>5 <b>A. Elmer, uh-huh.</b></p> <p>6 Q. So how can you tell -- I see where it says the</p> <p>7 time of the meeting and the date of the meeting.</p> <p>8 There's no indication of how long the meeting has gone</p> <p>9 on, is there?</p> <p>10 <b>A. No.</b></p> <p>11 Q. Can you tell from this who is in the meeting?</p> <p>12 <b>A. I cannot.</b></p> <p>13 Q. So it's about Nelva; but it doesn't indicate</p> <p>14 that Nelva is the only person there, right?</p> <p>15 <b>A. No.</b></p> <p>16 Q. And this was on July 30th. So you don't know</p> <p>17 from looking at this whether Nelva drove herself there,</p> <p>18 right?</p> <p>19 <b>A. I do not recall.</b></p> <p>20 Q. So what was the purpose of this form?</p> <p>21 <b>A. To assess where we were at and what documents</b></p> <p>22 <b>were going to be prepared.</b></p> <p>23 Q. And do you know why -- there's nothing on here</p> <p>24 to indicate why this meeting was called, right, like who</p> <p>25 called it?</p>	<p>1 signing not happen on August 4th? Was there more</p> <p>2 revision of the documents than you expected, or do you</p> <p>3 know?</p> <p>4 MR. REED: Object to form.</p> <p>5 <b>A. I do not know. There's nothing that indicates</b></p> <p>6 <b>to me that any of that is true or not true.</b></p> <p>7 Q. (By Ms. Bayless) Okay. And there's nothing on</p> <p>8 the notes and history about anything until</p> <p>9 September 2nd, which is after it was already signed,</p> <p>10 right?</p> <p>11 <b>A. That's correct.</b></p> <p>12 Q. And, in fact, the entry on September 2nd is</p> <p>13 really an entry about Carole wanting what's called a</p> <p>14 \$20,000 donation against her heritage. I assume that's</p> <p>15 an advancement?</p> <p>16 MR. REED: Form.</p> <p>17 <b>A. I guess so.</b></p> <p>18 Q. (By Ms. Bayless) So it really didn't have</p> <p>19 anything to do with the document?</p> <p>20 <b>A. No.</b></p> <p>21 Q. Okay. Look at Exhibit 20, if you would.</p> <p>22 My real question -- we're about to get to</p> <p>23 this in the notes, in the notes and history. If you</p> <p>24 look at page 1195 of Exhibit 17 -- put 20 to the side --</p> <p>25 sorry. Okay.</p>

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1 **A. 11 what?**  
 2 Q. 1195.  
 3 **A. Uh-huh.**  
 4 Q. Actually I gave you the wrong page number.  
 5 It's 1194. Look at 1194.  
 6 You see that -- it looks to me like this  
 7 entire Exhibit 20 is in the Notes/History on page 1194  
 8 under this same date of October 7, 2010.  
 9 **A. Okay.**  
 10 Q. So do you have any idea why -- I mean, these  
 11 were both produced. Do you have any idea why Exhibit 20  
 12 is somehow independent of the notes and history but it's  
 13 also included in the notes and history?  
 14 **A. Yeah.**  
 15 Q. And why is that?  
 16 **A. Because this does not have spell-check.**  
 17 **Sometimes I type it into Word and throw it in there so**  
 18 **it will not have a bunch of typos.**  
 19 Q. Okay.  
 20 **A. That happens, or I'll throw in my actual**  
 21 **e-mail. If you look, sometimes you'll see some e-mails.**  
 22 **You can actually copy and paste an e-mail in there too.**  
 23 Q. Okay.  
 24 **A. And sometimes I'll do that rather than just**  
 25 **retyping it.**

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1 Q. Okay. So was there a reason why you wanted  
 2 Exhibit 20 to be spell-checked?  
 3 MR. REED: Objection, form.  
 4 **A. No. I mean, just -- it depends on where I**  
 5 **typed it. Depends on where I was when I had the**  
 6 **conversation and I documented it. Maybe I wasn't at the**  
 7 **office and have -- or BPN'd in. It could be a litany of**  
 8 **reasons.**  
 9 Q. (By Ms. Bayless) All right. So it is -- you  
 10 just pasted it into the notes?  
 11 **A. Of course, yes.**  
 12 Q. Okay. So going back to page 1195.  
 13 **A. Okay.**  
 14 Q. On September 2nd you drafted the distribution  
 15 letter for Carole's request, right? Well, Summer did.  
 16 **A. I'm sorry. Where are you?**  
 17 Q. I'm down at the bottom, September 2nd.  
 18 **A. Of?**  
 19 Q. 2010?  
 20 **A. What page?**  
 21 Q. 1195. So you dealt with Nelva's request about  
 22 Carole wanting an advance, right?  
 23 **A. Okay.**  
 24 Q. And then the next entry is Anita is calling --  
 25 this is on October 6th, 2010. Anita is calling. And it

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1 says "re questions about power of attorney" -- I'm  
 2 assuming POA is power of attorney?  
 3 **A. Uh-huh.**  
 4 Q. -- "and gifting." It says, "Mom gave bro" --  
 5 so I assume that's Carl -- "25,000 instead of paying  
 6 medical bills directly. She has questions about the POA  
 7 clause in the living trust. Please call."  
 8 Did I read that right?  
 9 **A. Down here?**  
 10 Q. Yes.  
 11 **A. Okay.**  
 12 Q. So here we have Anita calling to ask questions  
 13 about the power of attorney. Is she talking about a  
 14 power of attorney that she held, or do you know?  
 15 **A. I don't know.**  
 16 Q. And gifting. And she talked with Summer, but  
 17 it looks like you called her back, right, because if you  
 18 look at the next entry, you returned Anita's call.  
 19 **A. Uh-huh. That's correct.**  
 20 Q. Okay. Why don't you read it, and then we'll  
 21 talk about it.  
 22 **A. "Anita is concerned about her mom."**  
 23 Q. You can just read it to yourself.  
 24 **A. Sorry. Thank you.**  
 25 Q. That's all right. It's a long entry. So I

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1 just wanted you to familiarize yourself with it.  
 2 **A. Okay.**  
 3 Q. So this appears to be an entry in which  
 4 Anita -- you're recording a call that you made,  
 5 returning Anita's call; and she is concerned that her  
 6 mother has been sick and in the hospital with pneumonia.  
 7 **A. Okay.**  
 8 Q. And her compromised lungs and that her other --  
 9 she mentioned to her other sister that she's getting  
 10 stressed out over the pressure she's getting from the  
 11 wife, Carl's wife, that is in the hospital.  
 12 Do you know who the other sister was? Did  
 13 she tell you who --  
 14 **A. She may have. I don't recall.**  
 15 Q. Okay. So this wasn't even a conversation that  
 16 she had with Nelva. This was one she was relaying to  
 17 you that Nelva had had with another sister, right?  
 18 **A. I suppose so.**  
 19 Q. Isn't that how you read it? I'm not trying  
 20 to ...  
 21 **A. It's hard to tell.**  
 22 Q. And she was also concerned because her mother  
 23 had sent this check to Carl that had bounced, and she  
 24 hadn't made sure that money was in the account and that  
 25 her mother didn't even remember calling the broker to

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<p>1 tell him that she needed the money transfer. 2 Is that what she told you? 3 <b>A. That's what it appears to say, yes.</b> 4 Q. Okay. And your suggestion was that Nelva 5 should resign and Anita should take over, or you gave 6 her that as an option? 7 <b>A. It says that I "suggested that if Mom is 8 willing to resign, that it's the best option for her to 9 accept the responsibility for now."</b> 10 Q. Okay. And so the whole resignation discussion 11 was initiated from this conversation, right? 12 <b>A. I don't recall.</b> 13 Q. Well, Nelva hadn't contacted you and said, I 14 want to resign as trustee? 15 <b>A. Not that I recall.</b> 16 Q. Okay. And there aren't any entries in any of 17 the notes or the history or pieces of paper like 18 Exhibit 20 that you have that say that, right? 19 <b>A. Not that I have seen.</b> 20 Q. And did Anita respond to the suggestion that 21 her mother resign? 22 <b>A. I don't recall.</b> 23 Q. Was there any indication from Anita that the 24 resignation was a good idea before you raised it? 25 <b>A. I don't recall.</b></p>	<p>1 whether Carole, who was in Houston, could be helpful? 2 <b>A. I don't recall. The only thing I can -- I must 3 have had at least some conversation because I listed her 4 as -- or suggested or it was going to be done that 5 Carole was the first person on healthcare documents. 6 And that would be an obvious choice since she's local.</b> 7 Q. You're looking at Exhibit 19? 8 <b>A. Yes, that's correct.</b> 9 Q. On the second page of that? Is that what 10 you're talking about? 11 <b>A. Yes.</b> 12 Q. And I think there had been some discussion 13 earlier about Carole had been helpful when Elmer was 14 ill. 15 <b>A. That's correct.</b> 16 Q. And Nelva appreciated that, right? 17 <b>A. That's correct.</b> 18 Q. So did Anita ever raise the issue about Carole 19 being involved in these discussions? 20 <b>A. In these discussions about what?</b> 21 Q. About what to do with this pressure that her 22 mother was feeling, where you were suggesting the 23 resignation. 24 <b>A. I don't recall. I have no idea.</b> 25 Q. Okay. So at some point in time it was decided</p>
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<p>1 Q. And then in this entry -- we're still talking 2 about this 10-6-2010 entry on page 1195 of Exhibit 17 -- 3 there's a paragraph that says that "the best option for 4 her to accept the responsibility" -- is for her to 5 accept the responsibility now "and that she can open an 6 account in Mom's name alone, with her as a cosigner, and 7 POD to the trust" -- what is POD? 8 <b>A. Payable on death.</b> 9 Q. -- "to the trust so that Mom could have the 10 freedom to write checks but that it will be monitored." 11 <b>A. Correct.</b> 12 Q. Is this ultimately the arrangement that was 13 being suggested? Is this ultimately what resulted in 14 the account that Carole was a signer on? 15 MR. REED: Object to form. 16 <b>A. I have no idea.</b> 17 Q. (By Ms. Bayless) Okay. 18 <b>A. I can only make recommendations.</b> 19 Q. And this -- but during this time, you know that 20 Anita was living in Victoria, right? 21 <b>A. I believe that's correct, yes.</b> 22 Q. Okay. Had you ever had any contact with 23 Carole, to speak of? 24 <b>A. I don't recall.</b> 25 Q. So did you ever raise any questions about</p>	<p>1 that a conference call was going to take place, right? 2 <b>A. Yes.</b> 3 Q. And tell me what you remember about how that 4 developed, if you would. 5 <b>A. As I recall, the first thing was the bounced 6 check of \$25,000, which I did believe was out of 7 character for Ms. Brunsting. But people have bounced 8 checks before, so it's not anything that I would be 9 overly concerned about.</b> 10 <b>But I believe there were two -- or another 11 call from Ms. Brunsting asking me to take Carl off of 12 things.</b> 13 <b>And I said we had already done that.</b> 14 <b>We're good. It's covered. So that concerned me, that 15 she was asking me to make changes that we had already 16 made.</b> 17 Q. Okay. Let's look at page 1194 of Exhibit 17. 18 I think this may be the notes of the conversation you're 19 talking about you had with Nelva. 20 <b>A. Is this Exhibit 20? I mean, it's the same 21 exact thing, correct?</b> 22 Q. Yeah. Actually it is, and you can probably 23 read it easier on Exhibit 20. 24 <b>A. Yeah.</b> 25 Q. So Exhibit 20 are the notes that you made about</p>

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<p>1 an October 7th, 2010 conversation with Nelva. 2 So she called you? 3 <b>A. I don't know.</b> 4 Q. Okay. 5 <b>A. It says "Call to Nelva Brunsting by CLF," so</b> 6 <b>I'm assuming I called her.</b> 7 Q. So maybe this was prompted by the conversation 8 you had with Anita, do you think? 9 MR. REED: Objection, form. 10 <b>A. Most likely.</b> 11 Q. (By Ms. Bayless) Okay. So you ask her if it 12 was okay to talk because she had a caregiver coming in 13 to help her? 14 <b>A. Correct.</b> 15 Q. So you wanted to make sure it was private? Is 16 that why? 17 <b>A. Correct.</b> 18 Q. And that's when she told you that the person 19 that was there was Carole? 20 <b>A. Correct.</b> 21 Q. And you told her that Anita had called, and she 22 confirmed that she had been in the hospital. She didn't 23 understand why Edward Jones didn't transfer the funds. 24 So she thought she had contacted them, I 25 guess.</p>	<p>1 <b>A. Because I had just asked Ms. Brunsting if she</b> 2 <b>was -- if it was okay to talk. She said, yes, she was</b> 3 <b>private but that Carole was there. But I didn't realize</b> 4 <b>that there was someone else on the phone.</b> 5 Q. Did you have an impression that Nelva realized 6 that Carole was on the phone? 7 <b>A. I didn't have any impression either way. It</b> 8 <b>just surprised me.</b> 9 Q. Okay. She didn't act surprised when Carole 10 started talking? 11 <b>A. (Witness shakes head negatively.)</b> 12 Q. Okay. So you discussed then with both Nelva 13 and Carole this Edward Jones issue and the bounced 14 check, right? 15 <b>A. Yes. It appears that I did.</b> 16 Q. So you continued to have the conversation. I 17 assume Nelva was fine with that? 18 <b>A. Well, she would have had to tell me not to.</b> 19 Q. Okay. And so this is the conversation where 20 she said Carl was sick and he needed to be taken off of 21 his appointments and her estate planning documents. 22 And you knew that that had already 23 occurred, right? 24 <b>A. Correct.</b> 25 Q. I assume -- when you corrected her and told her</p>
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<p>1 <b>A. I guess.</b> 2 Q. Okay. Did you sense confusion on her part when 3 you talked with her? 4 MR. REED: Objection, form. 5 <b>A. She sounded confused about why Edward Jones did</b> 6 <b>not transfer funds.</b> 7 Q. (By Ms. Bayless) Okay. And have you ever had 8 a conversation that you know of with -- I've forgotten 9 his name now but the guy who was at Edward Jones that 10 was her accountant? 11 <b>A. Doug.</b> 12 Q. Doug, yeah. 13 <b>A. I probably did at some point.</b> 14 Q. About this bounced check, though? 15 <b>A. Oh, no. That's not something I would get</b> 16 <b>involved with.</b> 17 Q. Okay. All right. It says that abruptly -- 18 although I'm not sure I think much of your spell check. 19 <b>A. Oh, did it --</b> 20 Q. It missed abruptly. Abruptly a voice came 21 through on the line, and that was Carole, right? 22 <b>A. I didn't know it was Carole at first. But,</b> 23 <b>yes, then I realized who it was when she started</b> 24 <b>talking.</b> 25 Q. Okay.</p>	<p>1 that that had already been done, did that seem to 2 confuse her? 3 <b>A. No. She said, Oh, that's right.</b> 4 Q. Okay. So that was more of something that she 5 just seemed to have forgotten? 6 <b>A. Yes.</b> 7 Q. Did you ever have occasion to speak with Nelva 8 where she didn't remember that Elmer had died? 9 <b>A. No.</b> 10 Q. I see in the notes that you talked to her about 11 if she wanted to resign, she could name somebody to 12 replace her. 13 <b>A. Uh-huh.</b> 14 Q. Prior to this conversation, had you ever had a 15 discussion with Nelva about her resigning as trustee? 16 <b>A. I don't recall.</b> 17 Q. So you might have? 18 <b>A. Might have.</b> 19 Q. Have you ever had a discussion with Nelva about 20 that before you had the conversation with Anita where 21 Anita was talking about she was pressured? 22 <b>A. I might have. I don't recall when</b> 23 <b>specifically.</b> 24 Q. Do you ever recall a time prior to this 25 conversation when Nelva asked you if she could resign?</p>

Candace Kunz-Freed

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1      **A. I don't recall.**  
2      Q. Then in this conversation -- and maybe it was  
3 because Carole was on the phone --  
4      MS. CAROLE BRUNSTING: Actually I dropped  
5 off when I realized it was a confidential call.  
6      MS. BAYLESS: All right.  
7      **A. I wouldn't have known that unless I hear a**  
8 **click.**  
9      Q. (By Ms. Bayless) Okay. I'm not sure --  
10     MS. CAROLE BRUNSTING: I just answered at  
11 the same time as Mother did.  
12     Q. (By Ms. Bayless) All right. But in this  
13 conversation -- and maybe Carole wasn't on the phone any  
14 longer. But for whatever reason, you suggested that  
15 Carole could be on an account with her since she was  
16 local?  
17     **A. Correct.**  
18     Q. Is that the first time that you recall the  
19 issue of Carole being on a convenience account for her  
20 came up?  
21     **A. Could be.**  
22     Q. Actually you do say down here that Carole  
23 abruptly hung up the phone.  
24     **A. Okay. Well, see, I didn't remember that.**  
25     Q. Okay. Let's see. Let's read it together here.

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1      It says -- you "suggested that Carole be on the account  
2 with Mom since she's local. Carole stated that while  
3 it's well and good that she thinks she should be the  
4 co-power of attorney" -- and you explained that  
5 "companies do not like co-powers of attorney because  
6 they have to be able to rely on them for decisions to be  
7 made; and if they do not agree, then nothing gets done."  
8      Then it says Carole hung up the phone  
9 abruptly.  
10     **A. Okay.**  
11     Q. So I guess you don't have a clue whether that  
12 made her upset that you said she shouldn't be co-power  
13 of attorney?  
14     **A. I do not.**  
15     Q. Okay. And so then you asked Nelva if  
16 everything was okay, and she said, Yes, it was fine.  
17      Was that because Carole had hung up the  
18 phone, do you think?  
19      MR. REED: Form.  
20     **A. Yes, probably.**  
21     Q. (By Ms. Bayless) And so then you just let her  
22 know that -- oh, no. You told her to have a family  
23 discussion about this --  
24     **A. That's correct.**  
25     Q. -- and then let you know?

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1      **A. That's correct.**  
2      Q. You were specifically referring to having a  
3 family discussion about whether she should resign as  
4 trustee?  
5      **A. That's correct.**  
6      Q. And you weren't suggesting that it was  
7 anybody's decision but hers, right?  
8      **A. That's correct.**  
9      Q. You just wanted her to talk with everybody  
10 about it?  
11     **A. It's my recommendation that the family should**  
12 **be involved in those situations.**  
13     Q. All right.  
14      MS. BAYLESS: I think we stop because I'm  
15 going to get ready to talk about this phone  
16 conversation.  
17      MR. REED: Okay.  
18      (Proceedings recessed at 5:01 p.m.)  
19  
20  
21  
22  
23  
24  
25

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CHANGES AND SIGNATURE

PAGE	LINE	CHANGE	REASON

Candace Kunz-Freed

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1 I, CANDACE KUNZ-FREED, have read the foregoing  
 2 deposition and hereby affix my signature that same is  
 3 true and correct, except as noted above.  
 4  
 5 \_\_\_\_\_  
 6 CANDACE KUNZ-FREED  
 7  
 8 THE STATE OF \_\_\_\_\_ )  
 9 COUNTY OF \_\_\_\_\_ )  
 10  
 11 Before me, \_\_\_\_\_, on this day  
 12 personally appeared CANDACE KUNZ-FREED, known to me or  
 13 proved to me on the oath of \_\_\_\_\_ or through  
 14 \_\_\_\_\_ (description of identity card  
 15 or other document) to be the person whose name is  
 16 subscribed to the foregoing instrument and acknowledged  
 17 to me that he/she executed the same for the purpose and  
 18 consideration therein expressed.  
 19 Given under my hand and seal of office on this \_\_\_\_  
 20 day of \_\_\_\_\_, \_\_\_\_\_.  
 21  
 22 \_\_\_\_\_  
 23 NOTARY PUBLIC IN AND FOR  
 24 THE STATE OF \_\_\_\_\_  
 25 My Commission Expires: \_\_\_\_\_

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1 following includes all parties of record and the amount  
 2 of time used by each party at the time of the  
 3 deposition:  
 4 Stephen Mendel (2h39m)  
 5 Attorney for Defendant Anita Brunsting  
 6 Carole Brunsting (0h18m)  
 7 Pro Se Defendant  
 8 Candace Curtis (0h28m)  
 9 Pro Se Defendant  
 10 Bobbie Bayless (2h31m)  
 11 Attorney for Plaintiff  
 12  
 13 That a copy of this certificate was served on all  
 14 parties shown herein on \_\_\_\_\_ and filed  
 15 with the Clerk.  
 16 I further certify that I am neither counsel for,  
 17 related to, nor employed by any of the parties in the  
 18 action in which this proceeding was taken, and further  
 19 that I am not financially or otherwise interested in the  
 20 outcome of this action.  
 21 Further certification requirements pursuant to  
 22 Rule 203 of the Texas Code of Civil Procedure will be  
 23 complied with after they have occurred.  
 24 Certified to by me on this \_\_\_\_\_ day of  
 25 \_\_\_\_\_, \_\_\_\_\_.  
 \_\_\_\_\_  
 Melinda Barre  
 Texas CSR 2192  
 Expiration: 12/31/21

259

1 CAUSE NO. 412,249-401  
 2 ESTATE OF \_\_\_\_\_ ) IN THE DISTRICT COURT  
 3 NELVA E. BRUNSTING, \_\_\_\_\_ )  
 4 DECEASED \_\_\_\_\_ ) HARRIS COUNTY, TEXAS  
 5  
 6 \_\_\_\_\_  
 7 CARL HENRY BRUNSTING, \_\_\_\_\_ )  
 8 et al. \_\_\_\_\_ )  
 9 vs. \_\_\_\_\_ )  
 10 ANITA KAY BRUNSTING, \_\_\_\_\_ )  
 11 et al. \_\_\_\_\_ )  
 12  
 13 REPORTER'S CERTIFICATE  
 14 ORAL DEPOSITION OF CANDACE KUNZ-FREED  
 15 March 20, 2019  
 16  
 17 I, Melinda Barre, Certified Shorthand Reporter in  
 18 and for the State of Texas, hereby certify to the  
 19 following:  
 20 That the witness, CANDACE KUNZ-FREED, was duly sworn  
 21 and that the transcript of the deposition is a true  
 22 record of the testimony given by the witness;  
 23 That the deposition transcript was duly submitted on  
 24 \_\_\_\_\_ to the witness or to the attorney for  
 25 the witness for examination, signature, and return to me  
 by \_\_\_\_\_.  
 That pursuant to information given to the deposition  
 officer at the time said testimony was taken, the

261

1 FURTHER CERTIFICATION UNDER TRCP RULE 203  
 2  
 3 The original deposition was/was not returned to the  
 4 deposition officer on \_\_\_\_\_.  
 5 If returned, the attached Changes and Signature  
 6 page(s) contain(s) any changes and the reasons therefor.  
 7 If returned, the original deposition was delivered  
 8 to Stephen Mendel, Custodial Attorney.  
 9 \$\_\_\_\_\_ is the deposition officer's charges to the  
 10 Defendant Anita Brunsting for preparing the original  
 11 deposition and any copies of exhibits;  
 12 The deposition was delivered in accordance with Rule  
 13 203.3, and a copy of this certificate, served on all  
 14 parties shown herein, was filed with the Clerk.  
 15 Certified to by me on this \_\_\_\_\_ day of  
 16 \_\_\_\_\_, \_\_\_\_\_.  
 17  
 18 \_\_\_\_\_  
 19 Melinda Barre  
 20 Texas CSR 2192  
 21 Expiration: 12/31/21  
 22  
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412249-403

3/1/2019 12:07:49 PM  
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Nelva Brunsting Decd.

NO. 2013-05455

PROBATE COURT 4

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CARL HENRY BRUNSTING,  
INDEPENDENT EXECUTOR OF THE  
ESTATES OF ELMER H. BRUNSTING  
AND NELVA E. BRUNSTING

§  
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IN THE DISTRICT COURT OF

vs.

HARRIS COUNTY, TEXAS

CANDACE L. KUNZ-FREED AND  
VACEK & FREED, PLLC f/k/a  
THE VACEK LAW FIRM, PLLC

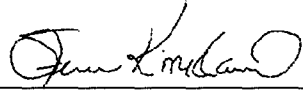
164<sup>th</sup> JUDICIAL DISTRICT

ORDER TRANSFERRING DISTRICT COURT CASE

On February 14, 2019, the Order on Motion to Transfer District Court Proceedings to Probate Court No. 4 was signed in Cause No. 412,249-401, styled *In the Estate of Nelva E. Brunsting, Deceased*, in Probate Court Number Four of Harris County, Texas. It is therefore

ORDERED that Cause No. 2013-05455, styled *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC*, is transferred to Harris County Probate Court Four and assigned Cause No. 412.249-403.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

Signed:   
4/4/2019  
JUDGE PRESIDING

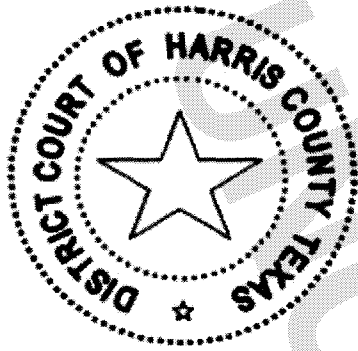
  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

2019 APR 10 AM 10:25

FILED

COPY





I, Marilyn Burgess, District Clerk of Harris County, Texas certify that this is a true and correct copy of the original record filed and or recorded in my office, electronically or hard copy, as it appears on this date.  
Witness my official hand and seal of office this April 8, 2019

Certified Document Number: 84655908

Marilyn Burgess, DISTRICT CLERK  
HARRIS COUNTY, TEXAS

In accordance with Texas Government Code 406.013 electronically transmitted authenticated documents are valid. If there is a question regarding the validity of this document and or seal please e-mail [support@hcdistrictclerk.com](mailto:support@hcdistrictclerk.com)

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REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. \_\_\_\_\_

THE ESTATE OF: ) IN THE PROBATE COURT  
NELVA E. BRUNSTING, ) NUMBER 4 (FOUR) OF  
DECEASED ) HARRIS COUNTY, TEXAS

\* \* \* \* \*

AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT

\* \* \* \* \*

On the 28th day of June, 2019, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable James Horwitz Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand

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

1  
2 ATTORNEY FOR APPLICANT, CARL BRUNSTING, IE:  
3 Ms. Bobbie G. Bayless  
4 Attorney at Law  
5 SBN 01940600  
6 2931 Ferndale  
7 Houston, Texas 77098  
8 713.522.2224

6 ATTORNEY FOR ANITA KAY BRUNSTING-RILEY:  
7 Mr. Timothy J. Jadloski  
8 Attorney at Law  
9 1155 Dairy Ashford  
10 Suite 104  
11 Houston, Texas 77079  
12 281.759.3213

10 RESPONDENT PRO SE, CAROLE BRUNSTING:  
11 5822 Jason Street  
12 Houston, Texas 77074  
13 cbrunsting@sbcglobal.net

13 ATTORNEY FOR DEFENDANT, AMY BRUNSTING:  
14 Mr. Neal E. Spielman  
15 GRIFFIN & MATTHEWS  
16 Attorney at Law  
17 SBN 00794678  
18 1155 Dairy Ashford  
19 Suite 300  
20 Houston, Texas 77079  
21 281.870.1647

17 RESPONDENT PRO SE, CANDACE LOUISE CURTIS:  
18 Ms. Candace L. Curtis  
19 1213 Ulfonian Way  
20 Martinez, CA 94533  
21 (APPEARING TELEPHONICALLY)

20 ATTORNEY FOR CANDACE KUNZ-FREED:  
21 Mr. Cory S. Reed  
22 THOMPSON, COE, COUSINS & IRONS, LLP  
23 Attorney at Law  
24 One River Way  
25 Suite 1400  
Houston, Texas 77056  
713.403.8210

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VOLUME 1  
(AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT)

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1 June 28, 2019

2 PROCEEDINGS:

3 THE COURT: Hello. Please be seated.

4 I'm going to call Case Number 412249-401,  
5 In The Estate of Nelva E. Brunsting, Deceased.

6 When we get Ms. Curtis on the phone, I'll  
7 have each counsel and pro se party stand, identify  
8 yourself, and who you represent.

