# TAB 100

APPEAL,CLOSED,REMANDED

# U.S. District Court
# SOUTHERN DISTRICT OF TEXAS (Houston)
# CIVIL DOCKET FOR CASE #: 4:12-cv-00592
# Internal Use Only

Candace Louise Curtis v. Anita Kay Brunsting et al **Case remanded to Harris County Probate Court No. 4.**
Assigned to: Judge Kenneth M. Hoyt
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/27/2012
Date Terminated: 09/23/2020
Jury Demand: Plaintiff
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

**Special Master**

**William West**
*Accountant*

represented by **Timothy Aaron Million**
Husch Blackwell
600 Travis Street
Suite 2350
Houston, TX 77002
713-525-6221
Fax: 713-647-6884
Email: tim.million@huschblackwell.com
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Candace Louise Curtis**

represented by **Candice Lee Schwager**
State Bar Information
2210 Village Dale Ave
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United Sta
832-315-8489
Fax: 713-456-2453
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

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Houston, TX 77006
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Email: jason@ostrompc.com
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Carl Brunsting**
*Necessary Party and Involuntary Plaintiff*

represented by **Carl Brunsting**
PRO SE

V.

**Defendant**

**Anita Kay Brunsting**

represented by **Bernard Lilse Mathews , III**
Green and Mathews LLP
14550 Torrey Chase Blvd
Suite 245
Houston, TX 77014
281-580-8100
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*TERMINATED: 02/20/2013*
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*ATTORNEY TO BE NOTICED*

**George William Vie , III**
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*LEAD ATTORNEY*

**Defendant**

**Amy Ruth Brunsting**

represented by **Bernard Lilse Mathews , III**
(See above for address)
*TERMINATED: 02/20/2013*
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**George William Vie , III**
(See above for address)
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**Stephen A Mendel**
(See above for address)
*ATTORNEY TO BE NOTICED*

**Defendant**

**Does 1-100**

**Defendant**

**Carole Ann Brunsting**

**Defendant**

**Candace L. Kunz-freed**

**Defendant**

**Albert E. Vacek Jr.**

**Defendant**

**Vacek & Freed, PLLC**

**Defendant**

**The Vacek Law Firm PLLC**

**Defendant**

**Bernard Lilse Mathews III**

| Date Filed | # | Docket Text |
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| 02/27/2012 | 1 (p.17) | PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION against Amy Ruth Brungsting, Anita Kay Brunsting (Filing fee $ 350) filed by Candace Louise Curtis. (Attachments: # 1 (p.17) Continuation, # 2 (p.425) Continuation, # 3 (p.428) Continuation, # 4 (p.432) Continuation, # 5 (p.436) Continuation, # 6 (p.437) Continuation, # 7 (p.438) Continuation, # 8 (p.443) Continuation, # 9 (p.444) Continuation, # 10 (p.446) Continuation, # 11 (p.490) Continuation, # 12 (p.491) Continuation, # 13 (p.492) Continuation)(dterrell, ) Modified on 2/27/2012 (dterrell, ). (Entered: 02/27/2012) |
| 02/27/2012 | 2 (p.425) | PROPOSED ORDER Injunctinctive Order Temporary Restraining Order, Asset Freeze, Production of Documents and Records, Appointment of Receiver, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 3 (p.428) | INITIAL DISCLOSURES by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 4 (p.432) | REQUEST for Production of Documents from Anita Kay Brunsting and Amy Ruth Brunsting by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 5 (p.436) | NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 6 (p.437) | NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | | Civil Filing fee re: 1 (p.17) Complaint,, : $350.00, receipt number CC003143, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | | Summons Issued as to Amy Ruth Brunsting, Anita Kay Brunsting, filed.(dterrell, ) (Entered: 02/27/2012) |

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| 02/28/2012 | 7 (p.438) | ORDER for Initial Pretrial and Scheduling Conference by Telephone and Order to Disclose Interested Persons. Counsel who filed or removed the action is responsible for placing the conference call and insuring that all parties are on the line. The call shall be placed to (713)250-5613. Telephone Conference set for 5/29/2012 at 09:30 AM by telephone before Judge Kenneth M. Hoyt.(Signed by Judge Kenneth M. Hoyt) Parties notified.(ckrus, ) (Entered: 02/28/2012) |
| 03/01/2012 | 8 (p.443) | ORDER denying the application for a temporary restraining order and for injunction.(Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/01/2012) |
| 03/05/2012 | 9 (p.444) | Letter from Rik Munson re: serving copies on parties, filed. (Attachments: # 1 (p.17) cover letter) (saustin, ) (Entered: 03/05/2012) |
| 03/06/2012 | 10 (p.446) | EMERGENCY MOTION by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Attachments: # 1 (p.17) Affidavit Affidavit of Amy Brunsting, # 2 (p.425) Exhibit Property Appraisal, # 3 (p.428) Exhibit Sale Contract, # 4 (p.432) Exhibit Tax Appraisal, # 5 (p.436) Supplement Request for Hearing, # 6 (p.437) Proposed Order Proposed Order)(Mathews, Bernard) (Entered: 03/06/2012) |
| 03/06/2012 | 11 (p.490) | Corrected MOTION Removal of Lis Pendens by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Mathews, Bernard) (Entered: 03/06/2012) |
| 03/06/2012 | 12 (p.491) | NOTICE of Setting. Parties notified. Telephone Conference set for 3/7/2012 at 11:00 AM by telephone before Judge Kenneth M. Hoyt, filed. The call shall be placed to (713)250-5613. (chorace) (Entered: 03/06/2012) |
| 03/08/2012 | 13 (p.492) | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on 3/7/12 Appearances: Candace L. Curtis, pro se, Bernard Lilse Mathews, III.. The Court will, sua sponte, dismiss the pltf's case by separate order for lack of jurisdiction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012) |
| 03/08/2012 | 14 (p.493) | ORDER OF DISMISSAL *(Sua Sponte)* re: 10 (p.446) EMERGENCY MOTION, 11 (p.490) Corrected MOTION Removal of Lis Pendens. The Court lacks jurisdiction and this case is dismissed. To the extent that a *lis pendens* has been filed among the papers in federal Court in this case, it is cancelled and held for naught. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012) |
| 03/09/2012 | 15 (p.495) | Plaintiff's Answer to 11 (p.490) Corrected MOTION Removal of Lis Pendens filed by Candace Louise Curtis. (pyebernetsky, ) (Entered: 03/12/2012) |
| 03/12/2012 | 16 (p.505) | NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 14 (p.493) Order of Dismissal, by Candace Louise Curtis (Filing fee $ 455), filed.(mlothmann) (Entered: 03/12/2012) |
| 03/16/2012 | 17 (p.507) | Notice of Assignment of USCA No. 12-20164 re: 16 (p.505) Notice of Appeal, filed.(sguevara, ) (Entered: 03/16/2012) |
| 03/26/2012 | 18 (p.509) | Notice of the Filing of an Appeal. DKT13 transcript order form was not mailed to appellant. Fee status: Not Paid. The following Notice of Appeal and related motions are pending in the District Court: 16 (p.505) Notice of Appeal, filed. (Attachments: # 1 (p.17) Order Dismissal, # 2 (p.425) Notice of Appeal, # 3 (p.428) Docket sheet, # 4 (p.432) Motion IFP)(lfilmore, ) (Entered: 03/26/2012) |

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| 03/30/2012 | | USCA Appeal Fees received $ 455, receipt number HOU022939 re: 16 (p.505) Notice of Appeal, filed.(klove, ) (Entered: 03/30/2012) |
| 04/12/2012 | 19 (p.522) | Form 22 TRANSCRIPT ORDER FORM by Candace Louise Curtis. Transcript is unnecessary for appeal purposes. This order form relates to the following: 16 (p.505) Notice of Appeal, filed.(mlothmann) (Entered: 04/16/2012) |
| 04/26/2012 | | (Court only) The Record on Appeal submission has been made, filed. (blacy, ) (Entered: 04/26/2012) |
| 04/26/2012 | | The Electronic record on appeal has now been certified to the Fifth Circuit Court of Appeals re: 16 (p.505) Notice of Appeal USCA No. 12-20164, filed.(blacy, ) (Entered: 04/26/2012) |
| 05/18/2012 | | (Court only) ***(PRIVATE ENTRY) CD containing copy of record forwared to Candace Curtis, filed. (glyons) (Entered: 05/18/2012) |
| 08/16/2012 | 20 (p.524) | Transmittal Letter on Appeal Certified re: 16 (p.505) Notice of Appeal. A paper copy of the electronic record is being transmitted to the Fifth Circuit Court of Appeals in 3 volumes. (USCA No. 12-20164), filed.(hler, ) (Additional attachment(s) added on 8/17/2012: # 1 (p.17) UPS Tracking #) (hler, ). (Entered: 08/16/2012) |
| 08/20/2012 | 21 (p.526) | Transmittal Letter on Appeal Certified re: 16 (p.505) Notice of Appeal. CDs containing the electronic record are being sent to Bernard Lilse Mathews, III, filed.(hler, ) (hler, ). (Entered: 08/20/2012) |
| 02/05/2013 | 22 (p.527) | JUDGMENT of USCA for the Fifth Circuit re: 16 (p.505) Notice of Appeal ; USCA No. 12-20164. The judgment of the District Court is REVERSED, and the cause is REMANDED to the District Court for further proceedings in accordance with the opinion of the Court. Case reopened on 2/5/2013, filed.(jdav, ) (Entered: 02/05/2013) |
| 02/05/2013 | 23 (p.528) | Court of Appeals for the Fifth Circuit LETTER advising the record/original papers/exhibits are to be returned (USCA No. 12-20164), filed.(jdav, ) (Entered: 02/05/2013) |
| 02/05/2013 | 24 (p.529) | OPINION of USCA for the Fifth Circuit re: 16 (p.505) Notice of Appeal ; USCA No. 12-20164. The district court's dismissal of the case is REVERSED and the case is REMANDED for further proceedings. REVERSED AND REMANDED., filed.(jdav, ) (Entered: 02/05/2013) |
| 02/06/2013 | 25 (p.535) | NOTICE of Setting. Parties notified. Status/Scheduling Telephone Conference set for 2/19/2013 at 08:45 AM before Judge Kenneth M. Hoyt, filed. (dpalacios, ) (Entered: 02/06/2013) |
| 02/17/2013 | 26 (p.536) | NOTICE of Appearance by George W. Vie III on behalf of Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Attachments: # 1 (p.17) Proposed Order)(Vie, George) (Entered: 02/17/2013) |
| 02/19/2013 | 27 (p.540) | ORDER FOLLOWING TELEPHONE STATUS/SCHEDULING CONFERENCE held on February 19, 2013 at 8:45 a.m. Appearances: Candace Curtis, pro se, George Vie ETT: TBA. Jury trial. Joinder of Parties due by 4/30/2013 Pltf Expert Witness List due by 9/30/2013. Pltf Expert Report due by 9/30/2013. Deft Expert Witness List due by 10/30/2013. Deft Expert Report due by 10/30/2013. Discovery due by 12/30/2013. Dispositive Motion Filing due by 12/30/2013. Docket Call set for |

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| | | 3/3/2014 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt. The defendant's are to file an answer to the plaintiff's suit on or before March 4, 2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 02/19/2013) |
| 02/20/2013 | 28 (p.541) | ORDER that George W. Vie III and the law firm of Mills Shirley L.L.P. are substituted as attorneys of record for Defendants in lieu of Bernard Lilse Mathews, III and the law firm of Green & Mathews, L.L.P.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 02/20/2013) |
| 02/20/2013 | | (Court only) *** Attorney Bernard Lilse Mathews, III terminated. (chorace) (Entered: 02/20/2013) |
| 03/01/2013 | 29 (p.542) | ANSWER to 1 (p.17) Complaint,, by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(Vie, George) (Entered: 03/01/2013) |
| 03/05/2013 | 30 (p.551) | Court of Appeals LETTER advising Electronic record has been recycled (USCA No. 12-20164), filed.(smurdock, ) (Entered: 03/05/2013) |
| 03/11/2013 | 31 (p.552) | CERTIFICATE OF INTERESTED PARTIES by Plaintiff, filed.(mmapps, ) (Entered: 03/11/2013) |
| 03/11/2013 | | (Court only) ***Party Computershare Investor Services, LLC, Edward Jones Securities, The Northern Trust Company and Bank of America added. (mlothmann, ) (Entered: 03/13/2013) |
| 03/14/2013 | 32 (p.555) | REPLY to 29 (p.542) Answer to Complaint, filed by Candace Louise Curtis. (sclement, ) (Entered: 03/20/2013) |
| 03/14/2013 | 33 (p.573) | CERTIFICATE OF SERVICE of 32 (p.555) Reply by Candace Louise Curtis, filed.(sclement, ) (Entered: 03/20/2013) |
| 03/14/2013 | 34 (p.574) | AFFIDAVIT of Candace Louise Curtis in Support of Application for Injunction, filed.(sclement, ) (Entered: 03/20/2013) |
| 03/14/2013 | 35 (p.577) | Renewed Application for Ex Parte Temporary Restraining Order, and Asset Freeze, Temporary and Permanent Injunction by Candace Louise Curtis, filed. Motion Docket Date 4/4/2013. (sclement, ) (Additional attachment(s) added on 3/20/2013: # 1 (p.17) Proposed Order) (sclement, ). (Entered: 03/20/2013) |
| 03/14/2013 | 36 (p.3060) | EXHIBITS re: 35 (p.577) MOTION for Temporary Restraining Order by Candace Louise Curtis, filed.(sclement, ) (Entered: 03/20/2013) |
| 03/14/2013 | | (Court only) 1 CD forwarded to fileroom related to 32 (p.555) 33 (p.573) 34 (p.574) 35 (p.577) & 36 (p.3060) ***(PRIVATE ENTRY), filed. (smurdock, ) (Entered: 03/20/2013) |
| 03/22/2013 | 37 (p.591) | NOTICE of Setting as to 35 (p.577) MOTION for Temporary Restraining Order. Parties notified. Injunction Hearing set for 4/9/2013 at 09:00 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 03/22/2013) |
| 03/29/2013 | | ***Plaintiff's email request to appear telephonically at the Injunction hearing set for April 9, 2013 at 9:00 a.m is Denied. Candace Curtis' appearance in person is required, filed. (chorace) (Entered: 03/29/2013) |
| 04/01/2013 | 38 (p.592) | Letter from Rik Munson re: the mailing of a copy of Rule 11 motion, filed. (mmapps, ) (Entered: 04/02/2013) |

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| 04/04/2013 | 39 (p.599) | RESPONSE in Opposition to 35 (p.577) MOTION for Temporary Restraining Order, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 (p.17) Proposed Order)(Vie, George) (Entered: 04/04/2013) |
| 04/09/2013 | 40 | Minute Entry for proceedings held before Judge Kenneth M. Hoyt. PRELIMINARY INJUNCTION HEARING held on 4/9/2013. Witness: 10 Anita Kay Brunsting. Pursuant to the courtroom ruling as stated on the record, the parties shall work toward resloving this matter w/i 90 days, or the Court shall appoint an independent firm or accountant to gather financial records of the Trust. The parties shall submit a name of an agreed accountant w/i one week. Defendant's shall submit a motion for approval of payment of the Trust taxes. No bond is required at this time. Appearances:Candace Curtis. George William Vie, III.(Court Reporter: F. Warner), filed.(chorace, ) (Entered: 04/09/2013) |
| 04/09/2013 | 42 (p.633) | Exhibit List by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(chorace) (Entered: 04/11/2013) |
| 04/10/2013 | 41 (p.610) | NOTICE *of filing of state court lawsuit against parties* by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/10/2013) |
| 04/11/2013 | 43 (p.634) | MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/2/2013. (Attachments: # 1 (p.17) Proposed Order)(Vie, George) (Entered: 04/11/2013) |
| 04/11/2013 | 44 (p.638) | ORDER granting 43 (p.634) Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/11/2013) |
| 04/19/2013 | 45 (p.639) | MEMORANDUM AND ORDER PRELIMINARY INJUNCTION. The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/19/2013) |
| 04/19/2013 | 46 (p.644) | NOTICE *of Agreed CPA Firm pursuant to Court's Order for Accounting* by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/19/2013) |
| 04/29/2013 | 47 (p.646) | ORDER. In light of the accusations in the pleadings and the Courts instructions, the Court is of the opinion that the best course forward is a Court appointed accountant who will be responsible to the Court. The Court, therefore, rejects the parties agreed notice as an appointment. An Order designating an accountant will be entered shortly.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) . (Entered: 04/29/2013) |
| 05/01/2013 | 48 (p.647) | **STRICKEN Per # 57** Order. Plaintiff's First AMENDED complaint with jury demand against All Defendants filed by Candace Louise Curtis.(olindor, ) (Entered: 05/01/2013) |
| 05/01/2013 | 49 (p.680) | MOTION for Joinder of Parties And Actions Demand For Show of Proof of Standing by Candace Louise Curtis, filed. Motion Docket Date 5/22/2013. (olindor) (Entered: 05/01/2013) |
| 05/01/2013 | 50 (p.690) | Plaintiff's Verified AFFIDAVIT In Support of Amended Complaint And In Support of Application For Joinder Candace Louise Curtis, filed. (Attachments: # 1 (p.17) Exhibit, # 2 (p.425) Exhibit)(olindor) (Entered: 05/01/2013) |

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| 05/01/2013 | 51 (p.740) | NOTICE of lawsuit and request to waiver service by Candace Louise Curtis, filed. (ccarnew, ) (Entered: 05/08/2013) |
| 05/01/2013 | 52 (p.741) | NOTICE of lawsuit and request to waive service by Candace Louise Curtis, filed. (ccarnew, ) (Entered: 05/08/2013) |
| 05/01/2013 | 53 (p.742) | NOTICE of a Lawsuit and Request to Waive Service of a Summons by Candace Louise Curtis, filed. (isoto) (Entered: 05/08/2013) |
| 05/01/2013 | 54 (p.743) | Notice of Lawuit and Request for Waiver of a Summons as to Bernard Lilse Mathews III sent on 4/28/13 by Candace Louise Curtis, filed.(dgonzalez) (Entered: 05/08/2013) |
| 05/09/2013 | | (Court only) ***Party William West added. (chorace) (Entered: 05/09/2013) |
| 05/09/2013 | 55 (p.744) | ORDER Pursuant to federal Rule of Civil Procedure 53, Appointing William G. West as Master to Perform Accounting 47 (p.646) .(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/09/2013) |
| 05/21/2013 | 56 (p.747) | RESPONSE in Opposition to 49 (p.680) MOTION for Joinder, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 (p.17) Proposed Order)(Vie, George) (Entered: 05/21/2013) |
| 05/22/2013 | 57 (p.764) | ORDER denying 49 (p.680) Motion for Joinder of Parties and Actions and Motion to Amend Complaint. The Amended Complaint 48 (p.647) was filed w/o leave of Court and is therefore STRICKEN from the record.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 05/22/2013) |
| 06/06/2013 | 58 (p.765) | MOTION for Approval of Disbursement by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 6/27/2013. (Attachments: # 1 (p.17) Appendix Exhibits 1 and 2, # 2 (p.425) Proposed Order)(Vie, George) (Entered: 06/06/2013) |
| 06/10/2013 | 59 (p.772) | ORDER granting 58 (p.765) Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(kpicota) (Entered: 06/10/2013) |
| 07/15/2013 | 60 (p.773) | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on July 15, 2013 at 8:15 a.m. Appearances: William G. West (Accountant). Pursuant to phone conference, the Court conferred with Mr. West concerning his report due at the end of the month. Upon receipt, a hearing date will be set to address any concerns of the parties.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 07/15/2013) |
| 08/05/2013 | 61 (p.774) | ORDER. Before the Court is the report of the Court-appointed accountant for the Brunsting Family Living Trust for the period December 21, 2010 through May 31, 2013. Objections to the report and the accountants invoice shall be filed on or before August 27, 2013. Miscellaneous Hearing set for 9/3/2013 at 01:30 PM at Courtroom 11A before Judge Kenneth M. Hoyt(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/05/2013) |
| 08/08/2013 | 62 (p.775) | NOTICE - *Report of Master - Accounting of Income/Receipts and Expenses/Distributions of the Brunsting Family Living Trust for the Period December 21, 2010 Through May 31, 2013* re: 55 (p.744) Order, 61 (p.774) Order, by William West, filed. (Million, Timothy) (Entered: 08/08/2013) |
| 08/08/2013 | 63 (p.3091) | Sealed Event, filed. (Entered: 08/08/2013) |

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| 08/26/2013 | 64 (p.813) | MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/16/2013. (Attachments: # 1 (p.17) Proposed Order)(Vie, George) (Entered: 08/26/2013) |
| 08/27/2013 | 65 (p.822) | MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013 by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/17/2013. (Attachments: # 1 (p.17) Proposed Order)(Vie, George) (Entered: 08/27/2013) |
| 08/27/2013 | 66 (p.833) | ORDER granting 64 (p.813) Defendant's Motion for Approval of Disbursements to Pay Property Tax Bills.(Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana) (Entered: 08/27/2013) |
| 08/27/2013 | 67 (p.835) | RESPONSE *to Report of Master*, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 (p.17) Appendix Tab 1, # 2 (p.425) Appendix Tab 2)(Vie, George) (Entered: 08/27/2013) |
| 08/28/2013 | 68 (p.852) | ORDER for Expedited Response; Motion-related deadline set re: 65 (p.822) MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013. Response to Motion due by 9/3/2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/28/2013) |
| 08/29/2013 | 69 (p.853) | RESPONSE to 62 (p.775) Notice - Report of Master, filed by Candace Louise Curtis. (Attachments: # 1 (p.17) Proposed Order, # 2 (p.425) Proposed Order). (CD filed in Clerks Office.)(sscotch, ) (Entered: 08/29/2013) |
| 08/29/2013 | 70 (p.862) | This document is a duplicate of DE 69 (p.853) ; this entry was made for case management purposes. Plaintiff's Response to the Report of Master and Applications for Orders by Candace Louise Curtis, filed. (CD filed in Clerks Office). Motion Docket Date 9/19/2013. (Attachments: # 1 (p.17) Proposed Order, # 2 (p.425) Proposed Order)(sscotch, ) (Entered: 08/29/2013) |
| 08/30/2013 | 71 (p.871) | PROPOSED ORDER re: 67 (p.835) Response, filed.(Vie, George) (Entered: 08/30/2013) |
| 09/03/2013 | 72 (p.872) | OBJECTIONS to 65 (p.822) MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013, filed by Candace Louise Curtis. (mmapps, ) (Entered: 09/03/2013) |
| 09/03/2013 | 73 (p.883) | OBJECTIONS to 62 (p.775) Notice (Other), Defendants Motion for Orders to Recommit Matters to Master for Consideration, filed by Candace Louise Curtis. (mmapps, ) (Entered: 09/03/2013) |
| 09/03/2013 | 74 (p.887) | Plaintiff's Ex Parte Motion for Order to Show Cause and Application for Judgment of Civil Contempt by Candace Louise Curtis, filed. Modified on 9/3/2013 (chorace). (Entered: 09/03/2013) |
| 09/03/2013 | 75 | Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MISCELLANEOUS HEARING held on 9/3/2013. There were no objection's by the parties to the Master's Report. Invoices are Ordered to be paid. Any and all pending motions not ruled on are DENIED. Appearances:Candace Louise Curtis, Maureen McCutchen, William Potter, George William Vie, III, Timothy Aaron Million.(Court Reporter: S. Carlisle), filed.(chorace) (Entered: 09/03/2013) |
| 09/03/2013 | 76 (p.900) | NOTICE of Setting as to 74 (p.887) MOTION for Order to Show Cause. Parties notified. Motion Hearing set for 10/2/2013 at 11:30 AM in Courtroom 11A before |

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| | | Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/03/2013) |
| 09/03/2013 | 77 (p.901) | ORDER granting Approval of Disbursements to Special Master & Special Master's Attorney. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013) |
| 09/03/2013 | 78 (p.902) | ORDER granting 65 (p.822) Motion for Approval and Renewal of Farm Lease.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013) |
| 09/03/2013 | | (Court only) ***Motion(s) terminated as #69 is not a motion: 70 (p.862) MOTION Application for Orders. (chorace) (Entered: 09/03/2013) |
| 09/18/2013 | 79 (p.2908) | TRANSCRIPT re: TRO Hearing held on April 9, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber FWarner. Release of Transcript Restriction set for 12/17/2013., filed. (fwarner, ) (Entered: 09/18/2013) |
| 09/19/2013 | 80 (p.903) | Notice of Filing of Official Transcript as to 79 (p.2908) Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/19/2013) |
| 09/23/2013 | 81 (p.904) | NOTICE of Resetting. Parties notified. Motion Hearing reset for 10/2/2013 at 09:00 AM (TIME CHANGE ONLY) in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/23/2013) |
| 09/23/2013 | 82 (p.905) | RESPONSE in Opposition to 74 (p.887) MOTION for Order to Show Cause, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 (p.17) Appendix)(Vie, George) (Entered: 09/23/2013) |
| 09/23/2013 | 83 (p.920) | PROPOSED ORDER re: 82 (p.905) Response in Opposition to Motion, filed.(Vie, George) (Entered: 09/23/2013) |
| 09/27/2013 | 84 (p.2962) | TRANSCRIPT re: Hearing held on September 3, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber S. Carlisle. Release of Transcript Restriction set for 12/26/2013., filed. (scarlisle) (Entered: 09/27/2013) |
| 09/30/2013 | 85 (p.921) | Notice of Filing of Official Transcript as to 84 (p.2962) Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/30/2013) |
| 10/02/2013 | 86 | Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MOTION HEARING held on 10/2/2013. Argument heard. Order to follow. Appearances:Candace Louise Curtis, Maureen Kuzik McCuchen. George William Vie, III.(Court Reporter: M. Malone), filed.(chorace) (Entered: 10/02/2013) |
| 10/03/2013 | 87 (p.922) | ORDER denying 74 (p.887) Motion for Order to Show Cause and Application for Judgment of Civil Contempt. The Court directs that the plaintiff employ counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. (Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana, 4) (Entered: 10/03/2013) |
| 11/08/2013 | 88 (p.924) | MOTION for Approval of Disbursement to pay invoice by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 11/29/2013. (Attachments: # 1 (p.17) Appendix Invoice, # 2 (p.425) Proposed Order)(Vie, George) (Entered: 11/08/2013) |
| 11/12/2013 | 89 (p.929) | ORDER granting 88 (p.924) Motion for Approval of Disbursement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 11/12/2013) |

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| 12/05/2013 | 90 (p.930) | PLAINTIFF'S MOTION for Approval of Disbursement to pay fee retainer by Candace Louise Curtis, filed. Motion Docket Date 12/26/2013. (Attachments: # 1 (p.17) Proposed Order)(sbejarano, 1) (Entered: 12/06/2013) |
| 12/12/2013 | 91 (p.934) | NOTICE of Setting as to 90 (p.930) MOTION for Approval of disbursement to pay fee retainer. Parties notified. Telephone Conference set for 12/18/2013 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 12/12/2013) |
| 12/18/2013 | 92 (p.935) | RESPONSE to 90 (p.930) MOTION for Approval of disbursement to pay fee retainer filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 (p.17) Proposed Order )(Vie, George) (Entered: 12/18/2013) |
| 12/18/2013 | 94 (p.943) | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on December 18, 2013 at 8:30 a.m. Appearances: Candace Curtis Curtis, Jason Ostrom, George Vie, III. Pursuant to phone conference, the parties agree to seek and agree upon an accommodation that satisfies the plaintiffs request for a disbursement for attorneys fees, if they can do so. The Court sanctions this process and sets December 30, 2013 as the deadline for filing any agreement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/06/2014) |
| 12/30/2013 | 93 (p.939) | Agreed PROPOSED ORDER re: 90 (p.930) MOTION for Approval of disbursement to pay fee retainer, filed. (Attachments: # 1 (p.17) Proposed Order Agreed proposed order)(Vie, George) (Entered: 12/30/2013) |
| 01/06/2014 | 95 (p.944) | NOTICE of Appearance by Jason B. Ostrom on behalf of Jason Ostrom, filed. (Ostrom, Jason) (Entered: 01/06/2014) |
| 01/06/2014 | 96 (p.946) | AGREED ORDER granting Approval of Disbursements. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/07/2014) |
| 02/24/2014 | 97 (p.948) | NOTICE of Setting. Parties notified. Telephone Conference set for 2/28/2014 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 02/24/2014) |
| 02/28/2014 | 98 (p.949) | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on February 28, 2014 at 8:30 a.m. Appearances: Jason B. Ostrom, George William Vie, III. Pursuant to phone conference conducted this day, the plaintiff, who determines that additional parties and claims may be necessary for a complete resolution of the case, also fears loss of diversity jurisdiction on the part of the Court. In this regard, and with an eye toward resolving these concerns, the plaintiff is to report the nature and extent of this progress to the Court on or before March 30, 2014. Docket call is cancelled.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/02/2014) |
| 02/28/2014 | | (Court only) ***March 3, 2014 Docket Call is terminated. (chorace) (Entered: 03/02/2014) |
| 03/08/2014 | 99 (p.950) | MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/31/2014. (Attachments: # 1 (p.17) Appendix Exhibit A, # 2 (p.425) Proposed Order)(Vie, George) (Entered: 03/08/2014) |
| 03/10/2014 | 100 (p.959) | Order Granting Defendants Motion for Approval of Disbursements to Pay Property Tax Bills 99 (p.950) Motion for Approval.(Signed by Judge Kenneth M. Hoyt) Parties notified.(sclement, 4) (Entered: 03/10/2014) |

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| 03/26/2014 | 101 (p.960) | MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 4/16/2014. (Attachments: # 1 (p.17) Proposed Order)(Vie, George) (Entered: 03/26/2014) |
| 03/27/2014 | 102 (p.963) | ORDER granting 101 (p.960) Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/27/2014) |
| 04/15/2014 | 103 (p.964) | MOTION for Approval of quarterly estimated income tax payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/6/2014. (Attachments: # 1 (p.17) Proposed Order)(Vie, George) (Entered: 04/15/2014) |
| 04/16/2014 | 104 (p.967) | ORDER granting 103 (p.964) Motion for Approval of Quarterly Estimated Income Tax Payments. (Signed by Judge Kenneth M. Hoyt) Parties notified. (rosaldana, 4) (Entered: 04/16/2014) |
| 04/22/2014 | 105 (p.968) | MOTION for Approval of Disbursements by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/13/2014. (Attachments: # 1 (p.17) Proposed Order)(Vie, George) (Entered: 04/22/2014) |
| 04/22/2014 | 106 (p.975) | ORDER granting 105 (p.968) Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/22/2014) |
| 05/09/2014 | 107 (p.976) | Unopposed MOTION for Leave to File First Amended Petition by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Attachments: # 1 (p.17) Exhibit Exhibit A)(Ostrom, Jason) (Entered: 05/09/2014) |
| 05/09/2014 | 108 (p.987) | First AMENDED Complaint with Jury Demand against Amy Ruth Brunsting, Anita Kay Brunsting, Does 1-100 filed by Candace Louise Curtis.(Ostrom, Jason) (Entered: 05/09/2014) |
| 05/09/2014 | 109 (p.993) | Unopposed MOTION to Remand by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Ostrom, Jason) (Entered: 05/09/2014) |
| 05/12/2014 | 110 (p.998) | Unopposed PROPOSED ORDER *Granting Motion for Leave to File First Amended Petion* re: 107 (p.976) Unopposed MOTION for Leave to File First Amended Petition, filed.(Ostrom, Jason) (Entered: 05/12/2014) |
| 05/15/2014 | 111 (p.999) | ORDER granting 107 (p.976) Motion for Leave to File First Amended Petition.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014) |
| 05/15/2014 | 112 (p.1000) | ORDER granting 109 (p.993) Motion to Remand to Harris County Probate Court No. 4.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014) |
| 05/15/2014 | | (Court only) Document(s) Sent by regular mail to Harris County Probate Court No. 4 re: Certified copy of 112 (p.1000) Order on Motion to Remand, filed. (glyons, 4) (Entered: 05/15/2014) |
| 07/25/2016 | 113 (p.1002) | MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 8/15/2016. (Attachments: # 1 (p.17) Letter, # 2 (p.425) Proposed Order)(chorace) (Entered: 07/28/2016) |
| 07/29/2016 | 114 (p.1005) | ORDER denying 113 (p.1002) Motion for Permission for Electronic Case Filing..(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 07/29/2016) |

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| 08/03/2016 | 115 (p.1006) | Plaintiff Candace Louise Curtis' Motion for Relief from Order Pursuant to Fed. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6) and Fed. R. Civ. P. 60(d)(3) by Candace Louise Curtis, filed. Motion Docket Date 8/24/2016. (Attachments: # 1 (p.17) Proposed Order)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/03/2016 | 117 (p.1350) | Other EXHIBITS re: 115 (p.1006) MOTION., filed. (Attachments: # 1 (p.17) Continuation of Exhibits, # 2 (p.425) Continuation, # 3 (p.428) Continuation, # 4 (p.432) Continuation, # 5 (p.436) Continuation, # 6 (p.437) Continuation, # 7 (p.438) Continuation, # 8 (p.443) Continuation, # 9 (p.444) Continuation, # 10 (p.446) Continuation, # 11 (p.490) Continuation, # 12 (p.491) Continuation, # 13 (p.492) Continuation)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/03/2016 | 118 (p.1714) | Other EXHIBITS re: 115 (p.1006) MOTION by Candace Louise Curtis., filed. (Attachments: # 1 (p.17) Exhibits Continue, # 2 (p.425) Continuation, # 3 (p.428) Continuation, # 4 (p.432) Continuation, # 5 (p.436) Continuation, # 6 (p.437) Continuation, # 7 (p.438) Continuation, # 8 (p.443) Continuation, # 9 (p.444) Continuation, # 10 (p.446) Continuation, # 11 (p.490) Continuation, # 12 (p.491) Continuation, # 13 (p.492) Continuation, # 14 (p.493) Continuation)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/03/2016 | 119 (p.2161) | Other EXHIBITS re: 115 (p.1006) MOTION by Candace Louise Curtis., filed. (Attachments: # 1 (p.17) Exhibits Continue, # 2 (p.425) Continuation, # 3 (p.428) Continuation, # 4 (p.432) Continuation, # 5 (p.436) Continuation, # 6 (p.437) Continuation, # 7 (p.438) Continuation, # 8 (p.443) Continuation, # 9 (p.444) Continuation, # 10 (p.446) Continuation)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/05/2016 | 116 (p.1034) | Other EXHIBITS re: 115 (p.1006) MOTION., filed. (Attachments: # 1 (p.17) Exhibits, # 2 (p.425) Continuation, # 3 (p.428) Continuation, # 4 (p.432) Continuation, # 5 (p.436) Continuation, # 6 (p.437) Continuation, # 7 (p.438) Continuation, # 8 (p.443) Continuation, # 9 (p.444) Continuation, # 10 (p.446) Continuation)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/05/2016 | 120 (p.2461) | Plaintiff Candance Louise Curtis Motion for Sanctions With Points and Authorities Preliminary Statement by Candace Louise Curtis, filed. Motion Docket Date 8/26/2016. (Attachments: # 1 (p.17) Exhibit Transcript, # 2 (p.425) Exhibit)(mxperez, 5) (Entered: 08/09/2016) |
| 08/10/2016 | 121 (p.2585) | PLAINTIFF'S NOTICE OF RELATED CASE (Local Rule 5.2) by Candace Louise Curtis, filed. (szellers, 7) (Entered: 08/11/2016) |
| 08/10/2016 | 122 (p.2586) | PLAINTIFF CANDACE LOUISE CURTIS' MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING by Candace Louise Curtis, filed. Motion Docket Date 8/31/2016. (Attachments: # 1 (p.17) Proposed Order)(szellers, 7) (Entered: 08/11/2016) |
| 03/09/2017 | 123 (p.2591) | ORDER denying 122 (p.2586) Motion or Access to the Courts Electronic Filing System.(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 03/09/2017) |
| 03/20/2019 | 124 (p.2592) | MOTION for Order to Show Cause Why Defendants and Their Counsel Should not be Held in Contempt of this Court's Injunctive Orders by Candace Louise Curtis, filed. Motion Docket Date 4/10/2019. (sguevara, 4) (Entered: 03/20/2019) |
| 04/15/2019 | 125 (p.2657) | AFFIDAVIT of Candace Louise Curtis in Support re: 124 (p.2592) MOTION for Order to Show Cause as to Held in Contempt of this Court's Injunctive Orders, filed. (Attachments: # 1 (p.17) Proposed Order)(dwilkerson, 3) (Entered: 04/16/2019) |

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| 04/23/2019 | 126 (p.2670) | NOTICE of Setting as to 124 (p.2592) MOTION for Order to Show Cause as to Held in Contempt of this Court's Injunctive Orders. Parties notified. Telephone Conference set for 5/8/2019 at 09:15 AM before Judge Kenneth M Hoyt, filed. (On "Meet-Me" Line) (chorace) (Entered: 04/24/2019) |
| 05/08/2019 | 127 (p.2671) | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on May 8, 2019 at 9:15 a.m. Appearances: Candace Curtis (pro se). (Court Reporter: J. Sanchez) Before the Court is the pro se plaintiffs, Candace Curtis, motion for an order directed to certain defendants to show cause why they should not be held in contempt for violating the Courts Preliminary Injunction entered on April 19, 2013. The Court is of the opinion that, having transferred the case to the Harris County Probate Court, it no longer has jurisdiction of the case. Therefore, the relief requested is Denied. (Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 05/09/2019) |
| 07/17/2020 | 128 (p.2672) | Ex Parte MOTION for Relief from Judgment by Candace Louise Curtis, filed. Motion Docket Date 8/7/2020. (Attachments: # 1 (p.17) Exhibit Exhibit A, # 2 (p.425) Exhibit Exhibit B, # 3 (p.428) Exhibit Exhibit C, # 4 (p.432) Exhibit Exhibit D, # 5 (p.436) Exhibit Exhibit E, # 6 (p.437) Exhibit Exhibit F, # 7 (p.438) Exhibit G)(Schwager, Candice) (Entered: 07/17/2020) |
| 07/17/2020 | 129 (p.2753) | Ex Parte PROPOSED ORDER *on Rule 60 motion for relief* re: 128 (p.2672) Ex Parte MOTION for Relief from Judgment, filed.(Schwager, Candice) (Entered: 07/17/2020) |
| 07/17/2020 | 130 (p.2757) | NOTICE of Appearance by Candice Leonard Schwager on behalf of Candace Louise Curtis, filed. (Schwager, Candice) (Entered: 07/17/2020) |
| 08/13/2020 | 131 (p.2758) | Joint RESPONSE in Opposition to 128 (p.2672) Ex Parte MOTION for Relief from Judgment, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 (p.17) Exhibit Doc 87 Order, # 2 (p.425) Exhibit Doc 127 Tel Hrg Notes, # 3 (p.428) Exhibit Docket Report, # 4 (p.432) Exhibit Order Remanding Case, # 5 (p.436) Exhibit Curtis Ntc Substitution, # 6 (p.437) Exhibit Curtis Correspondence, # 7 (p.438) Exhibit Curtis RICO Complaint, # 8 (p.443) Exhibit Plaintiff Curtis Answer to Ostrom Motion to Dismiss, # 9 (p.444) Exhibit Order Dismissing RICO Case, # 10 (p.446) Exhibit 5th Circuit Opinion, # 11 (p.490) Exhibit Probate Ct Order Denying Curtis Pleas & Mtns, # 12 (p.491) Exhibit Probate Court Order Sanctions Against Curtis, # 13 (p.492) Exhibit Probate Court Order for Contempt, # 14 (p.493) Exhibit Doc 45 Preliminary Injunction)(Mendel, Stephen) (Entered: 08/13/2020) |
| 08/14/2020 | 132 (p.2847) | PROPOSED ORDER re: 131 (p.2758) Response in Opposition to Motion,,, 128 (p.2672) Ex Parte MOTION for Relief from Judgment, filed.(Mendel, Stephen) (Entered: 08/14/2020) |
| 08/28/2020 | 133 (p.2850) | Opposed MOTION to Reopen Case by Candace Louise Curtis, filed. Motion Docket Date 9/18/2020. (Attachments: # 1 (p.17) Affidavit Affidavit Candace Curtis, # 2 (p.425) Exhibit Docket sheet probate court, # 3 (p.428) Exhibit Docket sheet missing matters, # 4 (p.432) Exhibit Email from Assoc. Judge stating consolidation never occurred, # 5 (p.436) Exhibit Bayless email re consolidation, # 6 (p.437) Exhibit Trustee counsel email distribution denied, # 7 (p.438) Exhibit Motion to Transfer, Answer and Contempt, # 8 (p.443) Exhibit order re contempt)(Schwager, Candice) (Entered: 08/28/2020) |
| 09/03/2020 | 134 (p.2898) | NOTICE of Setting as to 128 (p.2672) Ex Parte MOTION for Relief from Judgment. Parties notified. Telephone Conference set for 9/10/2020 at 09:00 AM before Judge |

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| | | Kenneth M Hoyt, filed. (On "Meet-Me" Line) (chorace) (Entered: 09/03/2020) |
| 09/10/2020 | 135 (p.2899) | AO 435 TRANSCRIPT REQUEST by Stephen A. Mendel for Transcript of Motion Hearing on 09/10/2020 before Judge Hoyt. Hourly turnaround requested. Court Reporter/Transcriber: Kathy Metzger, filed. (Mendel, Stephen) (Entered: 09/10/2020) |
| 09/10/2020 | 138 (p.2901) | ORDER FOLLOWING TELEPHONE CONFERENCE held on September 10, 2020 at 9:00 a.m. Appearances: Candice Curtis, Neal Spielman, Carol Brunsting, Amy Brunsting, Anita Brunsting Stephen A Mendel, Jason B Ostrom, Candice Lee Schwager. (Court Reporter: K. Metzger). Pursuant to phone conference conducted this day, the Court reopens this case for the limited purpose of considering the plaintiff's exparte motion for relief (Dkt. No. 128). This re-opening does not interfere of intervene in the matters pending or occurring in Probate Court No. 4 of Harris County, Texas. (Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 09/30/2020) |
| 09/10/2020 | | (Court only) ***Case Reopened for the limited purpose of considering the plaintiff's exparte motion for relief 128 (p.2672) . This re-opening does not interfere of intervene in the matters pending or occurring in Probate Court No. 4 of Harris County, Texas. (chorace) (Entered: 09/30/2020) |
| 09/12/2020 | 136 (p.3023) | TRANSCRIPT re: Telephone Conference held on 9/10/20 before Judge Kenneth M Hoyt. Court Reporter/Transcriber K. Metzger. Ordering Party Stephen A. Mendel Release of Transcript Restriction set for 12/11/2020., filed. (kmetzger) (Entered: 09/12/2020) |
| 09/14/2020 | 137 (p.2900) | Notice of Filing of Official Transcript as to 136 (p.3023) Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/14/2020) |
| 09/23/2020 | 139 (p.2902) | ORDER denying 128 (p.2672) Ex Parte MOTION for Relief from Judgment and 133 (p.2850) Opposed MOTION to Reopen Case. Case terminated on 9/23/2020.(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 09/30/2020) |
| 10/23/2020 | 140 (p.2904) | NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit by Candace Louise Curtis (Filing fee $ 505, receipt number 0541-25403999), filed. (Schwager, Candice) (Entered: 10/23/2020) |
| 10/26/2020 | 141 (p.2906) | Clerks Notice of Filing of an Appeal. The following Notice of Appeal and related motions are pending in the District Court: 140 (p.2904) Notice of Appeal. Fee status: Paid. Reporter(s): M. Malone, filed. (dnoriega, 1) (Entered: 10/26/2020) |
| 10/26/2020 | | Appeal Review Notes re: 140 (p.2904) Notice of Appeal. Fee status: Paid. The appeal filing fee has been paid.Hearings were held in the case. DKT13 transcript order form(s) due within 14 days of the filing of the notice of appeal.Hearings were held in the case - transcripts were produced. Number of DKT-13 Forms expected: 1, filed.(dnoriega, 1) (Entered: 10/26/2020) |
| 11/05/2020 | | Notice of Assignment of USCA No. 20-20566 re: 140 (p.2904) Notice of Appeal, filed.(JenniferLongoria, 1) (Entered: 11/05/2020) |
| 11/09/2020 | 142 (p.2907) | DKT13 TRANSCRIPT ORDER REQUEST by Candace Curtis. This is to order a transcript of Rule 60 motion hearing held 9/10/2020 before the Honorable Kenneth Hoyt. Court Reporter/Transcriber: Kathy Metzger. This order form relates to the following: 140 (p.2904) Notice of Appeal, filed.(jdav, 4) (Entered: 11/10/2020) |

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| 11/30/2020 | | (Court only) ***(PRIVATE ENTRY) EROA requested by the 5th Circuit; due by 12/15/20 (20-20566 ABT), filed. (EdnitaPonce, 1) (Entered: 11/30/2020) |

United States Courts
Southern District of Texas
FILED

FEB 27 2012

David J. Bradley, Clerk of Court

# United States District Court

for the

Southern District of Texas

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| CANDACE LOUISE CURTIS,<br>Plaintiff, | § | |
| VS. | § | Civil Action No._____ |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>And Does 1-100<br>Defendants | §<br>§<br>§<br>§ | Jury Trial Demanded |

PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION.

## I.
## Parties

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California. Defendant Anita Kay Brunsting, is a citizen of the State of Texas and Defendant Amy Ruth Brunsting a citizen of the State of Texas.

## II.
## Jurisdiction and Venue

2. This Court has federal subject matter and diversity jurisdiction of the state law claims alleged herein pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2) in that this action is between parties who



20-20566.17

are citizens of different states and the amount in controversy exceeds the sum or value of $75,000, exclusive of interests and costs.

3. The Res in this matter is the Brunsting Family Living Trust (the Trust). Known real property of the Trust is located in Texas and Iowa. No known actions have been previously filed with any court involving the Trust or the trust Res and neither the Will nor the Pour Over Will of either Settlor has been filed with any court for probate.

4. Defendant Anita Brunsting resides in the county of Victoria and Defendant Amy Brunsting resides in the county of Comal. The United States District Court for the Southern District of Texas is the proper venue under 28 USC §1391(a)(1).

## III.

Nature of Action

5. This is a diversity action alleging breach of fiduciary duty, extrinsic and constructive fraud and intentional infliction of emotional distress. The nature of action in breach is focused upon failures to disclose and failures to give notice. Plaintiff reserves the right to amend this complaint to add additional causes at any time prior to judgment.

## IV.

## CAUSES OF ACTION COUNT ONE

## Breach of Fiduciary Obligation

## Breach of Trust

It is settled law that no more than affidavits are necessary to make a prima facie case, U.S. V. Kis, 658 F. 2d 536 (CA7, 1981 Cert den, 50 U.S.L.W. 2169 (1982)

6. Attached Declaration of Candace Louise Curtis is incorporated herein by reference as if fully restated.

7. Plaintiff alleges that Defendant(s) Anita Brunsting and Amy Brunsting have accepted the appointment and are acting jointly as co-trustees for the Brunsting Family Living Trust (the Trust) of which I am a beneficiary and named successor beneficiary.

8. Defendant(s) Anita Brunsting and Amy Brunsting acting as co-trustees for the Trust owe a fiduciary duty to plaintiff, under the common law and under the property statutes of Texas, to provide all beneficiaries and successor beneficiaries of the Trust with information concerning trust administration, copies of trust documents, and semi-annual accounting. As co-trustees for the Trust both defendants owe a fiduciary duty to provide notice to all beneficiaries prior to any changes to the trust that would affect their beneficial interest.

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.

10. Defendant(s) individually and severally damaged Plaintiff through their breach of fiduciary obligations. Upon information and belief, Defendant(s)

individually and severally benefited through their breach of fiduciary obligations to Plaintiff.

11. Defendant(s) Anita Brunsting and Amy Brunsting are liable for all of the damages, both general and special, caused by the breach of fiduciary duties owed to Plaintiff by Defendants.

12. Defendant(s) Anita Brunsting and Amy Brunsting are liable for punitive damages arising from wrongful acts constituting breach of fiduciary duties insofar as conduct in furtherance of wrongful acts as set forth above amounted to egregious and intentional and/or reckless conduct carried out by Defendant(s) as fiduciaries against Plaintiff, whom they intentionally kept in an inferior position of knowledge.

## COUNT TWO

## Extrinsic Fraud

13. Attached Declaration of Candace Louise Curtis and all previous allegations are incorporated herein by reference as if fully re-alleged and restated.

14. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have refused or otherwise failed to meet their obligations to provide full, accurate, complete and timely accounting or to provide copies of material documents or notification of material facts relating to trust administration, the concealing of which constitutes extrinsic fraud.

15. Defendant(s) individually and severally damaged Plaintiff through their breach of fiduciary obligations. Upon information and belief, Defendant(s) individually and severally benefited through their breach of fiduciary obligations.

16. Defendant(s) Anita Brunsting and Amy Brunsting are liable for all of the damages caused by the breach of fiduciary duties owed to Plaintiffs through their fraudulent concealment.

17. Defendant(s) Anita Brunsting and Amy Brunsting are liable for punitive damages arising from wrongful acts constituting breach of fiduciary duties insofar as conduct in furtherance of wrongful acts as set forth above amounted to egregious and intentional and/or reckless conduct carried out by Defendant(s) as fiduciaries against Plaintiff, whom they intentionally kept in an inferior position of knowledge.

## COUNT THREE

## Constructive Fraud

18. Attached Declaration of Candace Louise Curtis and all previous allegations are incorporated herein by reference as if fully re-alleged and restated.

19. Plaintiff alleges the existence of conflicts of interest in that both Defendant(s), acting individually and severally as co-trustees for the Trust, were at all times complained of herein, beneficiaries or successor beneficiaries of the Trust.

20. Plaintiff further alleges the existence of conflicts of interest in that Anita Brunsting, while being a successor beneficiary to the Trust, held a general Power of Attorney for Settlor Nelva Brunsting, an original trustee who at some point resigned making Defendant Anita Brunsting her successor trustee.

21. Defendant Anita Brunsting acting as a successor trustee for the Trust has transgressed the limitation placed upon her authority by the Trust and by the rule of law and has refused or otherwise failed to meet her obligations to provide full, accurate, complete and timely accounting or to provide copies of material documents and facts relating to trust administration, the concealing of which, coupled with multiple conflicts of interest constitute manifest acts of constructive fraud.

22. Defendant(s) individually and severally damaged Plaintiff through their breach of fiduciary obligations. Upon information and belief, Defendant(s) individually and severally benefited through their breach of fiduciary obligations.

23. Defendant(s) Anita Brunsting and Amy Brunsting are liable for all of the damages caused by the breach of fiduciary duties owed to Plaintiff through their fraudulent concealment.

24. Defendant(s) Anita Brunsting and Amy Brunsting are liable for punitive damages arising from wrongful acts constituting breach of fiduciary duties insofar as conduct in furtherance of wrongful acts as set forth above amounted to egregious and intentional and/or reckless conduct carried out by Defendant(s) as fiduciaries against Plaintiff, whom they intentionally kept in an inferior position of knowledge.

## COUNT FOUR

## Intentional Infliction of Emotional Distress

25. Attached Declaration of Candace Louise Curtis and all previous allegations are incorporated herein by reference as if fully re-alleged and restated.

26. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have refused or otherwise failed to meet their obligations to provide full, accurate, complete and timely accounting or to provide copies of material documents and facts relating to trust administration.

27. Since the death of Nelva Brunsting, plaintiff has attempted verbally, via email, and by certified mail to obtain information from Defendant(s) regarding the Trust and the Trust's administration. Defendant co-trustee Amy Brunsting has remained totally silent and her part in the perceived fraud may be limited. Defendant co-trustee Anita Brunsting has been disingenuous and manipulative while avoiding answer and disseminating limited numbers of documents in piecemeal fashion. Defendant co-trustee Anita Brunsting is the principal defendant in this action.

28. As detailed in the attached Declaration of Candace Louise Curtis, Defendant(s) acted intentionally or recklessly and the conduct was both extreme and outrageous. The acts of Defendant(s) caused and continue to cause Plaintiff to suffer severe emotional distress.

29. Defendant(s) Anita Brunsting and Amy Brunsting are liable to plaintiff for damages caused by their reprehensible and egregious acts of intentionally inflicting emotional distress and suffering upon Plaintiff.

## V.
## MEMORANDUM OF POINTS AND AUTHORITIES

For present purposes little more is needed than Restatement of the Law of Trusts 2nd

**DISCLOSURE BY A FIDUCIARY/TRUSTEE OUTSIDE FORMAL DISCOVERY: NON-TRADITIONAL RULES AND ALTERNATIVE METHODS**

1. INTRODUCTION

This paper contains an analysis of a trustee's duty to disclose information to trust beneficiaries. While it is outside the scope of this paper, many of these duties apply to other fiduciaries such as executors and administrators. The duty of a trustee to disclose information is an **equitable duty**. Enforcement of this duty should therefore be through an **equitable remedy** rather than by the formal legal remedies that are set forth in the Texas Rules of Civil Procedure and apply to legal causes of action. Many Texas courts, however, have trouble recognizing this distinction.

2. AN OVERVIEW OF THE TRUSTEE'S DUTY TO DISCLOSE

The Commentators

American Law Institute, *Restatement Of The Law, Trusts 2d,* §173 states that:

"The trustee is under a duty to the beneficiary to give him upon his request at reasonable times complete and accurate information as to the nature and amount of the trust property, and to permit him, or a person duly authorized by him, to inspect the subject matter of the trust and the accounts and vouchers and other documents relating to the trust."

William E. Fratcher, *Scott On Trusts,* §173 (Fourth Edition) states that:

"The trustee is under a duty to the beneficiaries to give them on their request at reasonable times complete and accurate information as to the administration of the trust. The beneficiaries are entitled to know what the trust property is and how the trustee has dealt with it. They are entitled to examine the trust property and the accounts and vouchers and other documents relating to the trust and its administration. Where a trust is created for several beneficiaries, each of them is entitled to information as to the trust. Where the trust is created in favor of successive beneficiaries, a beneficiary who has a future interest under the trust, as well as a beneficiary who is presently entitled to receive income, is entitled to such information, whether his interest is vested or contingent."



20-20566.24

George Gleason Bogert and George Taylor Bogert,

*The Law of Trusts and Trustees,* § 961(Revised Second Edition) explain this duty in the following manner:
"The beneficiary is the equitable owner of the trust property, in whole or in part. The trustee is the mere representative whose function is to attend to the safety of the trust property and to obtain its avails for the beneficiary in the manner provided by the trust instrument. That the settlor has created a trust and thus required that the beneficiary enjoy his property interest indirectly does not imply that the beneficiary is to be kept in ignorance of the trust, the nature of the trust property and the details of its administration. **If the beneficiary is to be able to hold the trustee to proper standards of care and honesty and to obtain the benefits to which the trust instrument and doctrines or equity entitle him, he must know what the trust property consists and how it is being managed.** (emphasis supplied)

From these considerations it follows that the trustee has the duty to inform the beneficiary of important matters concerning the trust and that the beneficiary is entitled to demand of the trustee all information about the trust and its execution for which he has any reasonable use. It further follows that the trustee is under a duty to notify the beneficiary of the existence of the trust so that he may exercise his rights to secure information about trust matters and to compel an accounting from the trustee. **For the reason that only the beneficiary has the right and power to enforce the trust and to require the trustee to carry out the trust for the sole benefit of the beneficiary, the trustee's denial of the beneficiary's right to information consists of a breach of trust.** (emphasis supplied)

If the beneficiary asks for relevant information about the terms of the trust, its present status, past acts of management, the intent of the trustee as to future administration, or other incidents of the administration of the trust, and these requests are made at a reasonable time and place and not merely vexatiously, it is the duty of the trustee to give the beneficiary the information which he is asked. Furthermore, the trustee must permit the beneficiary to examine the account books of the trust, trust documents and papers, and trust property, when a demand is made at a reasonable time and place and such inspection would be of benefit to the beneficiary."

2. The Cases
In examining Texas cases involving this duty it is important to distinguish between cases that relate to transactions where a trustee has some personal dealing with a beneficiary (which impose very harsh disclosure requirements) from those cases that relate to disclosure in general. The following cases relate to the general disclosure rules.

In *Shannon v. Frost National Bank,* 533 S.W.2d 389 (Tex. App. - San Antonio, 1975, writ ref'd n.r.e), the court stated that: "However, it is well settled that a trustee owes a duty to give to the beneficiary upon request complete and accurate information as to the administration of the trust. 2 Scott, Trusts §173 (3rd. ed. 1967)."

In *Montgomery v. Kennedy,* 669 S.W.2d 309 (Tex. 1984) the Texas Supreme Court held that: "As trustees of a trust and executors of an estate with Virginia Lou as a beneficiary, Jack Jr. and his mother owed Virginia Lou a fiduciary duty of full disclosure of all material facts known to them that might affect Virginia Lou's rights....The existence of strained relations between the parties did not lessen the fiduciary's duty of full and complete disclosure..... The concealment of a material fact by a fiduciary charged with the duty of full disclosure is extrinsic fraud."

30. FURTHER, the Texas legislature has codified the common law duty a trustee owes to a beneficiary in the Texas Property Code.

§ 113.060. INFORMING BENEFICIARIES. The trustee shall keep the beneficiaries of the trust reasonably informed concerning:

(1) the administration of the trust; and

(2) the material facts necessary for the beneficiaries

to protect the beneficiaries' interests.

Added by Acts 2005, 79th Leg., ch. 148, § 15, eff. Jan. 1, 2006.

§ 113.151. DEMAND FOR ACCOUNTING. (a) A beneficiary by written demand may request the trustee to deliver to each beneficiary of the trust a written statement of accounts covering all transactions since the last accounting or since the creation of the trust, whichever is later. If the trustee fails or refuses to deliver the statement on or before the 90th day after the date the trustee receives the demand or after a longer period ordered by a court, any beneficiary of the trust may file suit to compel the trustee to deliver the statement to all beneficiaries of the trust.

The court may require the trustee to deliver a written statement of account to all beneficiaries on finding that the nature of the beneficiary's interest in the trust or the effect of the administration of the trust on the beneficiary's interest is sufficient to require an accounting by the trustee. However, the trustee is not obligated or required to account to the beneficiaries of a trust more frequently than once every 12 months unless a more frequent accounting is required by the court. If a beneficiary is successful in the suit to compel a statement under this section, the court may, in its discretion, award all or part of the costs of court and all of the suing beneficiary's reasonable and necessary attorney's fees and costs against the trustee in the trustee's individual capacity or in the trustee's capacity as trustee.

(b) An interested person may file suit to compel the trustee to account to the interested person. The court may require the trustee to deliver a written statement of account to the interested person on finding that the nature of the interest in the trust of, the claim against the trust by, or the effect of the administration of the trust on the interested person is sufficient to require an accounting by the trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984. Amended by Acts 2003, 78th Leg., ch. 550, § 3, eff. Sept. 1, 2003.



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(b) Notwithstanding Subsection (a)(9), a person other than a beneficiary who, without knowledge that a trustee is exceeding or improperly exercising the trustee's powers, in good faith assists a trustee or in good faith and for value deals with a trustee is protected from liability as if the trustee had or properly exercised the power exercised by the trustee.

Added by Acts 2005, 79th Leg., ch. 148, § 21, eff. Jan. 1, 2006.

## VI
## PRAYERS FOR RELIEF

32. **WHEREFORE**, Plaintiff prays for judgment and relief as follows, where applicable, including but not limited to the following:

33. Awarding compensatory damages in favor of Plaintiff against Defendant(s) for the damages sustained as a result of the wrongful conduct alleged as will be established through discovery or at trial, together with interest thereon, in an amount in excess of $75,000 from each Defendant for each offense found,

34. Awarding punitive damages to Plaintiff against the Defendant(s) for the egregiously wrongful conduct alleged herein,

35. Granting declaratory and/or injunctive relief as appropriate,

36. Awarding legal fees and costs to plaintiff and,

37 Such other and further relief as the Court may deem equitable and proper.

## REQUEST FOR EX-PARTE TEMPORARY RESTRAINING ORDER

38. Further, Plaintiff seeks an emergency order for injunctive relief and herein alleges irreparable harm will occur unless the court prevents the trustees from wasting the estate, and compels the trustees to produce a full, true and complete accounting of all assets.

## Financial Misconduct and Need for Accounting

39. A cursory review of the preliminary accounting spreadsheet of the Trust assets provided the Plaintiff reveals possibly significant discrepancies in the value of some trust assets, while other previously known trust assets are unaccounted for.

As trustees for the survivor's trust, created under the Brunsting Family Living Trust after the death of the first Settlor, Anita Brunsting and Amy Brunsting are responsible for maintaining accurate books and records for the survivor's trust created under the Brunsting Family Living Trust. Under the terms of the Trust trustees are to provide an accounting to the beneficiaries every 6 months. Even under Texas law an accounting to the beneficiaries is required annually. No proper accounting has ever been received.

40. Further, Anita Brunsting, holding Power of Attorney for Nelva Brunsting, and serving as successor trustee for the Nelva E. Brunsting Survivor's Trust, had an ongoing duty to account and, as a successor beneficiary of the Trust and its sub trusts, had an even greater level of loyalty and fidelity owed to the other four successor beneficiaries. Anita Brunsting had an ongoing obligation to report and account to the other successor beneficiaries, and to seek their approval before accepting gifts from Nelva Brunsting or the Trust.

41. By the acts alleged herein, Anita Brunsting and Amy Brunsting have breached fiduciary duties of loyalty, care and good faith owed directly to Plaintiff as co-trustees for the BFLT by acting in bad faith and for the purpose of benefiting themselves and harming Plaintiff; by misappropriating trust

property; and by failing to keep and maintain accurate and reliable books and accounting records; and by failing to report on the administration of the Trust; and by failing to notice Plaintiff of actions adversely affecting Plaintiff's rights and beneficial interest in the Trust Res.

42. Due to the lack of proper inventory, accounting and disclosure it is imperative that this court act quickly to protect the Trust property and assets, and to ascertain the reasons for the trustees' refusal to answer and to account.

Tuesday, February 21, 2012

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

# AFFIDAVIT OF CANDACE LOUISE CURTIS

I, Candace Louise Curtis (Affiant), am a competent witness over the age of 18 years of age, have personal knowledge of the information stated herein, and do solemnly declare and state to be true as follows:

I am an heir to the estate of the late Elmer H. Brunsting and Nelva E. Brunsting of Houston, Texas, and I am a beneficiary of the BRUNSTING FAMILY LIVING TRUST initially dated October 10, 1996 and amended January 12, 2005 ("BFLT").

My Father, Elmer Brunsting, died on April 1, 2009 and my Mother, Nelva Brunsting died on November 11, 2011. Both of them ultimately required round-the-clock, in home, care. When Dad could no longer manage the affairs of their finances and estate, Mother took over and carried on, until it became too much for her in late 2010. At that point she turned some of these duties over to my sister Anita. Exactly what occurred before or after that is unclear, as my efforts to obtain even the most basic information about the trust, or the trust assets, have been frustrated. The documents I have received over the years are inadequate, incomplete, and contain redactions and strikeouts, but would indicate that changes have been made to the BFLT that affect my beneficial interest. These changes were made without any notice to me. Additionally, there appear to be some discrepancies in a recent preliminary asset list, and some of the previously known assets are unaccounted for. This list is the only accounting I have ever received.

My husband, our two sons and I, moved to California in September of 1995, after having lived in Houston for 30 years. In Houston we lived only a couple of miles from my parents and the boys had a very close relationship with their grandparents while they were growing up. After we moved to California my parents came to visit us several times and we enjoyed the occasions immensely.

Although I lived 1,700 miles away, as his eldest daughter Dad talked to me throughout the process, about his intentions and goals in forming the Brunsting Family Living Trust. He told me the primary reason was to make sure they could die at home, if they so chose, and have the financial means to do so. Secondly, anything left over would be divided 5 ways among us (Carole, Carl, Amy, Anita and myself) and he wanted no misunderstandings when it came time to divvy up the assets or family heirlooms. He explained how the trust was set up, and that my brother Carl was executor of the estate. Dad handed me the first trust documents personally at a family gathering. I knew what the documents said, so I stuck them in my suitcase. They ended up in a drawer after I got home.

At approximately the same time that the BFLT was formed, a separate trust, The Brunsting Family Irrevocable Trust, was created for a last-to-die life insurance policy, of which the five of us were beneficiaries, naming Anita as original and sole trustee. My Father said that this was done so that if their estate was exhausted during their lifetimes, we would at least have something after they both passed away. He said that the trustee job would be easy, because all one had to do was send out a notice to the beneficiaries

each year and keep the signed copies in the trust file. He asked me if I would serve as trustee, and I agreed to, but ultimately he chose Anita, because she was the youngest.

I do not recall exactly when, but I think I first became aware that our Father was exhibiting signs of dementia sometime in 2006. I was visiting my parents at the time and some of my sisters were there. To see my Father's behavior and subsequent treatment by his own daughters was heartbreaking. I was dumbfounded to witness this ignorant cruelty and impatience in my sisters. One afternoon it was just he and I. In a fleeting moment of lucidity my Father asked me if his net worth was still such and such. Since he had kept me well informed over the years, I knew that it was and confirmed it. He smiled. He was always so proud of what he had created for his family. I gave him a hug and a kiss. He nodded off. That was the last time I saw him. He died in his OWN HOME, because Mother honored his wishes. Years later, when I started to realize something was "**going on**" with the trust, and began to question things, my sister Carole told me something like – Candy, if it makes you feel any better, Daddy asked for you by name the Sunday before he died.

In July of 2007, Mother asked me if I would be willing to replace Amy as successor co-trustee of the BFLT with Carl (attached as Plaintiff Exhibit P-1). She wrote that she did not think Amy was stable enough and that she thought I had a better relationship with my siblings than she. I said sure, and that is the last I heard of it until March of 2008, when I received an email from Mother asking if I minded if she made Anita successor co-trustee with Carl (P-2). She said she realized now that

> "Anita has a handle on everything from the insurance policy and the trust better than anybody."

At the time I had no reason to care one way or the other and I never gave it another thought.

Our Father passed away April 1, 2009. The cause of death was "dementia, likely vascular type". My sons were pallbearers for their grandpa. They loved their grandpa very much and were heartbroken and distraught when he passed away. They were very worried about their grandma being alone and volunteered to stay with her and take care of her if she wanted them to. After the funeral we returned home and it never crossed my mind that I might expect paperwork in connection with the settlement of the estate. I had no idea what, if anything, should happen. I knew that when Dad died, the terms of the trust became irrevocable. I also knew that I would not receive any inheritance until Mother was gone.

It began to occur to me in March of 2010 that something was amiss, but I could not quite put my finger on it. Anita emailed Amy and I (P-3) requesting that we print out and sign five undated "Notification of Demand Right" letters (P-4) (for the life insurance trust) and get them to her in the next couple of weeks. I asked her to send me a copy of the trust document and a current statement of account, because I do not like signing these

undated forms. I also thought that, as a beneficiary, I might actually be entitled to a copy of the trust. Her reply,

> "For now could you please send me a signed waiver dated 3/19/09, for last year's files?" (P-3)

It appeared that Anita was falling down on the easy trustee job.

On about July 2, 2010 Carl, our only brother, was stricken with encephalitis. When Carole called to tell me, she was crying and said that our brother might die. I could barely understand her she was sobbing so hard. They did not have a diagnosis at the time. I was so scared for him and his family. The next day I wanted to find out how he was doing, but could not reach Carole, so I called Anita. I started to ask about Carl, but before I could say anything she began to criticize Drina, Carl's wife of 36 years. I was somewhat dismayed at what I was being told, but Drina and I are the same age, have many of the same interests, and have always gotten along very well, so I figured I would react the same way in her situation. My main concern at the time was Carl, as was Drina's. I was unaware until just recently, that a few days later Amy drove in from New Braunfels and found it necessary to harangue Drina about their finances, at Carl's bedside. Carl is a self-employed architect. I was sure Drina was very worried about how she would be able to care for him financially with no income, but I doubt that was the most important thing on her mind at the time. Within days Amy and Anita started conjuring up totally unfounded scenarios of such things as Drina running off with Carl's money, divorcing him, killing him, and all kinds of other machinations having to do with Carl's future inheritance.

Mother was at the hospital visiting one day and offered to help Carl and Drina financially if they needed it. When they subsequently took her up on the offer, all of a sudden the entire situation blew up into a massive, unfounded character assassination of Drina, which I now know Anita started several years prior. Anita began to badger Mother and kept stopping her from acting on her promise to help. According to Carole, Anita was bullying and badgering Mother to the point that she was afraid to spend her own money to help her own son. In reviewing email communications, it was discovered that Anita had criticized our Father for his investments, expressed how Mother is finally "listening to reason", and regularly degraded one thing or another about each of us. Apparently Anita has sat in judgment of everyone except herself.

I continued to argue for help for Carl and Drina, even going so far as offering up any of my inheritance if they needed it to survive this and become whole again. Money means little to me in the face of family crisis and Carl is my only brother. I almost lost him once. I was not going to lose him for lack of money and care.

The character assassination continued in earnest. Amy and Anita were very aggressive in their attempts to prevent what they were convinced was happening. They kept coming up with ideas to keep Drina from touching Carl's money, even if it went directly for his care and well being. They were all consumed with this and never spoke about how his

recovery was progressing. I did not know that he almost died again, or that he lapsed into a coma and had to be put on a ventilator in ICU, before he started to mend ever so slowly.

Carl had a setback and Mother got pneumonia and was hospitalized. I attribute this to the stress my sisters were causing in both of them. At the same time I became concerned as to what this was doing to Drina's health and state of mind.

In October 2010 there was a flurry of activity regarding changes to the trust and Mother's competency, starting with an email (P-5) from Carole asking if I was okay with Anita taking over as Power of Attorney for Mother? She wrote "The paperwork is being drawn up today." She later said she was concerned that the trustee had more authority than we realize. I told her I needed a copy of the trust documents to figure out just what can and cannot be done.

On October 13, 2010 Anita, Carole, Amy, and I received an email (P-6, 4 pgs.) from Summer Peoples on behalf of attorney Candace Freed saying that Candace would like to have a conference call with "you and your Mother", reserving some times for "next week". Carl did not receive this email. Carole wrote back and asked Summer what the meeting was in reference to. Carole did not know if she could make the meeting and wanted to know if that would be a problem. Summer replied:

> "Ms. Brunsting: To answer your questions – This teleconference meeting is to discuss changes to your Mother's trust. If you are unable to attend, it simply means that you will have no say in what changes will be made. It will not be a problem if you cannot attend. However, Ms. Freed wants to extend the invitation to all Mrs. Brunsting's children."

I did not understand why Carl was not included, since he was executor of our parents' wills and a successor co-trustee of the Brunsting Family Living Trust, as well as one of "Mrs. Brunsting's children".

I wrote Anita that same day and reminded her that she had mentioned that she had a copy of the trust document. I asked if she would scan it and send it to me in the next day or two. I wanted to read it before the conference call. I still had not received anything by October 20, 2010 and was not planning on participating in the conference call without seeing the trust we would be discussing changes to. On October 23, 2010 Anita sent twelve documents in four separate emails (P-7, 5 pgs.). I could not believe my eyes when I started to read what she sent. Apparently the changes to which this conference call was in reference to, which by the way no one would clarify, had to do with changes THAT HAD ALREADY BEEN MADE - WITHOUT NOTICE.

The conference call was held on or about October 25, 2010. Neither Mother nor Carl participated. Anita began by asking how much power she had by virtue of the power of attorney. I wanted to know why someone thought it necessary to convert Carl's and my personal asset trusts, giving Anita and Amy control. Attorney Candace jumped in and said I was not entitled to those document copies, as Mother was the only beneficiary, and

that Anita should not have sent them in the first place. Amy jumped in and kept screeching that Drina needed to get a job, Carole kept asking her who is going to take care of Carl with Drina working. Finally Amy said I don't care and Carole hung up. The discussion then segued into having Mother declared incompetent. I wanted to know why, and no one would answer. At that point I hung up because the changes had already been made and it appeared there was nothing I could do about it. I am still not sure what the purpose of the call was, other than an attempt to lend some form of legitimacy to the changes that had apparently already occurred.

As I look at the email (P-7, supra) I received regarding this call, neither Carl nor Mother was copied on that communication.

The day after the call I spoke with Mother. She affirmed that she DID NOT know the full implications of what she signed. She said she should have been included on the call. She said that she would not have given Anita the authority to manage Carl's and my money. I told her it seems as though Amy and Anita were conspiring with Attorney Candace to have her declared incompetent so they can take control. She said Anita was driving her crazy. After talking to her for over 30 minutes I realized that she was NOT incompetent, simply left in the dark. I passed this information on to Carole in an email, (P-8, 4 pgs.) to which she replied,

> "Anita is going to be the one responsible for keeping Mother sick because she is such a control freak and will not LET IT GO!! Let Mother decide what she wants to do. It is Mother's money, not ANITA'S and not AMY's."

On or about 11/21/2010, after Anita had taken control of Mother's finances under the power of attorney, Amy apparently received a "gift", allegedly from Mother, of $13,000, and Anita's son Luke apparently received an unknown sum of money for a truck, also allegedly from Mother.

Much later, in March of 2011, I received a phone call from Carole regarding a meeting with Candace at Vacek and Freed. Carole had been asked by Anita to take Mother to sign some papers. During the meeting apparently Candace asked Mother if she REALLY understood what she was being asked to sign. She asked her if she REALLY wanted to disinherit her granddaughter Marta (Carl's daughter) and Mother said emphatically – NO.

On March 8, 2011, Anita emailed (P-9) Amy, Carol and I and wrote

> "I spoke w/mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to 'just say No' to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts – she seems fine w/everything, and expressed no desire to put Carl

back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naïve regarding the lengths to which Drina may go through to get Carl's inheritance."