9 (Calling Ms. Candace Curtis on telephone)

10 MS. CANDACE CURTIS: This is Candace.

11 THE COURT: Hi, ma'am. This is James  
12 Horwitz; I'm the judge in Harris County Probate Court 4.

13 MS. CANDACE CURTIS: Yes, sir.

14 THE COURT: We are on the record, and  
15 we're just now starting; so, I'm going to have each  
16 counsel stand and identify themselves and who they  
17 represent.

18 MS. CANDACE CURTIS: Thank you.

19 MR. SPIELMAN: Good afternoon, Judge, my  
20 name is Neal Spielman, and I represent Amy Brunsting.

21 THE COURT: All right.

22 MR. JADLOSKI: My name is Timothy

23 Jadloski --

24 MS. CANDACE CURTIS: Excuse me. Can you  
25 turn that up a little bit 'cause I can't hear anything



1 going on in the background.

2 THE COURT: All right. I'll try to have  
3 somebody that's more technical than me do this.

4 JUDGE COMSTOCK: Turning up the volume on  
5 this device increases your volume, Ms. Curtis, but it  
6 doesn't increase the volume of the attorneys in the  
7 courtroom; do you guys want to approach?

8 THE COURT: Yeah, y'all can come on up.

9 All right. Counsel, why don't we start  
10 over, okay.

11 MR. SPIELMAN: Judge, my name is Neal  
12 Spielman; I represent Amy Brunsting.

13 MR. JADLOSKI: Your Honor, my name is  
14 Timothy Jadloski, and I represent Anita Brunsting.

15 MR. REED: Cory Reed; I represent Candace  
16 Vacek in the 403 case.

17 MS. BAYLESS: Bobby Bayless; I represent  
18 Carl Brunsting.

19 MS. CAROLE BRUNSTING: And Carole  
20 Brunsting; I'm pro se.

21 THE COURT: Okay. So, we have a motion  
22 for sanctions and/or contempt filed by counsel for Amy  
23 Brunsting.

24 MR. SPIELMAN: That's correct, Judge; and  
25 Candace Curtis is on the phone as a pro se party,

1 correct?

2 THE COURT: Right. So, Ms. Curtis?

3 MS. CANDACE CURTIS: Yes.

4 THE COURT: I would like you to raise your  
5 right hand and be sworn by the court clerk, please.

6 MR. CANDACE CURTIS: All right.

7 (Ms. Candace Curtis is sworn)

8 MS. CANDACE CURTIS: I do.

9 THE COURT: All right. Counsel, would you  
10 like to proceed with your motion?

11 MOTION FOR SANCTIONS

12 ARGUMENT BY MR. SPIELMAN:

13 MR. SPIELMAN: Yes, thank you, Judge.

14 Essentially, Judge, we're here on a motion  
15 for sanctions and contempt stemming from your recent --  
16 the Court's recent order of February the 14th of 2019.  
17 By way of review, Your Honor, that order was entered  
18 following some pleadings that were filed by my office on  
19 Amy Brunsting's behalf that were connected to a series  
20 of five different pleadings that had been previously  
21 filed by Ms. Curtis. The sum and substance of those  
22 pleadings had to do with the suggestion or the argument  
23 that this Court did not have jurisdiction over the case  
24 that we're dealing with. And as you may recall, Judge,  
25 part of what led to your order being signed in February

1 was the discussion about how the case came to be in this  
2 courtroom from the federal court - Judge Hoyt's court -  
3 pursuant to a motion to remand and an order of remand  
4 that was signed by Judge Hoyt. The motion itself was  
5 submitted by Ms. Curtis and her lawyer at the time -  
6 Jason Ostrom. This Court then --

7 THE COURT: Is that the order dated March  
8 16th, 2015 - an agreed order to consolidate cases?

9 MR. SPIELMAN: I did not bring that part  
10 of the file with me, so I can't speak to the specific  
11 dates.

12 THE COURT: It's the -- it's in your --  
13 it's in my order denying plea and motion filed by Ms.  
14 Curtis that I signed on February 14th, 2019. So, I  
15 believe that's correct. Go ahead.

16 MR. SPIELMAN: Okay. Yeah.

17 And so then Judge Butts - prior to you  
18 taking the bench - Judge Butts signed her own order  
19 basically accepting the transfer. I do not recall, as I  
20 stand here today, whether that was done of the Court's  
21 own accord or if that was done in response to a motion  
22 filed by Ms. Curtis/Mr. Ostrom; but either way - you  
23 have the order from Judge Hoyt and then you have the  
24 order from Judge Butts bringing that federal court case  
25 into state court at Ms. Curtis' request; and yet, even



1 so, we had these five different pleadings and such  
2 suggesting that this Court didn't have jurisdiction.

3           Your Honor may also recall that in and  
4 around the same time period at other hearings we were  
5 having, Ms. Curtis wasn't appearing, and there was some  
6 discussion in the courtroom - not putting words into  
7 anybody's mouth - but there was some discussion in the  
8 courtroom as to whether or not Ms. Curtis wasn't  
9 appearing at these hearings because she did not think  
10 this Court had jurisdiction, and we talked about the  
11 importance of getting everybody to the table, so to  
12 speak, and that was the motivating factor for doing  
13 everything that I did so that we had everybody in the  
14 right place and we could recognize that the whole debate  
15 about who had jurisdiction wasn't even really one that  
16 should have been going on in any case.

17           So, fastforward to your order, Judge,  
18 February 14th - you issued your order - sort of  
19 confirming all of the things that we just said; and yet,  
20 even so, subsequent to that - on March the 20th and then  
21 again on April the 12th, this is all in 2019 - Ms.  
22 Curtis filed two more pleadings or documents into Judge  
23 Hoyt's federal court under the same cause of action that  
24 had been transferred. So --

25           THE COURT: Is that the cause of action

1 entering in what four numbers?

2 MR. SPIELMAN: The --

3 THE COURT: Is that the 592?

4 MR. SPIELMAN: That is -- yeah. Yes, I  
5 think so. Yes, the 592. So, those documents were the  
6 application for orders to show cause why Defendants and  
7 their counsel should not be held in contempt of this  
8 Court's injunctive order. That was one document that  
9 was filed. And then the second document that was filed  
10 later was affidavit of Candace Louise Curtis in support  
11 of application for orders to show cause. So, those were  
12 the two documents that were filed into the federal court  
13 case that had been closed and terminated prior to and  
14 then confirmed again by your order.

15 THE COURT: And, Counsel, is that case  
16 that ends in 592 in which she filed on April 12th, 2019,  
17 and March 20th, 2019 - the same case number in which  
18 Judge Hoyt had signed a agreed order to consolidate, and  
19 that case was moved to probate court?

20 MR. SPIELMAN: Yes, Your Honor.

21 THE COURT: Same case?

22 MR. SPIELMAN: Yes, sir.

23 THE COURT: Okay. Go ahead.

24 MR. SPIELMAN: Okay. And so, those  
25 actions right there - the March 20th and the April 12th

1 filing - are the ones that were taken subsequent to your  
2 February 14th, 2019 order, and those two actions are the  
3 ones that I am saying are the contemptuous actions  
4 relative to what's been going on in this court and the  
5 effort that was put forth to get everybody here and get  
6 any confusion that might have existed - legitimate or  
7 otherwise - resolved.

8           And so, that's really the sum and the  
9 substance of the conduct that we're here to talk about,  
10 Judge.

11           It's my position that - with regard to the  
12 contempt and the request for sanctions - that none of  
13 the conduct that was exhibited by Ms. Curtis with  
14 respect to the five pleadings that led up to your order  
15 or the two documents subsequent to your order were  
16 proper, necessary, merit, full, had merit, and should  
17 have ever been pursued because of the fact - like we  
18 talked about earlier - because of the orders from Judge  
19 Hoyt sending it over here and the order from Judge Butts  
20 accepting it, it was well known to everybody - and  
21 again, at Ms. Curtis' request - that we be here in this  
22 court for the remainder of the litigation.

23           And, you know, I spent a lot of time and  
24 effort to help get this properly positioned so that we  
25 could start moving forward and making progress with the



1 development of the case - like I said before - trying to  
2 get everybody that wanted to be at the table to the  
3 table; and now, Judge, what I'm trying to do here is to  
4 extend the analogy a little bit in a tortured fashion  
5 is - now that everybody's at the table, let's make sure  
6 we're all eating with the right fork. I just feel  
7 like -- I said it would be a tortured analogy.

8 I feel like this case, from inception, has  
9 been burdened by a lot of the conduct of Ms. Curtis and  
10 the delays that she's caused and the pleadings that  
11 she's filed and there's never been an opportunity - by  
12 this Court, at least - to call her out on that to say  
13 there is a proper way of conducting business; just  
14 because you are a pro se party does not excuse you from  
15 understanding how the process works and from following  
16 that process. It has cost the parties' time. It is  
17 going to cost the estate money. If it's not going to  
18 cost the estate money, it's certainly going to cost my  
19 client money, and it's time to send the message to Ms.  
20 Curtis that there are consequences to the decisions that  
21 she makes when she disregards this Court's order or  
22 pursues ill-timed, poorly-thought-out, or other conduct  
23 that's just contrary to the way we are to conduct  
24 ourselves in a litigation.

25 Judge, you would not let me speak to Ms.

1 Bayless or write things about Ms. Bayless of the nature  
2 that Ms. Curtis is writing about the lawyers. You would  
3 not reward Mr. Reed for filing frivolous pleadings  
4 attacking jurisdiction time and again, you know, if he  
5 were to do something like that because we, as the  
6 attorneys, we know what conduct we're held to. We know  
7 what standards we're held to, and we know how to apply  
8 and understand and perceive your rulings and the rules  
9 of court; and Ms. Curtis has never been taught that  
10 lesson.

11 One of the things that I pointed to in the  
12 motion, Judge, is that this is not the first time that  
13 this has come up. Yes, it's the first time that anybody  
14 has really stood up and presented it in this courtroom,  
15 but you can see from the history, you know, Judge Hoyt  
16 recognized there was a problem with Ms. Curtis' conduct,  
17 and he recognized, in an order, that it was hampering  
18 the ability for the case to proceed forward, and it was  
19 hampering the parties from fulfilling their  
20 responsibilities. His order is not specific on which  
21 parties, but I think the presumption could be Amy and  
22 Anita as the co-trustees.

23 Nevertheless, Judge - Judge Hoyt saw the  
24 problem with Ms. Curtis' behavior as so extreme that he  
25 ordered her to get legal counsel, and that's the order,



1 Exhibit 4, that I put in my motion. She did follow  
2 Judge Hoyt's order for about as long as it took for them  
3 to come back into this court.

4           Shortly after the case was transferred and  
5 accepted by Judge Butts, her counsel, Mr. Jason Ostrom,  
6 was fired by Ms. Curtis, and she resumed this conduct of  
7 wildly using the wrong court, filing ill-conceived  
8 motions, doing the two things that Judge Hoyt warned her  
9 against or wrote about which was hindering necessary  
10 discourse and preventing the parties from fulfilling  
11 their responsibilities.

12           For the longest period of time, we spent  
13 our time stuck in a different federal court proceeding  
14 because of an ill-timed, poorly-conceived, frivolous  
15 lawsuit. That is also referenced in my motion. That  
16 was what Judge Bennett said about Ms. Curtis' RICO case;  
17 and not only did Judge Bennett say that, but then the  
18 Fifth Circuit Court of Appeals said that.

19           So, we have now three courts highlighting  
20 the problems that we are seeing and experiencing here in  
21 this court with Ms. Curtis and her behavior.

22           And I guess, Judge, my point in all this  
23 is that it's time to send a message to Ms. Curtis, and I  
24 think that message is going to be best understood by her  
25 in the form of a contempt, a sanction, and a monetary

1 penalty and fee, and that's why I wrote the motion the  
2 way I did; and that's why I submitted my affidavit in  
3 support of the attorney's fees that I have incurred on  
4 Ms. Bruns -- on Amy's behalf dating back to the original  
5 five filings all the way through to today's hearing.

6 THE COURT: Mr. Spielman, who was the  
7 federal judge in this 592 case, do you remember?

8 MR. SPIELMAN: The 592 was Judge Hoyt, I  
9 believe.

10 THE COURT: All right. And he is the one  
11 that closed the federal -- this 592 case, granted the  
12 Plaintiff's motion to remand in the order of transfer  
13 and to have all of this brought back under our current  
14 case number; is that correct?

15 MR. SPIELMAN: Well, Judge Hoyt granted  
16 Plaintiff's motion to remand and then the order of  
17 transfer that you just mentioned was the document signed  
18 by Judge Butts in this court. But, other than that,  
19 yes.

20 THE COURT: All right. So, without going  
21 into the merits of her application for orders to show  
22 cause -- well, let me ask you this.

23 What has happened in federal court since  
24 this was filed in March and April of this year?

25 MR. SPIELMAN: Well, that's an interesting



1 question, Judge, because what happened there is,  
2 apparently, the Court called her -- those pleadings,  
3 those federal court filings, to hearing. I did not get  
4 notice of that from the Court. I received an email from  
5 Ric Munson - who is connected to Ms. Curtis - the  
6 evening before. By the time I got to the office and saw  
7 that email, the hearing had already transpired. I don't  
8 want to speak for Mr. Mendel and Mr. Jadloski, but I  
9 don't believe they received Mr. Munson's email at all.  
10 So, I cannot say specifically what was discussed during  
11 the telephonic conference, but I am aware that --

12 THE COURT: You say "telephonic  
13 conference" - what do you mean?

14 MR. SPIELMAN: The Court had a telephonic  
15 conference with Ms. Curtis. We were all instructed,  
16 apparently, to call in rather than show up.

17 THE COURT: Okay.

18 MR. SPIELMAN: And, you know, I regret not  
19 bringing it with me. I know I printed it out. There is  
20 a docket sheet entry from that proceeding, and I know  
21 we're on the record so I don't want to misquote, so I  
22 will say that I'm just sort of going from memory, words  
23 to the effect of - we're not going any further because I  
24 already closed this X years ago.

25 THE COURT: All right. And have you

1 subsequently researched that to make sure that's the  
2 finding of that court?

3 MR. SPIELMAN: I have -- I am -- I can 100  
4 percent say yes, I have; I can 90 percent say I printed  
5 it out; I can 100 percent say I can get that to you or  
6 go and print it out if that's something you would like  
7 to look at.

8 THE COURT: And, Counsel, do you have  
9 anything to add to that?

10 MR. JADLOSKI: Other than that I support  
11 the motion, no, Your Honor, I don't.

12 THE COURT: But any information about what  
13 the federal court did in reference to this application  
14 other than to say this matter's been closed?

15 MR. JADLOSKI: I have nothing else to add,  
16 Your Honor, except that I can confirm - yeah, we did not  
17 get notice of the hearing.

18 THE COURT: Counsel, do you have anything?

19 MR. REED: Yes, Your Honor.

20 If you look at every time when Ms. Curtis  
21 has filed any of these pleadings in the federal court -  
22 next to when you get the email notice - notification of  
23 a filing - it says, specifically, "case closed" and then  
24 it will have the filing information. So, the federal  
25 court, their notation in their system is - "case

1 closed".

2 THE COURT: All right. Ms. Bayless, do  
3 you have any information to add?

4 MS. BAYLESS: No. I mean, I agree with  
5 what Mr. Reed just said, you know, it would show up as  
6 "closed".

7 THE COURT: All right. So, what are you  
8 seeking today, Mr. Spielman?

9 MR. SPIELMAN: I'm seeking an order of  
10 contempt based off of her - Ms. Curtis' - violation of  
11 your February 19 -- your February 14th, 2019, order and  
12 that contempt can take whatever form this Court desires  
13 from the 500-dollar civil max penalty to just an order  
14 saying that you're in contempt for not following my  
15 order.

16 I'm also seeking, as a sanction, the  
17 attorney's fees that were incurred by my client while I  
18 took the actions that I described in my affidavit dating  
19 back from the first of the five filings through standing  
20 here today. And the only thing I will say about that  
21 affidavit is that in it, there is a portion where I  
22 estimated the amount of time that I would spend between  
23 the date of the filing of this motion and today's  
24 hearing - I estimated that as five hours. I have not  
25 spent five hours. I would -- if we had to round up, I



1 would say two hours from 1.7 or something of that  
2 nature.

3 THE COURT: In your affidavit for  
4 attorney's fees, you're seeking attorney's fees for work  
5 done going back to the receipt and review of the pleas  
6 in abatement and the plea to the jurisdiction?

7 MR. SPIELMAN: Correct. And the reason  
8 I'm doing that, Judge, is because, you'll remember - I  
9 made no such request at the time even though it was  
10 pretty obvious from the history of the file and Ms.  
11 Curtis' own actions that none of those five documents  
12 should have been filed by then; but at that time, it was  
13 more important for me to get us all on the same page  
14 than it was to argue about sanctions and fees. That  
15 changed in my mind when Ms. Curtis then filed her next  
16 two documents. And since the rules allow for us to seek  
17 sanctions retroactively while the case is pending, I  
18 felt like the best way to send the message was to go all  
19 the way back to the beginning.

20 THE COURT: In your responses to the plea  
21 in abatement and plea and the jurisdiction - which I  
22 don't have in front of me - did you request attorney's  
23 fees?

24 MR. SPIELMAN: I did not.

25 THE COURT: All right.

1 MR. SPIELMAN: And, in fact, Judge, I  
2 don't know that I've -- I don't know that the documents  
3 that I would have filed would have been styled as a  
4 response per se because I -- what was it... I think it  
5 was motion for -- whatever I called it. I didn't call  
6 it a "response" because we were doing more than just the  
7 response. But you'll remember, Judge, I think that -- I  
8 know what I called it - motion for clarification --

9 THE COURT: Motion for clarification and  
10 to dismiss.

11 MR. SPIELMAN: Right. And then within the  
12 context of Ms. Curtis' response and our reply, we  
13 brought up the issue of these five pleadings, was  
14 brought up, and that's what allowed Your Honor to  
15 dispose of them in your order.

16 THE COURT: How much time do think you've  
17 spent on this particular matter?

18 MR. SPIELMAN: As far as drafting?

19 THE COURT: Including this hearing today.

20 MR. SPIELMAN: We could -- well, let --  
21 we could call it five hours.

22 THE COURT: I think you just said you  
23 hadn't spent --

24 MR. SPIELMAN: Well, I thought you were  
25 asking me -- you're asking me from the time I filed the

1 motion through today how much time I did spend?

2 THE COURT: Well, on this matter. I  
3 assume that you spent time before you filed the motion.

4 MR. SPIELMAN: Correct. I may have  
5 misinterpreted your question from day one which was  
6 the -- which would have been receipt and review of  
7 the --

8 THE COURT: March 20th.

9 MR. SPIELMAN: August 20 -- so between  
10 August 20th, '18 and October 2018 which is when Ms.  
11 Curtis started the plea in abatement process.

12 THE COURT: I apologize for not being  
13 clear. What I'm curious about is -- I understand that  
14 sanctions can go retroactive; what I was curious about  
15 is the very first time you got notice of Ms. Curtis  
16 filing something in federal court was, I assume, March  
17 of 2019 in the latest round she did --

18 MR. SPIELMAN: I understand.

19 THE COURT: -- from that time until today,  
20 approximately, what was the file?

21 MR. SPIELMAN: Judge, that's what I was  
22 saying. If we want to call it five hours, just the  
23 preparation of this motion, the receipt of Ms. Curtis'  
24 response, the preparation for the hearing and the  
25 appearance here at the hearing, we could call that five



1 hours.

2 THE COURT: All right. And I believe you  
3 also requested in addition or in the alternative to  
4 further -- Ms. Curtis from making further filings in the  
5 federal court?

6 MR. SPIELMAN: That's correct, Judge; I  
7 would hope that although Ms. Curtis had been on the  
8 phone with Judge Hoyt and got that ruling or that  
9 instruction from him that maybe the injunction wouldn't  
10 be necessary. But, sure, yes. I mean, I do think, I do  
11 think as many times as we need to say that the case is  
12 closed, do not file anything in it, I mean, certainly if  
13 past predicts the future, it can't hurt to have an  
14 injunction to that effect.

15 THE COURT: All right. Anything further,  
16 Counsel?

17 MR. SPIELMAN: No, thank you, Judge.  
18 Thank you for indulging me.

19 THE COURT: Ms. Curtis?

20 MS. CANDACE CURTIS: Yes, Your Honor.

21 THE COURT: Would you like to respond,  
22 please?

23 ARGUMENT BY MS. CANDACE CURTIS:

24 MS. CANDACE CURTIS: I've answered Mr.  
25 Spielman in writing; so, my position is a matter of



1 record. And also, for the record, no one has even  
2 replied to my pleading in this court.

3 THE COURT: Do you recall having a  
4 telephone hearing with Judge Hoyt in federal court in  
5 reference to --

6 MS. CANDACE CURTIS: Yes, Your Honor, and  
7 I prefaced the conversation with the fact that it was an  
8 ex parte communication, and he simply corrected my  
9 misunderstanding in which I thought the judge who had  
10 issued an injunctive order would be the one to uphold  
11 the order, and he informed me that that was incorrect  
12 and that when he issued the remand order, it says in  
13 there that "It's further ordered that all orders  
14 rendered by this Court shall carry the same force and  
15 effect during the remand that they would have if the  
16 remand had not been ordered." And this injunctive order  
17 was filed in the probate court on February 6th, 2015,  
18 along with the report of master.

19 THE COURT: So, did you understand from  
20 Judge Hoyt that you were not to file anything further in  
21 that federal court case ending in 592?

22 MS. CANDACE CURTIS: What he said was,  
23 "mandamus."

24 THE COURT: I apologize, I couldn't  
25 understand.

1 MS. CANDACE CURTIS: What he suggested was  
2 "mandamus."

3 MR. SPIELMAN: Maybe she's trying to say  
4 "mandamus"?

5 MS. CANDACE CURTIS: Mandamus. Okay.  
6 Excuse me.

7 THE COURT: Did he tell you that that 592  
8 case was closed and all matters were transferred to the  
9 probate court?

10 MS. CANDACE CURTIS: Yes, Your Honor, he  
11 did.

12 THE COURT: All right. So, with that  
13 understanding, do you know not to file anything further  
14 in the Federal Case 592?

15 MS. CANDACE CURTIS: Yes, Your Honor, I  
16 do.

17 COURT'S RULING:

18 THE COURT: All right. I'm going to take  
19 this matter under advisement, and I will -- if you want  
20 to issue -- send me a proposed order, Mr. Spielman.

21 Ms. Curtis, if you have a proposed order  
22 you want to send to me - you're welcome to do that as  
23 well; and I'll review the record, argument of counsel,  
24 I'll reread your pleading, Ms. Curtis, as well as the  
25 statement that you've told me what Judge Hoyt told you,

1 and I'll get back with everybody.

2 MR. SPIELMAN: Your Honor, one point, I'm  
3 sorry.

4 First of all, I apologize if I did not  
5 send in an order. That is a mistake on my part. I will  
6 get you what you've asked for.

7 Number two is - would the Court -- like I  
8 said, I'm almost positive there is some kind of either a  
9 docket entry or a written order of some sort from Judge  
10 Hoyt following the telephonic conference in 2019. I'm  
11 happy to confirm that and send that in or if I'm wrong,  
12 I will send an email that says --

13 THE COURT: That's fine. But admission of  
14 a party opponent, she's acknowledged that the judge told  
15 her not to file anything else.

16 MR. SPIELMAN: And then the third thing,  
17 just for clarification purposes. I guess I'm wondering  
18 if Ms. Curtis would confirm for the Court, and for us,  
19 that what she wants you to read in response to all of  
20 this is the document that she filed that's got a pretty  
21 long title: Response To Fiduciary's Application For The  
22 Beneficiary To Be Held In Contempt For Seeking To  
23 Enforce The Injunction Commanding The Trustee To Perform  
24 Fiduciary Duty Owed To The Beneficiary Petition For  
25 Partial Summary Or Declaratory Judgment.



1                   If that's the document that she's  
2 referring to, then I think we have all sorts of problems  
3 depending on what the Court is going to do with this  
4 after the Court reviews it.

5                   THE COURT: Well, that's the document you  
6 wanted me to review, right, Ms. Curtis?

7                   MS. CANDACE CURTIS: Yes, Your Honor, it  
8 is.

9                   THE COURT: All right. I've looked at it  
10 once. I'll be glad to look at it again. And at this  
11 time, I'm going to end this hearing, and y'all are  
12 excused. I'll be back in touch. Please provide me with  
13 proposed orders.

14                  MR. REED: Your Honor, real quick before  
15 we end this hearing.

16                  We previously came down - I know this  
17 isn't before you, but since we're all here, I wanted  
18 some guidance on how you want to handle this in the  
19 future - on a request for a representative of the estate  
20 to be appointed for my 403 case, and I know we got some  
21 subsequent orders after that hearing, but none of them  
22 touched on that.

23                  THE COURT: Who is your client, again?

24                  MR. REED: I'm in the 403 case - the  
25 malpractice part. And so, my client is, frankly, in

1 limbo until this Court appoints somebody in charge of  
2 the estate. And so, we've had several hearings on this  
3 so far with no orders; and frankly, it's probably the  
4 biggest issue for my client because I can't proceed  
5 forward or backwards or any way without someone.

6 THE COURT: And if I understand it right,  
7 your client was the representative of the estate; he has  
8 resigned.

9 MS. BAYLESS: Right.

10 THE COURT: And your two clients want to  
11 be that or one of them wants to be that.

12 MR. SPIELMAN: I think "wants to" might be  
13 a strong term. I think the substance of it goes like  
14 this, Judge:

15 Carl Brunsting was the executor of the  
16 estate and filed the lawsuit against the law firm in  
17 that capacity because he was the executor of the estate  
18 under the Will. When he resigned, the Will then says  
19 that my client, Amy, is next, and then Ms. Curtis is  
20 underneath her. There are, then, the competing  
21 applications between Amy and Ms. Curtis about taking  
22 over the role of Mr. Brunsting.

23 THE COURT: As successor executor?

24 MR. SPIELMAN: As successor executor.

25 Somewhere in this process, we have also

1 brought up the question of whether or not that lawsuit  
2 is an asset of the estate because if that lawsuit is an  
3 asset of the estate, then it's really part of the Trust  
4 which means it's now Amy and Anita as the current  
5 co-trustees - that would be the people with the ability  
6 to do what Mr. Reed is so desperately looking for which  
7 is - negotiate some way out of that for his client and  
8 then --

9 MS. CANDACE CURTIS: I believe that is  
10 correct --

11 MR. SPIELMAN: I'm sorry?

12 THE COURT: Yes, Ms. Curtis?

13 MS. CANDACE CURTIS: I believe that Mr.  
14 Spielman is correct.

15 THE COURT: Thank you.

16 MR. SPIELMAN: Then I'm going to stop  
17 talking.

18 MR. REED: Well, that's a first.

19 THE COURT: And if I remember from our  
20 previous hearings, you don't want to be the  
21 representative.

22 MS. CAROLE BRUNSTING: I did want to be  
23 the rep --

24 THE COURT: Oh, you do. But other people  
25 object to that; is that right?



1 MR. SPIELMAN: I don't know that any  
2 people officially objected, but I don't think that's --  
3 that's certainly not what Mom and Dad wanted when they  
4 wrote their documents, and I don't think it would be  
5 productive --

6 MS. CAROLE BRUNSTING: I have the --

7 MR. SPIELMAN: -- in large part  
8 because --

9 THE COURT: I'm sorry, ma'am?

10 MS. CANDACE CURTIS: It think it's a  
11 little presumptuous, Mr. Spielman, for you to say what  
12 Mom and Dad wanted.

13 THE COURT: Ms. Curtis, Ms. Curtis let me  
14 swear in your sister if I could.

15 (Ms. Carole Brunsting sworn)

16 MS. CAROLE BRUNSTING: I believe he made a  
17 comment at one time that if I had supported my siblings  
18 that they agreed that I could take over that role, that  
19 was something to consider.

20 THE COURT: And this is to take over as  
21 the successor executor?

22 MR. SPIELMAN: I believe that's --

23 THE COURT: Is that what we're talking  
24 about?

25 MR. REED: I'm not sure that it's that



1 exact position; I think it would be -- I'm a little  
2 unfamiliar with the probate world, but what I understand  
3 it to be is a representative of the estate. So, if it's  
4 a successor --

5 THE COURT: I mean, she's not named in the  
6 Will; so, if we did that, it would have to be in some  
7 administrator status.

8 MS. CAROLE BRUNSTING: This is something  
9 we've been talking about this for years and years and  
10 years. It's something I would really like to go ahead  
11 and make the decision so I --

12 THE COURT: Is that motion before the  
13 Court? Not today, but is it, generally, before the  
14 Court?

15 MR. REED: It hasn't. Well, it's been  
16 vaguely pled in various motions, and that's why --

17 THE COURT: Well, if y'all want to, you  
18 know, if somebody wants to bring it to the Court, you  
19 know, and --

20 MR. REED: The problem is --

21 THE COURT: -- have a hearing on it, we  
22 can do that. I'm not going to do it today, I can tell  
23 you that.

24 MR. SPIELMAN: I don't think there's any  
25 motion by Carole Brunsting seeking to take --

1 MS. CAROLE BRUNSTING: I can file a motion  
2 if I need to.

3 MR. SPIELMAN: And we can deal with that  
4 at that time.

5 THE COURT: And the -- between y'all, you  
6 can't reach a settlement? Have you tried to reach a  
7 settlement on an appointment of a person?

8 MR. SPIELMAN: I mean, the closest that  
9 we've gotten to anything was just now when Ms. Curtis  
10 said she agreed with me about what would happen if it  
11 was, in fact, an asset of the estate - it would belong  
12 in the Trust. So, that's, of course, the other question  
13 is - if that's the correct analysis, then there really  
14 isn't a need for an executor of the estate because I  
15 think the thing that everybody would agree on is that  
16 but for that lawsuit, there is nothing else as an asset  
17 of the estate; anything else, is in the Trust. And so,  
18 if that's where that lawsuit belongs --

19 THE COURT: Then we have a continuing  
20 argument over who's the proper trustee of the Trust; is  
21 that correct?

22 MR. SPIELMAN: Because of the qualified  
23 beneficiary designations and the power of -- I'll  
24 butcher the terms --

25 THE COURT: That's the substance of the

1 malpractice lawsuit, is it?

2 MR. SPIELMAN: Correct.

3 THE COURT: She did some work to appoint  
4 somebody - your clients - as co-trustees and somebody  
5 thinks that's not correct; and hence, we go forward on  
6 that one.

7 MR. SPIELMAN: And we just finished the  
8 deposition of the drafter of those documents - Ms.  
9 Freed - yesterday here at the courthouse. Thanks  
10 everyone for their hospitality. And now I think we  
11 have, at least I do, I have a much better clearer and  
12 validating understanding of why Amy and Anita are, in  
13 fact, properly named. I suspect Ms. Bayless would  
14 disagree but that is also not for --

15 MS. BAYLESS: You're right.

16 MR. SPIELMAN: -- for today's proceeding.

17 MR. REED: And from my standpoint, that's  
18 a battle between the siblings. My client has been sued  
19 for the last seven years and wants to move forward with  
20 defending her name in this lawsuit, and she can't until  
21 this court appoints somebody to be the plaintiff of that  
22 lawsuit.

23 MS. BAYLESS: I'll bring one other point.

24 I think it will behoove everyone to try to  
25 settle everything; although, that sounds ambitious, I



1 understand. But I just learned today there was to be an  
2 appraisal of the Iowa farm property which was supposed  
3 to facilitate some discussions about settlement; and  
4 apparently, that hasn't been initiated yet. I don't  
5 know if you have an estimate of how long it's going to  
6 take, but I don't know if we would have the information  
7 to do that right now if we wanted to be particularly  
8 productive.

9 THE COURT: Well, and I remember this  
10 case. It reminded me of a Chinese finger puzzle - once  
11 you put your finger in it, you can't get your finger  
12 out.

13 MS. BAYLESS: Wacamole-kind-of.

14 THE COURT: Well, if y'all want to try to  
15 find somebody that you can agree on to be either a  
16 successor executor or a administrator --

17 MS. BAYLESS: Temporary administrator.

18 THE COURT: -- which would be a title that  
19 somebody who isn't named as an executor would have to  
20 utilize - I'm all for it. If y'all can't get an  
21 agreement on it, then I think we do need to get somebody  
22 appointed, and the Court can use its inherent power to  
23 get that accomplished if y'all can't agree among  
24 yourselves. I think it's time for y'all to - like an  
25 old truck driver said - shift or get off the lot, you

1 know.

2 MR. SPIELMAN: Is that exactly what he  
3 said, Your Honor?

4 MR. JADLOSKI: Judge, if I might ask just  
5 a point of clarification.

6 You said you'd like to see us get someone  
7 appointed. As Mr. Spielman explained earlier - there's  
8 the possibility that we don't need someone appointed if  
9 it's an as -- are we saying that someone becomes the  
10 person that whether it be ...

11 THE COURT: You know, if that person is  
12 representing the estate, they may help make the  
13 determination of whether it's an asset of the estate or  
14 not. I mean, I think what happens in cases like this is  
15 everybody tries to put pieces of it in their mouth and  
16 swallow the whole thing and we choke on it. And I think  
17 we're better off just going ahead and swallowing a  
18 little piece first. And let's, you know, if somebody  
19 wants to bring something forward to me, I'll be glad to  
20 deal with it; otherwise, see if you guys can actually  
21 get somebody - and this includes you, of course, Ms.  
22 Curtis - because you are second in the pecking order on  
23 successor executors. Let's see what we can get done. I  
24 mean, I'm glad to work with y'all on that.

25 MR. SPIELMAN: Judge, just thinking aloud



1 real quick. So, I would not suggest him at this point  
2 because of some things, but your approach right now is  
3 very similar to what Judge Comstock and Judge Butts did  
4 or what was maybe their intention in naming Mr. Lester  
5 at one point to do some work as - and I always butcher  
6 his position - temporary administrator or something  
7 along those lines.

8                   But, you know, we've heard a lot so far in  
9 some of the commentary of the siblings themselves that  
10 the attorneys making the decisions and the Courts making  
11 the decisions. We didn't know Elmer and Nelva. We  
12 don't know their family other than as the lawyers. I'm  
13 wondering out loud, without having spoken to my client  
14 about it, if the siblings might know of a family friend,  
15 somebody that they all trust, somebody that knew Elmer  
16 and Nelva, if there might be - rather than Frost Bank  
17 who is going to charge a crazy amount of money to do  
18 this - if there might be a family friend that might  
19 garner some confidence and some agreement amongst the  
20 siblings if they had ideas to submit possible names. I  
21 certainly wouldn't mind asking my client to do something  
22 like that if there was such a person and potentially  
23 even recommending that we let such a person do this if  
24 they were inclined to do so.

25                   MS. CAROLE BRUNSTING: And I realize I'm

1 pro se, but I've done a lot of work and I've really done  
2 my best to contact my siblings and I really believe that  
3 left on their own to make the decision and not be  
4 influenced by their attorneys, that they would agree  
5 that - because I've stayed so involved, I've attended  
6 every single hearing, I've been involved as much as I  
7 possibly can - that I would be the logical choice; and I  
8 do realize I would have to have legal counsel which I've  
9 already -- I already know the legal counsel that I would  
10 retain.

11 THE COURT: Well, today is beyond the  
12 power of the Court to just, you know, snap my fingers  
13 and say that, but it's something to consider. I'm going  
14 to ask y'all to work seriously to try and come up with  
15 something and someone, and if you can't make an  
16 agreement, then let's have a hearing on that, and I'll  
17 appoint somebody.

18 MS. CAROLE BRUNSTING: I have one other  
19 concern is - every time we appoint an outside party, it  
20 ends up costing the Trust, in my opinion, quite a bit of  
21 money, and it also causes a delay because they want six  
22 months to a year and then we're delayed again where I  
23 know that I can get started immediately.

24 THE COURT: Well --

25 MS. CAROLE BRUNSTING: So, I can file a



1 motion --

2 THE COURT: All right.

3 MS. CAROLE BRUNSTING: -- to do that.

4 THE COURT: All right. Y'all are excused.

5 Thank you, Ms. Curtis. I'm going to disconnect.

6 MS. CANDACE CURTIS: Thank you.

7 THE COURT: Bye-bye.

8 Y'all have a good weekend.

9 MR. SPIELMAN: Thank you.

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1 The State of Texas )  
2 County of Harris )

3  
4 I, Hipolita Lopez, Official Court Reporter in and  
5 for the Probate Court Number Four of Harris County,  
6 State of Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription of  
8 all portions of evidence and other proceedings requested  
9 in writing by counsel for the parties to be included in  
10 this volume of the Reporter's Record, in the  
11 above-styled and numbered cause, all of which occurred  
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
14 truly and correctly reflects the exhibits, if any,  
15 admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$240.50.  
18 and was paid by Ms. Candace Curtis.

19 WITNESS MY OFFICIAL HAND this the 18th day of  
20 July, 2019.

21  
22 /s/ Hipolita G. Lopez  
HIPOLITA G. LOPEZ, Texas CSR #6298  
23 Expiration Date: 12-31-20  
Official Court Reporter  
24 Probate Court Number Four  
Harris County, Texas  
25 201 Caroline, 7th Fl.  
Houston, Texas 77002

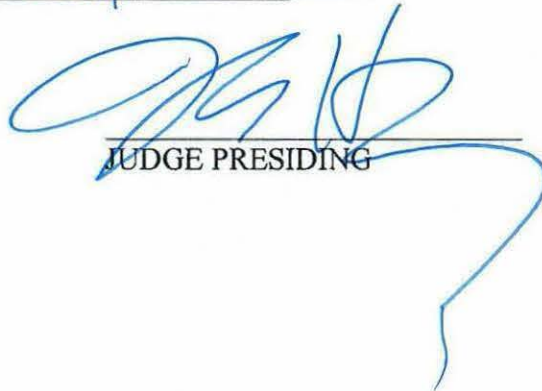




2. The Court FURTHER ORDERS, ADJUDGES and DECREES that as punishment for this contempt, Candace Curtis is fined the sum of \$ 500.00 , payable to Diane Trautman, Harris County Clerk, Indigent Bond on or before the 1<sup>st</sup> day of September 2019; Program, Registry No. 28190  
at 201 Caroline, 8<sup>th</sup> Floor, Room 800  
Houston TX 77002
3. The Court, after considering the description of services, time, fees and costs described in the Affidavit of Neal E. Spielman, ~~totaling \$8,690.00 (representing \$7,505.00 @ 19 hrs x \$395.00/hr through and including the filing of the Motion and \$1,185.00 @ 3 hrs x \$395.00/hr in additional fees and expenses incurred after the filing of the Motion)~~ FURTHER ORDERS, ADJUDGES and DECREES that as further punishment for this contempt and/or as a sanction conferred in accordance with its own initiative and inherent power and/or under CPRC §9.012, CPRC §10.004 and/or TRCP 13, Curtis must pay to Amy Brunsting the sum of \$ 1,975.00 to Amy Brunsting in care of her attorneys – Griffin & Matthews – at 1155 Dairy Ashford, Suite 300, Houston, Texas 77007 on or before the 1<sup>st</sup> day of September, 2019

FURTHER, in so far as Curtis's Response attempts to seek affirmative relief (including without limitation within the "Conclusion and Prayer" appearing on Page 6 of Curtis's Response) all such affirmative relief is DENIED.

SIGNED ON THIS THE 23 DAY OF July, 2019.

  
JUDGE PRESIDING

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 3<sup>rd</sup> day of July 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

Attorneys for Candace Kunz-Freed:

Zandra Foley/Cory S. Reed  
Thompson, Coe, Cousins & Irons, L.L.P.  
One Riverway, Suite 1400  
Houston, Texas 77056  
*Via E-Mail: [zfoley@thompsoncoe.com](mailto:zfoley@thompsoncoe.com)*  
*Via E-Mail: [creed@thompsoncoe.com](mailto:creed@thompsoncoe.com)*

Candace Louise Curtis – Pro Se:

Candace Louise Curtis  
*Via E-Mail: [occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)*

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless  
Bayless & Stokes  
*Via E-Mail: [bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)*

Carole Ann Brunsting – Pro Se:

Carole Ann Brunsting  
*Via E-Mail: [cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)*

Attorneys for Anita Kay Brunsting:

Steve Mendel/Tim Jadloski  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
*Via E-Mail: [steve@mendellawfirm.com](mailto:steve@mendellawfirm.com)*  
*[tim@mendellawfirm.com](mailto:tim@mendellawfirm.com)*

  
NEAL E. SPIELMAN

ESTATE OF NELVA E. BRUNSTING,  
DECEASED

IN PROBATE COURT

CARL HENRY BRUNSTING,  
INDEPENDENT EXECUTOR OF THE  
ESTATES OF ELMER H. BRUNSTING  
& NELVA E. BRUNSTING

NUMBER FOUR (4) OF

v.

CANDACE L. KUNZ-FREED &  
VACEK & FREED, P.L.L.C.,  
F/K/A THE VACEK LAW FIRM, P.L.L.C.

HARRIS COUNTY, TEXAS

**MEDIATION ORDER**

On January 10, 2020, the parties appeared before the Court on the Vacek Defendants, Candace L. Kunz-Freed, and Vacek & Freed, P.L.L.C., motion to appoint a third party representative. With the exception of Carole Brunsting, who was Pro Se, all the other parties appeared through counsel.

For purposes of this Order, the term "Parties" means Candace Curtis, Carl Brunsting, Carole Brunsting, Anita Brunsting, and Amy Brunsting, individually and in all other capacities held by them, if any, and the "Vacek Defendants."

In addition to the Vacek Defendants' motion, there was a general discussion of the status of other issues.

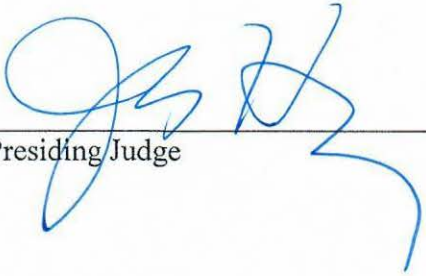
Based on the arguments of the Parties, it is, therefore, ORDERED as follows:

1. Unless the Parties agree otherwise, and notify the Court of any such agreement, the Parties shall mediate their disputes with the Hon. Mark Davidson. The mediation shall be scheduled with the mediator within fourteen (14) days from the date this Order is signed, and the mediation shall occur on or before sixty (60) days from the date this Order is signed, unless Judge Davidson's mediation calendar does not have an available date within that time frame, in which event the mediation shall be scheduled as soon as Judge Davidson is available.
2. The Co-Trustees, Anita Brunsting and Amy Brunsting, shall serve as the representative, for purposes of the mediation, to negotiate and/or settle all claims against the Vacek Defendants. Such authority will include, but not be limited to, settlement on any terms and/or conditions as the Co-Trustees consider reasonable, including, but not limited to, dismissal with prejudice of any and all claims against the Vacek Defendants.



3. Any settlements reached at mediation by the Co-Trustees with the Vacek Defendants shall be binding on every Brunsting Party.
4. If the Co-Trustees do not settle all claims against the Vacek Defendants at mediation, the authority of the Co-Trustees to prosecute, defend and/or settle the claims against the Vacek Defendants will end and the Court will hold a hearing to determine whether the Co-Trustees will be appointed thereafter to serve as representatives to prosecute, defend, and/or settle the claims against the Vacek Defendants, or whether a different representative should be appointed.
5. The Court acknowledges that on January 16, 2020, Candace Curtis filed an objection to the Co-Trustees serving as the representatives addressing claims against the Vacek Defendants. If the case is not resolved at mediation, any other objection to the continuation of authority of the Co-Trustees may be filed prior to the hearing on that issue.
6. The Bill of Review filed by Candace Curtis is ABATED pending the conclusion of the mediation, or until further order of the Court.

SIGNED on this February 21 \_\_\_\_\_, 2020.

  
\_\_\_\_\_  
Presiding Judge



AGREED & APPROVED BY  
THE FOLLOWING PARTIES

Stephen A. Mendel  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, TX 77079  
O: 281-759-3213  
F: 281-759-3214  
E: [info@mendellawfirm.com](mailto:info@mendellawfirm.com)

Attorney for Co-Trustee, Anita Brunsting

Neal Spielman  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, TX 77079  
O: 281-870-1124  
F: 281-870-1647  
E: [nspielman@grifmatlaw.com](mailto:nspielman@grifmatlaw.com)

Attorney for Co-Trustee, Amy Brunsting

Bobbie G. Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098  
O: 713-522-2224  
F: 713-522-2218  
E: [bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)

Attorney for Drina Brunsting,  
Alleged Attorney in Fact for Carl Brunsting

Carole Ann Brunsting  
5822 Jason St.  
Houston, Texas 77074  
E: [cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)

Pro Se

Zandra Foley/Cory S. Reed  
Thompson, Coe, Cousins & Irons, LLP  
One Riverway, Suite 1400  
Houston, Texas 77056  
O: 713-403-8210  
E: [creed@thompsoncoe.com](mailto:creed@thompsoncoe.com)

Attorney for Candace Kunz-Freed  
& Vacek & Freed, P.L.L.C.

FILED  
08/17/2020 12:17:22 PM  
Chris Hollins  
County Clerk  
Harris County, Texas  
dvasquez

NO. 412,249-401

ESTATE OF  
NELVA E. BRUNSTING,  
DECEASED  
\_\_\_\_\_

CARL HENRY BRUNSTING, Et Al

v.

ANITA KAY BRUNSTING, Et Al

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IN PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

**Order Regarding Plaintiff Carl Brunsting's  
Partial Motion for Summary Judgment**


Before the Court is the Plaintiff's, Carl Brunsting's, motion for partial summary judgment. Having considered the motion, responses, and arguments of counsel, it is, therefore:

ORDERED that the Court will defer its ruling on the motion pending further briefing, if any, by the parties.

It is ORDERED that Anita Brunsting, Amy Brunsting, Carole Brunsting, Candace Curtis, Vacek & Freed, PLLC, and/or Candace Kunz-Freed shall have until September 10, 2020, to file such responses, replies, and/or other forms of briefing as they may desire regarding the issues raised in the motion for partial summary judgment.

~~Carl Brunsting~~ / all parties  
It is ORDERED that ~~Carl Brunsting~~ shall have until September 25, 2020, to file a reply to any responses, replies, and/or other forms of briefing filed by the other parties.

SIGNED this August \_\_\_\_\_, 2020.



\_\_\_\_\_  
Presiding Judge

CC

Signed on: 08/13/2020

2:29:55 PM

<p>APPROVED AS TO FORM:</p> <p><i>// s // Stephen A. Mendel</i></p> <hr/> <p>Stephen A. Mendel (13930650)  The Mendel Law Firm, L.P.  1155 Dairy Ashford, Suite 104  Houston, TX 77079  O: 281-759-3213  F: 281-759-3214  E: <a href="mailto:info@mendellawfirm.com">info@mendellawfirm.com</a></p> <p>Attorney for Defendant Co-Trustee,  Anita Brunsting</p>	<p>APPROVED AS TO FORM:</p> <p><i>// s // Neal Spielman</i></p> <hr/> <p>Neal Spielman (0079467)  Griffin &amp; Matthews  1155 Dairy Ashford, Suite 300  Houston, TX 77079  O: 281-870-1124  F: 281-870-1647  E: <a href="mailto:nspielman@grifmatlaw.com">nspielman@grifmatlaw.com</a></p> <p>Attorney for Defendant Co-Trustee,  Amy Brunsting</p>
<p>TENDERED FOR REVIEW BY  CO-TRUSTEE ANITA BRUNSTING,  BUT NO RESPONSE AS TO FORM:</p> <p>Candace L. Schwager (24005603)  Schwager Law Firm  2210 Village Dale Ave.  Houston, TX 77059  O: 832-857-7173  E: <a href="mailto:candiceschwager@outlook.com">candiceschwager@outlook.com</a></p> <p>Attorney for Plaintiff Candace Louis Curtis</p>	<p>APPROVED AS TO FORM:</p> <p><i>// s // Bobbie G. Bayless</i></p> <hr/> <p>Bobbie G. Bayless (01940660)  Bayless &amp; Stokes  2931 Ferndale  Houston, Texas 77098  O: 713-522-2224  F: 713-522-2218  E: <a href="mailto:bayless@baylessstokes.com">bayless@baylessstokes.com</a></p> <p>Attorney for Plaintiff Carl Brunsting</p>
<p>APPROVED AS TO FORM:</p> <p><i>// s // Carole Ann Brunsting</i></p> <hr/> <p>Carole Ann Brunsting  5822 Jason St.  Houston, Texas 77074  E: <a href="mailto:cbrunsting@sbcglobal.net">cbrunsting@sbcglobal.net</a></p> <p>Pro Se Party</p>	<p>TENDERED FOR REVIEW BY  CO-TRUSTEE ANITA BRUNSTING,  BUT NO RESPONSE AS TO FORM:</p> <p>Cory S. Reed (24076640)  Thompson, Coe, Cousins &amp; Irons, LLP  &amp; Vacek &amp; Freed, P.L.L.C.  One Riverway, Suite 1400  Houston, Texas 77056  O: 713-403-8210  E: <a href="mailto:creed@thompsoncoe.com">creed@thompsoncoe.com</a></p> <p>Attorney for Defendant Candace Kunz-Freed  &amp; Vacek &amp; Freed, P.L.L.C.</p>



**Chris Hollins**  
COUNTY CLERK, HARRIS COUNTY, TEXAS  
PROBATE COURTS DEPARTMENT

August 17, 2020

Stephen A. Mendel  
1155 Dairy Ashford, Suite 104  
Houston, TX 77079

RE: In the Estate of: Nelva E. Brunsting, Deceased  
Cause No.: 412249-401

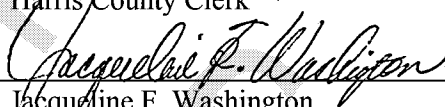
Dear Mr. Mendel,

In compliance with Rule 306 (a) of the Texas Rules of Civil Procedures, we herewith notify you that on August 13, 2020, the Honorable Judge Honorable James Horwitz, in County Probate Court No. 4, signed an **Order Regarding Plaintiff Carl Brunsting's Partial Motion for Summary Judgment**, in the above styled estate.

If you have any further questions regarding this matter, please feel free to contact Sarah Cuellar at 713-274-8585.

Sincerely,

Chris Hollins,  
Harris County Clerk

  
Jacqueline F. Washington  
Department Head  
Probate Courts Department  
(713) 274-8585

CC: Bobbie G. Bayless  
2931 Ferndale  
Houston, TX 77098

CC: Carole Ann Brunsting  
5822 Jason St.  
Houston, TX 77074

CH/jfw/sc

P.O. Box 1525 • Houston, TX 77251-1525 • (713) 274-8585

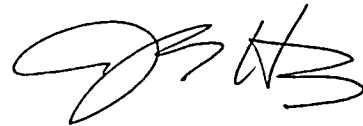
[www.cclerk.hctx.net](http://www.cclerk.hctx.net)



6. \_\_\_\_\_ **DISPOSITIVE MOTIONS AND PLEAS.** Must be heard as follows:
- (a) 12/31/2021 Dispositive motions or pleas subject to an interlocutory appeal must be heard by this date.
- (b) 02/07/2022 Summary Judgment motions not subject to an interlocutory appeal must be heard by this date.
- (c) 08/06/2021 Rule 166a(i) motions may not be filed before this date.
7. 01/14/2022 **CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.
8. 10/15/2021 **PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleading
9. 02/21/2022, by Noon **JOINT PRE-TRIAL ORDER.** Parties shall provide to the Court, by fax, email, or delivery to our offices, a copy of the signed Agreed Joint Pretrial Order by this date. Parties shall bring the original Agreed Joint Pretrial Order to the Pretrial Conference.
10. 02/24/2022, at 10 a.m. **PRETRIAL CONFERENCE.** Parties shall be prepared to discuss all aspects of trial with the Court at this time. Parties shall file and exchange (if jury trial) proposed jury charge questions, instructions and definitions at this conference. Parties should be prepared to mark exhibits. Failure to appear will be grounds for dismissal for want of prosecution.
11. 04/04/2022 at 9:00 a.m. **TRIAL.**

Signed this \_\_\_\_\_ day of June 2021.

Signed on: 06/10/2021  
3:08:04 PM



cc Judge Presiding

NO. 412,249-401

ESTATE OF § IN PROBATE COURT  
NELVA E. BRUNSTING, §  
DECEASED § NUMBER FOUR (4) OF  
§ HARRIS COUNTY, TEXAS  
§

CARL HENRY BRUNSTING, et al §  
V. §  
ANITA KAY BRUNSTING, et al §

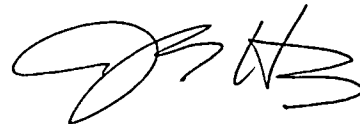
**Order Denying Plaintiff's  
Motion for Partial Summary Judgment**

Before the Court is Carl Henry Brunsting's Motion for Partial Summary Judgment. Having considered the motion, the responses, the replies, the evidence, the Court's file, and the arguments of counsel, if any, the Court finds the motion should be DENIED. It is, therefore,

ORDERED that Carl Henry Brunsting's Motion for Partial Summary Judgment is ~~DENIED~~ **urg**ing that the Qualified Beneficiary Designation be declared void is DENIED.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_ 2020.

Signed on: 11/12/2021  
2:18:01 PM



\_\_\_\_\_  
Judge Presiding

ENTRY REQUESTED:

Stephen A. Mendel (13930650)  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
O: 281-759-3213  
F: 281-759-3214  
[steve@mendellawfirm.com](mailto:steve@mendellawfirm.com)

Attorneys for Defendant,  
ARC Designs, Inc.



ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

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CARL HENRY BRUNSTING, Et Al	§
	§
V.	§
	§
ANITA KAY BRUNSTING, Et Al	§

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**Plaintiff Carl Brunsting’s & Defendant/Co-Trustees’  
Motion to Sever**

Plaintiff, Carl Brunsting, and Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting (collectively the “Severing Parties”), file this motion to sever their respective claims against each other from the above-entitled and numbered cause (the “401 Case”), and would respectfully show the Court as follows:

1. Given the totality of the litigious nature of Candace Curtis, the Severing Parties see no prospect of settlement regarding their respective claims against each other without a severance from the 401 Case.
2. A severance would promote judicial economy. More specifically, this case is set for a two-week trial starting April 4, 2022. The Severing Parties believe the 401 Case could probably be tried in one week, especially given the fact that Curtis has no evidence to refute the Defendant/Co-Trustees pending motion for summary judgment against Curtis.
3. In the event the Severing Parties are unable to settle their respective claims against each other, then Severing Parties will seek an agreed docket control order for the severed case.

The Severing Parties request that the Court sever the claims of Plaintiff, Carl Brunsting, against Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting, and those of the Defendant/Co-Trustees against Plaintiff, Carl Brunsting, into a separate cause number, and grant the Severing Parties such other and further relief to which they may be entitled.