It is difficult from this remote location and from listening to all of the "rumors" to really place validity on any particular claim. But this communication is **very** telling and gives great weight to Carole's concerns about Anita bullying Mother.

On January 8, 2011 I received an email (P-10) from Amy asking for my husband's phone number. She wanted to ask him a question about private investigators. I supplied the number.

In March of 2011 the character assassination of Drina and the rest of us resumed with a vengeance. I am so ashamed that I was a party to any of it, if only to listen to their lies and misplaced judgment. They were so aggressive with their assertions that at times I was convinced that what they were saying was true. They alleged having taped, in-person, conversations between Mother and others, taped telephone conversations between Mother and others, and video of the behavior and actions of others in Mother's house. I was told a private investigator had been hired to follow Drina around. Apparently, a GPS unit was affixed to her vehicle. They would not share this alleged "evidence" in its physical form, they only told me what was said and done. After telling me that my own character was assassinated by Carl in one of the videos, I almost lost my faith and hope that Carl would get his life back and that our brother/sister relationship could someday be renewed. What they were telling me was totally unbelievable and left me feeling devastated and in shock.

At this point Mother's health began to decline rather rapidly. I spoke to her at least once a week on the telephone. Several times neither she nor her caregiver answered the phone when I called. I would then call Carole, Amy, Anita, and the caregivers until I reached someone, only to find out that Mother was in the hospital, AGAIN. I had to drag the phone number to Mother's room out of someone each time, usually getting it from Tino or Robert (my Mother's caregivers), rather than one of my sisters. This happened for the last time on November 8, 2011,(P-11) just three days before Mother passed away. I had been urging them to get her home before it was too late. It now appears that both Carl and I were being purposely prevented from seeing or talking to our Mother in the last days of her life. WHY? On November 11, 2011 Carole called Carl, apparently much to the dismay of Anita, and told him to get to the hospital right away. He arrived just in time to say goodbye to Mother, who he loved very much. I was on my way to Houston, having not been told of the seriousness of her condition until that day, and not having had any opportunity to know where she was or to even have contact with her until it was too late. She died when I was on my way to the airport. Had they been forthcoming and honest with me I would have been there.

Also around March of 2011, Anita called and said she had "found" some Exxon Mobil stock that was not in the trust. She said Attorney Candace was going to figure out what had to be done to get one half in Dad's side and the other half in Mother's side. Anita said she planned to give us each "gifts" from Mother's share. I did not know the total value of the stock, but I did receive 160 shares on June 15, 2011 (p-12). Apparently Carole also received a "gift", but I do not know how much it was, or what happened to the remainder of the stock. I do know that Carl did not receive any stock, and knew nothing about the "finding" of it until I told him last month.

I recently received copies of two asset schedules from Carl, one dated 2005 (P-13) and one dated 1/27/10. (P-14, 7 pgs.) In 2005 there were 3,522.42 shares of Exxon-Mobil listed. In 2010 there was no Exxon-Mobil listed.

Later, Anita supplied us all, via email, (P-15, 2 pgs.) with a "preliminary tally" of assets as of 1/20/12, with 1,259 shares of Exxon-Mobil listed. I wonder what happened to 2,264 shares between then and now?

I saw Carl and Drina for the first time since our Father's death, at our Mother's funeral. I did not know what to expect. Carl was talking to someone when Drina and I saw each other. In the blink of an eye we were hugging each other and crying. The deep wounds created by what had transpired over the last 16 months immediately began to heal. The bond between Carl, Drina and I was rekindled over the next few days. The difficulty for all of us was coming to grips with the notion that, apparently, behind our backs, Anita had made a concentrated effort to take control of the entire trust, and our individual inheritances, in such a manner that if Carl and I complain about it, she gets to keep it, all the while asserting to others that our Mother made this decision ON HER OWN. I know she did not, because she said so to me on the phone. She took my concern to heart and subsequently sent me a handwritten note saying, again, that it was not true.(P-16, 2 pgs.)

I returned home to California a few days after the funeral. The unexpected time off had disrupted my workflow and I spent the following weeks catching up on things, putting my concerns about the trust and my inheritance aside. I was so happy that Carl was quickly returning to good health and that we were in touch again. All of a sudden the holidays were upon us. I started to miss Mother, a lot. I wondered what was happening with the trust, the house, the life insurance, the farm, the settlement process and so on. I had heard nothing whatsoever for over a month.

I could not sit by and wonder, so I wrote a "Formal Demand for Full and Complete Disclosure and Accounting" letter, dated December 19, 2011, (P-17, 2 pgs) and sent it certified mail to both Amy and Anita, with copies to Carole, Carl, and Candace Freed. Anita signed for hers on December 31, 2011, and Amy signed for hers on January 5, 2012.

The first "trust update" I received was an email from Anita (P-18) on December 20, 2011, prior to her receipt of my demand letter. She advised that the life insurance

paperwork was being processed. She also said the beneficiaries are entitled to a copy of the trust which we would receive shortly.

On or about December 21, 2011 I received an envelope from Anita containing a copy of the Restatement of The Brunsting Family Living Trust, dated January 12, 2005, and a copy of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, dated August 25, 2010.
December 28, 2011, Anita emailed me, (P-19) with a cc to Amy, re mom's house, wherein she stated that a realtor had been contacted and they hoped to

> "…get it on the market next week"… "After we get the house sold, we'll figure out the farm and the remaining liquid assets. Just double-checking, you still want to hold onto your portion of the farm right? If so, are you interested in "trading" some of the liquid assets (like your portion of the remaining stock/mutual funds or cash from the sale of the house) for more farmland? I'm just trying to get an idea of what everyone wants."… "We're still working w/ the lawyer to get a final tally of the worth of all the assets, when that's complete, you will get a spreadsheet that lists them."

I am not really sure how I was expected to make a major decision like this without knowing exactly what my assets are.

Being virtually in the dark about everything, I began to have a renewed sense of grave concern about the safety of the trust assets and was compelled to send a "Statutory Demand for Full and Complete Disclosure and Accounting" letter, dated January 3, 2012, (P-20, 4 pgs.) sent certified mail to Anita, with copies going to Amy, Carole, Carl and Mom's trust attorney Candace Freed. Anita's letter was signed for on January 9, 2012. Within that letter I asked her to

> "Please confirm to me in writing, within ten (10) days of your receipt of this demand, that you intend to furnish all of the information requested in this demand on or before the dates specified." "…inform me of the identities and contact information for the Trust Protector and the Special Co-Trustee, in writing, immediately, upon receipt of this demand."

The deadline for confirmation was January 19, 2012. To date I have not received a confirmation.

January 22, 2012, Anita emailed me, with cc's to Attorney Candace and Amy, writing "Attached please find the appointment of successor trustees dated 12/21/10 and Mother's will."

It seems to me I should have received some type of notice, as well as a copy of the appointment document more than a year previous. I was already angered by her blatant disregard of her legal obligations to the beneficiaries thus far and was compelled once

again to write and demand that she carry out the legal obligations of her position as trustee. On January 23, 2012, via email, (P-21, 2 pgs.) I explained that,

> "You received a written demand for disclosure of the identity of the trust protector or the special co-trustee(s) if any. Your lack of disclosure of this basic information, or any expression of good faith, leaves me with concerns that there is something you fear or want to conceal…"

On January 25, 2012 Anita replied, via email, (P-21, supra) with cc's to Attorney Candace and Amy, stating

> "Provisions for the Trust Protector and Special Co-Trustee can be found in the Qualified Beneficiary Designation on pages 15 and 28 respectively."

Directly following this email was a second email from Anita to Carl, Amy, Carole and myself, cc to Attorney Candace, regarding the life insurance money having been received on 1/17/12, eight days prior.

On or about January 23, 2012 I received a certified mail envelope with a cover letter that stated, "Per your request, enclosed please find the trust document regarding the life insurance policy mom and Dad had, as well as their death certificates."

It should be noted that I had requested a copy of this particular document back in March of 2010, almost two years earlier, when I was asked by Anita, the trustee, to sign blank, undated Notification of Demand Right forms.

On January 24, 2012 Anita sent an email (P-22) to Carl, Carol and myself, cc to Attorney Candace, writing

> "Attached please find a preliminary tally of trust assets and expenses (with a list of future liabilities). We are still working with Candace to complete the formal list."

As stated earlier in this affidavit, there appears to be a discrepancy in the amount of some ExxonMobil stock that was "found" not to be in the trust. It had been accounted for in 2005, was not included in an accounting from 2010, and was listed on the "tally" attached (P-15, supra). In 2005 there were 3,522.42 shares listed. The "tally" listed 1,258.91. It seems the beneficiaries have a right to know what happened to the difference. It will be difficult to determine without any accounting records.

I have received no other response to my recent demands for information, no notice, no other copies of trust documents and no expression of good faith.

The law is clear. Trustees have obligations and beneficiaries have rights. I can think of no legitimate purpose for the trustees' breach of their duty to disclose. To date I am in possession of the following documents, some of which were obtained from another

beneficiary and not from the trustees, who still refuse to fully answer, and the bulk of which were obtained from Anita in October 2010.

**Ordered by Document Date**

AKB denotes documents received via email from Anita on 10/23/10
CHB denotes documents received from Carl in January 2012
All other documents were received from Anita pursuant to my demand letters, and received on the date noted

AKB Quit Claim Deed, State of Iowa, signed by EHB and NEB 10/29/96 and recorded in Sioux County Iowa 11/18/96 (P-23, 7 pgs.), which contained 3 asset schedules, A, B, C, all blank

The Brunsting Family Irrevocable Trust dated February 12, 1997 (life insurance trust) received from Anita on or about 1/26/2011, Anita Kay Riley trustee. (P-24, 53 pgs.)

AKB Affidavit of Trust made 1/12/2005 (only first page) (P-25)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees. (P-26, 2 pgs.)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees UNSIGNED WITH AMY RUTH TSCHIRHART CROSSED OUT (P-27, 2 pgs.)

AKB Affidavit of Trust made 1/12/05, with selected provisions attached, Article IV Our Trustees, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-28, 32 pgs.)

AKB The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-29 102 pgs.)

The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed), received from Anita Kay Brunsting on or about 12/21/11 (duplication of P-29, printed front and back – copy omitted)

AKB Transfer To Grantor Trust Subject To Withdrawal Contribution Agreement, UNSIGNED, dated 01/12/05 (P-30, 2 pgs.)

AKB Last Will of Elmer H. Brunsting (Pour-Over Will), UNSIGNED, WITH ARTICLE III (Appointment of Personal Representative) redacted, dated 01/12/2005 (P-31, 14 pgs.)

AKB Last Will of Nelva E. Brunsting (Pour-Over Will), UNSIGNED, Elmer H. Brunsting personal representative, Carl Henry Brunsting first alternate, Amy Ruth Brunsting second alternate, Candace Louise Curtis third alternate, dated 01/12/05 (P-32, 11 pgs.)

AKB Living Will also known as the "Physician's Directive" signed by NEB, dated 01/12/05 (P-33, 5 pgs.)

Last Will of Nelva E. Brunsting, signed 01/12/05, EHB personal representative, Carl Henry Brunsting first successor, Amy Ruth Tschirhart second successor, Candace Louise Curtis third successor, received 1/22/12 via email from Anita (P-34, 11 pgs.)

CHB First Amendment to the Restatement to the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, Article IV, Section B amended and attached as Exhibit "A", dated 09/06/07, Carl Henry Brunsting and Candace Louise Curtis successor co-trustees. ***CHB and CLC "shall each have the authority to appoint his or her own successor Trustee by appointment in writing."***, THE FROST NATIONAL BANK alternate (P-35, 2 pgs.)

AKB General Durable Power of Attorney of Nelva E. Brunsting, marked copy, unsigned, and only dated 2010, Anita Kay Brunsting initial agent, Carol Ann Brunsting first successor, Amy Ruth Tschirhart second successor (P-36, 27 pgs.)

CHB Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, executed 6/15/10, in connection with advances against our inheritances AFTER JUNE 1, 2010 (P-37, 3 pgs.)

AKB Information Concerning The Medical Power of Attorney signed by NEB, dated 08/25/10 (P-38, 5 pgs.)

AKB Medical Power of Attorney Designation of Health Care Agent signed by NEB, dated 08/25/10, Carol A. Brunsting appointed, Anita Kay Brunsting first alternate, Amy Ruth Tschirhart second alternate (P-39, 5 pgs.)

AKB Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, signed by Nelva E. Brunsting as Trustee, and Founder and Beneficiary on August 25, 2010. (P-40, 37 pgs.)

Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, signed by Nelva E. Brunsting as Trustee, and Founder and Beneficiary on August 25, 2010, received from Anita Kay Brunsting on or about 12/21/11 (duplication of P-40, printed front and back – copy omitted)

AKB Appointment of Successor Trustees, signed by Nelva E. Brunsting as Founder and Original Trustee, dated 08/25/10, Anita Kay Brunsting and Amy Ruth Tschirhart successor co-trustees, FROST NATIONAL BANK alternate. (P-41, 5 pgs.)

Hand written note from Nelva Brunsting to Candy Brunsting, dated Sunday, referencing trick or treaters' that evening, postmark illegible except for 2010. (P-16, supra)

Appointment of Successor Trustees, marked law firm copy, signed 12/21/10, if NEB resigns as Trustee, Anita Kay Brunsting first successor, Amy Ruth Brunsting second successor, THE FROST NATIONAL BANK third successor; if NEB fails or ceases to serve, Anita Kay Brunsting and Amy Ruth Tschirhart successor co-trustees, THE FROST NATIONAL BANK successor trustee, emailed to me by Anita on 01/22/12 (P-42, 6 pgs.)

CHB Appointment of Successor Trustees, marked law firm copy, signed 12/21/10, if NEB resigns as Trustee, Anita Kay Brunsting first successor, Amy Ruth Brunsting second successor, THE FROST NATIONAL BANK third successor; if NEB fails or ceases to serve, Anita Kay Brunsting and Amy Ruth Tschirhart successor co-trustees, THE FROST NATIONAL BANK successor trustee (duplicate of P-42, copy omitted)

CHB Resignation of Original Trustee, Nelva E. Brunsting, signed 12/21/10, appointing Anita Kay Brunsting as trustee of BFLT dated October 10, 1996, as amended, as well as the subtrusts known as the NEB Survivor's Trust and the EHB Decedent's Trust. (P-43)

CHB Acceptance by Successor Trustee, Anita Kay Brunsting, signed 12/21/10 (P-44)

Certified Death Certificate EHB issued 3/10/2011 received from Anita on or about 1/26/2011, State file number 142-09-043-770

Certified Death Certificate NEB issued 11/18/2011 received from Anita on or about 1/26/2011, State file number 142-11-142-463

I, Candace Louise Curtis, declare under penalty of perjury pursuant to the laws of the United States, that the above declaration of facts is true and correct and based upon personal knowledge, except for those things averred upon information and belief, and as to those things, I believe them to be true as well.

2/20/2012

Candace Louise Curtis, Plaintiff

ACKNOWLEDGMENT

THE STATE OF CALIFORNIA §
§
COUNTY OF §

This instrument was acknowledged before me on this _____ day of February 2012, by Candace Louise Curtis.

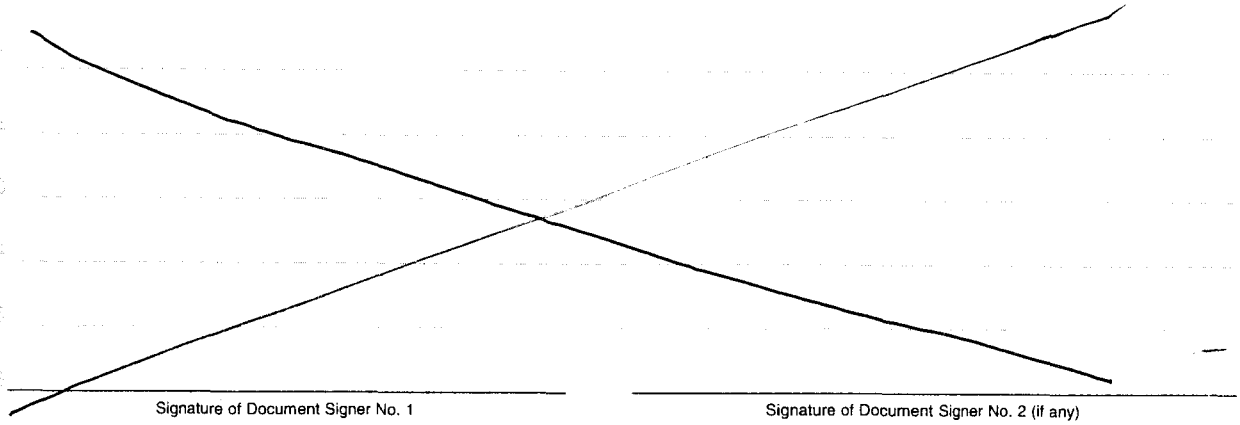
Kenny C. Lim, Notary Public

_____
Notary Public – State of California

See Attached California Jurat

# CALIFORNIA JURAT WITH AFFIANT STATEMENT

☒ See Attached Document (Notary to cross out lines 1–6 below)
☐ See Statement Below (Lines 1–5 to be completed only by document signer[s], *not* Notary)



Signature of Document Signer No. 1 | Signature of Document Signer No. 2 (if any)

State of California

County of NAPA

Subscribed and sworn to (or affirmed) before me on this

20th (Date) day of FEB (Month), 20 12 (Year), by

(1) CANDACE LOUISE CURTIS (Name of Signer),

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) (,)

(and

(2) _____ (Name of Signer),

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature _____ (Signature of Notary Public)

KENNY C. LIM
Commission # 1926091
Notary Public - California
Napa County
My Comm. Expires Feb 19, 2015

Place Notary Seal Above

## OPTIONAL

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Further Description of Any Attached Document**

Title or Type of Document: AFFIDAVIT OF CANDACE L. CURTIS

Document Date: 2/20/12 Number of Pages: (13)

Signer(s) Other Than Named Above: NONE

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

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JS 44 (Rev. 12/07)

# CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Candace Louise Curtis

(b) County of Residence of First Listed Plaintiff Contra Costa
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Pro se

## DEFENDANTS

Anita Brunsting & Amy Brunsting

County of Residence of First Listed Defendant Victoria
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

## II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

(For Diversity Cases Only)

| | PTF | DEF | | PTF | DEF |
|---|---|---|---|---|---|
| Citizen of This State | ☐ 1 | ☒ 1 | Incorporated *or* Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☒ 2 | ☐ 2 | Incorporated *and* Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

## IV. NATURE OF SUIT (Place an "X" in One Box Only)

**CONTRACT**
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excl. Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

**REAL PROPERTY**
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

**TORTS**

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury

PERSONAL INJURY
- ☐ 362 Personal Injury - Med. Malpractice
- ☐ 365 Personal Injury - Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☒ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

**CIVIL RIGHTS**
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 444 Welfare
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 440 Other Civil Rights

**PRISONER PETITIONS**
- ☐ 510 Motions to Vacate Sentence

Habeas Corpus:
- ☐ 530 General
- ☐ 535 Death Penalty
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition

**FORFEITURE/PENALTY**
- ☐ 610 Agriculture
- ☐ 620 Other Food & Drug
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 630 Liquor Laws
- ☐ 640 R.R. & Truck
- ☐ 650 Airline Regs.
- ☐ 660 Occupational Safety/Health
- ☐ 690 Other

**LABOR**
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 730 Labor/Mgmt.Reporting & Disclosure Act
- ☐ 740 Railway Labor Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Empl. Ret. Inc. Security Act

**IMMIGRATION**
- ☐ 462 Naturalization Application
- ☐ 463 Habeas Corpus - Alien Detainee
- ☐ 465 Other Immigration Actions

**BANKRUPTCY**
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

**PROPERTY RIGHTS**
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

**SOCIAL SECURITY**
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

**FEDERAL TAX SUITS**
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

**OTHER STATUTES**
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 810 Selective Service
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 875 Customer Challenge 12 USC 3410
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 892 Economic Stabilization Act
- ☐ 893 Environmental Matters
- ☐ 894 Energy Allocation Act
- ☐ 895 Freedom of Information Act
- ☐ 900Appeal of Fee Determination Under Equal Access to Justice
- ☐ 950 Constitutionality of State Statutes

## V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 USC 1332 (a) (1) - 28 USC 1332 (b) - 28 USC 1332 (c) (2)

Brief description of cause:
Breach of fiduciary, extrinsic fraud, failure to disclose, failure to notice

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND $ 600,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☑ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE 02/21/2012

SIGNATURE OF ATTORNEY OF RECORD

Plaintiff Pro Se

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

20-20566.44

**From:** Nelva Brunsting <elmernelva@sbcglobal.net>
**Date:** 7/28/2007 7:16 AM
**To:** Candy Curtis <occurtis@sbcglobal.net>

Hi: I have a question for you Candy. Would you be willing to serve as co-trustee with Carl? Amy is on there now but I'm going to take her off because I don't think she is stable enough. I'll think of a good excuse so she won't get her feelings hurt. It might entail a trip or two when the time comes(doesn't that sound ominous???!!) but you would b paid for your traveling expenses. I think you have a better relationship with your siblings than she. Let me know.

**From:** Nelva Brunsting <elmernelva@sbcglobal.net>
**Date:** 3/1/2008 3:06 PM
**To:** Candy Curtis <occurtis@sbcglobal.net>

Hope you are having as lovely weather as we are. It got up to 77 today as is did yesterday. The carolina jasmine and azaleas are in full bloom as are my petunias and snapdragons. Sometimes I think flowers do better when you neglect them. I'm doing a little better every day. Have dismissed the caregivers and are on our own. Seems like I told you this already. It's slow going but we're making it. Are going to try and go to S.S. tomorrow morning for the first time since early January. If I don't take a benadryl before I go to sleep I'm not as groggy all morning. Some nights are kind of up and down. Say Candy, do you mind if I make Anita as the alternate trustee.? I was trying to spread the jobs around evenly but I now realize Anita has a handle on everything from the insurance policy and the trust better than anybody. Besides the trustee book is so big and heavy it probably would cost a bundle to get it to you. I don't know how much there is to being a trustee but I suspect there will be several times you would have to be here and that might be difficult for you. Since Carole, Carl and Anita seem to be handling most of the stuff anyway and they're not far away I think it would be best if I do that. Anita has already talked to our broker about the policy, etc and she seems to have a handle on it. Hope you won't feel hurt. It's just that it seems the best way to handle things. Hope everone is well there. Did you hear of the flu in your area. This kind the flu shots didn't help. Hope I never get pneumonia again. Take care. Love you. MMother

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** occurtis@sbcglobal.net;
**Date:** Tue, March 2, 2010 7:50:26 PM
**Cc:**
**Subject:** RE: trust waiver docs

For now could you please send me a signed waiver dated 3/19/09, for last years files? With dad's death I didn't get all the paperwork done. I think you sent mom some signed copies last year, but they have gotten lost w/ all of the paperwork she had to complete last year.

---

**From:** Candace Curtis [mailto:occurtis@sbcglobal.net]
**Sent:** Tuesday, March 02, 2010 11:15 AM
**To:** Anita Brunsting
**Subject:** Re: trust waiver docs

Hi Anita,

Please send me a copy of the trust document and a current statement of the account. I'm sorry to be such a pain, but I'd like to know what I'm waiving before I sign a blank form.

Thanks.

--- On **Mon, 3/1/10, Anita Brunsting <*akbrunsting@suddenlink.net*>** wrote:

> From: Anita Brunsting <akbrunsting@suddenlink.net>
> Subject: trust waiver docs
> To: "'Candace Curtis'" <occurtis@sbcglobal.net>, "'Amy Tschirhart'" <at.home3@yahoo.com>
> Date: Monday, March 1, 2010, 8:18 PM
>
> Hi,
>
> I need some more copies of your signed "Notification of Demand Right". Could you print out about 5 copies, sign the bottom (leave date blank) and mail them back to me? I would have you scan them and send me an electronic version, but I'm not sure what the trust requires, so I'd rather err on the safe side. If you could get them to me in the next couple of weeks, I'd appreciate it.
>
> Thanks, Anita
>
> 203 Bloomingdale Circle
> Victoria, TX 77904

# NOTIFICATION OF DEMAND RIGHT

This notice is to inform you that on _____ a gift was made to the BRUNSTING FAMILY IRREVOCABLE TRUST, dated February 12, 1997, under which you are a beneficiary. As a beneficiary, you have the right to withdraw your share of this gift within thirty (30) days after the date of this Notification of Demand Right. In no event can the total amount withdrawable by you in this calendar year exceed the annual limit on withdrawals as provided in the trust.

Your withdrawal right is noncumulative and, to the extent you do not exercise it, will lapse thirty (30) days after the date of this Notification of Demand Right.

If you need any additional information to assist you in making a decision regarding the exercise of your withdrawal rights, or if you wish to exercise your withdrawal rights, you must contact the Trustee in writing.

Dated: _____

_____
ANITA KAY BRUNSTING, Trustee

## WAIVER OF WITHDRAWAL

I acknowledge receipt of this Notification of Demand Right. I waive my right to demand my share of this gift from the trust. I do not waive my right to subsequent gifts made to the trust.

Dated: _____

_____
CANDACE LOUISE CURTIS

**From:** Candace Curtis (occurtis@sbcglobal.net)
**To:** occurtis@sbcglobal.net;
**Date:** Sat, February 18, 2012 10:46:12 AM
**Cc:**
**Subject:** [ No Subject ]

----- Forwarded Message ----
**From:** Carole Brunsting <cbrunsting@sbcglobal.net>
**To:** Candace Curtis <occurtis@sbcglobal.net>
**Sent:** Thu, October 7, 2010 12:35:47 PM
**Subject:** Re: Carl

Are you okay with Anita taking over as Power of Attorney for Mother? The paper work is being drawn up today.

**From:** Carole Brunsting (cbrunsting@sbcglobal.net)
**To:** Summer@vacek.com;
**Date:** Wed, October 13, 2010 8:47:15 AM
**Cc:** occurtis@sbcglobal.net; at.home3@yahoo.com; akbrunsting@suddenlink.net; candace@vacek.com;
**Subject:** RE: Brunsting Trust

Summer,
Thank you for your response. Now I understand the nature of the meeting, could you please clarify what you mean by "have no say". I assumed the "say" belonged to our Mother. If I am not understanding that correctly please let me know.
Thanks again,
Carole

--- On **Wed, 10/13/10, Summer Peoples <*Summer@vacek.com*>** wrote:

> From: Summer Peoples <Summer@vacek.com>
> Subject: RE: Brunsting Trust
> To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Cc: occurtis@sbcglobal.net, at.home3@yahoo.com, "Anita Brunsting" <akbrunsting@suddenlink.net>, "Candace Freed" <candace@vacek.com>
> Date: Wednesday, October 13, 2010, 10:09 AM
>
> Ms. Brunsting:
>
> To answer your questions –
>
> This teleconference meeting is to discuss changes to your mother's trust. If you are unable to attend, it simply means that you will have no say in what changes will be made. It will not be a problem if you cannot attend. However, Mrs. Freed wants to extend the invitation to all Mrs. Brunsting's children.
>
> Thanks,
>
> ***Summer Peoples, CP***
>
> Certified Paralegal
>
> **Vacek & Freed, PLLC**
>
> 14800 St. Mary's Lane, Suite 230
>
> Houston, Texas 77079
>
> Telephone: 281.531.5800

**P-6**
20-20566.50

Toll Free: 1.800.229.3002

Facsimile: 281.531.5885

E-mail: summer@vacek.com

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---

**From:** Carole Brunsting [mailto:cbrunsting@sbcglobal.net]
**Sent:** 10/13/2010 9:06 AM
**To:** Summer Peoples
**Subject:** Re: Brunsting Trust

Summer,

What is this meeting in reference to? From looking at the time choices available, I may not be able to make the meeting and would like to know if that will be a problem.

Thanks

Carole Brunsting

--- On **Wed, 10/13/10, Summer Peoples <*Summer@vacek.com*>** wrote:

> From: Summer Peoples <Summer@vacek.com>
> Subject: Brunsting Trust
> To: occurtis@sbcglobal.net, "Anita Brunsting" <akbrunsting@suddenlink.net>, cbrunsting@sbcglobal.net, at.home3@yahoo.com
> Cc: "Candace Freed" <candace@vacek.com>
> Date: Wednesday, October 13, 2010, 8:42 AM
>
> Dear Brunsting Family:
>
> Attorney Candace Freed would like to coordinate a teleconference call with you and your mother for sometime next week. Currently, she has the following time slots available (all times are Central Standard Time zone):

1. Monday, October 18th @ 11 a.m. CST
2. Monday, October 18th @ 2 p.m. CST
3. Monday, October 18th @ 4 p.m. CST
4. Thursday, October 21st 10 a.m. CST

I am reserving these times for you until I hear from you to confirm one of them. Please coordinate with each other as soon as possible and contact me today (or tomorrow, at the latest, since our office is closed on Fridays) so that we may set this on the calendar as a confirmed appointment.

I look forward to hearing from you soon.

Thanks,

***Summer Peoples, CP***

Certified Paralegal

**Vacek & Freed, PLLC**

14800 St. Mary's Lane, Suite 230

Houston, Texas 77079

Telephone: 281.531.5800

Toll Free: 1.800.229.3002

Facsimile: 281.531.5885

E-mail: summer@vacek.com

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error, please notify us immediately by reply e-mail or by telephone (1-800-229-3002) and destroy the original transmission and its attachments without reading or saving them to disk or otherwise.***

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** at.home3@yahoo.com; occurtis@sbcglobal.net; cbrunsting@sbcglobal.net;
**Date:** Sat, October 23, 2010 10:46:35 AM
**Cc:**
**Subject:** trust docs

There are 12 docs in all - I'm sending them a few at a time.

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** at.home3@yahoo.com; cbrunsting@sbcglobal.net; occurtis@sbcglobal.net;
**Date:** Sat, October 23, 2010 10:47:40 AM
**Cc:**
**Subject:** [ No Subject ]

This should make it 9 docs

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** at.home3@yahoo.com; cbrunsting@sbcglobal.net; occurtis@sbcglobal.net;
**Date:** Sat, October 23, 2010 10:47:40 AM
**Cc:**
**Subject:** [ No Subject ]

Next 3

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** at.home3@yahoo.com; cbrunsting@sbcglobal.net; occurtis@sbcglobal.net;
**Date:** Sat, October 23, 2010 10:48:16 AM
**Cc:**
**Subject:** [ No Subject ]

This is the last 3

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** occurtis@sbcglobal.net;
**Date:** Sun, October 24, 2010 12:56:07 PM
**Cc:**
**Subject:** RE:

You're welcome, it wasn't that big a deal. Hope Kevan is ok. Love, Anita

---

**From:** Candace Curtis [mailto:occurtis@sbcglobal.net]
**Sent:** Sunday, October 24, 2010 1:19 PM
**To:** Anita Brunsting
**Subject:** Re:

Thank you Anita. I know it was a lot of work.

---

**From:** Anita Brunsting <akbrunsting@suddenlink.net>
**To:** at.home3@yahoo.com; cbrunsting@sbcglobal.net; Candy <occurtis@sbcglobal.net>
**Sent:** Sat, October 23, 2010 10:48:16 AM
**Subject:**

This is the last 3



20-20566.58
2/18/2012 11:06 AM

**From:** Carole Brunsting (cbrunsting@sbcglobal.net)
**To:** occurtis@sbcglobal.net;
**Date:** Tue, October 26, 2010 10:12:27 AM
**Cc:**
**Subject:** Re:

Oh Candy thank you!!! I feel that I have been fighting this battle with Anita and now Amy alone. Anita is going to be the one responsible for keeping Mother sick because she is such a control freak and will not LET IT GO!! Let Mother decide what she wants to do. It is Mother's money, not ANITA's and not AMY's.

--- On **Tue, 10/26/10, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: Re:
> To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Tuesday, October 26, 2010, 12:05 PM
>
> I just called Mother. She DID NOT know the full implications of what she signed. I told her Anita had been manipulating her since Daddy passed away. She said she should have been included on the call. She said that she would not have given Anita the authority to manage MY MONEY. I told her that Amy and Anita are conspiring with Candace to have her declared incompetent so they can take CONTROL.
>
> I don't really know what will happen now. I think that the August document should be declared null and void.
>
> After talking to her for at least 30 minutes I realized that she is NOT incompetent. It's her memory that is failing, not her ability to manager her affairs. This happens when people get old. She might not remember to pay a bill, but she knows that bills must be paid. She doesn't remember that I know Carl had encephalitis, but she knows Carl had encephalitis. She has the ability to UNDERSTAND something when it's explained to her, although she might not remember what it is that she understood at the time.
>
> Please change the password on Mother's bank account. Please also tell Mother that Anita checks her bank account to see what she is doing and that she also reads her private emails.
>
> Mother did say that Anita drives her crazy.
>
> Love you,
>
> C
>
> ---
>
> **From:** Carole Brunsting <cbrunsting@sbcglobal.net>
> **To:** Candace Curtis <occurtis@sbcglobal.net>
> **Sent:** Tue, October 26, 2010 9:34:02 AM
> **Subject:** Re:

I am glad you wrote because I could not sleep last night either and it is difficult to keep my mind on my work. I went over and over all the events of what has happened since Daddy passed away and Anita has been scheming and manipulating with Mother and even tried to get Carl involved. Candace has not been looking out for Mother's best interest. Candace has been allowing Anita to be the one to strong arm Mother into signing papers when I do not believe she understood what she was signing, she only wanted to shut Anita up.

All Anita was suppose to do or find out was placing Carl's money in medical trust for MOTHER to manage and now all of a sudden Amy is co-trustee and your money is in trust and I wonder about mine as well.

I am working on a time line of how and when all this happened and will show that they pressured Mother to make changes when she A) was accepting the fact that Carl was gravely ill B) she found out she had cancer C) she got pneumonia and was in the hospital D) had Drina breathing down her back because ANITA was to chicken to call Drina back E) had to decide on her own about giving Drina money because ANITA and AMY were to busy to be bothered to call me or Mother back and it is what Mother wanted to do but she knew Anita was going to chastise her for giving her money that was her own to give away as she saw fit. F) also during that time Mother had 2 PET scans, a CT scan and a bron scope for which she was sedated.

Now I understand why Mother kept putting off signing the changes to the Trust. I thought the papers were written only to put Carl's money in trust. I did not know that Amy was replacing Carl and your money was going into trust. I never saw the documents as Candace had them at her office, but Mother kept delaying going over there with various excuses. She was afraid to tell Anita she did not want to make all the changes, but Anita talked her into it.

The closer Anita comes to taking control the comments to me have been: A) it is a good thing I am trustee now and not Carl because you can make more changes to the trust than you realize and Carl would have been making all the decision and had final say over distribution B) she was going to find a way to fold Carl's money back into the trust if Carl died before Drina C) she was taking over all investment when ANITA is the one that moved the money over to this Edwards office that Mother works with and attended all the meetings D) Anita wanted to find out if she could sell the farm as one unit because she said she could get more per acre rather than us each sell our parcels when we wanted too. E) Now I find out that ANITA contacted Carl about a year ago about putting both our money in trust that she and Carl would control and Carl said no.

Candy I am so deeply hurt by all of this and disgusted at the same time. I am so angry with Candace because she allowed all this to happen and it impacts Mother. Amy will just go along with Anita now that her name is on the trust. But if she only knew that ANITA called CPS and they went out and spoke with Amy's neighbors about her kids and spied on her house for a report back to Anita and the report was they did not find any reason to take Jack and Ann. Anita wanted Carl and Drina to adopt them.

I think at this point I need to find an attorney to speak with. Now that Anita sent out the trust documents even though she should not have, Drina will hire a lawyer and this will never see the of day. And she will have Carl's full support.

--- On **Tue, 10/26/10, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Tuesday, October 26, 2010, 11:07 AM

Carole,

I promised myself when I hung up from the call that I was through with all of this. I broke my promise all night last night and didn't get a wink of sleep. I cannot let it go. Anita has been manipulating Mother since Daddy passed away. Rather than say "Candy, you are NO LONGER entitled to know anything about any of it" she has been lying and saying she had no idea what was going on. The fact that she has been talking to Candace and pushing for Mother to resign as trustee is truly sick. Now that she and Amy are dead set on having Mother declared incompetent I DON'T WANT THEM TO HAVE CONTROL OF MY SHARE OF THE TRUST. But they do, thanks to Candace, who does not know me from Adam. I don't think Mother realized what she was signing in August. She is not a stupid woman and would certainly understand the intent of the document if anyone explained it to her. THEY DID NOT. If they did explain it to her until she understood, I think she would have had second thoughts.

How dare Candace tell you that if you don't participate in the call you will not have any say in it. YOU DON'T HAVE ANY SAY IN IT ANYWAY. At least Mother and Anita think you're smart enough to be your own trustee.

When Amy and Anita were griping about Edward Jones and I suggested that they write a letter for Mother to sign, Amy ONLY thought that was a good idea. Anita said nothing. SHE WANTS TO GET HER HANDS ON THE MONEY SO SHE CAN DO A BETTER JOB OF INVESTING.

Bottom line. I'm truly scared about my future security and the fact that I have no control whatsoever over my destiny. If that's what Mother intended I would really have liked to hear it from her. I would also like to know what I did that made her feel it was necessary to take such drastic measures without consulting me.

I cannot sleep, I cannot keep my mind on my work, and I cannot get these thoughts out of my head.

---

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>
**To:** Candace Curtis <occurtis@sbcglobal.net>
**Sent:** Mon, October 25, 2010 9:17:05 PM
**Subject:** Re:

Based on the comments that Anita has been making to me for the past 4 months, I am concerned too, that she wants to see how much control she has.

--- On **Mon, 10/25/10, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Monday, October 25, 2010, 6:01 PM

Now the truth comes out. None of us is entitled to copies of the trust documents, since Mother is the only beneficiary. Amy and Anita are trying to take over and will probably do anything and everything they can to cut the rest of us out. I was already depressed today. I'm over the edge now.



20-20566.62
2/18/2012 11:13 AM

**From:** Candace Curtis (occurtis@sbcglobal.net)
**To:** occurtis@sbcglobal.net;
**Date:** Sat, February 18, 2012 11:29:12 AM
**Cc:**
**Subject:** Fw: New Development

----- Forwarded Message ----
**From:** Anita Brunsting <akbrunsting@suddenlink.net>
**To:** Candace Curtis <occurtis@sbcglobal.net>; Amy <at.home3@yahoo.com>; Carole Brunsting <cbrunsting@sbcglobal.net>
**Sent:** Tue, March 8, 2011 7:15:32 PM
**Subject:** RE: New Development

I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl $13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid $13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.

I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.

I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

**From:** Amy Tschirhart (at.home3@yahoo.com)
**To:** occurtis@sbcglobal.net;
**Date:** Sat, January 8, 2011 7:34:10 PM
**Cc:**
**Subject:** Phone number

Hi Candy,
Could you send me Owen's phone number? I wanted to ask him a question about private investigators.
Thanks,
Amy



P-10
20-20566.64
2/18/2012 12:08 PM

**From:** Candace Curtis (occurtis@sbcglobal.net)
**To:** at.home3@yahoo.com; akbrunsting@suddenlink.net; cbrunsting@sbcglobal.net;
**Date:** Tue, November 8, 2011 11:38:04 AM
**Cc:**
**Subject:** Mother

I am sorry for any animosity I have created over the last week. I have only been seeking information about her status. When I am unable to reach her by phone I never know why because I am not in the information loop.

I have been trying to call Mother just to say hello. The phone numbers I have been given are never answered. If she is unable to talk, please let me know and I will stop trying. If one of you, or a caregiver, is with her and she's awake, I would really appreciate a cell phone call so I could say hi to her. If it's not already too late, it may be the last time I speak to her while she still knows who I am.

My fears are based upon information I have gathered speaking to one of you, or Tino, or Robert. It appears that everyone sees the situation in a slightly different light. I have no idea what is best for Mother. All I know is that when I put myself in Mother's shoes I become Dorothy - "THERE'S NO PLACE LIKE HOME"

C



P-11
20-20566.65
2/18/2012 12:15 PM

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

001026

CANDACE CURTIS
1215 ULFINIAN WAY
MARTINEZ CA 94553

**Holder Account Number**

C0009516387

**SSN/TIN Certified** Yes

**Symbol** XOM

00ICS0003.D.L.MIX_3285/001026/001026/i

# Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

**It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.**

**Holder Account Number: C0009516387**

## ▶ ACCOUNT SUMMARY

**As of close of stock market on 15 Jun 2011**

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 160.000000 | 160.000000 | | |

## Transaction History

**From: 15 Jun 2011** **To: 15 Jun 2011**

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 0.000000 |
| 15 Jun 2011 | Transfer | | | | | | 160.000000 | 160.000000 |

[redacted]

00TPPA (Rev. 10/11)

**NET WORTH - ELMER & NELVA BRUNSTING**
**FEBRUARY 17, 2005**

| | | | |
|---|---|---|---|
| Chevron-Texaco | 1584.17 x 53.65 | 94288.11 | |
| Deere 2/103 | 559.77 x 66.70 | 37,310 | |
| Exxon-Mobil | 3522.42 x 58.48 | 205,991.12 | |
| Franklin Fund | 854,01 x 2.17 | 17,377.55 | |
| Met Life | | 9,141 | |
| | | | $364,107.78 |
| Elmer/Nelva Joint Trust | | $ 465,328 | |
| Nelva/IRA | | 22,768.18 | |
| Elmer/IRA | | 42,155.88 | |
| 60 Mo. CD | | 15,762.89 | |
| EE & HH Bonds | | 48,200 | |
| Bal. checking 3/31/04 | | 21,660.53 | |
| | | | $615,785.48 |
| Farm | | $640,000 | |
| House | | 300,000 | |
| Life Insurance | | 75,000 | |
| Last-to-die Insurance | | 250,000 | |
| in Irrevocable Trust Notebook | | | $1,265,000 |
| | | | $2,244,893.26 |

Case 4:12-cv-00592 Document 1-1 Filed on 02/27/12 in TXSD Page 24 of 30

20-20566.68

# BRUNSTING FUNDING ALLOCATIONS

| OWNER | ASSET CATEGORY | 04/01/09 VALUES | NELVA BRUNSTING | SURVIVOR'S TRUST | DECEDENT'S TRUST | 01/27/10 WS-1 TOTALS |
|---|---|---|---|---|---|---|
| | **REAL PROPERTY** | | | | | |
| LT | HS-Lt 31 Blk 4 Wilchester West Sec 1, 13630 Pinerock Ln., Houston, TX | $253,272.00 | | $253.272.00 | | $253,272.00 |
| H-SP (in LT) | Frl. NW1/4 of Section 2, T96N - R45W of the 5th P.M., Except a tract of 542.5 ft by 660 ft which is the acreage site. 140.22 Acres, Iowa (Based on Realtor Opinion) | $1,294,617.50 | | | $0.00 | $0.00 |
| | **STOCK CERTIFICATES** | | | | | |
| LT | 612 shares of Chevron Corporation Cert # ZQ SFZ 862711 | $41,166.18 | | | $41,166.18 | $41,166.18 |
| H | 95 shares of MetLife stock thru ChaseMellon Shareholder Services | $2,130.38 | $2,130.38 | | | $2,130.38 |
| | **INVESTMENT ACCOUNTS** | | | | | |
| LT | Edward Jones Acct #609-07698-1-8 | $350,735.49 | | $55.476.28 | $295,259.21 | $350,735.49 |
| | **CASH ACCOUNTS** | | | | | |
| LT | Bank of America Ckg Acct #008519001143 | $12,253.93 | | $12,253.93 | | $12,253.93 |
| H ROS? | Blue Bonnet Credit Union ? Acct #5805 | $31.75 | $31.75 | | | $31.75 |
| W ROS? | Blue Bonnet Credit Union ? Acct #13332 | $10.91 | $10.91 | | | $10.91 |
| | **MISCELLANEOUS** | | | | | |
| LT | Household and Personal Goods (Includes gold Watch $50 and 10 silver dollars as well as $10.00 worth of 50cent pieces) | $5,070.00 | | $5,070.00 | | $5,070.00 |
| JT | 2000 Buick LeSabre, VIN #1G4HR54K3YU229418 | $6,915.00 | $6,915.00 | | | $6,915.00 |
| H | John Hancock NQ annuity contract # ...8905 payable for life of spouse bene; $30.40/month | $2,379.82 | $2,379.82 | | | $2,379.82 |
| | **LIFE INSURANCE** | | | | | |
| W | MetLife contract #M9232883; Bene: LT; Accidental Death Benefit Amount; Measuring Life = W (Cacelled in June 1999 per client) | $0.00 | $0.00 | | | $0.00 |
| H | $37,000.00, MetLife-Chevron, Policy #GO-416-A-47, W is bene; deposited in checking acct | $37,000.00 | $37,000.00 | | | $37,000.00 |
| H | $9,141.00, MetLife, Policy #21 282 000, W is bene; deposited in checking acct | $9,792.33 | $9,792.33 | | | $9,792.33 |
| H | $6,000.00, Ohio State Life Ins, Policy #49-03223450, W is bene; now at Edward Jones | $6,542.32 | $6,542.32 | | | $6,542.32 |
| H | $9,000.00, Ohio State Life Ins, Policy #00605102, W is bene; moved to Edward Jones | $9,120.76 | $9,120.76 | | | $9,120.76 |
| H | $3,735.00, The Traveler's Ins Co-John Deere, Policy #G-164400, ? is bene | $0.00 | | | | $0.00 |
| H | $10,000.00, VA, Policy #V1708 75 02 2, LT is bene; deposited in chkg | $10,353.18 | | $10,353.18 | | $10,353.18 |
| | **FARM & RANCH INTERESTS** | | | | | |
| LT | Farm Lease (yr. lease for $28,200; recd pymt of $10,575.00 on 2/18/09) for lease commencing 03/01/2009 to February 28, 2010. Value at Right is the entire amount received although actually a debt of the estate ($1,762.50/month for 6 months); $8,812.50 in the estate that was not yet due although paid by payee in advance | $1,762.50 | $1,762.50 | | | $1,762.50 |
| | **IRAs\401k, etc.** | | | | | |
| W | Edward Jones Acct #609-91956-1-9, H (as of 3/28/09) is bene | $14,278.70 | $14,278.70 | | | $14,278.70 |
| H | Edward Jones Acct #609-91955-1-0, W (as of 3/28/09) is bene | $17,769.29 | $17,769.29 | | | $17,769.29 |
| | **PENSIONS** | | | | | |
| H | Chevron pension for $776.81/mth for life for Spouse beneficiary | $60,811.56 | $60,811.56 | | | $60,811.56 |
| H | John Deere (Minnesota Mutual Life) Securian NQ Pension annuity contract # 8074; $91.78 a month for life of Nelva Brunsting (W) | $7,184.88 | $7,184.88 | | | $7,184.88 |
| GRAND TOTAL | | $2,143,198.48 | $175,730.20 | $336,425.39 | $336,425.39 | $848,580.98 |
| | Less Elmer's Separate Property | $1,294,617.50 | | | $1,294,617.50 | |
| | Less assets direct to (surv spouse) | $175,730.20 | | | | |
| | Total Comm / Prop in LT | $672,850.78 | | | | |
| | 1/2 Comm / Prop in LT | $336,425.39 | | | | |
| | Total to be funded into Dec Tru | | | | | |
| | Total FET credit equivalent utilized | | $175,730.20 | $336,425.39 | $1,631,042.89 | $2,143,198.48 |

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# PREMIUM ESTATE VALUATION REPORT

**Prepared for:** ELMER H BRUNSTING

**Date:** May 28, 2009

**Prepared by:** Joe and Doug Williams
Financial Advisor

713-464-6071
9525 Katy Freeway
Suite 122
Houston, TX 77024

Edward Jones, its employees and financial advisors are not estate planners and cannot provide tax or legal advice.
You should consult a qualified attorney for professional advice on your specific situation.

## To Keep You Informed About Your Investments

___ Please call me at _____.

___ Here's some information for your review.

X Per your request

___ Diversification issue: please call me at _____.

___ We should discuss this. Please call me at _____.

___ Enclosed is important account information. Please check it for accuracy.

___ Enclosed is a request for important information regarding your account(s). Please complete this form (these forms) where indicated and return it/them to me.

X If you have any questions call me at 713-464-6071

___ For your information

___ Please call me to set an appointment. My number is _____.

___ A copy for your records

www.edwardjones.com Darlene

Edward Jones

ITEM# 2194 MIS-367 11-JAN-2005

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Edward Jones
MAKING SENSE OF INVESTING

OPR-3624-A APR 2008

20-20566.69

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20-20566.70

# Estate Valuation

Date of Death: 04/01/2009
Valuation Date: 04/01/2009
Processing Date: 05/28/2009

Estate of: ELMER H BRUNSTING
Account: 609-07698
Report Type: Date of Death
Number of Securities: 20
File ID: 609-07698

| | Shares or Par | Security Description | High/Ask | Low/Bid | Mean and/or Adjustments | Div and Int Accruals | Security Value |
|---|---|---|---|---|---|---|---|
| 1) | 4994.66 | MONEY MARKET INVESTMENT FUND (MNYMKT) | | | | | 4,994.66 |
| 2) | 5000 | UNIVERSITY TEX PERM UNIV FD REF BDS (915115K57)<br>Financial Times Interactive Data<br>DTD: 05/15/1992 Mat: 07/01/2013 6.25%<br>04/01/2009 | | 116.36100 Mkt | 116.361000 | | 5,818.05 |
| | | Int: 01/01/2009 to 04/01/2009 | | | | 78.13 | |
| 3) | 10000 | MONROE CNTY N Y ARPT AUTH ARPT REF BDS (610749DS9)<br>Financial Times Interactive Data<br>DTD: 03/04/2004 Mat: 01/01/2018 4%<br>04/01/2009 | | 89.89600 Mkt | 89.896000 | | 8,989.60 |
| | | Int: 01/01/2009 to 04/01/2009 | | | | 100.00 | |
| 4) | 30000 | INDIANA MUN PWR AGY PWR SUPPLY REV BDS (454898PV3)<br>Financial Times Interactive Data<br>DTD: 06/20/2006 Mat: 01/01/2026 5%<br>04/01/2009 | | 102.63700 Mkt | 102.637000 | | 30,791.10 |
| | | Int: 01/01/2009 to 04/01/2009 | | | | 375.00 | |
| 5) | 10000 | DALLAS TEX AREA RAPID TRAN SAL SR LIEN S (235241EW2)<br>Financial Times Interactive Data<br>DTD: 03/08/2007 Mat: 12/01/2027 4.5%<br>04/01/2009 | | 98.75100 Mkt | 98.751000 | | 9,875.10 |
| | | Int: 12/01/2008 to 04/01/2009 | | | | 150.00 | |



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20-20566.71

# Estate Valuation

Date of Death: 04/01/2009
Valuation Date: 04/01/2009
Processing Date: 05/28/2009

Estate of: ELMER H BRUNSTING
Account: 609-07698
Report Type: Date of Death
Number of Securities: 20
File ID: 609-07698

| | Shares or Par | Security Description | High/Ask | Low/Bid | Mean and/or Adjustments | Div and Int Accruals | Security Value |
|---|---|---|---|---|---|---|---|
| 6) | 30000 | HAYS TEX CONS INDPT SCH DIST SCH BLDG (421110G76)<br>Financial Times Interactive Data<br>DTD: 07/01/2008 Mat: 08/15/2033 5%<br>04/01/2009 | | 100.73700 Mkt | 100.737000 | | 30,221.10 |
| | | Int: 02/15/2009 to 04/01/2009 | | | | 191.67 | |
| 7) | 20000 | DISTRICT COLUMBIA REV REV BDS (2548393J0)<br>Financial Times Interactive Data<br>DTD: 12/17/1998 Mat: 08/15/2038 5%<br>04/01/2009 | | 86.21300 Mkt | 86.213000 | | 17,242.60 |
| | | Int: 02/15/2009 to 04/01/2009 | | | | 127.78 | |
| 8) | 9000 | GENERAL MTRS ACCEP CPSMARTNBE (37042GZ90)<br>Financial Times Interactive Data<br>DTD: 03/25/2003 Mat: 03/15/2018 7.05%<br>04/01/2009 | | 25.91970 Mkt | 25.919700 | | 2,332.77 |
| | | Int: 03/15/2009 to 04/01/2009 | | | | 28.20 | |
| 9) | 5000 | TOYOTA MTR CR CORP TMCC CORENO (89240AHB9)<br>Financial Times Interactive Data<br>DTD: 07/18/2007 Mat: 07/20/2027 6%<br>04/01/2009 | | 90.41920 Mkt | 90.419200 | | 4,520.96 |
| | | Int: 03/20/2009 to 04/01/2009 | | | | 9.17 | |



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20-20566.72

## Estate Valuation

Date of Death: 04/01/2009
Valuation Date: 04/01/2009
Processing Date: 05/28/2009

Estate of: ELMER H BRUNSTING
Account: 609-07698
Report Type: Date of Death
Number of Securities: 20
File ID: 609-07698

| | Shares or Par | Security Description | High/Ask | Low/Bid | Mean and/or Adjustments | Div and Int Accruals | Security Value |
|---|---|---|---|---|---|---|---|
| 10) | 10000 | GEORGIA PWR CO (373334JG7)<br>Financial Times Interactive Data<br>DTD: 08/30/2007 Mat: 09/01/2040 6%<br>04/01/2009 | | 93.96890 Mkt | 93.968900 | | 9,396.89 |
| | | Full coupon paid on 04/01/2009 | | | | | |
| 11) | 930 | CHEVRON CORP NEW (16676410; CVX)<br>COM<br>New York Stock Exchange<br>04/01/2009 | 68.70000 | 65.83000 H/L | 67.265000 | | 62,556.45 |
| 12) | 2580 | CITIGROUP INC (17296710; C)<br>COM<br>New York Stock Exchange<br>04/01/2009 | 2.75000 | 2.43000 H/L | 2.590000 | | 6,682.20 |
| 13) | 1789 | DEERE & CO (24419910; DE)<br>COM<br>New York Stock Exchange<br>04/01/2009 | 34.68000 | 31.88000 H/L | 33.280000 | | 59,537.92 |
| | | Div: 0.28 Ex: 03/27/2009 Rec: 03/31/2009 Pay: 05/01/2009 | | | | 500.92 | |



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20-20566.73

# Estate Valuation

Date of Death: 04/01/2009
Valuation Date: 04/01/2009
Processing Date: 05/28/2009

Estate of: ELMER H BRUNSTING
Account: 609-07698
Report Type: Date of Death
Number of Securities: 20
File ID: 609-07698

| | Shares or Par | Security Description | High/Ask | Low/Bid | Mean and/or Adjustments | Div and Int Accruals | Security Value |
|---|---|---|---|---|---|---|---|
| 14) | 200 | DU PONT E I DE NEMOURS & CO (26353410; DD)<br>COM<br>New York Stock Exchange<br>04/01/2009 | 23.65000 | 21.62000 H/L | 22.635000 | | 4,527.00 |
| 15) | 269 | EXXON MOBIL CORP (30231G10; XOM)<br>COM<br>New York Stock Exchange<br>04/01/2009 | 69.48000 | 66.50000 H/L | 67.990000 | | 18,289.31 |
| 16) | 150 | JOHNSON & JOHNSON (47816010; JNJ)<br>COM<br>New York Stock Exchange<br>04/01/2009 | 53.20000 | 51.88000 H/L | 52.540000 | | 7,881.00 |
| 17) | 300 | PROCTER & GAMBLE CO (74271810; PG)<br>COM<br>New York Stock Exchange<br>04/01/2009 | 48.48000 | 46.29000 H/L | 47.385000 | | 14,215.50 |
| 18) | 159.709 | CAPITAL INCOME BLDR FD (14019310; CAIBX)<br>SH BEN INT<br>Mutual Fund (as quoted by NASDAQ)<br>04/01/2009 | | 37.84000 Mkt | 37.840000 | | 6,043.39 |



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20-20566.74

# Estate Valuation

Date of Death: 04/01/2009
Valuation Date: 04/01/2009
Processing Date: 05/28/2009

Estate of: ELMER H BRUNSTING
Account: 609-07698
Report Type: Date of Death
Number of Securities: 20
File ID: 609-07698

| | Shares or Par | Security Description | High/Ask | Low/Bid | Mean and/or Adjustments | Div and Int Accruals | Security Value |
|---|---|---|---|---|---|---|---|
| 19) | 220.933 | CAPITAL WORLD GROWTH & INCOME (14054310; CWGIX)<br>COM<br>Mutual Fund (as quoted by NASDAQ)<br>04/01/2009 | | 24.02000 Mkt | 24.020000 | | 5,306.81 |
| 20) | 3343.281 | INCOME FD AMER INC (45332010; AMECX)<br>COM<br>Mutual Fund (as quoted by NASDAQ)<br>04/01/2009 | | 11.95000 Mkt | 11.950000 | | 39,952.21 |
| | | Total Value: | | | | | $349,174.62 |
| | | Total Accrual: | | | | $1,560.87 | |
| | | Total: $350,735.49 | | | | | |



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20-20566.75

Brunsting Family Survivor's and Decedent's Assets

| Asset | # shares | price/share * | Amount* | *values as of 1/20/2012 |
|---|---|---|---|---|
| Chevron/Texaco-decedent | 609.6515 | 106.89 | $65,165.65 | |
| Chevron/Texacos-survivor | 37.131 | 106.89 | $3,968.93 | |
| Chevron - Decedent | 612 | 106.89 | $65,416.68 | |
| ExxonMobil-Decedent | 583 | 87.49 | $51,006.67 | |
| ExxonMobil-survivor | 675.910671 | 87.49 | $59,135.42 | |
| MetLife - Survivor | 95 | 36.35 | $3,453.25 | |
| Survivor's Trust Edward Jones | | | $1.05 | |
| Decedent's Trust Edward Jones | | | $240,637.33 | |
| Survivor's Trust Checking | | | $23,611.65 | includes deposit of IRS refund: $6215.87 |
| Decedent's Trust Checking | | | $14,765.55 | Includes deposit of remaining farm rent for 2011: $13902.51 and Chevron Dividend: $495.72 |
| Misc. Coins | | | $690.00 | |
| Gold Watches/misc jewelry | | | | appraisal pending |
| **Total Liquid Assets** | | | $527,852.19 | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Farm (acres) | 141 | | $0.00 | apprasal pending |
| House | | | $410,000.00 | appraised value |
| Total Trust | | | | |
| | | | | |
| | | | | |

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20-20566.76

Trust Expenses

| Date | Vendor | Purpose | Amount |
|---|---|---|---|
| 11/12/2011 | Kroger - Houston | Groceries when cleaning/packing house | $ 23.31 |
| 11/16/2011 | Phillips 66 - Houston | Transportation | $ 56.20 |
| 11/22/2011 | Phillips 66 - Houston | Transportation | $ 49.08 |
| 12/26/2011 | Home Depot | Home Repair/Security | $ 92.56 |
| 12/26/2011 | Exxon - Victoria | Transportation | $ 45.15 |
| 12/28/2011 | Kroger - Houston | Groceries when cleaning/packing house | $ 16.31 |
| 12/28/2011 | HEB - Houston | Groceries when cleaning/packing house | $ 3.50 |
| 12/28/2011 | Ace Hardware | Supplies to pack up house | $ 66.53 |
| 12/29/2011 | Shell - Victoria | Transportation | $ 44.51 |
| 12/21/2011 | USPS | Trust Docs | $ 1.28 |
| 12/11/2011 | Vacek | Legal | $ 4,500.00 |
| 12/12/2011 | Wilchester West Fund | subdivision dues | $ 359.00 |
| 12/11/2012 | Memorial Hermann | mom's medical | $ 41.72 |
| 12/11/2011 | US Treasury | tax payment for Decedent Trust | $ 1,780.00 |
| 12/18/2011 | Mr. Pham Chen | Lawn care - 2 mos | $ 200.00 |
| 12/18/2011 | Centerpoint Energy | natl gas for house | $ 54.62 |
| 12/18/2011 | Kelsey-Seybold | mom's medical | $ 13.92 |
| 12/18/2011 | Memorial Hermann | mom's medical | $ 226.40 |
| 12/18/2011 | ACS Primary Care | mom's medical | $ 6.87 |
| 12/28/2011 | Herb Jamison | house appraisal | $ 450.00 |
| 12/29/2011 | Amy Brunsting | tires for mom's car/house repairs/transpc | $ 425.94 |
| 1/9/2012 | Exxon - Victoria | Transportation | $ 49.57 |
| 1/10/2012 | Dr. Annie Uralil | mom's medical | $ 44.06 |
| 1/16/2012 | Northwoods Urology Associates | mom's medical | $ 740.77 |
| 1/17/2012 | Don Sumners Tax Asses/Collect | 2011 property tax for mom's house | $ 1,285.05 |
| Total | | | $ 10,576.35 |

**Liabilities**

Farm Taxes
Property tax on house
Remaining medical bills
Insurance on house and car
Electricity/gas/water on house
Remaining repairs on house
Farm appraisal
Decendent & Survivor Trust tax prep
Trustee Expenses

Sunday

Hey;

It's almost 10 pm but I'm not sleepy and my computer wont cooperate tonite.

So I heard you were concerned that any money you receive after I "leave this mortal coil" will be put in a trust and Anita would have to deal it out.

That not true. I will well get whatever share is yours. If you don't know how to manage money

[illegible] to [illegible].

I'm on a sign quite a bit of the time now. Even sleep with it. The hum of the motor is rather soothing.

Had about 2 or so trickers this evening. I'm look [illegible] doing the [illegible] out.

Our weather is still gorgeous but so very dry. Glad I'm not a farmer. I'm farmers are doing better.

I'm watching the Mavis Series. Looks like your guys are winning.

Aren't these cards pretty? Carol get them for me.

(over)

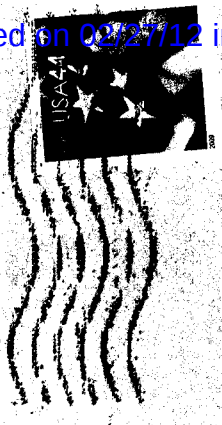
Some day I'm going to get a lap desk. I guess I'm too lazy to sit at the desk. I usually write while watching TV at mite.

Wish I had your lovely handwriting. I started out left handed but my 1st g. Teacher made me write right handed so I ~~[illegible]~~ ~~[illegible]~~. blame her.

Hallmark
STATIONERY
CNT3025
© HALLMARK LICENSING, INC.
MADE IN U.S.A.
Hallmark.com

I can't even read my own writing.)

Bye now. Love, Mother



USA44

Nelva Brunsting
13630 Pinerock Ln.
Houston, TX 77079

Candy Curtis,
1215 Ufinian Way
Martinez, CA
94553

CANDACE L. CURTIS
1215 Ulfinian Way
Martinez CA 94553

December 19, 2011

CERTIFIED MAIL R.R.R
ARTICLE NO. 7010 0290 0002 8531 8903
Ms. Anita Kay Brunsting
Co-Trustee
203 Bloomingdale Circle
Victoria TX 77904

CERTIFIED MAIL R.R.R
ARTICLE NO. 7010 0290 0002 8531 8866
Ms. Amy Ruth Brunsting
Co-Trustee
2582 Country Ledge
New Braunfels TX 78132

RE: Brunsting Family Living Trust, dated October 10, 1996, as amended
Formal Demand for Full and Complete Disclosure and Accounting

Dear Amy and Anita,

This letter shall stand as my formal written demand for you to provide me copies of the trust documents forthwith, including but not limited to wills, trusts as amended, declarations of trusts, indentures, death certificates, life insurance policies, and anything else relevant to the trust assets and/or the beneficiaries' beneficial interests.

As co-trustees you are hereby notified that before any of the trust assets are distributed, sold, or otherwise disposed of, you are required to provide all beneficiaries with prior notice, as required by Texas Property Code.

Furthermore, with this letter I demand a full and complete accounting of the trust assets. If you have questions regarding what that entails I suggest you begin by reviewing § 113.152 of the property code. To date I have never received an accounting, therefore, the period covered by this demand shall begin the moment one or both of you became a trustee or in any other manner assumed fiduciary capacity over Mother's financial affairs.

I am quite troubled by the simple fact that I have received no communication from you, of any type, since I left Houston after Mother's funeral. Your distribution of assets and personal effects in direct disregard for our Mother's express wishes is equally troubling.

Your tampering with the intent of our parent's trust constitutes a challenge to that trust under the terms of which you can be disinherited. I do not think you want push to come to shove on these kinds of issues. You both know what you have done and so do the rest of us.

At this juncture, you still retain the opportunity to cure and to save face. As long as we are all in agreement that the original intent of this trust will be the result of the estate's proper distribution, and we are all in agreement with that distribution, court intervention will not be necessary.

However, the conniving, deceitful manner in which you obtained control over the trust, trust assets, and the individual trust accounts for both Carl and myself, may soon be the subject of much inquiry. May I advise you that by accepting both the role of fiduciary AND gifts from the principal, you have consented to have your conduct measured by a higher standard of loyalty. You should also note that the violation of the duty that the fiduciary owes the principal CAN result in a felony conviction. I strongly suggest you execute your fiduciary obligations pursuant to the intent of the original trusts' terms and not according to the terms of your own manufacture.

Sincerely,



Candy

/cc

Cc: Ms. Carole Ann Brunsting
5822 Jason
Houston TX 77074

Mr. Carl Henry Brunsting
5629 Flack Drive
Houston TX 77081

Ms. Candace Freed
Vacek and Freed PLLC
11777 Katy Freeway
Suite 300 South
Houston, Texas 77079

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** cbrunsting@sbcglobal.net; occurtis@sbcglobal.net; drinabrunsting@sbcglobal.net;
**Date:** Tue, December 20, 2011 2:41:15 PM
**Cc:** at.home3@yahoo.com;
**Subject:** trust updates

The life insurance paperwork is being processed. It was under a separate trust. The trust will receive the $250,000 in a bank account set up by the life insurance company. Once the deposit is made, you will receive a check sent to you (or the beneficiary) by certified mail with a signature required. If electronic transfer is available on this account I will transfer it that way. I have no idea how long it will take the life insurance company to disburse the funds.

As a beneficiary of the Brunsting Family Living Trust, you (or the beneficiary) are entitled to a copy of the trust which you will be receiving in the mail shortly.

Anita

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** occurtis@sbcglobal.net;
**Date:** Wed, December 28, 2011 8:13:20 PM
**Cc:** at.home3@yahoo.com;
**Subject:** mom's house

Is this going to stay your email address? Also, do you want me to keep sending any certified/registered mail materials to your house on Ulfinian Way or do you have another address that you want me to use? For some of this mail, it will have to be you that signs for it.

We have almost finished cleaning up the house and we will have everything moved out in a few weeks. We've engaged a realtor and she said the house looked well taken care of (she was very impressed based on a lot of others she has seen in the same age range) and didn't think it would be a tear down, just something for someone to update. Said the floor plan and large amount of storage was a big plus. The fault is the only detractor, but I found daddy's records of all the repairs and it has a transferrable warranty, so the realtor said that was a really good thing. We hope to get it on the market next week - she said that would be a good window to start as there's not much on the market right now, but more should come on by the end of the month.

After we get the house sold, we'll figure out the farm and the remaining liquid assets. Just double checking, you still want to hold onto your portion of the farm right? If so, are you interested in "trading" some of the liquid assets (like your portion of the remaining stock/mutual funds or cash from the sale of the house) for more farm land? I'm just trying to get an idea of what everyone wants. The farm is already rented for this year, so we'll just divide the income from that by 5, so this gives us a little more time to figure out the farm in the long run.

We're still working w/ the lawyer to get a final tally of the worth of all the assets, when that's complete, you will get a spreadsheet that lists them.

Anita

P-20

CANDACE L. CURTIS
1215 Ulfinian Way
Martinez CA 94553

January 3, 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
ARTICLE NO. 7010 0290 0000 7314 5063

Ms. Anita Kay Brunsting
De facto Co-Trustee
203 Bloomingdale Circle
Victoria TX 77904

RE: Brunsting Family Living Trust, dated October 10, 1996, as amended
Statutory Demand for Full and Complete Disclosure and Accounting

Dear Anita:

When our Father and Mother created the above-referenced trust, it was a typical trust with boilerplate forms. They filled in the blanks with THEIR intent. It was obvious they wanted everything to go smoothly when they "left this mortal coil", avoiding probate, taxes, AND SQUABBLING. They were BOTH of sound mind at the time and Daddy was quite proud to have done so well for his family. NEITHER PARENT WOULD EVER HAVE CONCEIVED THE NOTION TO PUT ONE SIBLING IN CHARGE OF ANOTHER'S INHERITANCE. Moreover, if you had even SUGGESTED to Daddy that Carl's family be disinherited for any reason, he would have cut you off so quickly your head would spin. As it stands, you have bullied and tricked Mother into thinking she was helping Carl, when in fact she was being used to help YOU cut off (rob) his family.

Reviewing old emails I find evidence of your machinations BEFORE Daddy passed away. These machinations included trying to convince Mother to sell the farm AFTER Daddy passed away. You also tried to convince her that YOU could do a better job with investments than Daddy. Mother was offended by that suggestion and told you so. After he passed away you tried to convince Mother to cancel the last-to-die life insurance policy. You clearly were not thinking of anything but your own selfishness and greed. Finally, I understand that after Daddy passed away you tried to convince Carl to put Carole's and my personal asset trusts in quasi-conservatorship.

If I were in your shoes, I would do some crash reading on fiduciary obligation and, in your particular case, I would begin with the common dictionary definition of the word trust. If that is not clear enough, please refer to Black's Law Dictionary AND Subtitle B,

Sections 111-117, of Title 9 of the Texas Property Code. After that I would consult with a really good criminal attorney.

If, at this juncture, you are wondering if I am questioning your loyalty and trustworthiness, make no mistake about it. The information which has come to my attention, including physical evidence, has me not merely appalled and sickened, but I am emotionally distressed and, quite frankly, a little angry as well.

It is my understanding that you are presently acting as a Trustee for the Brunsting Family Living Trust. As a beneficiary of the Trust, I have standing to demand a written statement of account and other information from you. As a trustee you have a corresponding legal obligation to provide the information requested.

Your failure or refusal to meet your mandatory disclosure obligations is a breach of trust and I hereby demand that you inform me of the identities and contact information for the Trust Protector and the Special Co-Trustee, in writing, immediately, upon receipt of this demand. In addition, at the same time you are to provide me with copies of all appointment documents related thereto.

This letter also constitutes actual and constructive notice of a formal demand for a true and complete copy of all trust related documents including, but not limited to, a full and complete accounting covering ALL transactions since the last accounting, or since the creation of the Trust, whichever is later. To the extent that written statements of account with respect to such trusts have been prepared for any prior period or periods, and have been delivered to any beneficiary, this letter constitutes formal legal demand for true and complete copies of such statements of account.

Had you endeavored to understand your fiduciary obligations, rather than pursuing your own self-interest, you would never have attempted to rupture this Trust, as you would have realized your efforts would be of no avail unless you followed the established rules. Had you followed the rules, attempted changes to the trust would not have occurred and you would never have pretended any alleged changes to be valid.

In so doing you have all but confessed your abject moral bankruptcy and, as opposed to consolidating unbridled power unto yourself, you enmeshed yourself in conflicts of interest and made yourself both liable and culpable. Withholding information you have a duty to divulge only sinks you in deeper.

I am particularly interested in how we got from Carl and Amy as successor co-trustees, with me as alternate, to you and Amy as successor co-trustees AND QUASI-CONSERVATORS of Carl's and my personal asset trusts, WITHOUT ANY NOTICE WHATSOEVER. The last I heard about it from Mother was several years back. She felt Amy was unstable and wanted to replace her with me. She asked me if I would do it and I agreed. Then, all of a sudden, Mother decided it would be easier to replace Amy with you. She said she hoped her decision did not hurt my feelings.

My previous letter pointed you to the law regarding what you must produce to constitute a full and complete accounting. I hereby demand this accounting to specifically include a list describing all gifts, gratuities and compensation received by you, whether from Nelva Brunsting or from the trust Res, including when and how received, as well as copies of all attorney bills paid for with trust funds.

With this letter I also demand a written update as to the status of the last-to-die life insurance proceeds. It has been more than six weeks and based upon your past and present refusal to educate the beneficiaries about this policy, while asking them to sign blank, undated waivers year after year, I am starting to get worried that there is something else we don't know about yet.

Tex. Trust Code Ann. §113.151 provides that ALL of the trust documents and the full and complete accounting be delivered to me within a "reasonable time." Having made a common law demand for accounting mailed December 18, 2011, and receiving no responsive documents, it is my position that a reasonable time is on or before sixty (60) days after your receipt of this statutory demand.

The documents and accounting should be sent to the undersigned at 1215 Ulfinian Way, Martinez, CA 94553, not later than 5:00 p.m., on or before the first business day to occur sixty (60) days after your receipt of this demand.

Please confirm to me in writing, within ten (10) days of your receipt of this demand, that you intend to furnish all of the information requested in this demand on or before the dates specified.

If I do not receive written confirmation within such time, then I reserve the right to immediately file a motion in any court of competent jurisdiction to compel compliance with this demand. Any motion to compel compliance with this demand may also contain a request that, because of your breach of the fiduciary duty to disclose, you, acting in your individual capacity, pay all legal fees and costs incident to the enforcement of this demand.

If you believe this request is over burdensome or unreasonable, you will provide my designated agent with access to the books and records in your possession, and you will do so without delay. You are advised that this will be my last non-judicial effort to compel you to meet your fiduciary obligations. I have everything I need to get an injunction and I would not advise trying my patience any further.

If you have any questions regarding this matter please do not hesitate to contact me in writing to express your concerns. If you have legal counsel you are to communicate through that counsel.