Respectfully submitted,

// s // Stephen A. Mendel

---

Stephen A. Mendel (13930650)  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, TX 77079  
O: 281-759-3213  
F: 281-759-3214  
E: [info@mendellawfirm.com](mailto:info@mendellawfirm.com)

Attorneys for Anita Brunsting

&

Respectfully submitted,

// s // Neal Spielman

---

Neal Spielman (00794678)  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, TX 77079  
O: 281-870-1124  
F: 281-870-1647  
E: [nspielman@grifmatlaw.com](mailto:nspielman@grifmatlaw.com)

Attorney for Amy Brunsting

## **Certificate of Conference**

Notice of intent to file this motion was provided on December 21, 2021, to Candace L. Curtis and Carole Brunsting. Plaintiff Carl Brunsting agrees with the filing of this motion and the relief sought. Candace L. Curtis and Carole Brunsting are presumed to oppose the relief sought, since they did not join in the filing of this motion.

// s // Stephen A. Mendel

---

Stephen A. Mendel

## **Certificate of Service**

I certify that a true and correct copy of the foregoing instrument was served on the following:

Zandra Foley/Cory S. Reed  
Thompson, Coe, Cousins & Irons, LLP  
One Riverway, Suite 1400  
Houston, Texas 77056  
O: 713-403-8210  
E: [creed@thompsoncoe.com](mailto:creed@thompsoncoe.com)

Attorneys for Candace Kunz-Freed  
& Vacek & Freed, P.L.L.C.

Neal Spielman  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, TX 77079  
O: 281-870-1124  
F: 281-870-1647  
E: [nspielman@grifmatlaw.com](mailto:nspielman@grifmatlaw.com)

Attorney for Co-Trustee, Amy Brunsting

Bobbie G. Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098  
O: 713-522-2224  
F: 713-522-2218  
E: [bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)

Attorney for Drina Brunsting,  
Alleged Attorney in Fact for Carl Brunsting

Candace L. Schwager (24005603)  
Schwager Law Firm  
2210 Village Dale Ave.  
Houston, TX 77059  
O: 832-857-7173  
E: [candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

Attorney for Candace Louise Curtis

Carole Ann Brunsting  
5822 Jason St.  
Houston, Texas 77074  
E: [cbrunsting@sbcglobal.net](mailto:cbrunsting@sbcglobal.net)

Pro Se

via eService, email, telefax, or first-class mail, on this January 6, 2022.

// s // Stephen A. Mendel

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Stephen A. Mendel

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REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. \_\_\_\_\_

THE ESTATE OF:	)	IN THE PROBATE COURT
NELVA E. BRUNSTING,	)	NUMBER 4 (FOUR) OF
DECEASED	)	HARRIS COUNTY, TEXAS

\* \* \* \* \*

CAROLE A. BRUNSTING'S EMERGENCY MOTION  
FOR A TRUST DISTRIBUTION

\* \* \* \* \*

On the 6th day of January, 2022, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable James Horwitz, Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand

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

## ATTORNEY FOR CARL BRUNSTING:

Ms. Bobbie G. Bayless  
BAYLESS & STOKES  
Attorney at Law  
SBN 01940600  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
bayless@baylessstokes.com

## ATTORNEY FOR DEFENDANT AMY BRUNSTING:

Mr. Neal E. Spielman  
GRIFFIN & MATTHEWS  
Attorney at Law  
SBN 00794678  
1155 Dairy Ashford  
Suite 300  
Houston, Texas 77079  
281.870.1124  
nspielman@grifmatlaw.com

## ATTORNEY FOR DEFENDANT ANITA BRUNSTING:

Mr. Stephen A. Mendel  
Attorney at Law  
THE MENDEL LAW FIRM, L.P.  
SBN 13930650  
1155 Dairy Ashford  
Suite 104  
Houston, Texas 77079  
281.759.3213  
steve@mendellawfirm.com

## ATTORNEY REPRESENTING VACEK &amp; FREED ET AL:

Mr. Cory S. Reed  
Attorney at Law  
THOMPSON, COE, COUSINS, & IRONS, LLP  
SBN 24076640  
One Riverway  
Suite 1400  
Houston, Texas 77056  
713.403.8213

1 ATTORNEY FOR CANDACE LOUISE CURTIS:  
2 Ms. Candice L. Schwager  
3 SCHWAGER LAW FIRM  
4 Attorney at Law  
5 SBN 24005603  
6 P.O. Box 580008  
7 Houston, Texas 77258  
8 832.315.8489  
9 candiceschwager@icloud.com

10 ALSO PRESENT:  
11 Ms. Carole Ann Brunsting  
12 5822 Jason  
13 Houston, Texas  
14 cbrunsting@sbcglobal.net  
15 713.560.6381

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VOLUME 1

(Carole A. Brunsting's Emergency Motion For A Trust Distribution)

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1 January 6, 2022 (WHEREUPON the following proceedings  
2 were conducted via Zoom and YouTube:)

3 PROCEEDINGS:

4 THE COURT: All right. Good afternoon,  
5 counsel. Can everybody hear me? I guess if you  
6 couldn't hear me, you're not going to respond.

7 Happy New Year to each of you.

8 What I show on my docket today is an  
9 Emergency Motion For Trust Distribution, and this is  
10 filed by Carole Brunsting, pro se.

11 For the record, let's have each attorney  
12 make an appearance and tell the Court who you represent.

13 MS. BAYLESS: Bobbie Bayless, Your Honor,  
14 on behalf of Carl Brunsting.

15 MR. MENDEL: Steve Mendel on behalf of  
16 Anita Brunsting, a Defendant and Co-Trustee.

17 MS. SCHWAGER: Candice Schwager on behalf  
18 of Candace Curtis.

19 MR. SPIELMAN: Neal Spielman on behalf of  
20 Amy Brunsting.

21 MR. REED: Cory Reed on behalf of Candace  
22 Kunz-Freed and her law firm.

23 MS. CAROLE BRUNSTING: And this is Carole  
24 Brunsting, pro se.

25 THE COURT: Okay. Now Ms. Brunsting, I've

1 read your emergency motion - it states that you were  
2 diagnosed with cancer on December 22nd, 2021, and  
3 treatment will begin at M.D. Anderson on January 3rd,  
4 2022; is that still a correct --

5 MS. CAROLE BRUNSTING: Yes.

6 THE COURT: Okay.

7 MS. CAROLE BRUNSTING: That is a correct  
8 statement.

9 THE COURT: And you are seeking to receive  
10 an emergency distribution in the amount of a hundred  
11 thousand dollars.

12 MS. CAROLE BRUNSTING: That's correct.

13 THE COURT: Okay. And let me ask the  
14 counsel for the current trustees - and any of the other  
15 attorneys - if you can tell me about the status of the  
16 assets of the Trust or the various Trusts at this time.

17 MR. MENDEL: Your Honor, this is Steve  
18 Mendel; I can do that.

19 THE COURT: All right. Go ahead.

20 STATEMENTS BY MR. MENDEL:

21 MR. MENDEL: I can give you a general  
22 idea. There is a Decedent's Trust and a Survivor's  
23 Trust, and the Decedent's Trust has a little over  
24 \$900,000 of liquid assets. The -- of that sum, about  
25 \$200,000 is sitting in a bank account, so that's the

1 most liquid.

2 With regard to the Survivor's Trust, there  
3 are two accounts - there's a checking and a savings -  
4 which total about \$432,000, and then there are assets  
5 that are in stocks, bonds, mutual funds and things like  
6 that.

7 The biggest asset - which is a non-liquid  
8 asset - is real estate which is valued at \$2.1 million.

9 THE COURT: And you can imagine how many  
10 cases I hear, but was there talk about selling a piece  
11 of property?

12 MR. MENDEL: "Yes" is the answer. The  
13 preliminary indication - unless it's changed - is that  
14 four or five people were on board with the sale of the  
15 real estate. And the one individual that wanted to hang  
16 onto the property was Carole Brun -- hang on to a share  
17 was Carole Brunsting.

18 THE COURT: So, in other words, the sale  
19 didn't happen?

20 MR. MENDEL: Sale has not happened; it has  
21 to proceed in a very cautious manner in order to  
22 mitigate against taxes.

23 THE COURT: So, not saying that Carole  
24 Brunsting would change her mind, but if she did, would  
25 there still be a willing buyer?



1 MR. MENDEL: At this time, the last time  
2 we checked - and it's been a few months - but it's  
3 currently being farmed, and the farmer that is farming  
4 the property has expressed an interest in acquiring it.  
5 So, yes, there appears to be a willing buyer.

6 THE COURT: And that would be an  
7 arm's-length transaction; it's not an insider or a party  
8 in this litigation?

9 MR. MENDEL: That's correct, arm's-length.

10 THE COURT: Okay. Now, the Survivor's  
11 Trust was, I assume, the money set aside for the  
12 surviving spouse?

13 MR. MENDEL: Well, the Decedent's Trust  
14 would also be taking care of the surviving spouse, and  
15 then the Survivor's Trust had assets to, yes, take care  
16 of the surviving spouse. The surviving spouse had  
17 access to - what I'll call - both sides of the entire  
18 trust transaction.

19 THE COURT: So, the successor  
20 beneficiaries on both those Trusts remain the children;  
21 is that correct?

22 MR. MENDEL: Remain? Subject to the  
23 forfeiture provisions as set forth in the Trust and the  
24 QBD, the Trust beneficiaries are the five kids.

25 THE COURT: On both of those Trusts?

1 MR. MENDEL: Yes, Your Honor.

2 THE COURT: Okay.

3 MS. SCHWAGER: Your Honor, may I --

4 THE COURT: Hold on just a moment.

5 MS. SCHWAGER: Sure.

6 THE COURT: Ms. Carole Brunsting, can you  
7 hear me okay?

8 MS. CAROLE BRUNSTING: Yes, I can.

9 THE COURT: First of all, let me tell you  
10 I'm sorry to hear your diagnosis. My wife is also going  
11 through breast cancer treatment at M.D. Anderson and has  
12 been doing so for four years. She gets chemo every  
13 three weeks; just had it yesterday. So, I'm intimately  
14 involved with it and I am aware of it and I empathize  
15 with your situation. The mental aspect is the most  
16 difficult at this point.

17 STATEMENTS BY MS. CAROLE BRUNSTING:

18 MS. CAROLE BRUNSTING: It is... I'm  
19 sorry. I guess you don't realize what it's really like  
20 until you're given the diagnosis.

21 THE COURT: I understand. And your  
22 diagnosis is like only two-weeks old. So, you know,  
23 it's still pretty fresh, and it's going to take a while  
24 for you to assimilate it and --

25 MS. CAROLE BRUNSTING: And that's part of



1 the problem is because there still -- they don't have  
2 the full diagnosis of everything because they make  
3 updates to my chart every night; and so, I keep getting  
4 more and more information. But I have to say that the  
5 doctors and the people that work at M.D. Anderson are  
6 some of the kindest people I've ever met in my life, and  
7 they go out of their way to understand every aspect of  
8 everything you're going through and make accommodations  
9 because right now, I talked to my anesthesiologist  
10 yesterday, and she said my stress level was too high;  
11 and so, they're not really comfortable scheduling the  
12 surgeries until I meet with their psychologist, and they  
13 want me to try acupuncture to see if that is helpful as  
14 well. So, they're trying to schedule -- they're trying  
15 to rearrange their schedule so they can try and get me  
16 in as soon as possible --

17 THE COURT: Is there any effort to do  
18 chemotherapy before surgery?

19 MS. CAROLE BRUNSTING: Right now what  
20 they're trying to do is -- my surgeon is trying to see  
21 if I could qualify for a clinical trial, and that would  
22 prevent surgery right away. But I haven't heard back  
23 yet; but otherwise, it's going to be -- because I have  
24 to wait for the biopsy to come back after the surgery.  
25 So, there's going to be surgery, radiation, and then I

1 have to be on some medication for five years or --

2 THE COURT: Hold on. Hold on just a  
3 second.

4 MS. CAROLE BRUNSTING: Okay.

5 THE COURT: The Court on its own motion  
6 finds that the information in this matter is so  
7 sensitive that it outweighs the public's need to hear  
8 this, and I am ordering us to take this off of YouTube;  
9 will you do that, Judge Comstock?

10 JUDGE COMSTOCK: It's done.

11 (WHEREUPON the following remaining  
12 proceedings were via Zoom only)

13 THE COURT: Okay.

14 MS. CAROLE BRUNSTING: Thank you.

15 But as it was, it's going to be surgery.  
16 And then the chemo oncologist said it could be surgery  
17 and then I have to go through chemo first and then  
18 radiation and then I still have to be on the medication  
19 for five years. But the only thing is last night when  
20 they update your My Chart, they -- and they did the  
21 chest X-rays so I can get prior to the surgery, now  
22 they've discovered that I have emphysema, and so I have  
23 to get that addressed now. So, I'm waiting for the  
24 appointment for that which I'm assuming is going to be  
25 with Pulmonary. And so -- so, I don't know -- I mean,



1 it's just -- I mean, since your wife has been through  
2 this, I'm sure you understand that it's just a process  
3 that you go through and it's right now, I'm still kind  
4 of in this -- I know some information, but I don't know  
5 it all yet. I mean, nobody knows it all yet because I  
6 still have to wait for biopsies to come back. They did  
7 one biopsy on the 17th, and that's when they discovered  
8 there was cancer, and they gave it a stage -- no. No, I  
9 found out the stage on the 3rd, and that's when I met  
10 with the surgeon, the radiologist oncologist and the  
11 chemo oncologist, and they told me that in their  
12 opinion - with what they knew right now - this is what  
13 would happen and the time line of when it would happen.  
14 And then that's when I found out that I may qualify for  
15 this one clinical trial that's specifically for women  
16 60-and-older. But my surgeon -- and my surgeon  
17 participated in it before, but they're trying to --  
18 based on the type of cancer I have, they're trying to  
19 see if their response to that type of -- it's where they  
20 freeze the cancer, and they're trying to see if my  
21 particular kind responds to that before they're going to  
22 tell me I can participate in it. So, right now, I  
23 really don't know. So, otherwise --

24 THE COURT: Have they told you the  
25 particular kind you have?

1 MS. CAROLE BRUNSTING: Yes. And so, I  
2 really would like to --

3 THE COURT: Do you know the name of that  
4 particular kind?

5 MS. CAROLE BRUNSTING: I don't know, like,  
6 the exact --

7 THE COURT: Is it HER-negative?  
8 HER-positive --

9 MS. CAROLE BRUNSTING: That's it. I think  
10 that's it. I think that was it, what you just said.

11 THE COURT: HER-positive?

12 MS. CAROLE BRUNSTING: Yes, estrogen --  
13 for estrogen. And so, I talked -- the nutritionist --  
14 the doctor that's in charge in Nutrition called me  
15 yesterday and told me everything being as my diet, take  
16 out of my diet. And then -- I mean, I spent three hours  
17 on the phone yesterday with M.D. Anderson. They just  
18 call you. I mean, but you probably know all of this,  
19 that they just -- they're constantly working on your  
20 case and making updates and making appointments for you,  
21 but I didn't realize that they really do take your --  
22 they take into consideration everything, and they just  
23 said that -- they asked me a whole bunch of questions  
24 about between 0 and 10, and they just determined that my  
25 stress level would just rise. So, that's where I have

1 to talk to the psychologist and --

2 THE COURT: Do you have anything to  
3 help -- do you have anything that helps you sleep at  
4 night?

5 MS. CAROLE BRUNSTING: Well, they gave me  
6 a prescription for Xanax, and they're telling me to take  
7 it.

8 THE COURT: It's an anti-anxiety  
9 medication.

10 MS. CAROLE BRUNSTING: Yes.

11 THE COURT: I don't know that it  
12 particularly helps you sleep; it could in the evening if  
13 you're tired. But just let me tell you this:

14 Every cancer patient - and I'm a cancer  
15 survivor and will probably be back at M.D. Anderson one  
16 day myself - but you hear something, let's call that  
17 "Part A," and you don't know anything more, and you put  
18 your head -- you put your head down at night, and you  
19 say - okay, that's going to lead to "Part B" which will  
20 lead to "Part C" which will lead to "Part D" which will  
21 lead to "Part E," and you wake up at 3 in the morning  
22 sweating about "Part E," and --

23 MS. CAROLE BRUNSTING: Exactly --

24 THE COURT: -- "B" hasn't even happened  
25 yet, and that's what your mind does. Your mind



1 absolutely cannot stand uncertainty. Lawyers are  
2 somewhat trained to live with ambiguity, but when it  
3 comes to their own personal life - I can testify,  
4 myself - that legal training is of probably zero value.  
5 And that - I call it the "what ifs." The "what ifs" at  
6 nighttime are so strong that they keep you from  
7 sleeping. And lack of sleep increases your fatigue; it  
8 weakens your immune system. You have to sleep. And  
9 whatever it takes for you to sleep - if it's Ambien or  
10 Zoloft or whatever your doctor recommends - you have to  
11 get some sleep every night.

12 Now --

13 MS. CAROLE BRUNSTING: I got an  
14 appointment tomorrow to talk to somebody about some of  
15 this.

16 THE COURT: Now, let me ask you this  
17 question:

18 You have -- you -- do you have health  
19 insurance? Are you 65? Do you have Medicare?

20 MS. CAROLE BRUNSTING: Well, I had  
21 insurance through my --

22 THE COURT: Through Schlumberger?

23 MS. CAROLE BRUNSTING: -- yes. But my job  
24 is going away.

25 THE COURT: But are you still employed

1 with Schlumberger?

2 MS. CAROLE BRUNSTING: Yes, 'til the end  
3 of this month.

4 THE COURT: 'Til the end of this month?

5 MS. CAROLE BRUNSTING: Yes.

6 THE COURT: And will there be an  
7 opportunity for you to obtain COBRA Insurance for, I  
8 think it's, 18 months?

9 MS. CAROLE BRUNSTING: I'm assuming so,  
10 but I'm not sure.

11 THE COURT: Okay. It gets expensive --

12 MS. CAROLE BRUNSTING: Yes, I know.

13 THE COURT: And your request for a hundred  
14 thousand dollars is to cover a variety of what you  
15 believe to be cost of treatment, ongoing care, and  
16 maintenance.

17 MS. CAROLE BRUNSTING: Right. It's  
18 hard -- I'm sorry, I didn't mean to interrupt. It's  
19 hard for me to be able to say - I need exactly this -  
20 because I simply don't know everything yet. I don't  
21 know the type of surgery yet. I don't know if I'm  
22 having a complete mastectomy. I don't know if it's just  
23 a lumpectomy. I don't know some of this stuff yet; so,  
24 the recovery time can be much different. If I do end up  
25 having to have -- if I do end up having to have chemo, I

1 know I'm going to get pretty sick from that. And so,  
2 I'm going to need to have caregivers here; and so, it's  
3 really hard to know exactly how much I'm going to need.  
4 And because I wasn't able to get the money from my Trust  
5 to finish my house, there's work at my house that still  
6 needs to be completed so that I can convalesce here  
7 comfortably and expect for someone else to be able to,  
8 you know, stay here as well. I've got to have  
9 accommodations for someone else to be here. And so, I  
10 did my best -- and then also, too, the bills are  
11 starting to add up fairly quickly which I had no idea.  
12 I get an update about every other day with new charges,  
13 and that's where we haven't gotten to the surgery part  
14 yet or the radiation or any of that. And so, I'm  
15 thinking, okay, yeah, this is going to -- this is --  
16 even my portion is probably going to get very expensive  
17 at some point. But I did my best to try and allow  
18 myself enough money, enough funds, so that I didn't  
19 have -- because when they asked me, they said, "On a  
20 scale of 1 to 10, what is your anxiety when it comes to  
21 the finance?" And that was one of my key points is - I  
22 don't want to have to go through this and have to worry  
23 about - can I pay this? Can I pay this? Because this  
24 is my Trust. This is my Trust money. It's my Trust  
25 money. It's been my Trust money all along, you know,



1 for 11 years, and I've had to go without the benefit of  
2 having it, and I need it. I need it. And it's going to  
3 make a massive difference to me going through this and  
4 coming out the other side because also, too, I signed up  
5 with the American Cancer Society where they try and pair  
6 you with someone who has been through the same situation  
7 that you have, and I was able to speak with her last  
8 night for almost two hours, and that helped quite a bit,  
9 to be able to talk to somebody who's been through it,  
10 and I learned a lot of information from her. And  
11 there's no guarantee that it's not going to come back.  
12 And so, we kind of talked about living with that, and  
13 she just kind of told me what she does or how she kind  
14 of gets through the day. And also, too, with this  
15 medication I'm going to have to take, what it kind of --  
16 what it's done to her and what she does to overcome the  
17 side effects of it. And so, she's very positive. We're  
18 about the same age, and she has no children. And so,  
19 that was very helpful.

20 THE COURT: Do you know the name of the  
21 medication?

22 MS. CAROLE BRUNSTING: It starts with an  
23 "L." It's not Tamoxifen. It's not that. She said I'm  
24 going to be taking one of -- it's one of three, and  
25 apparently, this medication is really hard on your bones



1 and can make them kind of brittle; and unfortunately, I  
2 have osteoporosis in my lower vertebrae, and so she  
3 didn't like that. But she said that they have three  
4 and that I may also have to be on some kind of a  
5 poksamack [sic] or something like that. But the biggest  
6 side effect that Brenda, that I talked to last night,  
7 had is she said is joint pain.

8 THE COURT: That's a drug -- there's a  
9 drug called Xgeva that gives a shot to strengthen the  
10 bones, and you get that once a -- you get that once a  
11 month.

12 MS. CAROLE BRUNSTING: For somebody like  
13 me, I just try to take care of myself my whole life and  
14 I eat healthy and I exercise and I do all the right  
15 things and, you know, I'm kind of proud of myself for  
16 not having ever had to take medication for diabetes or  
17 high blood pressure or any of those things; but now, you  
18 know, I have no choice but to have to take something. I  
19 know I'm going to have to take something, and it's going  
20 to be for a period of five years. I know that. I know  
21 that. And then you have to go in for blood work and  
22 your exam, I think it's every six months and but then  
23 now --

24 THE COURT: Are you in Houston now?

25 MS. CAROLE BRUNSTING: Yes. I only live

1 about, oh, I don't know, maybe five miles from M.D.  
2 Anderson. I live straight down Braeswood and turn on  
3 Bertner --

4 THE COURT: I, for some reason, thought  
5 you lived in California - maybe that's Ms. Schwager's  
6 client.

7 MS. CAROLE BRUNSTING: Oh, no, no; I live  
8 in Houston. Like I said, I'm five miles from M.D.  
9 Anderson.

10 THE COURT: Okay. I got it. And, you  
11 know, let me say this about the billing that you're  
12 getting.

13 You know, I've practiced law for over 40  
14 years. I did complex litigation involving a lot of real  
15 estate, a lot of corporate mergers, and a lot of  
16 high-end divorces; and the billing from M.D. Anderson  
17 and its complexity and inability to be understood  
18 surpasses everything I ever did as a lawyer. So, when  
19 you get overwhelmed by your statement from M.D.  
20 Anderson, you're in great company.

21 One of the first things I would have you  
22 do is go over to the billing office and set up a payment  
23 plan. And when they tell you that, okay, they want \$900  
24 a month, you tell them, "I can only afford 250 a month"  
25 or whatever. They'll work with you.

1 MS. CAROLE BRUNSTING: I want to be able  
2 to pay them in full because I have the money.

3 THE COURT: Well, you don't need to and  
4 they don't charge interest. So, you can, you know, you  
5 have a payment plan that you can get.

6 Now, and of course, we started a new year,  
7 so you have a new deductible that you'll incur. So,  
8 there will be up-front costs that will come out now that  
9 you'll probably reach your deductible rather quickly.

10 I've seen a proposed order signed by Mr.  
11 Mendel regarding the distribution. And if you're on My  
12 Chart with M.D. Anderson, and you have a section in that  
13 called, "Test Results", am I correct?

14 MS. CAROLE BRUNSTING: Yes.

15 THE COURT: And in those test results,  
16 there should be something that evidences the diagnosis  
17 of a malignant tumor. I would assume that there would  
18 be something to that effect.

19 MS. CAROLE BRUNSTING: There is.

20 THE COURT: Okay. Do you have the ability  
21 to send that to Mr. Spielman or Mr. Mendel or any of  
22 these attorneys? You know --

23 MS. CAROLE BRUNSTING: I don't know if I  
24 have -- yeah -- I don't understand why I have to prove I  
25 have cancer. I mean, do you really think I would make



1 this up?

2 THE COURT: I don't. But I don't think  
3 it's much of a burden also to just print that out. And  
4 I wouldn't put much of an imposition on you given the  
5 fragile state that you are experiencing now which, by  
6 the way, is totally appropriate. I would say at this  
7 moment, you're probably still under some PTSD shock from  
8 the diagnosis. But I think that if you would, if you  
9 would simply print that out and send that to these  
10 lawyers, I will sign this proposed order, but first I  
11 want to hear from Ms. Schwager and Mr. Reed and Ms.  
12 Bayless if they have anything they wish to say.

13 So, I'm going to start with Ms. Schwager

14 STATEMENTS BY MS. SCHWAGER:

15 MS. SCHWAGER: Thank you.

16 Your Honor, first of all, my heart goes  
17 out to Carole, and I want to let her know that my  
18 prayers are with her, and we support her request. And  
19 we feel that if [inaudible] her house was hit by a  
20 hurricane - that wasn't sufficient; and now cancer is  
21 not sufficient either for a distribution according to  
22 the Trustees.

23 I just want to -- I took a few notes that  
24 I just wanted to add - if you don't mind - it's rather  
25 short.

1                   But first of all, the Trust -- Amy  
2 Brunsting testified, by affidavit in the Southern  
3 District of Texas, that the Trust was distributed into  
4 five separate Trusts as the QBD that they're relying on  
5 requires. They were Personal Asset Trusts. So, they  
6 told you today that the Trust is still in two separate  
7 Trusts and checking accounts; and so, that was perjury  
8 and it's a lie, and it was a breach of their duties.

9                   According to the QBD they rely upon,  
10 Carole is the sole trustee for her share. And under  
11 that instrument, the Defendants have been in the  
12 wrongful possession of her personal property for more  
13 than 10 years. And their demand is \$537,000 in  
14 attorneys' fees; that's why they're holding us all  
15 hostage. After 10 years, they've made no effort to  
16 divide these assets; but instead, chosen to invoke this  
17 in terrorem clause simply based on the fact that the  
18 beneficiaries - including my client - are exercising  
19 their right to demand accountings and hold the trustees  
20 liable for the breach of the duties that they have to  
21 Beneficiaries. They have no basis to continue to hold  
22 this money in the first place.

23                   And my thought is - the severance motion  
24 that was just filed is just another attempt to snuff out  
25 my client by depleting the Trust assets to this point

1 where there is nothing left. So, I would add that.

2 And, no, we're not considering that today.

3 But at any rate, I just -- there's been no  
4 attorney fee bills or retainer contracts, things that  
5 would even justify this extraordinary fee request. And  
6 you wonder how 537,000 in fees is incurred when nothing  
7 has happened in this case, in 10 years essentially.

8 So, I would only add that when my son was  
9 in ICU, the bills were over a million dollars. My  
10 portion was a hundred thousand; it was over a four-month  
11 period. So, as you know, insurance doesn't cover  
12 everything; and without a job, she's going to have  
13 expenses. So, we completely support her.

14 And again, I'm very sorry that you're  
15 going through this, Carole.

16 MS. CAROLE BRUNSTING: Thank you.

17 MS. SCHWAGER: I appreciate you letting me  
18 speak.

19 THE COURT: Sure thing, Ms. Schwager.

20 Ms. Bayless, you wish to make any comment?

21 MR. MENDEL: Bobbie, you're on mute.

22 Bobbie, you're on mute.

23 MS. BAYLESS: I'm trying. Okay.

24 THE COURT: You're there.

25 MS. BAYLESS: Sorry, Judge.



1 THE COURT: Okay.

2 STATEMENTS BY MY BAYLESS:

3 MS. BAYLESS: Yes. You know, nobody can  
4 relate to severe medical issues better than my client  
5 so, and being separated from the Trust funds and trying  
6 to deal with it. So we, you know, we don't oppose the  
7 request by Carole, and we also are sorry about her  
8 diagnosis. I think everyone's stress levels would be  
9 greatly reduced by resolving this matter, and that's  
10 where we're focusing our efforts - on trying to resolve  
11 it. We can only do what we can do and we can't make  
12 everyone want to resolve it. But that's our goal, and  
13 that's where we're going to be spending our focus, and  
14 that's why some of these filings have been made and that  
15 Ms. Schwager referred to.

16 But as far as what we're here about today,  
17 other than sympathy and support and acknowledging that  
18 we can certainly relate to the stress levels and the  
19 problems caused by having an asset that you can't access  
20 when you need to very badly for medical issues, you  
21 know, we don't oppose the distribution.

22 THE COURT: All right. Mr. Reed, I assume  
23 you don't -- you represent an attorney.

24 MR. REED: Yes, Judge.

25 THE COURT: And the fact that -- you don't



1 feel the need to weigh in on this, do you?

2 MR. REED: That's correct; I don't even  
3 think I have a right to speak on the issue, Judge,  
4 outside of expressing sympathy.

5 THE COURT: All right. In the proposed  
6 order regarding distribution - once the Defendant  
7 Co-Trustees to have sole discretion to determine from  
8 which account or accounts to make the distribution; what  
9 are the various accounts that are possible in which to  
10 make a distribution?

11 STATEMENTS BY MR. MENDEL:

12 MR. MENDEL: Well, Your Honor, with regard  
13 to the Survivor's Trust, there is a Bank of America  
14 checking, Bank of America savings. There's a Decedent's  
15 checking account. So, in terms of very prompt  
16 liquidity, those bank accounts are available. There is  
17 an Edward Jones account that has liquidity, stocks,  
18 bonds, mutual funds, and there are computer share  
19 accounts. And so, there are several sources from  
20 which - subject to what the Court decides is the  
21 appropriate number - there are several sources in order  
22 to make the payment.

23 THE COURT: What Trust was that?

24 MR. MENDEL: The decedent -- well, the  
25 Decedent's Trust has one checking account, and the

1 Survivor's Trust has two checking accounts.

2 THE COURT: And they're all at Bank of  
3 America?

4 MR. MENDEL: And they're at Bank of  
5 America.

6 THE COURT'S RULING:

7 THE COURT: Okay. I got the -- that's the  
8 information I wanted.

9 So, I'm going to order that she receive a  
10 distribution of a hundred thousand dollars, and I want  
11 that done within 36 hours after she provides written  
12 confirmation of her test results to either you, Mr.  
13 Mendel, or you, Mr. Spielman; and that money is to come  
14 from a Bank of America checking account. I don't want  
15 any of the mutual funds or the stocks, at this time,  
16 sold. You know, you have a taxable problem,  
17 potentially, with that. Also stock market's high and  
18 may go higher. So, you're probably not earning much  
19 interest on those liquid funds at Bank of America. So,  
20 if --

21 MR. MENDEL: And, Your Honor, for  
22 clarification, may the Trustees have the discretion to  
23 pick which accounts it comes from? As long as she gets  
24 a hundred grand out of Bank of America funds?

25 THE COURT: I don't -- I haven't heard

1 anything that would lead me to believe that I should  
2 limit it to one particular account or another; so, I'm  
3 going to allow that to happen.

4 If you can redraft your order --

5 MR. MENDEL: Yes, sir.

6 THE COURT: -- you should be able to make  
7 that change pretty quickly.

8 I want Ms. Brunsting to get her money as  
9 fast as possible to help reduce her stress level which  
10 I'm a little sensitized to the subject, but I think it's  
11 appropriate, and I'll sign this order when I get it.

12 MR. MENDEL: So, I'll modify it and send  
13 it to you in a few minutes, Your Honor.

14 THE COURT: That's fine; I'll sign it as  
15 soon as I get it.

16 MR. MENDEL: Should we --

17 THE COURT: If you'll -- Judge Comstock,  
18 how do you want -- want him to file it or send it to you  
19 by email or both?

20 JUDGE COMSTOCK: He can send it by email;  
21 I'll upload it.

22 THE COURT: Okay. So, send it by email to  
23 Judge Comstock.

24 MR. MENDEL: Yes, Your Honor. And then  
25 for purposes of the distribution, the check? Wire?



1 Does the Court have a preference? If she wants a wire,  
2 we need wiring instructions.

3 THE COURT: Let me ask Ms. Brunsting.

4 Do you have a bank account?

5 MS. CAROLE BRUNSTING: I have an account  
6 with Bank of America.

7 THE COURT: Did you use the past sentence,  
8 "had"?

9 MS. CAROLE BRUNSTING: I still have. I  
10 have. I have -- my main checking account is with Bank  
11 of America, but I did set up -- I mean, I don't -- if  
12 this is considered --

13 THE COURT: Let me ask you a question.

14 In the email, in the email that you send  
15 to Mr. Mendel with the test results showing that you  
16 have a cancer diagnosis, okay, can you provide Mr.  
17 Mendel with your account number? Is that something you  
18 could be comfortable with? He can do an in-bank  
19 transfer that goes from one Bank of America account to  
20 another, and it can happen almost immediately.

21 MS. CAROLE BRUNSTING: Okay. I can do  
22 that.

23 THE COURT: All right. So, you'll put  
24 that in the email to Mr. Mendel as well, your account  
25 number at Bank of America.

1 MS. CAROLE BRUNSTING: I will. Yes.

2 THE COURT: All right. Now, I think that  
3 takes care of the matter that is before us. I know  
4 there's been another motion filed, but that's not before  
5 me right now. I'll take it up when somebody sets it for  
6 a hearing. Right now, I want to close this hearing.  
7 I've got other cases lined up like airplanes at La  
8 Guardia Airport ready to take off. If there is nothing  
9 further, I'm going to excuse -- yes, sir, Mr. Mendel?

10 MR. MENDEL: We -- since that motion is  
11 now on file, can we go ahead and get a hearing date for  
12 that motion to sever?

13 THE COURT: Well, I'm going to let you  
14 talk to Judge Comstock about that.

15 MR. MENDEL: Okay. Yes, sir.

16 JUDGE COMSTOCK: Please reach out to Ana  
17 Vaso - she sets the hearings.

18 MR. MENDEL: Okay. All right.

19 THE COURT: All right. If there's nothing  
20 further, then I'm going to excuse all of you.

21 Ms. Brunsting, I wish you well. You are  
22 in the best hands in the world at M.D. Anderson.

23 MS. CAROLE BRUNSTING: Yes, I'm starting  
24 to realize that, and I really want to thank you so very  
25 much. This really means a lot to me.

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THE COURT: All right. Good luck to  
you-all. Everyone is excused.

\* \* \* \* \*

1 The State of Texas )

2 County of Harris )

3

4 I, Hipolita Lopez, Official Court Reporter in and  
 5 for the Probate Court Number Four of Harris County,  
 6 State of Texas, do hereby certify that the above and  
 7 foregoing contains a true and correct transcription of  
 8 all portions of evidence and other proceedings requested  
 9 in writing by counsel for the parties to be included in  
 10 this volume of the Reporter's Record, in the  
 11 above-styled and numbered cause, all of which occurred  
 12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
 14 truly and correctly reflects the exhibits, if any,  
 15 admitted by the respective parties.

16 I further certify that the total cost for the  
 17 preparation of this Reporter's Record is \$217.00.  
 18 and was paid by MS. CANDACE CURTIS.

19 WITNESS MY OFFICIAL HAND this the 20th day of  
 20 January, 2022.

21 /s/ Hipolita G. Lopez  
 22 HIPOLITA G. LOPEZ, Texas CSR #6298  
 23 Expiration Date: 10-31-23  
 24 Official Court Reporter  
 25 Probate Court Number Four  
 Harris County, Texas  
 201 Caroline, 7th Fl.  
 Houston, Texas 77002



NO. 412,249-401

CARL HENRY BRUNSTING,	§	IN PROBATE COURT
INDIVIDUALLY AND AS	§	
INDEPENDENT EXECUTOR OF THE	§	
ESTATES OF ELMER H. BRUNSTING	§	
AND NELVA E. BRUNSTING	§	NUMBER FOUR (4)
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING f/k/a	§	HARRIS COUNTY, TEXAS
ANITA KAY RILEY, individually,	§	
as attorney-in-fact for Nelva E. Brunsting,	§	
and as Successor Trustee of the Brunsting	§	
Family Living Trust, the Elmer H.	§	
Brunsting Decedent's Trust, the	§	
Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Anita Kay Brunsting	§	
Personal Asset Trust;	§	
AMY RUTH BRUNSTING f/k/a	§	
AMY RUTH TSCHIRHART,	§	
individually and as Successor Trustee	§	
of the Brunsting Family Living Trust,	§	
the Elmer H. Brunsting Decedent's Trust,	§	
the Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Amy Ruth Tschirhart	§	
Personal Asset Trust;	§	
CAROLE ANN BRUNSTING,	§	
Individually and as Trustee of the	§	
Carole Ann Brunsting Personal Asset Trust;	§	
and as a nominal defendant only,	§	
CANDACE LOUISE CURTIS	§	

ORDER AFTER HEARING

Before the Court is Carole Brunsting’s emergency motion for trust distribution. The Court has read the pleadings, reviewed the record, listened to the arguments of counsel, and has determined that the emergency motion should be granted.

## **Findings of Fact, Conclusions of Law and Order after Hearing**

There are certain rules common to all trust relationships that should be noted from the onset. The rights of the beneficiary and the obligations of the trustee are defined by the instruments creating the trust, the common law, and the trust code. Trustees owe fiduciary duties to beneficiaries; beneficiaries do not owe fiduciary obligations to trustees.

### **Enforceable duties**

In reviewing the trust instruments the Court finds the main instruments to be the 2005 Restatement as amended and the August 25, 2010, QBD

In reviewing the pleadings, the Court finds that Carole Brunsting has not filed any claims against the Defendant Co-trustees and that the Defendant Co-trustees have not filed any claims against Carole Brunsting. The Court further finds that, while clothed in allegations of a fiduciary nature, the claims filed against Carole by Carl Brunsting, individually and as independent executor, only implicate actions performed by Anita Brunsting while acting as sole trustee that relate to balance sheet issues for which Anita, as sole trustee, would be solely accountable.

## **“Divide and Distribute”**

The record reflects that Elmer Brunsting passed April 1, 2009, and that, consistent with Article VII of the 2005 Restatement, the trust corpus was divided into two resulting trust shares; an irrevocable portion designated with the reference “The Elmer H. Brunsting Decedent’s Trust” and a revocable portion called the “Nelva E. Brunsting Survivor’s Trust”. This division and the distribution of assets into separate resulting trusts required an accounting and valuation of assets. Those functions were apparently performed without incident. Nelva Brunsting passed November 11, 2011, and the trustee’s obligation following that event is addressed in the 2005 Restatement at Article X. Page 10-1 reads:

### *Article X*

#### *Upon the Death of the Survivor of Us*

##### *Section A. Our Beneficiaries*

*Unless one of us shall otherwise direct in a qualified beneficiary designation as to his or her ownership interest in the trust all trust property not previously distributed under the terms of our trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:*

<i>Beneficiaries</i>	<i>Share</i>
<i>CANDACE LOUISE CURTIS</i>	<i>1/5</i>
<i>CAROL ANN BRUNSTING</i>	<i>1/5</i>
<i>AMY RUTH TSCHIRHART</i>	<i>1/5</i>
<i>CARL HENRY BRUNSTING</i>	<i>1/5</i>
<i>ANITA KAY BRUNSTING</i>	<i>1/5</i>

Section 3 of the August 25, 2010, QBD contains the same fundamental trustee obligations expressed in Article X of the 2005 Restatement.

*Section 3. Provisions for Distribution and Administration of the Survivor's Trust and the Decedent's Trust.*

*The Trustee shall divide the remainder of the Trust Estate into separate shares hereinafter individually referred to as Personal Asset Trusts, as follows:*

<i>Beneficiaries</i>	<i>Share</i>
<i>CANDACE LOUISE CURTIS</i>	<i>1/5</i>
<i>CAROL ANN BRUNSTING</i>	<i>1/5</i>
<i>AMY RUTH TSCHIRHART</i>	<i>1/5</i>
<i>CARL HENRY BRUNSTING</i>	<i>1/5</i>
<i>ANITA KAY BRUNSTING</i>	<i>1/5</i>

There is no evidence before the court that would indicate division of the trust assets into separate shares has ever been performed.

It is therefore ordered that the co-trustees are to issue an emergency distribution to Carole Brunsting in the amount of \$100,000.00, as an advance against Carole Brunsting's share of the trust. This distribution is to be made from a Decedent's Trust checking account and delivered directly to Carole Brunsting within 72 hours of this Order.

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Presiding Judge

CARL HENRY BRUNSTING,	§	IN PROBATE COURT
INDIVIDUALLY AND AS	§	
INDEPENDENT EXECUTOR OF THE	§	
ESTATES OF ELMER H. BRUNSTING	§	
AND NELVA E. BRUNSTING	§	NUMBER FOUR (4)
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING f/k/a	§	HARRIS COUNTY, TEXAS
ANITA KAY RILEY, individually,	§	
as attorney-in-fact for Nelva E. Brunsting,	§	
and as Successor Trustee of the Brunsting	§	
Family Living Trust, the Elmer H.	§	
Brunsting Decedent's Trust, the	§	
Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Anita Kay Brunsting	§	
Personal Asset Trust;	§	
AMY RUTH BRUNSTING f/k/a	§	
AMY RUTH TSCHIRHART,	§	
individually and as Successor Trustee	§	
of the Brunsting Family Living Trust,	§	
the Elmer H. Brunsting Decedent's Trust,	§	
the Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Amy Ruth Tschirhart	§	
Personal Asset Trust;	§	
CAROLE ANN BRUNSTING,	§	
Individually and as Trustee of the	§	
Carole Ann Brunsting Personal Asset Trust;	§	
and as a nominal defendant only,	§	
CANDACE LOUISE CURTIS	§	

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**Answer to Defendant Co-Trustees Untimely Motion for Severance**

On January 6, 2022, almost nine years after case initiation, Defendant Co-Trustees Anita Brunsting and Amy Brunsting and Independent Executor Carl Brunsting (the severing fiduciaries) filed an extremely vague and untimely motion to sever that appears to raise more questions than it attempts to answer.



*“Plaintiff, Carl Brunsting, and Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting (collectively the “Severing Parties”), file this motion to sever their respective claims against each other from the above-entitled and numbered cause (the “401 Case”)”*

The fiduciaries move for severance in the name of judicial economy but neglect to identify any authority for the requested severance; make no effort to demonstrate their entitlement to a severance and fail to provide the court with a factual basis upon which severance should be granted.

While the court has discretion in granting a severance, *see Liberty Nat'l Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996), severance is only proper were the following conditions are met: (1) the controversy involves more than one cause of action (2) the severed claim is one that would be the proper subject of a lawsuit if independently asserted, and (3) the severed claim is not so interwoven with the remaining action that they involve the same facts and issues. *See Guaranty Fed. Savs. Bank v. Horseshoe Op. Co.*, 793 S.W.2d 652, 658 (Tex. 1990); *see also* Tex. R. Civ. P. 41.

### **The Questions of Facts and Issues**

While there appears to be a -401 case, a -402 case, a -403 case and a -404 case, there is only one nexus of operative facts. The real parties in interest are the five beneficiaries of the Brunsting family living trust, two of whom also occupy the fiduciary office as Co-trustees. Interwoven into the causative nexus are the decedent's personal representative's claims against the Settlor's estate planning attorneys (**the -403 case**). The Brunsting trusts were drafted by the law firm of Albert Vacek Jr. which later became Vacek & Freed P.L.L.C.

There is both a trust and a litigation chronology. Elmer Brunsting passed April 1, 2009 and Nelva Brunsting passed November 11, 2011.

Trust income beneficiary Candace Curtis filed a verified complaint in the Southern District of Texas under diversity jurisdiction on February 27, 2012, naming Co-trustees Anita Brunsting and Amy Brunsting Defendants, and seeking fiduciary disclosures and trust accounting<sup>[1]</sup>. At page 3 para 9 beneficiary Curtis alleged:

*“9. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have exercised all of the powers of trustees while refusing or otherwise failing to meet their first obligation under that power, to provide full, accurate, complete and timely accounting to the beneficiaries, to provide copies of material documents or other information relating to administration of the Trust, and to provide notice to all beneficiaries and successor beneficiaries of proposed changes to the trust that may tend to affect their beneficial interests.”*

The federal diversity case was dismissed under the probate exception, then reversed and remanded by the Fifth Circuit Court of Appeal on January 9, 2013. On January 29, 2013 Carl Henry Brunsting, the deceased Settlor's Personal Representative, filed professional negligence claims against the estate planning attorneys in Harris County District Court 164 (**the -403 case**).

On April 9, 2013<sup>2</sup> Carl filed ancillary cause 412,249-401 (**the -401 case**) in the probate court both individually (**-401.1**), and in the capacity of independent executor (**-401.2**). The -401 case is styled as above, not as the fiduciaries severance motion is styled. Knowing there was already an integrally related lawsuit pending in the federal court, involving the same beneficial rights and fiduciary obligations, independent executor Carl Brunsting filed civil conspiracy claims against the estate planning attorneys in Harris County District Court No. 164, and then filed civil conspiracy claims against the Defendant Co-trustees individually and as independent executor, in Harris County Probate Court No. 4. In part, the -403 complaint alleges:

<sup>1</sup> Made a part of this court's record February 9, 2015 [02102015:1527:P0027]

<sup>2</sup> 2013-04-09 PBT-2013-115617 Original Petition 412249-401

*“8. This is a case involving Defendants' negligence, breach of fiduciary duty and other acts or omissions in their representation of Elmer and Nelva, both individually and in their capacities as trustees of the Family Trust. Defendants' actions constitute negligent misrepresentation, negligence per se, deceptive trade practices, conversion, fraud, commercial bribery, breaches of their fiduciary duties, as well as aiding and abetting, assisting and encouraging repeated breaches of fiduciary duty. Alternatively, a conspiracy existed between Defendants and the Current Trustees for that unlawful purpose.*

*9. The Defendants assisted the Current Trustees in implementing a scheme to change the terms of the Family Trust, to ultimately remove Nelva from her position as trustee of the Family Trust, and to improperly remove assets from Elmer and Nelva' s estates and from the Family Trust. Because of the actions of the Defendants, the Current Trustees were able to alter Elmer and Nelva's wishes, resulting in the improper transfer of assets to Anita, Amy, and Carole, all to Plaintiffs detriment.*

*10. Despite the Law Firm's representations to Elmer and Nelva that the Family Trust would preserve their plans for their estate, Defendants took direction from the Current Trustees, while representing Nelva, with the result being just the opposite. It is believed that Defendants not only failed to inform Nelva that they had established a relationship with the Current Trustees which put them in a conflict of interest with regard to their representation of Nelva's interests but that Defendants actually ignored that conflict of interest and their obligations to Nelva and assisted the Current Trustees in changing the terms of the Family Trust in ways which it is believed that Nelva did not have capacity to change and/or did not understand or want. Defendants also took steps to undermine and even remove Nelva's control of her own assets, of the assets of Elmer's estate, and of the Family Trust assets, thereby placing those assets at risk of loss to Anita, Amy, and Carole and facilitating the loss which actually occurred.*

*11. Moreover, it is believed that Defendants assisted the Current Trustees in various ways intended to prevent Nelva from even understanding that documents were being prepared by Defendants at the Current Trustee's request, why those documents were being prepared, and what the impact of the documents would be. It is believed that in assisting the Current Trustees in obtaining their improper objectives, Defendants, among other things:...”*

## **The Preliminary Injunction**

On the very same day Carl filed his -401 claims in the Probate Court, there was a hearing held in the Southern District of Texas on Plaintiff Candace Curtis pro se motion for preliminary

injunction [3]. The federal Court issued the preliminary injunction in open court and published a memorandum of the injunction on April 19, 2013 [4]. Due to trustee Anita Brunsting's failure to produce a proper trust accounting after more than two and one half years as trustee, the Federal District Court felt compelled to appoint a Special Master in order to get an accounting of the financial assets [5] of the trust.

### **Relevant Trust History and Effect**

1996 Family Trust – Settlor's Co-Trustees - Anita sole successor trustee [Divide by 2 at the passing of the first settlor – Divide by 5 at the passing of the last settlor]

1999 Irrevocable Life Insurance Trust - Anita sole trustee [Divide by 5 and distribute at the passing of the last settlor]

2005 Restatement – Settlor's Co-Trustees – Anita removed from Article IV – Carl and Amy successor Co-Trustees with Candace as the alternate - [Divide by 2 at the passing of the first settlor – Divide by 5 at the passing of the last settlor]

2007 Amendment – Settlor's Co-Trustees – Amy removed from Article IV – Carl and Candace successor Co-Trustees with Frost Bank as the alternate - [Divide by 2 at the passing of the first settlor – Divide by 5 at the passing of the last settlor]

June 9, 2008 Elmer N.C.M. - Family Trust becomes irrevocable and all changes require approval from Court of Competent Jurisdiction.

July 1, 2008 Amendment to Article IV – Anita and Carl successor Co-Trustees with Candace as the alternate. This Instrument does not meet the Article III criterion for alterations and is invalid in its entirety.

April 1, 2009 Elmer Brunsting passes and the passing of a Settlor was a qualifying event that triggered the separation of assets into two resulting trusts. The Decedent's Irrevocable Trust [DIT] and the Survivor's Revocable Trust [SRT].

August 25, 2010 Amendment to Article IV - Anita and Amy successor Co-Trustees with Frost Bank as the alternate – Carl Removed

August 25, 2010 Nelva's Qualified Beneficiary Designation - - [Divide by 5 at the passing of the last settlor] Anita, Amy & Carole trustees of their own 1/5 share – Anita & Amy Co-Trustees for Carl and Candace Shares. If valid, this QBD could only apply to Nelva's share.

<sup>3</sup> Transcript of April 9, 2013 injunction hearing

<sup>4</sup> 2013-04-19 Case 4-12-cv-592 Doc 45: Notice of filing of injunction and Report of Master filed in 412,249: 2015-02-06 PBT-2015-47630 Notice of filing of injunction and Report of Master

<sup>5</sup> 2013-05-09 Case 4-12-cv-592 [Doc 55] Order Appointing West - Special Master

November 11, 2011, the passing of Nelva Brunsting, was a qualifying event that triggered the obligation to separate trust assets into five shares. November 11, 2011 is a focal point.

## **QUALIFYING EVENTS**

1. The incapacity of Elmer Brunsting was a qualifying event because under Article III, changes to the trust agreement required the signatures of both Settlor or the approval of a court of competent jurisdiction. Elmer could no longer sign legal instruments.
2. The passing of Elmer Brunsting was a qualifying event because it triggered provisions requiring the division of assets into two separate shares; an irrevocable decedents share and a revocable survivors share.
3. The passing of Nelva Brunsting was a qualifying event because, whether you look at the 2005 restatement or the 8/25/2010 QBD, the passing of the last Settlor triggered provisions requiring the division of assets into five separate shares. How the shares were to be managed after Nelva's passing is irrelevant to the fiduciary obligation to perform the divisions required. Those divisions have not been performed.

## **Obligations of the Co-Trustees**

Any argument over whether the Co-Trustees occupy the office de jure or de facto is not relevant to the obligation to perform the duties of the office they occupy. Whether one refers to Article X of the 1996 trust, the 2005 Restatement or the August 25, 2010 QBD, the Defendant Co-trustee had a duty to divide the trust estate by five and establish separate share accounts for each beneficiary. Neither the validity of transactions prior to November 11, 2011 nor the manner in which trust shares were to be distributed or managed are not relevant to the obligation to divide by five. The question of whether or not those divisions were performed is core to any subsequent questions and by their own admissions at hearing on January 6, 2022; the Co-trustee Defendants have refused and otherwise failed to perform the required divisions.

## **The Obligation to Account and Disclose**

Among the obligations of the office of trustee was to maintain and establish books and records of accounts. As shown by the preliminary injunction, Anita failed to establish and maintain proper books and records of accounts and failed in her obligation to disclose:

*The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment*

Defendant Co-trustees rely heavily upon the 8/25/2010 QBD's no-contest clause with corruption of blood provisions, seeking to evade accountability and enlarge their shares. However, without addressing questions of the validity of transactions or instruments we can look at what the QBD commands. The QBD requires the Co-Trustees to divide the assets and distribute those assets into five separate shares. These shares are thereafter referred to as "personal asset trusts".

According to the QBD's terms, Amy, Anita and Carole would be the sole trustee for their own share but Amy and Anita would also be Co-Trustees over Carl and Candace "Personal Asset Trust" shares.

### **Separation of legal and equitable title**

A trust is a relationship, a specific type of private law relationship relating to property. The hierarchy of controlling law is the trust indenture, then the trust code and, if neither addresses the subject, the common law is controlling. The public policy parameters within which trusts must confine their operation are covered in Title 9 of the Texas Property Code.

In distinguishing trusts from other kinds of legal relationships there are two vital distinctions to be noted. The first is separation of legal and equitable title wherein a fiduciary (loyal and trustworthy) holds the bare legal title to property and the beneficiary (deserving of a windfall) holds the equitable title and right to enjoy the property. The beneficiary is considered the true property owner. For a trust relationship to exist the separation of legal and equitable title



must be maintained, Texas Property Code § 112.034, because when legal and equitable titles are held by the same person merger occurs and either the trust collapses or no trust is created.

### **Enforceable duties**

The second aspect of a valid trust is the Imposition of enforceable (fiduciary) duties on the holder of legal title. Precatory language is insufficient. The duties of the trustee must be legally enforceable by the beneficiary and not merely moral or ethical. If the trustee has no enforceable affirmative obligations to perform for the benefit of the beneficiary, the trust becomes dry and both legal and equitable titles merge in the beneficiary.

The imposition of affirmative and enforceable duties is called “executing the uses”, which finds origin in King Henry’s Statute of Uses of 1535. *See Property Code § 112.032*

When merger occurs the property is held by the beneficiary in their individual capacity. The current Co-Trustees have not divided the assets into five separate shares and according to their own argument Carole’s share vested entirely in Carole at the passing of Nelva Brunsting November 11, 2011 and, the Defendant Co-Trustees have been in wrongful possession of Carole Brunsting’s personal property for more than ten years.

According to Defendants QBD the Defendant Co-Trustees own their own shares outright but claim to hold Carl and Candace shares in trust. However, if this is the case, the Defendant Co-Trustees failure to separate Carl and Candace trust assets from their own shares is co-mingling personal property with trust property.

In sum total the severing fiduciaries motion asks:

*“The Severing Parties request that the Court sever the claims of Plaintiff, Carl*

*Brunsting, against Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting, and those of the Defendant/Co-Trustees against Plaintiff, Carl Brunsting, into a separate cause number, and grant the Severing Parties such other and further relief to which they may be entitled.”*

## **List of Claims**

### **412,249-401.1 - Carl Henry Brunsting individually vs**

- (a) ANITA KAY BRUNSTING f/k/a as attorney-in-fact for Nelva E. Brunsting and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust;
- (b) AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust;
- (c) CAROLE ANN BRUNSTING, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust;
- (d) And, as a nominal defendant only, CANDACE LOUISE CURTIS

#### Breach of Fiduciary Duties,

- 1. There is fiduciary relationship between the plaintiff and defendant;
- 2. The defendant breached a fiduciary duty to the plaintiff;
- 3. The defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

#### Conversion,

- 1. Plaintiff owned, had legal possession of, or was entitled to possession of the property;
- 2. Defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights;
- 3. Plaintiff made a demand for the property;
- 4. Defendant refused to return the property.