Very truly yours,

Candace L. Curtis

/cc

Cc: Mr. Carl Henry Brunsting
Co-Trustee
5629 Flack Drive
Houston TX 77081

Ms. Amy Ruth Brunsting
Co-Trustee
2582 Country Ledge
New Braunfels TX 78132

Ms. Carole Ann Brunsting
5822 Jason
Houston TX 77074

Ms. Candace Freed
Vacek and Freed PLLC
11777 Katy Freeway
Suite 300 South
Houston TX 77079

paperwork was being processed. She also said the beneficiaries are entitled to a copy of the trust which we would receive shortly.

On or about December 21, 2011 I received an envelope from Anita containing a copy of the Restatement of The Brunsting Family Living Trust, dated January 12, 2005, and a copy of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, dated August 25, 2010.
December 28, 2011, Anita emailed me, (P-19) with a cc to Amy, re mom's house, wherein she stated that a realtor had been contacted and they hoped to

> "…get it on the market next week"… "After we get the house sold, we'll figure out the farm and the remaining liquid assets. Just double-checking, you still want to hold onto your portion of the farm right? If so, are you interested in "trading" some of the liquid assets (like your portion of the remaining stock/mutual funds or cash from the sale of the house) for more farmland? I'm just trying to get an idea of what everyone wants."… "We're still working w/ the lawyer to get a final tally of the worth of all the assets, when that's complete, you will get a spreadsheet that lists them."

I am not really sure how I was expected to make a major decision like this without knowing exactly what my assets are.

Being virtually in the dark about everything, I began to have a renewed sense of grave concern about the safety of the trust assets and was compelled to send a "Statutory Demand for Full and Complete Disclosure and Accounting" letter, dated January 3, 2012, (P-20, 4 pgs.) sent certified mail to Anita, with copies going to Amy, Carole, Carl and Mom's trust attorney Candace Freed. Anita's letter was signed for on January 9, 2012. Within that letter I asked her to

> "Please confirm to me in writing, within ten (10) days of your receipt of this demand, that you intend to furnish all of the information requested in this demand on or before the dates specified." "…inform me of the identities and contact information for the Trust Protector and the Special Co-Trustee, in writing, immediately, upon receipt of this demand."

The deadline for confirmation was January 19, 2012. To date I have not received a confirmation.

January 22, 2012, Anita emailed me, with cc's to Attorney Candace and Amy, writing "Attached please find the appointment of successor trustees dated 12/21/10 and Mother's will."

It seems to me I should have received some type of notice, as well as a copy of the appointment document more than a year previous. I was already angered by her blatant disregard of her legal obligations to the beneficiaries thus far and was compelled once

again to write and demand that she carry out the legal obligations of her position as trustee. On January 23, 2012, via email, (P-21, 2 pgs.) I explained that,

> "You received a written demand for disclosure of the identity of the trust protector or the special co-trustee(s) if any. Your lack of disclosure of this basic information, or any expression of good faith, leaves me with concerns that there is something you fear or want to conceal…"

On January 25, 2012 Anita replied, via email, (P-21, supra) with cc's to Attorney Candace and Amy, stating

> "Provisions for the Trust Protector and Special Co-Trustee can be found in the Qualified Beneficiary Designation on pages 15 and 28 respectively."

Directly following this email was a second email from Anita to Carl, Amy, Carole and myself, cc to Attorney Candace, regarding the life insurance money having been received on 1/17/12, eight days prior.

On or about January 23, 2012 I received a certified mail envelope with a cover letter that stated, "Per your request, enclosed please find the trust document regarding the life insurance policy mom and Dad had, as well as their death certificates."

It should be noted that I had requested a copy of this particular document back in March of 2010, almost two years earlier, when I was asked by Anita, the trustee, to sign blank, undated Notification of Demand Right forms.

On January 24, 2012 Anita sent an email (P-22) to Carl, Carol and myself, cc to Attorney Candace, writing

> "Attached please find a preliminary tally of trust assets and expenses (with a list of future liabilities). We are still working with Candace to complete the formal list."

As stated earlier in this affidavit, there appears to be a discrepancy in the amount of some ExxonMobil stock that was "found" not to be in the trust. It had been accounted for in 2005, was not included in an accounting from 2010, and was listed on the "tally" attached (P-15, supra). In 2005 there were 3,522.42 shares listed. The "tally" listed 1,258.91. It seems the beneficiaries have a right to know what happened to the difference. It will be difficult to determine without any accounting records.

I have received no other response to my recent demands for information, no notice, no other copies of trust documents and no expression of good faith.

The law is clear. Trustees have obligations and beneficiaries have rights. I can think of no legitimate purpose for the trustees' breach of their duty to disclose. To date I am in possession of the following documents, some of which were obtained from another

beneficiary and not from the trustees, who still refuse to fully answer, and the bulk of which were obtained from Anita in October 2010.

**Ordered by Document Date**

AKB denotes documents received via email from Anita on 10/23/10
CHB denotes documents received from Carl in January 2012
All other documents were received from Anita pursuant to my demand letters, and received on the date noted

AKB Quit Claim Deed, State of Iowa, signed by EHB and NEB 10/29/96 and recorded in Sioux County Iowa 11/18/96 (P-23, 7 pgs.), which contained 3 asset schedules, A, B, C, all blank

The Brunsting Family Irrevocable Trust dated February 12, 1997 (life insurance trust) received from Anita on or about 1/26/2011, Anita Kay Riley trustee. (P-24, 53 pgs.)

AKB Affidavit of Trust made 1/12/2005 (only first page) (P-25)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees. (P-26, 2 pgs.)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees UNSIGNED WITH AMY RUTH TSCHIRHART CROSSED OUT (P-27, 2 pgs.)

AKB Affidavit of Trust made 1/12/05, with selected provisions attached, Article IV Our Trustees, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-28, 32 pgs.)

AKB The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-29 102 pgs.)

The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed), received from Anita Kay Brunsting on or about 12/21/11 (duplication of P-29, printed front and back – copy omitted)

AKB Transfer To Grantor Trust Subject To Withdrawal Contribution Agreement, UNSIGNED, dated 01/12/05 (P-30, 2 pgs.)

AKB Last Will of Elmer H. Brunsting (Pour-Over Will), UNSIGNED, WITH ARTICLE III (Appointment of Personal Representative) redacted, dated 01/12/2005 (P-31, 14 pgs.)

AKB Last Will of Nelva E. Brunsting (Pour-Over Will), UNSIGNED, Elmer H. Brunsting personal representative, Carl Henry Brunsting first alternate, Amy Ruth Brunsting second alternate, Candace Louise Curtis third alternate, dated 01/12/05 (P-32, 11 pgs.)

AKB Living Will also known as the "Physician's Directive" signed by NEB, dated 01/12/05 (P-33, 5 pgs.)

Last Will of Nelva E. Brunsting, signed 01/12/05, EHB personal representative, Carl Henry Brunsting first successor, Amy Ruth Tschirhart second successor, Candace Louise Curtis third successor, received 1/22/12 via email from Anita (P-34, 11 pgs.)

CHB First Amendment to the Restatement to the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, Article IV, Section B amended and attached as Exhibit "A", dated 09/06/07, Carl Henry Brunsting and Candace Louise Curtis successor co-trustees. ***CHB and CLC "shall each have the authority to appoint his or her own successor Trustee by appointment in writing."***, THE FROST NATIONAL BANK alternate (P-35, 2 pgs.)

AKB General Durable Power of Attorney of Nelva E. Brunsting, marked copy, unsigned, and only dated 2010, Anita Kay Brunsting initial agent, Carol Ann Brunsting first successor, Amy Ruth Tschirhart second successor (P-36, 27 pgs.)

CHB Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, executed 6/15/10, in connection with advances against our inheritances AFTER JUNE 1, 2010 (P-37, 3 pgs.)

AKB Information Concerning The Medical Power of Attorney signed by NEB, dated 08/25/10 (P-38, 5 pgs.)

AKB Medical Power of Attorney Designation of Health Care Agent signed by NEB, dated 08/25/10, Carol A. Brunsting appointed, Anita Kay Brunsting first alternate, Amy Ruth Tschirhart second alternate (P-39, 5 pgs.)

AKB Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, signed by Nelva E. Brunsting as Trustee, and Founder and Beneficiary on August 25, 2010. (P-40, 38 pgs.)

Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, signed by Nelva E. Brunsting as Trustee, and Founder and Beneficiary on August 25, 2010, received from Anita Kay Brunsting on or about 12/21/11 (duplication of P-40, printed front and back – copy omitted)

AKB Appointment of Successor Trustees, signed by Nelva E. Brunsting as Founder and Original Trustee, dated 08/25/10, Anita Kay Brunsting and Amy Ruth Tschirhart successor co-trustees, FROST NATIONAL BANK alternate. (P-41, 5 pgs.)

Hand written note from Nelva Brunsting to Candy Brunsting, dated Sunday, referencing trick or treaters' that evening, postmark illegible except for 2010. (P-16, supra)

Appointment of Successor Trustees, marked law firm copy, signed 12/21/10, if NEB resigns as Trustee, Anita Kay Brunsting first successor, Amy Ruth Brunsting second successor, THE FROST NATIONAL BANK third successor; if NEB fails or ceases to serve, Anita Kay Brunsting and Amy Ruth Tschirhart successor co-trustees, THE FROST NATIONAL BANK successor trustee, emailed to me by Anita on 01/22/12 (P-42, 6 pgs.)

CHB Appointment of Successor Trustees, marked law firm copy, signed 12/21/10, if NEB resigns as Trustee, Anita Kay Brunsting first successor, Amy Ruth Brunsting second successor, THE FROST NATIONAL BANK third successor; if NEB fails or ceases to serve, Anita Kay Brunsting and Amy Ruth Tschirhart successor co-trustees, THE FROST NATIONAL BANK successor trustee (duplicate of P-42, copy omitted)

CHB Resignation of Original Trustee, Nelva E. Brunsting, signed 12/21/10, appointing Anita Kay Brunsting as trustee of BFLT dated October 10, 1996, as amended, as well as the subtrusts known as the NEB Survivor's Trust and the EHB Decedent's Trust. (P-43)

CHB Acceptance by Successor Trustee, Anita Kay Brunsting, signed 12/21/10 (P-44)

Certified Death Certificate EHB issued 3/10/2011 received from Anita on or about 1/26/2011, State file number 142-09-043-770

Certified Death Certificate NEB issued 11/18/2011 received from Anita on or about 1/26/2011, State file number 142-11-142-463

I, Candace Louise Curtis, declare under penalty of perjury pursuant to the laws of the United States, that the above declaration of facts is true and correct and based upon personal knowledge, except for those things averred upon information and belief, and as to those things, I believe them to be true as well.

2/19/2012

Candace Louise Curtis, Plaintiff

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** occurtis@sbcglobal.net;
**Date:** Wed, January 25, 2012 7:31:05 PM
**Cc:** candace@vacek.com; at.home3@yahoo.com;
**Subject:** RE: requested documents

Candy,

Regarding you request at the bottom of your e-mail. Provisions for the Trust Protector and Special Co-Trustee can be found in the Qualified Beneficiary Designation on pages 15 and 28 respectively. This document was mailed to you on Dec. 21, 2011 by certified mail.

Anita

**From:** Candace Curtis [mailto:occurtis@sbcglobal.net]
**Sent:** Monday, January 23, 2012 11:38 AM
**To:** Anita Brunsting; Carl and Drina Brunsting; Carole Brunsting
**Cc:** Candace Freed; Amy Brunsting; al@vasek.com
**Subject:** Re: requested documents

Dear Anita,

If you think that sending me incomplete or inaccurate records in this piecemeal fashion somehow satisfies my demands for production, or your legal obligation to produce said records, you should probably read the Texas statutes and your trustee handbook, where you will find that your first obligation as an alleged trustee is full and complete disclosure. Your piecemeal dissemination is merely evidence of your refusal or otherwise failure to meet your obligations. This is known in the law of trusts as BREACH. The more information I get, the less I am convinced that you have ANY authority to act as a trustee. You might want to check on how and when powers of attorney terminate.

Further, any intended action which may affect the interest of any beneficiary, requires written notice, by certified mail, no less than 30 days prior to any such action. You are required by law to notify ALL named trustees and successor trustees, and ALL beneficiaries and successor beneficiaries, in writing, by certified mail. You have failed to do so, over and over and over again, which means that NONE of your actions are valid.

If you intend to act on the basis of your alleged appointment, which no one forced you to accept, then you should probably apprise yourself of the law regarding your LEGAL OBLIGATIONS. Secondly, if you intend to act in any way whatsoever, you should probably be absolutely certain that your actions are lawful. It's too bad you didn't get a second opinion, or at least had an attorney who read her partner's "in terrorem" article before thinking you could exacerbate exculpatory or no-contest clauses in your fake ass qualified beneficiary designation. All those fatuous exacerbations are just further evidence of your moral turpitude, misfeasance and mal intent.

I could be mistaken, but with your refusal to provide full and complete disclosure, rather just doling out the documents in bits and pieces as you see fit, would appear to compel a presumption of impropriety as a matter of law. It's called extrinsic fraud.

Oh, and one more thing regarding your fake ass qualified beneficiary designation. If you intend to act on that document's alleged grant of authority and you think you are prepared to litigate the question of its

validity, you should probably try to figure out what EACH paragraph means and how in the world ANYONE could have explained that to our Mother. You assert that Mother signed those documents making those changes, knowing full well what she was signing. I, however, upon receipt of your initial piecemeal documents, contacted Mother by telephone and she assured me in no uncertain terms that she did no such thing. Better yet, she followed it with a written communication reciting our conversation and saying very clearly "that is not true". Disclaiming will not cure the past.

I have not bothered to consult with or retain counsel because I CAN READ AND COMPREHEND THE LAW. I have over 30 years of experience in contracts, accounting, and business management for multi-million dollar corporations. I am familiar with trust law because as a property manager all properties were managed under trusts. I am VERY FAMILIAR with NOTICE and accounting requirements.

How you managed to obtain a PhD without the ability to read and comprehend is a mystery to me. If you understood trust law AT ALL your disrespectful conduct and power arrogance would be VERY different or nonexistent. I guess that why it is said that those that cannot do, TEACH.

As it regards your actual trustee delegation, you are and have always been the sole trustee for the last-to-die life insurance policy. Daddy told me that the purpose of that policy was so that we would all have means pending the trust administration and final distribution, if any. You have failed to communicate any quality information about the proceeds of that policy. It has been 85 days since Mother's death and the majority of life insurance companies settle such claims within the first 90 days. I can envision no complications as it was not an accidental or other limited policy. So, WHERE IS MY MONEY? I have several emails from you over the years asking me to sign blank forms regarding the insurance. I have always asked for copies of the life insurance trust document so that I would know what it was I was waiving. You have consistently refused or otherwise failed to provide this to me, as you are obliged to do by your own voluntary acceptance of the fiduciary obligation.

And just one last item. You received a written demand for disclosure of the identity of the trust protector or the special co-trustee(s) if any. Your lack of disclosure of this basic information, or any expression of good faith, leaves me with concerns that there is something you fear or want to conceal, but don't worry, what ever it is, we'll get to the bottom of it.

Sincerely,

Candy

---

**From:** Anita Brunsting <akbrunsting@suddenlink.net>
**To:** Candace Curtis <occurtis@sbcglobal.net>
**Cc:** Candace Freed <candace@vacek.com>; Amy Brunsting <at.home3@yahoo.com>
**Sent:** Sun, January 22, 2012 9:02:11 PM
**Subject:** requested documents

Dear Candy,

Attached please find the appointment of successor trustees dated 12/21/10 and mother's will.

Anita

**From:** Anita Brunsting (akbrunsting@suddenlink.net)
**To:** cbrunsting@sbcglobal.net; occurtis@sbcglobal.net; cbarch@sbcglobal.net;
**Date:** Tue, January 24, 2012 6:37:58 PM
**Cc:** candace@vacek.com;
**Subject:** preliminary trust accounting

Attached please find a preliminary tally of trust assets and expenses (with a list of potential future liabilities). We are still working with Candace to complete the formal list.

Anita




# *TITLE TRANSFER DOCUMENTS*

This portion of your portfolio should contain copies of all documents which show that title to various assets has been transferred to your Living Trust. The original documents should be kept in a safe place, such as a safe deposit box. In order to help your trustees in the event of death or disability, you should keep records of all assets that have been transferred to your Living Trust in this section.

# Trust Property Inventory
## Schedule "A"
## Joint Property of Husband and Wife

| Date Transferred | Asset Description |
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# Trust Property Inventory
## Schedule "B"
## Separate Property of Husband

| Date Transferred | Asset Description |
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# Trust Property Inventory
## Schedule "C"
## Separate Property of Wife

| Date Transferred | Asset Description |
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RECORDED SIOUX COUNTY IOWA

'96 NOV 18 AM 9 44

FILE 1996 CARD 5407

Anita K. Van Bruggen

A. VAN BRUGGEN RECORDER

5407

5407

Prepared by: Dennis D. Duffy, 2550 Middle Road, Suite 101, Bettendorf, IA 52722, (319) 355-7070

# QUIT CLAIM DEED
# STATE OF IOWA,

Sioux County

18th November A.D. 19 96

aj

Rec'd 11-18-96 aj

**THIS INDENTURE WITNESSETH**, THAT THE GRANTORS,

**ELMER HENRY BRUNSTING and NELVA E. BRUNSTING, individually and as husband and wife,**

of the County of Harris and the State of Texas for and in consideration of Ten ($10) Dollars and other good and valuable consideration in hand paid, QUIT CLAIMS unto

**ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or their successors in trust, under the BRUNSTING FAMILY LIVING TRUST dated** October 10, 1996 **and any amendments thereto,**

the following described real estate in the County of Sioux, State of Iowa, hereby relinquishing all rights of dower, homestead and distributive share in and to the real estate, to-wit:

The Northwest Fractional Quarter (NW Frt.¼) of Section Two (2), Township Ninety-six (96), Range Forty-five (45) West of the 5th P.M. EXCEPT the North 542.5 Feet of the West 660 Feet in Sioux County, Iowa,

subject to all easements and restrictions of record.

**The consideration for this transfer is less than $500.00 so this conveyance is exempt from transfer tax, pursuant to Iowa Code Chapter 428A.2(21).**

**Grantors warrant that the trust named as grantee herein is a revocable trust as defined in Iowa Code Chapter 9H.1(20).**

TO HAVE AND TO HOLD the said premises with the appurtenances, upon the trusts and for uses and purposes herein and in said trust agreement set forth.

Full power and authority is hereby granted to said trustee to improve, manage and protect said premises or any part thereto, to contract to sell, to grant options to purchase, to sell on any terms, to convey, either with or without consideration; to convey said premises or any part thereof to a successor or successors in trust and to grant to such successor or successors in trust all of the title, estate, powers and authorities vested in said Trustee; to donate to dedicate, to mortgage, pledge or otherwise encumber, said property, or any part thereof, to lease said property, or any part thereof; from time to time, and upon any terms and for any period or periods of time, to grant easements or charges of any kind, to release, convey or assign any right, title or interest in or about or easement appurtenant to said premises or any part thereof, and to deal with said property and every part thereof in all other ways and for such other considerations as it would be lawful for any person owning the same to deal with the same, whether similar to or different from the ways above specified, at any time or times hereafter.

In no case shall any party dealing with said trustee in relation to said premises, or to whom said premises or any part thereof shall be conveyed, contracted to be sold, leased or mortgaged by said trustee, be obliged to see to the application of any purchase money, rent or money borrowed or advanced on said premises, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the necessity or expediency of any act of said trustee, or be obliged or privileged to inquire into any of the terms of said trust agreement; and every deed, trust deed, mortgage, lease or other instrument executed by said trustee in relation to said real estate shall be conclusive evidence in favor of every person relying upon or claiming under any such conveyance, lease or other instrument that

(a) at the time of the delivery of this deed the trust stated in this Indenture as grantee was in full force and effect,

(b) that such conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this Indenture and in said trust agreement or in some amendment thereof and binding upon all beneficiaries thereunder,

(c) that said trustee was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument, and

(d) if the conveyance is made to a successor or successors in trust, that such successor or successors in trust have been properly appointed and are fully vested with all the title, estate, rights, powers, authorities, duties and obligations of its, his or their predecessor in trust.

**IN WITNESS WHEREOF**, the grantors have signed this on October 29, 1996.

Elmer Henry Brunsting

Elmer Henry Brunsting

Nelva E. Brunsting

Nelva E. Brunsting

STATE OF TEXAS )
) ss.
COUNTY OF Harris )

I, the undersigned, a Notary Public, in and for said County and State, aforesaid, DO HEREBY CERTIFY, that **ELMER HENRY BRUNSTING and NELVA E. BRUNSTING, individually and as husband and wife,** personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal on OCTOBER 29, 1996.

BEVERLY A. RAM
NOTARY PUBLIC
State of Texas
Comm. Exp. 12-12-98

Beverly Ram

Notary Public

**THIS INSTRUMENT PREPARED BY AND RETURN TO:**

**Dennis D. Duffy**
**Attorney at Law**
**101 Northwest Bank Tower**
**2550 Middle Road**
**Bettendorf, Iowa 52722**
**(319) 355-7070**

# THE

# BRUNSTING FAMILY

# IRREVOCABLE TRUST

*Prepared By*

Albert E. Vacek, Jr.

Law Offices of Albert E. Vacek, Jr., P.C.

11757 Katy Freeway Suite 840
Houston, Texas 77079

Telephone: (281) 531-5800

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# THE BRUNSTING FAMILY IRREVOCABLE TRUST

## Article I

## The Creation of Our Irrevocable Trust

### Section A. Our Declaration of Trust

This trust declaration is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas. This is our irrevocable trust. The initial Trustee of this irrevocable trust shall be ANITA KAY RILEY.

### Section B. The Title of Our Trust

Although the name we have given to our irrevocable trust for our own convenience is the BRUNSTING FAMILY IRREVOCABLE TRUST, the full legal name of our irrevocable trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ANITA KAY RILEY, Trustee, or the successor Trustees, under the BRUNSTING FAMILY IRREVOCABLE TRUST dated February 12, 1997, as amended.

### Section C. An Irrevocable Trust

This trust is irrevocable. Neither Founder shall have any power to control and direct payments, remove trust property, or alter, amend, revoke or terminate this trust, either in whole or in part.

### Section D. Forfeiture of Founders' Rights in this Trust

Subsequent to the execution of this irrevocable trust agreement, neither Founder shall have any right, title nor interest in the income or principal of this irrevocable trust. In addition, neither Founder shall have any right, title, interest, power, incident of ownership nor any

other benefit in any property or asset of this irrevocable trust. Neither Founder nor the respective estates of either Founder shall have any reversionary or similar interest in this irrevocable trust or the property or assets contained in it.

**Section E. Our Beneficiaries and Family**

This irrevocable trust is created for the use and the benefit of the children named herein. Such children shall be the beneficiaries of the lifetime separate trusts created under this trust agreement.

For reference, our children are:

| Name | Birth Date |
|---|---|
| CANDACE LOUISE CURTIS | March 12, 1953 |
| CAROL ANN BRUNSTING | October 16, 1954 |
| CARL HENRY BRUNSTING | July 31, 1957 |
| AMY RUTH TSCHIRHART | October 7, 1961 |
| ANITA KAY RILEY | August 7, 1963 |

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

# Article II

# Transfers of Assets to Our Trust

## Section A. Our Initial Contribution

We have delivered to the Trustee $10.00 and such other certain property, as set forth in the schedule attached hereto and incorporated herein for all purposes, as the initial assets of this trust, the receipt of which is acknowledged.

## Section B. Additions to Our Trust

Any person, including either of us, a trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee. All property interests transferred, assigned, conveyed or delivered to the Trustee shall be subject to all of the terms and conditions set forth in this agreement. All such interests transferred, assigned, conveyed or delivered to the Trustee in trust shall be absolute and irrevocable.

# Article III

# Trust Administration During The Founders' Lives

**Section A. Division of Shares**

While either Founder is living, the Trustee shall divide all contributions to this trust into equal shares for each living beneficiary named herein. Such division shall occur at the time the contribution is made. Each share which is established for a beneficiary shall be held in a lifetime separate trust for the beneficiary as provided in this Article.

**Section B. Income and Principal Distributions**

The Trustee shall pay to, or apply for the benefit of, each beneficiary as much of the net income and principal of such beneficiary's lifetime separate trust as the Trustee, in its sole and absolute discretion, determines to be necessary or advisable for such beneficiary's health, education, maintenance and support. The Trustee shall accumulate and add to the principal of each respective lifetime separate trust all net income which is not distributed pursuant to this Section.

The decision to make distributions pursuant to this Section shall be in the Trustee's sole and absolute discretion. Therefore, any income or other resource which is available to a beneficiary outside of this trust and is known to the Trustee may be considered prior to making distributions pursuant to this Section.

In no event shall the Trustee make any payment or distribution which would in any way discharge any legal obligation of either Founder, or which would otherwise benefit either Founder monetarily.

During the Founders' lives, each beneficiary will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust. The Trustee shall convert the property immediately after receiving written direction to that effect.

The Trustee may convert the property by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

**Section C. A Beneficiary's Right to Withdraw**

Prior to the deaths of both Founders, each living beneficiary shall have the right to withdraw that beneficiary's share of any property which is given or deemed to be given to the trust during a calendar year by a direct or indirect transfer of property to the trust. Such right to withdraw shall exist during such calendar year. For purposes of determining the value of the withdrawal rights, the value of the gift contributed shall be used. Each beneficiary's right to withdraw shall be subject only to the limitations and qualifications as are provided in the provisions of this Article which follow.

In no event shall the total amount which a beneficiary may withdraw by reason of an addition or additions to his or her lifetime separate trust in any one calendar year exceed twice the gift tax annual exclusion under Section 2503(b) of the Internal Revenue Code (currently $10,000 per donee) or any other corresponding provisions of any subsequent federal tax laws in effect in the calendar year of withdrawal.

**Section D. Exercising the Right to Withdraw**

A beneficiary may exercise his or her right to withdraw at any time within thirty (30) days from the date of the notice by the Trustee to the withdrawal right beneficiary of the transfer to the trust. Each beneficiary's withdrawal right shall be vested as of the date of the transfer to the trust which results in a withdrawal right. A beneficiary shall exercise his or her right to withdraw by delivering a written request to the Trustee within thirty (30) days from the date of the Trustee's notice of such withdrawal right.

A beneficiary's right to withdraw is non-cumulative. To the extent that the withdrawal right has not been exercised at the end of thirty (30) days after the date of the notice, or to the extent that the withdrawal right has been waived in writing by the withdrawal right beneficiary at any time prior to the end of the thirty (30) day period, such withdrawal right shall lapse.

A beneficiary's vested withdrawal right shall not terminate by reason of such beneficiary's death. Upon the death of a withdrawal right beneficiary, the personal representative of the beneficiary's estate shall have the right to exercise the beneficiary's vested withdrawal right on behalf of the beneficiary's estate.

**Section E. Trustee's Notice**

Within fifteen (15) days following the transfer of property to this trust, the Trustee shall provide written notice to each beneficiary who is then entitled to a right to withdraw that

property has been transferred to the trust. Such notice shall inform the beneficiary of such beneficiary's right to withdraw and shall be delivered by hand or by mail to the last known address of the beneficiary.

If an indirect transfer is made to the trust, the Trustee shall provide written notice to each beneficiary then entitled to a right to withdraw that property has been transferred to the trust. Such notice shall be provided within fifteen days of the Trustee's actual notice of such indirect transfer. The notice shall inform the beneficiary of the right of the beneficiary to withdraw and shall be delivered by hand or by mail to the last known address of the beneficiary.

Neither Founder shall be permitted to add beneficiaries or expand the class of individuals to be beneficiaries subsequent to the date that this trust is executed. In any event, if additional individuals subsequently become qualified to be beneficiaries of the trust as a result of being born or adopted after this trust is signed, the Trustee shall give written notice to or on behalf of that beneficiary within a reasonable time after being informed of the additional beneficiary.

**Section F. Minor or Disabled Beneficiaries**

If a beneficiary entitled to make a withdrawal is a minor or is under any other form of legal disability during all or part of any withdrawal period, the beneficiary's legal or natural guardian, conservator or personal representative shall be informed of, and may exercise, the withdrawal right on behalf of the beneficiary.

**Section G. Additional Duties of the Trustee**

In order to satisfy any outstanding withdrawal rights, the Trustee shall retain sufficient liquid trust property or other trust property which is transferable. The Trustee may distribute trust property in cash or in kind, including insurance policies held in the trust or interests in such policies, to a beneficiary making a withdrawal. In addition, the Trustee is authorized to borrow, upon such terms as are reasonable and necessary, in order to provide for payment of amounts required by any exercise of withdrawal rights by a beneficiary.

**Section H. Indirect Transfers**

If any payment is made directly to an insurance company by any party other than the Trustee of all or any part of a premium on a life insurance policy owned by the trust on the joint lives of the Founders, or on the life of either Founder, the amount of such payment shall be

deemed a transfer to the trust. To the extent that the payment is deemed to be a gift from one or both of the Founders to the beneficiaries for federal gift tax purposes, the date of the premium payment shall also be the date of the transfer. Any such indirect transfer shall create withdrawal rights in an amount equal to the value of the deemed gift.

**Section I. Property Not Withdrawn**

Any amount which is subject to a withdrawal right and which is not withdrawn by the beneficiary of the withdrawal right, either because of lapse or a signed waiver, shall be retained as a part of such beneficiary's lifetime separate trust and shall be subject to the terms of the lifetime separate trust under this Article.

**Section J. Beneficiary's Death Prior to Founders' Deaths**

If a beneficiary dies while either Founder is still living, such beneficiary's lifetime separate trust shall terminate upon the death of the beneficiary for whom it was held.

In addition, if a beneficiary dies prior to the death of both Founders, such beneficiary shall have the unlimited and unrestricted general power to appoint the cumulative value of the amounts subject to the beneficiary's withdrawal power during the term of the trust and not withdrawn during the beneficiary's lifetime or not distributed to the beneficiary by the Trustee as a discretionary distribution. Such appointment may be among persons, corporations, such beneficiary's estate or other entities in any proportion, and on such terms and conditions as such beneficiary may elect. The right to exercise this general power of appointment is the sole and exclusive right of such beneficiary. The Trustee shall distribute the appointed portion of such beneficiary's property over which the beneficiary had a withdrawal power according to such appointment if exercised and specifically referred to in a valid last will and testament or living trust agreement executed by the deceased beneficiary.

To the extent this general power of appointment is not exercised by a beneficiary, the Trustee shall retain the unappointed principal and accumulated income of the lifetime separate trust until the death of the last Founder to die. After both Founders have died, the Trustee shall administer and distribute the principal and accumulated income of the deceased beneficiary's lifetime separate trust as provided in the subsequent provisions of this trust agreement relating to distribution after both Founders' deaths.

**Section K. Administration of Lifetime Separate Trusts Subsequent to Both Founders' Deaths**

When the surviving Founder dies, each separate lifetime trust held for a beneficiary who is living at the death of the surviving Founder shall be held, administered and distributed according to the following guidelines and in the following order:

The Trustee shall maintain the lifetime separate trust under this Article for a beneficiary who is living after both of us are deceased. The Trustee shall hold, administer and distribute the income and principal of this lifetime separate trust in the same manner as the income and principal is held, administered and distributed under the separate trust created for that beneficiary in Article VI of this trust agreement.

Notwithstanding anything in Article VI to the contrary, a beneficiary's lifetime separate trust created under this Article and being administered according to the provisions of the separate trust for the beneficiary as provided in Article VI shall be subject to a general power of appointment.

The beneficiary shall have the unlimited and unrestricted testamentary general power to appoint all of the value of the lifetime separate trust among persons, corporations, such beneficiary's estate or other entities in any proportion and on such terms and conditions as such beneficiary may elect. The right to exercise this testamentary general power of appointment is the sole and exclusive right of the beneficiary. The Trustee shall distribute the appointed portion of the value of the lifetime separate trust according to such appointment if exercised and specifically referred to in a valid last will and testament or living trust agreement executed by the beneficiary.

This testamentary general power of appointment specifically grants to the beneficiary the right to appoint property to the beneficiary's own estate.

To the extent this testamentary general power of appointment is not exercised by a beneficiary, the Trustee shall distribute the trust principal and accrued income under the lapse provisions for the separate trust created for the beneficiary under Article VI.

A lifetime separate trust shall not include the proceeds of any death benefit payable to the trust with respect to any life insurance policy on the lives of either or both Founders. The principal of the lifetime separate trust shall be computed to include only the value of a life insurance policy on the lives of either or both Founders immediately prior to the death that creates the death benefit. The death benefit shall be administered and disposed of under the subsequent provisions of this trust agreement which relate to distributions after the deaths of both Founders.

Although the death benefit under any policy of life insurance on the lives of either or both Founders will not be included in the value of a lifetime separate trust, the Trustee may use the death benefit to fund, in whole or in part, the value of any lifetime separate trust created under this Article.

# Article IV

# Life Insurance

**Section A. Purchase of Life Insurance**

The Trustee may purchase and hold as trust property a policy or policies of insurance on either Founders' life or lives, the Founders' joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest. The Trustee may also receive any such policies made as a gift to the trust, and thereafter may hold and deal with the policies as the owner.

In addition to all other powers that a policy owner may possess, the Trustee shall have, in its sole and absolute discretion, the following powers:

1. To execute or cancel any automatic premium loan agreement with respect to any policy.

2. To elect or cancel any automatic premium loan provision in a life insurance policy.

3. To borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source.

4. To assign any such policy as security for such loan.

5. To exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy.

6. To reduce the amount of a policy or convert or exchange the policy.

7. To surrender a policy at any time for its cash value.

8. To elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

9. To sell policies at their fair market value to the insured or to anyone having an insurable interest in the policy.

10. To exercise any other right, option or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon the termination of this trust, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

The Trustee shall make every effort to transfer any policy insuring a beneficiary's life to that beneficiary as part of that beneficiary's distributive share.

**Section B. Upon the Death of an Insured**

Upon the death of an insured, the Trustee shall make all appropriate after-death elections with respect to insurance policies on the life of the insured then held by the trust including, but not limited to, the following:

The Trustee shall make every effort to collect all sums made payable to this trust or the Trustee upon the death of an insured. In collecting such sums, the Trustee may, in its sole and absolute discretion, exercise settlement options available under the terms of a policy held by this trust. However, the Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

In order to enforce the payment of any death proceeds, the Trustee may institute any legal, equitable, administrative or other proceeding. However, the Trustee need not take any action to enforce any payment until the Trustee, in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected. The Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by the Trustee, pursuant to this Section, shall be binding and conclusive on all beneficiaries.

Any person or entity which pays any type of death proceeds to the Trustee, as beneficiary, shall not be required to inquire into any of the provisions of this trust agreement, nor will they be required to see to the application of any such proceeds by the Trustee. The Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

# Article V

# Trust Administration on a Founder's Death

## Section A. Purchase of Assets and Loans

Notwithstanding anything in this agreement to the contrary, the Trustee shall not have the power to use any trust property for the benefit of either Founders' estates as defined in Section 20.2042-1(b) of Title 26 of the Code of Federal Regulations, as amended, unless such property is included in a deceased Founder's gross estate for federal estate tax purposes.

Otherwise, the Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the probate or trust estate of a deceased Founder. In addition, the Trustee may make loans, with or without security, to such probate or trust estate. The Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this Section.

## Section B. Distributions of Amounts Included in a Founder's Estate

If any asset of this trust is includable in a deceased Founder's gross estate for federal estate tax purposes, the Trustee shall distribute an amount equal to the value of such asset to the living trust of the deceased Founder. Any amount so distributed shall be added to the property of the living trust and disposed of in accordance with its terms. However, if either Founder dies and a respective living trust is not in existence, the Trustee shall distribute the amount called for under this Section to the surviving Founder. If there is no surviving Founder, then the distribution shall be made to the Founders' descendants, per stirpes.

The value of any asset of our trust distributed under this Section shall be its value as finally determined for federal estate tax purposes.

## Section C. Administration of the Balance of the Trust Property

If one Founder survives the other, the balance of the trust property shall continue to be held by the Trustee and administered in accordance with the prior provisions of this trust agreement. Upon the death of the surviving Founder, or if neither Founder survives the other, the balance of the trust property not disposed of under the prior provisions of this trust agreement shall be administered as provided in the Articles that follow.

# Article VI

# Upon the Death of the Surviving Founder

**Section A. Our Beneficiaries**

All trust property not previously distributed under the terms of this trust shall be divided and distributed in accordance with the terms of this trust declaration and as follows:

| Beneficiary | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| ANITA KAY RILEY | 1/5 |

**Section B. Distribution to our Beneficiaries**

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share set aside for CANDACE LOUISE CURTIS shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CANDACE LOUISE CURTIS, free of the trust.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living

descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share set aside for CAROL ANN BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CAROL ANN BRUNSTING, free of the trust.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share set aside for CARL HENRY BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CARL HENRY BRUNSTING, free of the trust.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, the trust share set aside for CARL HENRY BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share set aside for AMY RUTH TSCHIRHART shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to AMY RUTH TSCHIRHART, free of the trust.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share set aside for ANITA KAY RILEY shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to ANITA KAY RILEY, free of the trust.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Descendant of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living

descendants shall be held in trust if the descendant of the deceased beneficiary is under 21 years of age, or is disabled or incapacitated.

Our Trustee shall administer and distribute each such share according to the provisions of Article VII, Section D.

**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article VII, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given the Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, the Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by the Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, the Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to the Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then the Trustee shall retain such distribution in trust at such beneficiary's written request. The Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, the Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as the Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

| Beneficiary | Share % |
|---|---|
| CENTRAL COLLEGE OF IOWA<br>Pella, Iowa | 100% |

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

**Section H. A Beneficiary's General Power to Appoint Trust Property**

If a beneficiary under this Article should die before the complete distribution of his or her trust, the trust shall terminate and all of the trust property shall be distributed to such persons, corporations or other entities, including the beneficiary's own estate, in the manner in which the beneficiary shall elect.

This general power of appointment is the sole and exclusive right of the beneficiary and must be exercised by the beneficiary by either (i) a last will and testament; (ii) a living trust agreement; or (iii) a written exercise of power of appointment, either of which specifically refers to this power of appointment.

To the extent this general power of appointment is not exercised, the Trustee shall distribute the remaining trust property to the then living descendants of the beneficiary, per stirpes.

If the beneficiary has no then living descendants, the Trustee shall distribute the remaining trust property to our then living descendants, per stirpes. If we have no then living descendants, the Trustee shall distribute the remaining trust property as provided in Section G of this Article.

# Article VII

# Protection of Beneficial Interests

## Section A. Protection of the Interests of Our Beneficiaries

To the fullest extent permitted by law, no beneficiary will have the power to anticipate, encumber or transfer any interest in the trust while such interests remain trust property, unless specifically authorized by the terms of this agreement. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

## Section B. Unproductive or Underproductive Assets

During the Founders' lives, each beneficiary will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust. The Trustee shall convert the property immediately after receiving written direction to that effect.

The Trustee may convert the property by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

## Section C. No Contest of This Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this

trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

## Section D. Our Trustee's Authority to Keep Property in Trust

If any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article X, the Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

### 1. Distributions of Trust Income and Principal

The Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as the Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support.

In making any distributions of income and principal under this Section, the Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

### 2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

**3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

**4. A Beneficiary's General Power to Appoint Trust Property**

If a beneficiary under this Section should die before the complete distribution of his or her trust, the trust shall terminate and all of the trust property shall be distributed to such persons, corporations or other entities, including the beneficiary's own estate, in the manner in which the beneficiary shall elect.

This general power of appointment must be exercised by the beneficiary by either a last will and testament or a living trust agreement, either of which specifically refers to this power of appointment.

To the extent this general power of appointment is not exercised, the Trustee shall distribute the remaining trust property to the then living descendants of the beneficiary, per stirpes.

If the beneficiary has no then living descendants, the Trustee shall distribute the remaining trust property to our then living descendants, per stirpes. If we have no then living descendants, the Trustee shall distribute the remaining trust property as provided in Article VI, Section G of this agreement.

# Article VIII

# The Trustee

**Section A. Original Trustee**

Founders appoint ANITA KAY RILEY as the original Trustee of this trust.

**Section B. Successor Trustees**

If the original Trustee fails or ceases to serve by reason of death, disability, resignation or for any other reason, then the following individuals or entities will serve as Trustee in the following order:

First, CARL HENRY BRUNSTING

Second, AMY RUTH TSCHIRHART

The original Trustee shall be replaced by the next named successor in the order listed above when he or she has resigned or is unable to continue to serve as Trustee due to death, disability or any other reason. Successor Trustees will have the authority vested in the original Trustee under this trust document.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of the Trustee**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of the Trustee**

Any Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All resignations must be in writing and delivered to the successor Trustee and all beneficiaries then eligible to receive mandatory or discretionary distributions of income from any trust created under this agreement.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive mandatory or discretionary distributions of income from the trust, or distributions of income from any separate trust created by this document, may remove any Trustee then serving, without cause, the notice of removal to be delivered in writing to the said Trustee.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

If such beneficiaries fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon an affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY IRREVOCABLE TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY IRREVOCABLE TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 19_____.

_____
Notary Public - State of Texas

## Section F. Documentary Succession of the Trustee

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

## Section G. The Trustee's Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

## Section H. Multiple Trustees

In the event there are two or more Trustees serving the trust, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

**Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

**Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

**Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

**Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by the Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

# Article IX

# Our Trustee's Powers and Authority

## Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

## Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

## Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows, except as that authority has been limited by other provisions contained in this trust declaration.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad

managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities, except as otherwise provided in this trust declaration.

**Originally Contributed Properties**

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

**Additional Properties**

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

**Securities Powers**

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

## Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

## Unproductive or Wasting Assets

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

## Mineral Properties

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

**Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

**Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

**Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its

officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

**Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

**Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

**Authority to Sell or Lease and Other Dispositive Powers**

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the

Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

**Warranties and Covenants**

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

**Trustee's Compensation**

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

**Employment and Delegation of Authority to Agents**

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

**Power to Release or Abandon Property or Rights, and to Pursue Claims**

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

**Nominal Title and Use of Nominees**

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

**Power to Lend Money and Guarantee Obligations**

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries,

provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

**Power to Borrow**

The Trustee may create indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

**Payment of Indebtedness and Settlement Costs**

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

**Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of the Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by the Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

**Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

**Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

**Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially

so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

**Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

**Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

However, all increases in the value of any life insurance policies held by this trust prior to the death of the insured shall be principal and not income.

**Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for the inspection or audit of the beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary to the trust who is or could be entitled to receive a present income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

**Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

**Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

**Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee

may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

**Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

**Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee or a substitute Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

**Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

**Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of

its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

**Section Q. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

**1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

**2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

**3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

# Article X

# Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent," "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

It must clearly evidence the interest of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the irrevocable trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustee, if serving in such capacity, as well as the successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

# Article XI

# Miscellaneous Matters

## Section A. The Rule Against Perpetuities

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

## Section B. Jurisdiction

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

## Section C. Maintaining Property in Trust

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom the Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

# Article XII

# Our Trustees' Powers and Authority

## Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

## Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

## Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

## Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

## Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

## Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

## Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

**Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

**Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

**Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

**Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

**Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

**Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

**Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

**Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

### Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

### Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

### Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

### Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

### Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

### Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

## Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

## Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

## Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

**Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

**Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

**Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

## Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

## Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

## Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

**Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

**Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

**Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

**Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

**Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

**Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

**Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

**Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

**Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

## Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

## Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

### 1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

### 2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

### 3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

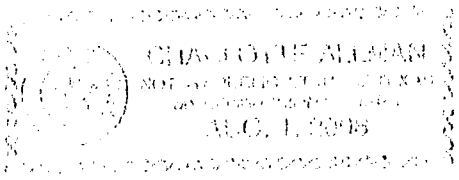
COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman

Notary Public, State of Texas



# Affidavit of Trust

1. The following trust is the subject of this Affidavit:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended.

**On January 12, 2005, the said BRUNSTING FAMILY LIVING TRUST was restated and amended. The Restatement replaces and supersedes our original trust agreement and all prior amendments.**

2. The names and addresses of the currently acting Trustees of the trust are as follows:

**Names:**

ELMER H. BRUNSTING
NELVA E. BRUNSTING

**Address:**

13630 Pinerock
Houston, Texas 77079

3. The trust is currently in full force and effect.

4. Attached to this Affidavit and incorporated in it are selected provisions of the trust evidencing the following:

| | | | |
|---|---|---|---|
| a. | **Article I** | - | Restatement of the trust and initial Trustees |
| b. | **Article III** | - | Statement of revocability of the trust |
| c. | **Article IV** | - | Successor Trustees |
| d. | **Article VII** | - | Upon the Death of One of Us |
| e. | **Article XII** | - | Powers of the Trustees |
| f. | **Article XIV** | - | Signature pages |




# *CERTIFICATE AND AFFIDAVIT OF TRUST*

When you transfer assets that you currently own to the trust, acquire property in the name of the trust or sell property already titled in the trust name, evidence may be required as to the identity of the trustees having authority to sign legal documents on behalf of the trust. For these purposes, your Certificate of Trust or Affidavit of Trust may be furnished to relevant third parties in order to provide the requested information while avoiding the necessity of providing a complete copy of the Living Trust.

# Certificate of Trust

The undersigned Founders hereby certify the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER H. BRUNSTING and NELVA E. BRUNSTING, Founders and initial Trustees on October 10, 1996.

   **The Restatement, dated January 12, 2005, hereby replaces and supersedes our original trust agreement and all prior amendments.**

   Either Founder while acting as Trustee may conduct business on behalf of the trust without the consent of any other Trustee. The full legal name of our trust for purposes of transferring assets into the trust, holding title of assets and conducting business for and on behalf of the trust, shall be known as:

   > ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. Should either original Trustee fail or cease to serve as Trustee by reason of death, disability or for any reason, the remaining original Trustee will continue to serve alone.

3. If both of the original Trustees fail or cease to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as Co-Trustees:

   CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART

   If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

   **On January 12, 2005, the said BRUNSTING FAMILY LIVING TRUST was restated and amended naming the above said successor Trustees.**

4. The Trustee(s) under the trust agreement are authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in trust name. All powers of the Trustee(s) are fully set forth in Article Twelve of the trust agreement.

5. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee(s) over trust property.

6. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance. A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certify that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on January 12, 2005.

Elmer H. Brunsting
ELMER H. BRUNSTING,
Founder and Trustee

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Trustee

# Certificate of Trust

The undersigned Founders hereby certify the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER H. BRUNSTING and NELVA E. BRUNSTING, Founders and initial Trustees, on October 10, 1996.

   **The Restatement, dated January 12, 2005, hereby replaces and supersedes our original trust agreement and all prior amendments.**

   Either Founder while acting as Trustee may conduct business on behalf of the trust without the consent of any other Trustee. The full legal name of our trust for purposes of transferring assets into the trust, holding title of assets and conducting business for and on behalf of the trust, shall be known as:

   > ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. Should either original Trustee fail or cease to serve as Trustee by reason of death, disability or for any reason, the remaining original Trustee will continue to serve alone.

3. If both of the original Trustees fail or cease to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as Co-Trustees:

   CARL HENRY BRUNSTING and ~~AMY RUTH TSCHIRHART~~

   If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

   **On January 12, 2005, the said BRUNSTING FAMILY LIVING TRUST was restated and amended naming the above said successor Trustees.**

4. The Trustee(s) under the trust agreement are authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in trust name. All powers of the Trustee(s) are fully set forth in Article Twelve of the trust agreement.

5. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee(s) over trust property.

6. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance. A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certify that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on _____, _____.

| | |
|---|---|
| _____ | _____ |
| ELMER H. BRUNSTING,<br>Founder and Trustee | NELVA E. BRUNSTING,<br>Founder and Trustee |

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on _____, _____, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Witness my hand and official seal.

_____
Notary Public, State of Texas

# Affidavit of Trust

1. The following trust is the subject of this Affidavit:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended.

**On January 12, 2005, the said BRUNSTING FAMILY LIVING TRUST was restated and amended. The Restatement replaces and supersedes our original trust agreement and all prior amendments.**

2. The names and addresses of the currently acting Trustees of the trust are as follows:

**Names:**

ELMER H. BRUNSTING
NELVA E. BRUNSTING

**Address:**

13630 Pinerock
Houston, Texas 77079

3. The trust is currently in full force and effect.

4. Attached to this Affidavit and incorporated in it are selected provisions of the trust evidencing the following:

| | | | |
|---|---|---|---|
| a. | **Article I** | - | Restatement of the trust and initial Trustees |
| b. | **Article III** | - | Statement of revocability of the trust |
| c. | **Article IV** | - | Successor Trustees |
| d. | **Article VII** | - | Upon the Death of One of Us |
| e. | **Article XII** | - | Powers of the Trustees |
| f. | **Article XIV** | - | Signature pages |

5. The trust provisions which are not attached to this Affidavit are of a personal nature and set forth the distribution of trust property. They do not modify the powers of the Trustees.

6. The signatories of this Affidavit are currently the acting Trustees of the trust and declare that the foregoing statements and the attached trust provisions are true and correct, under penalty of perjury.

7. This Affidavit is dated January 12, 2005.

Elmer H. Brunsting
ELMER H. BRUNSTING, Trustee

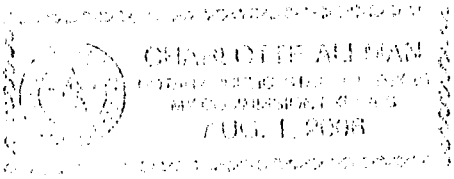
Nelva E. Brunsting
NELVA E. BRUNSTING, Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Affidavit of Trust was acknowledged before me on January 12, 2005, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Trustees.

Witness my hand and official seal.

Charlotte Allman
Notary Public, State of Texas



# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

## Article I

## Our Family Living Trust

### Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

### Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

# Article III

# Our Right to Amend or Revoke This Trust

## Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

## Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

## Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

# Article IV

# Our Trustees

## Section A. Original Trustees

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

## Section B. Our Successor Trustees

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and ~~AMY RUTH TSCHIRHART~~

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

# Article VII

# Upon the Death of One of Us

**Section A. Settlement of Affairs**

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

**1. Deceased Founder's Probate Estate**

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

**2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

**3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

**Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

**1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

**a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

**b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

### 2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

## Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

## Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

## Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

**Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

**Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

**1. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

**2. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

**3. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

**Section D. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

**Section E. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify the Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

**Section F. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

**Section G. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

**Section H. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section I. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section J. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section K. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section L. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

**Section M. Generation Skipping Transfers**

The Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this irrevocable trust agreement and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. We approve this irrevocable trust agreement in all particulars and request the Trustee to execute it. This instrument is to be effective upon the date recorded immediately below.

Dated: February 12, 1997

Elmer H. Brunsting
ELMER H. BRUNSTING, Founder

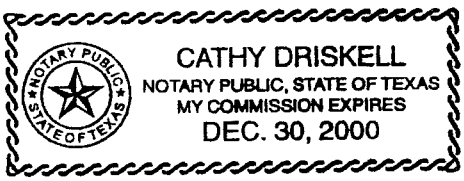
Nelva E. Brunsting
NELVA E. BRUNSTING, Founder

Anita Kay Riley
ANITA KAY RILEY, Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

On February 12, 1997, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders.

WITNESS MY HAND and official seal.

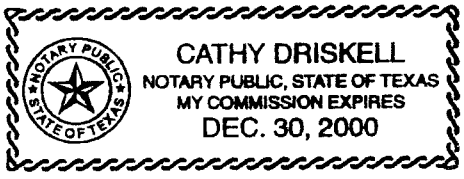



Cathy Driskell
Notary Public, State of Texas

THE STATE OF TEXAS
COUNTY OF Harris

On February 12, 1997, before me, a Notary Public of said State, personally appeared ANITA KAY RILEY, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged that (s)he executed the same as Trustee, or in the capacity indicated above, if any, on behalf of such Trustee.

WITNESS MY HAND and official seal.




Cathy Driskell
Notary Public, State of Texas

_____
Notary's Printed Name

My Commission Expires: _____

# Schedule A

## Initial Contribution

Ten Dollars ($10.00), the receipt of which is acknowledged

# THE RESTATEMENT OF

# THE BRUNSTING FAMILY

# LIVING TRUST

*Prepared By*

Albert E. Vacek, Jr.

The Vacek Law Firm, PLLC

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Houston, Texas 77079

Telephone: (281) 531-5800

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# SUMMARY

# OF

# THE BRUNSTING FAMILY LIVING TRUST

NAME OF TRUST:

THE BRUNSTING FAMILY LIVING TRUST

DATE ESTABLISHED:

October 10, 1996

INITIAL TRUSTEES:

ELMER H. BRUNSTING
NELVA E. BRUNSTING

SUCCESSOR TRUSTEES:

First, CARL HENRY BRUNSTING
Second, AMY RUTH TSCHIRHART
Third, CANDACE LOUISE CURTIS

TITLE TO ALL ASSETS IN THE TRUST ARE VESTED IN THE NAME OF:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended

THIS SUMMARY IS NOT PART OF THE TRUST

# THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING NELVA E. BRUNSTING

Co-Trustees

Period #1

Both Spouses Living

Husband & Wife are:
- Founders
- Trustees
- Beneficiaries

- Complete control of assets
- Avoids guardianship

- Can be amended or revoked
- No change in income taxes

## DEATH OF FIRST SPOUSE

Survivor's Trust (Share Two) (Irrevocable) QTIP

All Income
Principal for needs

Survivor's Trust (Share One) (Revocable) A

All Income
Principal for needs
5% or $5,000.00

Decedent's Trust (Irrevocable) B

Surviving Spouse is:
- Founder
- Trustee
- Beneficiary

- Complete control of assets (A&B&QTIP)
- Right to give away assets (A)

- Protected from creditors (QTIP&B)
- Grows estate tax free (B)

Period #2

Surviving Spouse

- No probate on death of first spouse
- No estate tax on death of first spouse
- Avoids guardianship for surviving spouse

## DEATH OF SURVIVING SPOUSE

A + B + QTIP

Period #3

Both Spouses Deceased

Successor Trustee(s):
- Manage assets
- Distribute assets

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART, as Co-Trustees

- No probate on death of surviving spouse
- In 2005 $3,000,000 can be passed estate tax free.

- Divided among beneficiaries
- Protects grandchildren if child dies
- Flexibility of distribution
- No outside interference

| | |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| ANITA KAY RILEY | 1/5 |

Beneficiaries

## IMPORTANT REMINDER

Your Living Trust will only control property which has been transferred into the name of the Trust. If property is not in the name of your Trust, it may be subject to guardianship and probate court proceedings, and may not pass according to your estate plan. All assets should be identified by listing them on the Schedules in the section entitled, "Title Transfer Documents". Copies of correspondence and documents of ownership for Trust assets should also be placed in that section.

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# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

## Article I

## Our Family Living Trust

### Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

### Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

**Section C. Our Beneficiaries and Family**

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

| Name | Birth Date |
|---|---|
| CANDACE LOUISE CURTIS | March 12, 1953 |
| CAROL ANN BRUNSTING | October 16, 1954 |
| CARL HENRY BRUNSTING | July 31, 1957 |
| AMY RUTH TSCHIRHART | October 7, 1961 |
| ANITA KAY RILEY | August 7, 1963 |

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

# Article II

# Transfers of Assets to Our Trust

## Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

## Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

## Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.



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# Article III

# Our Right to Amend or Revoke This Trust

**Section A. We May Revoke Our Trust**

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

**Section B. We May Amend Our Trust**

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

**Section C. Income Tax Matters**

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

# Article IV

# Our Trustees

**Section A. Original Trustees**

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and A~~MY RUTH TSCHIRHAR~~RT

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

## Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

## Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

**Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

**Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

**Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

**Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

## Section L. Court Supervision Not Required

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

## Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

### 1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

**3. Determination of "Incompetence" or "Incapacity"**

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

# Article V

# Insurance Policies and Retirement Plans

## Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

### 1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

### 2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.



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## Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

### 1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

### 2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

### 3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

**4. Payor's Liability**

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

**Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets**

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

**1. Minimum Distribution**

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

**2. Distribution Restrictions**

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

**3. Exclusion of Older Adopted "Descendants"**

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

**4. Payment of Estate Taxes of Plan Participant**

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

**5. Delivery of Trust to Plan Administrator**

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

**6. Distribution to the Beneficiaries**

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

**7. Distribution of More Than the Minimum Distribution**

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

# Article VI

# For So Long As We Both Shall Live

## Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

## Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

**Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

**Section D. Residence Homestead**

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;

3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.

# Article VII

# Upon the Death of One of Us

**Section A. Settlement of Affairs**

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

**1. Deceased Founder's Probate Estate**

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

**2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

**3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

**Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

**1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

**a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

**b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

**2. Creation of the Decedent's Trust**

The Decedent's Trust shall consist of the balance of the trust property.

**Section C. Valuation of Property Distributed to the Survivor's Trust**

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

**Section D. Conversion of Nonproductive Property**

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

**Section E. Survivor's Right to Refuse Property or Powers Granted**

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

**Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

**Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

**1. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

**2. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

**3. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

# Article VIII

# Administration of the Survivor's Trust

**Section A. Creation of Two Survivor's Shares**

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

**1. Survivor's Share One**

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

**2. Survivor's Share Two**

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

**Section B. Administration of Survivor's Share One**

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

**1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

**2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

## Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

### 1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

### 2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

### 3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

## Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

### 1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

**2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

**3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

**a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

**c. Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

# Article IX

# Administration of the Decedent's Trust

**Section A. Use of Income and Principal**

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

**Section B. Guidelines for All Distributions**

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

**Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

**Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

# 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:

| Beneficiary | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| ANITA KAY RILEY | 1/5 |

**Section B. Distribution to our Beneficiaries**

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Descendant of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

| Beneficiary | Share% |
|---|---|
| CENTRAL COLLEGE OF IOWA<br>Pella, Iowa | 100% |

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

# Article XI

# Protection of Beneficial Interests

## Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

## Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

## Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

**Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

**1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

**2. Methods of Distribution**

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

**3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

**Section E. Application to Founders**

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

# Article XII

# Our Trustees' Powers and Authority

## Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

## Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

## Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

## Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

## Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

## Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

## Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

**Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

**Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

**Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

**Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

**Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

**Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

**Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

**Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

### Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

### Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

### Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

### Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

### Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

### Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

## Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

## Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

## Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

**Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

**Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

**Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

## Distributions Not Treated as Advancements

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

## Tax Elections

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

## Transactions in Which the Trustee Has A Direct or Indirect Interest

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

**Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

**Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

**Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

**Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

**Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

**Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

**Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

**Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

**Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

## Section Q. Retirement Plan Elections

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

## Section R. Qualification as a Qualified Subchapter S Trust

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

### 1. A Sole Beneficiary

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

### 2. Multiple Beneficiaries

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

### 3. Outright Distribution

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

# Article XIII

# Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

# Article XIV

# Miscellaneous Matters

**Section A. Distribution of Personal Belongings by Memorandum**

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

**Section B. Special Bequests**

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

**Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

**Section D. Jurisdiction**

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

**Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

**Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

**Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

**Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

**Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

**Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

**Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

**Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

**Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

**Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

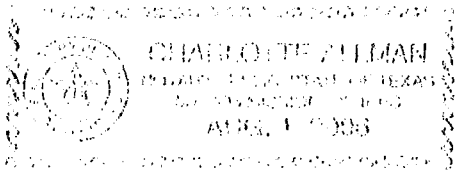
COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman

Notary Public, State of Texas



# TRANSFER TO GRANTOR TRUST SUBJECT TO WITHDRAWAL CONTRIBUTION AGREEMENT

**(Transfer of Personal Property to Trust)**

| | |
|---|---|
| TRUST IDENTITY: | BRUNSTING FAMILY LIVING TRUST |
| PRIMARY INCOME BENEFICIARIES: | ELMER H. BRUNSTING<br>NELVA E. BRUNSTING |
| IDENTITY OF CONTRIBUTORS: | ELMER H. BRUNSTING<br>NELVA E. BRUNSTING |

AGREEMENT:

ELMER H. BRUNSTING and NELVA E. BRUNSTING agree to contribute, or have contributed, the property identified below to the trust as well as all personal effects which they may acquire in the future. The Trustees accept the contribution, subject to the right of the Contributors to withdraw all or any part of the contribution and its appreciation in value. The Contributors shall give the Trustees written notice of at least seven (7) days in advance of the date the withdrawal is to be made, and at the conclusion of the notice period, the Trustees will deliver funds or trust property equal in value to the amount which the Contributors are authorized to withdraw. If the property contributed is commingled with other trust property, the trust property will share pro rata in the appreciation or depreciation of all trust property administered by the Trustees except other trust property which has maintained a separate identity and which has not been commingled. The Trustees will have the authority to partition commingled trust property in kind and to deliver a divided interest thereof in satisfaction of the trust's payment obligation or to deliver an undivided interest, of equivalent value, in trust property in satisfaction of the trust's payment obligation.

It is the intent and purpose of the contracting parties that the contribution made or to be made be structured so that the contribution will not constitute a gift of Contributors' property for federal gift tax purposes, and this agreement shall be construed and shall be subject to modification to obtain this result.

Notwithstanding the foregoing agreement, the right of withdrawal retained herein shall be, in all events, subject to the trust provisions prohibiting withdrawal from portions of the trust which become irrevocable pursuant to the terms and conditions of the trust, and this agreement shall be construed and shall be subject to modification to obtain this result.

**PROPERTY CONTRIBUTED OR TO BE CONTRIBUTED:**

All personal effects, clothes, jewelry, chinaware, silver, photographs, works of art, books, sporting goods, artifacts relating to the hobbies of the Contributors, and all household furniture, fixtures, equipment, goods and miscellaneous household items, as well as all other tangible articles of personal or household use, including, but not limited to, all such personalty set forth and described in Exhibit "A" attached hereto and incorporated herein for all purposes.

Date: January 12, 2005

_____

ELMER H. BRUNSTING,
Contributor and Trustee

_____

NELVA E. BRUNSTING,
Contributor and Trustee




# *POUR-OVER WILL*

Your original signed Pour-Over Will should be kept in a safe place such as a safe deposit box. This section contains an UNSIGNED COPY of your Pour-Over Will.

Upon your death, the Pour-Over Will leaves to your Living Trust any property which you did not place into your trust before your death. It serves merely as a safety net in order to assure that property which was overlooked will ultimately be transferred into your trust and managed by your trustees pursuant to your instructions.

If all of your assets are transferred to the Living Trust, then it will not be necessary to use the Pour-Over Will and probate will be avoided entirely.

# LAST WILL
# OF
# ELMER H. BRUNSTING

I, ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

## Article I

## My Family

I am married and my spouse's name is NELVA E. BRUNSTING.

All references to "my spouse" in my Will are to NELVA E. BRUNSTING.

The names and birth dates of my children are:

| Name | Birth Date |
|---|---|
| CANDACE LOUISE CURTIS | March 12, 1953 |
| CAROL ANN BRUNSTING | October 16, 1954 |
| CARL HENRY BRUNSTING | July 31, 1957 |
| AMY RUTH TSCHIRHART | October 7, 1961 |
| ANITA KAY RILEY | August 7, 1963 |

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

## Article II

## Testamentary Gifts

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

## Article III

## Appointment of Personal Representative

I appoint NELVA E. BRUNSTING as my Personal Representative. In the event NELVA E. BRUNSTING ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

First, CA

Second

Third,

The term ' pendent
Executor a ular will
include th construed
in contex y bond or
other sec... in relation

to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisement and list of claims as required by law.

## Article IV

## Payment of Debts, Taxes, Settlement Costs and Exercise of Elections

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

### Section A. Payment of Indebtedness and Settlement Costs

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

### Section B. Special Bequests

If property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed shall be the principal balance of the indebtedness on date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

### Section C. Estate, Generation Skipping, or Other Death Tax

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

**Section D. Election, Qualified Terminable Interest Property**

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for NELVA E. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which NELVA E. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless NELVA E. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of NELVA E. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of NELVA E. BRUNSTING, and this

provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

**Section E. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

**Section F. Elective Deductions**

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

## Article V

## Service of the Personal Representative

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.

**Section A. Possession, Assets, Records**

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

**Section B. Retain Property in Form Received, Sale**

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

**Section C. Investment Authority**

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

**Section D. Power of Sale, Other Disposition**

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.

**Section E. Partial, Final Distributions**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

**Section F. Partition, Undivided Interests**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

**Section G. Accounting**

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

**Section H. Protection of Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,

contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

**Section I. Consultants, Professional Assistance**

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

**Section J. Compensation**

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

**Section K. Documenting Succession**

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.

## Article VI

## No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause, and even though the proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by NELVA E. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

_____

ELMER H. BRUNSTING

The foregoing Will was, on the day and year written above, published and declared by ELMER H. BRUNSTING in our presence to be his Will. We, in his presence and at his request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, ELMER H. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

_____ _____

WITNESS

_____ _____

WITNESS

## SELF-PROVING AFFIDAVIT

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared ELMER H. BRUNSTING, _____ and _____, known to me to be the Testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said ELMER H. BRUNSTING, Testator, declared to me and to the said witnesses in my presence that said instrument is his Last Will and Testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testator that the said Testator had declared to them that the said instrument is his Last Will and Testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

_____
ELMER H. BRUNSTING

_____
WITNESS

_____
WITNESS

Subscribed and sworn to before me by the said ELMER H. BRUNSTING, the Testator, and by the said _____ and _____, witnesses, on January 12, 2005.

_____
Notary Public, State of Texas

# LAST WILL
# OF
# NELVA E. BRUNSTING

I, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

## Article I

## My Family

I am married and my spouse's name is ELMER H. BRUNSTING.

All references to "my spouse" in my Will are to ELMER H. BRUNSTING.

The names and birth dates of my children are:

| Name | Birth Date |
|---|---|
| CANDACE LOUISE CURTIS | March 12, 1953 |
| CAROL ANN BRUNSTING | October 16, 1954 |
| CARL HENRY BRUNSTING | July 31, 1957 |
| AMY RUTH TSCHIRHART | October 7, 1961 |
| ANITA KAY RILEY | August 7, 1963 |

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

## Article II

## Testamentary Gifts

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

## Article III

### Appointment of Personal Representative

I appoint ELMER H. BRUNSTING as my Personal Representative. In the event ELMER H. BRUNSTING fails or ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

First, CARL HENRY BRUNSTING

Second, AMY RUTH TSCHIRHART

Third, CANDACE LOUISE CURTIS

The term "Personal Representative" will mean and refer to the office of Independent Executor and Trustee collectively. Reference to Personal Representative in the singular will include the plural, the masculine will include the feminine, and the term is to be construed in context. A Personal Representative will not be required to furnish a fiduciary bond or other security. I direct that no action be required in the county or probate court in relation

to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisement and list of claims as required by law.

## Article IV

## Payment of Debts, Taxes, Settlement Costs and Exercise of Elections

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

### Section A. Payment of Indebtedness and Settlement Costs

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

### Section B. Special Bequests

If property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed shall be the principal balance of the indebtedness on date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

### Section C. Estate, Generation Skipping, or Other Death Tax

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

**Section D. Election, Qualified Terminable Interest Property**

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for ELMER H. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which ELMER H. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless ELMER H. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of ELMER H. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of ELMER H. BRUNSTING, and this

provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

**Section E. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

**Section F. Elective Deductions**

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

## Article V

## Service of the Personal Representative

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.

**Section A. Possession, Assets, Records**

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

**Section B. Retain Property in Form Received, Sale**

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

**Section C. Investment Authority**

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

**Section D. Power of Sale, Other Disposition**

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.

**Section E. Partial, Final Distributions**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

**Section F. Partition, Undivided Interests**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

**Section G. Accounting**

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

**Section H. Protection of Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,

contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

**Section I. Consultants, Professional Assistance**

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

**Section J. Compensation**

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

**Section K. Documenting Succession**

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.

## Article VI

## No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause, and even though the proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by ELMER H. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

_____

NELVA E. BRUNSTING

The foregoing Will was, on the day and year written above, published and declared by NELVA E. BRUNSTING in our presence to be her Will. We, in her presence and at her request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, NELVA E. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

_____ _____

WITNESS

_____ _____

WITNESS

## SELF-PROVING AFFIDAVIT

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared NELVA E. BRUNSTING, _____ and _____, known to me to be the Testatrix and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said NELVA E. BRUNSTING, Testatrix, declared to me and to the said witnesses in my presence that said instrument is her Last Will and Testament, and that she had willingly made and executed it as her free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testatrix that the said Testatrix had declared to them that the said instrument is her Last Will and Testament, and that she executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testatrix and at her request; that she was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

_____
NELVA E. BRUNSTING

_____
WITNESS

_____
WITNESS

Subscribed and sworn to before me by the said NELVA E. BRUNSTING, the Testatrix, and by the said _____ and _____, witnesses, on January 12, 2005.

_____
Notary Public, State of Texas




# *LIVING WILL*

This section contains a signed copy of your Living Will, which is also known as the "Physician's Directive." If you are suffering from a terminal condition or an irreversible condition, this document allows you to express your wishes as to whether or not you direct your physician to terminate life sustaining procedures which serve only to prolong the moment of your death. In essence, it clarifies and makes known your intent regarding life sustaining procedures.

# DIRECTIVE TO PHYSICIANS AND FAMILY OR SURROGATES

**Instructions for completing this document:**

This is an important legal document known as an Advance Directive. It is designed to help you communicate your wishes about medical treatment at some time in the future when you are unable to make your wishes known because of illness or injury. These wishes are usually based on personal values. In particular, you may want to consider what burdens or hardships of treatment you would be willing to accept for a particular amount of benefit obtained if you were seriously ill.

You are encouraged to discuss your values and wishes with your family or chosen spokesperson, as well as your physician. Your physician, other health care provider, or medical institution may provide you with various resources to assist you in completing your advance directive. Brief definitions are listed below and may aid you in your discussions and advance planning. Initial the treatment choices that best reflect your personal preferences. Provide a copy of your directive to your physician, usual hospital, and family or spokesperson. Consider a periodic review of this document. By periodic review, you can best assure that the directive reflects your preferences.

In addition to this advance directive, Texas law provides for two other types of directives that can be important during a serious illness. These are the Medical Power of Attorney and the Out-of-Hospital Do-Not-Resuscitate Order. You may wish to discuss these with your physician, family, hospital representative, or other advisers. You may also wish to complete a directive related to the donation of organs and tissues.

## DIRECTIVE

I, **NELVA ERLEEN BRUNSTING**, also known as **NELVA E. BRUNSTING**, recognize that the best health care is based upon a partnership of trust and communication with my physician. My physician and I will make health care decisions together as long as I am of sound mind and able to make my wishes known. If there comes a time that I am unable to make medical decisions about myself because of illness or injury, I direct that the following treatment preferences be honored:

If, in the judgment of my physician, I am suffering with a terminal condition from which I am expected to die within six months, even with available life-sustaining treatment provided in accordance with prevailing standards of medical care:



20-20566.318

NEB I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

____ I request that I be kept alive in this terminal condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

If, in the judgment of my physician, I am suffering with an irreversible condition so that I cannot care for myself or make decisions for myself and am expected to die without life-sustaining treatment provided in accordance with prevailing standards of care:

NEB I request that all treatments other than those needed to keep me comfortable be discontinued or withheld and my physician allow me to die as gently as possible; OR

____ I request that I be kept alive in this irreversible condition using available life-sustaining treatment. (THIS SELECTION DOES NOT APPLY TO HOSPICE CARE.)

Additional requests: (After discussion with your physician, you may wish to consider listing particular treatments in this space that you do or do not want in specific circumstances, such as artificial nutrition and fluids, intravenous antibiotics, etc. Be sure to state whether you do or do not want the particular treatment.)

_____

_____

After signing this directive, if my representative or I elect hospice care, I understand and agree that only those treatments needed to keep me comfortable would be provided and I would not be given available life-sustaining treatments.

If the persons named in my Medical Power of Attorney are not available, or if I have not designated a spokesperson, I understand that a spokesperson will be chosen for me following standards specified in the laws of Texas. If, in the judgment of my physician, my death is imminent within minutes to hours, even with the use of all available medical treatment provided within the prevailing standard of care, I acknowledge that all treatments may be withheld or removed except those needed to maintain my comfort. I understand that

under Texas law this directive has no effect if I have been diagnosed as pregnant. This directive will remain in effect until I revoke it. No other person may do so.

WITNESS MY HAND on January 12, 2005.

Nelva E. Brunsting

NELVA E. BRUNSTING
Houston, Texas 77079
Harris County, Texas

Two competent adult witnesses must sign below, acknowledging the signature of the declarant. The witness designated as Witness 1 may not be a person designated to make a treatment decision for the patient and may not be related to the patient by blood or marriage. This witness may not be entitled to any part of the estate and may not have a claim against the estate of the patient. This witness may not be the attending physician or an employee of the attending physician. If this witness is an employee of a health care facility in which the patient is being cared for, this witness may not be involved in providing direct patient care to the patient. This witness may not be an officer, director, partner, or business office employee of a health care facility in which the patient is being cared for or of any parent organization of the health care facility.

Signature of First Witness

Krysti Brull
11511 Katy Freeway, Suite 520
Houston, Texas 77079

Address

Signature of Second Witness

April Driskell
11511 Katy Freeway, Suite 520
Houston, Texas 77079

Address

**DEFINITIONS**:

"**Artificial nutrition and hydration**" means the provision of nutrients or fluids by a tube inserted in a vein, under the skin in the subcutaneous tissues, or in the stomach (gastrointestinal tract).

"**Irreversible condition**" means a condition, injury, or illness:

(1) that may be treated, but is never cured or eliminated;

(2) that leaves a person unable to care for or make decisions for the person's own self; and

(3) that, without life-sustaining treatment provided in accordance with the prevailing standard of medical care, is fatal.

Explanation: Many serious illnesses such as cancer, failure of major organs (kidney, heart, liver, or lung), and serious brain disease such as Alzheimer's dementia may be considered irreversible early on. There is no cure, but the patient may be kept alive for prolonged periods of time if the patient receives life-sustaining treatments. Late in the course of the same illness, the disease may be considered terminal when, even with treatment, the patient is expected to die. You may wish to consider which burdens of treatment you would be willing to accept in an effort to achieve a particular outcome. This is a very personal decision that you may wish to discuss with your physician, family, or other important persons in your life.