#### Negligence,

- 1. Duty owed by defendant to plaintiff;
- 2. Breach of that duty;
- 3. Proximate cause of the plaintiff's damages by defendant's breach; and
- 4. Damages.

#### Civil Conspiracy,

- 1. a combination of two or more persons;
- 2. the persons seek to accomplish an object or course of action;

3. the persons reach a meeting of the minds on the object or course of action;
4. one or more unlawful, overt acts are taken in pursuance of the object or course of action; and
5. Damages occur as a proximate result.

Fraudulent Concealment

1. Generally a theory applied to statutes of limitations in fraud cases. Given limitations are not at issue here, this cause would simply mean breach of the fiduciary duty of full disclosure in conjunction with the object or course of action in the civil conspiracy.

THE OTHER CLAIMS ARE REMEDIAL

~~Tortious Interference with Inheritance,~~

Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)

Constructive Trust,

Construction of Trust and Suit for Declaratory Judgement,

Demand for Trust Accounting,

Prejudgment Interest

Attorney's Fees pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code.

**412,249-401.2 - Independent Executor Carl Brunsting vs**

- (a) ANITA KAY BRUNSTING f/k/a as attorney-in-fact for Nelva E. Brunsting and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust;
- (b) AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust;
- (c) CAROLE ANN BRUNSTING, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust;
- (d) And, as a nominal defendant only, CANDACE LOUISE CURTIS

Breach of Fiduciary Duties,

1. there is fiduciary relationship between the plaintiff and defendant;
2. the defendant breached his fiduciary duty to the plaintiff; and
3. the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

Conversion,

1. Plaintiff owned, had legal possession of, or was entitled to possession of the property;
2. Defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights;
3. Plaintiff made a demand for the property;
4. Defendant refused to return the property.

Negligence,

1. Duty owed by defendant to plaintiff;
2. Breach of that duty;
3. Proximate cause of the plaintiff's damages by defendant's breach; and
4. Damages.

Civil Conspiracy,

1. a combination of two or more persons;
2. the persons seek to accomplish an object or course of action;
3. the persons reach a meeting of the minds on the object or course of action;
4. one or more unlawful, overt acts are taken in pursuance of the object or course of action; and
5. Damages occur as a proximate result.

Fraudulent Concealment

1. Generally a theory applied to statutes of limitations in fraud cases. Given limitations are not at issue here it would simply mean breach of the fiduciary duty of full disclosure combined with the object or course of action in the civil conspiracy.

THE OTHER CLAIMS ARE REMEDIAL

Tortious Interference with Inheritance –

Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)

Constructive Trust,

Construction of Trust and Suit for Declaratory Judgement,

Demand for Trust Accounting,

Prejudgment Interest

Attorney's Fees pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code.

**412,249-401.3 - Defendant Carole Brunsting's Original Counter Claims vs Independent Executor Carl Brunsting**

(Filed May 5, 2013)

Breach of Fiduciary,

1. there is fiduciary relationship between the plaintiff and defendant;
2. the defendant breached his fiduciary duty to the plaintiff; and
3. the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

~~Tortious Interference with Inheritance Rights~~

Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)

Actual Damages

Punitive Damages

Attorneys' fees, costs, and expenses

declaratory judgment

**412,249-401.4 Defendant Co-trustees Original Counter Claims vs beneficiary Carl Brunsting**

Defendant Co-Trustees filed their original answers on May 13, 2013 with no counter claims. On November 4, 2019, 6 years, 5 months, 23 days later, the Defendant Co-Trustees filed their "original counter claims" against beneficiaries Carl Brunsting and Candace Curtis, without reference to jurisdiction, venue or forum statutes. Those claims are as follows:

1. One or more of the causes of action asserted and/or declarations sought by Carl trigger forfeiture provisions.
2. One or more of the motions, responses, and/or replies filed by Carl trigger forfeiture provisions;
3. Carl did not have just cause to bring the action, and it was not brought in good faith;
4. Carl has forfeited his interest, and thus his interest passes as if he has predeceased the Founders;
5. If Carl has not forfeited his interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's

expenses in defending against Carl's claims are to be charged against his interest dollar for-dollar

6. All expenses incurred by Amy and Anita to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.

It is an odd theory that defending beneficial interests in trust property equals forfeiture of rights in property or that bringing action to compel the trustee to perform their obligations somehow equals forfeiture of beneficial interests. This is the equivalent of saying the beneficiary's interest is merely nominal, the Co-trustees obligations are merely nominal and the trust is merely a token.

If the Defendant Co-Trustees have no obligations that can be enforced by the beneficiary, the trust becomes dry or passive and both legal and equitable titles merge in the beneficiary, see Trust Code § 112.032. If the trust is passive the Defendant Co-trustees have no authority other than to deliver the assets to the beneficiary or as instructed by the beneficiary.

*Texas Property Code § 111.0035(b)(6) The terms of a trust will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties; from seeking redress against a fiduciary for a breach of the fiduciary's duties; or seeking a judicial construction of a will or trust. (§ 112.038)*

*"The right to challenge a fiduciary's actions is inherent in the fiduciary / beneficiary relationship." McLendon, [862 S.W.2d at 678](#)." Lesikar v. Moon, 237 S.W.3d 361, 370 (Tex. App. 2007)*

Defendant Co-Trustees have no claims against Carl for seeking to compel the fiduciary's to perform their fiduciary duties.

#### **412,249-401.5 - Defendant Co-trustees Original Counter Claims vs beneficiary Candace Curtis**

1. One or more of the causes of action asserted and/or declarations sought by Candace trigger forfeiture provisions.
2. One or more of the motions, responses, and/or replies filed by Curtis trigger the Forfeiture provisions;

3. Curtis did not have just cause to bring the action, and it was not brought in good faith;
4. Curtis has forfeited her interest, and thus her interest passes as if she has predeceased the Founders;
5. If Curtis has not forfeited her interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's expenses in defending against Curtis' claims are to be charged against her interest dollar-for-dollar;
6. All expenses incurred by Amy and Anita to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.

If the Defendant Co-Trustees have no obligations that can be enforced by the beneficiary, the trust becomes dry or passive and both legal and equitable titles merge in the beneficiary, see Trust Code § 112.032. If the trust is passive the Defendant Co-trustees have no authority other than to deliver the assets to the beneficiary or as instructed by the beneficiary.

*Texas Property Code § 111.0035(b)(6) The terms of a trust will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties; from seeking redress against a fiduciary for a breach of the fiduciary's duties; or seeking a judicial construction of a will or trust. (§ 112.038)*

*"The right to challenge a fiduciary's actions is inherent in the fiduciary / beneficiary relationship." McLendon, [862 S.W.2d at 678](#)." Lesikar v. Moon, 237 S.W.3d 361, 370 (Tex. App. 2007)*

Defendant Co-Trustees have no claims against any beneficiary for seeking to compel the fiduciary's to perform their fiduciary duties. Those duties begin with fiduciary disclosures including, but not limited to, a proper accounting so that they could divide by five at the passing of the last Settlor. The federal preliminary injunction and the Report of Special Master settled the question of whether or not the Defendant Co-trustees were able to produce a proper accounting. The Report of Special Master was filed August 8, 2013 <sup>[6]</sup> and the first trust accounting submitted by the Co-trustees was received on a CD-ROM from Defendant Co-trustees counsel

<sup>6</sup> 2013-08-08 Case 4-12-cv-592 Doc 62 Report of Special Master. (fn. 4)



George Vie III (Mills Shirley) on August 16, 2013, containing Bates numbers [Brunsting000001-004922]. That was more than eight years ago. Defendant's own admissions on January 6, 2022 establish their continued failure to divide the assets into five separate shares.

**412,249-402 - Candace Louise Curtis vs Anita Brunsting, Amy Brunsting and Does 1-100**

Filed U.S. District Court No. 4:12-cv-592 on 2/27/2012

Breach of Fiduciary Duties,

1. there is fiduciary relationship between the plaintiff and defendant;
2. the defendant breached his fiduciary duty to the plaintiff; and
3. the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

Constructive Fraud, (Subset of breach and not a separate cause of action)

Constructive fraud is a breach of a legal or equitable duty that the law declares fraudulent, irrespective of moral guilt, because it tends to deceive others, violate confidences, or injure public interests. Constructive fraud, by its very definition, does not include an overt act.

Extrinsic Fraud, (Subset of breach and not a separate cause of action)

Fraudulent acts which keep a person from obtaining information about his/her rights to enforce a contract or getting evidence to defend against a lawsuit. This could include destroying evidence or misleading an ignorant person about the right to sue. Extrinsic fraud is distinguished from intrinsic fraud, which is the fraud that is the subject of a lawsuit

Intentional Infliction of Emotional Distress, a byproduct of breach and not an independent cause of action

1. the defendant acted intentionally or recklessly;
2. the defendant's conduct was extreme and outrageous;
3. the conduct caused the plaintiff emotional distress; and
4. the emotional distress was severe

Intentional infliction of emotional distress is a "gap-filler" tort applicable only when "a defendant intentionally inflicts severe emotional distress in a manner so unusual that the victim has no other recognized theory of redress.

**Plaintiff Candace Curtis October 15, 2021 Addendum adds:**

Money had and received, an equitable doctrine used to prevent unjust enrichment.

Conversion – Theft -

1. Plaintiff owned, had legal possession of, or was entitled to possession of the property;
2. Defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights;
3. Plaintiff made a demand for the property;
4. Defendant refused to return the property.

~~Tortious interference with inheritance rights~~

Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)

Declaratory Judgement

In Terrorem allegations against the co-trustee defendants

**412,249-403 - Independent Executor Carl Brunsting vs Vacek & Freed P.L.L.C.**

Carl filed professional negligence claims in the District Court in his fiduciary capacity as independent executor for the estates of Elmer and Nelva Brunsting on January 29, 2013, three months before related claims were filed against all of the trust beneficiaries in the probate court. The -403 case has remained without an official plaintiff since Carl's resignation on February 19, 2015 and so has the -401.2.

Professional negligence,

Negligence Per Se- Violation of Texas Penal Code § 32.43; Commercial Bribery

Negligence Per Se- Violation of Texas Penal Code § 7.02(a)(2) & (3); Criminal Responsibility for Conduct of Another

Breach of Fiduciary Duty

Negligent Misrepresentation

Aiding & Abetting Current Trustees' Breaches of Fiduciary Duty

Assisting & Encouraging

Assisting & Participating

Concert of Action

Fraud

Conversion

Conspiracy

Deceptive Trade Practices

Fraudulent Concealment

Actual Damages

Forfeiture of Fees

Treble Damages

Punitive Damages

Attorney's Fees

Prejudgment Interest

### **See Tex. R. Civ. P. 41**

*A claim may be properly severed only if: (1) the controversy involves more than one cause of action, (2) the severed claim is one that would be proper if independently asserted, and (3) the severed claim is not so interwoven with the remaining action that they involve the same facts and issues. State Dep't of Highways & Pub. Transp. v. Cotner, 845 S.W.2d 818, 819 (Tex. 1993). Additionally, even when a case may be properly severed, a severance must be affected prior to the point at which all the facts have been presented to the finder of fact and the parties have requested a resolution. See Tex. R. Civ. P. 41; In re El Paso County Hosp. Dist., 979 S.W.2d 10, 12 (Tex.App.- El Paso 1998, orig. proceeding).*

*A severance divides a lawsuit into two or more separate and independent causes that may be resolved separately. In re Liu, 290 S.W.3d 550, 519-20 (Tex. App.—Texarkana 2009, no pet.) (citing Hall v. City of Austin, 450 S.W.2d 836, 837-38 (Tex. 1970)). When a severance is granted, the separated causes proceed to individual judgments—judgments that are separately final and appealable. Liu, 290 S.W.3d at 520 (citing Hall, 450 S.W.2d at 838); see Van Dyke v. Boswell,*

*O'Toole, Davis & Pickering, 697 S.W.2d 381, 383 (Tex. 1985). In other words, after a severance, there are two separate causes resulting in two separate judgments. Accordingly, the "one judgment rule," which states "one final judgment shall be rendered in any cause" is not implicated because there are two causes with separate judgments. 04-10-00602-CV 11/23/11*

At the scheduling conference on May 24, 2021 Defendant Co-trustees argued their estimate of 7-10 days for trial with Carl's counsel arguing four weeks with as many as four experts and twelve fact witnesses. The joint severance motion argues that severing would reduce the serving fiduciaries trial estimate to four days but have failed to provide the court with a proposed order identifying what specific claims, separated from what cause(s), this separate lawsuit would be composed and fail to identify any new or unique facts that would distinguish the amputated portion from the body of fact questions left behind. This leaves one to wonder how additional segmentation will help clarify the issues and aid the Court in resolving the existing controversy, or how two separate trials will conserve judicial resources.

Respectfully submitted,

*Candice Schwager*

Candice Schwager  
Schwager Law Firm  
Tel: 832-857-7173

[candiceschwager@icloud.com](mailto:candiceschwager@icloud.com)

ATTORNEY FOR CANDACE  
CURTIS, PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel of record and unrepresented parties in the manner required by the Rules on this Monday, February 07, 2022.

*Candice Schwager*  
Candice Schwager

Bobbie G. Bayless  
Attorney for Carl Brunsting  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098  
bayless@baylessstokes.com

Neal E. Spielman  
Attorney for Defendant Amy Brunsting  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, Texas 77079  
nspielman@grifmatlaw.com

Stephen A. Mendel  
Attorney for Defendant Anita Brunsting  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
steve@mendellawfirm.com

Carole Ann Brunsting pro se  
5822 Jason  
Houston, Texas  
cbrunsting@sbcglobal.net

Zandra Foley  
Cory S. Reed  
Attorneys for Vacek & Freed et al.,  
One Riverway, Suite 1400  
Houston, Texas 77056  
Telephone: (713) 403-8200  
Telecopy: (713) 403-8299  
Email: zfoley@thompsoncoe.com  
Email: creed@thompsoncoe.com

NO. 412,249-401

CARL HENRY BRUNSTING,	§	IN PROBATE COURT
INDIVIDUALLY AND AS	§	
INDEPENDENT EXECUTOR OF THE	§	
ESTATES OF ELMER H. BRUNSTING	§	
AND NELVA E. BRUNSTING	§	NUMBER FOUR (4)
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING f/k/a	§	HARRIS COUNTY, TEXAS
ANITA KAY RILEY, individually,	§	
as attorney-in-fact for Nelva E. Brunsting,	§	
and as Successor Trustee of the Brunsting	§	
Family Living Trust, the Elmer H.	§	
Brunsting Decedent's Trust, the	§	
Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Anita Kay Brunsting	§	
Personal Asset Trust;	§	
AMY RUTH BRUNSTING f/k/a	§	
AMY RUTH TSCHIRHART,	§	
individually and as Successor Trustee	§	
of the Brunsting Family Living Trust,	§	
the Elmer H. Brunsting Decedent's Trust,	§	
the Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Amy Ruth Tschirhart	§	
Personal Asset Trust;	§	
CAROLE ANN BRUNSTING,	§	
Individually and as Trustee of the	§	
Carole Ann Brunsting Personal Asset Trust;	§	
and as a nominal defendant only,	§	
CANDACE LOUISE CURTIS	§	

---

**Order denying Motion to Sever**

Defendant Co-Trustees Anita Brunsting and Amy Brunsting and Plaintiff Carl Brunsting's motion to sever fails to provide the Court with a basis in law or fact for the desired separation. It is therefore Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2022 that the motion to sever is denied.

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James Horwitz, Judge  
Harris County Probate Court No. 4

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. \_\_\_\_\_

THE ESTATE OF:	)	IN THE PROBATE COURT
NELVA E. BRUNSTING,	)	NUMBER 4 (FOUR) OF
DECEASED	)	HARRIS COUNTY, TEXAS

\* \* \* \* \*

MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ  
& MOTION TO EXECUTE EASEMENT AND SETTLEMENT

\* \* \* \* \*

On the 11th day of February, 2022, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable James Horwitz, Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand



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

## ATTORNEY FOR CARL BRUNSTING:

Ms. Bobbie G. Bayless  
BAYLESS & STOKES  
Attorney at Law  
SBN 01940600  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
bayless@baylessstokes.com

## ATTORNEY FOR DEFENDANT AMY BRUNSTING:

Mr. Neal E. Spielman  
GRIFFIN & MATTHEWS  
Attorney at Law  
SBN 00794678  
1155 Dairy Ashford  
Suite 300  
Houston, Texas 77079  
281.870.1124  
nspielman@grifmatlaw.com

## ATTORNEY FOR DEFENDANT ANITA BRUNSTING:

Mr. Stephen A. Mendel  
Attorney at Law  
THE MENDEL LAW FIRM, L.P.  
SBN 13930650  
1155 Dairy Ashford  
Suite 104  
Houston, Texas 77079  
281.759.3213  
steve@mendellawfirm.com

## ATTORNEY REPRESENTING VACEK &amp; FREED ET AL:

Mr. Cory S. Reed  
Attorney at Law  
THOMPSON, COE, COUSINS, & IRONS, LLP  
SBN 24076640  
One Riverway  
Suite 1400  
Houston, Texas 77056  
713.403.8213

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ATTORNEY FOR CANDACE LOUISE CURTIS:

Ms. Candice L. Schwager  
SCHWAGER LAW FIRM  
Attorney at Law  
SBN 24005603  
P.O. Box 580008  
Houston, Texas 77258  
832.315.8489  
candiceschwager@icloud.com

ALSO PRESENT:

Ms. Carole Ann Brunsting  
5822 Jason  
Houston, Texas  
cbrunsting@sbcglobal.net  
713.560.6381

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VOLUME 1

(Motion to Sever & Status Conference Regarding MSJ  
& Motion to Execute Easement and Settlement)

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1 February 11, 2022

2 (WHEREUPON the following proceedings  
3 were conducted via Zoom and YouTube:)

4 PROCEEDINGS:

5 THE COURT: This is our case, it's the  
6 412249 the 401, Brunsting estate.

7 My notes reflect that we have a motion to  
8 sever and a status conference regarding an MSJ and a  
9 motion to execute easement and settlement.

10 First, I want to make sure we're all in  
11 agreement that's what we're talking about today.

12 MR. MENDEL: Yes, sir, for Anita  
13 Brunsting.

14 THE COURT: I'm not hearing anybody  
15 disagree.

16 All right. Let's start by having each  
17 attorney make an appearance on the record, and tell the  
18 Court who you represent.

19 MS. BAYLESS: Bobbie Bayless on behalf of  
20 Carl Brunsting.

21 MR. MENDEL: Steve Mendel on behalf of  
22 Anita Brunsting.

23 MR. SPIELMAN: Neal Spielman on behalf of  
24 Amy Brunsting.

25 MS. CAROLE BRUNSTING: Carole Brunsting,



1 pro se.

2 MS. SCHWAGER: Candice Schwager on behalf  
3 of Candace Curtis, Your Honor

4 MR. REED: This is Cory Reed on behalf of  
5 Candace Kunz-Freed.

6 THE COURT: Okay, Mr. Spielman, I heard  
7 you barely; if you can turn your volume up and get a  
8 little closer.

9 MR. SPIELMAN: Is that better?

10 THE COURT: That's a lot better. All  
11 right. Who spoke after Mr. Spielman?

12 MS. CAROLE BRUNSTING: I think I did.  
13 Carole Brunsting, pro se.

14 THE COURT: Okay, Carole. Got it.

15 Ms. Schwager and Mr. Reed, I think are the  
16 only two remaining to speak.

17 MS. SCHWAGER: Oh. Candice Schwager for  
18 Candace Curtis, Your Honor.

19 THE COURT: Thank you.

20 MR. REED: And Cory Reed on behalf of Ms.  
21 Kunz Freed.

22 THE COURT: Okay. The first thing I want  
23 to take up is this motion to execute easement and  
24 settlement.

25 The Co-Trustees have filed their motion

1 for authority to execute an easement and Settlement  
2 Agreement. Would either Mr. Spielman or Mr. Mendel like  
3 to speak on this topic, briefly?

4 MOTION TO EXECUTE EASEMENT AND SETTLEMENT

5 ARGUMENT BY MR. MENDEL:

6 MR. MENDEL: Yes, Your Honor.

7 There's a -- part of the Trust asset is  
8 145 acres, plus-or-minus, up in, I think, Sioux County,  
9 Iowa. The Local Water Authority wants an easement  
10 across a whole bunch of contiguous tracks. This is one  
11 of those.

12 I have emails from Ms. Bayless and from  
13 Carole Brunsting and from Candice Schwager that indicate  
14 no opposition; so, I'm pleased to say that we've  
15 resolved that particular issue. But the bottom line -  
16 for the Court's benefit - is that it's not a lot of  
17 money, but it's about \$17,000-and-change that the Local  
18 Water Authority is going to be compensating the Trust.

19 THE COURT: All right. And if I  
20 understand it right - some portion of that is going to  
21 go to a tenant-farmer?

22 MR. MENDEL: Well, it might. That's a  
23 discussion to have with the tenant-farmer, but we've  
24 received money - as part of the negotiation - from the  
25 Local Water Authority to -- they're of the opinion

1 there's no material impact to farmers. Naturally,  
2 farmers would disagree, but we may need to share a  
3 little bit of that money with the farmer. That amount  
4 is to be negotiated, but we need to be resolved with the  
5 Local Water Authority.

6 THE COURT: All right. And if I  
7 understand it right as what Mr. Mendel has said -  
8 counsel for the other parties aren't in disagreement as  
9 to at least initially signing the Settlement Agreement  
10 with the Water Board; is that a correct statement, Ms.  
11 Bayless?

12 MS. BAYLESS: Yes, Your Honor.

13 THE COURT: Ms. Schwager?

14 MS. SCHWAGER: Yes, Your Honor.

15 THE COURT: And, Ms. Brunsting? Carole?

16 MS. CAROLE BRUNSTING: Sorry, I was on  
17 mute. Yes, that's correct.

18 THE COURT: Okay. So, the Court has a  
19 little bit of a concern, given that the proposed  
20 order...

21 (Judge's computer froze)

22 THE COURT REPORTER: Judge, you're frozen.

23 THE COURT: Gives the Trustees right to  
24 make --

25 JUDGE COMSTOCK: Judge, can you hear me?



1 THE COURT: Did I freeze up?

2 JUDGE COMSTOCK: You did. Can you sort  
3 of -- right as you started, I think it was a ruling.  
4 I'm not sure.

5 MOTION TO EXECUTE EASEMENT AND SETTLEMENT

6 THE COURT'S RULING:

7 THE COURT: All right. My concern is the  
8 language in the proposed order that gives the Trustees  
9 the right to unilaterally make a settlement with the  
10 tenant-farmer for some monies. Given the litigious  
11 nature of this whole situation with the family, I'm a  
12 little bit concerned that I would just be creating  
13 another problem with that. So, I'm willing to agree to  
14 the settlement for the Trust to receive the - I think  
15 you said - some \$17,000.

16 MR. MENDEL: Yes, sir.

17 THE COURT: But I want to hear back from  
18 the parties.

19 And Mr. Mendel, if you're the one leading  
20 the charge - on what kind of money is going to satisfy  
21 the tenant-farmer for his crop damage.

22 MR. MENDEL: Well, it's our position - and  
23 we haven't negotiated this out - but based on the due  
24 diligence that we have performed, we think that number  
25 might be in the range of maybe 250 to maybe 500 dollars.

1 We do not see the farmer as having any rights whatsoever  
2 to a material significant portion of this money.

3 THE COURT: All right. Let me ask this  
4 question of Ms. Bayless, Ms. Schwager, Ms. Brunsting.  
5 If I was to delineate -- and Mr. Reed, sorry and Mr.  
6 Spielman.

7 If I was to delineate into this proposed  
8 order that the Trustees can tender a portion of the  
9 settlement of the proceeds not to exceed a thousand  
10 dollars; would that be acceptable to all of the parties?

11 MS. BAYLESS: Yes, Your Honor.

12 MS. SCHWAGER: Yes.

13 THE COURT: Okay. So, why don't I do  
14 that. And, Judge Comstock... Are you with me, Judge  
15 Comstock?

16 JUDGE COMSTOCK: I am; yes, Judge.

17 THE COURT: Can you delineate that phrase  
18 in there?

19 JUDGE COMSTOCK: Yes, sir.

20 THE COURT: To tender a portion of the  
21 settlement proceeds not to exceed a thousand dollars.

22 JUDGE COMSTOCK: Got it.

23 THE COURT: To the existing farming  
24 tenant. So, we put that issue to bed, okay.

25 MR. SPIELMAN: Judge, I have one comment.

1 THE COURT: Sure, go ahead, sir.

2 MR. SPIELMAN: To perhaps avoid anyone in  
3 the future misconstruing what you just said, like maybe  
4 not to exceed \$1,000 without prior court, without prior  
5 court approval - that way nobody thinks that you've  
6 ruled that it can't be a thousand and one dollars;  
7 you're just giving the Trustees authority up to a  
8 thousand dollars.

9 THE COURT: That's fine. If that will  
10 make additional comfort, I'm okay with that. So, can  
11 you add that language, Judge Comstock?

12 JUDGE COMSTOCK: I will.

13 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

14 THE COURT: All right. So, we're taking  
15 care of that.

16 All right. The next [technical  
17 interruption] we have after this before me right now is  
18 the -- a motion to sever. Now, let me make sure I'm  
19 reading this correctly.

20 And then this motion to sever is -- is it  
21 to be understood in conjunction with the Rule 11  
22 Agreement that was filed on December the 6th?

23 MR. MENDEL: Yes, Your Honor.

24 THE COURT: Okay. Now, I've ruled on the  
25 July -- I think the July 9th, 2015 motion for partial



1 summary judgment has been ruled on, has it not?

2 MR. MENDEL: You ruled on part of it. I'm  
3 sorry, Ms. Bayless - that's your motion; I apologize.

4 MS. BAYLESS: That's all right. But, you  
5 said what I was going to say. You only ruled on part of  
6 it, Judge.

7 THE COURT: All right. Well, I just want  
8 to make sure that whatever decision is going to be made  
9 after this hearing, things don't change because of the  
10 fact that I've ruled on this, that part of that motion  
11 for summary judgment - after the Rule 11 Agreement - it  
12 doesn't affect the Rule 11 Agreement - the motion to  
13 sever; am I correct?

14 MS. BAYLESS: No, Your Honor. I'm sorry.  
15 We knew about your ruling when we did the Rule 11.

16 THE COURT: Okay. All right. I just  
17 wanted to make sure. Okay.

18 MR. SPIELMAN: I'm sorry. Just to be  
19 clear. I think I'm -- I think just to be clear. The  
20 status conference relative to the summary judgment, I  
21 believe, is with regard to the Co-Trustees' pending  
22 summary judgment against Ms. Curtis which has been set  
23 for a hearing but which the Court switched to its  
24 submission docket.

25 THE COURT: Okay. So, Ms. Bayless, would

1 you like to speak on... I'm not... Let me see about  
2 this. Yeah, I want [technical interruption] this motion  
3 to sever and the part of the Rule 11 Agreement that  
4 relates to that.

5 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

6 ARGUMENT BY MS. BAYLESS:

7 MS. BAYLESS: Okay. Well, Judge, I don't  
8 have the Rule 11 Agreement in front of me, but I think I  
9 remember enough to answer your question. The  
10 severance --

11 THE COURT: I'll be glad to read to you  
12 the significant portion that relates to your client,  
13 okay?

14 MS. BAYLESS: Okay.

15 THE COURT: It says, "Plaintiff Carl  
16 Brunsting requests the Court not rule on the portion of  
17 his July 9th, 2015 Motion for Partial Summary  
18 Judgment" - and maybe you've already said this has been  
19 taken care of - "Carl sees the determination as a matter  
20 of law that disbursements in 2011 of Exxon Mobile stock  
21 and Chevron stock were improper distributions for which  
22 Anita as the Trustee making the disbursements is  
23 liable."