"**Life-sustaining treatment**" means treatment that, based on reasonable medical judgment, sustains the life of a patient and without which the patient will die. The term includes both life-sustaining medications and artificial life support such as mechanical breathing machines, kidney dialysis treatment, and artificial hydration and nutrition. The term does not include the administration of pain management medication, the performance of a medical procedure necessary to provide comfort care, or any other medical care provided to alleviate a patient's pain.

"**Terminal condition**" means an incurable condition caused by injury, disease, or illness that according to reasonable medical judgment will produce death within six months, even with available life-sustaining treatment provided in accordance with the prevailing standard of medical care.

Explanation: Many serious illnesses may be considered irreversible early in the course of the illness, but they may not be considered terminal until the disease is fairly advanced. In thinking about terminal illness and its treatment, you again may wish to consider the relative benefits and burdens of treatment and discuss your wishes with your physician, family, or other important persons in your life.

# LAST WILL
# OF
# NELVA E. BRUNSTING

I, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

## Article I

## My Family

I am married and my spouse's name is ELMER H. BRUNSTING.

All references to "my spouse" in my Will are to ELMER H. BRUNSTING.

The names and birth dates of my children are:

| Name | Birth Date |
|---|---|
| CANDACE LOUISE CURTIS | March 12, 1953 |
| CAROL ANN BRUNSTING | October 16, 1954 |
| CARL HENRY BRUNSTING | July 31, 1957 |
| AMY RUTH TSCHIRHART | October 7, 1961 |
| ANITA KAY RILEY | August 7, 1963 |

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

## Article II

## Testamentary Gifts

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

## Article III

## Appointment of Personal Representative

I appoint ELMER H. BRUNSTING as my Personal Representative. In the event ELMER H. BRUNSTING fails or ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

First, CARL HENRY BRUNSTING

Second, AMY RUTH TSCHIRHART

Third, CANDACE LOUISE CURTIS

The term "Personal Representative" will mean and refer to the office of Independent Executor and Trustee collectively. Reference to Personal Representative in the singular will include the plural, the masculine will include the feminine, and the term is to be construed in context. A Personal Representative will not be required to furnish a fiduciary bond or other security. I direct that no action be required in the county or probate court in relation

to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisement and list of claims as required by law.

## Article IV

## Payment of Debts, Taxes, Settlement Costs and Exercise of Elections

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

### Section A. Payment of Indebtedness and Settlement Costs

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

### Section B. Special Bequests

If property given as a special bequest or gift is subject to a mortgage or other security interest; the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed shall be the principal balance of the indebtedness on date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

### Section C. Estate, Generation Skipping, or Other Death Tax

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

**Section D. Election, Qualified Terminable Interest Property**

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for ELMER H. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which ELMER H. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless ELMER H. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of ELMER H. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of ELMER H. BRUNSTING, and this

provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

**Section E. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

**Section F. Elective Deductions**

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

## Article V

## Service of the Personal Representative

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.

**Section A. Possession, Assets, Records**

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

**Section B. Retain Property in Form Received, Sale**

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

**Section C. Investment Authority**

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

**Section D. Power of Sale, Other Disposition**

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.

**Section E. Partial, Final Distributions**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

**Section F. Partition, Undivided Interests**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

**Section G. Accounting**

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

**Section H. Protection of Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,

contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

**Section I. Consultants, Professional Assistance**

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

**Section J. Compensation**

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

**Section K. Documenting Succession**

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.

## Article VI

## No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause, and even though the proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by ELMER H. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

Nelva E. Brunsting
NELVA E. BRUNSTING

The foregoing Will was, on the day and year written above, published and declared by NELVA E. BRUNSTING in our presence to be her Will. We, in her presence and at her request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, NELVA E. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

WITNESS

**Krysti Brull**
11511 Katy Freeway, Suite 520
Houston, Texas 77079

WITNESS

**April Driskell**
11511 Katy Freeway, Suite 520
Houston, Texas 77079

## SELF-PROVING AFFIDAVIT

STATE OF TEXAS
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared NELVA E. BRUNSTING, Kristi Brau and April Prisker, known to me to be the Testatrix and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said NELVA E. BRUNSTING, Testatrix, declared to me and to the said witnesses in my presence that said instrument is her Last Will and Testament, and that she had willingly made and executed it as her free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testatrix that the said Testatrix had declared to them that the said instrument is her Last Will and Testament, and that she executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testatrix and at her request; that she was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Nelva E. Brunsting
NELVA E. BRUNSTING

Kristi Brau
WITNESS

April Prisker
WITNESS

Subscribed and sworn to before me by the said NELVA E. BRUNSTING, the Testatrix, and by the said Kristi Brau and April Prisker, witnesses, on January 12, 2005.

Charlotte Allman
Notary Public, State of Texas

CHARLOTTE ALLMAN
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
AUG. 1, 2006

# FIRST AMENDMENT TO THE RESTATEMENT TO THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

ELMER H. BRUNSTING,
Founder and Trustee

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Notary Public, State of Texas

CAROLYNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 7, 2011

EXHIBIT "A"

# Article IV

# Our Trustees

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

COPY

# General Durable Power of Attorney of NELVA E. BRUNSTING

THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, CHAPTER XII, TEXAS PROBATE CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO.

I, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, of Houston, Harris County, Texas, am creating a durable power of attorney under the laws of the State of Texas. I hereby revoke all Powers of Attorney previously granted by me as Principal and terminate all Agency relationships created by me except:

Powers granted by me under any Medical Power of Attorney;

Powers granted by me on forms provided by financial institutions granting the right to write checks on, deposit funds to and withdraw funds from accounts to which I am a signatory; and

Powers granting access to a safe deposit box.

This is a durable general power of attorney given in order to coordinate the management, protection and conservation of my property, with property previously transferred to my revocable living trust, especially in the event I am unable for any reason to manage, protect and conserve my own property or transfer such property to my revocable living trust, and to avoid a guardianship as to the management, protection and conservation of property. The authority and legal capacity of my Agent will be that of a personal representative, trustee and attorney-in-fact.

## Article One
## Appointment of Agent

### Section 1.01 Initial Agent

I appoint ANITA KAY BRUNSTING to serve as my Agent.

### Section 1.02 Successor Agent

If ANITA KAY BRUNSTING fails to serve, I appoint the following persons to serve as successor Agent, in the order named:

First, CAROL ANN BRUNSTING
Second, AMY RUTH TSCHIRHART

If a successor Agent fails to serve as my Agent, I appoint the next successor Agent named above to serve as my Agent.

My Agents, in the order listed above, are also my preference as guardian should a court appointed guardian of my person or estate be required.

### Section 1.03 No Person Under 21 Years of Age May Serve as Agent

No person named as my Agent or successor Agent may serve until that person has attained the age of 21 years.

### Section 1.04 Prior or Joint Agent Unable to Act

A successor Agent or an Agent serving jointly with another Agent may establish that the acting Agent or joint Agent is no longer able to serve as Agent, by signing an affidavit that states that the Agent is not available or is incapable of acting. The affidavit may (but need not) be supported by a death certificate of the Agent, a certificate showing that a guardian or conservator has been appointed for the Agent, a letter from a physician stating that the Agent is incapable of managing his or her own affairs, or a letter from the Agent stating his or her unwillingness to act or delegating his or her power to the successor Agent.

## Article Two
## Effectiveness of Appointment - Durability Provision

### Section 2.01 Effectiveness

The authority granted to my Agent under this power of attorney shall be effective immediately upon signing.

### Section 2.02 *Durability*

The authority granted to my Agent under this power of attorney shall not be affected by my subsequent disability, incompetency, incapacity or lapse of time.

### Section 2.03 Term of Durable Power of Attorney

This Durable Power of Attorney shall expire at the earlier of:

My death (except for post-death matters allowed under the laws of Texas), or

Upon my divorce or the annulment of my marriage if I am married and my spouse is named herein as my Agent, or

Upon my revocation of this Power of Attorney.

## Article Three
## Powers Granted to My Agent

I grant my Agent the powers set forth in the Durable Power of Attorney Act (Chapter XII of the Texas Probate Code, as amended) which is incorporated herein and made a part hereof for all purposes, except to the extent that such Act conflicts with the powers set forth herein so that my Agent may act on my behalf. In addition, I further grant my Agent the authority to do everything necessary to exercise the powers listed below.

## Section 3.01 Power to Fund

My Agent may transfer any of my assets or any interest I have in any property, tangible or intangible, real or personal, to the trustee of any revocable trust agreement ("trust") created by me or by my Agent acting within the authority granted in Section 3.18 before or after the execution of this power of attorney, and including any trust that may extend beyond my incapacity or beyond my lifetime.

In order that my Agent may transfer property under this Section, I grant my Agent the following general powers for the specific purpose of transferring property to my trusts:

My Agent may transfer any interest I have in real or personal property, tangible or intangible to my trusts.

My Agent may assign any rights I have to receive income from any source to my trusts.

My Agent may execute all legal instruments and other documents necessary or convenient to transfer property to my trusts.

My Agent may terminate savings, checking, safekeeping, brokerage, investment advisory and custodial accounts in my name (alone or jointly with others) at any bank, broker or financial institution and transfer all or any part of my interest in the cash, stocks, bonds and securities of the accounts to my trusts.

My Agent may enter and remove my property from any safe-deposit box registered in my name (alone or jointly with others) and transfer the removed property to my trusts, and any institution in which a safe-deposit box is located shall be relieved of any liability to me, my heirs, or assigns as a result of my Agent's exercise of this power.

My Agent may designate the trust as beneficiary to receive any property, benefit or contract right on my death, or to change any existing designation to the trust as beneficiary.

I also grant my Agent general powers for the specific purpose of transferring any interest I may have in property owned by me to any general partnership, limited partnership, or limited liability company in which I have an interest. This power is subject to the same limitations as set forth in the preceding paragraphs of this Section.

## Section 3.02 Power to Amend Revocable Living Trust Agreement

My Agent may amend, for the following express purposes, any revocable trust agreement ("trust") created by me before or after the execution of this power of attorney, and including any trust that may extend beyond my incapacity or beyond my lifetime:

To alter the administrative and investment powers of my Trustee;

To reflect tax or other legal changes that affect trust administration; or

To correct ambiguities, including scrivener errors, that might otherwise require court construction or reformation.

### Section 3.03 Power to Sell

Unless specifically limited by the other provisions of this power of attorney, my Agent may sell any interest I own in any kind of property, real or personal, tangible or intangible, including any contingent or expectant interest, marital right and any right of survivorship incident to joint tenancy or tenancy by the entirety. My Agent may determine the terms of sale and may grant options with regard to sales.

State law, and title companies that issue owners' and mortgagees' policies of title insurance, may impose a limitation upon the authority of an Agent to convey title to real estate without the actual joinder of the person represented. Any such impediment will serve to frustrate the very purpose for which this power of attorney is given. Therefore, I give to my Agent the unlimited authority to transfer, assign, convey and deliver legal and equitable title to any real estate, or interest in real estate which I may own to my Living Trust.

This authority will include any property in which I may have a homestead interest. I waive any requirements which may be imposed by law or by a title agency that I personally join in the conveyance. To protect the title agency and any other person, agency or entity who may rely upon the authority vested in this document, I bind myself, my estate, my successors and assigns and my Agent to indemnify and hold harmless any person, agency, or entity from any claim or loss, whatsoever in relying upon the authority provided by this document and the authority of my Agent.

My Agent may dispose of sales proceeds on my behalf as my Agent determines is appropriate.

### Section 3.04 Power to Buy

Unless specifically limited by the other provisions of this power of attorney, my Agent may buy any kind of property. My Agent may determine the terms for buying property and may obtain options to buy property. In addition, my Agent may arrange to insure the purchased property, and otherwise arrange for its safekeeping.

My Agent is authorized to borrow money for the purposes described in this Section and to secure the loan in any manner my Agent determines is appropriate.

My Agent is authorized to repay from my funds any money borrowed by me or on my behalf and to pay for any purchases made or cash advanced using my credit cards.

### Section 3.05 Power to Invest

My Agent may invest and reinvest all or any part of my property in any other property of whatever type, real or personal, tangible or intangible, and whether located inside or outside the geographic borders of the United States and its possessions or territories. Unless specifically limited by the other provisions of this power of attorney, my Agent may:

> Invest in securities of all kinds, limited partnership interests, real estate or any interest in real estate whether or not productive at the time of investment, commodities contracts of all kinds, interests in trusts including investment trusts;
>
> Participate in common, collective or pooled trust funds or annuity contracts;

Sell or otherwise terminate any investment made by me or on my behalf, and establish and terminate savings and money market accounts at banks and other financial institutions;

Establish and terminate accounts with securities brokers and use brokerage accounts to make short sales and to buy on margin, and pledge any securities held or purchased in brokerage accounts as security for loans and advances made to the account;

Invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal;

Establish and terminate agency accounts with corporate fiduciaries; and
Employ and fire financial and investment advisors.

**Section 3.06 Power to Manage Real Property**

My Agent may manage any real property I now own or may acquire in the future including my personal residence. Unless specifically limited by the other provisions of this power of attorney, my Agent may:

Lease and sublease property for any period, and grant options to lease or subdivide property, even if the term of the lease, sublease or option extends beyond the term of this power of attorney;
Eject and remove tenants or other persons from property, and recover the property by all lawful means;

Collect and sue for rents;

Pay, compromise or contest tax assessments and apply for tax assessment refunds;

Subdivide, partition, develop, dedicate property to public use without consideration, or grant or release easements over my real property;

Maintain, protect, repair, preserve, insure, build upon, improve, demolish, abandon and alter all or any part of my real property;

Employ laborers;

Obtain or vacate plats and adjust boundaries;

Adjust differences in the property's value on exchange or partition by giving or receiving consideration;

Release or partially release real property from a lien;

Enter into any contracts, covenants and warranty agreements regarding my real property that my Agent considers appropriate; and

Encumber property by mortgage or deed of trust.

My Agent may accept real property as a gift or as security for a loan.

## Section 3.07 Power to Manage Tangible Personal Property

My Agent may manage any tangible personal property (including, but not limited to, any motor vehicle, trailer, water craft, or any similar property) I now own or may acquire in the future. Unless specifically limited by the other provisions of this power of attorney, my Agent may:

Lease and sublease property for any period, and grant options to lease or subdivide property, even if the term of the lease, sublease or option extends beyond the term of this power of attorney;

Recover my property by all lawful means;

Collect and sue for rents;

Pay, compromise or contest tax assessments and apply for tax assessment refunds; Maintain, protect, repair, preserve, insure, improve, destroy, and abandon all or any part of my property; and

Grant security interests in my property.

My Agent may accept tangible personal property as a gift or as security for a loan.

## Section 3.08 Power to Operate Businesses

My Agent may continue operating and managing any business in which I now or later own an interest for the period of time and in any manner my Agent considers appropriate. Unless specifically limited by the other provisions of this power of attorney, my Agent may:

Act as a director, general or limited partner, or associate or officer of the business;

Select and vote for directors, partners, associates and officers of the business and enter into owners' agreements with other owners of any business in which I have an interest;

Execute agreements and amendments to agreements necessary to the operation of the business including, but not limited to, stockholder agreements, partnership agreements, buy-sell agreements and operating agreements for limited liability companies;

Hire and fire employees;

Pay employees' salaries and provide for employee benefits;

Employ legal, accounting, financial and other consultants;

Continue, modify, terminate, renegotiate and extend any contracts with any person, firm, association or corporation;

Execute business tax returns and other government forms required for my business;

Pay all business related expenses;

Transact business for me in my name and on my behalf;

Contribute additional capital to the business;

Change the name or the form of the business;

Incorporate the business;

Enter into a partnership agreement with other persons;

Join in a plan to reorganize or consolidate my business, or merge my business with any other business;

Establish the value of the business under "buy-out" or "buy-sell" agreements to which I am a party;

Create, continue or terminate retirement plans for my business' employees and make contributions required by those plans;

Advance money or other property to the business and make loans of cash or securities to the business as my Agent considers appropriate; and

Borrow for the business and secure any loans with business assets or my personal assets.

My Agent may sell, liquidate or close a business upon terms my Agent considers appropriate, including a sale in exchange for cash, a private annuity and an installment note or any combination of those arrangements.

**Section 3.09 Power to Manage Partnership Interests**

My Agent may manage any general, limited or special partnership interest I own now or in the future. Unless specifically limited by the other provisions of this power of attorney, my Agent may:

Exercise any right, power, privilege or option I may have or may claim under any contract with the partnership;

Modify or terminate my interest on terms and conditions my Agent considers appropriate;

Enforce the terms of the partnership agreement for my protection by instituting or maintaining any action, proceeding or otherwise as my Agent considers appropriate; and

Defend, arbitrate, settle or compromise any action or other legal proceeding to which I am a party because of my membership in the partnership.

**Section 3.10 Power Regarding Securities**

My Agent may exercise all rights regarding securities that I own now or in the future. Specifically my Agent may:

Buy, sell, and exchange all types of securities and financial instruments including, but not limited to, stocks, bonds, mutual funds and commodity futures contracts and call and put options on stocks and stock indexes;

Receive certificates and other evidences of ownership with regard to securities;

Hold securities in bearer or uncertified form and use a central depository, clearing agency or book-entry system such as The Depository Trust Company, Euroclear or the Federal Reserve Bank of New York;

Place all or any part of my securities in the custody of a bank or trust company or in the name of its nominee;

Employ a broker-dealer as custodian for my securities and register the securities in the name of the broker-deal or its nominee;

Exercise voting rights with respect to securities in person or by proxy, enter into voting trusts, and consent to limitations on the right to vote;

Participate in any reorganization, recapitalization, merger or similar transaction; and

Exercise any subscription rights, option rights (whether or not qualified under the Internal Revenue Code) or other rights to which I am entitled now or in the future, or to sell and dispose of these rights, and, if required, to sign my name to rights, warrants or other similar instruments.

### Section 3.11 Power to Collect and Settle My Obligations

My Agent may collect all rights and benefits to which I am entitled now or in the future, including, but not limited to, rights to, cash payments, property, debts, accounts, legacies, bequests, devises, dividends and annuities. In collecting my obligations, my Agent may demand, sue for, arbitrate, settle, compromise, receive, deposit, expend for my benefit, reinvest or otherwise dispose of these matters as my Agent determines appropriate.

My Agent may use all lawful means and methods to recover these assets and rights, to qualify me for benefits and claim benefits on my behalf, and to compromise claims and grant discharges regarding the matters described in this Section. My Agent may convert my assets into assets that do not disqualify me from receiving benefits, or my Agent may divest my assets altogether. In any divestment action or asset conversion, I direct my Agent to avoid disrupting the dispositive provisions of my estate plan as established by me prior to my incapacity.

### Section 3.12 Power Regarding Governmental Benefits

All Powers described in this section are exercisable with respect to all federal and state (or any subdivision thereof) programs existing when this power of attorney was executed or for which I become eligible after this power of attorney is executed. The power of attorney shall extend to any state in which I live when my Agent's powers become effective.

My Agent is appointed as my "Representative Payee" for the purposes of receiving Social Security benefits. My Agent may collect all benefits payable to or for my benefit by any governmental agency or body, such as Supplemental Social Security Income (SSI), Medicaid, Medicare, and Social Security Disability Insurance (SSDI). My Agent shall have the full power to represent me and deal

in all ways necessary concerning rights or benefits payable to me by any governmental agency including, without limitation, Supplemental Social Security Income (SSI), Medicaid and Social Security Disability Income (SSDI).

My Agent may:

Execute vouchers in my name for allowances and reimbursements payable to me by the United States, a foreign government, a state, or a subdivision of a state to me, including allowances and reimbursements for my transportation, my wife's, children's and other individual's customarily or legally entitled to be supported by me, and for shipment of their household effects.

Take possession, remove and ship any of my property from a post, warehouse, depot, dock, or other place of storage, whether governmental or private, and execute and deliver a release, voucher, receipt, bill of lading, shipping ticket, certificate, or other instrument for that purpose.

Prepare, file, and prosecute my claims for benefits or assistances, financial or otherwise, for any claim to which I am entitled under a statute or government regulation.

Prosecute, defend, arbitrate, settle, and propose or accept a compromise with respect to any benefits I may be entitled to receive.

Receive the financial proceeds of any type of claim described in this Section and invest, disburse, or use the proceeds on my behalf for any lawful purpose.

Sign on my behalf any document necessary to permit my return to my residence following my incapacity or other condition that prevents me from currently living there.

Execute any trust agreement described in 42 U.S.C. § 1396p (d)(4) with any trustee or trustees that my Agent selects. In addition, my Agent may deliver and convey any or all of my assets to the trustee or trustees of the trust as well as designate the trust as payee of any income to which I maybe entitled.

File applications for certification of eligibility, or renewals of such certification, any necessary forms or submissions of any nature, and to execute vouchers on my behalf for any and all allowances, compensation, and reimbursements properly payable to me by the Government of the United States, or any agency or department thereof, including, but not restricted to, medical, dental, hospital, or other health care claims or other payments under Veteran's Administration, Medicare, Medicaid, or any other social security programs. Further, such powers shall include, but not be limited to, the powers set forth in Section 501 of the Texas Probate Code, which are incorporated herein for all purposes.

Take any action necessary in order to seek qualification on my behalf for any and all government benefits that I may be entitled to, including, but not limited to, Social Security Disability, Medicaid, and Medicare. This power includes any acts necessary to achieve eligibility for these programs including gifting of my assets to the agent themselves or other persons and selling or swapping any of my property or exchanging any property for assets that would be exempt under the rules of these

programs. Any authority granted to my attorneys herein shall be limited so as to prevent this general power of attorney from causing my attorneys to be taxed on my income or from causing my assets to be subject to a general power of appointment by my attorneys, as that term is defined in Section 2041 of the Internal Revenue Code (or any successor provision).

Power to arrange for my maintenance and support and to incur expenses in my name therefore and to pay from my funds or from funds in my name expenses in connection with my maintenance and support, including, without limitation, my living expenses and all other expenses for my reasonable comfort, maintenance and support, and further including medical or surgical services, nursing services or hospital room or services for me or for my benefit, or any other thing or service incidental thereto deemed by my agent to be necessary or appropriate.

**Section 3.13 Power Regarding My Retirement Plans and Other Employee Benefits**

My Agent may exercise all rights and collect all qualified retirement benefits to which I am entitled now or in the future. Specifically, my Agent may:

Establish, using any of my assets, one or more qualified retirement plans in my name;

Make contributions, including "rollover" contributions, or cause contributions to be made, to any qualified retirement plan my Agent considers appropriate using my assets;

Receive and endorse checks and other distributions to me from any qualified retirement plans, or arrange for the direct deposit of those checks or distributions in any of my accounts;

Elect any form of payment from my qualified retirement plans and to withdraw benefits on my behalf from the IRAs and retirement plans;

Make, exercise, waive or consent to any and all election and option that I may have regarding contributions to qualified retirement plans, investments and administration of the retirement plans, and distribution or other forms of qualified retirement benefits available to me; and

Borrow money, purchase assets from any of my qualified retirement plans and sell assets to any of my qualified retirement plans if the plan authorizes these actions.

My Agent may make primary and contingent beneficiary designations, whether revocable or irrevocable, change primary and contingent revocable beneficiary designations, and consent or waive consent in connection with the designation of primary and contingent beneficiaries and the selection of joint and survivor annuities under any employee benefit plan. But my Agent may not directly or indirectly designate a greater share or portion of any benefit than my Agent would have otherwise received unless all other beneficiaries under the IRA or plan consent to the change in beneficiary designation.

For all purposes of this Section, "qualified retirement plan" means a plan qualified under Section 401 of the Internal Revenue Code, an individual retirement arrangement under Section 408 or Section 408A or a tax-sheltered annuity under Section 403. The term "qualified retirement benefits" means

the amounts held in or distributed pursuant to a plan qualified under Section 401, an individual retirement arrangement under Section 408 or Section 408A, a tax-sheltered annuity under Section 403 or any other benefit subject to the distribution rules of Section 401(a)(9).

### Section 3.14 Power Regarding Bank Accounts

My Agent may establish bank accounts of any type in one or more bank institutions that my Agent may choose. My Agent may modify, terminate, make deposits to, write checks on, make withdrawals from and grant security interests in any account in my name or to which I am an authorized signatory, except accounts held by me in a fiduciary capacity. In exercising this authority, it does not matter whether or not the account was established by me or for me by my Agent. My Agent is authorized to negotiate, endorse or transfer any check or other instrument with respect to any account, to contract for any services rendered by any bank or financial institution, and to execute, on my behalf as principal, any agency or power of attorney forms furnished by a bank with respect to accounts with the bank that appoints the bank or any person as my agent.

### Section 3.15 Power Regarding Safe-Deposit Boxes

My Agent may contract with any institution to rent a safe-deposit box in my name. My Agent may have access to any safe-deposit box in my name or with respect to which I am an authorized signer. This Section will apply whether or not the contract for the safe-deposit box was executed by me alone or jointly with others or by my Agent in my name. My Agent may also add to or remove the contents of a safe-deposit box, or terminate any rental contract for a safe-deposit box.

### Section 3.16 Power to Prosecute and Defend Legal Actions

My Agent may institute, supervise, prosecute, defend, intervene in, abandon, compromise, adjust, arbitrate, settle, dismiss, and appeal from any and all legal, equitable, judicial or administrative hearings, actions, suits or proceedings involving me in any way. This authority includes, but is not limited to, claims by or against me arising out of property damage or personal injury suffered by or caused by me or under circumstances such that the resulting loss may be imposed on me. My Agent may otherwise engage in litigation involving me, my property or my legal interests, including any property, interest or person for which or whom I have or may have any responsibility.

### Section 3.17 Power to Loan and Borrow

My Agent may make secured or unsecured loans to any person, entity, trust or estate on my behalf, for any term or payable on demand, with or without interest. My Agent may enter into or modify the terms of any mortgage, deed of trust or security agreement made in connection with any loan and may release or foreclose on the mortgage, deed of trust, or security.

My Agent may borrow money on my behalf at interest rates and on other terms that my Agent considers advisable from any person, institution or other source including, if my then-acting Agent is a corporate fiduciary, its own banking or commercial lending department.

My Agent may encumber my property by mortgages, pledges, and other hypothecation and shall have the power to enter into any mortgage or deed of trust even though the term of the mortgage or deed of trust may extend beyond the term for which this power of attorney is effective.

My Agent may borrow money for any purpose on any life insurance policy owned by me on my life even though the term of the loan may extend beyond the term for which this power of attorney is effective. My Agent may grant a security interest in the policy to secure the loan. In this regard, my

Agent may assign and deliver the policy as security. No insurance company will be under any obligation to determine the necessity of the loan or how my Agent applies the loan proceeds.

### Section 3.18 Power to Create Revocable Trusts for my Benefit

My Agent may execute a revocable trust agreement with any trustee or trustees that my Agent selects. All income and principal must be paid under the trust agreement, to me or another person for my benefit or applied for my benefit. The income and principal of the trust must be paid under the agreement in the amounts that I or my Agent requests or that the trustee or trustees determine. The remaining income and principal must be paid on my death to my personal representative under the agreement. The trust agreement must provide that it may be revoked or amended by me or my Agent at any time. The trust agreement, however, must provide that any amendment by my Agent must be of a type that by law or under the provisions of this power of attorney could have been included in the original trust agreement. In addition, my Agent may deliver and convey any or all of my assets to the trustee or trustees of the revocable living trust, or convey any or all of my assets to a revocable living trust that exists now or is created by me after the creation on this power of attorney.

Further, I hereby vest in my Agent all of the power and authority given to trustees by the trust laws of the State of Texas upon establishing such revocable trust. If my Agent determines that it is in my best interest under the facts and circumstances then existing, I authorize my Agent to take possession of any and all of my property and estate, as Trustee, and to hold, conserve and administer such property for me and my general welfare. My Agent will be responsible only for the property of my estate over which the Agent shall assert direct control, and will not have liability for the loss of income from, or the depreciation of the value of, assets which the Agent does not possess or which are retained in the form my Agent received them.

My Agent is authorized, upon my death, to make, direct payment for any expense related to my hospitalization, illness, treatment and care prior to my death, and any expenses related to my death and the settlement of my estate. The trust created by this document will continue for a reasonable period of time in which to conclude any administration, pay expenses of termination (including the discretionary payment of expenses and estate settlement costs) and to make distributions of the trust property to my Living Trust.

My Agent may be sole trustee of my revocable living trust or one of several trustees.

If the trustee is not an individual, it must be a bank or trust company authorized to do trust business in the state in which I or my Agent reside now or in the future.

### Section 3.19 Power to Revoke Trusts

I grant my Agent full power and authority to revoke any and all revocable trust agreements of which I am a founder, settlor, grantor, trustmaker and/or contributor. Immediately after the revocation of the aforesaid revocable trust agreement, or as soon as is practicable after such revocation, my Agent shall convey the said trust assets to the beneficiaries named therein, if in the judgment of my Agent it is advisable to do so.

My Agent may be sole trustee of my revocable living trust or one of several trustees.

### Section 3.20 Power to Withdraw Funds from Trusts

My Agent may withdraw and receive the income or principal of any trust over which I have a right of receipt or withdrawal. My Agent may request and receive the income or principal of any trust with respect to which the trustee has the discretionary power to make distributions to me or on my behalf. In connection with this, my Agent may execute and deliver to the trustee a receipt and release or similar document for the income or principal received. My Agent may exercise in whole or in part, release or let lapse any power of appointment held by me, whether general or special, or any amendment or revocation power under any trust even if the power may be exercised only with the consent of another person and even if my Agent is the other person, subject to any restrictions on exercise imposed on my Agent under this power of attorney.

### Section 3.21 Power to Renounce or Resign from Fiduciary Positions

My Agent may resign or renounce for me any fiduciary position I hold now or in the future including personal representative, trustee, guardian, attorney-in-fact, and officer or director of a corporation and any governmental or political office or position. In so doing, my Agent may file an accounting with the appropriate court of competent jurisdiction or settle on the basis of a receipt, release or other appropriate method.

### Section 3.22 Power to Disclaim or Release Property Interests

My Agent may renounce and disclaim any property or property interest or power to which I may become entitled by gift, testate or intestate succession. My Agent may release or abandon any property interest or power that I may own or hold now or in the future, including any interest in, or right over, a trust, including the right to alter, amend, revoke or terminate the trust. My Agent may claim an elective share in any estate or under any will. But my Agent may not make any disclaimer that is expressly prohibited by the law or other provisions of this power of attorney.

### Section 3.23 Power Regarding Insurance

My Agent may purchase, maintain, surrender, collect, or cancel:

All kinds of life insurance or annuities on my life or the life of any one in whom I have an insurable interest;

Liability insurance protecting me and my estate against third party claims;

Hospital insurance, medical insurance, Medicare supplement insurance, custodial care insurance, and disability income insurance for me or my dependents; and

Casualty insurance insuring my assets against loss or damage due to fire, theft, or other commonly insured risk.

My Agent may pay all insurance premiums, select any options under the policies, increase coverage under any policy, borrow against any policy, pursue all insurance claims on my behalf, and adjust insurance losses. This authority shall apply to both private and public plans, including Medicare, Medicaid, SSI and Workers' Compensation.

My Agent may decrease or terminate coverage under any insurance policy insuring my life. My Agent may receive and dispose of the cash value received if the policy is decreased or terminated and dispose of the cash value as my Agent considers appropriate.

## Section 3.24 Power Regarding Taxes

My Agent may represent me in all tax matters and proceedings before any agent or officer of the Internal Revenue Service, state and local authorities and in any court, for all periods.

My Agent may:

Prepare, sign, and file all federal, state, and local tax returns including income, gift, FICA and payroll tax returns on my behalf;

Prepare, sign, and file claims for refunds, requests for extensions of time to file returns or pay taxes, extensions and waivers of applicable periods of limitation, protests and petitions to administrative agencies or courts (including, but not limited to, the United States Tax Court);

Sign consents and agreements under Section 2032A of the Internal Revenue Code or any successor section and consents to split gifts, closing agreements, and any power of attorney form required by the Internal Revenue Service or any state or local taxing authority with respect to any tax year;

Pay taxes due, collect and dispose of refunds as my Agent determines appropriate, post bonds, receive confidential information and contest deficiencies determined by the Internal Revenue Service or any state or local taxing authority;

Exercise any election I have under federal, state or local tax law and allocate any generation-skipping tax exemption to which I am entitled;

Engage representation for me in any and all tax proceedings by attorneys-at-law, Certified Public Accountants, enrolled agents, and other licensed tax professionals; and,

Settle with the Internal Revenue Service, its agents and representatives, any questions concerning my liability for and the collection, refund or payment of said taxes, and to possess all of the authorities and all of the powers set forth in Form 2848 of the Department of the Treasury, Internal Revenue Service, as amended or revised hereafter, including the power to receive refund checks due to me, from the date of this instrument until this instrument is revoked.

## Section 3.25 Power to Deal with My Spouse

My Agent may deal with my spouse on my behalf. In dealing with my spouse, my Agent may partition, transfer and exchange any of my marital property estate, whether separate or community property between my spouse and me. My Agent may enter into and execute on my behalf marital property agreements, partition and exchange agreements or community property agreements or may enforce, amend or revoke any marital property agreement between my spouse and me but only with respect to rights in and obligations with respect to property owned by my spouse, by me or by both of us and with respect to reclassification of management and control over our property.

## Section 3.26 Power to Make Gifts

My Agent may make gifts on my behalf. In order to make gifts, my Agent may withdraw assets from any trust created by me or by my Attorney-in-Fact acting within the authority granted in Section 3.18 and from which I may withdraw assets.

For purposes of this power of attorney, my Agent may forgive any debts owed to me, and any debt forgiven will be considered a gift to the debtor.

For purposes of this Section, "my beneficiaries" shall mean my wife, my descendants and beneficiaries, including contingent beneficiaries, named in my Will or my revocable living trust.

As mentioned in Section 3.12, my Agent may gift or otherwise spend down my estate for Medicaid eligibility and planning.

My Agent may make gifts on the following terms and conditions:

### (a) Continuation of My Gifting

My Agent may honor pledges and continue to make gifts to charitable organizations that I have regularly supported in the amounts I have customarily given. My Agent may make gifts in order to assure the continuation of any gifting program initiated by me prior to the time I became incapacitated.

My Agent may make special occasion gifts to my estate plan beneficiaries, family members, or friends, in equal or unequal amounts, that reflect my past giving and my relationship with such individuals.

### (b) Gifts to My Agent

I specifically authorize gifts to my Agent, but only a Special Agent appointed under the provisions of Section 7.03 may make gifts to my Agent. My Agent may not make gifts to himself or herself, his or her estate, his or her creditors, or the creditors of his or her estate.

### (c) Gifts in Excess of the Annual Federal Gift Tax Exclusion

Only a Special Agent appointed under the provisions of Section 7.03 may make gifts in excess of the annual federal gift tax exclusion to my beneficiaries.

If my Agent determines that gifts in amounts in excess of the annual federal gift tax exclusion are in my best interest and the best interests of my beneficiaries, my Agent, by unanimous vote if more than one Agent is serving, shall appoint a Special Agent unrelated by blood or marriage to any Agent to review the facts and circumstances and to decide whether such gifts should be made. I recommend, but do not require, that my Agent select an independent certified public accountant, attorney-at-law, or corporate fiduciary to serve as the Special Agent under such circumstances.

Neither my Agent, nor the Special Agent appointed by my Agent, shall be liable to any beneficiary for exercising or failing to exercise its discretion to make gifts.

### (d) Gifts for Tuition

My Agent may prepay the cost of tuition for any of my beneficiaries. My Agent shall make the payments directly to the educational institution or by establishing and contributing to a Qualified State Tuition Program established under Section 529 of the Internal Revenue Code.

### (e) Gifts for Medical Expenses

My Agent may pay medical expenses for any of my beneficiaries as permitted under Section 2503(e) of the Internal Revenue Code. My Agent shall make the payments directly to the medical provider.

### (f) Gift Splitting Authorized

My Agent is authorized to consent to the splitting of gifts under Section 2513 of the Internal Revenue Code or under similar provisions of any state or local gift tax laws.

### (g) Methods of Making Gifts

My Agent may make gifts of my property under this Section outright, in trust or in any other manner that my Agent considers appropriate.

By way of example and without limiting my Agent's powers under this Section, my Agent is specifically authorized to make gifts by creating tenancy in common and joint tenancy interests or establishing irrevocable trusts including charitable or non-charitable split interest trusts. My Agent may make gifts by establishing and contributing my property to corporations, family limited partnerships, limited liability partnerships, limited liability companies or other similar entities and by making gifts of interests in any of those entities.

To accomplish the objectives described in this subsection, my Agent may establish and maintain financial accounts of all types and may execute, acknowledge, seal and deliver deeds, assignments, agreements, authorizations, checks and other instruments. My Agent may prosecute, defend, submit to arbitration, settle or propose or accept a compromise with respect to a claim existing in favor of or against me based on or involving a gift transaction on my behalf. My Agent may intervene in any related action or proceeding.

My Agent may perform any other act my Agent considers necessary or desirable to complete a gift on my behalf in accordance with the provisions of this Section.

### (h) Standard for Making Gifts

It is my desire that in making gifts on my behalf, my Agent consider the history of my gift making and my estate plan. To the extent reasonably possible, I direct my Agent to avoid disrupting the dispositive provisions of my estate plan as established by me prior to my incapacity.

### (i) Ratification of Gifts

I specifically ratify any gifts made by my Agent under the terms of this power of attorney.

## Article Four
## Care and Control of Principal

My Agent may, in my Agent's sole and absolute discretion, exercise the following powers with respect to the control and management of my person.

### Section 4.01 Power to Provide for My Support

My Agent may do anything reasonably necessary to maintain my customary standard of living, including:

Maintain my residence by paying all operating costs, including, but not limited to, interest on mortgages or deeds of trust, amortization payments, repairs and taxes, or by purchasing, leasing or making other arrangement for a different residence;

Provide normal domestic help;

Provide clothing, transportation, medicine, food and incidentals; and

Make all necessary arrangements, contractual or otherwise, for my care at any hospital, hospice, nursing home, convalescent home or similar establishment, or in my own residence should I desire it, and assure that all of my essential needs are met wherever I may be.

### Section 4.02 Power to Provide for Support of Dependents

My Agent may make payments as my Agent deems necessary for the health, education, maintenance or support of my wife and those my Agent determines to be dependent on me for support.

### Section 4.03 Power to Protect or Dispose of Property

If my Agent determines that I will never be able to return to my residence from a hospital, hospice, nursing home, convalescent home or similar facility, my Agent may dispose of my residence. In so doing, my Agent may sell, lease, sublease or assign my interest on terms and conditions that my Agent considers appropriate.

My Agent may store and safeguard any items of tangible personal property remaining in my residence and pay all storage costs. Alternatively, my Agent may sell any items that my Agent believes I will never need again on terms and conditions that my Agent considers appropriate.

As an alternative to storing my tangible personal property, my Agent may transfer custody and possession, but not title, of any property item to the person named in my Will or my revocable living trust as the person entitled to receive that property item on my death.

### Section 4.04 Power to Provide for My Recreation and Travel

My Agent may, at my expense, allow me to engage in recreational and sports activities as my health permits, including travel.

### Section 4.05 Power to Provide for Religious and Spiritual Needs

My Agent may provide for my religious and spiritual needs, including involvement of religious clergy and spiritual leaders in my care and my membership in religious and spiritual organizations consistent with my religious beliefs. My Agent may purchase religious books, tapes and other materials for my use and benefit.

### Section 4.06 Power to Provide for Companionship

My Agent may arrange any form of companionship for me necessary to meet my needs if I am unable to arrange for such companionship myself.

### Section 4.07 Power to Make Advance Funeral Arrangements

My Agent may make advance arrangements for my funeral and burial, including a burial plot, marker and any other related arrangements that my Agent considers appropriate.

## Article Five
## Incidental Powers

My Agent may perform those acts and execute and deliver those legal documents necessary or appropriate to the exercise of the powers set forth in this power of attorney, including, but not limited, to the following incidental powers.

### Section 5.01 Power to Commence Court Proceedings

My Agent may commence any court proceedings necessary to protect my legal rights and interests under this power of attorney including, but not limited to:

> Actions for declaratory judgments from any court of competent jurisdiction interpreting the validity of this power of attorney and any of the acts sanctioned by this power of attorney; provided, however, that my Agent need not seek a declaratory judgment to perform any act sanctioned by this power of attorney;
>
> Actions for mandatory injunctions requiring any person or entity to comply with my Agent's directions as authorized by this power of attorney; and
>
> Actions for actual and punitive damages and the recoverable costs and expenses of such litigation against any person or entity who negligently or willfully fails or refuses to follow my Agent's directions as authorized by this power of attorney.

### Section 5.02 Power to Employ and Discharge Personnel

My Agent may employ and remove investment advisors, accountants, auditors, depositories, custodians, brokers, consultants, attorneys, expert advisors, agents and employees to advise or assist my Agent as my Agent considers appropriate.

### Section 5.03 Power to Sign Documents

My Agent may sign, execute, endorse, seal, acknowledge, deliver and file or record all appropriate legal documents necessary to exercise the powers granted under this power of attorney.

### Section 5.04 Power to Submit Costs for Payment

If my Agent incurs costs in performing any powers granted under this power of attorney, or in enforcing compliance with the powers given to my Agent under this power of attorney, my Agent may submit those costs to any person who has the authority to pay those costs such as the trustee of my revocable living trust or to my guardian or conservator. My trustee, conservator or guardian shall promptly pay those costs.

### Section 5.05 Power Regarding My Mail

My Agent may open, read, respond to and redirect my mail. My Agent may represent me before the U.S. Postal Service and all other mail or package carriers in any matter relating to mail or delivery services including the receipt of certified mail.

### Section 5.06 Power Regarding Memberships

My Agent may establish, cancel, continue or initiate my membership in organizations and associations of all kinds.

### Section 5.07 Power Regarding Custody of Documents

My Agent may take, give or deny custody of my important documents, including my Will and any codicils, trust agreements, deeds, leases, life insurance policies, contracts or securities. My Agent may disclose or not disclose the whereabouts or contents of those documents as my Agent believes appropriate.

### Section 5.08 Power to Care for My Pets

My Agent may provide for the housing, support, and maintenance of my pet animals. My Agent may contract for and pay the expenses of their proper veterinary care and treatment. But if my Agent decides that the care and maintenance of my pet animals is unreasonably expensive or burdensome, my Agent may give the pet animals to persons willing to care for and maintain them.

## Article Six
## Limitation on Powers

All powers granted to my Agent under this power of attorney are subject to the limitations set forth in this Article.

### Section 6.01 Tax Sensitive Powers

No individual serving as my Agent may exercise any fiduciary power or discretion if the exercise of that power or discretion would:

Cause any income generated by my property to be attributed to my Agent for federal income tax purposes;

Cause the value of any property subject to this power of attorney to be included in my Agent's gross estate for federal estate tax purposes;

Cause any distribution made or allowed to be made by my Agent to be treated as a gift from my Agent; or

Discharge a legal obligation of my Agent.

If the exercise of a power by my Agent under this power of attorney would cause any of the foregoing results, a Special Agent appointed under the provisions of Section 7.03 may exercise the power or discretion.

### Section 6.02 Life Insurance on the Life of My Agent

No individual Agent may exercise any powers or rights in a policy owned by me that insures the life of that Agent. Any powers and rights regarding the policy will be exercised solely by another Agent serving under this power of attorney, or by a Special Agent appointed under the provisions of Section 7.03 of this power of attorney.

### Section 6.03 Prohibition on Power over Prior Transfers

No Agent may exercise any power or authority over any irrevocable trust created by my Agent to which I am a trustee or a beneficiary or any asset given to me by my Agent.

### Section 6.04 My Agent to Avoid Disrupting My Estate Plan

If it becomes necessary for my Agent to liquidate or reinvest any of my assets to provide support for me, I direct that my Agent, to the extent that it is reasonably possible, avoid disrupting the dispositive provisions of my estate plan as established by me prior to my incapacity.
If it is necessary to disrupt the dispositive provisions of my estate plan, my Agent will use his or her best efforts to restore my plan as soon as possible. My Agent will make reasonable efforts to obtain and review my estate plan. I authorize any person with knowledge of my estate plan or possession of my estate planning documents to disclose information to my Agent and to provide copies of documents to my Agent.

## Article Seven
## Administrative Powers and Provisions

This Article contains certain administrative powers and provisions that facilitate the use of the power of attorney and that protect my Agent and those who rely upon my Agent.

### Section 7.01 Release of Information

My Agent may release and obtain, as the case may be, any and all information regarding my financial investments and taxes, including any information regarding stocks, bonds, certificates of deposit, bank accounts, tax returns, retirement accounts, pension plans, and any other documents or information regarding my financial affairs and taxes from my attorneys-at-law, financial advisors,

insurance professionals, accountants, stockbrokers, stock transfer agents, and any other persons having such information.

I release these persons or entities from any liability for releasing the above-referenced information to my Agent in reliance on this Section.

If my Agent is an attorney-at-law or other accounting or financial professional, the professional regulations of my Agent's profession and federal law may prohibit my Agent from releasing information about my financial affairs to others if I am a client of my Agent. This instrument, therefore, is a limited waiver of any privilege (such as the attorney-client privilege) that I have established with any Agent as a client. The privilege is waived for the limited purpose of permitting my Agent to perform his or her duties under this power of attorney.

**Section 7.02 Nomination of Guardian of my Person and my Estate**

If at any time proceedings are initiated for the appointment of Guardian of my person and my estate, I nominate the person serving, or named to serve, as my Agent under this power of attorney at the time the proceedings are initiated.

If any person I have nominated is appointed Guardian of my person and my estate, I request that the court grant to such Guardian of my person and my estate all or as many of the independent powers listed below as the court shall find appropriate.

The power to contract for the estate, to carry out existing contracts, and so bind my estate.

The power to operate, at the risk of loss to the estate, any business, farm, or enterprise of the estate.

The power to grant and take options.

The power to sell any real or personal property of the estate at public or private sale.

The power to create by grant or otherwise easements and servitudes on any property of the estate.

The power to borrow money on the estate's behalf and give security for the loan.

The power to purchase real or personal property on the estate's behalf.

The power to alter, improve, and repair or raze, replace, and rebuild the estate's property.

The power to lease the estate's property for any purpose (including exploration for and removal of gas, oil and other minerals and natural resources) and for any period, including a term commencing at a future time.

The power to lend the estate's money on adequate security.

The power to exchange property of the estate.

The power to sell estate property on credit if any unpaid portion of the selling price is adequately secured.

The power to commence and maintain an action for partition on behalf of the estate.

The power to exercise stock rights and stock options on behalf of the estate.

The power to participate in and become subject to and to consent to the provisions of a voting trust and of a reorganization, consolidation, merger, dissolution, liquidation, or other modification or adjustment affecting estate property.

The power to pay, collect, compromise, arbitrate or otherwise adjust claims, debts or demands upon the estate.

The power to employ attorneys, accountants, investment counsel, agents, depositories and employees and to pay the expense from the estate's assets.

### Section 7.03 Appointment of a Special or Ancillary Agent

If for any reason any Agent is unwilling or unable to act with respect to any property or any provision of this power of attorney, my Agent shall appoint, in writing, a corporate fiduciary or an individual to serve as Special Agent as to the property or with respect to the provision. The Special Agent appointed must be an individual that is not related or subordinate to my Agent within the meaning of Section 672(c) of the Internal Revenue Code. My Agent may revoke any such appointment at will.

If my Agent determines that it is necessary or desirable to appoint an Ancillary Agent to act under this power of attorney in a jurisdiction other than this one, my Agent may do so. In making an appointment, my Agent may sign, execute, deliver, acknowledge and make declarations in any documents that may be necessary, desirable, convenient or proper in order to carry out the appointment.

A Special or Ancillary Agent may exercise all powers granted by this power of attorney unless expressly limited elsewhere in this power of attorney or by the instrument appointing the Special or Ancillary Agent. A Special or Ancillary Agent may resign at any time by delivering written notice of resignation to my Agent. Notice of resignation shall be effective in accordance with the terms of the notice.

### Section 7.04 Agent Authorized to Employ My Attorney

My Agent may employ the attorney who prepared this power of attorney or any other attorney employed by me in connection with my estate plan or business matters and I specifically:

Waive any and all conflicts of interest that might arise through such employment;

Authorize the attorney to make full disclosure of my estate plan and business to the Agent; and

Authorize the attorney to accept the engagement.

### Section 7.05 Fiduciary Eligibility of Agent

My Agent shall be eligible to serve in any other fiduciary capacity for me or for my benefit, including trustee, guardian, conservator, committee, executor, administrator, or personal representative.

### Section 7.06 Reimbursement for Expenses and Compensation

My Agent may pay himself or herself, from my assets, fair and reasonable compensation authorized by law for services performed under this power of attorney and, in addition, my Agent may reimburse himself or herself for all reasonable expenses incurred for carrying out any provision of this power of attorney. "Fair and reasonable" compensation shall be equivalent to such compensation charged by banks or trust companies which provide similar services and are located in the county in which I reside.

### Section 7.07 Liability of Agent

I release and discharge any Agent acting in good faith from any and all civil liability and from all claims or demands of all kinds whatsoever by me, my estate, and my heirs, successors and assigns arising out of the acts or omissions of my Agent, except for willful misconduct or gross negligence. This protection extends to the estate, heirs, successors and assigns of my Agent.

### Section 7.08 Ratification and Indemnity

I agree that any third party who receives a copy of this document may act under it. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. Further, I ratify and confirm all that my Agent will do or cause to be done by reason of the authority vested by this power of attorney and by law. No person, firm, agency or entity will be obligated to see to the application of any payment delivered to my Agent for or on my behalf.

### Section 7.09 Amendment and Revocation

I may amend or revoke this power of attorney at any time. Amendments to this document must be made in writing by me personally (not by my Agent) and must be attached to the original of this document and recorded in the same county or counties as the original if the original is recorded.

### Section 7.10 Resignation

My Agent may resign by the execution of a written resignation delivered to me or, if I am mentally disabled, by delivery to any person with whom I am residing or who has my care and custody.

### Section 7.11 Signature of Agent

My Agent shall use the following form when signing documents on my behalf pursuant to this power:

NELVA E. BRUNSTING by [enter Agent's name], her Agent.

### Section 7.12 Interpretation

This power of attorney is a general power of attorney and should be interpreted as granting my Agent all general powers permitted under the laws of the State of Texas, including, but not limited to, the

powers set forth in Article XII ("Durable Power of Attorney Act") of the Texas Probate Code, as amended. The description of specific powers is not intended to, nor does it, limit or restrict any of the general powers granted to my Agent.

### Section 7.13 Use of "Agent" Nomenclature

The word "Agent" and any modifying or equivalent word or substituted pronoun includes the singular and the plural and the masculine, feminine and neuter genders.

### Section 7.14 Third Party Reliance

No person who relies in good faith on the authority of my Agent under this power of attorney will incur any liability to me, my estate, or my heirs, successors and assigns.

Any party dealing with my Agent may conclusively rely upon an affidavit or certificate of my Agent that:

The authority granted to my Agent under this power of attorney is in effect;

My Agent's actions are within the scope of my Agent's authority under this power of attorney;

I was competent when I executed this power of attorney;

I have not revoked this power of attorney; and

My Agent is currently serving as my Agent.

Any person, entity or institution dealing with my Agent will be entitled to rely upon my Agent's sworn statement that this general power of attorney has not been revoked and that Agent is authorized and empowered to serve. I indemnify and hold harmless any person, firm, institution or agency from any loss or claim whatsoever when reliant upon such statement, and to this end, I bind myself, my estate, my heirs, successors and assigns. I vest in my Agent the authority to record this power of attorney at any reasonable time, and to the extend I may lawfully provide, my Agent may do so at any time before the Agent is to act with respect to any third party who may be asked to rely upon this document.

I grant my Agent full power and authority to indemnify and hold harmless any third party who accepts and acts under this Durable General Power of Attorney. No person who acts in reliance on the representations of my Agent or the authority granted under this Durable General Power of Attorney shall incur any liability to me, my heirs, executors, administrators, or assigns as a result of permitting my Agent to exercise any power granted under this Durable General Power of Attorney.

### Section 7.15 Effect of Duplicate Originals or Copies

If this power of attorney has been executed in multiple counterparts, each counterpart original will have equal force and effect. My Agent may make photocopies (photocopies shall include: facsimiles and digital or other reproductions, hereafter referred to collectively as "photocopy") of this power of attorney and each photocopy will have the same force and effect as the original.

### Section 7.16 Governing Law

This power of attorney's validity and interpretation will be governed by the laws of the State of Texas. To the extent permitted by law, this power of attorney is applicable to all my property, whether real, personal, intangible or mixed, wherever located, and whether or not the property is owned by me now or in the future.

### Section 7.17 Severability

If any provision of this power of attorney is declared invalid for any reason, the remaining provisions will remain in full force and effect.

## Article Eight
## Declarations of the Principal

I understand that this power of attorney is an important legal document. Before executing this power of attorney, my attorney explained to me the following:

The power of attorney provides my Agent with broad powers to dispose of, sell, convey and encumber my real and personal property.

The powers will exist for an indefinite period of time unless I revoke the power of attorney or I have limited their duration by specific provisions in the power of attorney.

This Durable Power of Attorney will continue to exist notwithstanding my subsequent disability or incapacity.

I have the power to revoke or terminate this Durable Power of Attorney at any time.

Dated: _____, 2010

_____
NELVA E. BRUNSTING, Principal

## ACKNOWLEDGMENT FOR PRINCIPAL

STATE OF TEXAS
COUNTY OF HARRIS

Before me, a Notary Public, on this day personally appeared NELVA E. BRUNSTING, as Principal, known to me (or proved to me through satisfactory evidence) to be the person whose name is subscribed to the foregoing instrument and who acknowledged to me that she executed the same for the purposes and consideration therein expressed.

Given under my hand and official seal this day, _____, 2010.

_____
Notary Public, State of Texas

THE ATTORNEY-IN-FACT OR AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT AND IS RESPONSIBLE FOR MAINTAINING APPROPRIATE RECORDS OF EACH TRANSACTION, INCLUDING AN ACCOUNTING OF RECEIPTS AND DISBURSEMENTS. AS A FIDUCIARY, AN ATTORNEY-IN-FACT OR AGENT IS HELD TO THE HIGHEST STANDARDS OF GOOD FAITH, FAIR DEALING, AND LOYALTY WITH RESPECT TO THE PRINCIPAL. FAILURE TO ADHERE TO THESE STANDARDS MAY SUBJECT AN ATTORNEY-IN-FACT OR AGENT TO LEGAL ACTION. DEPENDING ON THE DEGREE OF MISCONDUCT, AN ATTORNEY-IN-FACT OR AGENT MAY BE LIABLE FOR DAMAGES OR MAY BE CHARGED WITH A CRIMINAL OFFENSE.

## DUTY TO INFORM AND ACCOUNT
## Texas Probate Code Section 489B

The attorney-in-fact or agent is a fiduciary and has a duty to inform and to account for actions taken pursuant to the power of attorney.

The attorney-in-fact or agent shall timely inform the principal of all actions taken pursuant to the power of attorney. Failure of the attorney-in-fact or agent to inform timely, as to third parties, shall not invalidate any action of the attorney-in-fact or agent.

The attorney-in-fact or agent shall maintain records of each action taken or decision made by the attorney-in-fact or agent.

The principal may demand an accounting by the attorney-in-fact or agent. Unless otherwise directed by the principal, the accounting shall include:

1. the property belonging to the principal that has come to the attorney-in-fact's or agent's knowledge or into the attorney-in-fact's or agent's possession;
2. all actions taken or decisions made by the attorney-in-fact or agent;
3. a complete account of receipts, disbursements, and other actions of the attorney-in-fact or agent, including their source and nature, with receipts of principal and income shown separately;
4. a listing of all property over which the attorney-in-fact or agent has exercised control, with an adequate description of each asset and its current value if known to the attorney-in-fact or agent;
5. the cash balance on hand and the name and location of the depository where the balance is kept;
6. all known liabilities; and,
7. such other information and facts known to the attorney-in-fact or agent as may be necessary to a full and definite understanding of the exact condition of the property belonging to the principal.

Unless directed otherwise by the principal, the attorney-in-fact or agent shall also provide to the principal all documentation regarding the principal's property.

The attorney-in-fact or agent shall maintain all records until delivered to the principal, released by the principal, or discharged by a court.

If the attorney-in-fact or agent fails or refuses to inform the principal, provide documentation, or deliver the accounting within 60 days (or such longer or shorter time that the principal demands or a court may order), the principal may file suite to compel the attorney-in-fact or agent to deliver the accounting, to deliver the assets, or to terminate the power of attorney.

This section shall not limit the right of the principal to terminate the power of attorney or make additional requirements of, or to give additional instructions to the attorney-in-fact or agent.
Wherever in this chapter a principal is given an authority to act, that shall include not only the principal but also any person designated by the principal, a guardian of the estate of the principal, or other personal representative of the principal.

The rights set out in this section and chapter are cumulative of any other rights or remedies the principal may have at common law or other applicable statutes and not in derogation of those rights.

**QUALIFIED BENEFICIARY DESIGNATION AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT UNDER LIVING TRUST AGREEMENT**

**I.** I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST not previously distributed, as follows:

**Section A. Advance on Trust Share for a Beneficiary**

> Upon the death of NELVA E. BRUNSTING, any funds advanced during her lifetime after June 1, 2010, and further evidenced in a writing signed by her stating that such funds are an advance on the said beneficiary's inheritance, shall be treated by her successor Trustee as an advance on the trust share of the beneficiary receiving such advance or their descendants, as the case may be, and shall be deducted from said beneficiary's trust share. Such sums withheld shall be distributed equally among all remaining beneficiaries, as set forth in Article X, Section A of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

**II.** I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Decedent's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, my Trustee shall distribute the balance of the principal and net, undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST not previously distributed, as set forth in Roman Numeral I, Section A of this document.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on June 15, 2010.

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on June 15, 2010.

Nelva E. Brunsting
NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on June 15, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

SUMMER PEOPLES
Notary Public, State of Texas
My Commission Expires
April 04, 2014

Notary Public, State of Texas

COPY

## INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you

or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:**

(1) the person you have designated as your agent;

(2) a person related to you by blood or marriage;

(3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;

(4) your attending physician;

(5) an employee of your attending physician;

(6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

Signed on 8-25, 2010, to confirm that I received this disclosure statement prior to execution of my Medical Power of Attorney and that I have read and understand it.

Nelva E. Brunsting

NELVA E. BRUNSTING

## MEDICAL POWER OF ATTORNEY

## DESIGNATION OF HEALTH CARE AGENT

I, **NELVA ERLEEN BRUNSTING**, also known as **NELVA E. BRUNSTING**, appoint **CAROL A. BRUNSTING**, who resides at 5822 Jason, Houston, Texas 77074, and whose phone number is (713) 560-6381 (cell), as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

## DESIGNATION OF ALTERNATE AGENT

(You are not required to designate an alternate agent but you may do so. An alternate agent may make the same health care decisions as the designated agent if the designated agent is unable or unwilling to act as your agent. If the agent designated is your spouse, the designation is automatically revoked by law if your marriage is dissolved.)

If the person designated as my agent is unable or unwilling to make health care decisions for me, I designate the following persons to serve as my agent, in the following order, to make health care decisions for me as authorized by this document:

A. First Alternate Agent

**ANITA KAY BRUNSTING**
203 Bloomingdale Circle
Victoria, Texas 77904
(361) 576-5732 (home) or (361) 550-7132 (cell)

B. Second Alternate Agent

**AMY RUTH TSCHIRHART**
2582 Country Ledge
New Braunsfels, Texas 78132
(830) 625-8352 (home) or (830) 823-2388 (cell)

The original of this document is kept with my other estate planning documents. A signed copy of this document is on file with my lawyer, ALBERT E. VACEK, JR., 14800 St. Mary's Lane, Suite 230, Houston, Texas 77079, telephone (281) 531-5800 or 1-800-229-3002.

## DURATION

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority

I have granted my agent continues to exist until the time I become able to make health care decisions for myself.

## PRIOR DESIGNATIONS REVOKED

I revoke any prior medical power of attorney.

## HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

In addition to the other powers granted by this document, I grant to my agent the power and authority to serve as my personal representative for all purposes of the Health Insurance Portability and Accountability Act of 1996 and its regulations ("HIPAA") immediately upon my signing this document.

Pursuant to HIPAA, I specifically authorize my agent as my HIPAA personal representative to request, receive and review any information regarding my physical or mental health, including, without limitation all HIPAA protected health information, medical and hospital records; to execute on my behalf any authorizations, releases or other documents that may be required in order to obtain this information; and to consent to the disclosure of this information. I further authorize my agent to execute on my behalf any documents necessary or desirable to implement the health care decisions that my agent is authorized to make under this document.

By signing this Medical Power of Attorney, I specifically empower and authorize my physician, hospital or health care provider to release any and all medical records to my agent or my agent's designee. Further, I waive any liability to any physician, hospital or any health care provider who releases any and all of my medical records to my agent and acknowledge that the health information that would otherwise be protected under HIPAA will no longer be protected or private.

## ACKNOWLEDGMENT OF DISCLOSURE STATEMENT

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

I sign my name to this Medical Power of Attorney at Houston, Texas on 8-25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING

## STATEMENT OF FIRST WITNESS

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Merlin Case
Signature of First Witness

Date: 8/25th, 2010

**Merlin Case**
14800 St. Mary's Ln., Suite 230
Houston, TX 77079

Address of First Witness

Candace D Kunz-Freed
Signature of Second Witness

Date: 08-25, 2010

**Candace Kunz-Freed**
14800 St. Mary's Ln., Suite 230
Houston, TX 77079

Address of Second Witness

COPY

# INFORMATION CONCERNING THE MEDICAL POWER OF ATTORNEY

**THIS IS AN IMPORTANT LEGAL DOCUMENT. BEFORE SIGNING THIS DOCUMENT, YOU SHOULD KNOW THESE IMPORTANT FACTS:**

Except to the extent you state otherwise, this document gives the person you name as your agent the authority to make any and all health care decisions for you in accordance with your wishes, including your religious and moral beliefs, when you are no longer capable of making them yourself. Because "health care" means any treatment, service, or procedure to maintain, diagnose, or treat your physical or mental condition, your agent has the power to make a broad range of health care decisions for you. Your agent may consent, refuse to consent, or withdraw consent to medical treatment and may make decisions about withdrawing or withholding life-sustaining treatment. Your agent may not consent to voluntary inpatient mental health services, convulsive treatment, psychosurgery, or abortion. A physician must comply with your agent's instructions or allow you to be transferred to another physician.

Your agent's authority begins when your doctor certifies that you lack the competence to make health care decisions.

Your agent is obligated to follow your instructions when making decisions on your behalf. Unless you state otherwise, your agent has the same authority to make decisions about your health care as you would have had.

It is important that you discuss this document with your physician or other health care provider before you sign it to make sure that you understand the nature and range of decisions that may be made on your behalf. If you do not have a physician, you should talk with someone else who is knowledgeable about these issues and can answer your questions. You do not need a lawyer's assistance to complete this document, but if there is anything in this document that you do not understand, you should ask a lawyer to explain it to you.

The person you appoint as agent should be someone you know and trust. The person must be 18 years of age or older or a person under 18 years of age who has had the disabilities of minority removed. If you appoint your health or residential care provider (e.g., your physician or an employee of a home health agency, hospital, nursing home, or residential care home, other than a relative), that person has to choose between acting as your agent or as your health or residential care provider; the law does not permit a person to do both at the same time.

You should inform the person you appoint that you want the person to be your health care agent. You should discuss this document with your agent and your physician and give each a signed copy. You should indicate on the document itself the people and institutions who have signed copies. Your agent is not liable for health care decisions made in good faith on your behalf.

Even after you have signed this document, you have the right to make health care decisions for yourself as long as you are able to do so and treatment cannot be given to you

or stopped over your objection. You have the right to revoke the authority granted to your agent by informing your agent or your health or residential care provider orally or in writing or by your execution of a subsequent medical power of attorney. Unless you state otherwise, your appointment of a spouse dissolves on divorce.

This document may not be changed or modified. If you want to make changes in the document, you must make an entirely new one.

You may wish to designate an alternate agent in the event that your agent is unwilling, unable, or ineligible to act as your agent. Any alternate agent you designate has the same authority to make health care decisions for you.

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS SIGNED IN THE PRESENCE OF TWO COMPETENT ADULT WITNESSES. THE FOLLOWING PERSONS MAY NOT ACT AS ONE OF THE WITNESSES:**

(1) the person you have designated as your agent;

(2) a person related to you by blood or marriage;

(3) a person entitled to any part of your estate after your death under a will or codicil executed by you or by operation of law;

(4) your attending physician;

(5) an employee of your attending physician;

(6) an employee of a health care facility in which you are a patient if the employee is providing direct patient care to you or is an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility; or

(7) a person who, at the time this power of attorney is executed, has a claim against any part of your estate after your death.

Signed on 8-25, 2010, to confirm that I received this disclosure statement prior to execution of my Medical Power of Attorney and that I have read and understand it.

Nelva E. Brunsting

NELVA E. BRUNSTING

## MEDICAL POWER OF ATTORNEY

## DESIGNATION OF HEALTH CARE AGENT

I, **NELVA ERLEEN BRUNSTING**, also known as **NELVA E. BRUNSTING**, appoint **CAROL A. BRUNSTING**, who resides at 5822 Jason, Houston, Texas 77074, and whose phone number is (713) 560-6381 (cell), as my agent to make any and all health care decisions for me, except to the extent I state otherwise in this document. This medical power of attorney takes effect if I become unable to make my own health care decisions and this fact is certified in writing by my physician.

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New Braunsfels, Texas 78132
(830) 625-8352 (home) or (830) 823-2388 (cell)

The original of this document is kept with my other estate planning documents. A signed copy of this document is on file with my lawyer, ALBERT E. VACEK, JR., 14800 St. Mary's Lane, Suite 230, Houston, Texas 77079, telephone (281) 531-5800 or 1-800-229-3002.

## DURATION

I understand that this power of attorney exists indefinitely from the date I execute this document unless I establish a shorter time or revoke the power of attorney. If I am unable to make health care decisions for myself when this power of attorney expires, the authority

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In addition to the other powers granted by this document, I grant to my agent the power and authority to serve as my personal representative for all purposes of the Health Insurance Portability and Accountability Act of 1996 and its regulations ("HIPAA") immediately upon my signing this document.

Pursuant to HIPAA, I specifically authorize my agent as my HIPAA personal representative to request, receive and review any information regarding my physical or mental health, including, without limitation all HIPAA protected health information, medical and hospital records; to execute on my behalf any authorizations, releases or other documents that may be required in order to obtain this information; and to consent to the disclosure of this information. I further authorize my agent to execute on my behalf any documents necessary or desirable to implement the health care decisions that my agent is authorized to make under this document.

By signing this Medical Power of Attorney, I specifically empower and authorize my physician, hospital or health care provider to release any and all medical records to my agent or my agent's designee. Further, I waive any liability to any physician, hospital or any health care provider who releases any and all of my medical records to my agent and acknowledge that the health information that would otherwise be protected under HIPAA will no longer be protected or private.

## ACKNOWLEDGMENT OF DISCLOSURE STATEMENT

I have been provided with a disclosure statement explaining the effect of this document. I have read and understand that information contained in the disclosure statement.

I sign my name to this Medical Power of Attorney at Houston, Texas on 8-25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING

## STATEMENT OF FIRST WITNESS

I am not the person appointed as agent by this document. I am not related to the principal by blood or marriage. I would not be entitled to any portion of the principal's estate on the principal's death. I am not the attending physician of the principal or an employee of the attending physician. I have no claim against any portion of the principal's estate on the principal's death. Furthermore, if I am an employee of a health care facility in which the principal is a patient, I am not involved in providing direct patient care to the principal and am not an officer, director, partner, or business office employee of the health care facility or of any parent organization of the health care facility.

Merlin Case
Signature of First Witness

Date: 8/25th, 2010

Merlin Case
14800 St. Mary's Ln., Suite 230
Houston, TX 77079

Address of First Witness

Candace Kunz-Freed
Signature of Second Witness

Date: 08-25, 2010

**Candace Kunz-Freed**
14800 St. Mary's Ln., Suite 230
Houston, TX 77079

Address of Second Witness

# QUALIFIED BENEFICIARY DESIGNATION AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT UNDER LIVING TRUST AGREEMENT

**Section 1. Exercise of General Power of Appointment and Qualified Beneficiary Designation**

I, NELVA E. BRUNSTING, the surviving Founder (herein also referred to as "Trustor" and "Founder") of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B.4 of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to administer and distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST as set forth in Section 3 of this document.

The BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, is incorporated herein by reference for all purposes (herein sometimes referred to as "the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996," and the "Trust Agreement").

**Section 2. Exercise of Limited Power of Appointment and Qualified Beneficiary Designation**

I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named

the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, I direct my Trustee to administer and distribute the balance of the principal and undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST, except for any portion which has been disclaimed by me, as set forth in Section 3 of this document.

**Section 3. Provisions for Distribution and Administration of the Survivor's Trust and the Decedent's Trust**

**DISTRIBUTION OF TRUST ASSETS**

**A. Beneficiaries**

The Trustee shall divide the remainder of the Trust Estate into separate shares hereinafter individually referred to as Personal Asset Trusts, as follows:

| Beneficiaries | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| ANITA KAY BRUNSTING | 1/5 |

**B. Division into Separate Shares**

My Trustee shall distribute the share for each of my beneficiaries in a separate Personal Asset Trust for the benefit of each beneficiary as provided in this Section 3. If a named beneficiary fails to survive me, then that share shall be distributed as set forth below as if it had been an original part thereof. The decisions of the Trustee as to the assets to constitute each such share shall be conclusive, subject to the requirement that said shares shall be of the respective values specified.

**1. Share for CANDACE LOUISE CURTIS**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CANDACE LOUISE CURTIS, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CANDACE LOUISE CURTIS fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CANDACE LOUISE CURTIS, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**2. Share for CAROL ANN BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CAROL ANN BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CAROL ANN BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CAROL ANN BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**3. Share for AMY RUTH TSCHIRHART**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of AMY RUTH TSCHIRHART, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If AMY

RUTH TSCHIRHART fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of AMY RUTH TSCHIRHART, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**4. Share for CARL HENRY BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CARL HENRY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CARL HENRY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CARL HENRY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**5. Share for ANITA KAY BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of ANITA KAY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If ANITA KAY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of ANITA KAY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

## PERSONAL ASSET TRUST PROVISIONS

A. Establishment of the Personal Asset Trust:

A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified

to be made to said beneficiary's Personal Asset Trust first occurs. The Personal Asset Trust shall be held, administered and distributed as set forth under this Agreement. After a beneficiary's Personal Asset Trust is established, any further distribution specified to be made to said beneficiary's Personal Asset Trust under any other provisions of this Agreement shall be added to and become a part of said existing Personal Asset Trust, to be held, administered and distributed as if it had been an original part thereof. The Personal Asset Trust may be referred to by either using the name of the beneficiary for whom such trust is created or such other name as is designated by the Trustee. Notwithstanding the foregoing, if the Trustee exercises his or her right to create a separate and distinct Personal Asset Trust for said beneficiary (pursuant to the paragraph of this Agreement entitled "Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners"), any further distributions specified to be made to said beneficiary's Personal Asset Trust may, in the Trustee's sole and absolute discretion, instead be partly or entirely made to such newly created Personal Asset Trust.

B. Trustor's Intent in Establishing Personal Asset Trusts: The Trustor's intended purposes in creating a Personal Asset Trust for a beneficiary are as follows:

1. To protect and conserve trust principal;

2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary;

3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

4. To protect trust assets and income from claims of and interference from third parties;

5. To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

7. To give the beneficiary the ability to direct the distribution of wealth (during life or at death) to other individuals or charitable organizations (subject to any limitation provided elsewhere herein);

8. To allow for the prudent management of property if the beneficiary is incapacitated or otherwise unable to handle his or her own financial affairs because of alcohol or drug abuse or other reasons;

9. To protect the beneficiary from the unreasonable or negative influence of others, divorce claims, paternity or maternity suits or claims, and other lawsuits; and

10. To protect the beneficiary against claims of third parties.

C. Duty to Inform Beneficiary of Trust Benefits and Protections: Immediately prior to a Personal Asset Trust being established for a beneficiary hereunder, the then acting Trustee of the Trust shall, if at all practicable, have a private meeting or telephone call with such beneficiary to explain the above stated long-term purposes and benefits of the Personal Asset Trust and to advise such beneficiary how he or she may maintain the benefits and protections that such trust provides. The Trustee is directed to have an attorney assist the Trustee in conducting this meeting or call and the Trustor hereby authorizes the Trustee to employ the services of VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, for such purpose and waive any potential conflict that may otherwise deter them from acting; however, the Trustee is free to hire any other attorney, provided such attorney is an experienced estate planning specialist.

D. Designation of Trustee: Except for the Personal Asset Trusts created for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS, each beneficiary for whom a Personal Asset Trust is created shall act as sole Trustee of said trust. ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall act as Co-Trustees for the Personal Asset Trusts for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS. If either ANITA KAY BRUNSTING or AMY RUTH TSCHIRHART cannot serve for any reason, the remaining Co-Trustee shall serve alone. Both ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall have the right to appoint their own successor Trustee in writing. Notwithstanding the foregoing, each beneficiary who is acting as his or her own Trustee of his or her said trust shall have the right, at such time as said beneficiary is acting as sole Trustee and in said beneficiary's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said beneficiary as Co-Trustee of said trust. Said beneficiary shall also have the right, at any time and in said beneficiary's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said beneficiary appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said beneficiary shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a

successor Trustee or Co-Trustee(s) in said beneficiary's place, as the case may be, in the event of said beneficiary's death, incompetency, inability or unwillingness to act; but, if said beneficiary is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c) and said beneficiary shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said beneficiary fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said beneficiary to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

E. Designation of Trustee for Primary Beneficiary's Issue: Notwithstanding the foregoing, upon attaining age thirty five (35) each of the descendants of a Primary Beneficiary (hereinafter sometimes referred to as "issue") shall act as sole Trustee of the Personal Asset Trust created for such issue. Said issue shall have the right, at such time as said issue is acting as sole Trustee and in said issue's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said issue as Co-Trustee of said trust. Said issue shall also have the right, at any time and in said issue's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said issue appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said issue shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a successor Trustee or Co-Trustee(s) in said issue's place, as the case may be, in the event of said issue's death, incompetency, inability or unwillingness to act; but, if said issue is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c)) and said issue shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said issue fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said issue to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

F. Administration of Personal Asset Trust: The Personal Asset Trust shall be held, administered and distributed by the Trustee appointed under this Section of the Trust Agreement as follows:

1. Discretionary Distributions of Income and/or Principal: The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for

the benefit of the beneficiary for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as such Trustee shall deem appropriate for such distributees' health, support, maintenance and education. Any income not distributed shall be accumulated and added to principal. In exercising the discretions conferred in this paragraph, the Trustee may pay more to or apply more for some beneficiaries to the exclusion of others, if such Trustee deems this necessary or appropriate in light of the circumstances, the size of the Trust Estate and the probable future needs of the beneficiaries. The Trustee shall, before making any such distributions, consider the Trustor's intent in creating the trust, as set forth above in paragraph B.

2. Additional Guidelines for Distributions: In addition to the provisions set forth above for making discretionary distributions of income and/or principal, the Trustee shall be further guided as follows in making such distributions. Any such distributions shall be made in the sole and absolute discretion of the Trustee and shall be binding on all persons howsoever interested now or in the future in this trust.

   a. Primary Beneficiary's Needs Considered First; Broad Interpretation of "Health, Education, Maintenance and Support": In exercising the discretionary powers to provide benefits under this trust, the Trustee shall take into consideration that the primary purpose in establishing this trust is to provide for the present and future welfare of the primary beneficiary, and secondly, the present and future welfare of the primary beneficiary's issue. Furthermore, the Trustee may take into account any beneficiary's character and habits and his or her willingness and action to support himself or herself in light of his or her particular abilities and disabilities, and the needs of other beneficiaries, if any, of the same trust. Finally, the Trustor requests that the Trustee be liberal in determining the needs of a beneficiary for health, support, maintenance and education and in conferring benefits hereunder. The term "health" need not take into account any private or governmental medical insurance or other medical payments to which a beneficiary may be entitled, and the Trustee may pay for the expense of providing health and medical insurance coverage for the beneficiary. The term "education" may include but is not limited to, all expenses incurred in connection with or by reason of a beneficiary's attendance at public or private elementary or high school, college, university or vocational, technical or other educational institution or specialized training programs (whether or not any such institution or program provider shall be a fully accredited educational institution), graduate or post-graduate education expenses, and all expenses incurred in providing such beneficiary with an education in a non-institutional setting; including,

but not limited to, the expense of travel and charges for tutoring, tuition, room and board (whether or not charged by an educational institution at which such beneficiary shall be a student), laboratory fees, classroom fees, clothing, books, supplies, laboratory or other equipment or tools (including computer hardware and software) or other material or activities that the Trustee shall determine to be of educational benefit or value to such beneficiary. In determining the need for funds for education, the Trustee shall consider all direct and indirect expenses, including living expenses of the beneficiary and those persons who may be dependent upon said beneficiary. The terms "support" and "maintenance" may include but are not limited to investment in a family business, purchase of a primary residence, entry into a business, vocation or profession commensurate with a beneficiary's abilities and interests; recreational or educational travel; expenses incident to marriage or childbirth; and for the reasonably comfortable (but not luxurious) support of the beneficiaries. When exercising the powers to make discretionary distributions from the trust, the Trustee shall maintain records detailing the amount of each distribution made to any beneficiary from trust income and/or principal and the reasons for such distribution. The distributions made to a beneficiary shall not be allocated to or charged against the ultimate distributable share of that beneficiary (unless so provided in the primary beneficiary's exercise of his or her limited power of appointment).

b. Consider the Situation of the Beneficiary: In determining whether or not it is in the best interest of a beneficiary for any payment to be made to that beneficiary, the Trustee shall consider the financial responsibility, judgment and maturity of such beneficiary, including whether or not, at the time of such determination, such beneficiary: (i) is suffering from any physical, mental, emotional or other condition that might adversely affect the beneficiary's ability to properly manage, invest and conserve property of the value that would be distributed to said beneficiary; (ii) is at such time, or previously has been, a substantial user of or addicted to a substance the use of which might adversely affect the beneficiary's ability to manage, invest and conserve property of such a value; (iii) has demonstrated financial instability and/or inability to manage, invest and conserve the beneficiary's property; or (iv) is going through a period of emotional, marital or other stress that might affect the beneficiary's ability to manage, invest and conserve such property.

c. Consider Any Written Letter of Instructions from the Trustor: The Trustor may from time to time by written letter or other instrument, not constituting a holographic will or codicil or amendment to any trust, set forth instructions to the Trustee as to how the Trustor wishes the

Trustee's discretion to be exercised. The Trustor recognizes and intends that such instructions shall only be directive in nature and not binding on the Trustee or any beneficiary hereunder; however, the Trustor requests, to the extent possible, that the Trustee be mindful of these instructions when administering the trust.

d. Loans, Use of Trust Property and Joint Purchases Preferred Over Distributions: The Trustee is directed, prior to making any distributions directly to or for the benefit of a beneficiary, to consider the alternatives of making a loan to the beneficiary, allowing the beneficiary the use of property of the Trust Estate (or such property to be acquired) and/or making a joint purchase of property with the beneficiary, pursuant to the paragraph below entitled "Special Trustee Powers."

e. Restrictions on Distributions That Discharge Legal Obligations of a Beneficiary: The primary beneficiary is expressly prohibited from making any distributions from the trust, either as Trustee or under any limited power of appointment, either directly or indirectly, in favor of anyone to whom the primary beneficiary owes a legal obligation, to satisfy, in whole or in part, such legal obligation. Any such distributions may only be made by the Trust Protector.

G. Primary Beneficiary's Limited Power of Appointment: The primary beneficiary shall have the following Limited Powers of Appointment. During the lifetime of the primary beneficiary, said beneficiary may appoint and distribute the accumulated income and/or principal to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions, and in such amounts or proportions as said beneficiary wishes. Upon the death of the primary beneficiary, the Trustee shall distribute any remaining balance, including accumulated income and principal, to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions and in such amounts or proportions as said beneficiary shall appoint by said beneficiary's last unrevoked Will, codicil or other written instrument executed prior to said beneficiary's death and specifically referring to this power of appointment. In the event there should be a failure of disposition of all or any portion of said income or principal, either in connection with the exercise or as a result of the nonexercise of the above testamentary limited power of appointment, all of said income and principal not disposed of shall be administered and distributed as set forth below in the paragraph entitled "Final Disposition of Trust." The terms of this paragraph may be limited by the Section of this Trust Agreement entitled "Trust Protector Provisions."

H. Final Disposition of Trust: If the primary beneficiary for whom the Personal Asset Trust has been created should die before complete distribution of said trust, and the beneficiary's above powers of appointment have not been fully exercised, said trust shall terminate and the remaining principal (including accumulated income added

thereto) in said trust shall be held, administered and distributed for the benefit of the succeeding or contingent beneficiaries named, if any, pursuant to the respective paragraph set forth in Section 3.B. of this Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment establishing said beneficiary's share as if such beneficiary had been an original part thereof. Any share or portion thereof of any trust administered hereunder which is not disposed of under any of the foregoing provisions (or the provisions of the Article entitled "Trust Protector Provisions") shall be distributed pursuant to the paragraph of the Trust Agreement entitled "Ultimate Distribution."

I. Special Trustee Powers: With respect to each Personal Asset Trust created under this Section, and in addition to or in lieu of the powers and authority granted to the Trustee under any other provisions of the Trust Agreement, during the existence of the Personal Asset Trust and until such time of its termination the Trustee, in his or her sole and absolute discretion, shall have the powers and authority to do the following.

1. Permit Beneficiaries to Use Trust Assets: The Trustor desires that the beneficiaries of the trust be given the liberal use and enjoyment of trust property. To the extent deemed practical or advisable in the sole and absolute discretion of the Trustee, the primary beneficiary (or other beneficiaries) of each trust hereunder may have the right to the use, possession and enjoyment of (a) all of the tangible personal property at any time held by such trust, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, and (b) all real property that may at any time constitute an asset of such trust. Such use, possession and enjoyment may be without rent or other financial obligation. To the extent of the trust assets and unless the Trustee is relieved of such obligation by such beneficiary (or beneficiaries), which the Trustee may agree to do, the Trustee shall see to the timely payment of all taxes, insurance, maintenance and repairs, safeguarding and other charges related to the preservation and maintenance of each and every such property. The Trustor requests, but do not require, that any such use, possession or enjoyment by a beneficiary other than the primary beneficiary be subject to veto at any time by the primary beneficiary.

a. Hold and Maintain a Residence for the Use of Beneficiaries: The Trustee is specifically authorized to hold and maintain any residence (whether held as real property, condominium or cooperative apartment) for the use and benefit of any beneficiary of any trust. If the Trustee, in the Trustee's sole and absolute discretion, determines that it would be in the best interests of any beneficiary of any trust to maintain a residence for their use, but that the residence owned by the Trustee should not be used for such purpose, the Trustee is authorized to sell said residence and to apply the net proceeds of the sale to the purchase of such other residence or to make such other arrangements as the Trustee, in such Trustee's sole and absolute discretion, deems suitable

for the purpose. Any proceeds of sale not needed for reinvestment in a residence as provided above shall be added to the principal of the trust and thereafter held, administered and disposed of as a part thereof. The Trustee is authorized to pay all carrying charges of such residence, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of any beneficiary of the trust; the Trustee may alternatively provide, by agreement with the beneficiary, that such charges and expenses, or a portion of them, are to be paid by the beneficiary. Having in mind the extent to which funds will be available for future expenditure for the benefit of the beneficiaries, the Trustee is authorized under this paragraph to expend such amounts as such Trustee shall, in his or her sole and absolute discretion, determine to maintain the current lifestyle of the beneficiaries and their personal care and comfort; the Trustor does not, however, desire that the Trustee assist the beneficiaries in maintaining a luxurious lifestyle.

2. Special Investment Authority: Notwithstanding any investment limitations placed on the Trustee under the Trust Agreement or the provisions of any state law governing this trust which may contain limitations such as the prudent investor rule, the Trustee is authorized to make the following types of investments of trust assets:

a. Closely Held Businesses: To continue to hold and operate, to acquire, to make investments in, to form, to sell, or to liquidate, at the risk of the Trust Estate, any closely held partnership, corporation or other business that a beneficiary is involved in as an owner, partner, employee, officer or director, as long as the Trustee deems it advisable. The Trustee shall not be liable in any manner for any loss, should such loss occur, resulting from the retention or investment in such business. In the absence of actual notice to the contrary, the Trustee may accept as correct and rely on financial or other statements rendered by any accountant for any such business. Any such business shall be regarded as an entity separate from the trust and no accounting by the Trustee as to the operation of such business shall be required to be made. The Trustee shall have these powers with respect to the retention and purchase of such business, notwithstanding any rule or law requiring diversification of assets. Additionally, the foregoing shall not be limited by the fact that the Trustee or related parties, or any of them, shall be owners, partners, employees, officers or directors of the business. This paragraph, however, shall not be deemed to be a limitation upon the right of the Trustee to sell the investment in any

business if in the Trustee's sole and absolute discretion such sale is deemed advisable.

b. Tangible Personal Property: To acquire and/or continue to hold as an asset of the trust such items of tangible personal property as an investment or for the use of a beneficiary, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, home furniture and furnishings.

3. Permit Self-Dealing: Financial transactions, both direct and indirect, between any trust and any beneficiary and/or Trustee who is also a beneficiary of that trust (including, for example, the sole or joint purchase, sale or leasing of property, investments in mortgages, acquisitions of life insurance policies, employment in any capacity, lending, etc.), whether or not specifically described in the Trust Agreement as permitted between such parties, except to the extent expressly prohibited hereunder, are expressly authorized, notwithstanding any rule of law relating to self-dealing, provided only that the Trustee, in thus acting either on behalf of or with or for such trust, shall act in good faith to assure such trust receives in such transaction adequate and full consideration in money or money's worth. Furthermore, the Trustee shall have the power to employ professionals or other individuals to assist such Trustee in the administration of any trust as may be deemed advisable (and as more particularly described in the paragraph of the Trust Agreement entitled "Trustee Powers"), notwithstanding such person or entity may be, or is affiliated in business with, any Trustee or beneficiary hereunder. The compensation to which a Trustee who is also a beneficiary is entitled under the Trust Agreement shall not be reduced or offset by any employment compensation paid to such Trustee for services rendered outside the scope of such Trustee's ordinary fiduciary duties and responsibilities, or for reason of receiving sales or other fees or commissions on property sold to the trust by such Trustee (directly or indirectly), which sales are hereby authorized.

4. Make Loans: Loan money to any beneficiary, or to any estate, trust or company in which such person or any trust hereunder has an interest, or had an interest while living, for any purpose whatsoever (including but not limited to purchasing, improving, repairing and remodeling a principal residence or entering into, purchasing or engaging in a trade or business or professional career), with or without security and at such rate of interest as the Trustee shall determine in the exercise of reasonable fiduciary discretion, and, with respect to such loans and/or security interests, to renew, extend, modify and grant waivers. Notwithstanding the foregoing, and without limiting the ability of the Trustee to act in such Trustee's discretion under this paragraph, the Trustor hereby expresses his preference that, whenever economically feasible, any and all loans made pursuant to the provisions of this paragraph be adequately secured and bear interest at least at the higher of the "applicable federal rate"

as set forth by the Internal Revenue Service for loans with similar payment terms and length or a fair market rate for such loans.

5. Take Actions With Respect to Properties and Companies Owned in Common With a Beneficiary or Others: The Trustee is specifically authorized, with or without the joinder of other owners of the property or securities that may be held in trust (and notwithstanding that one or more such other owners may be, directly or indirectly, a beneficiary or a fiduciary hereunder), to enter upon and carry out any plan (a) for the foreclosure, lease or sale of any trust property, (b) for the consolidation or merger, dissolution or liquidation, incorporation or reincorporation, recapitalization, reorganization, or readjustment of the capital or financial structure of any corporation, company or association, the securities of which, whether closely held or publicly traded, may form a part of such trust, or (c) for the creation of one or more holding companies to hold any such securities and/or properties (even if it leaves, following the termination of such trust, a trust beneficiary as a minority shareholder in such holding company), all as such Trustee may deem expedient or advisable for the furtherance of the interests of such trust and the carrying out of the Trustor's original intent as to such trust, its beneficiaries and as to those properties and/or securities. In carrying out such plan, such Trustee may deposit any such securities or properties, pay any assessments, expenses and sums of money, give investment letters and other assurances, receive and retain as investments of such trust any new properties or securities transferred or issued as a result thereof, and generally do any act with reference to such holdings as might be done by any person owning similar securities or properties in his own right, including the exercise of conversion, subscription, purchase or other rights or options, the entrance into voting trusts, etc., all without obtaining authority therefor from any court.

6. Right to Distribute to Entities: Any distribution from the trust, including a distribution upon trust termination (whether made by the Trustee or Trust Protector) may be made directly to an entity, such as a trust, "S" corporation, limited liability company or limited partnership, whether existing or newly created, rather than directly to the beneficiary (and if it is a newly created entity or one in which the Trust Estate holds an interest, the interest in the entity may be distributed to such beneficiary).

7. Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners: Without in any manner limiting any other power or right conferred upon the Trustee hereunder, the Trustee may divide a trust into separate trusts, and if a trust is held as, or divided into, separate trusts, the Trustee may, at any time prior to combining such trusts, treat the trusts in substantially different manners, including, without limitation, the right to: (a) make different tax elections (including the disproportionate allocation of the generation skipping tax exemption) with respect to each separate trust; (b)

make disproportionate principal distributions; (c) exercise differently any other discretionary powers with respect to such separate trusts; (d) invest the property of such separate trusts in different investments, having different returns, growth potentials, or bases for income tax purposes; and (e) take any and all other actions consistent with such trusts being separate entities. Furthermore, the holder of any power of appointment with respect to any trust so divided may exercise such power differently with respect to the separate trusts created by the division of a trust.

## TRUST PROTECTOR PROVISIONS

A. Purpose of Trust Protector: The Trustor has established the position of Trust Protector for the reasons and purposes set forth below, which are intended as general guidelines only and in no way shall limit any other provisions relating to the Trust Protector.

1. Insulate the Trustee from Negative Influences: To protect the Trustee from the negative, or potentially negative, influences of third parties and to protect the Trust Estate and its beneficiaries from damaging, or potentially damaging, conduct by the Trustee.

2. Carry Out the Purposes of the Trust: To help ensure that the Trustor's purpose in establishing the Trust Agreement, as defined elsewhere herein, will be properly carried out.

3. Adapt to Changing Laws and Conditions: To adapt the provisions of the Trust Agreement to law changes, changes in interpretation of the law or other changing conditions that threaten to harm the Trust or its beneficiaries, keeping in mind the dispositive wishes of the Trustor and the Trustor's desires as expressed in the Trust Agreement.

B. Designation of Trust Protector: In addition to the Trustee and Special Co-Trustee provided in the Trust Agreement, there shall, from time to time, be a Trust Protector whose limited powers and duties are defined below. The order of succession of Trust Protector shall be as follows:

1. Initial Trust Protector: The Special Co-Trustee, at any time and in his sole and absolute discretion, may appoint a Trust Protector of the entire Trust or of any separate trust established hereunder (hereinafter the trust for whom a Trust Protector is appointed shall be referred to as "the affected trust") by a writing delivered to the Trustee of the affected trust. The Trustor requests that the Special Co-Trustee, prior to making the appointment, meet (in person or by telephone) with VACEK & FREED, PLLC, formerly the Vacek Law Firm,

PLLC of Houston, Texas, to help ensure the appropriate selection of the initial Trust Protector.

2. Successor Trust Protector: Upon the removal, death, incompetency, inability or unwillingness to act of the initial Trust Protector (including a written resignation delivered to the Trustee of the affected trust), the next succeeding Trust Protector shall be appointed either by the Special Co-Trustee or by the initial Trust Protector (except as limited by paragraph 4 below) in writing delivered to the Trustee of the affected trust (the first such writing delivered to the Trustee shall control). All further successor Trust Protectors shall be appointed in the same manner, except that where the word "initial" is used in the foregoing sentence there shall be substituted the words "last appointed."

3. Qualifications to Act as Trust Protector: A Trust Protector may act once he has accepted, in writing, his appointment and, other than the case of the initial Trust Protector, has delivered a copy of his appointment and acceptance to the last appointed Trust Protector. Notwithstanding the foregoing, at no time may a Trust Protector be appointed or otherwise act if such person or entity is a currently acting Trustee or Special Co-Trustee or is a current beneficiary of the affected trust or is related to any such beneficiary in any of the following ways: as spouse, ancestor or issue, brother, sister, employee of such beneficiary or of any corporation, firm or partnership in which such beneficiary is an executive or has stock or other holdings which are significant from the viewpoint of control, or is otherwise "related or subordinate to" such beneficiary under IRC Sections 674(a) and (c) and the Regulations thereunder or any similar succeeding Sections or Regulations.

4. Removal of Trust Protector: The primary beneficiaries of the affected trust may by majority vote, and at any time and for any reason, remove the current Trust Protector by delivering to said Trust Protector and to the Special Co-Trustee a signed instrument setting forth the intended effective time and date of such removal. The Special Co-Trustee shall then appoint a successor Trust Protector in accordance with paragraph 2 above (the Trust Protector removed shall no longer have the power under paragraph 2 to appoint his successor). The powers of removal under this paragraph may be limited by the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective."

5. Temporarily Filling a Trust Protector Vacancy: If at any time a vacancy in the office of Trust Protector has not yet been filled as otherwise provided above (including the time before the initial Trust Protector is appointed), such office may be filled promptly, on a temporary basis, by a bank or trust company experienced in trust administration or an attorney (or law firm) who is an experienced tax and/or estate planning specialist provided they meet the qualifications set forth in paragraph 3 above. The Trustor requests, but do not

require, that VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or its successors or assigns, act as such temporary Trust Protector and the Trustor hereby waives any conflict of interest that may arise if VACEK & FREED, PLLC, or its successors or assigns, is also representing the Trustee of the affected trust and/or the Trustor. Any Trust Protector acting under this paragraph shall first notify the Trustee of the affected trust and only serve as Trust Protector until such time as a successor Trust Protector is appointed by the Special Co-Trustee in accordance with paragraph 2 above and there is delivered to the Trust Protector acting under this paragraph a written acceptance of such appointment signed by the successor Trust Protector.

C. Limited Powers of the Trust Protector: The Trust Protector shall not have all the broad powers of a Trustee; rather, the powers of the Trust Protector shall be limited to the powers set forth below. The Trustor directs the Trust Protector, prior to exercising any power, to consult with VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or another law firm or attorney specializing in estate planning and/or asset protection planning in order to be fully informed of the consequences of exercising such power.

1. Give Advance Notice to Affected Beneficiaries: Within a reasonable time prior to the exercise of any power under this paragraph C, the Trust Protector shall provide to the Trustee and the primary beneficiary or beneficiaries of the affected trust a written notice, setting forth the power intended to be exercised, the intended date of exercise and the reasons for exercise. The Trust Protector shall, in his sole and absolute discretion, determine what is "a reasonable time," as the Trustor recognizes that emergency situations may arise which may permit little or no time for advance notice or, as a practical matter, it may be too difficult to notify the beneficiary; the Trustor specifically waives this advance notice requirement when the particular beneficiary is "incapacitated" as defined below. Once notice is given, the Trust Protector shall not exercise the power prior to the date specified in the notice, unless the Trust Protector in his sole and absolute discretion determines that an emergency so warrants.

A person shall be deemed "incapacitated" if in the Trustee's sole and absolute discretion, it is impracticable for said person to give prompt, rational and prudent consideration to financial matters, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause.

A person shall be conclusively deemed "incapacitated" if a guardian of the person or his or her estate, or both, has been appointed by a court having jurisdiction over such matters or two (2) licensed physicians who are not related by blood or marriage to such person have examined said person and stated in writing that such incapacity exists; the Trust Protector may, but shall not be under any duty to, institute any inquiry into a person's possible

incapacity (such as, but not limited to, by drug testing) or to obtain physician statements; and if he does, then the expense may be paid from the Trust Estate of said person's trust.

2. Postpone Distributions: Notwithstanding any other provisions of the Trust Agreement, except the paragraph herein entitled "Rule Against Perpetuities," the Trust Protector shall have the power to postpone any distribution of income and/or principal otherwise required to be made from the affected trust to any one or more of its beneficiaries (including as the result of exercise of a power of appointment or withdrawal right) and to postpone the termination of such trust which might otherwise be required if the Trust Protector, in his or her sole and absolute discretion, determines, after taking into consideration the Trustor's overall intent as expressed in the Trust Agreement, that there is a compelling reason to do so.

A "compelling reason" may include but is not limited to: the beneficiary requesting in writing that distributions be retained by the trust; the beneficiary being "incapacitated" as defined in paragraph 1 immediately above; the beneficiary contemplating, or in the process of filing for or has a pending bankruptcy; a pending or threatened divorce, paternity or maternity claim or other lawsuit; a creditor claim (including for unpaid taxes or reimbursement of government benefits); an existing judgment or lien; the fact the beneficiary is receiving (or may in the near future receive) government or other benefits that may be jeopardized; the beneficiary having demonstrated financial instability and/or inability to manage, invest or conserve the beneficiary's own property; the beneficiary being under the negative influence of third parties, such that the beneficiary's good judgement may be impaired; a serious tax disadvantage in making such distribution; or any other substantially similar reasons.

Any such postponement of distribution or termination may be continued by the Trust Protector, in whole or in part and from time to time, up to and including the entire lifetime of the beneficiary. While such postponement continues, all of the other provisions previously applicable to such trust shall continue in effect, except (a) any power of appointment or withdrawal shall be exercisable only with the approval of the Trust Protector and (b) distributions of income and/or principal shall only be made to or for the benefit of the beneficiary from time to time and in such amounts as the Trust Protector, in his or her sole and absolute discretion, deems appropriate for the best interests of the beneficiary; provided, however, the Trust Protector may, in his or her sole and absolute discretion, determine that the beneficiary's situation is extreme enough to warrant the establishment of a special needs trust pursuant to other provisions of this Section of the Trust Agreement.

The Trust Protector may also, from time to time, make certain distributions which cannot be made by the primary beneficiary because of limits imposed in this Section entitled "Restrictions on Distributions That Discharge Legal Obligations of the Beneficiary."

3. Terminate a Trust Due to Unforeseen Conditions: The Trustor recognizes that some or all of the following conditions may arise in the future, although they cannot be foreseen at the time of creation of this Trust: (a) a radical, substantial and negative change in the political, economic or social order in the United States of America; (b) legislation or IRS or court decisions highly detrimental to a trust or beneficiary hereunder (including, for example, if the federal estate tax or IRA required minimum distribution rules are modified, repealed or no longer applicable and the non-tax reasons for the trust no longer justify the trust's existence); (c) a beneficiary's capability to prudently manage his own financial affairs or a radical, positive change in his situation regarding possible third party claims; (d) a beneficiary no longer has a need for (or the availability of) government benefits; and (e) other events that may greatly impair the carrying out of the intent and purposes of the Trust Agreement.

If any of the foregoing conditions occur, the Trust Protector may, in addition to the other powers granted him or her, in his sole and absolute discretion, and keeping in mind the Trustor's wishes and dispositive provisions of the Trust Agreement, terminate the affected trust, or a portion thereof, and distribute same to or for the benefit of the primary beneficiary thereof (notwithstanding any other provisions of the Trust Agreement), or to a newly created or existing Personal Asset Trust for that beneficiary.

4. Revise or Terminate a Trust So It Can Qualify as a "Designated Beneficiary" of an IRA or Retirement Plan: In the event that the affected trust does not qualify as a "designated beneficiary" of an IRA or other retirement plan as that term is used in IRC Section 401(a)(9), the Regulations thereunder and any successor Section and Regulations, the Trust Protector may, keeping in mind the Trustor's wishes and the dispositive provisions of the Trust Agreement: (a) revise or reform the terms of the Trust Agreement in any manner so that the affected trust will qualify as a "designated beneficiary" (any such revision or reformation may by its terms apply retroactively to the inception of the Trust Agreement or creation of any separate trust established hereunder); or (b) deem it to have been dissolved in part or in whole as of September 30 of the year following the year of the Trustor's death, with fee simple interest vesting outright in the primary beneficiary and the rights of all other persons who might otherwise have an interest as succeeding life income beneficiaries or as remaindermen shall cease.

If the beneficiary is still a minor, the Trustee may designate a custodian and transfer the principal and accrued income of the beneficiary's trust to the

custodian for the benefit of the minor under the Texas Uniform Transfers to Minors Act until such beneficiary attains age 21. A receipt from the custodian shall be a complete discharge of the Trustee as to the amount so paid.

Notwithstanding any provisions of the Trust Agreement to the contrary, after the Trustor's death this Trust or any separate trust established hereunder shall not terminate and be distributed in full prior to September 30 of the year following the year of the Trustor's death pursuant to this paragraph if this will result in this Trust or any separate trust established hereunder not qualifying as a "designated beneficiary."

5. Modify Certain Other Trust Provisions: The Trust Protector shall have the power, in his or her sole and absolute discretion, at any time and from time to time, to delete, alter, modify, amend, change, add to or subtract from all or any part of the various paragraphs and provisions of the Trust Agreement and any trust created thereunder, effective (even retroactively) as of the date determined by the Trust Protector, for the following purposes.

a. Change Income Tax Treatment of the Trust: The Trust Protector may, at any time, and from time to time, create, terminate and/or reinstate a power granted to a beneficiary, either prospectively or retroactively, enabling trust income to be income taxable to a beneficiary, even as income accumulates in the trust, if the Trust Protector deems this to be in the best interests of the affected trust and its beneficiaries.

b. Protect a Disabled Beneficiary's Government Benefit by Establishing a Special Needs Trust: The Trust Protector may take any such actions he or she deems appropriate or necessary in connection with a beneficiary's qualification for, receipt of and/or possible future liability to reimburse government benefits (whether income, medical, disability or otherwise) from any agency (state, federal or otherwise), such as but not limited to Social Security, Medicaid, Medicare, SSI and state supplemental programs. In particular, but not by way of limitation, the Trust Protector may add new trust provisions to govern administration and distribution of assets for the benefit of the beneficiary (such as would create a "special needs trust").

c. Protect a Beneficiary from Himself or from Creditors by Establishing a Spendthrift Trust or Eliminating Any General Power of Appointment: In the event there is a compelling reason to postpone distributions to a beneficiary pursuant to the paragraph of this Section entitled "Postpone Distributions," the Trust Protector may alternatively, in his or her sole discretion, add new trust provisions to govern administration and distribution of assets for the benefit of said beneficiary (such as would create a "spendthrift trust" in the form recognized by the laws of the

state(s) in which trust assets are located). Furthermore, the Trust Protector may, in his or her sole discretion, in order to protect the beneficiaries of a Trust beneficiary, terminate and/or reinstate said Trust beneficiary's testamentary general power of appointment, if any, under the Section of this Trust Agreement entitled "Generation Skipping Tax Provisions."

6. Change Legal Jurisdiction of the Trust: The Trust Protector may change the situs of the affected trust to another jurisdiction by any such means deemed appropriate by the Trust Protector. This paragraph shall in no way limit the Trustee's power and authority to change the situs of this Trust or any separate trust established hereunder.

7. Remove and Reinstate a Trustee: The Trust Protector shall have the power at any time to remove the acting Trustee of the affected trust (but not the Special Co-Trustee) for any reason which he believes to be in the best interests of the beneficiaries. Such removal shall be stated in writing and delivered to the Trustee. The successor Trustee shall then be determined and appointed in accordance with the Section of the Trust Agreement entitled "Successor Trustees." At any time after the Trust Protector removes a Trustee, the Trust Protector may reinstate the previously removed Trustee and the order of successor Trustees shall be thereafter determined as if such reinstated Trustee was never removed.

8. Eliminate Own Powers: The Trust Protector shall have the power, on his own behalf and/or on behalf of all successor Trust Protectors, to release, renounce, suspend, reduce, limit and/or eliminate any or all of his enumerated powers and to make the effective date any date he wishes, including ab initio to the date of establishment of a trust hereunder or retroactively to the date of death of the Trustor, by a writing delivered to the Trustee of the affected trust.

9. Limitations on Above Powers: The Trust Protector may not exercise any power if he is compelled by a court or other governmental authority or agency to do so or is otherwise acting under the duress or undue influence of an outside force; if the Trust Protector is so compelled, or under such duress or influence, his powers shall become void prior to exercise; these limitations are in addition to those contained in the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective." The Trust Protector is directed not to exercise any of the foregoing powers if such exercise will result in any substantial, direct or indirect financial benefit to anyone who at the time of exercise is not an ancestor, spouse or issue of a primary beneficiary or is not already a present or contingent beneficiary of this Trust. The Trust Protector shall not exercise any power that may be construed as a general power of appointment to himself, his creditors, his estate or the creditors of his estate under IRC Sections 2041 and 2514, or that would otherwise cause the

inclusion of any of the Trust Estate in the Trust Protector's taxable estate for estate, inheritance, succession or other death tax purposes.

D. Limited Liability of the Trust Protector: The Trust Protector shall not be held to the fiduciary duties of a Trustee. The Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, merely by reason of his appointment as Trust Protector and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Trust Protector to act. Furthermore, the Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Trust Protector a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care. In the event a lawsuit against the Trust Protector fails to result in a judgment against him, the Trust Protector shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

E. Compensation: The Trust Protector shall not be entitled to compensation merely as the result of his appointment. The Trust Protector shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Trust Protector shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

F. Waiver of Bond: No bond shall be required of any individual or entity acting as Trust Protector.

## MISCELLANEOUS PROVISIONS

A. Prohibition Against Contest: If any devisee, legatee or beneficiary under the Trust Agreement or any amendment to it, no matter how remote or contingent such beneficiary's interest appears, or any legal heir of the Trustor, or either of them, or any legal heir of any prior or future spouse of the Trustor (whether or not married to the Trustor at the time of the Trustor's death), or any person claiming under any of them, directly or indirectly does any of the following, then in that event the Trustor specifically disinherits each such person, and all such legacies, bequests, devises and interests given to that person under the Trust Agreement or any amendment to it shall be forfeited and shall be distributed as provided elsewhere herein as though he or she had predeceased the Trustor without issue:

1. unsuccessfully challenges the appointment of any person named as a Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, or unsuccessfully seeks the removal of any person acting as a Trustee, Special Co-Trustee or Trust Protector;

2. objects in any manner to any action taken or proposed to be taken in good faith by the Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, whether the Trustee, Special Co-Trustee or Trust Protector is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

3. objects to any construction or interpretation of the Trust Agreement or any amendment to it, or the provisions of either, that is adopted or proposed in good faith by the Trustee, Special Co-Trustee or Trust Protector, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

4. claims entitlement to (or an interest in) any asset alleged by the Trustee to belong to the Trustor's estates (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), whether such claim is based upon a community or separate property right, right to support or allowance, a contract or promise to leave something by will or trust (whether written or oral and even if in exchange for personal or other services to the Trustor), "quantum meruit," constructive trust, or any other property right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

5. files a creditor's claim against the assets of the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

6. anyone other than the Trustor attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on the Trustor's life or any designation of beneficiaries for any bank or brokerage account, pension plan, Keogh, SEP or IRA account, employee benefit plan, deferred compensation plan, retirement plan, annuity or other Will substitute of the Trustor;

7. in any other manner contests this Trust or any amendment to it executed by the Trustor (including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence, or otherwise), or in any other manner,

attacks or seeks to impair or invalidate this Trust, any such amendment or any of their provisions;

8. conspires with or voluntarily assists anyone attempting to do any of the above acts;

9. refuses a request of the Trustee to assist in the legal defense against any of the above actions.

Expenses to legally defend against or otherwise resist any above contest or attack of any nature shall be paid from the Trust Estate as expenses of administration. If, however, a person taking any of the above actions is or becomes entitled to receive any property or property interests included in the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), then all such expenses shall be charged dollar-for-dollar against and paid from the property or property interests that said person would be entitled to receive under the Trust Agreement or the Trustor's Will, whether or not the Trustee (or Executor under the Trustor's Will) was successful in the defense against such person's actions.

The Trustor cautions the Trustee against settling any contest or attack or any attempt to obtain an adjudication that would interfere with the Trustor's estate plan and direct that, prior to the settlement of any such action short of a trial court judgment or jury verdict, the Trustee seek approval of any such settlement from the appropriate court having jurisdiction over this Trust by way of declaratory judgment or any other appropriate proceeding under applicable Texas law. In ruling on any such petition for settlement, the Trustor requests the Court to take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the Trust Estate or from the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) under any theory and, therefore, no settlement should be approved by the Court unless it is proved by clear and convincing evidence that such settlement is in the best interest of the Trust Estate and the Trustor's estate plan.

In the event that any provision of this Section is held to be invalid, void or illegal, the same shall be deemed severable from the remainder of the provisions in this paragraph and shall in no way affect, impair or invalidate any other provision in this paragraph. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The provisions of this paragraph shall not apply to any disclaimer (or renunciation) by any person of any benefit (or right or power) under the Trust Agreement or any amendment to it.

B. Compelled Exercise of Powers Not Effective: It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, notwithstanding any other provisions of the Trust Agreement, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will. An individual's agent may not exercise a power given to such individual under the Trust Agreement if such purported exercise is in response to or by reason of any such order or direction unless the order or direction was obtained by the agent in a proceeding in which the agent was the moving party or voluntarily acquiesced. Notwithstanding the above, if a Trustee's failure to exercise a power or to acquiesce in a beneficiary's exercise of a power may result in exposing a Trustee to serious personal liability (such as contempt of court or other sanctions), a Trustee may: (a) withdraw and permit the Special Co-Trustee to act instead in relation to such purported exercise of a power; (b) if the Special Co-Trustee would also be exposed to such liability, then the Trustee may notify the Trust Protector who may, in his discretion, act if permitted under the Trust Agreement; or (c) if neither the Special Co-Trustee nor the Trust Protector acts, then the Trustee may exercise or acquiesce in a beneficiary's exercise of a power.

C. Creditor's Rights – Spendthrift Provisions: Subject to the express grant herein of certain rights to withdraw or substitute assets and/or powers of appointment, if any, no beneficiary under the trusts created herein shall assign, transfer, alienate or convey, anticipate, pledge, hypothecate or otherwise encumber his or her interest in principal or income hereunder prior to actual receipt. To the fullest extent permitted by law:

(1) neither the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary, any beneficiary's spouse, ex-spouse or others, or be subject to any bankruptcy proceedings or claims of creditors of said persons (including said persons' spouses or ex-spouses), or be subject to any attachment, garnishment, execution, lien, judgment or other process of law; (2) no interest of any beneficiary shall be subject to claims of alimony, maternity, paternity, maintenance or support; and (3) no power of appointment or withdrawal or substitution shall be subject to involuntary exercise. Should the Trustee so desire, the Trustee may as a condition precedent, withhold payments of principal or interest under this Trust until personal order for payment is given or personal receipt furnished by each such beneficiary as to his or her share. The Trustee may, alternatively in the Trustee's sole and absolute discretion, deposit in any bank designated in writing by a beneficiary to his or her credit, income or principal payable to such beneficiary. The

Trustee may, alternatively in the Trustee's sole and absolute discretion, hold and accumulate any income and/or principal so long as it may be subject to the claims, control or interference of third parties, up to and until the beneficiary's death, at which time it shall be distributed in accordance with the beneficiary's exercise of his or her power of appointment, if any, and/or pay to or for the benefit of the beneficiary only such sums as the Trustee deems necessary for said beneficiary's reasonable health, support, maintenance and education.

D. Trustee Power to Determine Principal and Income: The Trustee shall determine what is principal or income of the Trust Estate, and apportion and allocate any and all receipts and expenses between these accounts, in any manner the Trustee determines, regardless of any applicable state law to the contrary including any Principal and Income Act of Texas, or similar laws then in effect. In particular (but not by way of limitation), the Trustee shall have sole and absolute discretion to apportion and allocate all receipts and expenses between principal and income in whole or in part, including the right to: allocate capital gains; elect whether or not to set aside a reserve for depreciation, amortization or depletion, or for repairs, improvement or upkeep of any real or personal property, or for repayments of debts of the Trust Estate; and charge Trustee's fees, attorney's fees, accounting fees, custodian fees and other expenses incurred in the collection, care, management, administration, and protection of the Trust Estate against income or principal, or both. The exercise of such discretion shall be conclusive on all persons interested in the Trust Estate. The powers herein conferred upon the Trustee shall not in any event be so construed as allowing an individual to exercise the Trustee's sole and absolute discretion except in a fiduciary capacity.

E. Broad Trustee Power to Invest: It is the Trustor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Estate without being restricted to forms and investments that the Trustee may otherwise be permitted to make by law. The Trustee is empowered to invest and reinvest all or any part of the Trust Estate in such property as the Trustee in his discretion may select including but not limited to bank accounts, money market funds, certificates of deposit, government bonds, annuity contracts, common or preferred stocks, closely held businesses, shares of investment trusts and investment companies, corporate bonds, debentures, mortgages, deeds of trust, mortgage participations, notes, real estate, put and call options, commodities, commodities futures contracts and currency trading. When selecting investments, the Trustee may take into consideration the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the Trust Estate and its beneficiaries, the amount and nature of all assets available to beneficiaries from sources outside the Trust and the beneficiaries' economic circumstances as a whole, and shall exercise the judgment that a reasonable person would if serving in a like capacity under the same circumstances and having the same objectives. In addition to the investment powers conferred above, the Trustee is authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would

be forbidden by the "prudent person" (or "prudent investor") rule. In making investments, the Trustee may disregard any or all of the following factors: (i) whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal; (ii) whether the acquisition or retention of a particular investment, or the trust investments collectively, is consistent with any duty of impartiality as to the different beneficiaries (the Trustor intends no such duty shall exist); (iii) whether the trust is diversified (the Trustor intends that no duty to diversify shall exist); and (iv) whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts (the Trustor intends the Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy). The Trustor's purpose in granting the foregoing broad authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustee shall not be liable for any loss in value of an investment merely because of the nature, class or type of the investment or the degree of risk presented by the investment, but shall be liable if the Trustee fails to meet the "reasonable person" standard set forth above or if the Trustee's procedures in selecting and monitoring the particular investment are proven by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

F. Special Co-Trustee Provisions: Notwithstanding anything in the Trust Agreement to the contrary, the powers, duties or discretionary authority granted hereunder to any Trustee shall be limited as follows:

1. Prohibited and Void Trustee Powers: Except where a beneficiary shall act as sole Trustee of his or her share, or unless limited by an ascertainable standard as defined in Code Section 2041 , no Trustee shall participate in the exercise of any discretionary authority to allocate receipts and expenses to principal or income, any discretionary authority to distribute principal or income, or any discretionary authority to terminate any trust created hereunder, if distributions could then be made to the Trustee or the Trustee has any legal obligation for the support of any person to whom distributions could then be made. Any other power, duty or discretionary authority granted to a Trustee shall be absolutely void to the extent that either the right to exercise such power, duty or discretionary authority or the exercise thereof shall in any way result in a benefit to or for such Trustee which would cause such Trustee to be treated as the owner of all or any portion of any of the trusts created herein for purposes of federal or state income tax, gift, estate or inheritance tax laws, or cause any disclaimer of an interest or benefit hereunder to be disqualified under Code Section 2518. Notwithstanding the foregoing, a beneficiary serving as Trustee may have and exercise a power, duty or discretionary authority that causes any Personal Asset Trust created hereunder to be a grantor trust with said beneficiary being treated as the owner for income tax purposes.

Notwithstanding the foregoing, this paragraph shall not apply during the lifetime of the Trustor, nor shall it apply when the exercise of any power, duty, or discretionary authority relates to any provisions herein directed towards preserving the trust estate for beneficiaries named in the Trust Agreement in the event the Trustor should require long-term health care and/or nursing home care. Should a Trustee be prohibited from participating in the exercise of any power, duty, or discretionary authority, or should a power, duty or discretionary authority granted to a Trustee be absolutely void, as a result of the foregoing, then such power, duty or discretionary authority may be exercised in accordance with the following paragraphs.

2. Exercise of Power by an Existing Independent Co-Trustee: In the event that the right to exercise or the exercise of any power, duty or discretionary authority is prohibited or void as provided above, or is prohibited elsewhere in this Trust Agreement with respect to "incidents of ownership" of life insurance, or the Special Co-Trustee is given any other powers or authority under this paragraph "Special Co-Trustee Provisions," the remaining Co-Trustee, if any, shall have the right to exercise and may exercise said power, duty or discretionary authority, provided the Co-Trustee is independent within the meaning set forth in Section 674(c) of the Code, or any successor statute or regulations thereunder.

3. Exercise of Power if No Existing Independent Co-Trustee: In the event there is no independent Co-Trustee capable of exercising any power, duty or discretionary authority which is prohibited or void as provided above, or which is given to the Special Co-Trustee elsewhere herein, then the following procedure shall apply:

   a. Appointment of Special Co-Trustee: The next succeeding, Trustee or Co-Trustees, as the case may be, of the Trust (or, if only a particular, separate trust created under this Trust Agreement is affected by the exercise of such power, duty or authority, then the next succeeding Trustee or Co-Trustees of said separate trust) who is not disqualified under paragraph "2" above, shall serve as Special Co-Trustee of the Trust herein created.

4. Protect the Trust Estate by Appointment and Removal of an Independent Co-Trustee: In addition to any other powers granted to the Special Co-Trustee under the Trust Agreement, in the event that the Special Co-Trustee named above, in his sole and absolute discretion, determines that it is necessary in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries of any trust established under the Trust Agreement from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may appoint a Co-Trustee (to immediately act with the then existing Trustee) who is independent from the party to be protected within

the meaning set forth in IRC Section 674(c). The Special Co-Trustee may appoint himself to act as such Co-Trustee if he is independent within the meaning of IRC Section 674(c). In addition, if the Special Co-Trustee, in his sole and absolute discretion, determines that it is no longer necessary for an independent Co-Trustee to act in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may remove any independent Co-Trustee whom was either appointed by another acting Trustee of the Trust pursuant to other provisions of the Trust Agreement (if any) or appointed by the Special Co-Trustee, and shall not be required to replace such removed independent Co-Trustee with another.

5. Limited Responsibilities of Special Co-Trustee: The responsibilities of the Special Co-Trustee shall be limited to the exercise of the Trustee power, duty or discretionary authority prohibited or void as provided in the Trust Agreement, and the Special Co-Trustee powers regarding the appointment and removal of an independent Co-Trustee as permitted above, and appointment of a Trust Protector as permitted in the Section of the Trust Agreement entitled "Trust Protector Provisions," and said Special Co-Trustee shall not be concerned with, nor shall have, any power, duty or authority with respect to any other aspects of administration of the Trust Estate.

6. Limited Liability of the Special Co-Trustee: The Special Co-Trustee shall not be held to the fiduciary duties of a Trustee. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, merely by reason of his appointment as Special Co-Trustee and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Special Co-Trustee to act. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust either now or in the future, for failing to properly or timely appoint a Trust Protector or to properly or timely advise a Trust Protector of any circumstances or facts that might impact a Trust Protector's decisions. Furthermore, the Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Special Co-Trustee a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care and in good faith. In the event a lawsuit against the Special Co-Trustee fails to result in a judgment against him, the Special Co-Trustee shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

7. Compensation: The Special Co-Trustee shall not be entitled to compensation merely as the result of his appointment. The Special Co-Trustee shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Special Co-Trustee shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

8. Waiver of Bond: No bond shall be required of any individual or entity acting as Special Co-Trustee.

## GENERATION SKIPPING TAX PROVISIONS

Article XIV, Section R of the said Trust entitled "Generation Skipping Transfers" is hereby amended so that from henceforth Article XIV, Section R is replaced in its entirety with the provisions which follow.

A. Explanation of this Section: The purpose of this Section of the Trust Agreement and the desire of the Trustor is to eliminate or reduce the burden on the Trustor's family and issue resulting from the application of the federal generation skipping transfer tax under Chapter 13 of the Code, including any future amendments thereto (hereinafter referred to as the "GST Tax"). The Trustor directs the Trustee and any court of competent jurisdiction to interpret the provisions of this Section in accordance with the Trustor's desires stated above, since the Trustor, when creating this Trust, is aware that the provisions of said GST Tax are very complex and as yet there are few court rulings to aid in their interpretation. The Trustor requests that, before the Trustee or any beneficiary acts in accordance with the provisions of this Section, they seek professional advice from an attorney who specializes in estate planning, in order that they may avoid any unintentional triggering of negative GST Tax consequences.

B. Allocation of Trustor's GST Tax Exemptions: The Trustee (or such other person or persons whom Code provisions, Treasury Regulations or court rulings authorize to make elections or allocations with regard to the Trustor's GST Tax exemptions) is instructed to allocate such exemptions in good faith, without a requirement that such allocation be proportionate, equal or in any particular manner equitably impact any or all of the various transferees or beneficiaries of property subject to or affected by such allocations. When allocating such exemptions, the Trustee may include or exclude any property of which the Trustor is the transferor for GST Tax purposes, including property transferred before the Trustor's death, and may take into account prior transfers, gift tax returns and other relevant information known to the Trustee. It is recommended that, to the extent possible, any such trust allocated an inclusion ratio of zero shall contain any and all Roth IRAs. The Trustee is also directed, when allocating Trustor's GST Tax exemptions, to coordinate with the Executor of Trustor's estate and/or the Trustee of Trustor's revocable Living Trusts regarding the

most appropriate use of said exemption; however, the Trustee's final determination shall be made in his or her sole and absolute discretion and shall be binding upon all parties howsoever interested in this Trust.

1. Trustee's Power to Combine and Divide Trusts: If a trust hereunder would be partially exempt from GST Tax by reason of an allocation of GST Tax exemption to it, before the allocation the Trustee in his discretion may divide the trust into two separate trusts of equal or unequal value, to permit allocation of the exemption solely to one trust which will be entirely exempt from GST Tax. The Trustee of any trust shall have authority, in the Trustee's sole discretion, to combine that trust with any other trust or trusts having the same exempt or nonexempt character, including trusts established (during life or at death) by the Trustor or any of his issue; and the Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts being combined do not have identical terms or if separate shares are otherwise deemed desirable by the Trustee. These powers to combine and divide trusts may be exercised from time to time, and may be used to modify or reverse their prior exercise. In deciding whether and how to exercise this authority the Trustee may take account of efficiencies of administration, generation-skipping and other transfer tax considerations, income tax factors affecting the various trusts and beneficiaries (including determination of life expectancy to be used for Retirement Assets required minimum distribution purposes), the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the Trustee may deem appropriate to these decisions. Prior to exercising any power to combine trusts under this paragraph, the Trustee shall take into consideration that, where possible and appropriate (keeping in mind the dispositive provisions of the Trust Agreement and the situation of the beneficiary), separate trusts should be maintained so that the trust beneficiaries may enjoy the benefit of distributions from any Retirement Assets being stretched out over their separate life expectancies; in particular, the Trustee shall not merge trusts when one provides for the payout to or for the beneficiary of all withdrawals from IRAs and other Retirement Assets, net of trust expenses, and another provides for the accumulation of income (including IRA and Retirement Asset withdrawals).

2. Same Terms and Provisions for Divided Trusts: Except as expressly provided in the Trust Agreement, when a trust otherwise to be established is divided under the foregoing provisions into exempt and non-exempt trusts or otherwise into separate trusts, each trust shall have the same provisions as the original trust from which it is established, and references in the Trust Agreement to the original trust shall collectively refer to the separate trusts derived from it.

3. Exempt (and Non-Exempt) Character of Property to be Preserved: On termination, partial termination, subdivision or distribution of any of the

separate trusts created by the Trust Agreement, or when it is provided that separate trusts are to be combined, the exempt (zero inclusion ratio) or the non-exempt (inclusion ratio of one) generation-skipping character of the property of the trusts shall be preserved. Accordingly, when property is to be added to or combined with the property of another trust or trusts, or when additional trusts are to be established from one or more sources, non-exempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions, unless the Trustee believes that economic efficiency or other compelling considerations justify sacrificing their separate generation-skipping characteristics.

4. Trustee's Investment Power; Distributions: Without limiting the foregoing, the Trustor specifically authorizes (but do not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on whether they are funded by Roth IRAs or other assets and on their generation-skipping ratios, and to prefer making distributions from Retirement Assets other than Roth IRAs and from non-exempt trusts to beneficiaries who are non-skip persons for generation-skipping purposes and from exempt trusts to those who are skip persons. Upon division or distribution of an exempt trust and a nonexempt trust hereunder, the Trustee may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur. It is further recommended that to the extent that distributions would be made for the benefit of skip persons and such distributions would be exempt from GST Tax because such distributions are for the payment of medical expenses exempt under IRC Section 2503(e)(2)(B) or for the payment of tuition or educational expenses exempt under IRC Section 2503 (e)(2)(A), such payments to the extent possible be first made from a trust which has an inclusion ratio of one.

5. Trustee's Exoneration: The Trustor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

C. Beneficiary's General Power of Appointment: Should a beneficiary die prior to the creation of his or her separate share of the Trust Estate or die subsequent to the creation of such share but before complete distribution of such share, and as a result of said death a portion of the Trust Estate would be subject to GST Tax but for the provisions of this paragraph, the beneficiary may, pursuant to a general power of appointment exercised in his or her last Will (but not in a codicil) or other writing delivered to the Trustee prior to his or her death and specifically referring to the Trust Agreement, provide for such share to pass to the creditors of that beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to

the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's share. This general power of appointment may be subject to termination and reinstatement by the Trust Protector. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of the Trust Agreement.

## TRUSTEES ENVIRONMENTAL POWERS

A. Trustee Authorized to Inspect Property Prior to Acceptance:

1. Actions at Expense of Trust Estate: Prior to acceptance of this Trust by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of the Trust Estate:

   a. Enter Property: To enter and inspect any existing or proposed asset of the Trust (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

   b. Review Records: To review records of the currently acting Trustee or of the Trustor (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

2. Rights Equivalent to Partner, Member or Shareholder: The right of the proposed or designated Trustee to enter and inspect assets and records of a partnership, limited liability company or corporation under this provision is equivalent to the right under state law of a partner, member or shareholder to inspect assets and records under similar circumstances.

3. Right to Still Refuse Acceptance of Trusteeship: Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of the Trust.

4. Right to Accept Trusteeship Over Other Assets Only: If an asset of the Trust is discovered upon environmental audit by the acting Trustee or any proposed or designated Trustee to be contaminated with hazardous waste or otherwise

not in compliance with environmental law or regulation, the Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of the Trust. The Trustee, in his discretion, may petition a court to appoint a receiver or special Trustee to hold and manage the rejected asset, pending its final disposition.

5. Right to Reject Asset: Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to the Trustee.

B. Termination, Bifurcation or Modification of The Trust Due to Environmental Liability:

1. Trustee's Powers over Hazardous Waste Property: If the Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of any federal, state or local environmental law or regulation, the Trustee may take one or more of the following actions, if the Trustee, in the Trustee's sole and binding discretion, determines that such action is in the best interests of the Trust and its beneficiaries:

   a. Modify Trust: Modification of trust provisions, upon court approval, granting the Trustee such additional powers as are required to protect the Trust and its beneficiaries from liability or damage relating to actual or threatened violation of any federal, state or local environmental law or regulations, with it being the Trustors' desire that the Trustee keep in mind the Trustors' dispositive wishes expressed elsewhere in this Trust Agreement and that the Trustee consider and weigh any potentially negative federal and state income, gift, estate or inheritance tax consequences to the Trustee, Trust and its beneficiaries;

   b. Bifurcate Trust: Bifurcation of the Trust to separate said asset from other assets of the Trust Estate;

   c. Appoint a Special Trustee: Appointment of a special Trustee to administer said asset; and/or

   d. Abandon Property: Abandonment of such asset.

2. Terminate Trust or Distribute Other Assets: With court approval, the Trustee may terminate the Trust or partially or totally distribute the Trust Estate to beneficiaries.

3. Broad Discretion: It is the intent of the Trustors that the Trustee shall have the widest discretion in identification of and response to administration problems connected to potential environmental law liability to the Trust Estate and the

Trustee, in order to protect the interests of the Trust, the Trustee and the beneficiaries of the Trust.

C. Trustee's Powers Relating to Environmental Laws: The Trustee shall have the power to take, on behalf of the Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. §9601 (25), or any successor statute, relating to any asset, which is or has been held by the Trustee as part of the Trust Estate.

D. Indemnification of Trustee from Trust Assets for Environmental Expenses:

1. Indemnification and Reimbursement for Good Faith Actions: The Trustee shall be indemnified and reimbursed from the Trust Estate for any liabilities, loss, damages, penalties, costs or expenses arising out of or relating to federal, state or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from the Trustee's intentional wrongdoing, bad faith or reckless disregard of his fiduciary obligation.

a. Environmental Expenses Defined: Environmental expenses shall include, but not be limited to:

(i) Costs of investigation, removal, remediation, response, or other cleanup costs of contamination by hazardous substances, as defined under any environmental law or regulation;

(ii) Legal fees and costs arising from any judicial, investigative or administrative proceeding relating to any environmental law or regulation;

(iii) Civil or criminal fees, fines or penalties incurred under any environmental law or regulation; and

(iv) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

b. Properties and Businesses Covered: This right to indemnification or reimbursement shall extend to environmental expenses relating to:

(i) Any real property or business enterprise, which is or has been at any time owned or operated by the Trustee as part of the Trust Estate; and

(ii) Any real property or business enterprise, which is or has been at any time owned or operated by a corporation, limited liability company or partnership, in which the Trustee holds or has held at any time an ownership or management interest as part of the Trust Estate.

2. Right to Pay Expenses Directly from Trust: The Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of the Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

3. Right to Lien Trust Assets: The Trustee shall have a primary lien against assets of the Trust for reimbursement of environmental expenses, which are not paid directly from Trust assets.

E. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law: The Trustee shall not be liable to any beneficiary of the Trust or to any other party for any good faith action or inaction, relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however that the Trustee shall be liable for any such action, inaction or payment which is a breach of Trust and is committed in bad faith, or with reckless or intentional disregard of his fiduciary obligations.

F. Allocation of Environmental Expenses and Receipts Between Principal and Income: The Trustee may, in the Trustee's discretion, allocate between income and principal of the Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, the Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. The Trustee may, in the Trustee's discretion, create a reserve for payment of anticipated environmental expenses.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII and Article IX. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas

## APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and

WHEREAS, ELMER H. BRUNSTING, died on April 1, 2009. The Brunsting Family Living Trust authorized the creation of subsequent subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST. The full legal names of the said subtrusts are:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

WHEREAS, the said NELVA E. BRUNSTING is desirous of exercising her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical

information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

**3. Determination of "Incompetence" or "Incapacity"**

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the said Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on August 25, 2010.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace K Kunz Freed
Notary Public, State of Texas

Law Firm Copy

## APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and

WHEREAS, ELMER H. BRUNSTING, died on April 1, 2009. The Brunsting Family Living Trust authorized the creation of subsequent subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST. The full legal names of the said subtrusts are:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.
>
> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

WHEREAS, the said NELVA E. BRUNSTING is desirous of exercising her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, resign as Trustee, then the following individuals will serve as successor Trustee in the following order:

> First, ANITA KAY BRUNSTING
> Second, AMY RUTH TSCHIRHART
> Third, THE FROST NATIONAL BANK

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death or disability, then the following individuals will serve as successor Co-Trustees:

> ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to,

protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

**3. Determination of "Incompetence" or "Incapacity"**

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries

participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the said Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on December 21, 2010.

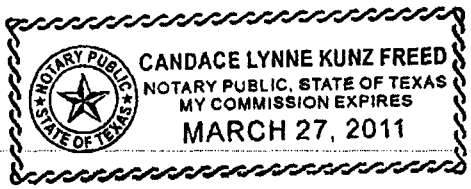
Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:34 pm p.m., by NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace K Kunz Freed
Notary Public, State of Texas



# RESIGNATION OF ORIGINAL TRUSTEE

Pursuant to Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended (the "Trust"), I, NELVA E. BRUNSTING, an original Trustee of the Trust may resign as Trustee.

On April 1, 2009, two subtrusts were created under the BRUNSTING FAMILY LIVING TRUST and are known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

I hereby resign as Trustee of these said Trusts in accordance with the provisions contained in Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

My resignation is effective immediately and I hereby appoint ANITA KAY BRUNSTING as the Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as well as the subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

Nelva E. Brunsting
NELVA E. BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:35 p.m., by NELVA E. BRUNSTING.

Candace Lynne Kunz Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

## ACCEPTANCE BY SUCCESSOR TRUSTEE

I, ANITA KAY BRUNSTING, hereby acknowledge my acceptance this day of the office and duties of Successor Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST, after the resignation of the original Trustee, NELVA E. BRUNSTING.

Anita Kay Brunsting
ANITA KAY BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:36pm p.m., by ANITA KAY BRUNSTING.

Candace S Kunz-Freed
Notary Public, State of Texas

NOTARY PUBLIC STATE OF TEXAS
CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

United States District Court
for the
Southern District of Texas

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS,<br>Plaintiff, | §<br>§<br>§<br>§ | |
| VS. | § | Civil Action No._____ |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>And Does 1-100<br>Defendants | §<br>§<br>§<br>§ | Jury Trial Demanded |

INJUNCTINCTIVE ORDER
Temporary Restraining Order, Asset Freeze, Production of Documents and Records, Appointment of Receiver

1. The court has read the Plaintiff's original petition and application for ex-parte temporary restraining order, asset freeze, temporary and permanent injunction, and for good cause showing enters the following order.

2. **IT IS THEREFORE ORDERED** that Defendants and their officers, agents, servants, employees, attorneys, and any other persons or entities in active concert or participation with them, including all financial institutions holding money or assets of any kind in the name and/or for the benefit of the Brunsting Family Living Trust (the Trust), who receive actual notice of this


20-20566.425

Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices, to wit:

3. Transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, dissipating, distributing, or allowing the transfer, removal, withdrawal or encumbering from any financial institution or from any other entity or location or from the jurisdiction of this Court, any money, cash, stocks, bonds, assets, notes, equipment, funds, receipts, reports, accounts receivable, policies of insurance, trust agreements, trust documents or other property, real, personal or mixed, wherever situated, belonging to the Brunsting Family Living Trust or any trust created under it, until further order of this court.

PRODUCTION OF DOCUMENTS AND ACCOUNTING RECORDS

4. ___ Defendants Anita Kay Brunsting and Amy Ruth Brunsting are hereby ordered to produce true, accurate and complete copies of all documents and records relating to the Brunsting Family Living Trust and to provide copies of all said documents and records to Plaintiff.

5. ___ Defendants Anita Kay Brunsting and Amy Ruth Brunsting are hereby ordered to produce a true, accurate and complete listing of all assets of the Brunsting Family Living Trust and any trust created under or held by the Trust, with all supporting documentation, and to provide a true, accurate and complete statement of all transactions involving the Brunsting Family Living Trust as of and since the death of Elmer Brunsting, April 1, 2009, with all supporting documentation, and to provide copies of all said documents and records to Plaintiff.


20-20566.426

This order and the command for production shall be satisfied within 30 days of service of this order.

5. IT IS FURTHER ORDERED THAT ___ Defendants Anita Kay Brunsting and Amy Ruth Brunsting shall surrender all of the property belonging to the Brunsting Family Living Trust and any trust created under or held under the Trust to the following receiver as hereby appointed by this court.

6. The Court hereby appoints the following receiver.

_____

Judge of the United States District Court for the Southern District of Texas

United States Courts
Southern District of Texas
FILED

FEB 27 2012

David J. Bradley, Clerk of Court

# United States District Court

For the
Southern District of Texas

Curtis vs. Brunsting Case No_____

Plaintiff's Mandatory Disclosure
**[F.R.C.P. 26(a)(1)]**

In accordance with Rule 26(a)(1) of the Federal Rules of Civil Procedure, Plaintiff makes its mandatory disclosure as follows:

A. Witnesses

1. Anita Brunsting Co-Trustee at 203 Bloomingdale Circle Victoria TX 77904 is likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings including physical evidence of the existence of the Brunsting Family Living Trust and its administration including; cash, stocks, notes, bonds, documents, books, records, receipts, ledgers, account numbers, broker identities and all other information relating to the Brunsting Family Living Trust.

2. Amy Ruth Brunsting Co-Trustee at 2582 Country Ledge New Braunfels TX 78132 is likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings including physical evidence of the existence of the Brunsting Family Living Trust and its administration including; cash, stocks, notes, bonds, documents, books, records, receipts, ledgers, account numbers, broker identities and all other information relating to the Brunsting Family Living Trust.



20-20566.428

3. Carl Brunsting at 5629 Flack Drive Houston, TX 77081 is likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings including personal knowledge of the Trust and of the actions and inactions of the trustees.

4. Drina Brunsting at 5629 Flack Drive Houston, TX 77081 is likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings including personal knowledge of the Trust and of the actions and inactions of the trustees.

5. Carol Brunsting at 5822 Jason, Houston, TX 77074 is likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings including personal knowledge of the Trust and of the actions and inactions of the trustees.

6. Candace Freed at Vacek & Freed PLLC 11777 Katy Freeway Suite 300 South, Houston, TX 77079 was Nelva and Elmer Brunsting's trust attorney and is likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings including personal knowledge of the Trust and of the actions of the trustees.

7. Robert Cantu at [Address unknown at this time] who was a care giver for Nelva Brunsting is likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings including personal knowledge of the state of mind of Nelva Brunsting and of the actions, conduct and demeanor of each of the beneficiaries.

8. Tino Vaquera at [Address unknown at this time] who was a care giver for Nelva Brunsting is likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings including personal knowledge of the state of mind of Nelva Brunsting and of the actions, conduct and demeanor of each of the beneficiaries.

9. Does 1-100 are likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings including physical evidence of the existence of the Brunsting Family Living Trust and its administration including: documents, books, records, receipts, ledgers, account numbers, broker identities or other information relating to the Brunsting Family Living Trust and its assets. The individuals identified as Does 1-100 are unknown at this time due to the withholding of

information by the trustees and will be added as further evidence and identities are uncovered.

B. Documents

Plaintiff hereby discloses the documents identified by affidavit and listed as exhibits.

1. Further: Plaintiff intends to use such other documents and records as are discovered prior to trial, including but not limited to transaction records for the Exxon Mobile stocks shown on the schedule of assets from 2005 and again on the schedule of assets from 2012, and

2. Any other documentary evidence as will be discovered, including those obtained by subpoena before and during trial. Since this action is brought based upon discovery of the facts and information the trustees had a duty to disclose but chose not to reveal.

The above list of documents is by no means complete or exhaustive.

C. Computation of Damages

1. Explanation

The damages in this case are based upon breach of the fiduciary duty to disclose and, due to the nature of the breach, Plaintiff gives a generously lenient estimate of the damages both general and special and reserves the right to amend to add causes of action and to adjust the damage amounts as causes, calculations and explanations are discovered as the veil of concealment is pierced. The generalized calculation is based upon a generously fair estimate of the injuries both tangible and incorporeal as compounded by the degree of constructive, extrinsic and other possible fraud and the malicious and hurtful manner in which the defendants accomplished their plot to injure and to unjustly enrich themselves at Plaintiff's expense.

2. Documents Upon Which Computation Based

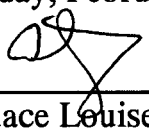
a. Computation of damages is based upon the number of documents the fiduciaries have withheld, as those documents and the information they contain was mostly gleaned from sources other than from the

Defendants in breach and at great anxiety, inconvenience and effort to the Plaintiff.

b. Further, the damages are calculated upon the belief that Defendant's conduct was intentional and reckless and was done with a specific intent to injure plaintiff and probably to unjustly enrich Defendants.

c. Finally the damages are calculated upon the emotional suffering of Plaintiff as a direct result of the character and nature of the wrongful acts complained of.

Tuesday, February 21, 2012



Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

United States Courts
Southern District of Texas
FILED

FEB 27 2012

David J. Bradley, Clerk of Court

# United States District Court

For the
Southern District of Texas

Curtis vs. Brunsting Case No_____

DEMAND FOR PRODUCTION OF DOCUMENTS
**[F.R.C.P. 34(b)]**

Plaintiff Candace Louise Curtis requests Defendant(s) Anita Kay Brunsting and Amy Ruth Brunsting to respond within 30 days to the following requests that Defendants produce and provide Plaintiff with copies of the following documents:

For purposes of these requests the following terms are defined as stated:
Beneficiary includes successor beneficiaries and remainders.
Trustee includes only the Defendants and does not include an original trustee, an independent special co-trustee, or a trustee named in the Trust other than Defendants unless specifically so stated.

Document means every form of expression, however recorded, whether analog or digital, whether audio, video or text, in Defendant(s) possession or known by Defendant(s) to exist, but does not include any unrecorded verbal statement.

(1) Defendants are to produce all documents purporting to be part of the Brunsting Family Living Trust "the Trust" including but not limited to all sub-trusts, amendments, revisions, wills, diagrams, photographs, and descriptions. If none, say none and give the legal reason why any demanded document(s) or record(s) does not exist or why it is otherwise unavailable to scrutiny.

(2) Defendants are to produce a full, true and complete statement of inventory listing all assets belonging to the Brunsting Family Living Trust "the Trust" including but not limited to Schedules of assets and statements of inventory for the Trust and all trusts created under and/or held by the Trust. The inventories should be true and complete copies of all transactions involving trust property and should include all associated documents, transaction records and receipts. If none, say none and give the legal reason why any demanded document(s) or record(s) does not exist or why it is otherwise unavailable to scrutiny.

(3) There was a phone conference held on or about October 25, 2010. Defendants are to produce all documents relating to that phone conference including but not limited to communications in whatever form, whether electronic or otherwise, and which indicate from and to whom the communications were sent and/or the purpose for that conference. If none, say none and give the legal reason why any demanded document(s) or record(s) does not exist or why it is otherwise unavailable to scrutiny.

(4) Defendants are to produce all documents containing proposed amendments or revisions to the trust that did not become part of the trust including but not limited to the document intending to disinherit Carl's Daughter Marta that Nelva refused to sign, which plaintiff is informed and believes occurred in or about March of 2010. If none, say none with an affirmative statement that no such event ever occurred and that no such document ever existed.

(5) Defendants are to produce copies of all documents, receipts, and transaction records relating to handling of Exxon stock which may tend to show how it was managed, when and by whom, using what instruments of authority and/or evidencing any other action which may tend to explain how the stocks were accessed, converted or, distributed to beneficiaries with statements of individual amounts,

when and how deposited to what accounts and all other Exxon stock associated records and receipts as of the death of Elmer Brunsting 4/1/2009. If none, say none and give the legal reasons if any.

(6) Defendants are to produce copies of all documents, receipts, and transaction records explaining and documenting all trust transactions involving acquisitions or sales of trust assets from April 1, 2009 to the present. If none, say none and give the legal reasons if any.

(7) Defendants are to produce a full, true and complete accounting of the Trust assets with adequate explanations of each act of the trustees when moving, transferring, liquidating, distributing or in any way changing the status or condition of trust property from April 1, 2009 up until and including the date of receipt of this demand.

(8) Defendants are to produce copies of all documents notifying beneficiaries of proposed changes to the trust after April 1, 2009. The documents should describe the proposed changes and contain enough information for the beneficiaries to protect their beneficial interest including when those changes would be implemented. If none, say none and explain in detail the legal reason(s) why the trustee's were not required to notice the beneficiaries.

(9) Defendants are to produce copies of all documents notifying beneficiaries of a right to receive distributions from any trust, account or policy of insurance, after April 1, 2009.

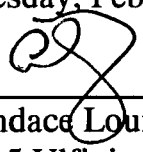
(10) Defendants are to produce copies of all documents authored or signed by Nelva Brunsting indicating a desire to change her estate plan after April 1, 2009.

(11) Defendants are to produce copies of all documents in their possession or known by them to exist relating to the competency of Nelva Brunsting, including but not limited to the identity and report of any and every doctor who may have examined her.

(12) Defendants are to produce copies of all documents appointing a trust protector, including but not limited to any and every document identifying the name, address and phone number of said trust protector. If none, say none and explain why not.

(13) Defendants are to produce copies of all documents appointing an independent special co-trustee, including but not limited to documents identifying the name, address and phone number of said independent special co-trustee if any. If none, say none and explain why not.

Tuesday, February 21, 2012



Candace Louise Curtis
1215 Ulfinian Way
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United States Courts
Southern District of Texas
FILED

FEB 27 2012

David J. Bradley, Clerk of Court

United States District Court
for the
Southern District of Texas

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS,<br>Plaintiff, | § | |
| VS. | § | Civil Action No._____ |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>And Does 1-100<br>Defendants | § | |

LIS PENDENS

NOTICE IS HEREBY GIVEN that an action has been instituted and is now pending in the United States District Court for the Southern District of Texas upon the complaint of CANDACE LOUISE CURTIS, Plaintiff, against the above-named Defendant(s), ANITA KAY BRUNSTING, and AMY RUTH BRUNSTING as trustees for the Brunsting Family Living Trust, that the object of that action is fraud and Breach of Fiduciary and that rights to the property listed below is the amongst the subjects of that suit.

Frl. NW1/4 of sec 2, T96N – R45W of the 5th P.M., Except a tract of 542.5 ft by 660 ft which is the acreage site. 140.22 Acres, Iowa (Based on realtor opinion)

Any persons in any manner dealing with the above-described real estate subsequent to the filing of this action will take subject to the rights of the Plaintiff as established in this action.

Dated: Saturday, February 11, 2012

Respectfully presented by:

Candace Louise Curtis, Plaintiff

United States Courts
Southern District of Texas
FILED

FEB 27 2012

David J. Bradley, Clerk of Court

United States District Court
for the
Southern District of Texas

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS,<br>Plaintiff, | § | |
| VS. | § | Civil Action No._____ |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>And Does 1-100<br>Defendants | § | |

LIS PENDENS

NOTICE IS HEREBY GIVEN that an action has been instituted and is now pending in the United States District Court for the Southern District of Texas upon the complaint of CANDACE LOUISE CURTIS, Plaintiff, against the above-named Defendant(s), ANITA KAY BRUNSTING, and AMY RUTH BRUNSTING as trustees for the Brunsting Family Living Trust, that the object of that action is fraud and Breach of Fiduciary and that rights to the property listed below is the amongst the subjects of that suit.

HS-Lt 31 Blk 4 Winchester West Sec 1, 13630 Pinerock Ln. Houston, TX

Any persons in any manner dealing with the above-described real estate subsequent to the filing of this action will take subject to the rights of the Plaintiff as established in this action.

Dated: Saturday, February 11, 2012

Respectfully presented by:

Candace Louise Curtis, Plaintiff

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis

Plaintiff

v. Civil Action No. 4:12−cv−00592

Anita Kay Brunsting, et al.