24 Now that -- is that issue connected to  
25 this motion to sever?

1 MS. BAYLESS: Yes, Your Honor, in a sense  
2 that the Court made no ruling on that portion of my  
3 motion, and the parties have been attempting to work out  
4 a settlement of the remaining issues. And when I say  
5 "the parties," I mean my client and Anita and Amy, the  
6 Co-Trustees. I've also had discussions with Carole  
7 Brunsting about some issues, but I've been working on  
8 trying to get issues resolved, and I think progress has  
9 been made on some fronts.

10 But the question about the ruling on the  
11 motion for summary judgment was part of why we want to  
12 sever these issues. Those are different questions than  
13 what are presented by Candy Curtis. And, frankly,  
14 Judge, there are -- everybody in this Rule 11 has their  
15 own issues. I think the Co-Trustees are interested in  
16 getting in a posture where they could have a final  
17 judgment and some finality to issues with Candace  
18 Curtis, and we want to get in a position where we can  
19 try our issues separately from Candy Curtis. And,  
20 frankly, you know, the cleaner way to do that is a  
21 motion to sever which is what we had been discussing in  
22 our settlement discussions. But, if the Court doesn't  
23 grant the motion to sever, I'm going to file a motion  
24 for separate trials because my client would be  
25 prejudiced in trying to present a case that has two



1 plaintiffs that have different issues. I don't even  
2 know how the Court can do that very realistically and I  
3 certainly -- I think there's been enough hostility  
4 toward my -- me, mainly, by Candy Curtis that I'm not  
5 interested in the prejudice that could result from some  
6 type of a joint trial where we're supposed to be on the  
7 same side, and we don't even have the same issues.

8           So, the discussion was - and depending on  
9 what the Court does on the Co-Trustees' motion for  
10 summary judgment - severance may be the most efficient  
11 way to deal with it. If the Court disagrees with that  
12 for some reason, then we're still going to have to  
13 address the issue of trying these cases separately. And  
14 I think the Co-Trustees - I don't mean to speak for  
15 them; they can speak to this - but I think their  
16 position is they need to try the issues against Candy  
17 Curtis and get those finalized and know that they are  
18 put to bed so that they have some framework within which  
19 we can continue our settlement discussions.

20           My client, Your Honor, frankly, just as a  
21 little bit of background, it's very important for my  
22 client to get this matter resolved. Now, he suffered a  
23 rare and usually fatal form of encephalitis in 2011.  
24 And since Nelva Brunsting's death, he's not received any  
25 support or assistance, and his condition is physically



1 and mentally deteriorating, and he's going to need  
2 expensive care, and he's going to need some adjustments  
3 made because he's already fallen and broken a hip, had  
4 to have emergency surgery which, in a situation like his  
5 and his past medical history, is a very serious  
6 situation and, again, life-threatening. So, we are  
7 making every effort and exploring every possibility of  
8 getting the case resolved, and it's a big muddle; it  
9 doesn't seem to be going anywhere. I don't know if that  
10 answered your question, but that kind of gives you the  
11 background for that Rule 11.

12 THE COURT: So, just the idea -- and I'm  
13 not going to hold you to this, but I'm just trying to  
14 get my hands around this case. The idea is if this was  
15 severed you -- your client could make a settlement  
16 arrangement or an agreement with the Co-Trustees on some  
17 of the issues that are involved in this motion for  
18 summary judgment that's still pending, correct?

19 MS. BAYLESS: That's correct. That's  
20 correct.

21 THE COURT: For example, whether your  
22 client triggered the trust forfeiture provisions or  
23 similar provisions; is that right?

24 MS. BAYLESS: That's right.

25 THE COURT: Now, do you distinguish the

1 type of resistance that your client made against the  
2 Trustees different from Ms. Schwager's client in regard  
3 to their allegations of forfeiture provisions?

4 MS. BAYLESS: Yes, Your Honor. I mean --  
5 yes. They have an entire claim that the -- as I  
6 understand part of what they're asserting, at least - is  
7 that the whole document is forged or it's some type of  
8 cut-and-paste document, that there is that type of  
9 situation ongoing. And I had Janet Masson look at the  
10 originals early on and eliminate those issues when I  
11 first heard them raised. We're not addressing any of  
12 those issues. Likewise, we haven't gone out and sued  
13 every party in the case including the judge and the  
14 court reporter and the clerk and everybody else who  
15 might have come near the courtroom when a hearing was  
16 going on. There are any number of differences between  
17 the two claims or the two cases. And frankly, the whole  
18 issue of whether they can be separated is sort of a non  
19 issue because they were separate lawsuits to begin with.  
20 So, there's no question that they can be separate. And  
21 the beauty of that situation is the inevitable appeal  
22 that will result from whatever Ms. Curtis -- the ruling  
23 on Ms. Curtis' claims are - or is - will be able to  
24 proceed through the appellate court and there be some  
25 finality.

1                   Everything that Ms. Curtis has touched in  
2 this case has become 10 to 20 times more litigious than  
3 it needs to be, more contentious than it needs to be.  
4 And whether it's done in a clean way with the severance,  
5 whether it's done where everybody is still lumped  
6 together and there is separate trials -- I have had --  
7 my client has been contacted by Ms. Curtis and Rik  
8 Munson who helps her with this case. And the most  
9 incredibly ridiculous and slanderous things have been  
10 said to my client about me in attempt to get my client  
11 to listen to them and not to listen to me. That's going  
12 to go on in a trial, Judge. That's going to be  
13 prejudicial to anything that I try to put on for my  
14 client assuming that I try to put anything on because I  
15 think we can get it resolved. I think rational people,  
16 reasonable people, can get these issues resolved, and I  
17 think progress has been made in that direction. We're  
18 not there. We're not presenting a settlement to the  
19 Court, but things have to be calmer in order to  
20 accomplish these things, and they're not calmer when Ms.  
21 Curtis is involved.

22                   THE COURT: Okay. I'm certainly going to  
23 hear from her counsel.

24                   THE COURT REPORTER: Judge? Judge  
25 Horwitz?



1 THE COURT: Hold on just a second.  
2 This is for Mr. Mendel or Mr. Spielman:  
3 If I should sever this out, what is your  
4 position on that as far as it affecting your client?  
5 does it -- it creates, potentially, two separate trials.

6 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

7 ARGUMENT BY MR. MENDEL:

8 MR. MENDEL: Well, Your Honor, we  
9 recognize that there's, potentially, two separate  
10 trials. The -- but given the progress that has occurred  
11 between Ms. Bayless' client and the Co-Trustees, we  
12 believe that being carved out as a separate trial which  
13 would still ultimately need to result in a severance so  
14 that the appellate timetable as to Ms. Curtis will be  
15 separate from the rest of us. But we believe the  
16 severance is going to significantly increase the  
17 reasonable probability of a settlement which is good for  
18 our clients. Also, it reduces - which is great for the  
19 Court - is that it will significantly decrease, we  
20 believe, the time -- we're set on April 4th on a  
21 two-week trial docket; we believe it would reduce the  
22 time necessary to address the claims just to be asserted  
23 by Ms. Curtis. And so, we see value in increasing the  
24 probability of settlement with one party and decreasing  
25 the time that's going to be necessary for a trial. And

1 I would point out - we don't even think we need to get  
 2 to a trial because there's no evidence, absolutely no  
 3 evidence, against our summary judgment. But if we -- if  
 4 we do need to go to trial, then we think it should just  
 5 be a one-week period and let it be with the most  
 6 litigious person in this entire case.

7 THE COURT: So, just --

8 MR. MENDEL: We're ready for trial. We  
 9 want to go to trial. I want to be clear about that. If  
 10 we can't have our summary judgment, we want to go to  
 11 trial.

12 THE COURT: So, just so I understand  
 13 clearly, and it may be obvious.

14 On the pending motion for summary judgment  
 15 that was filed on or about November 5th - you wish the  
 16 Court to consider this as solely a motion for summary  
 17 judgment against Ms. Curtis.

18 MR. MENDEL: That's correct, Your Honor.  
 19 We're reserving all our rights. In the severed action,  
 20 we're reserving all our rights against Carl Brunsting  
 21 just like Carl Brunsting's reserving his rights against  
 22 the Co-Trustees. We want our MSJ to be dully considered  
 23 as to Candace Curtis and no one else.

24 THE COURT: And -- but you're reserving  
 25 the right for to reset an oral hearing or written

1 submission the same summary judgment issues against Ms.  
2 Bayless' client should that come to pass?

3 MR. MENDEL: Well, that's true, but if  
4 we're in a severed action, we've discussed - Ms. Bayless  
5 and myself and Mr. Spielman - that we would be -- we  
6 would, in reasonable probability, be tendering a -- an  
7 agreed docket control order or we would come back to the  
8 Court and ask for a docket control order to address --  
9 as Ms. Bayless pointed out, there are issues between her  
10 client and our clients that are different from Ms.  
11 Curtis'. And, yes, we may be coming back and asking for  
12 that, and they may be considered in the future. But our  
13 issues with Mr. Brunsting and those of Curtis' are  
14 divergent in many ways.

15 THE COURT: Okay. Mr. Spielman, do you  
16 have anything to add to that before I talk to Ms.  
17 Schwager?

18 MR. SPIELMAN: Yes, Judge, I always have  
19 something to add to that. I would just --

20 THE COURT: I thought that might be the  
21 case.

22 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

23 ARGUMENT BY MR. SPIELMAN:

24 MR. SPIELMAN: I would just say, Your  
25 Honor, that the motion for summary judgment specific to



1 Ms. Curtis is wholly briefed by the parties; it is ripe  
2 for judgment; it solves a ton of problems which Ms.  
3 Bayless has eloquently described and accurately fully  
4 described.

5 I'll add that on behalf of Mr. Mendel - my  
6 opinion - that Mr. Mendel has received similar hostile,  
7 inappropriate, slanderous contact. I haven't seen  
8 what's been written about Ms. Bayless, but I have seen  
9 some, at least of what's been written about Mr. Mendel;  
10 and frankly, frankly, it's not remotely consistent with  
11 Steve Mendel, the person who's on this Zoom call and  
12 just this pattern of aggressive rhetoric and spiraling  
13 out of control nonsense from Ms. Curtis is -- it is the  
14 single reason why these people have not received what  
15 they are supposed to receive years ago, you know. And  
16 it wasn't appropriate to talk about this during Carole's  
17 emergency motion. But it speaks to the reason why she  
18 hadn't gotten her money yet; it speaks to the reason why  
19 Carl hasn't gotten his money yet; it speaks to the  
20 reason why Amy and Anita, even as individuals, haven't  
21 gotten their money yet. This whole thing has been just  
22 ridiculously nonsensically. And there are Courts that  
23 have used those words as well, Judge; this is not just  
24 me pontificating. I'm using things that other judges in  
25 other courtrooms have said about Ms. Curtis and her

1 claims. And the time for this case to be resolved as to  
2 Ms. Curtis is now. Ideally, that's through the summary  
3 judgment, and if it has to be through the trial - so be  
4 it. And that's my thought on that.

5 THE COURT: Okay. Before Ms. Schwager  
6 speaks, I'll just make one little comment.

7 You know, it's a pleasure to work with  
8 veteran attorneys, and I appreciate it, but I always get  
9 a little bit of an ironic smile when I hear veteran  
10 attorneys say never before have they have heard such  
11 unfounded and ridiculous and, you know, statements.  
12 Each lawyer's charged with zealous advocacy on behalf of  
13 their client. And so, when lawyers, especially seasoned  
14 lawyers, come to me with - I've never heard such  
15 ridiculous and unfounded things, I -- if you're anything  
16 like me, and I'm sure you've practiced law a long time,  
17 you probably heard it all many times before. So, that  
18 doesn't necessarily invalidate the authenticity of your  
19 argument. But the Courts take such words with a grain  
20 of salt.

21 Now, Ms. Schwager, I'd like you to  
22 respond, if you could, to the argument about severing  
23 this so that you, alone, would be facing a summary  
24 judgment -- your client, alone, would be facing a  
25 summary judgment and how she could be penalized by such



1 severance.

2 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

3 ARGUMENT BY MS. SCHWAGER:

4 MS. SCHWAGER: Your Honor, I -- this  
5 really doesn't surprise me. This case has gone on 10  
6 years, and just when you think you're getting towards  
7 the finish line, they throw another wrench in it.

8 We started out in federal court. The  
9 first lawsuit ever filed between any of these parties  
10 was my client in federal court; that case was never  
11 invalidated. My client was never called weird names by  
12 the judges. That case - we won an injunction, and  
13 they've been trying to get away from it ever since.  
14 Maybe that's their thought in doing the severance, is  
15 somehow doubt in the effect of the injunction.

16 When you told us to go to mediation, they  
17 qualify -- the condition was that all claims had to be  
18 settled or none of them. Had they divided into the five  
19 accounts they were supposed to in 2013 when the Court  
20 ordered, it might -- I might not care so much, but I do  
21 have the obvious question of - who is going to pay their  
22 attorneys' fees for two trials when two trials aren't  
23 needed? It's not correct to say that we have different  
24 issues. And that's not the standard. The standard is  
25 not - do we have a different question or two from them

1 that -- than they have? I suppose the other parties in  
2 this case may not have an interest in the injunction  
3 that's protected the Trust all these years, but that's a  
4 common issue that has been there to help put all of the  
5 parties as against the Trustees' misused funds.

6 But, the law states not only that the case  
7 would be proper to be severed and that it involved more  
8 than one cause of action, but the severed claim is not  
9 so interwoven with the remaining action; they involve  
10 the same facts and issues.

11 What is very maddening to me is - as you  
12 know, we have challenged the jurisdiction of this court  
13 because of the action that we had in federal court.  
14 What happened was Jason Ostrom - Candace Curtis' counsel  
15 at the time - polluted diversity on purpose by making  
16 Candy a nominal defendant in a claim and managed to use  
17 that to her case over to probate court. So, we went  
18 through the appropriate channels. We challenged that.  
19 We're here -- we're here in their case. I'm actually --  
20 we're in the case that Ms. Bayless filed for us to be  
21 drug over into this court pretty much against our will  
22 at the time. I mean, we are now litigating in good  
23 faith and got the docket control order. I feel like  
24 this is some scheme on the part of counsel to deprive  
25 Candace of her portion of the inheritance. Since it has



1 not been divided in a separate trust account for her,  
2 then I think I have reason to have concern for that  
3 about who's going to pay the fees? Who's going to pay  
4 the doubled [sic] fees? Are these going to be  
5 attorneys' fees that the Trust incurs twice or are they  
6 paying their own fees? We've asked for those fee bills  
7 for months, and we've not received any of that.

8                   And the other issue that Mr. Spielman  
9 brought up about hostile emails. I don't know what  
10 family doesn't have hostile communications going on in  
11 the course of the 10 years of litigation; certainly that  
12 has gone on. I don't know about it all. Largely, it  
13 flies under the radar, and I see it later; but I can  
14 tell you that there have been talks behind closed doors  
15 trying to settle this case, not just trying to stir the  
16 pot. And I just think that severance is not the  
17 solution for whatever objectionable emails counsel is  
18 finding that my client wrote. As long as this is one  
19 nucleus of operative fact and one law of fiduciary duty,  
20 I don't see why it needs to be separate. I also don't  
21 see why it needs to be severed for them to settle. If  
22 they have reached a settlement, I just don't understand  
23 why they need to have a severance to accomplish that.

24                   But to the extent that it doesn't  
25 prejudice my client's rights or her money, the

1 attorneys' fees as they would be charged against the  
2 parties, then I suppose we would have no objection, but  
3 our objection is based upon these ever-escalating  
4 attorneys' fees that are already admittedly over a  
5 half-a-million dollars for -- they keep blaming Candy  
6 for litigation, but most of the litigation was -- she  
7 was successful in. So, I don't see how her pursuing her  
8 legal rights and attempt to hold the Trustees  
9 accountable and obtaining release stating that they were  
10 breaching their duties, I don't see how that's worthy of  
11 so much contempt from the rest of the parties or the  
12 Trustees.

13           And Mr. Spielman admits that the single  
14 reason Candace hasn't received what she's entitled to is  
15 basically they don't like the way she emails or she  
16 doesn't, what, she hasn't just succumbed to the  
17 exorbitant settlement demands and say - I'll pay all the  
18 fees myself? I don't know what it is that she's doing  
19 besides litigating and winning that has been so  
20 prejudicial to any party in this case. And I don't know  
21 why fees haven't been sought from her before in federal  
22 court if that's what they contend was appropriate.

23           You know, but this fee issue is running  
24 this whole thing. All this is about fees because nobody  
25 really has a claim against anyone except my client. My



1 client made fiduciary duty claims. The claims asserted  
2 against my client are admittedly frivolous. She was  
3 sued as a nominal defendant to get her into your court.  
4 So, we -- you know, the ultimate result would be we'd be  
5 left in a case that we never filed in, we never appeared  
6 in, you know, as a nominal defendant rather than as a  
7 plaintiff which is what we filed in a federal court.

8 MOTION TO SEVER & STATUS CONFERENCE REGARDING MSJ

9 THE COURT'S RULING:

10 THE COURT: Thank you. Your words are  
11 well-taken by the Court. Normally, the Court is very -  
12 I don't know what the word is - supportive of judicial  
13 economy and not creating more work for the Court, also  
14 not incurring more attorneys' fees; but certainly the  
15 Co-Trustees would have the right - should they want to -  
16 a nonsuit against Carl Brunsting, Ms. Bayless' client,  
17 in their motion for summary judgment. And certainly the  
18 Court has the right, at a later time, to rule on  
19 attorneys' fees along the lines to what you pointed out.

20 And given all of this, I'm inclined to go  
21 ahead and sign the order severing this matter so long  
22 as -- we're not dealing with the attorneys' fees at this  
23 point, but it will come up. So, I'm going to go ahead  
24 and sign that order.

25 So, having dealt with the motion to sever

1 and the water rights or the water board, I'm trying to  
2 think if there's something else I need to bring up.

3 I owe you a ruling on the motion for  
4 summary judgment taking into account what we're doing  
5 today, and I will have that decision made by next week  
6 without belaboring the point.

7 Does anybody else have anything they wish  
8 to say? Ms. Bayless?

9 MS. BAYLESS: No, Judge, I'm done.

10 THE COURT: Ms. Schwager?

11 MS. SCHWAGER: No, that's all, Judge.

12 THE COURT: Mr. Mendel?

13 MR. MENDEL: No, sir.

14 THE COURT: Mr. Spielman?

15 MR. SPIELMAN: No, sir.

16 THE COURT: And Carole Brunsting, I know,  
17 nominally, you don't have a dog in this fight other than  
18 the attorneys' fees issue which is important to you.  
19 But before I even ask you that, how are you doing?

20 MS. CAROLE BRUNSTING: Well, I'm probably  
21 about a -- I'm doing probably about as well as I can  
22 with the situation right now.

23 THE COURT: Have you kind of  
24 psychologically assimilated your situation where it's  
25 not as -- let me put it this way: Are you able to sleep

1 at night?

2 MS. CAROLE BRUNSTING: When they ask you  
3 on a scale of 1 to 10, unfortunately that number is  
4 still going up. So, no, I'm not quite there yet.

5 THE COURT: Well, I pray that you will get  
6 there, and I hope you do better.

7 MS. CAROLE BRUNSTING: Well, there's still  
8 just some unknowns that I'm dealing with; and so, until  
9 all that gets resolved, it's just been a lot to deal  
10 with.

11 THE COURT: Well, your confusion and  
12 anxiety is entirely appropriate. So, given -- given  
13 your concerns, I wouldn't start beating on yourself for  
14 being confused and anxious and depressed in accompanying  
15 emotions. I hope we can resolve this and you can get  
16 some family care and comfort.

17 MS. CAROLE BRUNSTING: Well, I've been  
18 paired up with -- I've been paired up with -- M.D.  
19 Anderson pairs you up with people that have been through  
20 a similar situation as yourself; and so, I've been  
21 paired up with few women that have been very good with  
22 coaching me and providing a lot of support. So, that's  
23 been really, really helpful.

24 And then I guess that as far as this  
25 trust - and unfortunately, it is something that I've



1 been talking with my counsel and all that at M.D.  
2 Anderson - I guess the fear for me is because I am pro  
3 se, I guess I'm a bit concerned about what happens to me  
4 in this situation especially since I don't have legal  
5 counsel and because the money is really important to me  
6 now more so than ever because I didn't realize how  
7 expensive cancer can -- I didn't realize how this can  
8 get expensive rather quickly and ongoing care and things  
9 like that. So, there is...

10 THE COURT: Hopefully, we can get an end  
11 to this so you can get some more money.

12 All right. At this time, I'm going to  
13 excuse all the parties. I thank you very much. And we  
14 will sure visit again soon. Thank you. Bye-bye.

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\* \* \* \* \*

1 The State of Texas )  
2 County of Harris )  
3

4 I, Hipolita Lopez, Official Court Reporter in and  
5 for the Probate Court Number Four of Harris County,  
6 State of Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription of  
8 all portions of evidence and other proceedings requested  
9 in writing by counsel for the parties to be included in  
10 this volume of the Reporter's Record, in the  
11 above-styled and numbered cause, all of which occurred  
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
14 truly and correctly reflects the exhibits, if any,  
15 admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$224.00.  
18 and was paid by MS. CANDACE CURTIS.

19 WITNESS MY OFFICIAL HAND this the 20th day of  
20 February, 2021.

21  
22 /s/ Hipolita G. Lopez  
23 HIPOLITA G. LOPEZ, Texas CSR #6298  
24 Expiration Date: 10-31-22  
25 Official Court Reporter  
Probate Court Number Four  
Harris County, Texas  
201 Caroline, 7th Fl.  
Houston, Texas 77002

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REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. \_\_\_\_\_

THE ESTATE OF: ) IN THE PROBATE COURT  
NELVA E. BRUNSTING, ) NUMBER 4 (FOUR) OF  
DECEASED ) HARRIS COUNTY, TEXAS

\* \* \* \* \*  
PRETRIAL CONFERENCE & MOTION FOR SANCTIONS  
& MSJ & MOTION TO EXCLUDE  
\* \* \* \* \*

On the 25th day of February, 2022, the following proceedings came to be heard in the above-entitled and numbered cause before the Honorable Kathleen Stone, Judge of Probate Court No. 4, held in Houston, Harris County, Texas:

Proceedings reported by Machine Shorthand



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

## ATTORNEY FOR CARL BRUNSTING:

Ms. Bobbie G. Bayless  
BAYLESS & STOKES  
Attorney at Law  
SBN 01940600  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
bayless@baylessstokes.com

## ATTORNEY FOR DEFENDANT AMY BRUNSTING:

Mr. Neal E. Spielman  
GRIFFIN & MATTHEWS  
Attorney at Law  
SBN 00794678  
1155 Dairy Ashford  
Suite 300  
Houston, Texas 77079  
281.870.1124  
nspielman@grifmatlaw.com

## ATTORNEY FOR DEFENDANT ANITA BRUNSTING:

Mr. Stephen A. Mendel  
Attorney at Law  
THE MENDEL LAW FIRM, L.P.  
SBN 13930650  
1155 Dairy Ashford  
Suite 104  
Houston, Texas 77079  
281.759.3213  
steve@mendellawfirm.com

## ATTORNEY REPRESENTING VACEK &amp; FREED ET AL:

Mr. Cory S. Reed  
Attorney at Law  
THOMPSON, COE, COUSINS, & IRONS, LLP  
SBN 24076640  
One Riverway  
Suite 1400  
Houston, Texas 77056  
713.403.8213

1 ATTORNEY FOR CANDACE LOUISE CURTIS:  
2 Ms. Candice L. Schwager  
3 SCHWAGER LAW FIRM  
4 Attorney at Law  
5 SBN 24005603  
6 P.O. Box 580008  
7 Houston, Texas 77258  
8 832.315.8489  
9 candiceschwager@icloud.com

10 ALSO PRESENT:  
11 Ms. Carole Ann Brunsting  
12 5822 Jason  
13 Houston, Texas  
14 cbrunsting@sbcglobal.net  
15 713.560.6381

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VOLUME 1

(Pretrial Conference & Motion For Sanctions & MSJ & Motion to Exclude)

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1 February 25, 2022

2 (WHEREUPON the following proceedings  
3 were conducted via Zoom and YouTube:)

4 PROCEEDINGS:

5 THE COURT: Okay. We're here on a  
6 pretrial, correct?

7 MR. SPIELMAN: We're here on a couple of  
8 things, Your Honor. We are here on a pretrial that is  
9 set for 3:00, but we're also here on a motion to exclude  
10 testimony evidence and for sanctions and for third  
11 contempt as to Ms. Curtis. I don't know that any of the  
12 lawyers know in what order the Court wanted to address  
13 those things.

14 MOTION FOR SUMMARY JUDGMENT RULING:

15 THE COURT: Well, I think the very first  
16 thing I need to address is the Co-Trustees' summary  
17 judgment. I've been in contact with Judge Horwitz, and  
18 I've signed the motion for summary judgment.

19 MR. SPIELMAN: Thank you, Your Honor.

20 THE COURT: So, where are we now?

21 MR. SPIELMAN: Well, I guess I'll have to  
22 ask the Court that question, too.

23 So, this pretrial, this pretrial order --  
24 pretrial conference, Your Honor, has to do with the  
25 lawsuit between Candace -- from Candace Curtis to the



1 Co-Trustees and the Co-Trustees' counterclaims against  
2 Candace Curtis; if both have just been resolved by  
3 summary judgment, then I believe the only pretrial  
4 matters that would be left would involve the remaining  
5 parties which would be Carole Brunsting, who is pro se,  
6 Carl Brunsting, who is represented by Ms. Bayless, and  
7 Ms. Curtis and whatever remaining causes of action and  
8 claims exist between the three of them. But if the  
9 summary judgment's been granted in its totality, then  
10 Mr. Mendel and I probably don't need to participate in  
11 the pretrial because our clients are now summary  
12 judgment -- have now summary judgment in their favor;  
13 does that sound right, Steve?

14 MR. MENDEL: That's true. The one thing  
15 we would need clarification from the Court is the one  
16 outstanding issue with regard to our clients is the fee  
17 issue and any hearing regarding same. So, would the  
18 Court be keeping the trial date to take care of the fees  
19 or would we be looking at some potential earlier date?

20 THE COURT: The date is April -- I forgot.

21 MR. MENDEL: April 4th, Your Honor.

22 MS. SCHWAGER: Your Honor, I would just  
23 point out that the Defendants have no cognizable claim  
24 against my client; they simply ask for attorneys' fees  
25 based upon on a new cause of action asserted. So, I

1 don't think there's anything to talk about there  
2 regarding my client.

3 THE COURT: Well, Ms. Bayless?

4 MS. BAYLESS: Yes, Your Honor.

5 THE COURT: What would be tried -- or as I  
6 understand it - your claim against the Co-Trustees has  
7 been, by Rule 11 Agreement, kind of set aside?

8 MS. BAYLESS: Right, they've been severed,  
9 yes.

10 THE COURT: And so, is this going to be --  
11 I mean, is there anything to be tried on April the 4th  
12 for you?

13 MS. BAYLESS: Well, Your Honor, I've been  
14 trying to resolve the issues that -- the only issues  
15 that would be there relate to claims that we filed  
16 against Carole and claims that Carole raised in a  
17 counterclaim. I've been trying to resolve those.  
18 Carole is pro se, and she's going through some health  
19 issues; and so, she wanted to delay, further, the  
20 discussions. I don't know where that stands. She  
21 wanted to have an attorney look at the proposed  
22 dismissal that I had sent to her which was a joint  
23 dismissal with prejudice, and then that timing was  
24 dependent upon her health issues. So, I don't really  
25 know where that stands, and I don't really know how to



1 answer that question. I think those claims should be  
2 able to be resolved based on the discussions we've had,  
3 but I don't have that resolution to give you today.