Defendant

## ORDER FOR CONFERENCE AND DISCLOSURE OF INTERESTED PARTIES

1. Counsel shall appear for an initial pretrial and scheduling conference before

**JUDGE KENNETH HOYT**
**on May 29, 2012 at 09:30 AM**
**by telephone**

2. Counsel shall file with the clerk within fifteen days from receipt of this order a certificate listing all persons, associations of persons, firms, partnerships, corporations, affiliates, parent corporations, or other entities that are financially interested in the outcome of this litigation. If a group can be specified by a general description, individual listing is not necessary. Underline the name of each corporation whose securities are publicly traded . If new parties are added or if additional persons or entities that are financially interested in the outcome of the litigation are identified at any time during the pendency of this litigation, then each counsel shall promptly file an amended certificate with the clerk.

3. Fed. R. Civ. P. 4(m) requires defendant(s) to be served within 120 days after the filing of the complaint. The failure of plaintiff(s) to file proof of service within 120 days after the filing of the complaint may result in dismissal of this action by the court on its own initiative.

4. After the parties confer as required by Fed. R. Civ. P. 26(f), counsel shall prepare and file not less than 10 days before the conference a joint discovery/case management plan containing the information required on the attached form.

5. The court will enter a scheduling order and may rule on any pending motions at the conference.

6. Counsel who file or remove an action must serve a copy of this order with the summons and complaint or with the notice of removal.

7. Attendance by an attorney who has authority to bind the party is required at the conference.

8. Counsel shall discuss with their clients and each other whether alternative dispute resolution is appropriate and at the conference advise the court of the results of their discussions.

9. A person litigating pro se is bound by the requirements imposed upon counsel in this Order.

10. Failure to comply with this order may result in sanctions, including dismissal of the action and assessment of fees and costs.

11. **Counsel who file or remove any action is responsible for placing the conference call and insuring that all parties are on the line. The call may be placed to (713)250−5613.**

**Court Procedures:** Information on the court's practices and procedures and how to reach court personnel may be obtained at the Clerk's website at http://www.txs.uscourts.gov or from the intake desk of the Clerk's office.

Kenneth M. Hoyt
United States District Judge

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis

Plaintiff

v. Civil Action No. 4:12−cv−00592

Anita Kay Brunsting, et al.

Defendant

**JOINT DISCOVERY/CASE MANAGEMENT PLAN**
**UNDER RULE 26(f)**
**FEDERAL RULES OF CIVIL PROCEDURE**

Please restate the instruction before furnishing the information.

1. State where and when the meeting of the parties required by Rule 26(f) was held, and identify the counsel who attended for each party.

2. List the cases related to this one that are pending in any state or federal court with the case number and court.

3. Briefly describe what this case is about.

4. Specify the allegation of federal jurisdiction.

5. Name the parties who disagree and the reasons.

6. List anticipated additional parties that should be included, when they can be added, and by whom they are wanted.

7. List anticipated interventions.

8. Describe class−action issues.

9. State whether each party represents that it has made the initial disclosures required by Rule 26(a). If not, describe the arrangements that have been made to complete the disclosures.

10. Describe the proposed agreed discovery plan, including:

    A. Responses to all the matters raised in Rule 26(f).
    B. When and to whom the plaintiff anticipates it may send interrogatories.

C. When and to whom the defendant anticipates it may send interrogatories.
D. Of Whom and by when the plaintiff anticipates taking oral depositions.
E. Of Whom and by when the defendant anticipates taking oral depositions.
F. When the plaintiff (or the party with the burden of proof on an issue) will be able to designate experts and provide the reports required by Rule 26(a)(2)(B), and when the opposing party will be able to designate responsive experts and provide their reports.
G. List expert depositions the plaintiff (or the party with the burden of proof on an issue) anticipates taking and their anticipated completion date. See Rule 26(a)(2)(B) (expert report).
H. List expert depositions the opposing party anticipates taking and their anticipated completion date. See Rule26(a)(2)(B) (export report).

11. If the parties are not agreed on a part of the discovery plan, describe the separate view and proposals of each party.

12. Specify the discovery beyond initial disclosures that has been undertaken to date.

13. State the date the planned discovery can reasonably be completed.

14. Describe the possibilities for a prompt settlement or resolution of the case that were discussed in your Rule 26(f) meeting.

15. Describe what each party has done or agreed to do to bring about a prompt resolution.

16. From the attorneys' discussion with the client, state the alternative dispute resolution techniques that reasonably suitable.

17. Magistrate judges may now hear jury and non−jury trials. Indicate the parties' joint position on a trial before a magistrate judge.

18. State whether a jury demand has been made and if it was made on time.

19. Specify the number of hours it will take to present the evidence in this case.

20. List pending motions that could be ruled on at the initial pretrial and scheduling conference.

21. List other motions pending.

22. Indicate other matters peculiar to this case, including discovery, that deserve the special attention of the court at the conference.

23. Certify that all parties have filed Disclosure of Interested Parties as directed in the Order for Conference and Disclosure of Interested Parties, listing the date of filing for original and any amendments.

24. List the names, bar numbers, addresses, and telephone numbers of all counsel.

_____ _____

Counsel for Plaintiff(s) Date

_____ _____

Counsel for Defendant(s) Date

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. H-12-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER**

Before the Court is the ex parte application of the plaintiff, Candace Louise Curtis, for a temporary restraining order and injunction. The record shows that the defendants have not been served with process. Moreso, it appears that the Court lacks subject matter jurisdiction over the claim(s) asserted. Therefore, the application for a temporary restraining order and for injunction are denied.

It is so Ordered.

SIGNED at Houston, Texas this 1st day of March, 2012.

Kenneth M. Hoyt
United States District Judge



20-20566.443

# United States District Court
Southern District of Texas
Houston Division

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
MAR 05 2012
David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS,
Plaintiff
v
ANITA BRUNSTING et al.
Defendants

Civil Action No. 4:12-cv-00592

I, Rik Munson, below signed, under penalty of perjury pursuant to the laws of the United States do declare to be true as follows:

I am a competent fact witness over the age of 18 and not a party to the above titled action. My business address is 218 Landana St. American Canyon CA 94503

On Friday, March 02, 2012 I served a true copy of the **ORDER FOR CONFERENCE AND DISCLOSURE OF INTERESTED PARTIES issued by Judge Hoyt on February 28, 2012 and Judge Hoyt's Policies Cover Page along with notice of plaintiff's intent to file for ex-parte temporary restraining order** upon the following persons by placing true copies in an envelope and depositing in the US Mail on Thursday, March 1, 2012 at American Canyon California addressed as follows:

Certified #7010 0290 0002 8531 8880
Anita Brunsting 203 Bloomingdale Circle Victoria TX 77904

Certified #7010 0290 0002 8531 8835
Amy Brunsting 2582 Country Ledge New Braunfels TX 78132

Respectfully submitted Rik Munson
Rik Munson

United States Courts
Southern District of Texas
FILED

MAR 0 5 2012

David J. Bradley, Clerk of Court

Dear Mr Bradley

I am a pro se litigant and currently have an application into the CM/ESF system. As I understand it pro se litigants are not allowed to use the electronic filing system. I have an ex-parte request for an order for approval submitted to Judge Hoyt's Case Manager.

In the interim could you please cause the enclosed proof of service to be filed.

Respectfully

Rik Munson for Candace Louise Curtis



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| | § | CIVIL ACTION NO. H-12-CV-592 |
| | § | |
| vs. | § | |
| | § | |
| ANITA KAY BRUNSTING, and | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |

**EMERGENCY MOTION FOR REMOVAL OF LIS PENDENS**

TO THE HONORABLE COURT:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting (Trustees) file this Emergency Motion for Removal of Lis Pendens and respectfully allege:

> [Note: This Motion is brought subject to the Trustees contention that this Court lacks subject matter jurisdiction due to the fact that Texas Probate Code §115.001 (7) confers exclusive jurisdiction over matters related to questions "arising in the administration or distribution of a trust" to the State District Court, and by analogy this case should not be considered under the Probate Exception to Federal Court Jurisdiction, *Marshall v. Marshall,* 126 S.Ct. 1735, 1748 (2006). These issues will be raised by a separate Motion to Dismiss under FRCP 12(b)]

1. Trustees are the Co-Successor Trustees of the Brunsting Family Living Trust (the Trust), referenced and attached to Plaintiff's Complaint.

2. Part of the trust estate which Trustees are attempting to liquidate for distribution to the heirs is a residence located at 13639 Pinerock Lane, Houston, Texas 77079 (the Property). This was the home of their parents. A sale for the appraised fair market value has been put under contract and is set to close on March 9, 2012.

3. Trustees were served with the above lawsuit on or about March 1, 2012. Among the

documents served was a "Lis Pendens" dated February 11, 2012, which Trustees had not previously seen or about which they had been advised prior to the service of suit papers.

4. The Property is titled in the name of the Trust. Plaintiff has no ownership interest, and has, at best, an expectancy of the property or proceeds as one of the heirs. Plaintiff's lawsuit cites no ownership in the Property, but is exclusively a disjointed complaint regarding her displeasure at the adequacy of the accounting of Trust assets by the Trustees to her, as a beneficiary.

5. Trustees have a right and obligation to sell the Property at the best price pursuant to Article IX of the Trust, and have taken all necessary steps to maximize the benefit to the Trust estate.

6. Plaintiff has no purpose for utilizing a *lis pendens* other than to jeopardize a legitimate sale in an effort to leverage her position.

7. Trustees incorporate the affidavit of Amy Brunsting, and supporting exhibits filed herewith.

WHEREFORE, Trustees request an order of this court vacating and removing any incident of the lis pendens recorded by Plaintiff as it relates residence located at 13639 Pinerock Lane, Houston, Texas 77079, and for such other relief as may be appropriate.

**GREEN & MATHEWS, L.L.P.**

/s/

**BERNARD LILSE MATHEWS, III**
State Bar # 13187450
14550 Torrey Chase Boulevard, Suite 245
Houston, Texas 77014
Telephone: (281) 580-8100
Facsimile: (281) 580-8104

Attorneys for Anita Kay and Amy Ruth Brunsting

**Certificate of Service**

I certify that on March 6, 2012 I served the foregoing Candace Louise Curtis by electronic filing and service at her e-mail address: occurtis@sbcglobal.net.

/s/

Bernard Lilse Mathews, III

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| | § | CIVIL ACTION NO. H-12-CV-592 |
| | § | |
| vs. | § | |
| | § | |
| ANITA KAY BRUNSTING, and | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |

**AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS**

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at $410,000. We listed the property for $469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered $469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately $270,000.

8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

Amy Ruth Brunsting
AMY RUTH BRUNSTING

Sworn to and signed before me by Amy Ruth Brunsting, on this 6th day of March, 2012.

Notary Public in and for the State of Texas

TERESA SIMMONS
MY COMMISSION EXPIRES
September 7, 2014

Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

# INVOICE

**FROM:**
Chris Catechis
Catechis, Campbell & Associates
13505-2 Westheimer
Houston, TX 77077

**Telephone Number:** 281-556-9182 **Fax Number:** 281-556-1805

**TO:**
Individual
,

**Telephone Number:** **Fax Number:**
**Alternate Number:** **E-Mail:**

| INVOICE NUMBER |
|---|
| 097430HJ |
| **DATE** |
| 01/10/2012 |

**REFERENCE**

**Internal Order #:** 097430HJ
**Lender Case #:**
**Client File #:**
**Main File # on form:** 097430HJ
**Other File # on form:**
**Federal Tax ID:**
**Employer ID:**

## DESCRIPTION

**Lender:** Brunsting Family Living Trust **Client:** Individual
**Purchaser/Borrower:** Brunsting Family Living Trust
**Property Address:** 13630 Pinerock Ln
**City:** Houston
**County:** Harris **State:** TX **Zip:** 77079
**Legal Description:** Lot 31, Block 4, Wilchester West Section 1

| FEES | AMOUNT |
|---|---|
| Summary Appraisal Fee | 450.00 |
| **SUBTOTAL** | 450.00 |

| PAYMENTS | | | AMOUNT |
|---|---|---|---|
| **Check #:** | **Date:** 01/10/2012 | **Description:** Paid in Full | 450.00 |
| **Check #:** | **Date:** | **Description:** | |
| **Check #:** | **Date:** | **Description:** | |
| | | **SUBTOTAL** | 450.00 |
| | | **TOTAL DUE** | $ 0 |

Please Return This Portion With Your Payment

**FROM:**
Individual
,

**Telephone Number:** **Fax Number:**
**Alternate Number:** **E-Mail:**

**TO:**
Chris Catechis
Catechis, Campbell & Associates
13505-2 Westheimer
Houston, TX 77077

**AMOUNT DUE:** $ _____
**AMOUNT ENCLOSED:** $ _____

| INVOICE NUMBER |
|---|
| 097430HJ |
| **DATE** |
| 01/10/2012 |

**REFERENCE**

**Internal Order #:** 097430HJ
**Lender Case #:**
**Client File #:**
**Main File # on form:** 097430HJ
**Other File # on form:**
**Federal Tax ID:**
**Employer ID:**

**Summary Appraisal Report**

# Uniform Residential Appraisal Report

File # 097430HJ

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

## SUBJECT

Property Address 13630 Pinerock Ln | City Houston | State TX | Zip Code 77079

Borrower Brunsting Family Living Trust | Owner of Public Record Brunsting Family Living Trust | County Harris

Legal Description Lot 31, Block 4, Wilchester West Section 1

Assessor's Parcel # 098-560-000-0031 | Tax Year 2011 | R.E. Taxes $ 7,212.44

Neighborhood Name Wilchester West/Nottingham Area | Map Reference 489-F | Census Tract 4502.00

Occupant ☐ Owner ☐ Tenant ☒ Vacant | Special Assessments $ 0.00 | ☒ PUD | HOA $ 680.00 ☒ per year ☐ per month

Property Rights Appraised ☒ Fee Simple ☐ Leasehold ☐ Other (describe)

Assignment Type ☐ Purchase Transaction ☐ Refinance Transaction ☒ Other (describe) Fair Market Value in Anticipation of Marketing for Sale

Lender/Client Brunsting Family Living Trust | Address 13630 Pinerock Ln Houston, Texas 77079

Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☐ Yes ☒ No

Report data source(s) used, offering price(s), and date(s). The subject has not been listed for sale in MLS for the past twelve months.

## CONTRACT

I ☐ did ☒ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed. The subject property was not under contract at the time of this appraisal.

Contract Price $ N/A | Date of Contract N/A | Is the property seller the owner of public record? ☒ Yes ☐ No | Data Source(s) REIData, Inc.

Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☒ No

If Yes, report the total dollar amount and describe the items to be paid. N/A The subject property was not under contract for sale at the time of this appraisal.

## NEIGHBORHOOD

**Note: Race and the racial composition of the neighborhood are not appraisal factors.**

| Neighborhood Characteristics | | | | One-Unit Housing Trends | | | | One-Unit Housing | | | Present Land Use % | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Location | ☐ Urban | ☒ Suburban | ☐ Rural | Property Values | ☐ Increasing | ☒ Stable | ☐ Declining | PRICE | AGE | | One-Unit | 80 % |
| Built-Up | ☒ Over 75% | ☐ 25-75% | ☐ Under 25% | Demand/Supply | ☐ Shortage | ☒ In Balance | ☐ Over Supply | $ (000) | (yrs) | | 2-4 Unit | 1 % |
| Growth | ☐ Rapid | ☒ Stable | ☐ Slow | Marketing Time | ☐ Under 3 mths | ☒ 3-6 mths | ☐ Over 6 mths | 200 | Low | New | Multi-Family | 5 % |
| Neighborhood Boundaries | The subjects marketing area is bounded by I-10 to the north, Buffalo Bayou to | | | | | | | 1.5M+ | High | 55 | Commercial | 14 % |
| the south, Gessner Road to the east, and Eldridge Road to the west. | | | | | | | | 475 | Pred. | 40 | Other | % |

Neighborhood Description The subject is located Wilchester West a subdivision which is approximately 13-14 miles west of downtown Houston. Schools, shopping, places of worship, employment and other consumer needs are in close proximity to the area. The subject is located in the Spring Branch ISD. Access to downtown Houston is I-10 or Memorial Drive.

Market Conditions (including support for the above conclusions) Marketing time is predominantly under 180 days. Mortgage financing is currently available at competitive rates and terms for homes in the subject neighborhood. Significant seller concessions that would result in increased sale prices have not been noted in this area. A reasonable exposure time for the subject property is 90 days.

## SITE

Dimensions 75.02' x 115.03' x 75.03' x 115.72' | Area 8,625 sf per HCAD | Shape Rectangular | View Average

Specific Zoning Classification Deed Restricted - SFR | Zoning Description Deed Restricted - SFR

Zoning Compliance ☐ Legal ☐ Legal Nonconforming (Grandfathered Use) ☒ No Zoning ☐ Illegal (describe) No Zoning - Deed Restrictions

Is the highest and best use of subject property as improved (or as proposed per plans and specifications) the present use? ☒ Yes ☐ No If No, describe The subject property is deed restricted single family residential and all of the surrounding properties are single family residential therefore, H&B is SFR.

| Utilities | Public | Other (describe) | Public | Other (describe) | Off-site Improvements - Type | Public | Private |
|---|---|---|---|---|---|---|---|
| Electricity | ☒ | ☐ | Water | ☒ | ☐ | Street Concrete | ☒ | ☐ |
| Gas | ☒ | ☐ | Sanitary Sewer | ☒ | ☐ | Alley None | ☐ | ☐ |

FEMA Special Flood Hazard Area ☐ Yes ☒ No | FEMA Flood Zone X | FEMA Map # 48201C0640L | FEMA Map Date 06/18/2007

Are the utilities and off-site improvements typical for the market area? ☒ Yes ☐ No If No, describe

Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☒ No If Yes, describe

The subject site is a typical interior lot. No adverse easement, encroachments were noted. However, no survey was provided at the time of the appraisal. The subject's site dimensions were taken from platt maps provided by the Harris County Appraisal District. See Site Comments in attached addendum

## IMPROVEMENTS

| General Description | Foundation | Exterior Description materials/condition | Interior materials/condition |
|---|---|---|---|
| Units ☒ One ☐ One with Accessory Unit | ☒ Concrete Slab ☐ Crawl Space | Foundation Walls Concrete Slab/Aver. | Floors Cpt,SV,HW/Avg |
| # of Stories 1.5 | ☐ Full Basement ☐ Partial Basement | Exterior Walls Bv,Wood/Average | Walls Dw,Wp,Wdpl/Avg |
| Type ☒ Det. ☐ Att. ☐ S-Det./End Unit | Basement Area N/A sq.ft. | Roof Surface Composition/Avg | Trim/Finish Wood/Avg |
| ☒ Existing ☐ Proposed ☐ Under Const. | Basement Finish N/A % | Gutters & Downspouts Aluminium/Avg | Bath Floor Tile/Avg |
| Design (Style) Trad/1.5st | ☐ Outside Entry/Exit ☐ Sump Pump | Window Type S/H Alum/Avg | Bath Wainscot Tile/Avg |
| Year Built 1966 | Evidence of ☐ Infestation NoneNoted | Storm Sash/Insulated None | Car Storage ☐ None |
| Effective Age (Yrs) 30 yrs | ☐ Dampness ☒ Settlement | Screens Yes/Average | ☒ Driveway # of Cars 2 |
| Attic ☐ None | Heating ☒ FWA ☐ HWBB ☐ Radiant | Amenities ☐ Woodstove(s) # 0 | Driveway Surface Concrete |
| ☐ Drop Stair ☐ Stairs | ☐ Other Fuel Gas | ☒ Fireplace(s) # 1 ☒ Fence Wood | ☒ Garage # of Cars 2 |
| ☐ Floor ☒ Scuttle | Cooling ☒ Central Air Conditioning | ☒ Patio/Deck C/C ☒ Porch Covered | ☐ Carport # of Cars |
| ☐ Finished ☐ Heated | ☐ Individual ☐ Other | ☐ Pool None ☐ Other | ☐ Att. ☒ Det. ☐ Built-in |

Appliances ☐ Refrigerator ☒ Range/Oven ☒ Dishwasher ☒ Disposal ☐ Microwave ☐ Washer/Dryer ☐ Other (describe)

Finished area **above** grade contains: 10 Rooms 5 Bedrooms 3 Bath(s) 3,049 Square Feet of Gross Living Area Above Grade

Additional features (special energy efficient items, etc.). Covered front porch, open rear patio, two car detached garage, wood fence; See Description of Improvements in attached addendum

Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.). Physical depreciation was estimated based on the modified age/life method. No functional or external obsolescence was noted. See Description of Improvements and Cost Approach Comments in attached addendum

Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☒ No If Yes, describe

No warranty or guarantee is made as to the condition of the slab, the roof, the electrical systems, the air conditioning and heating systems, the appliances, the presence of pest infestation, the presence of dampness or the presence of settlement. If the client has any questions regarding these items, it is the client's responsibility to order the appropriate inspections. The appraiser does ** SEE ADDITIONAL COMMENTS SECTION.

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☒ Yes ☐ No If No, describe

The improvements appear to conform to the neighborhood, in terms of age, type, design, and materials used for their construction.



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# Uniform Residential Appraisal Report

File # 097430HJ

There are comparable properties currently offered for sale in the subject neighborhood ranging in price from $ to $ .

There are comparable sales in the subject neighborhood within the past twelve months ranging in sale price from $ to $ .

SALES COMPARISON APPROACH

| FEATURE | SUBJECT | COMPARABLE SALE # 1 | | COMPARABLE SALE # 2 | | COMPARABLE SALE # 3 | |
|---|---|---|---|---|---|---|---|
| Address | 13630 Pinerock Ln Houston, TX 77079 | 13403 Barryknoll Ln Houston, TX 77079 | | 13750 Kingsride Ln Houston, TX 77079 | | 13611 Queensbury ln Houston, TX 77079 | |
| Proximity to Subject | | 0.30 miles E | | 0.23 miles NW | | 0.07 miles E | |
| Sale Price | $ N/A | | $ 478,000 | | $ 371,050 | | $ 455,000 |
| Sale Price/Gross Liv. Area | $ sq.ft. | $ 163.47 sq.ft. | | $ 139.97 sq.ft. | | $ 182.95 sq.ft. | |
| Data Source(s) | | MLS/Deed/TaxRolls | | MLS/Deed/TaxRolls | | MLS/Deed/TaxRolls | |
| Verification Source(s) | | MLS#64926675/713-461-6800 | | MLS#43214775/713-528-1800 | | MLS#10347397/713-482-2222 | |
| VALUE ADJUSTMENTS | DESCRIPTION | DESCRIPTION | +(-) $ Adjustment | DESCRIPTION | +(-) $ Adjustment | DESCRIPTION | +(-) $ Adjustment |
| Sales or Financing Concessions | | SC-$7200 Conv 80% | -7,200 | SC-0 Conv 75% | | SC-$4000 conv 78% | -4,000 |
| Date of Sale/Time | | 4/11-5/11 | | 4/11-5/11 | | 7/11-10/11 | |
| Location | Average | Average | | Average | | Average | |
| Leasehold/Fee Simple | Fee Simple | Fee Simple | | Fee Simple | | Fee Simple | |
| Site | 8625 sf | 8927 sf | | 9463 sf | | 8775 sf | |
| View | Average | Average | | Average | | Average | |
| Design (Style) | Trad/1.5st | Trad/2st | | Trad/2st | | Trad/1st | |
| Quality of Construction | Average | Average | | Average | | Average | |
| Actual Age | 45 yrs | 45 yrs | | 46 yrs | | 45 yrs | |
| Condition | Average | Good | -60,000 | Average | | Good | -60,000 |
| Above Grade Room Count (Total / Bdrms. / Baths) | 10 / 5 / 3 | 10 / 5 / 3.1 | -2,000 | 10 / 5 / 3 | | 8 / 4 / 2 | +4,000 |
| Gross Living Area | 3,049 sq.ft. | 2,924 sq.ft. | +6,300 | 2,651 sq.ft. | +19,900 | 2,487 sq.ft. | +28,100 |
| Basement & Finished Rooms Below Grade | None | None | | None | | None | |
| Functional Utility | Average | Average | | Average | | Average | |
| Heating/Cooling | Ca/Ch | Ca/Ch | | Ca/Ch | | Ca/Ch | |
| Energy Efficient Items | Typical | Typical | | Typical | | Typical | |
| Garage/Carport | 2 Car Garage | 2 Car Garage | | 2 Car Garage | | 2 Car Garage | |
| Porch/Patio/Deck | Porch,Patio | Porch,Patio | | Porch,Patio | | Porch,Patio | |
| Fireplaces | Fireplace | Fireplace | | Fireplace | | Fireplace | |
| Swimming Pool | No Pool | Pool | -20,000 | No Pool | | No Pool | |
| Proximity to Fault Line | Yes | Yes | | None | -10,000 | Yes | |
| Net Adjustment (Total) | | ☐ + ☒ - | $ -82,900 | ☒ + ☐ - | $ 9,900 | ☐ + ☒ - | $ -30,900 |
| Adjusted Sale Price of Comparables | | Net Adj. 17.3 % Gross Adj. 20.0 % | $ 395,100 | Net Adj. 2.7 % Gross Adj. 8.1 % | $ 380,950 | Net Adj. 6.8 % Gross Adj. 21.3 % | $ 424,100 |

I ☒ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research ☐ did ☒ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data Source(s) Houston MLS and Harris County Appraisal District.

My research ☐ did ☒ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data Source(s) Houston MLS and Harris County Appraisal District.

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

| ITEM | SUBJECT | COMPARABLE SALE #1 | COMPARABLE SALE #2 | COMPARABLE SALE #3 |
|---|---|---|---|---|
| Date of Prior Sale/Transfer | No sales history in | No sales history in | No sales history in | No sales history in |
| Price of Prior Sale/Transfer | in past 36 months | in past 36 months | in past 12 months | in past 36 months |
| Data Source(s) | Deed Records/MLS | Deed Records/MLS | Deed Records/MLS | Deed Records/MLS |
| Effective Date of Data Source(s) | 1/6/2012 | 1/6/2012 | 1/6/2012 | 1/6/2012 |

Analysis of prior sale or transfer history of the subject property and comparable sales No sales or transfer history were found for the subject property in the past three years. No sales or transfer history were found for the above comparable sales utilized in the twelve months prior to their dates of sale.

Summary of Sales Comparison Approach See Sales Comparison Analysis in attached addendum

Indicated Value by Sales Comparison Approach $ 410,000

RECONCILIATION

**Indicated Value by: Sales Comparison Approach $** 410,000 **Cost Approach (if developed) $** 439,242 **Income Approach (if developed) $** N/A

Most emphasis was placed on the Market Data Approach. Support is provided by the Cost Approach. The Income Approach is not considered relevant as residential properties in this area are not typically purchased for investment purposes.

This appraisal is made ☒ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair:

**Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is $** 410,000 **, as of** December 27, 2011 **, which is the date of inspection and the effective date of this appraisal.**



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# Uniform Residential Appraisal Report

File # 097430HJ

## ADDITIONAL COMMENTS

**COMMENTS ON DEED RESTRICTIONS/ZONING CONT':**

The subject property is protected by either deed restrictions or zoning as stated in the site section of this appraisal report. The subject represents its highest and best use. We did not inspect nor do we have ready accessibility to the deed restrictions/covenants of the subject. Deed restrictions do not adversely affect the subject property. If the processor of this report has any questions regarding the aforementioned, contact this office for clarification.

**PHYSICAL DEFICIENCIES COMMENTS CONT':**

... the appropriate inspections. The appraiser does not have the skill or the expertise needed to make such inspections. The appraiser assumes no responsibility for these items.

**DEFINITION OF INSPECTION:**

The term "inspection", as used in this report, is not the sale level of inspection that is required for a "Professional Home Inspection". The appraiser does not fully inspect the electrical system, plumbing system, mechanical systems, foundation system, floor structure or subfloor. The appraiser is not an expert in construction materials and the purpose of the appraisal is to make an economic evaluation of the subject property. If the client needs a more detailed inspection of the property, a home inspection, by a Professional Home Inspector, is recommended.

**APPRAISER CERTIFICATION:**

I certify that the use of this report is subject to the requirements of The Appraisal Institute relating to review by its duly authorized representatives. As of the date of this report, the designated appraiser has completed the requirements of the continuing education program of The Appraisal Institute.

**INTENDED USER / INTENDED USE:**

The intended user of this appraisal report is the Lender/Client. The Intended Use is to evaluate the property that is the subject of this appraisal for the purpose of marketing it for sale, subject to the stated Scope of Work, purpose of the appraisal, reporting requirements of this appraisal report form, and Definition of Market Value. No additional Intended Users or Intended uses are identified by the appraiser.

**SEE ATTACHED ADDENDUM**

## COST APPROACH

**COST APPROACH TO VALUE (not required by Fannie Mae)**

Provide adequate information for the lender/client to replicate the below cost figures and calculations.

Support for the opinion of site value (summary of comparable land sales or other methods for estimating site value) The estimated site value is based on recent sales activity of comparably price properties or in cases where there is insufficient data, the site value can be based upon the allocation, extraction, or land residual techniques.

| | | | |
|---|---|---|---|
| ESTIMATED ☐ REPRODUCTION OR ☒ REPLACEMENT COST NEW | OPINION OF SITE VALUE | | =$ 300,000 |
| Source of cost data Builders,reliable sources | DWELLING | 3,049 Sq.Ft. @ $ 85.00 | =$ 259,165 |
| Quality rating from cost service N/A Effective date of cost data N/A | | N/A Sq.Ft. @ $ | =$ |
| Comments on Cost Approach (gross living area calculations, depreciation, etc.) | | | =$ |
| The replacement cost new was based on information obtained from the | Garage/Carport | 466 Sq.Ft. @ $ 20.00 | =$ 9,320 |
| Marshall and Swift Residential Cost Estimator and supplemented by the | Total Estimate of Cost-New | | =$ 268,485 |
| appraisers' knowledge of the local market. See Cost Approach | Less Depreciation | Physical 134,243 / Functional / External | =$( 134,243) |
| Comments in attached addendum | Depreciated Cost of Improvements | | =$ 134,242 |
| | "As-is" Value of Site Improvements | | =$ 5,000 |
| Estimated Remaining Economic Life (HUD and VA only) 30 Years | **INDICATED VALUE BY COST APPROACH** | | **=$** 439,242 |

## INCOME

**INCOME APPROACH TO VALUE (not required by Fannie Mae)**

Estimated Monthly Market Rent $ N/A X Gross Rent Multiplier N/A = $ N/A Indicated Value by Income Approach

Summary of Income Approach (including support for market rent and GRM) The Income Approach is not considered to be relevant, as properties of this type are not typically income producing.

## PUD INFORMATION

**PROJECT INFORMATION FOR PUDs (if applicable)**

Is the developer/builder in control of the Homeowners' Association (HOA)? ☐ Yes ☒ No Unit type(s) ☒ Detached ☐ Attached

Provide the following information for PUDs ONLY if the developer/builder is in control of the HOA and the subject property is an attached dwelling unit.

Legal Name of Project

Total number of phases Total number of units Total number of units sold

Total number of units rented Total number of units for sale Data source(s)

Was the project created by the conversion of existing building(s) into a PUD? ☐ Yes ☐ No If Yes, date of conversion.

Does the project contain any multi-dwelling units? ☐ Yes ☐ No Data Source

Are the units, common elements, and recreation facilities complete? ☐ Yes ☐ No If No, describe the status of completion.

Are the common elements leased to or by the Homeowners' Association? ☐ Yes ☐ No If Yes, describe the rental terms and options.

Describe common elements and recreational facilities. N/A - Not a PUD



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# Uniform Residential Appraisal Report

File # 097430HJ

This report form is designed to report an appraisal of a one-unit property or a one-unit property with an accessory unit; including a unit in a planned unit development (PUD). This report form is not designed to report an appraisal of a manufactured home or a unit in a condominium or cooperative project.

This appraisal report is subject to the following scope of work, intended use, intended user, definition of market value, statement of assumptions and limiting conditions, and certifications. Modifications, additions, or deletions to the intended use, intended user, definition of market value, or assumptions and limiting conditions are not permitted. The appraiser may expand the scope of work to include any additional research or analysis necessary based on the complexity of this appraisal assignment. Modifications or deletions to the certifications are also not permitted. However, additional certifications that do not constitute material alterations to this appraisal report, such as those required by law or those related to the appraiser's continuing education or membership in an appraisal organization, are permitted.

**SCOPE OF WORK:** The scope of work for this appraisal is defined by the complexity of this appraisal assignment and the reporting requirements of this appraisal report form, including the following definition of market value, statement of assumptions and limiting conditions, and certifications. The appraiser must, at a minimum: (1) perform a complete visual inspection of the interior and exterior areas of the subject property, (2) inspect the neighborhood, (3) inspect each of the comparable sales from at least the street, (4) research, verify, and analyze data from reliable public and/or private sources, and (5) report his or her analysis, opinions, and conclusions in this appraisal report.

**INTENDED USE:** The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

**INTENDED USER:** The intended user of this appraisal report is the lender/client.

**DEFINITION OF MARKET VALUE:** The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions* granted by anyone associated with the sale.

*Adjustments to the comparables must be made for special or creative financing or sales concessions. No adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgment.

**STATEMENT OF ASSUMPTIONS AND LIMITING CONDITIONS:** The appraiser's certification in this report is subject to the following assumptions and limiting conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it, except for information that he or she became aware of during the research involved in performing this appraisal. The appraiser assumes that the title is good and marketable and will not render any opinions about the title.

2. The appraiser has provided a sketch in this appraisal report to show the approximate dimensions of the improvements. The sketch is included only to assist the reader in visualizing the property and understanding the appraiser's determination of its size.

3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in this appraisal report whether any portion of the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand, or as otherwise required by law.

5. The appraiser has noted in this appraisal report any adverse conditions (such as needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the research involved in performing the appraisal. Unless otherwise stated in this appraisal report, the appraiser has no knowledge of any hidden or unapparent physical deficiencies or adverse conditions of the property (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) that would make the property less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, this appraisal report must not be considered as an environmental assessment of the property.

6. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that the completion, repairs, or alterations of the subject property will be performed in a professional manner.

# Uniform Residential Appraisal Report

File # 097430HJ

**APPRAISER'S CERTIFICATION:** The Appraiser certifies and agrees that:

1. I have, at a minimum, developed and reported this appraisal in accordance with the scope of work requirements stated in this appraisal report.

2. I performed a complete visual inspection of the interior and exterior areas of the subject property. I reported the condition of the improvements in factual, specific terms. I identified and reported the physical deficiencies that could affect the livability, soundness, or structural integrity of the property.

3. I performed this appraisal in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

4. I developed my opinion of the market value of the real property that is the subject of this report based on the sales comparison approach to value. I have adequate comparable market data to develop a reliable sales comparison approach for this appraisal assignment. I further certify that I considered the cost and income approaches to value but did not develop them, unless otherwise indicated in this report.

5. I researched, verified, analyzed, and reported on any current agreement for sale for the subject property, any offering for sale of the subject property in the twelve months prior to the effective date of this appraisal, and the prior sales of the subject property for a minimum of three years prior to the effective date of this appraisal, unless otherwise indicated in this report.

6. I researched, verified, analyzed, and reported on the prior sales of the comparable sales for a minimum of one year prior to the date of sale of the comparable sale, unless otherwise indicated in this report.

7. I selected and used comparable sales that are locationally, physically, and functionally the most similar to the subject property.

8. I have not used comparable sales that were the result of combining a land sale with the contract purchase price of a home that has been built or will be built on the land.

9. I have reported adjustments to the comparable sales that reflect the market's reaction to the differences between the subject property and the comparable sales.

10. I verified, from a disinterested source, all information in this report that was provided by parties who have a financial interest in the sale or financing of the subject property.

11. I have knowledge and experience in appraising this type of property in this market area.

12. I am aware of, and have access to, the necessary and appropriate public and private data sources, such as multiple listing services, tax assessment records, public land records and other such data sources for the area in which the property is located.

13. I obtained the information, estimates, and opinions furnished by other parties and expressed in this appraisal report from reliable sources that I believe to be true and correct.

14. I have taken into consideration the factors that have an impact on value with respect to the subject neighborhood, subject property, and the proximity of the subject property to adverse influences in the development of my opinion of market value. I have noted in this appraisal report any adverse conditions (such as, but not limited to, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, adverse environmental conditions, etc.) observed during the inspection of the subject property or that I became aware of during the research involved in performing this appraisal. I have considered these adverse conditions in my analysis of the property value, and have reported on the effect of the conditions on the value and marketability of the subject property.

15. I have not knowingly withheld any significant information from this appraisal report and, to the best of my knowledge, all statements and information in this appraisal report are true and correct.

16. I stated in this appraisal report my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the assumptions and limiting conditions in this appraisal report.

17. I have no present or prospective interest in the property that is the subject of this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or opinion of market value in this appraisal report on the race, color, religion, sex, age, marital status, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property or on any other basis prohibited by law.

18. My employment and/or compensation for performing this appraisal or any future or anticipated appraisals was not conditioned on any agreement or understanding, written or otherwise, that I would report (or present analysis supporting) a predetermined specific value, a predetermined minimum value, a range or direction in value, a value that favors the cause of any party, or the attainment of a specific result or occurrence of a specific subsequent event (such as approval of a pending mortgage loan application).

19. I personally prepared all conclusions and opinions about the real estate that were set forth in this appraisal report. If I relied on significant real property appraisal assistance from any individual or individuals in the performance of this appraisal or the preparation of this appraisal report, I have named such individual(s) and disclosed the specific tasks performed in this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in this appraisal report; therefore, any change made to this appraisal is unauthorized and I will take no responsibility for it.

20. I identified the lender/client in this appraisal report who is the individual, organization, or agent for the organization that ordered and will receive this appraisal report.

# Uniform Residential Appraisal Report

File # 097430HJ

21. The lender/client may disclose or distribute this appraisal report to: the borrower; another lender at the request of the borrower; the mortgagee or its successors and assigns; mortgage insurers; government sponsored enterprises; other secondary market participants; data collection or reporting services; professional appraisal organizations; any department, agency, or instrumentality of the United States; and any state, the District of Columbia, or other jurisdictions; without having to obtain the appraiser's or supervisory appraiser's (if applicable) consent. Such consent must be obtained before this appraisal report may be disclosed or distributed to any other party (including, but not limited to, the public through advertising, public relations, news, sales, or other media).

22. I am aware that any disclosure or distribution of this appraisal report by me or the lender/client may be subject to certain laws and regulations. Further, I am also subject to the provisions of the Uniform Standards of Professional Appraisal Practice that pertain to disclosure or distribution by me.

23. The borrower, another lender at the request of the borrower, the mortgagee or its successors and assigns, mortgage insurers, government sponsored enterprises, and other secondary market participants may rely on this appraisal report as part of any mortgage finance transaction that involves any one or more of these parties.

24. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

25. Any intentional or negligent misrepresentation(s) contained in this appraisal report may result in civil liability and/or criminal penalties including, but not limited to, fine or imprisonment or both under the provisions of Title 18, United States Code, Section 1001, et seq., or similar state laws.

**SUPERVISORY APPRAISER'S CERTIFICATION:** The Supervisory Appraiser certifies and agrees that:

1. I directly supervised the appraiser for this appraisal assignment, have read the appraisal report, and agree with the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

2. I accept full responsibility for the contents of this appraisal report including, but not limited to, the appraiser's analysis, opinions, statements, conclusions, and the appraiser's certification.

3. The appraiser identified in this appraisal report is either a sub-contractor or an employee of the supervisory appraiser (or the appraisal firm), is qualified to perform this appraisal, and is acceptable to perform this appraisal under the applicable state law.

4. This appraisal report complies with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place at the time this appraisal report was prepared.

5. If this appraisal report was transmitted as an "electronic record" containing my "electronic signature," as those terms are defined in applicable federal and/or state laws (excluding audio and video recordings), or a facsimile transmission of this appraisal report containing a copy or representation of my signature, the appraisal report shall be as effective, enforceable and valid as if a paper version of this appraisal report were delivered containing my original hand written signature.

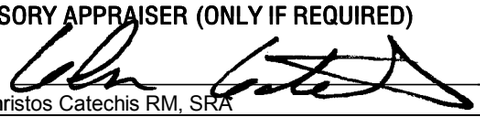
**APPRAISER**

Signature 
Name Herbert Wayne Jamison
Company Name Catechis, Campbell & Associates
Company Address 13505-2 Westheimer, Houston, TX 77077

Telephone Number (281) 556-9182
Email Address appraise@cca-appraise.com
Date of Signature and Report January 10, 2012
Effective Date of Appraisal December 27, 2011
State Certification # 1323509-G
or State License #
or Other (describe) State #
State TX
Expiration Date of Certification or License 08/31/2012

ADDRESS OF PROPERTY APPRAISED
13630 Pinerock Ln
Houston, TX 77079
APPRAISED VALUE OF SUBJECT PROPERTY $ 410,000
LENDER/CLIENT
Name
Company Name Brunsting Family Living Trust
Company Address 13630 Pinerock Ln Houston, Texas 77079
Email Address

**SUPERVISORY APPRAISER (ONLY IF REQUIRED)**

Signature 
Name Christos Catechis RM, SRA
Company Name Catechis, Campbell & Associates
Company Address 13505-2 Westheimer, Houston, TX 77077

Telephone Number (281) 556-9182
Email Address appraise@cca-appraise.com
Date of Signature January 10, 2012
State Certification # 1320570-R
or State License #
State TX
Expiration Date of Certification or License 04/30/2013

SUBJECT PROPERTY

☒ Did not inspect subject property
☐ Did inspect exterior of subject property from street
Date of Inspection
☐ Did inspect interior and exterior of subject property
Date of Inspection

COMPARABLE SALES

☒ Did not inspect exterior of comparable sales from street
☐ Did inspect exterior of comparable sales from street
Date of Inspection

# Uniform Residential Appraisal Report

File # 097430HJ

## SALES COMPARISON APPROACH

| FEATURE | SUBJECT | COMPARABLE SALE # 4 | | COMPARABLE SALE # 5 | | COMPARABLE SALE # 6 | |
|---|---|---|---|---|---|---|---|
| Address | 13630 Pinerock Ln Houston, TX 77079 | 13611 Taylorcrest Rd Houston, TX 77079 | | 707 Patchester Dr Houston, TX 77079 | | 13518 Queensbury Ln Houston, TX 77079 | |
| Proximity to Subject | | 0.21 miles SE | | 0.20 miles W | | 0.17 miles NE | |
| Sale Price | $ N/A | | $ 451,500 | | $ 495,000 | | $ 468,025 |
| Sale Price/Gross Liv. Area | $ sq.ft. | $ 171.02 sq.ft. | | $ 184.70 sq.ft. | | $ 197.90 sq.ft. | |
| Data Source(s) | | MLS/Deed/TaxRolls | | MLS/Deed/TaxRolls | | MLS/Deed/TaxRolls | |
| Verification Source(s) | | MLS#64639045/713-784-0888 | | MLS#51898424/281-582-3910 | | MLS#16789648/713-520-1981 | |
| VALUE ADJUSTMENTS | DESCRIPTION | DESCRIPTION | +(-) $ Adjustment | DESCRIPTION | +(-) $ Adjustment | DESCRIPTION | +(-) $ Adjustment |
| Sales or Financing Concessions | | SC-$5000 Conv 85% | -5,000 | SC-$4000 Conv 62% | -4,000 | SC-$4025 Conv 95% | -4,025 |
| Date of Sale/Time | | 8/11-10/11 | | 2/11-3/11 | | 10/10-12/1/10 | |
| Location | Average | Average | | Average | | Average | |
| Leasehold/Fee Simple | Fee Simple | Fee Simple | | Fee Simple | | Fee Simple | |
| Site | 8625 sf | 9450 sf | | 8400 sf | | 9266 sf | |
| View | Average | Ext Obso | +10,000 | Average | | Average | |
| Design (Style) | Trad/1.5st | Trad/1.5st | | Trad/2st | | Trad/1st | |
| Quality of Construction | Average | Average | | Average | | Average | |
| Actual Age | 45 yrs | 44 yrs | | 45 yrs | | 46 yrs | |
| Condition | Average | Good | -60,000 | Good | -60,000 | Good | -60,000 |
| Above Grade Room Count (Total / Bdrms. / Baths) | 10 / 5 / 3 | 10 / 5 / 2.1 | +2,000 | 9 / 4 / 2.1 | +2,000 | 8 / 4 / 2.1 | +2,000 |
| Above Grade Room Count | | | | | +1,000 | | +1,000 |
| Gross Living Area | 3,049 sq.ft. | 2,640 sq.ft. | +20,500 | 2,680 sq.ft. | +18,500 | 2,365 sq.ft. | +34,200 |
| Basement & Finished Rooms Below Grade | None | None | | None | | None | |
| Functional Utility | Average | Average | | Average | | Average | |
| Heating/Cooling | Ca/Ch | Ca/Ch | | Ca/Ch | | Ca/Ch | |
| Energy Efficient Items | Typical | Typical | | Typical | | Typical | |
| Garage/Carport | 2 Car Garage | 2 Car Garage | | 2 Car Garage | | 2 Car Garage | |
| Porch/Patio/Deck | Porch,Patio | Porch,Patio | | Porch,Patio | | Porch,Patio | |
| Fireplaces | Fireplace | Fireplace | | Fireplace | | Fireplace | |
| Swimming Pool | No Pool | No Pool | | No Pool | | No Pool | |
| Proximity to Fault Line | Yes | None | -10,000 | None | -10,000 | Yes | |
| Net Adjustment (Total) | | ☐ + ☒ - | $ -42,500 | ☐ + ☒ - | $ -52,500 | ☐ + ☒ - | $ -26,825 |
| Adjusted Sale Price of Comparables | | Net Adj. 9.4 % Gross Adj. 23.8 % | $ 409,000 | Net Adj. 10.6 % Gross Adj. 19.3 % | $ 442,500 | Net Adj. 5.7 % Gross Adj. 21.6 % | $ 441,200 |

## SALE HISTORY

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

| ITEM | SUBJECT | COMPARABLE SALE # 4 | COMPARABLE SALE # 5 | COMPARABLE SALE # 6 |
|---|---|---|---|---|
| Date of Prior Sale/Transfer | No sales history in | No sales history in | No sales history in | No sales history in |
| Price of Prior Sale/Transfer | in past 36 months | in past 12 months | in past 12 months | in past 36 months |
| Data Source(s) | Deed Records/MLS | Deed Records/MLS | Deed Records/MLS | Deed Records/MLS |
| Effective Date of Data Source(s) | 1/6/2012 | 1/6/2012 | 1/6/2012 | 1/6/2012 |

Analysis of prior sale or transfer history of the subject property and comparable sales See page two for subject information. No sales or transfer history were found for comparable 4 in the twelve months prior to its date of sale. No sales or transfer history were found for comparable 5 in the past twelve months.

## ANALYSIS / COMMENTS

Analysis/Comments See page two for comparable sale 4 comments. Comparable 5 is a current listing in the adjacent competing development of Wilchester and was utilized due to the lack of more current comparable listings available at this time in Wilchester West. A downward adjustment was made for the median sale price as a percent of the list price based on the most current time frame on the MC Form. A downward adjustment was warranted for quality of construction due to it having a master bath with a separate tub and shower. Downward adjustments were warranted since it is larger in gross living area and has a spa. Active listings are often excellent indicators of the most current market trends.

**Supplemental Addendum** File No. 097430HJ

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | | | |
| Property Address | 13630 Pinerock Ln | | | | | | |
| City | Houston | County | Harris | State | TX | Zip Code | 77079 |
| Lender | Brunsting Family Living Trust | | | | | | |

**ADDENDUM TO APPRAISAL**
**FILE # 097430HJ**

**SCOPE OF APPRAISAL:**

This appraisal report has been prepared in accordance with the Uniform Standards of Professional Appraisal Practices. The purpose of this appraisal is to estimate the current market value, as defined herein, of the subject property as of the date of inspection. The function of the appraisal is to assist the client in evaluating the subject property for the purpose of marketing it for sale. This is not a Federally related transaction. No other intended users or intended uses have been identified by the appraiser.

The appraisal process consists of various steps which will lead to a final value conclusion. These steps include a physical inspection of the subject, exterior inspection of the comparables, inspection of the subject neighborhood. The process continues with a thorough research and analysis of sales data in the subject's market area with emphasis placed on various units of comparability to the subject property. The Cost Data is taken from various sources such as the Marshall and Swift Cost Estimator, local builders and other reliable sources. The estimated site value is based on recent sales activity of comparably priced properties or in cases where there is insufficient data, the site value can be based upon the allocation, extraction, or land residual techniques. The collection of general and specific data is also researched and analyzed in this appraisal. The sales utilized in this report are felt to be the best available within a reasonable time period.

**COMMENTS ON DEED RESTRICTIONS/ZONING:**

The subject property is protected by either deed restrictions or zoning as stated in the site section of this appraisal report. The subject represents its highest and best use.

We did not inspect nor do we have ready accessibility to the deed restrictions/covenants of the subject. If the processor of this report has any questions regarding the aforementioned, contact this office for clarification.

**SITE COMMENTS:**

The subject site is a typical interior lot. However, the "Long Point" fault line runs across the property. A visual inspection of the property reveals that the "fault zone" appears to run directly under the adjacent home located at 13634 Pinerock and cross the rear of the subject property in a southwest to northeast direction. It appears that all of the subject's single family residence lies on the low side of the fault zone. However, the master bathroom appears to be located in the fault zone on the "low" side.

**DESCRIPTION OF IMPROVEMENTS:**

The subject property is a typical one and one half story home in the area. It has five bedrooms, three full bathrooms and a two car detached garage. The property has been well maintained but is in basically original condition. Neither the kitchen or bathrooms have been updated or remodeled. The property has carpet in the living areas and bedrooms and sheet vinyl in the kitchen breakfast and utility room. The bathrooms have ceramic tile floors and wainscoting in the wet areas and the master bathroom has carpet in the vanity/sink area.

As previously discussed, part of the single family residence is located in the fault zone of the Long Point Fault. The fault zone also appears to run behind the detached garage. Pictures has been included in this report depicting the position of the improvements relative to the fault zone. Members of the family have indicated that the foundation has been repaired and/or supported with piers stabilizing the foundation and have a lifetime transferable warranty. It appears that the previous foundation repairs are performing their intended function of stabilizing the foundation.

**COST APPROACH COMMENTS:**

The subject property has a high land to value ratio. This condition exists because of the neighborhood's desirability and it's location in the prestigious "Memorial" area. High land to value ratios are normal for the subject neighborhood and are well accepted in the marketplace by the typical buyer.

The land value has been estimated based on sales of other lots in the area. However, the estimated land value "as if" vacant reflects the loss in value from being located on the "Long Point" fault.

# Supplemental Addendum

File No. 097430HJ

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | | | |
| Property Address | 13630 Pinerock Ln | | | | | | |
| City | Houston | County | Harris | State | TX | Zip Code | 77079 |
| Lender | Brunsting Family Living Trust | | | | | | |

**SALES COMPARISON ANALYSIS:**

All comparables are located in the immediate market area and are considered to be similar to the subject. Comps 1, 3, 4, 5 and 6 were all adjusted for seller paid contributions toward the buyers closing costs. The rear of Comp 4 abuts a strip shopping center which faces Memorial Drive. Therefore, Comp 4 was adjusted for it's inferior location with external obsolescence.

Comps 1, 3, 4, 5 and 6 had all been remodeled and updated and were therefore adjusted for their superior conditions. Typical market adjustments for room count and gross living area were made, where applicable. Other market adjustments for the differences in features such as swimming pools were made, where applicable.

Comps 1, 3 and 6 are located adjacent to or on the Long Point fault. Comps 2, 4 and 5 are not located on the Long Point Fault and were adjusted accordingly. Comp 6 is a somewhat older sale than would normally be used and was included in this report because it is located on the Long Pont fault like the subject and was used as support for the final estimate of value.

**FINANCING DATA:**

An appropriate adjustment will be made in the sales comparison grid if any inducements of sales prices are found, otherwise, no adverse influences were found. Sales or Financing Concessions indicated in the Sales Comparison Analysis were verified through the Data Sources indicated in the Sales Comparison Analysis.

**IMPROVEMENTS-WARRANTIES:**

This appraisal report should be in its entirety. If the processor of this report has any questions pertaining to its contents or completeness, contact this office immediately for clarifications.

Possession of this report, or a copy thereof, does carry with it the right of publication. It may not be used for any other purpose by any person other than the person to whom it is addressed without the written consent of the appraiser, and in any event only with the proper written qualification and only in its entirety.

No warranty or guarantee is made as to the condition of the slab, the roof, the electrical systems, the air conditioning, and heating systems, the appliances, the presence of pest infestation, the presence of dampness or the presence of settlement.

If the client has any questions regarding these items, it is the client's responsibility to order the appropriate inspections. The appraiser does not have the skill or the expertise needed to make such inspections. The appraiser assumes no responsibility for these items.

Unless otherwise stated in this report, the existence of hazardous substances, including without limit, asbestos, polyshlorinated biphenyls, petroleum leakage, or other agricultural chemicals, which may or may not be present on the property, or other environmental conditions, were not called to the attention of nor did the appraiser become aware of such during the appraiser's inspection. The appraiser has no knowledge of the existence of such materials on or in the property unless otherwise stated. The appraiser, however, is not qualified to test such substances of condition. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation, or other hazardous substances or environmental conditions, may affect value of the property, the value estimate is predicted on the assumption there is no such on or in the property or in such proximity thereto that it would cause a loss in value. No responsibility is assumed for any such conditions, nor for any expertise or engineering knowledge required to discover them.

If this appraisal was performed for the purpose of FHA financing then a visual inspection was done in accordance with FHA guidelines.

This appraisal is not a home inspection and the appraiser is not acting as a home inspector when preparing the report. The borrower has the right to have the home inspected by a professional home inspector. When performing the inspection of this property, the appraiser visually observed areas that were readily accessible. The appraiser is not required to disturb or move anything that obstructs access or visibility.

The inspection is not technically exhaustive. The inspection does not offer warranties or guarantees of any kind.

## Supplemental Addendum

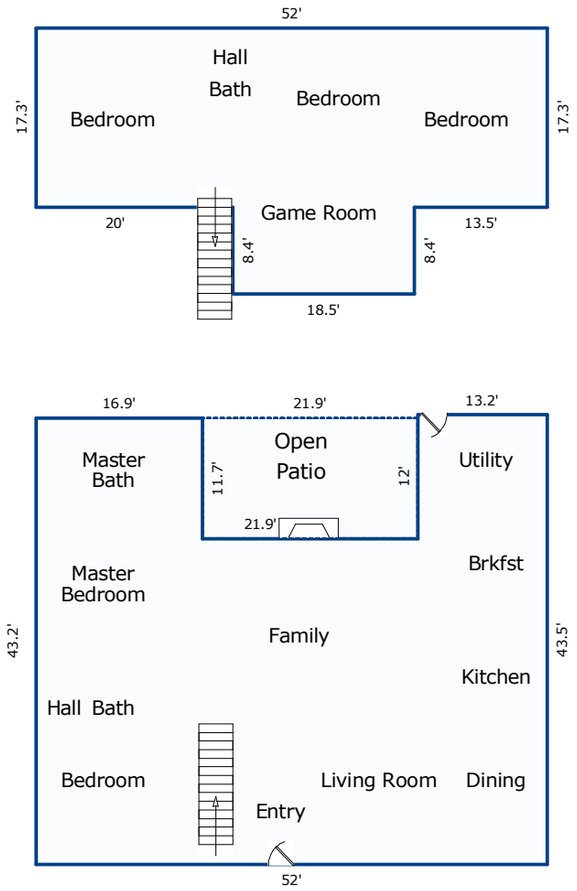
File No. 097430HJ

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | | | |
| Property Address | 13630 Pinerock Ln | | | | | | |
| City | Houston | County | Harris | State | TX | Zip Code | 77079 |
| Lender | Brunsting Family Living Trust | | | | | | |

The appraiser is not a home or environmental inspector. The appraiser provides an opinion of value. The appraisal does not guarantee that the property is free of defects or environmental problems. The appraiser performs an inspection of visible and accessible areas only. Mold or termites may be present in areas the appraiser can not see. A professional home inspection or environmental inspection or termite inspection is recommended.

# Building Sketch

| | | | | | |
|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | |
| Property Address | 13630 Pinerock Ln | | | | |
| City | Houston | County | Harris | State TX | Zip Code 77079 |
| Lender | Brunsting Family Living Trust | | | | |




Sketch by Apex Medina™

Comments:

## AREA CALCULATIONS SUMMARY

| Code | Description | Net Size | Net Totals |
|---|---|---|---|
| GLA1 | First Floor | 1994.1 | 1994.1 |
| GLA2 | Second Floor | 1055.0 | 1055.0 |
| P/P | Patio | 256.2 | 256.2 |
| Net LIVABLE Area | | (rounded) | 3049 |

## LIVING AREA BREAKDOWN

| Breakdown | | | Subtotals |
|---|---|---|---|
| First Floor | | | |
| 52.0 | x | 31.5 | 1638.0 |
| 12.0 | x | 13.2 | 158.4 |
| 11.7 | x | 16.9 | 197.7 |
| Second Floor | | | |
| 52.0 | x | 17.3 | 899.6 |
| 8.4 | x | 18.5 | 155.4 |
| 5 Items | | (rounded) | 3049 |

# Location Map

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | | | |
| Property Address | 13630 Pinerock Ln | | | | | | |
| City | Houston | County | Harris | State | TX | Zip Code | 77079 |
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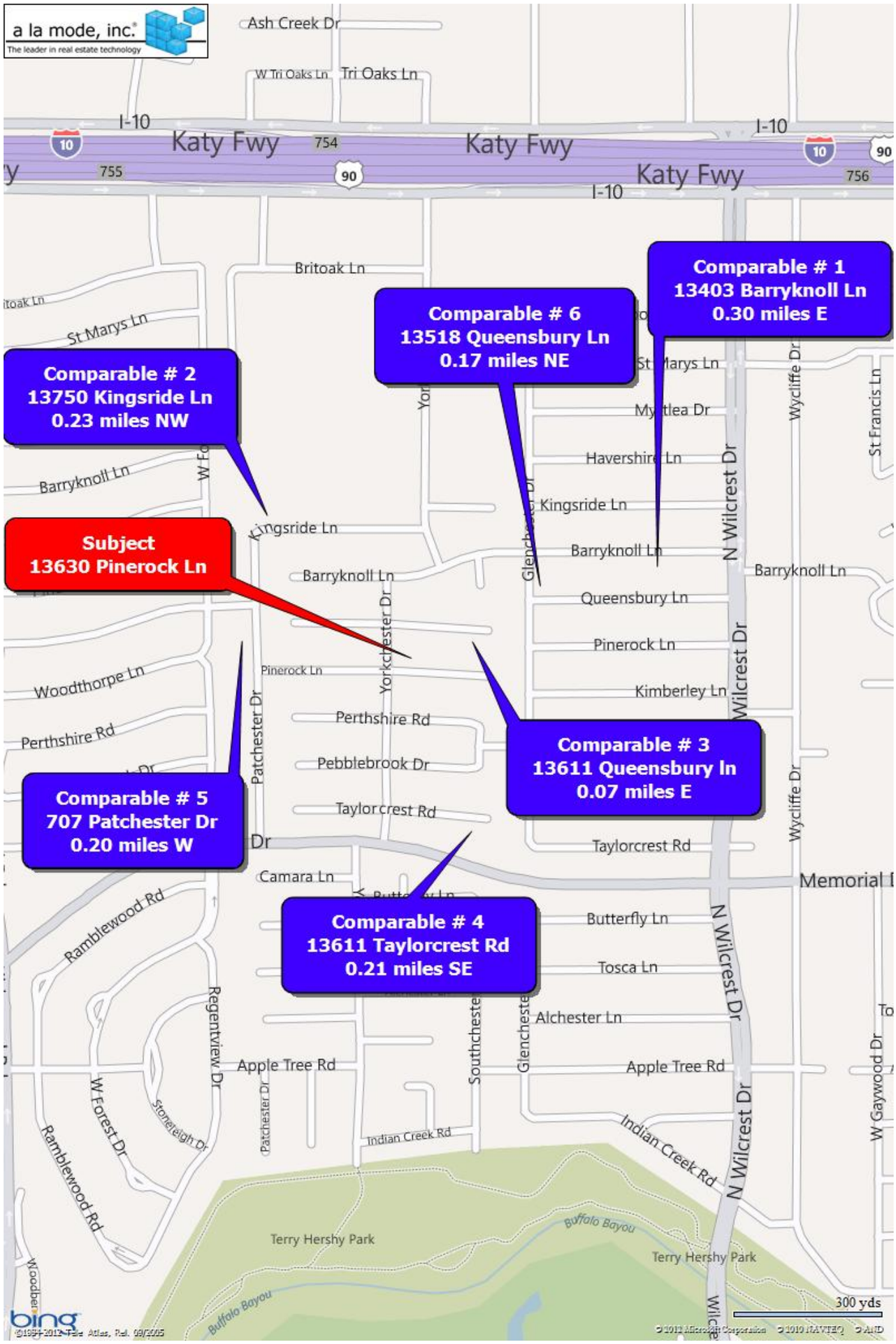

# Flood Map

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | | | |
| Property Address | 13630 Pinerock Ln | | | | | | |
| City | Houston | County | Harris | State | TX | Zip Code | 77079 |
| Lender | Brunsting Family Living Trust | | | | | | |

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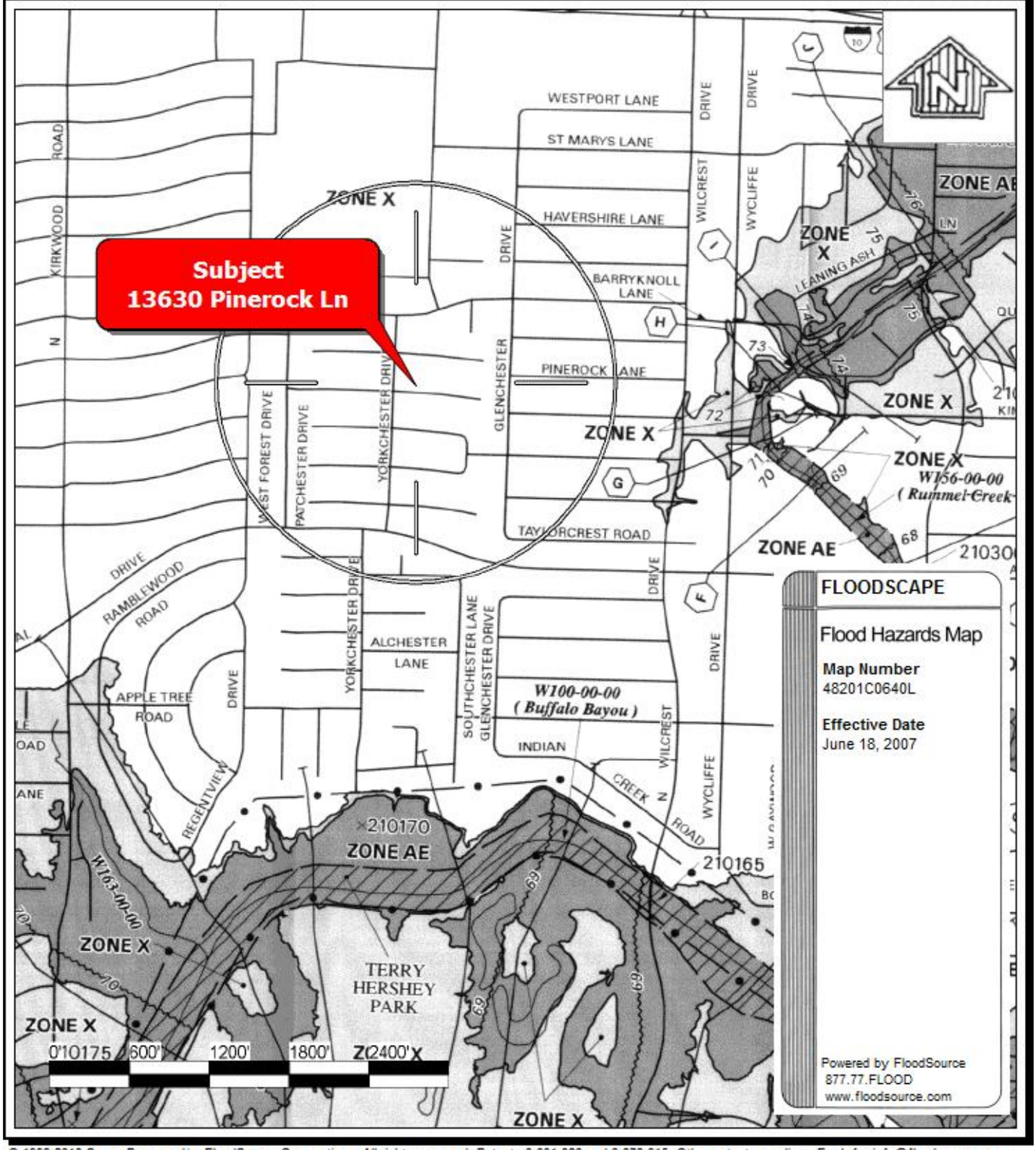
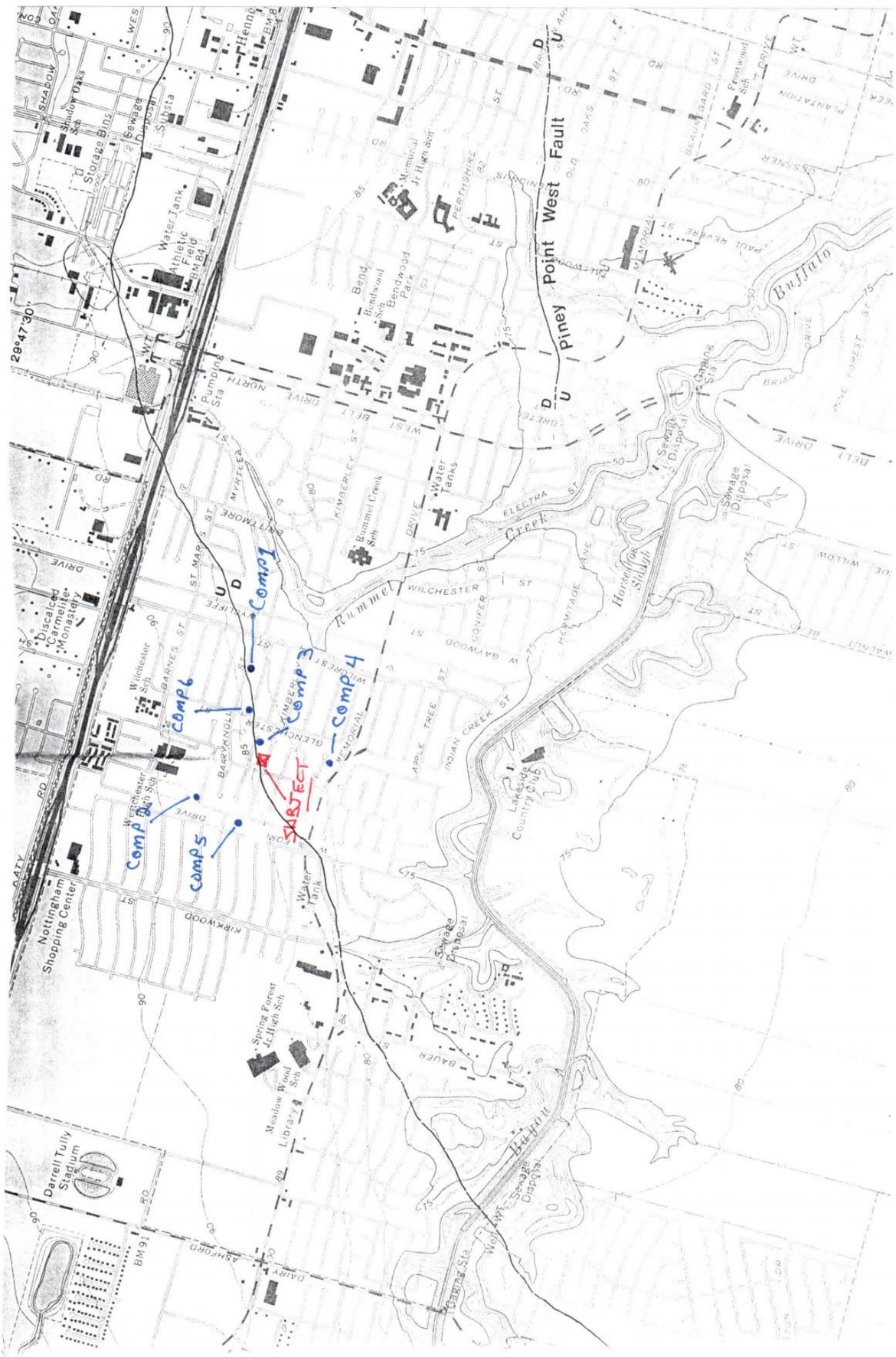
**Prepared for:**
Catechis, Campbell & Associates

13630 Pinerock Ln
Houston, TX 77079




© 1999-2010 SourceProse and/or FloodSource Corporations. All rights reserved. Patents 6,631,326 and 6,678,615. Other patents pending. For Info: info@floodsource.com.


Piney Point West Fault
Comp1
Comp3
Comp4
Comp5
Comp6
SUBJECT
Rummel Creek
Buffalo
Bayou
Nottingham Shopping Center
Darrell Tully Stadium
Lakeside Country Club
Discalced Carmelite Monastery
Water Tank
Athletic Field
Storage Bins
Sewage Disposal
Pumping Sta
Water Tanks
Rummel Creek Sch
Memorial Jr High Sch
Bendwood Park
Spring Forest Jr High Sch
Meadow Wood Sch
Library
Wilchester Sch
Westchester High Sch
Horseshoe Slough
Gaging Sta
29°47'30"

# Subject Photo Page

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | | | |
| Property Address | 13630 Pinerock Ln | | | | | | |
| City | Houston | County | Harris | State | TX | Zip Code | 77079 |
| Lender | Brunsting Family Living Trust | | | | | | |



## Subject Front

13630 Pinerock Ln

| | |
|---|---|
| Sales Price | N/A |
| Gross Living Area | 3,049 |
| Total Rooms | 10 |
| Total Bedrooms | 5 |
| Total Bathrooms | 3 |
| Location | Average |
| View | Average |
| Site | 8625 sf |
| Quality | Average |
| Age | 45 yrs |



## Subject Rear



## Subject Street

## Photograph Addendum

| | | | | | |
|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | |
| Property Address | 13630 Pinerock Ln | | | | |
| City | Houston | County Harris | State TX | Zip Code 77079 | |
| Lender | Brunsting Family Living Trust | | | | |



**LEFT SIDE OF HOME: NOTE THE HOME ON THE LEFT (13634 PINEROCK) IS MUCH HIGHER THAN THE SUBJECT.**



**RIGHT SIDE VIEW**



**LEFT SIDE VIEW FROM THE REAR**



**REAR VIEW OF THE MASTER BATHROOM: NOTE THE HIGHER GROUND RIGHT BEHIND THE HOUSE IS THE FAULT ZONE**



**VIEW ALONG THE BACK OF THE MASTER BATHROOM WING FACING 13634 PINEROCK**



**VIEW OF THE AREA BEHIND THE TWO CAR DETACHED GARAGE**

# Interior Photos

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | | | |
| Property Address | 13630 Pinerock Ln | | | | | | |
| City | Houston | County | Harris | State | TX | Zip Code | 77079 |
| Lender | Brunsting Family Living Trust | | | | | | |

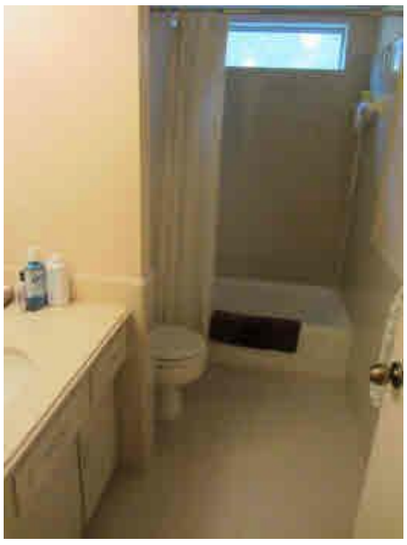












# Interior Photos

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | | | |
| Property Address | 13630 Pinerock Ln | | | | | | |
| City | Houston | County | Harris | State | TX | Zip Code | 77079 |
| Lender | Brunsting Family Living Trust | | | | | | |











# Comparable Photo Page

| | | | | | |
|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | |
| Property Address | 13630 Pinerock Ln | | | | |
| City | Houston | County | Harris | State TX | Zip Code 77079 |
| Lender | Brunsting Family Living Trust | | | | |



## Comparable 1

13403 Barryknoll Ln

| | |
|---|---|
| Prox. to Subject | 0.30 miles E |
| Sales Price | 478,000 |
| Gross Living Area | 2,924 |
| Total Rooms | 10 |
| Total Bedrooms | 5 |
| Total Bathrooms | 3.1 |
| Location | Average |
| View | Average |
| Site | 8927 sf |
| Quality | Average |
| Age | 45 yrs |



## Comparable 2

13750 Kingsride Ln

| | |
|---|---|
| Prox. to Subject | 0.23 miles NW |
| Sales Price | 371,050 |
| Gross Living Area | 2,651 |
| Total Rooms | 10 |
| Total Bedrooms | 5 |
| Total Bathrooms | 3 |
| Location | Average |
| View | Average |
| Site | 9463 sf |
| Quality | Average |
| Age | 46 yrs |



## Comparable 3

13611 Queensbury ln

| | |
|---|---|
| Prox. to Subject | 0.07 miles E |
| Sales Price | 455,000 |
| Gross Living Area | 2,487 |
| Total Rooms | 8 |
| Total Bedrooms | 4 |
| Total Bathrooms | 2 |
| Location | Average |
| View | Average |
| Site | 8775 sf |
| Quality | Average |
| Age | 45 yrs |

# Comparable Photo Page

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Borrower | Brunsting Family Living Trust | | | | | | |
| Property Address | 13630 Pinerock Ln | | | | | | |
| City | Houston | County | Harris | State | TX | Zip Code | 77079 |
| Lender | Brunsting Family Living Trust | | | | | | |



## Comparable 4

13611 Taylorcrest Rd

| | |
|---|---|
| Prox. to Subject | 0.21 miles SE |
| Sales Price | 451,500 |
| Gross Living Area | 2,640 |
| Total Rooms | 10 |
| Total Bedrooms | 5 |
| Total Bathrooms | 2.1 |
| Location | Average |
| View | Ext Obso |
| Site | 9450 sf |
| Quality | Average |
| Age | 44 yrs |



## Comparable 5

707 Patchester Dr

| | |
|---|---|
| Prox. to Subject | 0.20 miles W |
| Sales Price | 495,000 |
| Gross Living Area | 2,680 |
| Total Rooms | 9 |
| Total Bedrooms | 4 |
| Total Bathrooms | 2.1 |
| Location | Average |
| View | Average |
| Site | 8400 sf |
| Quality | Average |
| Age | 45 yrs |



## Comparable 6

13518 Queensbury Ln

| | |
|---|---|
| Prox. to Subject | 0.17 miles NE |
| Sales Price | 468,025 |
| Gross Living Area | 2,365 |
| Total Rooms | 8 |
| Total Bedrooms | 4 |
| Total Bathrooms | 2.1 |
| Location | Average |
| View | Average |
| Site | 9266 sf |
| Quality | Average |
| Age | 46 yrs |

# TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

*BE IT KNOWN THAT*

## HERBERT WAYNE JAMISON

*HAVING PROVIDED SATISFACTORY EVIDENCE OF THE QUALIFICATIONS REQUIRED BY THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT,*

*TEXAS OCCUPATIONS CODE, CHAPTER 1103, IS AUTHORIZED TO USE THE TITLE*

## STATE CERTIFIED
## GENERAL REAL ESTATE APPRAISER

**Number: TX-1323509-G**

**Date of Issue: August 12, 2010**

**Date of Expiration: August 31, 2012**

*In Witness Thereof*

James (Jamie) B. Ratliff, Chair

Douglas E. Oldmixon, Commissioner

| | | |
|---|---|---|
| James (Jamie) B. Ratliff, Chair | Mark A. McAnally, Vice Chair | Luis F. De La Garza, Jr., Secretary |
| Walker R. Beard | MALACHI O. Boyuls | Robert D. Davis, Jr. |
| Clinton P. Sayers | SHERYL R. Swift | Donna L. Walz |

# Texas Appraiser Licensing and Certification Board

P.O. Box 12188 Austin, Texas 78711-2188

## Certified Residential Real Estate Appraiser

Number: TX 1320570 R

Issued: 02/22/2011 Expires: 04/30/2013

Appraiser: CHRISTOS CATECHIS

Having provided satisfactory evidence of the qualifications required by the Texas Appraiser Licensing and Certification Act, Texas Occupations Code, Chapter 1103, is authorized to use this title, Certified Residential Real Estate Appraiser.

Douglas E. Oldmixon
Commissioner

08-01-2011

EQUAL HOUSING OPPORTUNITY

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

# ONE TO FOUR FAMILY RESIDENTIAL CONTRACT (RESALE)

NOTICE: Not For Use For Condominium Transactions

1. **PARTIES:** The parties to this contract are Amy Brunsting (Seller) and Brett C. McCarroll (Buyer). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.

2. **PROPERTY:**
   A. LAND: Lot 31 Block 4, Wilchester West Addition, City of Houston, County of Harris, Texas, known as 13630 Pinerock Ln Houston Tx 77079 5914 (address/zip code), or as described on attached exhibit.
   B. IMPROVEMENTS: The house, garage and all other fixtures and improvements attached to the above-described real property, including without limitation, the following **permanently installed and built-in items,** if any: all equipment and appliances, valances, screens, shutters, awnings, wall-to-wall carpeting, mirrors, ceiling fans, attic fans, mail boxes, television antennas and satellite dish system and equipment, mounts and brackets for televisions and speakers, heating and air-conditioning units, security and fire detection equipment, wiring, plumbing and lighting fixtures, chandeliers, water softener system, kitchen equipment, garage door openers, cleaning equipment, shrubbery, landscaping, outdoor cooking equipment, and all other property owned by Seller and attached to the above described real property.
   C. ACCESSORIES: The following described related accessories, if any: window air conditioning units, stove, fireplace screens, curtains and rods, blinds, window shades, draperies and rods, door keys, mailbox keys, above ground pool, swimming pool equipment and maintenance accessories, artificial fireplace logs, and controls for: (i) satellite dish systems, (ii) garage doors, (iii) entry gates, and (iv) other improvements and accessories.
   D. EXCLUSIONS: The following improvements and accessories will be retained by Seller and must be removed prior to delivery of possession: n/a

   The land, improvements and accessories are collectively referred to as the "Property".

3. **SALES PRICE:**
   A. Cash portion of Sales Price payable by Buyer at closing ..... $ 52,000.00
   B. Sum of all financing described below (excluding any loan funding fee or mortgage insurance premium) ..... $ 417,000.00
   C. Sales Price (Sum of A and B) ..... $ 469,000.00

4. **FINANCING:** The portion of Sales Price not payable in cash will be paid as follows: (Check applicable boxes below)
   [X] A. THIRD PARTY FINANCING: One or more third party mortgage loans in the total amount of $ 3B above (excluding any loan funding fee or mortgage insurance premium).
      (1) Property Approval: If the Property does not satisfy the lenders' underwriting requirements for the loan(s), (including, but not limited to appraisal, insurability and lender required repairs), Buyer may terminate this contract by giving notice to Seller prior to closing and the earnest money will be refunded to Buyer.
      (2) Credit Approval: (Check one box only)
         [X] (a) This contract is subject to Buyer being approved for the financing described in the attached Third Party Financing Addendum for Credit Approval.
         [ ] (b) This contract is not subject to Buyer being approved for financing and does not involve FHA or VA financing.
   [ ] B. ASSUMPTION: The assumption of the unpaid principal balance of one or more promissory notes described in the attached TREC Loan Assumption Addendum.
   [ ] C. SELLER FINANCING: A promissory note from Buyer to Seller of $ _____, secured by vendor's and deed of trust liens, and containing the terms and conditions described in the attached TREC Seller Financing Addendum. If an owner policy of title insurance is furnished, Buyer shall furnish Seller with a mortgagee policy of title insurance.

5. **EARNEST MONEY:** Upon execution of this contract by all parties, Buyer shall deposit $4,690.00 as earnest money with Darlene Glos as escrow agent, at First American Title Co 13110 Memorial Dr (address). Buyer shall deposit additional earnest money of $ _____ with escrow agent within _____ days after the effective date of this contract. If Buyer fails to deposit the earnest money as required by this contract, Buyer will be in default.

6. **TITLE POLICY AND SURVEY:**

A. TITLE POLICY: Seller shall furnish to Buyer at [X] Seller's [ ] Buyer's expense an owner policy of title insurance (Title Policy) issued by First American title Co (Title Company) in the amount of the Sales Price, dated at or after closing, insuring Buyer against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:
(1) Restrictive covenants common to the platted subdivision in which the Property is located.
(2) The standard printed exception for standby fees, taxes and assessments.
(3) Liens created as part of the financing described in Paragraph 4.
(4) Utility easements created by the dedication deed or plat of the subdivision in which the Property is located.
(5) Reservations or exceptions otherwise permitted by this contract or as may be approved by Buyer in writing.
(6) The standard printed exception as to marital rights.
(7) The standard printed exception as to waters, tidelands, beaches, streams, and related matters.
(8) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer, at Buyer's expense, may have the exception amended to read, "shortages in area".

B. COMMITMENT: Within 20 days after the Title Company receives a copy of this contract, Seller shall furnish to Buyer a commitment for title insurance (Commitment) and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (Exception Documents) other than the standard printed exceptions. Seller authorizes the Title Company to deliver the Commitment and Exception Documents to Buyer at Buyer's address shown in Paragraph 21. If the Commitment and Exception Documents are not delivered to Buyer within the specified time, the time for delivery will be automatically extended up to 15 days or the Closing Date, whichever is earlier.

C. SURVEY: The survey must be made by a registered professional land surveyor acceptable to the Title Company and Buyer's lender(s). (Check one box only)
[X] (1) Within 7 days after the effective date of this contract, Seller shall furnish to Buyer and Title Company Seller's existing survey of the Property and a Residential Real Property Affidavit promulgated by the Texas Department of Insurance (T-47 Affidavit). **If Seller fails to furnish the existing survey or affidavit within the time prescribed, Buyer shall obtain a new survey at Seller's expense no later than 3 days prior to Closing Date.** If the existing survey or affidavit is not acceptable to Title Company or Buyer's lender(s), Buyer shall obtain a new survey at [ ] Seller's [X] Buyer's expense no later than 3 days prior to Closing Date.
[ ] (2) Within _____ days after the effective date of this contract, Buyer shall obtain a new survey at Buyer's expense. Buyer is deemed to receive the survey on the date of actual receipt or the date specified in this paragraph, whichever is earlier.
[ ] (3) Within _____ days after the effective date of this contract, Seller, at Seller's expense shall furnish a new survey to Buyer.

D. OBJECTIONS: Buyer may object in writing to defects, exceptions, or encumbrances to title: disclosed on the survey other than items 6A(1) through (7) above; disclosed in the Commitment other than items 6A(1) through (8) above; or which prohibit the following use or activity: residential use
Buyer must object the earlier of (i) the Closing Date or (ii) 3 days after Buyer receives the Commitment, Exception Documents, and the survey. Buyer's failure to object within the time

allowed will constitute a waiver of Buyer's right to object; except that the requirements in Schedule C of the Commitment are not waived. Provided Seller is not obligated to incur any expense, Seller shall cure the timely objections of Buyer or any third party lender within 15 days after Seller receives the objections and the Closing Date will be extended as necessary. If objections are not cured within such 15 day period, this contract will terminate and the earnest money will be refunded to Buyer unless Buyer waives the objections.

E. TITLE NOTICES:

(1) ABSTRACT OR TITLE POLICY: Broker advises Buyer to have an abstract of title covering the Property examined by an attorney of Buyer's selection, or Buyer should be furnished with or obtain a Title Policy. If a Title Policy is furnished, the Commitment should be promptly reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.

(2) PROPERTY OWNERS ASSOCIATION(S) MANDATORY MEMBERSHIP: The Property [X] is [ ] is not subject to mandatory membership in a property owners association(s). If the Property is subject to mandatory membership in a property owners association(s), Seller notifies Buyer under §5.012, Texas Property Code, that, as a purchaser of property in the residential community identified in Paragraph 2A in which the Property is located, you are obligated to be a member of the property owners association(s). Restrictive covenants governing the use and occupancy of the Property and a dedicatory instrument governing the establishment, maintenance, and operation of this residential community have been or will be recorded in the Real Property Records of the county in which the Property is located. Copies of the restrictive covenants and dedicatory instrument may be obtained from the county clerk. You are obligated to pay assessments to the property owners association(s). The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of the Property. **If Buyer is concerned about these matters, the TREC promulgated Addendum for Property Subject to Mandatory Membership in a Property Owners Association should be used for each association.**

(3) STATUTORY TAX DISTRICTS: If the Property is situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, Chapter 49, Texas Water Code, requires Seller to deliver and Buyer to sign the statutory notice relating to the tax rate, bonded indebtedness, or standby fee of the district prior to final execution of this contract.

(4) TIDE WATERS: If the Property abuts the tidally influenced waters of the state, §33.135, Texas Natural Resources Code, requires a notice regarding coastal area property to be included in the contract. An addendum containing the notice promulgated by TREC or required by the parties must be used.

(5) ANNEXATION: If the Property is located outside the limits of a municipality, Seller notifies Buyer under §5.011, Texas Property Code, that the Property may now or later be included in the extraterritorial jurisdiction of a municipality and may now or later be subject to annexation by the municipality. Each municipality maintains a map that depicts its boundaries and extraterritorial jurisdiction. To determine if the Property is located within a municipality's extraterritorial jurisdiction or is likely to be located within a municipality's extraterritorial jurisdiction, contact all municipalities located in the general proximity of the Property for further information.

(6) PROPERTY LOCATED IN A CERTIFICATED SERVICE AREA OF A UTILITY SERVICE PROVIDER: Notice required by §13.257, Water Code: The real property, described in Paragraph 2, that you are about to purchase may be located in a certificated water or sewer service area, which is authorized by law to provide water or sewer service to the properties in the certificated area. If your property is located in a certificated area there may be special costs or charges that you will be required to pay before you can receive water or sewer service. There may be a period required to construct lines or other facilities necessary to provide water or sewer service to your property. You are advised to determine if the property is in a certificated area and contact the utility service provider to determine the cost that you will be required to pay and the period, if any, that is required to provide water or sewer service to your property. The undersigned Buyer

hereby acknowledges receipt of the foregoing notice at or before the execution of a binding contract for the purchase of the real property described in Paragraph 2 or at closing of purchase of the real property.

(7) PUBLIC IMPROVEMENT DISTRICTS: If the Property is in a public improvement district, §5.014, Property Code, requires Seller to notify Buyer as follows: As a purchaser of this parcel of real property you are obligated to pay an assessment to a municipality or county for an improvement project undertaken by a public improvement district under Chapter 372, Local Government Code. The assessment may be due annually or in periodic installments. More information concerning the amount of the assessment and the due dates of that assessment may be obtained from the municipality or county levying the assessment. The amount of the assessments is subject to change. Your failure to pay the assessments could result in a lien on and the foreclosure of your property.

**7. PROPERTY CONDITION:**

A. ACCESS, INSPECTIONS AND UTILITIES: Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer and licensed by TREC or otherwise permitted by law to make inspections. Seller at Seller's expense shall turn on existing utilities for inspections.

B. SELLER'S DISCLOSURE NOTICE PURSUANT TO §5.008, TEXAS PROPERTY CODE (Notice): (Check one box only)

☒ (1) Buyer has received the Notice.

☐ (2) Buyer has not received the Notice. Within _____ days after the effective date of this contract, Seller shall deliver the Notice to Buyer. If Buyer does not receive the Notice, Buyer may terminate this contract at any time prior to the closing and the earnest money will be refunded to Buyer. If Seller delivers the Notice, Buyer may terminate this contract for any reason within 7 days after Buyer receives the Notice or prior to the closing, whichever first occurs, and the earnest money will be refunded to Buyer.

☐ (3) The Seller is not required to furnish the notice under the Texas Property Code.

C. SELLER'S DISCLOSURE OF LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS is required by Federal law for a residential dwelling constructed prior to 1978.

D. ACCEPTANCE OF PROPERTY CONDITION: (Check one box only)

☒ (1) Buyer accepts the Property in its present condition.

☐ (2) Buyer accepts the Property in its present condition provided Seller, at Seller's expense shall complete the following specific repairs and treatments: _____. (Do not insert general phrases, such as "subject to inspections" that do not identify specific repairs.)

NOTICE TO BUYER AND SELLER: Buyer's agreement to accept the Property in its present condition under Paragraph 7D(1) or (2) does not preclude Buyer from inspecting the Property under Paragraph 7A, from negotiating repairs or treatments in a subsequent amendment, or from terminating this contract during the Option Period, if any.

E. LENDER REQUIRED REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, neither party is obligated to pay for lender required repairs, which includes treatment for wood destroying insects. If the parties do not agree to pay for the lender required repairs or treatments, this contract will terminate and the earnest money will be refunded to Buyer. If the cost of lender required repairs and treatments exceeds 5% of the Sales Price, Buyer may terminate this contract and the earnest money will be refunded to Buyer.

F. COMPLETION OF REPAIRS AND TREATMENTS: Unless otherwise agreed in writing, Seller shall complete all agreed repairs and treatments prior to the Closing Date. All required permits must be obtained, and repairs and treatments must be performed by persons who are licensed or otherwise authorized by law to provide such repairs or treatments. At Buyer's election, any transferable warranties received by Seller with respect to the repairs and treatments will be transferred to Buyer at Buyer's expense. If Seller fails to complete any agreed repairs and treatments prior to the Closing Date, Buyer may do so and receive reimbursement from Seller at closing. The Closing Date will be extended up to 15 days, if necessary, to complete repairs and treatments.

G. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by TREC or required by the parties should be used.

H. RESIDENTIAL SERVICE CONTRACTS: Buyer may purchase a residential service contract from a residential service company licensed by TREC. If Buyer purchases a residential service contract, Seller shall reimburse Buyer at closing for the cost of the residential service contract in an amount not exceeding $ n/a. Buyer should review any residential service contract for the scope of coverage, exclusions and limitations. **The purchase of a residential service contract is optional. Similar coverage may be purchased from various companies authorized to do business in Texas.**

8. **BROKERS' FEES:** All obligations of the parties for payment of brokers' fees are contained in separate written agreements.

9. **CLOSING:**
   A. The closing of the sale will be on or before February 17, 2012, or within 7 days after objections made under Paragraph 6D have been cured or waived, whichever date is later (Closing Date). If either party fails to close the sale by the Closing Date, the non-defaulting party may exercise the remedies contained in Paragraph 15.
   B. At closing:
      (1) Seller shall execute and deliver a general warranty deed conveying title to the Property to Buyer and showing no additional exceptions to those permitted in Paragraph 6 and furnish tax statements or certificates showing no delinquent taxes on the Property.
      (2) Buyer shall pay the Sales Price in good funds acceptable to the escrow agent.
      (3) Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale and the issuance of the Title Policy.
      (4) There will be no liens, assessments, or security interests against the Property which will not be satisfied out of the sales proceeds unless securing the payment of any loans assumed by Buyer and assumed loans will not be in default.
      (5) If the Property is subject to a lease, Seller shall (i) deliver to Buyer the lease(s) and the move-in condition form signed by the tenant, if any, and (ii) transfer security deposits (as defined under §92.102, Property Code), if any, to Buyer. In such an event, Buyer shall deliver to the tenant a signed statement acknowledging that the Buyer has received the security deposit and is responsible for the return of the security deposit, and specifying the exact dollar amount of the security deposit.

10. **POSSESSION:** Seller shall deliver to Buyer possession of the Property in its present or required condition, ordinary wear and tear excepted: [X] upon closing and funding [ ] according to a temporary residential lease form promulgated by TREC or other written lease required by the parties. Any possession by Buyer prior to closing or by Seller after closing which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties. **Consult your insurance agent prior to change of ownership and possession because insurance coverage may be limited or terminated. The absence of a written lease or appropriate insurance coverage may expose the parties to economic loss.**

11. **SPECIAL PROVISIONS:** (Insert only factual statements and business details applicable to the sale. TREC rules prohibit licensees from adding factual statements or business details for which a contract addendum, lease or other form has been promulgated by TREC for mandatory use.) Response requested by noon Wed Jan 18,2012

**12. SETTLEMENT AND OTHER EXPENSES:**

A. The following expenses must be paid at or prior to closing:

(1) Expenses payable by Seller (Seller's Expenses):

(a) Releases of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; one-half of escrow fee; and other expenses payable by Seller under this contract.

(b) Seller shall also pay an amount not to exceed $ n/a to be applied in the following order: Buyer's Expenses which Buyer is prohibited from paying by FHA, VA, Texas Veterans Land Board or other governmental loan programs, and then to other Buyer's Expenses as allowed by the lender.

(2) Expenses payable by Buyer (Buyer's Expenses): Appraisal fees; loan application fees; adjusted origination charges; credit reports; preparation of loan documents; interest on the notes from date of disbursement to one month prior to dates of first monthly payments; recording fees; copies of easements and restrictions; loan title policy with endorsements required by lender; loan-related inspection fees; photos; amortization schedules; one-half of escrow fee; all prepaid items, including required premiums for flood and hazard insurance, reserve deposits for insurance, ad valorem taxes and special governmental assessments; final compliance inspection; courier fee; repair inspection; underwriting fee; wire transfer fee; expenses incident to any loan; Private Mortgage Insurance Premium (PMI), VA Loan Finding Fee, or FHA Mortgage Insurance Premium (MIP) as required by the lender; and other expenses payable by Buyer under this contract.

B. If any expense exceeds an amount expressly stated in this contract for such expense to be paid by a party, that party may terminate this contract unless the other party agrees to pay such excess. Buyer may not pay charges and fees expressly prohibited by FHA, VA, Texas Veterans Land Board or other governmental loan program regulations.

**13. PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the prorations when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.

**14. CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.

**15. DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If, due to factors beyond Seller's control, Seller fails within the time allowed to make any non-casualty repairs or deliver the Commitment, or survey, if required of Seller, Buyer may (a) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (b) terminate this contract as the sole remedy and receive the earnest money. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.

**16. MEDIATION:** It is the policy of the State of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion [X] will [ ] will not be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.

**17. ATTORNEY'S FEES:** A Buyer, Seller, Listing Broker, Other Broker, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.

**18. ESCROW:**

A. ESCROW: The escrow agent is not (i) a party to this contract and does not have liability for the performance or nonperformance of any party to this contract, (ii) liable for interest on the earnest money and (iii) liable for the loss of any earnest money caused by the failure of any financial institution in which the earnest money has been deposited unless the financial institution is acting as escrow agent.

B. EXPENSES: At closing, the earnest money must be applied first to any cash down payment, then to Buyer's Expenses and any excess refunded to Buyer. If no closing occurs, escrow agent may: (i) require a written release of liability of the escrow agent from all parties, (ii) require payment of unpaid expenses incurred on behalf of a party, and (iii) only deduct from the earnest money the amount of unpaid expenses incurred on behalf of the party receiving the earnest money.

C. DEMAND: Upon termination of this contract, either party or the escrow agent may send a release of earnest money to each party and the parties shall execute counterparts of the release and deliver same to the escrow agent. If either party fails to execute the release, either party may make a written demand to the escrow agent for the earnest money. If only one party makes written demand for the earnest money, escrow agent shall promptly provide a copy of the demand to the other party. If escrow agent does not receive written objection to the demand from the other party within 15 days, escrow agent may disburse the earnest money to the party making demand reduced by the amount of unpaid expenses incurred on behalf of the party receiving the earnest money and escrow agent may pay the same to the creditors. If escrow agent complies with the provisions of this paragraph, each party hereby releases escrow agent from all adverse claims related to the disbursal of the earnest money.

D. DAMAGES: Any party who wrongfully fails or refuses to sign a release acceptable to the escrow agent within 7 days of receipt of the request will be liable to the other party for liquidated damages in an amount equal to the sum of: (i) three times the amount of the earnest money; (ii) the earnest money; (iii) reasonable attorney's fees; and (iv) all costs of suit.

E. NOTICES: Escrow agent's notices will be effective when sent in compliance with Paragraph 21. Notice of objection to the demand will be deemed effective upon receipt by escrow agent.

**19. REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.

**20. FEDERAL TAX REQUIREMENTS:** If Seller is a "foreign person," as defined by applicable law, or if Seller fails to deliver an affidavit to Buyer that Seller is not a "foreign person," then Buyer shall withhold from the sales proceeds an amount sufficient to comply with applicable tax law and deliver the same to the Internal Revenue Service together with appropriate tax forms. Internal Revenue Service regulations require filing written reports if currency in excess of specified amounts is received in the transaction.

**21. NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile or electronic transmission as follows:

| **To Buyer at:** | **To Seller at:** |
|---|---|
| | |
| | |
| | |
| Telephone: | Telephone: |
| Facsimile: | Facsimile: |
| E-mail: brett.mccarroll@constellation.com | E-mail: |

**22. AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Addenda which are a part of this contract are (Check all applicable boxes):

- [X] Third Party Financing Addendum for Credit Approval
- [ ] Seller Financing Addendum
- [X] Addendum for Property Subject to Mandatory Membership in a Property Owners Association
- [ ] Buyer's Temporary Residential Lease
- [ ] Loan Assumption Addendum
- [ ] Addendum for Sale of Other Property by Buyer
- [ ] Addendum for Reservation of Oil, Gas and Other Minerals
- [ ] Addendum for "Back-Up" Contract
- [ ] Addendum for Coastal Area Property
- [ ] Environmental Assessment, Threatened or Endangered Species and Wetlands Addendum
- [ ] Seller's Temporary Residential Lease
- [ ] Short Sale Addendum
- [ ] Addendum for Property Located Seaward of the Gulf Intracoastal Waterway
- [X] Addendum for Seller's Disclosure of Information on Lead-based Paint and Lead-based Paint Hazards as Required by Federal Law
- [ ] Other (list): _____

**23. TERMINATION OPTION:** For nominal consideration, the receipt of which is hereby acknowledged by Seller, and Buyer's agreement to pay Seller $ 100.00 (Option Fee) within 2 days after the effective date of this contract, Seller grants Buyer the unrestricted right to terminate this contract by giving notice of termination to Seller within 10 days after the effective date of this contract (Option Period). If no dollar amount is stated as the Option Fee or if Buyer fails to pay the Option Fee to Seller within the time prescribed, this paragraph will not be a part of this contract and Buyer shall not have the unrestricted right to terminate this contract. If Buyer gives notice of termination within the time prescribed, the Option Fee will not be refunded; however, any earnest money will be refunded to Buyer. The Option Fee [X] will [ ] will not be credited to the Sales Price at closing. **Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

**24. CONSULT AN ATTORNEY:** TREC rules prohibit real estate licensees from giving legal advice. READ THIS CONTRACT CAREFULLY. If you do not understand the effect of this contract, consult an attorney BEFORE signing.

| Buyer's Attorney is: | Seller's Attorney is: |
|---|---|
| | |
| Telephone: | Telephone: |
| Facsimile: | Facsimile: |
| E-mail: | E-mail: |

**EXECUTED the _____ day of _____, _____ (EFFECTIVE DATE).**
**(BROKER: FILL IN THE DATE OF FINAL ACCEPTANCE.)**

| | |
|---|---|
| Brett M. Carroll | |
| Buyer Brett C. McCarroll | Seller Amy Brunsting |
| Buyer | Seller |

The form of this contract has been approved by the Texas Real Estate Commission. TREC forms are intended for use only by trained real estate licensees. No representation is made as to the legal validity or adequacy of any provision in any specific transactions. It is not intended for complex transactions. Texas Real Estate Commission, P.O. Box 12188, Austin, TX 78711-2188, (512) 936-3000 (http://www.trec.texas.gov) TREC NO. 20-10. This form replaces TREC NO. 20-8.

Contract Concerning 13630 Pinerock Ln Houston Tx 77079 Houston, 5914 (Address of Property) 

## BROKER INFORMATION

| | |
|---|---|
| Prudential Gary Greene Realtors — Other Broker Firm | 0475512 — License No. |
| represents [X] Buyer only as Buyer's agent [ ] Seller as Listing Broker's subagent | |
| Sharon Teusink — Licensed Supervisor of Associate | (281) 444-5140 — Telephone |
| Mary Johnson — Associate | (281) 451-5247 — Telephone |
| 8817 Louetta Rd — Other Broker's Address | (281) 444-0630 — Facsimile |
| Spring — City | Tx — State; 77379 — Zip |
| mary.johnson@garygreene.com — Associate Email Address | |

| | |
|---|---|
| Listing Broker Firm | License No. |
| represents [ ] Seller and Buyer as an intermediary [ ] Seller only as Seller's agent | |
| Licensed Supervisor of Associate | Telephone |
| Listing Associate | Telephone |
| Listing Broker's Office Address | Facsimile |
| City | State; Zip |
| Listing Associate's Email Address | |
| Selling Associate | Telephone |
| Selling Associate's Office Address | Facsimile |
| City | State; Zip |
| Selling Associate's Email Address | |

Listing Broker has agreed to pay Other Broker 3% of the total sales price when the Listing Broker's fee is received. Escrow Agent is authorized and directed to pay Other Broker from Listing Broker's fee at closing.

## OPTION FEE RECEIPT

Receipt of $ _____ (Option Fee) in the form of _____ is acknowledged.

Seller or Listing Broker _____ Date _____

## CONTRACT AND EARNEST MONEY RECEIPT

Receipt of [ ] Contract and [ ] $ _____ Earnest Money in the form of _____ is acknowledged.

Escrow Agent: _____ Date: _____

By: _____ Email Address _____

Address _____ Telephone: _____

City _____ State _____ Zip _____ Facsimile: _____



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11-29-2010

PROMULGATED BY THE TEXAS REAL ESTATE COMMISSION (TREC)

# THIRD PARTY FINANCING ADDENDUM FOR CREDIT APPROVAL

TO CONTRACT CONCERNING THE PROPERTY AT

13630 Pinerock Ln Houston Tx 77079 Houston
(Street Address and City)

Buyer shall apply promptly for all financing described below and make every reasonable effort to obtain credit approval for the financing (Credit Approval). Buyer shall furnish all information and documents required by lender for Credit Approval. Credit Approval will be deemed to have been obtained when (1) the terms of the loan(s) described below are available and (2) lender determines that Buyer has satisfied all of lender's requirements related to Buyer's assets, income and credit history. If Buyer cannot obtain Credit Approval, Buyer may give written notice to Seller within 25 days after the effective date of this contract and this contract will terminate and the earnest money will be refunded to Buyer. **If Buyer does not give such notice within the time required, this contract will no longer be subject to Credit Approval. Time is of the essence for this paragraph and strict compliance with the time for performance is required.**

*NOTE: Credit Approval does not include approval of lender's underwriting requirements for the Property, as specified in Paragraph 4.A.(1) of the contract.*

Each note must be secured by vendor's and deed of trust liens.

**CHECK APPLICABLE BOXES:**

☒ A. CONVENTIONAL FINANCING:

☒ (1) A first mortgage loan in the principal amount of $ 417,000.00 (excluding any financed PMI premium), due in full in 30 year(s), with interest not to exceed 4.000 % per annum for the first 30 year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed 1.000 % of the loan.

☐ (2) A second mortgage loan in the principal amount of $ _____ (excluding any financed PMI premium), due in full in _____ year(s), with interest not to exceed _____ % per annum for the first _____ year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan.

☐ B. TEXAS VETERANS LOAN: A loan(s) from the Texas Veterans Land Board of $ _____ for a period in the total amount of _____ years at the interest rate established by the Texas Veterans Land Board.

☐ C. FHA INSURED FINANCING: A Section _____ FHA insured loan of not less than $ _____ (excluding any financed MIP), amortizable monthly for not less than _____ years, with interest not to exceed _____ % per annum for the first _____ year(s) of the loan with Adjusted Origination Charges as shown on Buyer's Good Faith Estimate for the loan not to exceed _____ % of the loan. As required by HUD-FHA, if FHA valuation is unknown, *"It is expressly agreed that, notwithstanding any other provision of this contract, the purchaser (Buyer) shall not be obligated to complete the purchase of the Property described herein or to incur any penalty by forfeiture of earnest money deposits or otherwise unless the purchaser (Buyer) has been given in accordance with HUD/FHA or VA requirements a written statement issued by the Federal Housing Commissioner, Department of Veterans Affairs, or a Direct Endorsement Lender setting forth the appraised value of the Property of not less than $ _____ . The purchaser (Buyer) shall have the privilege and option of proceeding with consummation of the contract without regard to the amount of the*

Monday, March 05, 2012

Tax Year: 2011

HARRIS COUNTY APPRAISAL DISTRICT
REAL PROPERTY ACCOUNT INFORMATION
**0985600000031**

Print E-mail

**Ownership History**

Owner and Property Information

| | | | |
|---|---|---|---|
| Owner Name & Mailing Address: | **NELVA E BRUNSTING TRUST**<br>**13630 PINEROCK LN**<br>**HOUSTON TX 77079-5914** | Legal Description: | **LT 31 BLK 4**<br>**WILCHESTER WEST SEC 1** |
| | | Property Address: | **13630 PINEROCK LN**<br>**HOUSTON TX 77079** |

| State Class Code | Land Use Code |
|---|---|
| A1 -- Real, Residential, Single-Family | 1001 -- Residential Improved |

| Land Area | Total Living Area | Neighborhood | Neighborhood Group | Market Area | Map Facet | Key Map® |
|---|---|---|---|---|---|---|
| 8,625 SF | 2,761 SF | 7750 | 25011 | 391 | 4858D | 489F |

Value Status Information

| Capped Account | Value Status | Notice Date | Shared CAD |
|---|---|---|---|
| No | Noticed | 04/02/2011 | No |

Exemptions and Jurisdictions

| Exemption Type | Districts | Jurisdictions | ARB Status | 2010 Rate | 2011 Rate | Online Tax Bill |
|---|---|---|---|---|---|---|
| **Residential Homestead Surviving Spouse Over-65** | 025 | SPRING BRANCH ISD * | Certified: 08/12/2011 | 1.394500 | 1.394500 | View |
| | 040 | HARRIS COUNTY | Certified: 08/12/2011 | 0.388050 | 0.391170 | View |
| | 041 | HARRIS CO FLOOD CNTRL | Certified: 08/12/2011 | 0.029230 | 0.028090 | |
| | 042 | PORT OF HOUSTON AUTHY | Certified: 08/12/2011 | 0.020540 | 0.018560 | |
| | 043 | HARRIS CO HOSP DIST | Certified: 08/12/2011 | 0.192160 | 0.192160 | |
| | 044 | HARRIS CO EDUC DEPT | Certified: 08/12/2011 | 0.006581 | 0.006581 | |
| | 061 | CITY OF HOUSTON | Certified: 08/12/2011 | 0.638750 | 0.638750 | |

* Because the owner qualifies for an over-65 exemption, taxes may be frozen for this account.

Valuations

| | Value as of January 1, 2010 | | | Value as of January 1, 2011 | |
|---|---|---|---|---|---|
| | Market | Appraised | | Market | Appraised |
| Land | 114,919 | | Land | 114,919 | |
| Improvement | 138,353 | | Improvement | 155,229 | |
| Total | 253,272 | 253,272 | Total | 270,148 | 270,148 |

**5-Year Value History**

Land

Market Value Land

| Line | Description | Site Code | Unit Type | Units | Size Factor | Site Factor | Appr O/R Factor | Appr O/R Reason | Total Adj | Unit Price | Adj Unit Price | Value |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | 1001 -- Res Improved Table Value | SF1 | SF | 8,400 | 1.00 | 1.00 | 0.50 | Topography | 0.50 | 27.00 | 13.50 | 113,400 |
| 2 | 1001 -- Res Improved Table Value | SF3 | SF | 225 | 1.00 | 0.50 | 0.50 | Topography | 0.25 | 27.00 | 6.75 | 1,519 |

Building

Case 4:12-cv-00592 Document 10-4 Filed on 03/06/12 in TXSD Page 2 of 2

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# Home Finder
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## 13630 Pinerock Ln Houston, TX 77079
Map It Share Bookmark Listing Back To Results Add to MyCart

REALTOR® Agent



Lara Nesmith
CNE
HAVE AGENT CALL BACK
Contact Info & Web Site
Email Me | My Profile

Client Experience Rating
4.96/5.0 Overall Rating
View Rating Details
Based on 37 Completed Surveys

View My Listings
View My Transactions

REALTOR® Broker
Martha Turner PROPERTIES
CLICK HERE

MARTHA TURNER PROPERTIES
Click for Broker Phone
Email Broker | Office Profile
Visit Web Site
12506 Memorial Drive
Houston, TX 77024

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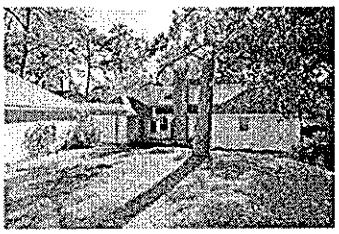
Follow HAR on Twitter
HAR TV on YouTube
Housing Market Trends.



Click on image to enlarge

Gallery | View All Images
1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15

### Room/Lot Dimension

| | |
|---|---|
| Living: | 17X14 |
| Den: | 20X16 |
| Game Room: | 17X12 |
| Dining: | 13X11 |
| Kitchen: | 12X13 |
| Breakfast: | 9X8 |
| 1st Bed: | 15X14 |
| 2nd Bed: | 12X10 |
| 3rd Bed: | 12X10 |
| 4th Bed: | 11X13 |
| 5th Bed: | 12X11 |
| Utility Room Desc: | Utility Room 1st Floor |
| Utility Room Dim: | 9X6 |
| Bedroom Desc: | Master Bed - 1st Floor |

### School Information

| | |
|---|---|
| School District: | Spring Branch |
| Elementary Sch: | WILCHESTER |
| Middle Sch: | MEMORIAL |
| High Sch: | STRATFORD |

( Information should be independently verified )

### General Description

Wonderful custom home with an awesome floor plan on a great cul de sac in prestigious Wilchester West. This home appears to have been very well maintained, Two bedrooms and two full baths down, 3 bedrooms and play room/gameroom up with 3rd full bath, some updating in the 90's with Corian countertops and tile backsplash in the kitchen. This is a jewel and is priced only slightly above lot value! Great Pool and tennis courts and membership in Wilchester Club included, great schools too!

| | |
|---|---|
| Listing Price: | $469,000 |
| Address | 13630 Pinerock Ln |
| City | Houston |
| Zip Code: | 77079-5914 |
| Subdivision: | Wilchester West 1 |
| Property Type: | Single Family Homes |
| Status: | Pending Continue to Show |
| Bedrooms: | 5 Bedroom(s) |
| Baths: | 3 Full & 0 Half Bath(s) |
| Garage: | 2 Car Detached |
| Stories: | 1 ½ Story |
| Style: | Traditional |
| Year Built: | 1966 / Appraisal District |
| Building Sqft: | 3,049 / Appraisal |
| Lotsize: | 8,625 / Appraisal District |
| Front Door: | South |
| Maintenance Fee: | $654 annually |
| Mrkt Area: | Memorial West |
| Key Map® : | PAGE 489F |
| MLS# / Area: | 19348628 / 23-Memorial |

### Interior Feature

Drapes/Curtains/Window Cover, Fire/Smoke Alarm

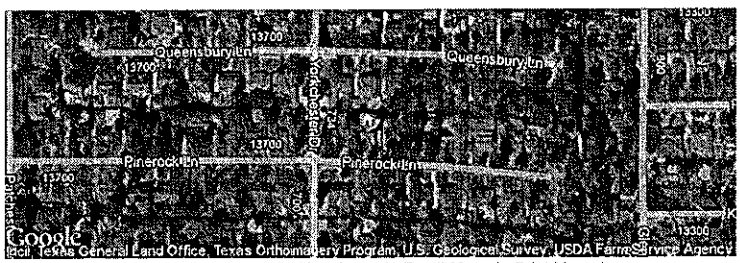
| | |
|---|---|
| Fireplace: | 1 / Gas Connections, Wood Burning Fireplace |
| Dishwasher: | Yes |
| Disposal: | Yes |
| Compactor: | No |
| Microwave: | No |
| Range: | Electric Range |
| Oven: | Double Oven, Electric Oven |
| Connection: | Washer, Electric Dryer, Gas Dryer |
| BedRooms: | Master Bed - 1st Floor |
| Heating: | Central Gas |
| Cooling: | Central Electric |
| Floors: | Carpet, Terrazo, Tile, Vinyl |
| Countertop: | Corian |

### Exterior Feature

Back Yard, Fully Fenced, Patio/Deck, Sprinkler System, Subdivision Tennis Court

| | |
|---|---|
| Extr Constrn: | Brick & Wood |
| Area Pool: | Yes |
| Private Pool: | No |
| Lot Desc: | Cul-De-Sac, Subdivision Lot, Wooded |
| Roof: | Composition |
| Foundation: | Slab |

### 13630 Pinerock Ln, Houston, TX 77079




Birds Eye View | View Large Map | Directions | Email Map | Print Map |

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Email Company
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Mortgage Calculator
Schools
Neighborhood
Translate It
Currency Converter

MyCart ( 0 Listings )

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| | § | CIVIL ACTION NO. H-12-CV-592 |
| | § | |
| vs. | § | |
| | § | |
| ANITA KAY BRUNSTING, and | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |

**REQUEST FOR HEARING OR CALL IN CONFERENCE ON EMERGENCY MOTION**

Defendants have filed an Emergency Motion for Remove Lis Pendens on this date.

Consistent with Judge Hoyt's procedures, Section II, on Monday March 5, 2012, Defendant's counsel contacted Plaintiff, who is acting *pro se*, to discuss resolution of the issue presented or a possible hearing on the motion. She advised that she would be available for a hearing or call in conference at any time this week at her work telephone number (925) 938-1600, extension 100, taking into consideration the time difference between Houston and California.

**Defendants request a hearing or call in conference at the court's earliest convenience due the urgency to have this matter resolved**.

**GREEN & MATHEWS, L.L.P.**

/s/

**BERNARD LILSE MATHEWS, III**
State Bar # 13187450
14550 Torrey Chase Boulevard, Suite 245
Houston, Texas 77014
Telephone: (281) 580-8100
Facsimile: (281) 580-8104

Attorneys for Anita Kay and Amy Ruth Brunsting

**Certificate of Service**

I certify that on March 6, 2012 I served the foregoing Candace Louise Curtis by electronic filing and service at her e-mail address: occurtis@sbcglobal.net.

/s/

Bernard Lilse Mathews, III

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| | § | CIVIL ACTION NO. H-12-CV-592 |
| | § | |
| vs. | § | |
| | § | |
| ANITA KAY BRUNSTING, and | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |

**ORDER REMOVING LIS PENDENS**

On this date came on Defendants' Emergency Motion to Remove Lis Pendens. The court having considered the motion and any written or oral opposition thereto is of the opinion the motion is meritorious, and should be granted, and therefore,

IT IS ORDERED that the Lis Pendens submitted by Plaintiff in this case, and any recorded incident thereof related to that certain real property at 13639 Pinerock Lane, Houston, Texas 77079, legally described as Lot 31, Block 4 of Wilchester West, an Addition in Houston, Harris County, Texas, is hereby REMOVED and VACATED, and shall not constitute any cloud on title.

SIGNED this ___ day of March, 2012.

Judge, United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| | § | CIVIL ACTION NO. H-12-CV-592 |
| | § | |
| vs. | § | |
| | § | |
| ANITA KAY BRUNSTING, and | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |

**ORDER REMOVING LIS PENDENS**

On this date came on Defendants' Emergency Motion to Remove Lis Pendens. The court having considered the motion and any written or oral opposition thereto is of the opinion the motion is meritorious, and should be granted, and therefore,

IT IS ORDERED that the Lis Pendens submitted by Plaintiff in this case, and any recorded incident thereof related to that certain real property at 13630 Pinerock Lane, Houston, Texas 77079, legally described as Lot 31, Block 4 of Wilchester West, an Addition in Houston, Harris County, Texas, is hereby REMOVED and VACATED, and shall not constitute any cloud on title.

SIGNED this ___ day of March, 2012.

Judge, United States District Court

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis

Plaintiff,

v.

Case No.: 4:12−cv−00592
Judge Kenneth M. Hoyt

Anita Kay Brunsting, et al.

Defendant.

TYPE OF CASE: Civil

---

## NOTICE OF SETTING

**TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR THE PLACE, DATE AND TIME SET FORTH BELOW.**

**Before the Honorable**

Kenneth M. Hoyt

**PLACE:**
by telephone
United States District Court
515 Rusk Ave
Houston, TX

**DATE:** 3/7/12

**TIME:** 11:00 AM

**TYPE OF PROCEEDING:** Telephone Conference

Date: March 6, 2012

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. H-12-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE HELD ON March 7, 2012 at 11:00 a.m.**

**Appearance for Plaintiff**

Candace Louise Curtis, *pro se*

**Appearance for Defendant**

Bernard Lilse Mathews, III

The following rulings were made:

Pursuant to phone conference, the Court will, *sua sponte*, dismiss the plaintiff's case by separate order for lack of jurisdiction.

It is so ORDERED.

SIGNED at Houston, Texas this 8th day of March, 2012.

Kenneth M. Hoyt
United States District Judge



20-20566.492

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. H-12-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER OF DISMISSAL**
**(*Sua Sponte*)**

**I.**

Before the Court is the defendants, Amy Ruth Brunsting and Anita Kay Brunsting's emergency motion for removal of *Lis Pendens* filed by the plaintiff, Candace Louise Curtis. After a phone conference and discussion with the plaintiff and counsel for the defendants, the Court determines that it lacks jurisdiction over the parties and subject matter of this litigation.

**II.**

Generally, the facts will show that the plaintiff and defendants are sisters and, along with other siblings, are beneficiaries of the Brunsting Family Living Trust. It appears from the pleadings and colloquy between the plaintiff and counsel for the defendants, that the plaintiff's father and mother, Elmer H. and Nelva E. Brunsting, established the Brunsting Family Living Trust for the benefit of their offspring in 1996. Elmer H. Brunsting died on April 1, 2009, and Nelva E. Brunsting died on November 11, 2011. The plaintiff's dispute arises out of the administration of the family Trust.

**III.**

The plaintiff contended, during the phone conference, that she is suing her sisters, the trustees, in their individual capacities. However, in her pleadings, the plaintiff asserts that she is



20-20566.493

suing her sisters individually and severally as co-trustees for the Trust because they have failed . . . "to meet their first obligation under that power, to provide full, accurate, complete and timely accounting to the beneficiaries." Therefore, the plaintiff alleges claims for breach of fiduciary obligations, fraud, constructive fraud and intentional infliction of emotional distress.

In its motion for removal of *Lis Pendens*, the defendants argue that the Court lacks subject matter jurisdiction over the dispute because it is, in truth, a probate matter and falls under the Probate Exception to federal court jurisdiction. *See Marshall v. Marshall*, 126 S. Ct. 1735, 1748 (2006). Responding to the defendants' motion, the plaintiff seeks to satisfy the jurisdictional issue of the amount in controversy by stating that the *res* is the Trust. Yet, the plaintiff argues the controversy is a personal one, not a dispute about the Trust.

**IV.**

The Court is of the opinion that the Probate Exception to federal jurisdiction applies. *Marshall*, 126 S. Ct. at 1748. The plaintiff admits this fact, yet only to avoid the Court removing her *lis pendens* filing. *See* [Response Doc. No. ___; citing *Lepard v. NBD Bank*, 384 F. 3d 232, 237 (6th Cir. 2004)]. Hence, because the plaintiff's suit is a dispute over the distribution of the family Trust, the Court lacks jurisdiction and the case must be DISMISSED. To the extent that a *lis pendens* has been filed among the papers in federal Court in this case, it is cancelled and held for naught.

It is so Ordered.

SIGNED at Houston, Texas this 8th day of March, 2012.

Kenneth M. Hoyt
United States District Judge



20-20566.494

United States District Court
Southern District of Texas
FILED

MAR 0 9 2012

David J. Bradley, Clerk of Court

# UNITED STATES DISTRICT COURT
## SOUTHERN DISTRICT OF TEXAS
## HOUSTON DIVISION

Candace Louise Curtis
Plaintiff

v.

Anita Kay Brunsting, et al.
Defendants

Civil Action No. 4:12–cv–00592
Jury

PLAINTIFF'S ANSWER TO DEFENDANTS MOTION FOR REMOVAL OF LIS PENDENS

TO THE HONORABLE COURT:

I, Candace Louise Curtis, Plaintiff pro se, file this Plaintiff's Answer to Defendant's Motion for Removal of Lis Pendens:

1The above titled action is a personal injury action for the civil torts of breach of fiduciary, fraud, and intentional infliction of emotional distress. As such, it seeks in personam jurisdiction over the Defendants and does not seek to probate or annul a will or to administer an estate.

1. Defendants in the first instance, challenge the Court's jurisdiction to hear this matter under the probate exception to diversity, and then in the second instance attempt to invoke this Court to assume the same jurisdiction, and to reach to a lis pendens in the custody of the Harris County Recorder. Either this Court is foreclosed from reaching the subject matter under the probate exception to diversity, as Defendants claim, or it can reach to the lis pendens in the custody of the Harris County Recorder. Both of these things cannot be true. Either the federal court is without jurisdiction under the probate exception to diversity, or it has jurisdiction to reach the lis pendens.

2. Defendants are loath to bring any form of action in the District Court in the State of Texas, because as soon as they do they will be held to answer



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and to account. They cannot answer and they cannot account. If they can, they should simply do so.

3. Defendants mischaracterize Plaintiff's claim. Plaintiff does not bring action against Defendants in the capacity of trustees and Plaintiff's claim does not seek distribution or other relief directly from the Brunsting Family Living Trust.

4. Plaintiff's claims are based upon the provable fact that Defendants have accepted the appointment to the office of trustee for the Brunsting Family Living Trust and/or any resulting trust, and have exercised the powers and privileges associated therewith, but have never fully occupied said office, as they have abjectly refused or otherwise failed to meet the obligations bound to their acceptance of said office.

5. Defendant's claim that this action arises in the context of trust administration is baseless. Defendant's abject refusal to answer, to account, to explain, to inform, to notify, or even to communicate in any form whatsoever, is not activity intrinsically related to the administration of a trust or an estate.

6. In paragraph 1 of Defendant's motion, they admit that they are co-trustees of the Brunsting Family Living Trust, and in paragraph 4 admit that Plaintiff is an heir. There can be no question that there is a fiduciary relationship and other than to examine the question of whether or not Defendants breached the obligations under that instrument, Plaintiff has no further use for the Brunsting Family Living Trust in this action.

7. Defendants filed their motion into the incorrect court, under an incorrect case number, and the motion gives an incorrect property description. The lis pendens at issue is a public record in the custody of the Harris County Recorder and is a public record exclusively within the jurisdiction of the Harris County District Court.

8. This Court is foreclosed from reaching the lis pendens under the probate exception to diversity jurisdiction as explained below.

9. Defendant's characterization of Plaintiff's claims as without merit and as emanating from unjustified anger is, in and of itself, the intentional infliction of emotional distress, as Plaintiff's factual experience is one of a long train of abuses that Plaintiff has suffered at the unclean hands of Defendants.

10. Plaintiff has serious questions regarding the selective exhibits attached to Defendant's motion, but this Court has no jurisdiction to hear a probate claim. Therefore, Plaintiff requests that the Defendants file their motion in the court having competent jurisdiction, the Harris County District Court, before Plaintiff will consider stipulating to removal of the lis pendens.

## MEMORANDUM OF POINTS AND AUTHORITIES

11. Historically speaking the probate exception to federal jurisdiction is amongst the most misunderstood challenges to federal court jurisdiction. It has been claimed by some to apply to both federal questions, as well as to diversity cases, and was interpreted as a very broad exception until the US Supreme Court intervened in Marshall v Marshall[1].

12. The matter is probably best summed up by the Sixth Circuit in a case appearing to be on all fours with the case in point:

Wisecarver v Moore No. 06-6046 as follows:

> It is well-settled that "a federal court has no jurisdiction to probate a will or administer an estate" Markham v. Allen, 326 U.S. 490, This exception, known as the probate exception, "is a practical doctrine designed to promote legal certainty and judicial economy by providing a single forum of litigation, and to tap the expertise of probate judges by conferring exclusive jurisdiction on the probate court." Lepard v. NBD Bank, 384

[1] Marshall v. Marshall, 547 U.S. 293, 126 S.Ct. 1735, 1746, 164 L.Ed.2d 480 (2006)

F.3d 232, 237 (6th Cir.2004) (quoting Cenker v. Cenker, 660 F.Supp. 793, 795 (E.D.Mich.1987)).

The Supreme Court delineated the probate exception's "distinctly limited scope" in Markham:

[W]hile a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate the rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.

Markham, 326 U.S. at 494, 66 S.Ct. 296. Recently, the Court noted that after Markham, "[l]ower courts have puzzled over the meaning of the words 'interfere with the probate proceedings'" Marshall, 126 S.Ct. at 1748. This ambiguous language, the Court found, was intended merely to reiterate the general rule that "when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res[2]." clarified:

Thus, the probate exception reserves to the state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court, But it does not bar federal courts from adjudicating probate court matters outside those confines and otherwise within federal jurisdiction.

Id. Thus, it found that the plaintiff's claims for tortuous interference with a gift fell outside the exception because the claim sought in personam relief, as opposed to relief seeking to reach the res over which the state court had custody.

Therefore, to the extent that Plaintiffs' claims seek in personam jurisdiction over the Defendants, and do not seek to probate or annul a will, the probate exception does not apply. Turning to the complaint, Plaintiffs allege, in relevant part:

---

[2] Id. at 1748, 126 S.Ct. 1735.

Loretta Moore and Evelyn Page exercised undue influence on Floyd C. McCamy, and procured from Floyd C. McCamy his signature on testamentary documents. The plaintiffs, upon information and belief, allege that the defendants obtained a Power of Attorney from the deceased prior to his death and used that Power of Attorney for their benefit. The defendants failed to use good faith in exercising the authority granted by the power of attorney.

The defendants through the use of their fiduciary and confidential relationship, with Floyd C. McCamy, prior to his death, persuaded him at a time when he was both physically and mentally incompetent, to execute a Will leaving his entire Estate to them even though the bulk of his Estate had come from the family of the plaintiffs and the deceased, Floyd C. McCamy, had stated his intent to leave the Estate to the plaintiffs.

[Defendants] used their relationship with Mr. McCamy and his frail, weak and deteriorating physical and mental condition to create animosity towards the plaintiffs and to exercise dominion and control over McCamy.

[B]y virtue of the confidential and fiduciary relationship and the defendants' dominance over Floyd C. McCamy, defendants procured a Will from him which was not the intent or desire of Floyd C. McCamy and was designed solely for the benefit of the defendants.

[D]efendants manipulated Floyd C. McCamy by means of undue pressure and undue influence in order to cause Floyd C. McCamy to execute a Will whereby the defendants were materially benefited [sic].

Defendants by way of conversion, have retained money and personal property of the deceased and have exercised dominion and control over such property as their own to [the] exclusion of the rightful owner.

Liberally construed, Plaintiffs' claims for breach of fiduciary duty, breach of confidential relationship, undue influence, and fraud are not barred by the probate exception because they seek in personam jurisdiction over the Defendants and do not seek to probate or annul a will. Instead, these claims allege that the Defendants received assets from McCamy during his lifetime by misusing the Power of Attorney executed by McCamy in



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their favor and that Plaintiffs were damaged as a result.[3] Moreover, these assets were allegedly transferred during McCamy's lifetime and were therefore not part of his estate at his death. Thus, these assets were not subject to the probate court's disposition of McCamy's estate. See Lamica v. Pierre, No. 5:05-CV-964, 2006 WL 3423861 (N.D.N.Y. Nov. 28, 2006) (finding probate exception inapplicable to claims relating to property transferred before decedent's death).

Since Marshall, other circuit courts considering similar claims have also held that causes of action alleging breach of fiduciary duties, fraud, and undue influence do not necessarily fall within the scope of the probate exception. See Campi v. Chirco Trust UDT, No. 05-55595, 2007 WL 628049, at *1 (9th Cir. Feb. 27, 2007) (cause of action alleging fraud, undue influence, and breach of fiduciary duties regarding property removed from a trust and never probated not barred by probate exception); Jones v. Brennan, 465 F.3d 304, 307-308 (7th Cir.2006) (breach of fiduciary duty claim regarding guardian's mismanagement not barred by probate exception). These decisions follow Marshall's in personam/in rem distinction and find that the principles underlying the probate exception are not implicated when federal courts exercise jurisdiction over claims seeking in personam jurisdiction based upon tort liability because the claims do not interfere with the res in the state court probate proceedings or ask a federal court to probate or annul a will.

While the issues involved in Plaintiff's remaining claims undoubtedly intertwine with the litigation proceeding in the probate courts, in addressing the claims, the federal court will not be asserting control of any res in the custody of a state court. Marshall, 126 S.Ct. at 1748. A federal court properly "exercise[s] its jurisdiction to adjudicate rights in [property in the custody of a state court] where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court." Marshall, 126 S.Ct. at 1747 (citing Markham, 326 U.S. at 494, 66 S.Ct. 296) (internal quotation marks omitted). The probate exception can no longer be used to dismiss "widely recognized tort [s]" such as breach of fiduciary duty or fraudulent misrepresentation merely because the issues intertwine with claims

[3] We are careful to limit Plaintiffs' claims to money damages related to To the extent that the allegedly improper inter vivos transfers. Plaintiffs' claims for breach of fiduciary duty, fraud, or undue influence seek money damages equal to the amount of the probate disbursements, awarding such damages would clearly be prohibited by the probate exception since it would be tantamount to setting aside the will.



20-20566.500

proceeding in state court. Id. at 1748. Accordingly, these claims may not be dismissed under the probate exception.[4]

13. As can clearly be seen by a thorough reading of Marshall v Marshall 126 S.Ct. at 1748, Lefkowitz v. Bank of New York, Docket 04-0435-cv from the Second Circuit; Wisecarver v. Moore No. 06-6046 from the Sixth Circuit and Jones v. Brennan No. 04-3528 from the Seventh Circuit, this Court has the jurisdiction to entertain Plaintiff's in personam suit against Defendants for civil torts, but does not have the jurisdiction to reach to the lis pendens in the custody of the Harris County Recorder. As summed up in Lefkowitz (infra):

> "Thus, insofar as our Court's decision in Moser purported to direct courts to decline to exercise subject-matter jurisdiction over in personam and other claims that might "interfere" with probate proceedings only, see 294 F.3d at 341, that holding was overly-broad and has now been superseded by Marshall's limitation of the exception. See Marshall, 126 S.Ct. at 1748. Following Marshall we must now hold that so long as a plaintiff is not seeking to have the federal court administer a probate matter or exercise control over a res in the custody of a state court, if jurisdiction otherwise lies, then the federal court may, indeed must, exercise it. See id. at 1741 (quoting Chief Justice Marshall in Cohens v. Virginia, 19 U.S.(6 Wheat.) 264, 404, 5 L.Ed. 257 (1821), for the maxim that while "[i]t is most true that this Court will not take jurisdiction if it should not it is equally true, that it must take jurisdiction, if it should. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given"); see also, e.g., Jones v. Brennan, 465 F.3d 304, 307-08 (7th Cir.2006) (concluding probate exception does not bar federal jurisdiction for claim of estate administrator's breach of fiduciary duty with respect to estate pending in state court); McAninch v. Wintermute, 478 F.3d 882, 889 (8th Cir.2007) (same as to claim for breach of contract and libel by administrator)."

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[4] LEFKOWITZ v. BANK OF NEW YORK 04-0435-cv. Docket No. 04-0435-cv Argued: Feb. 12, 2007. -- June 28, 2007

14. Plaintiff therefore reasserts her claim that the action brought against Defendants is an in personam tort action for breach of fiduciary, fraud, and intentional infliction of emotional distress. Plaintiff is seeking civil damages from Defendants in their individual capacity, and not as trustees, and Plaintiff's claim does not come within the probate exception to diversity.

15. Plaintiff further alleges that Defendant's motion is presented to the wrong court and that this court is without subject matter jurisdiction to grant the relief requested.

16. Plaintiff, therefore, respectfully requests that this Honorable Court dismiss Defendant's Emergency Motion for Removal of Lis Pendens and defer to the jurisdiction of the Harris County District Court.

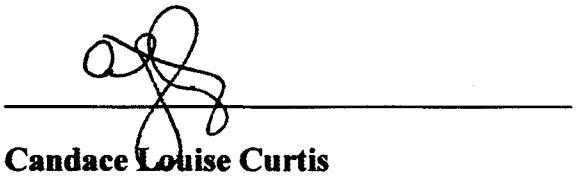
Plaintiff respectfully requests the above relief.



Candace Louise Curtis Tuesday, March 6, 2012

**Certificate of Service**

**I certify that on March 6, 2012 I served the foregoing Answer to Defendant's Motion for Removal of Lis Pendens upon responsive counsel, Bernard Lilse Mathews, III, by electronic filing and service at his email address: texlawyer@gmail.com.**



**Candace Louise Curtis**

**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis
Plaintiff

v.

Anita Kay Brunsting, et al.
Defendant

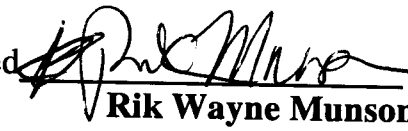
Civil Action No. 4:12–cv–00592

I, Rik Wayne Munson, the below signed declarant, under penalty of perjury pursuant to the laws of the United States state to be true as follows:

I am a competent witness over the age of 18 and not a party to the above titled action. On Wednesday, March 07, 2012 I served the attached "plaintiff's answer to defendants motion to lift lis pendens" upon the following persons by placing a true copy in an envelope and depositing it in the US Mail Wednesday, March 07, 2012 at American Canyon California addressed as follows:

Bernard Lilse Mathews, III
Attorney at Law
Green & Mathews, LLP
14550 Torrey Chase Blvd., Suite 245
Houston, Texas 77014

David J. Bradley
Clerk of Court
P. O. Box 61010
Houston, TX 77208

Respectfully submitted  Wednesday, March 07, 2012
**Rik Wayne Munson**

# UNITED STATES COURT OF APPEALS
## FOR THE FIFTH CIRCUIT

United States Courts
Southern District of Texas
FILED
MAR 12 2012
David J. Bradley, Clerk of Court

Candace Louise Curtis
Plaintiff pro se

v.

Anita Kay Brunsting, et al.
Defendants

Civil Action No. 4:12–cv–00592
Jury

**Plaintiff's Notice of Appeal**

Parties are hereby noticed that above named Plaintiff will appeal the order dismissing Plaintiff's action under the probate exception to diversity jurisdiction entered March 8, 2012 by the Honorable Kenneth Hoyt.

Respectfully Submitted _____ March 9, 2012
Candace Louise Curtis

# United States District Court
Southern District of Texas
Houston Division

CANDACE LOUISE CURTIS,
Plaintiff
v
ANITA BRUNSTING et al.
Defendants

Civil Action No. 4:12-cv-00592

## Proof of Service Notice of Appeal

I, Rik Munson, below signed, under penalty of perjury pursuant to the laws of the United States do declare to be true as follows:

I am a competent fact witness over the age of 18 and not a party to the above titled action. My business address is 218 Landana St. American Canyon CA 94503

On Friday, March 09, 2012 I served a true copy of the attached Notice of Appeal on the parties by placing a true copy in an envelope with postage fully prepaid addressed as follows:

Bernard Lilse Mathews, III
Attorney at Law
Green & Mathews, LLP
14550 Torrey Chase Blvd., Suite 245
Houston, Texas 77014

David J. Bradley
Clerk of Court
P. O. Box 61010
Houston, TX 77208

Respectfully submitted 
Rik Munson

**Fw: NEW NOA Activity in Case 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting et al Notice of Appeal**

Amanda Sutton-Foy to: Brandy Lemelle 03/13/2012 10:06 AM

From: Amanda Sutton-Foy/CA05/05/USCOURTS
To: Brandy Lemelle/CA05/05/USCOURTS@USCOURTS

Follow Up: Normal Priority.

United States Courts
Southern District of Texas
FILED
MAR 16 2012
David J. Bradley, Clerk of Court

Houston
12-20164

4-12cv592 - CASE OPENING SHEET.pdf

Amanda Sutton-Foy
U. S. Court of Appeals, 5th Circuit
Case Manager for Southern & Eastern Texas
600 S. Maestri Place
New Orleans, LA 70130
(504) 310-7670

----- Forwarded by Amanda Sutton-Foy/CA05/05/USCOURTS on 03/13/2012 09:31 AM -----

From: CA5SETX Notification/CA05/05/USCOURTS
To: Amanda Sutton-Foy/CA05/05/USCOURTS@USCOURTS
Date: 03/12/2012 04:09 PM
Subject: NEW NOA Activity in Case 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting et al Notice of Appeal
Sent by: Peter Conners

----- Forwarded by Peter Conners/CA05/05/USCOURTS on 03/12/2012 04:09 PM -----

From: DCECF_LiveDB@txs.uscourts.gov
To: DC_Notices@txs.uscourts.gov
Date: 03/12/2012 04:03 PM
Subject: Activity in Case 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting et al Notice of Appeal

**This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.**
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**U.S. District Court**

**SOUTHERN DISTRICT OF TEXAS**

**Notice of Electronic Filing**

The following transaction was entered on 3/12/2012 at 4:02 PM CDT and filed on 3/12/2012

| | |
|---|---|
| **Case Name:** | Candace Louise Curtis v. Anita Kay Brunsting et al |
| **Case Number:** | 4:12-cv-00592 |
| **Filer:** | Candace Louise Curtis |
| **WARNING: CASE CLOSED on 03/08/2012** | |
| **Document Number:** | 16 |

**Docket Text:**
**NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: [14] Order of Dismissal, by Candace Louise Curtis (Filing fee $ 455), filed.(mlothmann)**

**4:12-cv-00592 Notice has been electronically mailed to:**

Bernard Lilse Mathews , III texlawyer@gmail.com

**4:12-cv-00592 Notice has not been electronically mailed to:**

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553

The following document(s) are associated with this transaction:

**Document description:**Main Document
**Original filename:**n/a
**Electronic document Stamp:**
[STAMP dcecfStamp_ID=1045387613 [Date=3/12/2012] [FileNumber=14678418-0] [60fb3fc08d0d16a698af456c30eec98203ed003b2700c1f52c48ae13d77aee4663b395a1e0bda24677583b8e88adc355285bc0e224e216e90566b3f154e7212b]]

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| Candace Louise Curtis | § | |
| | § | |
| | § | CASE NUMBER: 4:12-cv-00592 |
| v. | § | District Judge: Kenneth M. Hoyt |
| | § | Court Reporter(s): |
| Anita Kay Brunsting, et al | § | |

**NOTICE OF THE FILING OF AN APPEAL**

In connection with this appeal, instrument # 16, filed by Candace Louise Curtis, a copy of the notice of appeal, the order being appealed and the docket sheet are attached.

In regard to this appeal:

- The Court of Appeal $455.00 filing and docketing fees have not been paid, the appellant is a pro se litigant and a notice regarding a motion to proceed in forma pauperis was entered and a response is due.
- This case was decided without a hearing – no transcripts.
- The Clerk of Court will submit to the Fifth Circuit Court of Appeals a Certificate of Non-Compliance if the appellant fails to pay the filing fee (or submit an application to proceed in forma pauperis).

David Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| Candace Louise Curtis | § | |
| | § | |
| | § | CASE NUMBER: 4:12-cv-00592 |
| v. | § | District Judge: Kenneth M. Hoyt |
| | § | Court Reporter(s): |
| Anita Kay Brunsting, et al | § | |

**FILING FEE INSTRUCTIONS TO APPELLANT**

A filing fee of $455.00 is required to proceed on appeal. The Clerk will file the notice of appeal without prepayment of the filing fee. However, for this appeal to proceed, the appellant must submit either: (1) the filing fee of $455.00; or (2) a completed application to proceed in forma pauperis.

The appellant is instructed to comply as directed within thirty (30) days of the date of this notice. Failure to comply with this notice may result in your appeal being dismissed.

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| Candace Louise Curtis | § | |
| | § | |
| | § | CASE NUMBER: 4:12-cv-00592 |
| v. | § | District Judge: Kenneth M. Hoyt |
| | § | Court Reporter(s): |
| Anita Kay Brunsting, et al | § | |

**NOTICE OF THE FILING OF AN APPEAL**

In connection with this appeal, instrument # 16, filed by Candace Louise Curtis, a copy of the notice of appeal, the order being appealed and the docket sheet are attached.

In regard to this appeal:

- The Court of Appeal $455.00 filing and docketing fees have not been paid, the appellant is a pro se litigant and a notice regarding a motion to proceed in forma pauperis was entered and a response is due.
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David Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. H-12-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER OF DISMISSAL**
**(*Sua Sponte*)**

**I.**

Before the Court is the defendants, Amy Ruth Brunsting and Anita Kay Brunsting's emergency motion for removal of *Lis Pendens* filed by the plaintiff, Candace Louise Curtis. After a phone conference and discussion with the plaintiff and counsel for the defendants, the Court determines that it lacks jurisdiction over the parties and subject matter of this litigation.

**II.**

Generally, the facts will show that the plaintiff and defendants are sisters and, along with other siblings, are beneficiaries of the Brunsting Family Living Trust. It appears from the pleadings and colloquy between the plaintiff and counsel for the defendants, that the plaintiff's father and mother, Elmer H. and Nelva E. Brunsting, established the Brunsting Family Living Trust for the benefit of their offspring in 1996. Elmer H. Brunsting died on April 1, 2009, and Nelva E. Brunsting died on November 11, 2011. The plaintiff's dispute arises out of the administration of the family Trust.

**III.**

The plaintiff contended, during the phone conference, that she is suing her sisters, the trustees, in their individual capacities. However, in her pleadings, the plaintiff asserts that she is



20-20566.512

suing her sisters individually and severally as co-trustees for the Trust because they have failed . . . "to meet their first obligation under that power, to provide full, accurate, complete and timely accounting to the beneficiaries." Therefore, the plaintiff alleges claims for breach of fiduciary obligations, fraud, constructive fraud and intentional infliction of emotional distress.

In its motion for removal of *Lis Pendens*, the defendants argue that the Court lacks subject matter jurisdiction over the dispute because it is, in truth, a probate matter and falls under the Probate Exception to federal court jurisdiction. *See Marshall v. Marshall*, 126 S. Ct. 1735, 1748 (2006). Responding to the defendants' motion, the plaintiff seeks to satisfy the jurisdictional issue of the amount in controversy by stating that the *res* is the Trust. Yet, the plaintiff argues the controversy is a personal one, not a dispute about the Trust.

**IV.**

The Court is of the opinion that the Probate Exception to federal jurisdiction applies. *Marshall,* 126 S. Ct. at 1748. The plaintiff admits this fact, yet only to avoid the Court removing her *lis pendens* filing. *See* [Response Doc. No. ___; citing *Lepard v. NBD Bank*, 384 F. 3d 232, 237 (6th Cir. 2004)]. Hence, because the plaintiff's suit is a dispute over the distribution of the family Trust, the Court lacks jurisdiction and the case must be DISMISSED. To the extent that a *lis pendens* has been filed among the papers in federal Court in this case, it is cancelled and held for naught.

It is so Ordered.

SIGNED at Houston, Texas this 8th day of March, 2012.

Kenneth M. Hoyt
United States District Judge



20-20566.513

# UNITED STATES COURT OF APPEALS
## FOR THE FIFTH CIRCUIT

United States Courts
Southern District of Texas
FILED
MAR 12 2012
David J. Bradley, Clerk of Court

Candace Louise Curtis
Plaintiff pro se

v.

Anita Kay Brunsting, et al.
Defendants

Civil Action No. 4:12–cv–00592
Jury

**Plaintiff's Notice of Appeal**

Parties are hereby noticed that above named Plaintiff will appeal the order dismissing Plaintiff's action under the probate exception to diversity jurisdiction entered March 8, 2012 by the Honorable Kenneth Hoyt.

Respectfully Submitted _____ March 9, 2012
Candace Louise Curtis

# United States District Court
Southern District of Texas
Houston Division

CANDACE LOUISE CURTIS,
Plaintiff
v
ANITA BRUNSTING et al.
Defendants

Civil Action No. 4:12-cv-00592

## Proof of Service Notice of Appeal

I, Rik Munson, below signed, under penalty of perjury pursuant to the laws of the United States do declare to be true as follows:

I am a competent fact witness over the age of 18 and not a party to the above titled action. My business address is 218 Landana St. American Canyon CA 94503

On Friday, March 09, 2012 I served a true copy of the attached Notice of Appeal on the parties by placing a true copy in an envelope with postage fully prepaid addressed as follows:

Bernard Lilse Mathews, III
Attorney at Law
Green & Mathews, LLP
14550 Torrey Chase Blvd., Suite 245
Houston, Texas 77014

David J. Bradley
Clerk of Court
P. O. Box 61010
Houston, TX 77208

Respectfully submitted 
Rik Munson

APPEAL, CLOSED

**U.S. District Court**
**SOUTHERN DISTRICT OF TEXAS (Houston)**
**CIVIL DOCKET FOR CASE #: 4:12-cv-00592**
**Internal Use Only**

Candace Louise Curtis v. Anita Kay Brunsting et al
Assigned to: Judge Kenneth M. Hoyt
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/27/2012
Date Terminated: 03/08/2012
Jury Demand: Plaintiff
Nature of Suit: 370 Fraud or Truth-In-Lending
Jurisdiction: Diversity

**Plaintiff**

**Candace Louise Curtis** represented by **Candace Louise Curtis**
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
PRO SE

V.