4 THE COURT: All right. Ms. Brunsting?  
5 Carole?

6 MR. MENDEL: You're on mute, Carole.

7 THE COURT: You're on mute.

8 MS. CAROLE BRUNSTING: Yes. I got the  
9 proposal to -- from Ms. Bayless about a week before I  
10 was to have surgery; and because I'm pro se, it just  
11 wasn't a decision I wanted to make at that time. And  
12 then also, too, I just didn't feel it was a good idea to  
13 sign anything without having an attorney look at it.  
14 Unfortunately, my [audio interruption] got delayed; and  
15 unfortunately, just because I've had to make so many  
16 trips back and forth to M.D. Anderson and between work  
17 and things like that, I just haven't had a chance --  
18 well, no, actually what they did was they told me that  
19 I'm supposed to minimize my exposure to anything at this  
20 point because they don't want to have to delay the  
21 surgery any longer. So, I can't go -- I've been unable  
22 to go to meet with an attorney just to have them look at  
23 this. So, that's what's causing the delay - is just  
24 poor timing and all of this happening. So, I'm just,  
25 like I said, I -- because I'm pro se, I'm just not

1 really comfortable just having something signed on --  
2 for me to sign something without the benefit of having  
3 an attorney review it. And I'm not trying to drag that  
4 out, it's just, unfortunately, my focus is somewhere  
5 else at this time. So, my best guess would be maybe in  
6 the next -- I talked to an attorney this morning, would  
7 be possibly in the next two weeks.

8 THE COURT: All right. Well, you might --

9 MS. CAROLE BRUNSTING: Just depends on how  
10 fast my recovery goes and all of that.

11 THE COURT: You might ask the attorney to  
12 contact - if you've decided to hire them - to contact  
13 Ms. Bayless directly and then maybe if they had any  
14 questions, she would be able to answer them.

15 MS. CAROLE BRUNSTING: Okay.

16 THE COURT: And then you might not even  
17 have to go into their office for any reason.

18 MS. CAROLE BRUNSTING: Okay.

19 THE COURT: They should be able to look at  
20 the document, talk to Ms. Bayless who's been in this  
21 lawsuit - from what I understand from the beginning -  
22 and answer any questions that your attorney might have.

23 MS. CAROLE BRUNSTING: Unfortunately,  
24 since I'm talking to somebody that's brand new to all of  
25 this, they're having a lot of questions, and they just

1 want a lot of background and all of this, so it's not  
2 something that they're like - oh, sure, just send it  
3 over, and I'll give you my opinion. So, it's just  
4 gotten to be a lot more complicated than just making a  
5 simple phone call to an attorney.

6 THE COURT: Okay. Well, that's just a  
7 suggestion.

8 MS. CAROLE BRUNSTING: Okay. Yes, that's  
9 a really good suggestion. So, maybe I can find someone  
10 that's willing to do that.

11 THE COURT: All right. So, the attorneys'  
12 fees that are for trial by the Co-Trustees, right? Is  
13 that what I'm hearing?

14 MR. MENDEL: Yes, Your Honor. Yes, Your  
15 Honor, we'd like to keep that April 4th trial date for  
16 the issue of fees.

17 THE COURT: All right. I don't see any  
18 reason why not. I'll expect it's probably not going to  
19 take four days, five days.

20 MR. MENDEL: Well, we told the Court -  
21 when we did the severance - this case would be reduced  
22 down to a week. You're right - it's probably not going  
23 to take a week, but at this moment it's still a jury  
24 case, and maybe it gets turned into a bench case. But I  
25 don't think we're at a position at this moment to say if



1 it's going to be less than the full week.

2 THE COURT: All right. Well, we'll just  
3 keep it on the trial docket. I mean, Judge Horwitz was  
4 expecting a trial, and we'll just leave it on the trial  
5 docket for the 4th. So, a lot of the things that we  
6 would do today as far as the docket con --

7 MS. SCHWAGER: Your Honor, if I may  
8 interject? I'm rather sure that we're going to appeal  
9 the granting of the summary judgment, and I would  
10 suspect that's going to throw this April 4th trial date  
11 off so --

12 THE COURT: Actually, it's the 14th not  
13 the 4th.

14 MS. SCHWAGER: Oh, I see.

15 THE COURT: But go ahead.

16 MS. SCHWAGER: I don't know how long that  
17 it would take the court of appeals to respond, but it is  
18 an issue that affects the trial. So, I just wanted to  
19 bring that to your attention.

20 THE COURT: Well, it probably will take  
21 the court of appeals, I think, about between a  
22 year-and-a-half to two years.

23 MR. MENDEL: Well, Your Honor, she can  
24 just take up the MSJ along with the fees, so it's all up  
25 before the court of appeals. She's not entitled to some

1 interlocutory appeal.

2 THE COURT: Well, for one thing, we need  
3 to kind of get what's -- there's too much in the 401.  
4 So, we're trying to - we, I mean the Court - is trying  
5 to make sure that what is left is just the -- Ms.  
6 Schwager's client's case so that that can go up to the  
7 court of appeals. And then, if you want to include the  
8 attorneys' fees, I think we are -- we talked about  
9 trying to clear up or clean up - 'cause there's a 401, a  
10 403, a 404, a 405 - and to go get the case in the two --  
11 the 151st, bring it in and make it the 406.

12 JUDGE COMSTOCK: Judge, let me just chime  
13 in.

14 When I spoke to counsel, you know, when we  
15 first got started, I think we all reached an agreement  
16 that the pleadings in the 151st could be brought down  
17 and put into the 401.

18 THE COURT: Okay.

19 JUDGE COMSTOCK: And then I was, you know,  
20 just thinking. I know that there's going to be a lot to  
21 process here. We could -- I do have an opening the  
22 Thursday before their April 4th trial setting, and we  
23 can put in another pretrial conference to let people  
24 kind of digest what's going on and decide what to do,  
25 actually, at trial, but there are a lot of loose ends.

1 THE COURT: Okay. So, that would be  
2 the -- what day would that be, April 1st?

3 JUDGE COMSTOCK: I'm sorry, March 31st.

4 THE COURT: March 31st, okay.

5 JUDGE COMSTOCK: And we could have a  
6 pretrial that afternoon, maybe about 1:30 if that works  
7 with the people's schedules.

8 THE COURT: Counsel?

9 MS. SCHWAGER: I'm available.

10 THE COURT: Does it work with everybody's  
11 schedule?

12 MR. SPIELMAN: For right now, it does.

13 THE COURT: Okay.

14 MR. MENDEL: I'm available on the 31st.

15 THE COURT: Okay.

16 MS. BAYLESS: Fine with me, Judge.

17 Hopefully by that time, we'll have the issue sorted out  
18 with Carole.

19 THE COURT: All right.

20 MR. SPIELMAN: I'll figure it out, Your  
21 Honor.

22 THE COURT: All right. And, obviously,  
23 Ms. Brunsting - you don't have to be there?

24 JUDGE COMSTOCK: You're muted.

25 MS. CAROLE BRUNSTING: So, I don't have to



1 be there because I'm not part of it at all?

2 THE COURT: I think that all we're talking  
3 about in the trial is the attorneys' fees, correct?

4 MS. CAROLE BRUNSTING: I mean, so I have  
5 no participation in that? That's what I'm asking. I'm  
6 kind of a little bit lost in all of the severance and  
7 how this is all panning out. So, I'm just asking - is  
8 that something that I should be there for or I'm not  
9 required to be there for or I'm not sure.

10 THE COURT: Well, let me ask the attorneys  
11 if they think you're required to be there. Counsel?  
12 Mr. Mendel?

13 MR. MENDEL: Well, she might want to be  
14 there. I mean, it's possible, depending on how the  
15 Court rules on our fees - off the top with regard to the  
16 trust, are they off the top and apportioned as to Ms.  
17 Curtis. So, Ms. Carole Brunsting might want to be  
18 present because she may have an interest in how that  
19 develops.

20 The other thing that's not clear to me,  
21 Your Honor, is - and Ms. Bayless, maybe you can clarify  
22 it - is right now, it appears to be fees and the bale --  
23 Carl Brunsting, Carole Brunsting claims that are all  
24 that's left that would be scheduled for trial. And if  
25 Carl Brunsting and Carole Brunsting resolve their

1 issues, then we're just down to attorneys' fees.

2 MS. BAYLESS: I think that's right. As  
3 far as I --

4 MR. MENDEL: Carole, long story short -  
5 you have the right to be there; whether you want to be  
6 there, is up to you.

7 MR. SPIELMAN: I think we'll all know a  
8 little bit more when we see the actual order that got  
9 signed on the summary judgment, too.

10 THE COURT: Okay. Well, it should be --  
11 should pop up in the -- on the file online sometime  
12 shortly.

13 MR. MENDEL: I'm online now; it hasn't  
14 popped up yet.

15 THE COURT: Okay. Well --

16 JUDGE COMSTOCK: It's being processed  
17 right now, so it should be up soon.

18 MR. SPIELMAN: And I suppose I have a  
19 question for the Court which I don't know if the Court  
20 will be able to answer.

21 Judge Comstock, when we spoke before we  
22 went on the record, when the attorneys spoke before we  
23 went on the record, and we discussed bringing the  
24 district court cases into the 401 - is that still the  
25 right decision in light of the summary judgment being

1 granted and what we're talking about today? Is it the  
2 Court's intention that the summary judgment encompasses  
3 the injunction proceeding?

4 THE COURT: The injunction was just to pay  
5 fees, wasn't it?

6 MR. SPIELMAN: Well, the injunction that  
7 we're talking about has a lot of different terms - one  
8 of which is that, essentially paraphrased, nobody is to  
9 spend any money out of the Trust without the permission  
10 of the Court, and there are other things about it, of  
11 course. And in the district court, the injunction was  
12 filed as a final judgment, and it was argued that it  
13 should be enforced as such almost like out of -- almost  
14 like you would do collection of -- collecting of a  
15 judgment. And so, I guess either I may have  
16 misunderstand [sic] what that district court proceeding  
17 was or I'm confused as to what happens now that it's  
18 being brought over by -- now that it's a claim by Ms.  
19 Schwager on behalf of Ms. Curtis being brought into the  
20 401 in which the Co-Trustees have just been granted  
21 summary judgment as to Ms. Curtis' claims.

22 MS. SCHWAGER: The injunction applied to  
23 the entire Trust not just Ms. Curtis' claims.

24 MR. SPIELMAN: Well, right - that's my  
25 point. So, I suppose that the injunction survives the



1 summary judgment to the extent that there are other  
2 parties still in the case.

3 JUDGE COMSTOCK: If I can chime in.

4 It seems to me that because that was all  
5 brought into the 401, that it would still be proper to  
6 bring that piece of it into the 401 and deal with it all  
7 as one animal, so to speak. So, I think I and Judge  
8 Stone and Judge Horwitz would all be willing to consider  
9 whatever counsel thinks is the best for y'all's case.

10 THE COURT: Well, if it's going to go up  
11 on appeal, it should go up with the fees also. The fees  
12 should go with it so there's not two different appeals  
13 going on.

14 JUDGE COMSTOCK: So maybe bring it in and  
15 then decide how you want it dealt with before pretrial  
16 on the 31st, and then maybe it can all be addressed in  
17 the same cause as part of the same process.

18 THE COURT: Okay. I think that sounds  
19 about right of how it should proceed 'cause you don't  
20 want two different courts of appeal - Fourteenth and the  
21 First - handling bits and pieces of this case.

22 MR. MENDEL: That's fine, Your Honor.  
23 Like Judge Comstock just said, you know, the parties can  
24 figure out what they want to do, and it can be either  
25 raised by motion before the 31st or at the time of the

1 31st pretrial hearing.

2 THE COURT: Okay.

3 MS. SCHWAGER: Your Honor, I would also  
4 point out - the 404 is a Bill of Review, and it's never  
5 been ruled upon; it's a challenge to the jurisdiction.  
6 And even though I might have some idea as to how this  
7 judge would rule, it's not been considered at this time.  
8 And so, I believe --

9 THE COURT: Well, Judge Horwitz and I've  
10 discussed that also; we'll get that ruled on.

11 MS. SCHWAGER: Okay.

12 THE COURT: I'll look at it, and he  
13 obviously knows a lot more about it than I do.

14 MS. SCHWAGER: Sure.

15 THE COURT: Okay. Is there anything else?

16 MOTION TO EXCLUDE:

17 MR. SPIELMAN: Your Honor, just because we  
18 are on the docket today on the motion to exclude, I  
19 think that the Co-Trustees will pass that, pass that  
20 hearing for today; and if it needs to be considered by  
21 the Court again, we will ask if we can have it  
22 considered at the next pretrial on March the 31st --

23 THE COURT: Okay.

24 MR. SPIELMAN: -- notice for that if we  
25 decide to go forward.

1 THE COURT: Okay. Anything else?

2 MR. MENDEL: No, Your Honor.

3 THE COURT'S RULING:

4 THE COURT: Okay. We'll pass the motion.  
5 We'll go get the case from the 151st, we'll put it into  
6 the 401; we'll have a hearing on the potential trial on  
7 the fees and do the -- is it the 404, Ms. Schwager?

8 MS. SCHWAGER: The 404.

9 THE COURT: 404. We'll look at the 404.  
10 And I'll discuss it with Judge Horwitz.

11 Okay. So, does anybody need anything from  
12 me?

13 MR. SPIELMAN: No, Your Honor.

14 THE COURT: Okay. Great. Thank you.

15 Oh, Bobbie, do you still have the  
16 Christmas ornament place?

17 MS. BAYLESS: I'm sorry?

18 THE COURT: Do you still have the  
19 Christmas ornament place?

20 MS. BAYLESS: Yes. Yes.

21 THE COURT: There was always cute things  
22 in there.

23 MS. BAYLESS: Yeah, it's hard to do  
24 everything. I'm trying, but..

25 THE COURT: Okay. Thank you, counsel,



1 y'all are excused.

2 MS. BAYLESS: Thank you, Judge.

3 MR. MENDEL: Thank you, Judge.

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1 The State of Texas )  
2 County of Harris )

3  
4 I, Hipolita Lopez, Official Court Reporter in and  
5 for the Probate Court Number Four of Harris County,  
6 State of Texas, do hereby certify that the above and  
7 foregoing contains a true and correct transcription of  
8 all portions of evidence and other proceedings requested  
9 in writing by counsel for the parties to be included in  
10 this volume of the Reporter's Record, in the  
11 above-styled and numbered cause, all of which occurred  
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record  
14 truly and correctly reflects the exhibits, if any,  
15 admitted by the respective parties.

16 I further certify that the total cost for the  
17 preparation of this Reporter's Record is \$147.00.  
18 and was paid by MS. CANDACE CURTIS.

19 WITNESS MY OFFICIAL HAND this the 3rd day of  
20 March, 2022.

21  
22 /s/ Hipolita G. Lopez  
23 HIPOLITA G. LOPEZ, Texas CSR #6298  
24 Expiration Date: 10-31-23  
25 Official Court Reporter  
Probate Court Number Four  
Harris County, Texas  
201 Caroline, 7th Fl.  
Houston, Texas 77002

NO. 412,249-401

CARL HENRY BRUNSTING, et al	§	IN PROBATE COURT
v.	§	NUMBER FOUR (4) OF
ANITA KAY BRUNSTING, et al	§	HARRIS COUNTY, TEXAS

**ORDER GRANTING  
CO-TRUSTEES' MOTION FOR SUMMARY JUDGMENT  
AS TO CANDACE LOUISE CURTIS ONLY**

On the 25 day of February, 2022, the Court, at its' discretion, considered, via submission, the Motion for Summary Judgment (the "Motion") filed by AMY RUTH BRUNSTING ("Amy") and ANITA KAY BRUNSTING ("Anita") (the "Co-Trustees"), in their individual capacities and as the co-trustees of The Brunsting Family Living Trust, a/k/a The Restatement of The Brunsting Family Living Trust (the "Trust") originally set for oral hearing on December 14, 2021.

The Court considered the Motion on no-evidence and traditional grounds. Via submission, the Court considered (1) the Motion and its summary judgment evidence, as well as the Co-Trustees' Reply to Candace Louise Curtis's Answer to Co-Trustee's Motion for Summary Judgment and Motion to Strike (the "Reply"); (2) any responses from counsel/pro se parties, including without limitation, the "*Answer to Co-Trustee's Motion for Summary Judgment and Motion to Strike*" filed by Candace Louise Curtis ("Curtis"); and (3) the pleadings on file in this cause.

As part of its consideration of this matter, the Court considered Curtis's position as set forth in her Motion to Strike. The Court **FINDS** that the Motion and the Reply were timely filed, procedurally proper and that the Motion is ripe for ruling. Accordingly, Curtis's Motion to Strike is **DENIED** in all respects.

As part of its consideration of this matter, the Court considered the Co-Trustees' objections to materials submitted by Curtis as summary judgment evidence. The Court **FINDS** that one or more of the submitted exhibits violate the Texas Rules of Evidence for one or more of the reasons described by the Co-Trustees in the Reply. Accordingly, the Court **ORDERS** as follows:

<u>Exhibit</u>	<u>Exhibit Description</u>	<u>Objection to Exhibit</u>	<u>Disposition</u>
Exhibit Pg. 1	Trust Flow Chart	Hearsay; not authenticated; not a testamentary instrument that would alter the 2005 Restated Trust or the 2010 QBDs.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit Pgs. 2-3	2007 Amendment	Not authenticated; not a controlling instrument; not relevant to any issue raised by the co-trustees' motion for summary judgment.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit Pgs. 4-5	Article III 2005 Restatement	Not authenticated; not relevant to any issue raised by the co-trustees' motion for summary judgment.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit Pg. 6	Affidavit filed in federal court Feb. 27, 2012 describing Anita's plan.	Hearsay; not authenticated.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit Pgs. 7-10	Nelva Brunstings' handwritten greeting card say-ing "That's Not true!"	Hearsay; not authenticated; the card does not negate the <i>in terrorem</i> provisions in the 2005 Restated Trust and/or QBD.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
Exhibit Pgs. 11-13	Estate Plan Purposes	Hearsay; not authenticated; not a testamentary instrument that would alter the 2005 Restated Trust or the 2010 QBDs.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled

Exhibit Pg. 14	Estate Planning Attorney-Candace Kunz-Freed explaining the reason for subjecting Nelva to a competency evaluation.	Hearsay; not authenticated.	<input checked="" type="checkbox"/> Sustained <input type="checkbox"/> Overruled
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Consistent with the above and foregoing, the Court **FINDS** that Curtis has failed to meet her summary judgment burden on the Motion's traditional and no-evidence points. The Court **FINDS** that Curtis has forfeited her interest as a beneficiary of the Trust, by taking one or more actions in violation of the Trust and/or the August 2010 QBD (as such terms are defined in the Motion). The Court **FINDS** that the Co-Trustees shall first recover attorneys' fees from Curtis (and/or from her forfeited interest in the Trust) via Article IV, Section G of the Trust; via Miscellaneous Provisions: Item A of the August 2010 QBD; and/or via the Declaratory Judgment Act.

Accordingly, the Court **GRANTS** the Motion as to Curtis only, **RENDERS** judgment for the Co-Trustees against Curtis only and **ORDERS**:

- (1) That Co-Trustees' Motion for Summary Judgment is **GRANTED** as to Curtis in its totality;
- (2) That Curtis **TAKE-NOTHING** by way of her claims against Amy, Anita, the Co-Trustees and/or the Trust;
- (3) That the Co-Trustees are awarded attorneys' fees payable by Curtis (and/or from her forfeited interest in the Trust) in an amount to be subsequently determined; and
- (4) That court costs are taxed against the party incurring same.

This Order disposes of all claims and causes of action asserted against Amy, Anita, the Co-Trustees and/or the Trust by Curtis, and no other claims or causes of action are pending against Amy, Anita, the Co-Trustees and/or the Trust from Curtis.

If and as necessary, the Court, upon motion properly filed, will enter an order of severance.

SIGNED AND ENTERED on this 25 day of February, 2022.

Kathleen A. Stov  
JUDGE PRESIDING

UNOFFICIAL COPY



NO. 412249-401

ESTATE OF § IN PROBATE COURT  
NELVA E. BRUNSTING, §  
DECEASED §  
§  
§ HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, Et Al §  
V. §  
ANITA KAY BRUNSTING, Et Al §

**Order Granting Motion to Sever**

On February 11, 2022, the Court considered the motion to sever filed by Plaintiff, Carl Brunsting, and Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting. After considering the motion, responses, and the arguments of counsel and/or the parties, if any, it is, therefore:

ORDERED that the Court severs the claims of Plaintiff, Carl Brunsting, against Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting, and those of the Defendant/Co-Trustees against Plaintiff, Carl Brunsting, into a separate cause number to be known as C.A. 412249-405; *Carl Henry Brunsting v. Anita Kay Brunsting, Et Al*; In Probate Court No. 4, Harris County, Texas.

It is further ORDERED that the Clerk’s Office shall transfer copies of the following instruments from C.A. No. 412249-401 to the new cause number as referenced in the preceding paragraph:

04/09/2013 Carl Henry Brunsting’s Petition for Declaratory Judgment, for an Accounting, for Damages, for Imposition of a Constructive Trust, & for Injunctive Relief, Together with a Request for Disclosures (20 Pages).

05/13/2013 Defendant/Co-Trustee Anita K. Brunsting's Original Answer & Request for Disclosures (5 Pages).

05/31/2013 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's 1<sup>ST</sup> Amended Answer (6 Pages).

06/07/2013 Plaintiff Carl Henry Brunsting's 1<sup>ST</sup> Amended Petition for Declaratory Judgment (18 Pages).

12/01/2014 Plaintiff Carl Henry Brunsting's Designation of Expert Witnesses (10 Pages)

12/05/2014 Defendant/Co-Trustee Anita K. Brunsting's Response to Plaintiff's Motion to Remove Trustee (3 Pages).

12/08/2014 Defendant/Co-Trustee Amy R. Brunsting's Response to Plaintiff Carl Henry Brunsting's Motion to Remove Trustee (4 Pages).

03/20/2015 Plaintiff Carl Henry Brunsting's 1<sup>ST</sup> Supplement to 1<sup>ST</sup> Amended Petition & Request for Injunctive Relief (4 Pages).

03/23/2015 Plaintiff Carl Henry Brunsting's Response to Anita Brunsting's Motion to Compel Carl Brunsting's Response to Anita Brunsting's Request for Disclosures with Exhibits 1-5 (43 Pages).

07/01/2015 Defendants/Co-Trustee Anita K. Brunsting's Expert Witness Designations (3 Pages)

07/10/2015 Plaintiff Carl Henry Brunsting's 2<sup>ND</sup> Supplement to Plaintiff Carl Henry Brunsting's 1<sup>ST</sup> Amended Petition & Request for Injunctive Relief / Film Code No. PBT-2015-225377 (3 Pages).

08/03/2015 Plaintiff Carl Henry Brunsting's 3<sup>RD</sup> Supplement to Plaintiff 1<sup>ST</sup> Amended Petition & Request for Injunctive Relief / Film Code No. PBT-2015-250703 (6 Pages).

08/29/2018 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's Joint Response to Plaintiff's Motion for Partial Summary Judgment with Exhibit A (20 Pages).

11/04/2019 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's 2<sup>ND</sup> Amended Answer (6 Pages).

11/04/2019 Defendants/Co-Trustees Amy R. Brunsting's & Anita K. Brunsting's Original Counterclaim (8 Pages).

07/30/2020 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's Response to C. Brunsting's Partial MSJ with Exhibits A-E (225 Pages).

- 08/04/2020 Plaintiff Carl Henry Brunsting's Reply to Defendants' Response to Carl's Motion for Partial Summary Judgment (10 Pages)
- 08/13/2020 Order on Briefing as to Plaintiff Carl Henry Brunsting's Motion for Partial Summary Judgment (2 Pages).
- 09/10/2020 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's Joint Amended Response to Carl Brunsting's Motion for Partial Summary Judgment with Stephen A. Mendel's Declaration Regarding Exhibits A-J & Exhibits A-J (456 Pages).
- 09/17/2020 Defendants/Co-Trustees Anita K. Brunsting & Amy R. Brunsting's 1<sup>ST</sup> Supplemental Answer (3 Pages).
- 09/25/2020 Plaintiff Carl Henry Brunsting's Reply to Defendants Amy R. Brunsting & Anita K. Brunsting's Amended Response to Carl's Motion for Partial Summary Judgment (14 Pages).
- 10/15/2021 Plaintiff Carl Henry Brunsting's Original Answer to Amy R. Brunsting's & Anita K. Brunsting's Original Counterclaim (4 Pages).
- 10/15/2021 Plaintiff Carl H. Brunsting's 4<sup>TH</sup> Supplement to First Amended Petition & Request for Injunctive Relief (3 Pages).
- 11/04/2021 Plaintiff Carl Henry Brunsting's 2<sup>ND</sup> Amended Expert Witness Designation & Further Supplement to Carl's Responses to All Requests for Disclosures (13 Pages).
- 11/05/2021 Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting Motion for Summary Judgment & Exhibits A-L (265 Pages).
- 11/12/2021 Order Denying Part of Plaintiff Carl Henry Brunsting's Motion for Partial Summary Judgment.
- 12/06/2021 2021-12-05 Rule 11 Agreement – Plaintiff Carl Henry Brunsting & Defendants/Co-Trustees Anita K. Brunsting & Amy R. Brunsting (4 Pages).
- 01/08/2022 Plaintiff Carl H. Brunsting & Defendants/Co-Trustees Amy R. Brunsting & Anita K. Brunsting's Agreed Motion to Sever (3 Pages).

SIGNED on this \_\_\_\_\_, 2022.

Signed on: 03/11/2022  
3:50:08 PM



CC \_\_\_\_\_  
Presiding Judge

APPROVED AS TO FORM:

Bobbie G. Bayless (01940600)  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098  
O: 713-522-2224  
F: 713-522-2218  
E: [bayless@baylessstokes.com](mailto:bayless@baylessstokes.com)

Counsel for Plaintiff/Counter-Defendant/Co-Trustee  
Anita Brunsting

&

Stephen A. Mendel (13930650)  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, TX 77079  
O: 281-759-3213  
F: 281-759-3214  
E: [info@mendellawfirm.com](mailto:info@mendellawfirm.com)

Counsel for Defendant/Co-Trustee  
Anita Brunsting

&

Neal Spielman (00794678)  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, TX 77079  
O: 281-870-1124  
F: 281-870-1647  
E: [nspielman@grifmatlaw.com](mailto:nspielman@grifmatlaw.com)

Counsel for Defendant/Co-Trustee  
Amy R. Brunsting

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Stephen Mendel  
Bar No. 13930650  
info@mendellawfirm.com  
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Associated Case Party: CAROLEANNBRUNSTING

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Carole AnnBrusnting		cbrunsting@sbcglobal.net	3/9/2022 4:45:20 PM	SENT

Associated Case Party: ANITAKAYBRUNSTING

Name	BarNumber	Email	TimestampSubmitted	Status
Stephen A.Mendel		info@mendellawfirm.com	3/9/2022 4:45:20 PM	SENT

Associated Case Party: CANDACE LOUISECURTIS

Name	BarNumber	Email	TimestampSubmitted	Status
Candice Schwager		candiceschwager@icloud.com	3/9/2022 4:45:20 PM	SENT

Associated Case Party: CANDACELKUNZ-FREED

Name	BarNumber	Email	TimestampSubmitted	Status
Cory SReed		creed@thompsoncoe.com	3/9/2022 4:45:20 PM	SENT

Associated Case Party: CARLHENRYBRUNSTIING

Name	BarNumber	Email	TimestampSubmitted	Status
Bobbie G.Bayless		bayless@baylessstokes.com	3/9/2022 4:45:20 PM	SENT

Associated Case Party: AMYRUTHBRUNSTING

Name	BarNumber	Email	TimestampSubmitted	Status
Neal Spielman		nspielman@grifmatlaw.com	3/9/2022 4:45:20 PM	SENT