**Defendant**

**Anita Kay Brunsting** represented by **Bernard Lilse Mathews , III**
Green and Mathews LLP
14550 Torrey Chase Blvd
Suite 245
Houston, TX 77014
281-580-8100
Fax: 281-580-8104
Email: texlawyer@gmail.com
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**Defendant**

**Does 1-100**

**Defendant**

**Amy Ruth Brunsting** represented by **Bernard Lilse Mathews , III**
(See above for address)
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

| Date Filed | # | Docket Text |
|---|---|---|
| 02/27/2012 | 1 | PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND |

20-20566.516

| | | |
|---|---|---|
| | | APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION against Amy Ruth Brungsting, Anita Kay Brunsting (Filing fee $ 350) filed by Candace Louise Curtis. (Attachments: # 1 Continuation, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation)(dterrell, ) Modified on 2/27/2012 (dterrell, ). (Entered: 02/27/2012) |
| 02/27/2012 | 2 | PROPOSED ORDER Injunctinctive Order Temporary Restraining Order, Asset Freeze, Production of Documents and Records, Appointment of Receiver, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 3 | INITIAL DISCLOSURES by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 4 | REQUEST for Production of Documents from Anita Kay Brunsting and Amy Ruth Brunsting by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 5 | NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 6 | NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | | Civil Filing fee re: 1 Complaint,, : $350.00, receipt number CC003143, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | | Summons Issued as to Amy Ruth Brunsting, Anita Kay Brunsting, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/28/2012 | 7 | ORDER for Initial Pretrial and Scheduling Conference by Telephone and Order to Disclose Interested Persons. Counsel who filed or removed the action is responsible for placing the conference call and insuring that all parties are on the line. The call shall be placed to (713)250-5613. Telephone Conference set for 5/29/2012 at 09:30 AM by telephone before Judge Kenneth M. Hoyt.(Signed by Judge Kenneth M. Hoyt) Parties notified. (ckrus, ) (Entered: 02/28/2012) |
| 03/01/2012 | 8 | ORDER denying the application for a temporary restraining order and for injunction.(Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/01/2012) |
| 03/05/2012 | 9 | Letter from Rik Munson re: serving copies on parties, filed. (Attachments: # 1 cover letter) (saustin, ) (Entered: 03/05/2012) |
| 03/06/2012 | 10 | EMERGENCY MOTION by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Attachments: # 1 Affidavit Affidavit of Amy Brunsting, # 2 Exhibit Property Appraisal, # 3 Exhibit Sale Contract, # 4 Exhibit Tax Appraisal, # 5 Supplement Request for Hearing, # 6 Proposed Order Proposed Order)(Mathews, Bernard) (Entered: 03/06/2012) |
| 03/06/2012 | 11 | Corrected MOTION Removal of Lis Pendens by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Mathews, Bernard) (Entered: 03/06/2012) |

| | | |
|---|---|---|
| 03/06/2012 | 12 | NOTICE of Setting. Parties notified. Telephone Conference set for 3/7/2012 at 11:00 AM by telephone before Judge Kenneth M. Hoyt, filed. The call shall be placed to (713)250-5613. (chorace) (Entered: 03/06/2012) |
| 03/08/2012 | 13 | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on 3/7/12 Appearances: Candace L. Curtis, pro se, Bernard Lilse Mathews, III.. The Court will, sua sponte, dismiss the pltf's case by separate order for lack of jurisdiction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012) |
| 03/08/2012 | 14 | ORDER OF DISMISSAL *(Sua Sponte)* re: 10 EMERGENCY MOTION, 11 Corrected MOTION Removal of Lis Pendens. The Court lacks jurisdiction and this case is dismissed. To the extent that a *lis pendens* has been filed among the papers in federal Court in this case, it is cancelled and held for naught. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012) |
| 03/09/2012 | 15 | Plaintiff's Answer to 11 Corrected MOTION Removal of Lis Pendens filed by Candace Louise Curtis. (pyebernetsky, ) (Entered: 03/12/2012) |
| 03/12/2012 | 16 | NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 14 Order of Dismissal, by Candace Louise Curtis (Filing fee $ 455), filed. (mlothmann) (Entered: 03/12/2012) |
| 03/16/2012 | 17 | Notice of Assignment of USCA No. 12-20164 re: 16 Notice of Appeal, filed. (sguevara, ) (Entered: 03/16/2012) |

✎AO 240 (Rev. 10/03)

# UNITED STATES DISTRICT COURT

_____ District of _____

Plaintiff

V.

Defendant

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES AND AFFIDAVIT

CASE NUMBER:

I, _____ declare that I am the (check appropriate box)

☐ petitioner/plaintiff/movant ☐ other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915 I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? ☐ Yes ☐ No (If "No," go to Part 2)

   If "Yes," state the place of your incarceration _____

   Are you employed at the institution? _____ Do you receive any payment from the institution? _____

   Attach a ledger sheet from the institution(s) of your incarceration showing at least the past six months' transactions.

2. Are you currently employed? ☐ Yes ☐ No

   a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

   b. If the answer is "No," state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

3. In the past 12 twelve months have you received any money from any of the following sources?

| | | | |
|---|---|---|---|
| a. | Business, profession or other self-employment | ☐ Yes | ☐ No |
| b. | Rent payments, interest or dividends | ☐ Yes | ☐ No |
| c. | Pensions, annuities or life insurance payments | ☐ Yes | ☐ No |
| d. | Disability or workers compensation payments | ☐ Yes | ☐ No |
| e. | Gifts or inheritances | ☐ Yes | ☐ No |
| f. | Any other sources | ☐ Yes | ☐ No |

If the answer to any of the above is "Yes," describe, on the following page, each source of money and state the amount received and what you expect you will continue to receive.

4. Do you have any cash or checking or savings accounts? ☐ Yes ☐ No

   If "Yes," state the total amount. _____

5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or any other thing of value? ☐ Yes ☐ No

   If "Yes," describe the property and state its value.

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support.

I declare under penalty of perjury that the above information is true and correct.

Date _____ Signature of Applicant _____

NOTICE TO PRISONER: A Prisoner seeking to proceed without prepayment of fees shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

AO 240A (Rev. 12/03)

# UNITED STATES DISTRICT COURT

_____ **District of** _____

Plaintiff

V.

Defendant

**ORDER ON APPLICATION TO PROCEED WITHOUT PREPAYMENT OF FEES**

CASE NUMBER:

Having considered the application to proceed without prepayment of fees under 28 USC §1915;

IT IS ORDERED that the application is:

☐ GRANTED.

☐ The clerk is directed to file the complaint.

☐ IT IS FURTHER ORDERED that the clerk issue summons and the United States marshal serve a copy of the complaint, summons and this order upon the defendant(s) as directed by the plaintiff. All costs of service shall be advanced by the United States.

☐ DENIED, for the following reasons:

ENTER this _____ day of _____, _____.

_____
Signature of Judge

_____
Name and Title of Judge

Form 22

FORM 22. Transcript Purchase Order

United States Courts
Southern District of Texas
FILED

APR 12 2012

David J. Bradley, Clerk of Court

# United States Court of Appeals for the Federal Circuit

Candace Louise Curtis - Plaintiff-Appellant

) Appeal from ☑ U.S. District Court for So. Dist. Texas
☐ Court of International Trade
☐ Court of Federal Claims

—VERSUS—

) TRIAL COURT NO. 4:12-cv-00592

Anita Brunsting et al., Defendant Appellees

) CIRCUIT COURT NO. 12-21064

TRANSCRIPT PURCHASE ORDER
(See Rules 10(b) and 11(b) of the Federal Rules of Appellate Procedure)

PART I - TO BE COMPLETED BY THE APPELLANT WITHIN 14 DAYS OF FILING OF NOTICE OF APPEAL.
When filing this form, distribute copies as follows: 3 copies to the court reporter; 1 copy to the Trial Court; 1 copy to the appellee; 1 copy retained by appellant.

A. Complete one of the following:

( ✔) A transcript is not needed for the appeal
( ) A transcript is already on file
( ) Request is hereby made to the reporter for a transcript of the following proceedings (give particulars):

Note: voir dire and closing arguments are not prepared unless specifically requested.

Note: Unless the entire transcript is ordered, appellant must attach a statement of the issues to Copies 4 and 5.

B. I certify that financial arrangements have been made with the reporter. Payment is by:

( ) Private Funds
( ) Government expense (civil case). A motion for transcript has been submitted to the trial judge.

SIGNED _____ DATE 4/9/2012 ~~COUNSEL FOR~~ Pro Se

ADDRESS 1215 Ulmian Way Martinez CA 94553

TELEPHONE 925-759-9020

PART II - TO BE COMPLETED BY THE COURT REPORTER
2 copies retained by the reporter; 1 copy to be transmitted to the Court of Appeals on same date transcript order is received.
Date Purchase Order received: _____
Estimated completion date: _____
Estimated number of pages: _____

I certify that satisfactory financial arrangements have/have not (strike one) been completed with appellant for payment of the cost of the transcript.

_____
Signature and Date

Telephone _____

PART III - NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN THE TRIAL COURT.
(To be completed by court reporter on date of filing transcript in Trial Court and this notification must be forwarded to Court of Appeals on the same date.)

This is to certify that the transcript has been completed. _____ volumes of transcript have been filed with the Trial Court today.

_____ _____
Date Signature

Case 4:12-cv-00592 Document 19 Filed on 04/12/12 in TXSD Page 2 of 2

20-20566.523

Rik Munson
218 Landana St.
American Canyon, Ca [94503]

OAKLAND CA 945
10 APR 2012 PM 2 T

USA
Justice
FOREVER

David J. Bradley
Clerk of Court
P.O. Bx 61010
Houston, TX 77208

77208+1010

# UNITED STATES DISTRICT COURT
# SOUTHERN DISTRICT OF TEXAS
# HOUSTON DIVISION

David Bradley
CLERK

P.O. BOX 61010
HOUSTON, TX 77208

August 16, 2012

Mr. Lyle Wyman Cayce, Clerk
U.S. Court of Appeals, Fifth Circuit
600 South Maestri Place
New Orleans, LA 70130

IN RE: Curtis v. Brunsting
District Court Case No.: 4:12cv0592
Circuit Court Case No.: 12-20164

Dear Mr. Cayce:

Enclosed is a printed copy of the certified electronic record on appeal in the above referenced matter. This record contains 3 volumes of the printed record on appeal.

- No hearing were held in this matter.
- No sealed documents exist in this case.
- No state court records exist in this case.

Copies do not need to be returned to our Clerk's office. Please properly dispose of all items when the appeal process in complete.

Very Truly Yours,

David Bradley, Clerk

H Lerma
Deputy Clerk

726275 AUG 17, 2012 ACT WT 32.1 LBS #PK 1
SVC GNDCOM BL WT 33.0 LBS
TRACKING# 1Z7262750348653883 ALL CURRENCY USD
YOUR NAME: H LERMA
DEPARTMENT: APPEALS

HANDLING CHARGE 0.00 FRT: SHP
SHIPMENT PUB RATE CHARGES: SVC 14.71 USD

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# UNITED STATES DISTRICT COURT
# SOUTHERN DISTRICT OF TEXAS
# OFFICE OF THE CLERK

**MICHAEL N. MILBY**
**CLERK**

**POST OFFICE BOX 61010**
**HOUSTON, TX 77208**

**August 21, 2012**

IN RE: Curtis v. Brunsting, et al
District Court No. 4:12-0592
Circuit Court No.: 12-20164

To Whom It May Concern:

Enclosed is a CD containing the original electronic record for the above referenced Notice of Appeal. Prepare your brief regarding this appeal using this copy of the paginated record.

Very Truly Yours,
David Bradley Clerk

H Lerma
Deputy Clerk

United States Court of Appeals
Fifth Circuit
FILED
January 9, 2013
Lyle W. Cayce
Clerk

# UNITED STATES COURT OF APPEALS

# FOR THE FIFTH CIRCUIT

No. 12-20164

D.C. Docket No. 4:12-CV-592

United States District Court
Southern District of Texas
FILED
FEB 05 2013
David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS,

Plaintiff - Appellant

v.

ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING,

Defendants - Appellees

Appeal from the United States District Court for the Southern District of Texas, Houston

Before HIGGINBOTHAM, SMITH, and ELROD, Circuit Judges.

J U D G M E N T

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is reversed, and the cause is remanded to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that each party bear its own costs on appeal.

ISSUED AS MANDATE: JAN 31 2013

A True Copy
Attest
Clerk, U.S. Court of Appeals, Fifth Circuit
By: _____ Deputy
New Orleans, Louisiana JAN 31 2013

20-20566.527

# *United States Court of Appeals*
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

January 31, 2013

United States District Court
Southern District of Texas
FILED

FEB 05 2013

David J. Bradley, Clerk of Court

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 12-20164, Candace Curtis v. Anita Brunsting, et al
USDC No. 4:12-CV-592

Enclosed, for the district court only, is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Record/original papers/exhibits to be returned.

Sincerely,

LYLE W. CAYCE, Clerk

By: _____
Linda B. Miles, Deputy Clerk
504-310-7709

cc: (letter only)
Ms. Candace Louise Curtis
Honorable Kenneth M. Hoyt
Mr. Bernard Lilse Mathews III
Mr. George William Vie III

P.S. to Judge Hoyt: A copy of the opinion was sent to your office via email the day it was filed.

# IN THE UNITED STATES COURT OF APPEALS
# FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
January 9, 2013
Lyle W. Cayce
Clerk

No. 12-20164

CANDACE LOUISE CURTIS,

Plaintiff-Appellant

v.

ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas

Before HIGGINBOTHAM, SMITH, and ELROD, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

This appeal concerns the scope of the probate exception to federal subject-matter jurisdiction in the wake of the Supreme Court's decision in *Marshall v. Marshall*.[1] The Plaintiff contends that, under *Marshall*, her claims for breach of fiduciary duty against the co-trustees of an inter vivos trust do not implicate the probate exception. We agree.

[1] 547 U.S. 293 (2006).

## I.

In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively "the Brunstings' Wills") appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust.[2] Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.

Candace Curtis, Anita Brunsting, and Amy Brunsting are siblings. In February 2012, Candace Curtis ("Curtis") filed a complaint in federal district court against Anita Brunsting and Amy Brunsting (collectively "the Defendants") based on diversity jurisdiction. In that complaint, she alleged that Anita and Amy, acting as co-trustees of the Trust, had breached their fiduciary duties to Curtis, a beneficiary of the Trust. Specifically, she alleged that Anita and Amy had misappropriated Trust property, failed to provide her documents related to administration of the Trust, and failed to provide an accurate and timely accounting. The complaint alleged claims for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. Curtis sought compensatory damages, punitive damages, a temporary restraining order against "wasting the estate," and an injunction compelling both an accounting of Trust property and assets as well as production of documents and accounting records.

On March 1, 2012, the district court denied Curtis's application for a temporary restraining order and injunction because the Defendants had not

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[2] The signed copies of the Brunstings' Wills are not included in the record, but Curtis provided unsigned copies, which we assume match the signed versions that have been admitted to probate.



20-20566.530

been served with process. In the order, the district court judged noted that it "appears that the court lacks subject matter jurisdiction over the claim(s) asserted." On March 6, 2012, in response to the lis pendens Curtis had filed related to property in Texas and Iowa, Anita and Amy filed an emergency motion to remove the lis pendens. The motion noted that it was subject to the Defendants' contention that the federal district court lacked subject matter jurisdiction under the probate exception to federal court jurisdiction, an issue that the Defendants said would be raised in a separate Rule 12(b) motion to dismiss. On March 8, 2012, following a telephone conference with the parties, the district court judge entered a *sua sponte* order dismissing the case for lack of subject matter jurisdiction. In doing so, he concluded that the case falls within the probate exception to federal diversity jurisdiction. This appeal followed.

## II.

This Court reviews *de novo* a district court's dismissal for lack of subject-matter jurisdiction.[3]

## III.

Although a federal court "has no jurisdiction to probate a will or administer an estate,"[4] in *Markham v. Allen*, the Supreme Court recognized that the probate exception does not bar a federal court from exercising jurisdiction over all claims related to such a proceeding:

> [F]ederal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heris' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume

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[3] *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 170 (5th Cir. 2009).

[4] *Markham v. Allen*, 326 U.S. 490, 494 (1946).



20-20566.531

> general jurisdiction over the probate or control of the property in the custody of the state court.
>
> Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.[5]

Sixty years later, in *Marshall v. Marshall*, the Supreme Court expressed concern with lower courts' interpretation of *Markham*, noting that "[l]ower federal courts have puzzled over the meaning of the words 'to interfere with the probate proceedings,' and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate."[6] Thus, the Supreme Court clarified the "distinctly limited scope" of the probate exception,[7] explaining:

> [W]e comprehend the 'interference' language in *Markham* as essentially a reiteration of the guiding principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.[8]

The *Marshall* Court concluded that the federal district court had subject-matter jurisdiction, and the probate exception did not apply, reasoning: "[The claimant]

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[5] *Id.* (internal citations omitted).

[6] 547 U.S. at 311.

[7] *Id.* at 310.

[8] *Id.* at 311–12.



20-20566.532

seeks an *in personam* judgment against [the Defendant], not the probate or annulment of a will. Nor does she seek to reach a *res* in custody of a state court."[9] After *Marshall*, the probate exception only bars a federal district court from (1) probating or annulling a will or (2) "seek[ing] to reach a *res* in custody of a state court" by "endeavoring to dispose of [such] property."[10]

As we see it, to determine whether the probate exception deprives a federal court of jurisdiction, *Marshall* requires a two-step inquiry into (1) whether the property in dispute is estate property within the custody of the probate court and (2) whether the plaintiff's claims would require the federal court to assume *in rem* jurisdiction over that property. If the answer to both inquiries is yes, then the probate exception precludes the federal district court from exercising diversity jurisdiction. Here, we find the case outside the scope of the probate exception under the first step of the inquiry because the Trust is not property within the custody of the probate court.

As a threshold matter, the probate exception only applies if the dispute concerns property within the custody of a state court. The federal court cannot exercise *in rem* jurisdiction over a *res* in the custody of another court. Both of the Brunstings' Wills were admitted to probate after the district court dismissed the case, and probate proceedings are ongoing.[11] However, nothing suggests that the Texas probate court currently has custody or *in rem* jurisdiction over the Trust. It likely does not. Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and

---

[9] *Id.* at 312 (internal citations omitted).

[10] *Id.* at 312–13.

[11] At the time the district court dismissed the case, no probate proceedings had been initiated. As such, there was no possibility that the case fell within the probate exception. Nevertheless, we must consider whether, upon remand, the federal district court would have subject-matter jurisdiction now that probate proceedings are ongoing.



20-20566.533

therefore are not part of the decedent's estate.[12] In other words, because the assets in a living or inter vivos trust are not property of the estate at the time of the decedent's death, having been transferred to the trust years before, the trust is not in the custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust. The record also indicates that there would be no probate of this Trust's assets upon the death of the surviving spouse.[13] Finding no evidence that this Trust is subject to the ongoing probate proceedings, we conclude that the case falls outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.

## IV.

For the reasons set forth above, we REVERSE the district court's dismissal of the case and REMAND for further proceedings. REVERSED AND REMANDED.

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[12] *See* 3 TEX. PRAC. GUIDE WILLS, TRUSTS, AND EST. PLAN. § 10:83 ("Any property held in a revocable living trust is not considered a probate asset . . . ."); 2 EST. TAX & PERS. FIN. PLAN. § 19:15 ("Avoidance of probate perhaps is the most publicized advantage of the revocable living trust.'"); 18 EST. PLAN. 98 ("Assets in a living trust are not subject to probate administration . . . .").

[13] Any assets "poured over" from the decedents' estates into the Trust would have to go through probate, but that does not change the fact that the Trust property over which the Defendants have been acting as Trustees would not be subject to probate, having been transferred to the Trust prior to the parents' deaths.



20-20566.534

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**NOTICE OF SETTING**

The parties are hereby notified that a status/scheduling conference is set for **February 19, 2013 at 8:45 a.m.** and will be handled as a **telephone conference.** The plaintiff shall initiate the conference call and shall have defendants' counsel on the line when calling in. *Counsels shall not call in to the conference line individually*. The call shall be placed to **(713) 250-5613.**

Date: February 6, 2013

DAVID BRADLEY, CLERK

By: D. Palacios, Case Manager



20-20566.535

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**COUNSEL'S NOTICE OF APPEARANCE AND SUBSTITUTION OF ATTORNEY OF RECORD FOLLOWING REMAND**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

George W. Vie III and the law firm of Mills Shirley L.L.P. file this Notice of Appearance as counsel of record for Defendants Anita Kay Brunsting and Amy Ruth Brunsting in the above numbered and entitled cause, following remand from the Fifth Circuit.

1. This Court entered an Order of dismissal in March 2012 (Dkt. 14). Prior to that time Defendants were represented in this Court by Bernard Lilse Mathews, III and the firm of Green & Mathews, L.L.P.

2. Following dismissal of the cause, Plaintiff gave notice of appeal. (Dkt. 16). Defendants, as Appellees, were represented by George W. Vie III of Mills Shirley L.L.P. in the subsequent appeal to the Fifth Circuit. The court of appeals thereafter reversed the dismissal and remanded the case to this Court for further proceedings.

3. On remand, Mills Shirley L.L.P. and the undersigned will continue representation of Defendants Anita Kay Brunsting and Amy Ruth Brunsting. George W. Vie III of Mills Shirley L.L.P. enters his appearance as attorney of record in lieu of Mr. Mathews and the

firm of Green & Mathews, L.L.P. Counsel has received an email, as did *Plaintiff pro se*, in which Mr. Mathews stated he did not presently represent Defendants.

4. The undersigned therefore respectfully moves this Court to take notice of this Appearance and to Substitute George W. Vie III and the law firm of Mills Shirley L.L.P. as Attorney of Record for Defendants Anita Kay Brunsting and Amy Ruth Brunsting for the proceedings on remand, and request the Clerk of the Court to note the representation of this Counsel for Defendants on the Court's docket.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
Fed Id. No.
State Bar No. 20579310
One City Centre
1021 Main Street, Suite 1950
Houston, Texas 77002-6502
Tel: 713.225.0547 or 713.571.4232
Fax: 713.225.0844
Email: gvie@millsshirley.com

Attorneys for Anita Kay Brunsting and
Amy Ruth Brunsting

**CERTIFICATE OF CONFERENCE**

I certify that counsel for Defendants has attempted to confer with Mr. Mathews, regarding this Notice of Appearance and Substitution of Attorney of Record. Counsel did not receive a response before filing.

*/s/ George W. Vie III*
George W. Vie III

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Plaintiff *pro se*, if not a Filing User, will receive a true and accurate copy of the foregoing via first class U.S. mail and email on this 17th day of February 2013.

A copy of the filing is also provided to prior counsel, as follows:

Bernard Lilse Mathews, III
State Bar No. 13187450
14550 Torrey Chase Boulevard, Suite 245
Houston, Texas 77014
Phone: 281-580-8100
Facsimile: 281-580-8104

*/s/ George W. Vie III*
George W. Vie III

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER**

BEFORE THE COURT is the Notice of Appearance and Substitution of Attorney of Record for Defendants Anita Kay Brunsting and Amy Ruth Brunsting. The Court, having taken notice of the filing,

ORDERS that George W. Vie III and the law firm of Mills Shirley L.L.P. are substituted as attorneys of record for Defendants in lieu of Bernard Lilse Mathews, III and the law firm of Green & Mathews, L.L.P.

The Clerk of the Court is directed to conform the Court's docket to reflect the appearances and designation of counsel.

DONE this _____ day of February, 2013, at Houston, Texas.

_____
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| Candace Louise Curtis | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v. | § | CIVIL ACTION NO. 4:12−cv−00592 |
| | § | |
| Anita Kay Brunsting, et al. | § | |
| | § | |
| Defendant. | § | |

**ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE**
**HELD ON February 19, 2013 at 8:45 a.m.**

Appearances: Candace Curtis, pro se, George Vie

The following schedule shall govern the disposition of this case:

| | |
|---|---|
| New parties/class allegations by: | April 30, 2013 |
| Plaintiff's experts to be designated by: | September 30, 2013 |
| Report furnished by: | September 30, 2013 |
| Defendant's experts to be designated by: | October 30, 2013 |
| Report furnished by: | October 30, 2013 |
| Discovery to be completed by: | December 30, 2013 |
| Dispositive motions due by: | December 30, 2013 |
| Docket call to be held at 11:30 AM on: | March 3, 2014 |
| Estimated trial time: TBA | Jury trial |

The following rulings were made:

The defendant's are to file an answer to the plaintiff's suit on or before March 4, 2013.

It is so ORDERED.

SIGNED on the 19th of February 2013, at Houston, Texas.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS *Plaintiff,* | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and AMY RUTH BRUNSTING *Defendants.* | § | |

**ORDER**

BEFORE THE COURT is the Notice of Appearance and Substitution of Attorney of Record for Defendants Anita Kay Brunsting and Amy Ruth Brunsting. The Court, having taken notice of the filing,

ORDERS that George W. Vie III and the law firm of Mills Shirley L.L.P. are substituted as attorneys of record for Defendants in lieu of Bernard Lilse Mathews, III and the law firm of Green & Mathews, L.L.P.

The Clerk of the Court is directed to conform the Court's docket to reflect the appearances and designation of counsel.

DONE this 20th day of February, 2013, at Houston, Texas.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

MOTION TO STRIKE ATTACHMENTS UNDER RULE 12(F) AND,
SUBJECT TO THE MOTION TO STRIKE,
DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move to strike the Declaration and accompanying exhibits attached to Plaintiffs' Complaint under Rule 12(f).

MOTION TO STRIKE DECLARATION AND EXHIBITS

Defendants object to, and move to strike under Rule 12(f), the inclusion in the Complaint of a 13-page Declaration and exhibits, adopted by reference in paragraphs 6, 13, 18, and 25 of the Complaint.

Under Federal Rule of Civil Procedure 8(a)(2), a pleading must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." The Rule 8 pleading standard does not require "detailed factual allegations." *See Ashcroft v. Iqbal*, 556 U.S. 662, 677-78, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009). Rule 10 permits the inclusion of a written instrument that is an exhibit to a pleading, but Plaintiff's Declaration is not a written instrument within the meaning of Rule 10 nor is it central to

the Plaintiff's claims. Moreover, it includes self-serving references to family history; personal history; alleged hearsay conversations and declarations of her deceased father and mother; criticisms of her sisters including "cruelty" and "character assassinations"; conclusory statements; and other immaterial matters.

Rule 12(f) grants the Court discretion to strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." Evidence pleading, as distinguished from the pleading of ultimate facts, is not favored under the Federal Rules. *See In re Beef Indus. Antitrust Litig.*, 600 F.2d 1148, 1169 (5th Cir.1979). Under the Rules, unnecessary evidentiary details that are prejudicial, or of no consequence to the controversy, may be stricken. In this case, so much of the Declaration includes redundant, immaterial, impertinent, and scandalous matters that parsing the attachment is not possible and the attachment as whole should be stricken. Defendants move to strike the Declaration attached to the Complaint, and its 44 exhibits (totaling 379 pages).

## ANSWER TO COMPLAINT

Subject to the Motion, Defendants file this Answer to the complaint of Plaintiff. Unless expressly admitted, Defendants deny each allegation of the complaint. Defendants answer by corresponding paragraph numbers as follows:

## I.
## PARTIES

1. Defendants, on information and belief, admit the allegations of the first sentence of paragraph 1. Defendants admit the balance of paragraph 1.

## II.
## JURISDICTION AND VENUE

2. Defendants admit the allegations of paragraph 2 to the extent that the allegations

of the complaint would confer subject matter diversity jurisdiction on this Court under the alleged statutory ground of 28 U.S.C. § 1332(a)(1). Defendants deny 28 U.S.C. § 1332(b) is presently applicable. Defendants deny 28 U.S.C. § 1332 (C)(2) is applicable.

3. Defendants understand Plaintiff's suit to be *in personam* and not *in rem*, and the reference to the trust as "the Res" in this matter is therefore not fully accurate, but Defendants understand Plaintiff's causes of action arise from the referenced trust. The real property of the Trust is located in Iowa, and the allegation of the second sentence is denied with regard to the reference to Texas real property. With regard to the third sentence of paragraph 3, there is a Texas state action that includes claims about the Trust and legal representation of the former trustees of the Trust, but such action had not been filed "previous" to the filing of this suit. Defendants deny the allegation in the balance of the paragraph that the wills of the Settlors have not been filed with a court for probate, and both wills have in fact been admitted to probate in Texas.

4. Defendants admit the allegations of the first sentence of paragraph 4. Defendants admit the allegations of the second sentence of paragraph 4 to the extent that the allegations of the complaint would confer venue in this Court under the alleged statutory grounds.

## III.
## NATURE OF ACTION

5. Defendants admit the first and second sentences of paragraph 5 only to the extent that they are Plaintiff's characterization of her suit. Defendants deny the last sentence of the paragraph, and assert that Plaintiff's right to amend, if any, is governed by Rule 15.

## IV.
## CAUSE OF ACTION COUNT ONE

Defendants, to the extent necessary, deny the assertion of law and citation of law in the first numbered paragraph of paragraph IV, as it is not an allegation of fact asserted against them by an opposing party.

6. Subject to the motion to strike, and only to the extent necessary, Defendants deny the allegations of paragraph 6.

7. Defendants admit the allegations of paragraph 7, except that Plaintiff is not a "named successor beneficiary."

8. Defendants admit the duty of the trustees is the general duty to administer the trust in good faith according to its terms and the Texas Trust Code, and that in the absence of any contrary terms in the trust instrument or contrary provisions of the Texas Trust Code, when administering the trust the trustees shall perform all of the duties imposed on trustees by the common law. Defendants otherwise deny the allegations of paragraph 8, and deny anyone is a "successor beneficiary."

9. Defendants deny the allegations of paragraph 9.

10. Defendants deny the allegations of paragraph 10.

11. Defendants deny the allegations of paragraph 11.

12. Defendants deny the allegations of paragraph 12.

## COUNT TWO

13. Defendants reassert their response to paragraph 6.

14. Defendants deny the allegations of paragraph 14.

15. Defendants deny the allegations of paragraph 15, which is a repeated allegation of paragraph 10.

16. Defendants deny the allegations in paragraph 16.

17. Defendants deny the allegation of paragraph 17, which is a repeated allegation of paragraph 12.

COUNT THREE

18. Defendants reassert their response to paragraph 6.

19. Defendants deny the allegations in paragraph 19.

20. Defendants deny the allegations in paragraph 20.

21. Defendants deny the allegations in paragraph 21.

22. Defendants deny the allegations in paragraph 22.

23. Defendants deny the allegations in paragraph 23, which are a repeated allegation of paragraph 16.

24. Defendants deny the allegations in paragraph 24, which are a repeated allegation of paragraph 17.

COUNT FOUR

25. Defendants adopt by reference their answer to paragraph 6.

26. Defendants deny the allegations in paragraph 26.

27. Defendants deny the allegations in paragraph 27 and Plaintiff's attribution of a "principal defendant" label.

28. Defendants deny the allegations in paragraph 28.

29. Defendants deny the allegations in paragraph 29.

V.

Defendants object and move to strike the "Memorandum of Points and Authorities in the unnumbered paragraph of V as the material from treatises and case law recitals are

not allegations of fact and are not a short, plain statement of the claim against Defendants. Defendants cannot otherwise admit or deny the matters that are not factual allegations, and therefore they are denied to the extent necessary.

30. Defendants object and move to strike the "Memorandum of Points and Authorities in paragraph 30 as the statutory material is not an allegation of fact and is not a short, plain statement of the claim against Defendants. Defendants cannot otherwise admit or deny the matters that are not factual allegations, and therefore they are denied to the extent necessary.

31. [There is no paragraph 31 in the complaint].

## VI.
## PRAYERS FOR RELIEF

32. Defendants deny that the allegation of the prayer and all relief sought in the prayer, paragraphs 33-37.

## REQUEST FOR EX PARTE TEMPORARY RESTRAINING ORDER

38. Defendants deny the allegations in paragraph 38 and the temporary relief there requested.

39. Defendants deny the allegations in paragraph 39.

40. Defendants deny the allegations in paragraph 40.

41. Defendants deny the allegations in paragraph 41.

42. Defendants deny the allegations in paragraph 42 and the temporary relief there requested.

## VII.
## AFFIRMATIVE DEFENSES

43. Defendants would show that the complaint fails to state a claim by which relief may be granted.

44. Defendants further plead the defenses of waiver, estoppel, laches, ratification (express or implied) and acceptance of benefits.

45. Defendants would show that to the extent Plaintiff has sustained damages, which Defendants deny, then Plaintiff has failed to mitigate or avoid damages.

46. Defendants plead all applicable provisions of the Trust and sub-trust instruments concerning the duties and liabilities of a person serving as Trustee, including any exculpatory provision applicable to alleged errors of judgment or mistake of fact or law or ordinary negligence.

47. Defendants would show that a claim of intentional infliction of emotional distress is a "gap-filler" tort, judicially created in Texas for the limited purpose of allowing recovery in those rare instances in which a defendant intentionally inflicts severe emotional distress in a manner so unusual that the victim has no other recognized theory of redress. Where the main charge in the plaintiff's complaint is another tort, intentional infliction of emotional distress should not be available as a matter of law. Further, Defendants deny that the intended consequence or primary risk of their alleged conduct was severe emotional distress; as a result the tort of intentional infliction of emotional distress is unavailable as a matter of law.

48. Defendants would show that any claim for declaratory relief set out in the Prayer is without merit as the claim is subsumed within the other claims of Plaintiff.

49. Defendants plead the doctrine of comparative responsibility as provided in Chapter 33 of the Tex. Civ. Prac. & Rem. Code and its application to the Plaintiff's claims of fraud and all other torts (intentional or otherwise) that may be alleged against Defendants.

50. Plaintiff is not entitled to punitive damages, and any and all excessive amounts of such damages sought violate Chapter 41 of the Tex. Civ. Prac. & Rem. Code, the Texas Constitution, and the United States Constitution, all of which set limits on the award of punitive damages. Defendants' alleged actions and omissions were undertaken in good faith, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further the purposes of the Trust and sub-trusts.

WHEREFORE, Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant the Rule 12(f) motion and strike the Declaration of Plaintiff and its exhibits; that subject to the motion to strike, Plaintiff takes nothing by her Complaint; that Defendants recover their taxable costs and disbursements under the applicable statutory provision; and for such other and further relief as this Court may find proper.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844
Email: gvie@millsshirley.com

ATTORNEYS FOR DEFENDANTS

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail.

*/s/ George W. Vie III*
George W. Vie III

# *United States Court of Appeals*
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE
NEW ORLEANS, LA 70130

February 26, 2013

United States Courts
Southern District of Texas

MAR 05 2013

David J. Bradley, Clerk of Court

Mr. David J. Bradley
Southern District of Texas, Houston
United States District Court
515 Rusk Street
Room 5300
Houston, TX 77002

No. 12-20164, Candace Curtis v. Anita Brunsting, et al
USDC No. 4:12-CV-592

The electronic copy of the record has been recycled.

Sincerely,

LYLE W. CAYCE, Clerk

By: Brandy Lemelle
Brandy C. Lemelle, Deputy Clerk
504-310-7714

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

United States Courts
Southern District of Texas
FILED
MAR 11 2013
David J. Bradley, Clerk of Court

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| Plaintiff, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, et al. | § | |
| | § | |
| Defendants. | § | |

CERTIFICATE OF INTERESTED PERSONS

| | |
|---|---|
| Computershare Investor services, LLC<br>Clarence F. Kendall, II<br>3318 Mercer Rd<br>Houston, TX 77069 | Albert E. Vacek, Jr.<br>Vacek & Freed, PLLC<br>11777 Katy Freeway, Suite 300<br>Houston, TX 77079 |
| Edward Jones Securities<br>12555 Manchester Road<br>Saint Louis, MO 63131 | Bernard L. Mathews III<br>Vacek & Freed, PLLC<br>11777 Katy Freeway, Suite 300<br>Houston, TX 77079 |
| The Northern trust Company<br>C/o Texas Secretary of State<br>Citations Unit<br>P.O. Box 12079<br>Austin, TX 78711-2079 | Green & Mathews, LLP<br>14550 Torrey Chase Blvd., Suite 245<br>Houston, Texas 77014 |
| Bank of America<br>C/o CT Corporation System<br>350 N. Saint Paul, Suite 2900<br>Dallas, TX 75201-4234 | Candace L. Kunz-Freed<br>Vacek & Freed, PLLC<br>11777 Katy Freeway, Suite 300<br>Houston, TX 77079 |
| Carl Brunsting<br>5629 Flack Dr.<br>Houston, TX 77081 | Anita Kay Brunsting<br>203 Bloomingdale Circle<br>Victoria, TX 77904<br>361-550-7132 |

| | |
|---|---|
| Candace Curtis<br>1215 Ulfinian Way<br>Martinez CA 94553<br><br>Richard K. Rikkers<br>Kroese & Kroese, P.C.<br>540 N Main<br>Sioux Center, IA, 51250 | Amy Ruth Brunsting<br>2582 Country Ledge<br>New Braunfels, TX 78132<br><br>Carole Ann Brunsting<br>5822 Jason St.<br>Houston, TX 77074 |

Knowledge of any other interested person(s) is uniquely in the possession of the Defendants.

March 4, 2013

Candace Curtis, Plaintiff Pro se
1215 Ulfinian Way
Martinez CA 94553
occurtis@sbcglobal.com
925-759-9020



20-20566.553

Candace Louise Curtis v. Anita Kay Brunsting, et al.,

Civil Action No. 4:12-cv-00592

**PROOF OF SERVICE**

I the below signed declare that I am over the age of eighteen and I am not a party to the titled above action. I served the following documents on the individuals named below by placing a true copy in the United States Mail with postage fully prepaid addressed as follows:

1. Plaintiff's Certificate of Interested Persons

George Vie III
One City Centre
1021 Main Street
Suite 1950
Houston, Texas 77002

David J. Bradley
Clerk of Court
P. O. Box 61010
Houston, TX 77208

I declare under penalty of perjury that this information is true.

Date: Tuesday, March 05, 2013

Server's signature R. Munson
Printed name: Rik Munson
Server's address: 218 Landana St. American Canyon CA. 94503

United States Courts
Southern District of Texas
FILED
MAR 1 4 2013
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| versus | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | § | |

# PLAINTIFF'S REPLY TO DEFENDANTS' ANSWER AND DEFENDANTS' MOTION TO STRIKE

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**Cases**

*Archer v. Griffith, 390 S.W.2d 735, 740 (Tex. 1964)* ..... 10
*Gaynier v. Ginsberg, 715 S.W.2d 749,754 (Tex. App.--Dallas 1986, writ ref'd n.r.e.)* ..... 10
*Ginther v. Taub, 570 S.W.2d 516, 525 (Tex. Civ. App.--Waco 1975, writ ref'd n.r.e.)* ..... 10
*Houston v. Ludwick, No. 14-09-00600-CV, 2010 WL 4132215, at *7 (Tex. App.—Houston [14th Dist.] Oct. 21, 2010* ..... 13, 16
*Jackson Law Office, P.C. v. Chappell, 37 S.W.3d 15, 22* ..... 13
*Miller v. Miller, 700 S.W.2d 941 (Tex. App.--Dallas 1985, writ ref'd n.r.e.)* ..... 10
*Nissho-Iwai Am. Corp. v. Kline, 845F.2d 1300, 1305 (5th Cir. 1988)* ..... 7
*Slay v. Burnett Trust, 187 S.W.2d 377, 388 (Tex. 1945)* ..... 9
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*Stephens County Museum, Inc. v. Swenson, 517 S.W.2d 257, 260 (Tex. 1974)* ..... 10
*Texas Bank and Trust v. A. E. Moore, 595 S.W.2d 502 (Tex. 1980)* ..... 10

**Statutes**

28 U.S.C. § 1332(a)(1) ..... 10
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28 USC §1332 (C) (2) ..... 3
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**Treatises**

Bogert, Trusts & Trustees, Second Edition Revised, §961 ..... 13
William E. Fratcher, Scott On Trusts, §173 ..... 14

## PARTIES

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California.

2. Defendant Anita Brunsting resides in the county of Victoria; Defendant Amy Brunsting resides in the county of Comal.

## NATURE OF ACTION

3. Plaintiff, as a beneficiary, brought this action under diversity jurisdiction, alleging breach of fiduciary duty, extrinsic and constructive fraud, and intentional infliction of emotional distress, against two of her sisters who claim to be trustees of the family trust.

## JURISDICTION

4. This matter was originally brought in equity as breach of fiduciary and related equitable claims, and included a common law tort claim under diversity jurisdiction pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2).

## BRIEF HISTORY OF THE CASE

5. On February 27, 2012, Plaintiff filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress, alleging that Defendants, Anita and Amy, acting as trustees for their

family's' trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments and refused to account for trust assets, or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. Curtis promptly filed notice of appeal.

6. While this matter was pending appeal, a number of related actions were undertaken in Harris County courts.

7. On March 9, 2012, Plaintiff's brother, Carl Brunsting, filed a petition for deposition before suit in the Harris County District Court 80th Judicial District, No. 2012-14538.

8. On April 2, 2012, the Houston law firm of Vacek and Freed filed the Will of Elmer Brunsting [#412248] and a purported Will for Nelva Brunsting [#412249] with the Harris County Clerk.

9. On or about April 5, 2012, Plaintiff received a number of documents by email, addressed to herself, Carl Brunsting's attorney Bobbie Bayliss, and her sister Carole Brunsting, from Defendants' counsel Bernard Mathews, in response to the state court filing by Carl. These documents were offered to satisfy accounting requirements under the Texas Property Code and included spreadsheets labeled as Schedules A through J. These flat spreadsheet looking documents show a large

number of asset transfers, into and out of the trust accounts, which appear to evidence self-dealing, comingling, and misapplication of trust funds.

10. On August 15, 2012, Carl Brunsting filed an application to probate the wills of his parents and issue letters testamentary, into the Harris County Probate Court. On August 28, 2012, the Harris County Probate Court issued letters testamentary naming Carl Henry Brunsting independent executor.

11. On December 26, 2012, Maureen McCutcheon of Mills Shirley filed an appearance in the Harris County Probate Court, on behalf of the current trustees.

12. On January 9, 2013, the Fifth Circuit Court of Appeals published their opinion and this matter was remanded for further proceedings.

13. On January 29, 2013, Carl Brunsting filed a civil suit against Candace Kunz-Freed (Freed) and the law firm of Vacek & Freed as executor on behalf of the Brunsting Estate[1]

14. On January 30, 2013, this Court received a Mandate from the Fifth Circuit Court of Appeals for further proceedings.

## DEFENDANTS' MOTION TO STRIKE

15. Defendants object to Plaintiff's Affidavit, submitted under California Jurat[2] with attached exhibits identified therein. Defendants are claiming that the

[1] 164th Judicial District No. 2013-05455
[2] Record on Appeal USCA5- p.32

submission is "unnecessary" under Rule 8(a)(1) and that Rule 12(f) allows striking from a pleading "an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter".

16. Defendants first express concern that the affidavit and exhibits are unnecessary under Rule 8(a)(2), that the affidavit, referred to as a declaration, "is not a written instrument within the meaning of Rule 10, nor is it central to the Plaintiff's claims", and that it is redundant, immaterial, impertinent, or scandalous and that it "...includes self-serving references to family history; personal history; alleged hearsay conversations and declarations of her deceased father and mother; criticisms of her sisters including "cruelty" and "character assassinations"; conclusory statements; and other immaterial matters."

**PLAINTIFF'S REPLY TO DEFENDANTS' MOTION TO STRIKE**

17. Defendants' objection, by innuendo, to references involving alleged "immaterial matters" is vague and mounts no particularized challenge to any specific assertion or exhibit as redundant, immaterial, impertinent, or scandalous, identifies no clear points of controversy and leaves Plaintiff without the luxury of answer on the merits.

18. Further, Defendants fail to distinguish between a mere declaration under notary affirmation and an Affidavit under a Jurat. A notary affirmation simply

affirms that the person who claims to have signed an instrument in fact signed it and has been held to be insufficient to convert the unsworn statement into a valid affidavit.[3] A Jurat is quite different, as it affirms the statement was verified under oath and sworn to under penalty of perjury before one authorized to accept the oath.

19. Defendants' assertion that Plaintiff's affidavit "is not a written instrument within the meaning of Rule 10" is illogical. Everything contained in Plaintiff's affidavit is absolutely true, can be testified to at trial, can be supported with external and independent evidence, is probative, non-prejudicial, admissible, meets one of the exceptions to an evidentiary objection, is supported by oath under a California Jurat and is, therefore, fully admissible as an affidavit.

20. Plaintiff's affidavit serves to introduce the exhibits, which Defendants' objection does not challenge on the merits. It establishes a prima facie case and properly puts the burden of bringing forth evidence on the fiduciaries, where it explicitly belongs. The affidavit is incorporated into Plaintiff's complaint by reference and is an integral part of that written instrument within the meaning of Rule 10. Plaintiff agrees that this Court has the authority to strike a pleading or

[3] *Nissho-Iwai Am. Corp. v. Kline, 845F.2d 1300, 1305 (5th Cir. 1988)*

portions of a pleading on its own motion, or upon motion of a party[4] but Defendants cite to no authority compelling the court to do so, do not cite to a specific statement or exhibit to which they object, and state no ground for a particularized objection.

## PLAINTIFF'S REPLY TO DEFENDANTS' ANSWER

21. The essence of Defendants' answer is a blanket general denial to the factual allegations of each claim, to each theory of damages, and to each claim for relief.

22. Defendants object to Plaintiff's claims for intentional infliction of emotional distress and declaratory judgment.

## CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

23. Plaintiff's claim for intentional infliction of emotional distress is a fact claim, independent of the equitable breaches and misapplications of fiduciary, and does not involve improper transactions per se, but actions designed to distract from improper transactions.

24. These complained of activities, by design, were intended to break down communications between the victims, thus damaging those familial relations and

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[4] Affidavits that fail to comply with the Rules of Procedure "should be stricken and disregarded." 35B C.J.S. Federal Civil Procedure §1214(2008). The proper avenue by which counsel should seek such exclusion on pending motion for summary judgment is by motion to strike pursuant to Rule 56(e) of the Rules of Civil Procedure or, alternatively, by raising a more general objection **to the admissibility of the contents of the submission**. Saucier v. Coldwell Banker JME Realty, 2007 WL2475943 *3 (S.D. Miss. 2007) (citing Auto Drive-Away Co. of Hialeah, Inc. v. Interstate Commerce Comm'n, 360F.2d 446, 448-49 (5th Cir. 1966)); Larouche v. Webster, 175 F.R.D. 452,454 (S.D.N.Y. 1996). (*Emphasis Curtis*)

(1) Defendants acted intentionally or recklessly; (2) Defendants' conduct was extreme and outrageous; (3) Defendants' actions caused Plaintiff emotional distress; (4) the emotional distress was severe; and (5) Defendants' conduct was so egregious in character, and so extreme in degree, as to go beyond all possible bounds of decency, and should properly be regarded as atrocious, and utterly intolerable in a civilized community. Plaintiff reaffirms this civil tort claim.

**DECLATORY RELIEF**

25. Chapter 37 of the Texas Civ. Practice and Remedies Code § 37.005 provides that: 1. A person interested as or through a . . . trustee . . . other fiduciary . . . or cestui que trust in the administration of a trust . . . may have a declaration of rights or legal relations in respect to the trust.

**ALLEGED ABSENCE OF INJURY**

26. The notion that Plaintiff has suffered no injury is fatuous. Injury is not an element of a breach of fiduciary, or Plaintiff's constructive and extrinsic fraud claims, and is neither requisite to, nor a limitation upon, Plaintiff's prayer for remedy.

27. These matters, intent to defraud, conspiracy, and injury or damage to the beneficiary, are immaterial to the determination of liability for breaches of fiduciary or misapplication of fiduciary . . .

It is well settled that in a suit of this kind recovery may be had by the beneficiary even though he has suffered no damages and even though the trustee may have acted in good faith. (emphasis added). *Slay v. Burnett Trust, 187 S.W.2d 377, 388 (Tex. 1945)*

The constructive fraud doctrine provides that if a fiduciary takes any discretionary action as a fiduciary which directly or indirectly benefits the fiduciary (or the fiduciary's family or affiliates) then the transaction is presumed fraudulent. The burden of proof then shifts to the fiduciary to provide that the transaction is fair. In any transaction wherein a person benefitting from it stands in a fiduciary relationship to one or more of the other parties, the transaction, if challenged, is presumed by equity to be unfair and, therefore, a constructive fraud unless the fairness of the transaction is proven by the benefitting fiduciary. *Stephens County Museum, Inc. v. Swenson, 517 S.W.2d 257, 260 (Tex. 1974)*. Unlike actual fraud, constructive fraud does not necessarily involve dishonesty of purpose or an intent to deceive and, therefore, proof of such is not required in order to invoke the doctrine. *Archer v. Griffith, 390 S.W.2d 735, 740 (Tex. 1964)*. Thus, once a plaintiff establishes that the transaction which he wishes to avoid was executed while a fiduciary relationship existed between him and the defendant, the burden of presenting evidence and securing a finding that the transaction was fair to the plaintiff is put upon the defendant fiduciary who claims the validity and benefits from the transaction. *Ginther v. Taub, 570 S.W.2d 516, 525 (Tex. Civ. App.--Waco 1975, writ ref'd n.r.e.)*; *Gaynier v. Ginsberg, 715 S.W.2d 749,754 (Tex. App.--Dallas 1986, writ ref'd n.r.e.)*. Evidence introduced by the defendant to meet this burden simply creates a question of fact. Ginther, 570 S.W.2d at 525. Absent any such proof, the presumption of unfairness and constructive fraud stands unrebutted, and the transaction is invalid as a matter of law. *Texas Bank and Trust v. A. E. Moore, 595 S.W.2d 502 (Tex. 1980)*. Because the burden of proof in this cause of action is shifted to the defendant, it is distinguishable from other types of "constructive fraud" in which the entire burden rests on the party asserting it. *Miller v. Miller, 700 S.W.2d 941 (Tex. App.--Dallas 1985, writ ref'd n.r.e.)*.

**ADMISSIONS**

28. At paragraph 2, Defendants admit "the allegations of the complaint would confer subject matter diversity jurisdiction on this Court under the alleged statutory ground of 28 U.S.C. § 1332(a)(1)." It is unnecessary to argue further.

29. Regarding paragraph 7:

Defendants admit at paragraph 7 that they are acting as trustees for the Brunsting family Living Trust and that Plaintiff is a beneficiary but not a "named successor beneficiary." They thus admit the existence of the fiduciary duty Defendants owe to Plaintiff.

Paragraph 7 reads as follows:

> 7. Plaintiff alleges that Defendant(s) Anita Brunsting and Amy Brunsting have accepted the appointment and are acting jointly as co-trustees for the Brunsting Family Living Trust (the Trust) of which I am a beneficiary and named successor beneficiary.

30. It is unclear by Defendants' denial whether they are denying Plaintiff is a named successor beneficiary to her parents, as stated in the Brunsting Family Trust, or that she is not a successor co-beneficiary under whatever ruptured condition the trust or trusts may currently be in. Defendants' argument over semantics is inconsequential.

31. Plaintiff is informed and believes, on the basis of Defendants' own disclosures[5], that most of the questionable transactions occurred during the lifetime of Nelva Brunsting, while Plaintiff was a named successor co-beneficiary to her Mother's "Survivors Trust" and a successor co-beneficiary to her Father's "Decedents Trust". The apparent acts of self-dealing, co-mingling and misapplication of fiduciary began as inter vivos abuses, but have continued after the death of Nelva Brunsting, when Plaintiff became a first tier beneficiary.

**AFFIRMATIVE DEFENSES**

32. Defendants' affirmative defense claims (45) that Plaintiff failed to mitigate or avoid damages, (46) that Defendants followed the trust provisions and that they are exculpated for any poor judgment by the terms of the trust and/or that (49) Plaintiff is somehow comparatively liable for Defendants' breaches of fiduciary, co-mingling, self-dealing, misapplications of fiduciary and fraudulent concealment of those actions, are wholly without merit.

**APPLICABLE PROVISIONS OF THE TRUST**

33. At paragraph 46 Defendants affirmatively plead conformance with "applicable provisions of the Trust and sub-trust instruments". Plaintiff exhibit 29 at USCA5 p179-278 shows the provisions of the Brunsting trust.

[5] Spreadsheet accounting schedules identified, attached to and offered as proof, in the accompanying Reapplication for Protective Orders.

34. At paragraph 49 Defendants plead comparative responsibility and at paragraph 50 Defendants plead good faith and affirmatively claim:

> "Defendants' alleged actions and omissions were undertaken in good faith, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further the purposes of the Trust and sub-trusts."

35. Defendants' comparative responsibility and good faith claims put the burden of proof squarely upon the Defendants in this case.

36. Defendants are invited to answer the accompanying application for injunction and to show that their actions, as confessed by their accounting schedules, are consistent with their affirmative claims in items 45, 46, 49 and 50.

**TRUSTEE'S COMMON LAW DUTY TO DISCLOSE**

> A fiduciary "has an affirmative duty to make a full and accurate confession of all his fiduciary activities, transactions, profits, and mistakes." *Jackson Law Office, P.C. v. Chappell, 37 S.W.3d 15, 22 (Tex. App.—Tyler 2000, pet. denied)*[6].
>
> Additionally, when a plaintiff alleges self-dealing by the fiduciary as part of a breach-of-fiduciary-duty claim[7], a presumption of unfairness automatically arises, which the fiduciary bears the burden to rebut. See *Houston v. Ludwick, No. 14-09-00600-CV, 2010 WL 4132215, at *7 (Tex. App.—Houston [14th Dist.] Oct. 21, 2010, pet. denied) (mem. op.); Chappell, 37 S.W.3d at 22*[8].

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[6] (citing Montgomery v. Kennedy, 669 S.W.2d 309, 312–14 (Tex. 1984); Kinzbach Tool Co., Inc. v. Corbett-Wallace Corp., 160 S.W.2d 509, 513–14 (Tex. 1942))
[7] USCA5 – 7, Curtis original Complaint Count I page 3, item 10,
[8] (citing Stephens County Museum, Inc. v. Swenson, 517 S.W.2d 257, 261 (Tex. 1974); Int'l Bankers Life Ins. Co. v. Holloway, 368 S.W.2d 567, 576 (Tex. 1963))

37. Bogert, Trusts & Trustees, Second Edition Revised, §961 explains the reason for the trustees duty to disclose information as follows:

> The beneficiary is the equitable owner of the trust property, in whole or in part. The trustee is a mere representative whose function is to attend to the safety of the trust property and to obtain its avails for the beneficiary in the manner provided by the trust instrument. That the settlor has created a trust and thus required that the beneficiary enjoy his property interest indirectly does not imply that the beneficiary is to be kept in ignorance of the trust, the nature of the trust property and the details of its administration. If the beneficiary is to be able to hold the trustee to proper standards of care and honesty and to obtain the benefits to which the trust instrument and doctrines of equity entitle him, he must know of what the trust property consists and how it is managed.[9]

38. William E. Fratcher, Scott On Trusts, §173 (Fourth Edition) states that:

> The trustee is under a duty to the beneficiaries to give them on their request at reasonable times complete and accurate information as to the administration of the trust. The beneficiaries are entitled to know what the trust property is and how the trustee has dealt with it. They are entitled to examine the trust property and the accounts and vouchers and other documents relating to the trust and its administration. Where a trust is created for several beneficiaries, each of them is entitled to information as to the trust. Where the trust is created in favor of successive beneficiaries, a beneficiary who has a future interest under the trust, as well as a beneficiary who is presently entitled to receive income, is entitled to such information, whether his interest is vested or contingent.

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[9] Trustee's Common Law Duty to Disclose... A fiduciary has an affirmative duty to make a full and accurate disclosure of all material facts that might affect the beneficiary's rights. Huie v. DeShazo, 922 S.W.2d 920 (Tex. 1996); Montgomery v. Kennedy, 669 S.W. 2d 309 (Tex. 1984);Kinszbach Tool Co. Inc. v. Corbett-Wallace Corp.,160 S.W.2d 509 (Tex. 1942); Texas Bank & TrustCo. v. Moore, 595 S.W.2d 502, 508-09 (Tex.1980);Baird v. Mills, 119 S.W.2d 889, 892(Tex.Civ.App.-Austin 1938, writ ref'd); Inter First Bank Dallas, N.A. v. Risser, 739 S.W.2d 882(Tex.App.-Texarkana 1987, no writ); Bogert, The Law of Trusts and Trustees (6 ed. 2006) §§ 961-th974 ("Bogert"); Restatement (2d) of Trusts §§ 172-173 ("Restatement"). The rationale for this rule is described by William E. Fratcher, Scott On Trusts(4 ed. 1988) §173 ("Scott"):

**TRUSTEE'S STATUTORY DUTIES**

39. Defendants appear to blur the distinction between "Powers" and "Duties". Trustees are subject to the duties imposed by the common law, the duties imposed by the Texas Trust Code and the duties imposed by the instrument creating the Trust. Tex. Trust Code Ann. § 113.051 (Vernon 1984).

40. A statute may codify a common law fiduciary duty. With respect to statutory versus common law duties, Texas Trust Code § 111.005 provides:

> If the law codified in this subtitle repealed a statute that abrogated or restated a common law rule, that common law rule is re-established, except as the contents or the rule are changed by this subtitle. Tex. Trust Code Ann. § 111.005 (Vernon 1984);

and Trust Code § 113.051 provides:

> The trustee shall administer the trust according to its terms and this subtitle. In the absence of any contrary terms in the trust instrument or contrary provisions of this subtitle, in administering the trust the trustee shall perform all of the duties imposed by trustees by the common law. Tex. Trust Code Ann. § 113.051 (Vernon 1984)

41. The powers and duties imposed by the instrument creating the Trust are contained in this Court's record by affidavit and exhibit at pages 179-278 of the official Record on Appeal, and is the only evidence of those elements before this Court. Of course, Defendants move to strike!

42. The powers and duties imposed by the Texas Legislature are found in the Texas Property Code Title 9 Subtitle B Chapters 101-123.

## BURDEN OF PROOF

43. This action invokes the Court's equity jurisdiction. In equity actions where breach of fiduciary allegations are coupled with allegations of a misapplication of fiduciary, the burden of proof is upon the fiduciary to show that the questioned transactions were proper. As previously stated, the constructive fraud doctrine provides that if a fiduciary takes any discretionary action as a fiduciary, which directly or indirectly benefits the fiduciary (or the fiduciary's family or affiliates), then the transaction is presumed fraudulent. The burden of proof then shifts to the fiduciary to provide that the transaction is fair.

> Additionally, when a plaintiff alleges self-dealing by the fiduciary as part of a breach-of-fiduciary-duty claim[10], a presumption of unfairness automatically arises, which the fiduciary bears the burden to rebut. See *Houston v. Ludwick, No. 14-09-00600-CV, 2010 WL 4132215, at *7 (Tex. App.—Houston [14th Dist.] Oct. 21, 2010, pet. denied) (mem. op.); Chappell, 37 S.W.3d at 22*[11].
>
> "Where facts lie peculiarly within the knowledge of a party and cannot, in the nature of the case, be known to his adversary, the party having knowledge has the burden of proving the facts." Spencer v. Petit, Tex. Civ. App., 17 S.W.2d 1102 @ 1106, (Affirmed, Tex. Com. App., 34 S.W.2d 798).

[10] USCA5 – 7, Curtis original Complaint Count I page 3, item 10,
[11] (citing Stephens County Museum, Inc. v. Swenson, 517 S.W.2d 257, 261 (Tex. 1974); Int'l Bankers Life Ins. Co. v. Holloway, 368 S.W.2d 567, 576 (Tex. 1963))

## DEMAND FOR SHOW OF PROOF

44. As to the notion that Defendants can seek refuge in exculpatory clauses, the Texas legislature has already foreclosed that argument[12]. As to Defendants' claim that they have met their obligation under the terms of the trust[13] Plaintiff demands a show of proof.

## PUBLIC POLICY

45. Far too frequently our courts are flooded with litigation that would be all too easily avoided if these acts were properly viewed as crimes, and if injunctions against wasting estates and looting to pay lawyers were issued as a matter of course.

46. Public policy demands a level playing field. When trustees abuse their position of control over assets for their own unjust self-enrichment they are able to use resources intended for the benefit of the beneficiaries to defend their acts while the victims of these acts have no such luxury and often have no economic or other means of access to the courts.

47. The presumption of impropriety bears against the Defendant fiduciaries in this case and the mere suggestion of any comparative responsibility is an outrage.

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[12] See Texas Trust Code § 111.0035 Default And Mandatory Rules; Conflict Between Terms And Statute and Texas Trust Code § 114.007 Exculpation Of Trustee

[13] See also Texas Trust Code §113.151 Demand for Accounting and Texas Trust Code **§113.152**

## REQUEST FOR RELIEF

48. Defendants' did not object to Plaintiff's affidavit or exhibits on appeal. The motion to strike is a vague general blanket objection. The motion is ambiguous as it fails to raise opposition to any specific statement or exhibit and should be denied.

49. If Defendants want to cling to the affirmative defense (46) that they have met their obligations under the trust, or believe they can find refuge in some form of exculpation terms in the trust, or that their alleged actions and omissions were "undertaken in good faith, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further the purposes of the Trust and sub-trusts", then let them answer the attached application for temporary and permanent injunction. Plaintiff demands proof that the questioned transactions meet the criteria for their affirmative defense claims as a matter of law.

50. Plaintiff so prays this court order.

51. Plaintiff's renewed application for injunction and supporting affidavit are hereby incorporated by reference as if fully restated herein.

Respectfully submitted March 11, 2013

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

United States District Court
ED
MAR 1 4 2013
Clerk of Court

United States District Court for the Southern District of Texas
Houston Division Civil Action No. 4:12-cv-00592

Curtis v Brunsting, et al.

I the undersigned, do declare that I am beyond the age of majority and not a party to the above action. I served the following documents upon the persons named below by placing a true copy in the United States Mail with postage fully prepaid at American Canyon California on Tuesday, March 12, 2013.

1. Plaintiff's Reply to Answer
2. Application for Injunctive Orders
3. Affidavit in Support of Application for Injunctive Orders
4. Proposed Injunctive Order
5. Certificate of Interested Persons
6. Schedules A-J
7. Decedent's Trust Checking Account report Dec 2012
8. Copy of Brunsting Family Trust assets and Expenses as of 12-26-12
9. Copy of Survivors trust checking Account report Dec 2012
10. Copy of Survivors trust Savings Account report Dec 2012

Addressed to:

David J. Bradley
Clerk of Court
P. O. Box 61010
Houston, TX 77208

1 CD forwarded to fileroom.

George Vie III
1021 Main, Suite 1950
Houston, Texas 77002

Respectfully submitted

/s/ Rik Munson

Rik Munson
218 Landana St
American Canyon
CA 94503
925-349-8348

Proof of Service March 12, 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
MAR 14 2013
David J. Bradley, Clerk of Court

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| versus | § | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | § | |

**PLAINTIFF'S AFFIDAVIT IN SUPPORT OF APPLICATION FOR INJUNCTION**

Comes now Plaintiff Candace Louise Curtis, the undersigned affiant, who does declare under penalty of perjury pursuant to the laws of the United States and does state the facts alleged in Plaintiff's application for injunctive relief are true and based upon personal knowledge except for those things alleged upon information and belief and as to those things I believe them to be true as well.

Defendants' own accounting spreadsheets support Plaintiff's application for restraint and show that (1) Plaintiff is likely to succeed on the merits of the underlying litigation; (2) Plaintiff is likely to suffer immediate, irreparable harm in the absence of preliminary relief; (3) the balance of equities weighs in favor of injunctive relief; and (4) an injunction in this instance is in the public interest.

Defendants' continue to use trust funds for their personal obligations, including paying their lawyers to defend their breaches of fiduciary in this action. Defendants have provided no acceptable accounting in either form or content,

continue to refuse to communicate any information regarding the existence or administration of any trust, refuse to provide valid unaltered copies of any trust instruments.

The only thing Plaintiff Curtis has received from Defendants subsequent to the filing of this suit is the accounting-like spreadsheets offered into evidence as admissions exceptions to the Hearsay rule. The synopsis of these schedules and spreadsheets was kept brief, but there are anomalies and false assertions of alarming proportions raising very serious questions regarding what may have happened to large sums of money and why known assets remain unaccounted for.

Plaintiff has received no information from Carl Brunsting that may have been produced in any of the three state court actions and Plaintiff is concerned about that fact.

I declare under penalty of perjury, pursuant to the laws of the United States, that the above statement of facts is true and correct and based upon personal knowledge.

March 11, 2013

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

See Attached for Notary Public

# CALIFORNIA JURAT

**STATE OF: CALIFORNIA**
**COUNTY OF:** CONTRA COSTA

**SUBSCRIBED AND SWORN TO (OR AFFIRMED) BEFORE ME ON THIS** 11th **DAY OF** MARCH**, 2013 BY** CANDACE LOUISE CURTIS**, PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHO APPEARED BEFORE ME.**

Jeannine M. Birge

**SIGNATURE: JEANNINE M. BIRGE, NOTARY PUBLIC**

JEANNINE M. BIRGE
COMM. #1998475
NOTARY PUBLIC • CALIFORNIA
ALAMEDA COUNTY
Commission Expires NOV 17, 2016

**SEAL**

**TITLE OF DOCUMENT:** PLAINTIFF'S AFFIDAVIT IN SUPPORT OF APPLICATION FOR INJUNCTION

**TOTAL NUMBER OF PAGES INCLUDING ATTACHMENT:** THREE

**NOTARY COMMISSION EXPIRATION DATE: NOVEMBER 17, 2016**

**NOTARY COMMISSION NUMBER: 1998475**

United States Courts
Southern District of Texas
FILED
MAR 14 2013
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| versus | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | § | |

**RENEWED APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, AND ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION**

## PARTIES

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California.

2. Defendant Anita Brunsting resides in the county of Victoria; Defendant Amy Brunsting resides in the county of Comal.

## NATURE OF ACTION

3. Plaintiff, is a beneficiary within the meaning of Texas Trust Code §111.004. Plaintiff brought this action under diversity jurisdiction, alleging breach of fiduciary duty, extrinsic and constructive fraud, and intentional infliction of emotional distress, against two of Plaintiff's sisters who claim to be trustees of the family trust.

## JURISDICTION

4. This matter was originally brought in equity as breach of fiduciary and



20-20566.577

related equitable claims and included a common law tort claim under diversity jurisdiction pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2).

**BRIEF HISTORY OF THE CASE**

5. On February 27, 2012, Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress, alleging that Defendants, Anita and Amy, acting as trustees for their parents trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments and refused to account for trust assets, or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. Plaintiff promptly filed notice of appeal. On January 30, 2013, this Court received a Mandate from the Fifth Circuit Court of Appeals for further proceedings.

**WASTING THE TRUST ESTATE**

**OFFER OF PROOF**

6. On or about April 5, 2012, Plaintiff Curtis received a number of documents by email from Defendants' counsel Bernard Mathews. These documents were addressed to Bobbie Bayless, Candace Curtis and Carole Brunsting, apparently in

response to a state court petition brought in the name of Carl Brunsting as executor for the Elmer and Nelva Brunsting estate. On January 4, 2013, Plaintiff received four Excel spreadsheets purported to show "the assets in the trust as of year end", sent by Defendant Anita Brunsting. Plaintiff herein offers the accounting schedules and related correspondence received from Defendants into evidence, as an offer of proof of the existence of self-dealing, co-mingling and misapplication of fiduciary. None of the spreadsheets were certified as true and correct, and are, in fact, incomplete and inaccurate. These schedules list a multitude of funds transfers of securities traded under the laws of the United States, primarily via electronic means. Other than these spreadsheets and schedules, Defendants have provided no other information, documents, notices, records, or any information of any kind regarding alleged administration of the trust.

**SCHEDULES A THROUGH J AND JANUARY 2013 SPREADSHEETS**

| | Decedent | | Survivor | |
|---|---|---|---|---|
| | Dec '10 | Dec '12 | Dec '10 | Dec '12 |
| Chevron Texaco | 128,932.01 | 136,338.85 | 75,396.16 | 4,198.01 |
| Exxon Mobil | 157,848.84 | 51,722.62 | 173,895.85 | 60,337.71 |
| Edward Jones | 267,302.58 | 257,683.30 | 191,205.00 | 1.05 |
| IRA | | | 54,367.51 | |
| Total | 554,083.43 | 445,744.77 | 494,864.52 | 64,536.77 |
| Decrease in Assets | 108,338.66 | | 430,327.75 | |
| **Total Decrease in Assets** | **538,666.41** | | | |

(Table 1)

7. Based upon the spreadsheets, Table 1 represents a rough estimate of the decrease in value of trust owned securities between December 2010, when Defendant Anita Brunsting proclaims herself to have become trustee, and December 2012, the date of the most recent spreadsheets, totaling **$538,666.41**. Other questionable and/or unexplained transactions, apparent self-dealing, co-mingling, and/or misappropriation of trust assets include, but are not limited to, the following: Nelva Brunsting's social security payments were apparently diverted to an unknown location after January 3, 2011. Tax liabilities were created in direct violation of the terms of the trust and we have no evidence that those tax liabilities have been satisfied, or from what funds. Roughly $108,000.00 in principal was removed from the Decedent's trust when the terms of the trust specifically state that no more than $5,000.00 per year is allowed.[1] Almost $100,000.00 was transferred, apparently to a Rights of Survivorship styled checking account jointly held by Plaintiff's sister Carole Brunsting and their Mother Nelva Brunsting. No other information about that account has ever been provided to Plaintiff. More than $41,000.00 was paid from the trust account directly to credit cards assumed to be in the name of Anita Brunsting, and/or college funds for Defendant's children, and was excused as trustee compensation[2] at an exorbitant rate of 2% of the annual

[1] Article IX section A(2)(a) and (b) USCA5 p. 225.

[2] Trustee compensation is governed by article IV section G USCA5 p. 195.

value of the trust per month, allegedly under an agreement with Nelva Brunsting. On November 7, 2011, four days before Nelva Brunsting passed away, two wire transfers were made for $10,000.00 to each of the Defendants, with a memo "for future trust exp", categorized as "legal fees", with a tag of "redeposited into new Surv Trust acct". There is no evidence that these funds were ever redeposited into any account and, not including this $20,000.00, legal fees paid with trust account funds since the passing of Nelva Brunsting exceed $37,500.00. Transfers from Edward Jones into the Survivor's Trust checking, between 12/23/2010 and 3/9/2012, exceed $273,000.00. The balance of the Nelva Brunsting Survivor's Trust Edward Jones Asset as of December 2010, as shown on Schedule B, is $191,205.00. It is unclear where the difference of approximately $81,795.00 came from.

8. After more than one year since Plaintiff's first demand for an accounting, there are known assets of the trust that remain unaccounted for.

**FAILURE TO HONOR TRUSTEE DUTIES**

9. There are numerous anomalies and inconsistencies within these alleged accountings that are cumulative, but disconcerting none-the-less. Plaintiff could write *War and Peace* in an effort to itemize the obligations Defendants have failed to honor, but it is more economical to list the obligations that Defendants have honored.

10. The position of a trustee is voluntary. There are three substantive sources of duty that burden a trustee upon acceptance of that office. These are the common law; the law of the trust instrument; and statutes created by the legislature for the convenience of our courts in the settling of disputes.

11. Plaintiff can identify no common law duties that have been complied with by the alleged trustee Defendants. Plaintiff can identify no duties prescribed by the trust instrument that have been complied with by the alleged trustee Defendants, nor can Plaintiff identify duties prescribed by statute that have been fully complied with by the alleged trustee Defendants.

12. Amongst the duties prescribed by the trust,

Article XII Section E. Records, Books of Account and Reports p.12-10, states[3]:

> "The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate."

Defendants have failed to maintain complete and accurate books and records.

13. Defendants continue to conceal information and refuse to provide true, complete, and accurate accountings. Further, Defendants continue to communicate nothing regarding trust administration, or any other information regarding the trusts at all.

14. Affirmative Duty Of Trustee To Disclose Information To Beneficiaries:

[3] USCA5 p.258

Texas Trust Code § 113.060. INFORMING BENEFICIARIES.
The trustee shall keep the beneficiaries of the trust reasonably informed concerning:

(1) the administration of the trust; and
(2) the material facts necessary for the beneficiaries

to protect the beneficiaries' interests.

A trustee has the fiduciary duty, without any demand, to disclose to the beneficiaries all material facts known to the trustee that might affect the beneficiaries' rights. *Kinzbach v. The Corbett-Wallace Corporation, 160 S.W.2d 509 (Tex. 1942); Shannon v. Frost National Bank of San Antonio, 533 S.W.2d 389 (Tex. Civ. App. – San Antonio 1975); Montgomery v. Kennedy, 669 S.W.2d 309 (Tex. 1984); Huie v. Deshazo, 922 S.W.2d 920 (Tex. 1996); Restatement of the Law, Trusts 2d, §170; Scott on Trusts, §170; Bogert, Trusts and Trustees, §961.*

The breach of the duty of full disclosure by a fiduciary is tantamount to fraudulent concealment. *Willis v. Maverick, 760 S.W.2de 642 (Tex. 1988).* The beneficiary is not required to prove the elements of fraud, *Archer v. Griffith, 309 S.W.2d 735 (Tex. 1965); Langford v. Shamburger, 417 S.W.2d 438, (Tex.App.—Ft. Worth 1967, writ ref'd n.r.e.)*, and need not even prove that he relied on the fiduciary to disclose the information. *Johnson v. Peckham, 120 S.W.2d 786 (Tex. 1938); Miller v. Miller, 700 S.W.2d 941 (Tex.App.—Dallas 1985, writ ref'd n.r.e.).*

The trustee's duty of full disclosure extends to all material facts affecting the beneficiaries' rights. This duty exists independently of the rules of discovery, applying even if no litigious dispute exists between the trustee and the beneficiaries. *Huie v. Deshazo, 922 S.W.2d 920 (Tex. 1996).*

**TRUSTEE DUTY TO PROVIDE BIANNUAL ACCOUNTING**

15. Section E of Article XII of the trust[4] requires trustees to setup and maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Section E in the next paragraph requires trustees to provide biannual accountings to each beneficiary in writing.

16. It should not be necessary to resort to the Texas Trust Code to compel the accounting required by the trust, or to define the content of a proper accounting, none-the-less those sections are §113.151 and 113.152.

**DEFENDANTS' PERSONAL LIABILITIES**

17. The most recent spreadsheets show Defendants are paying their legal fees for their breach of fiduciary defense out of property belonging to the trust, but the trust is not a defendant and is not liable for the Defendants' breach of fiduciary.

> Texas Property Code Section 101.002 - Liability Of Trust Property
>
> § 101.002. LIABILITY OF TRUST PROPERTY. Although trust property is held by the trustee without identifying the trust or its beneficiaries, the trust property is not liable to satisfy the personal obligations of the trustee.

[4] USCA5 p. 258

## BURDEN OF PROOF

18. In equity actions where breach of fiduciary allegations are coupled with misapplication of fiduciary, the burden of proof is upon the fiduciary to show that the transactions were proper. Further, in a fiduciary case, the usual burden of establishing a "probable right to recover", before the court will grant a temporary injunction, does not apply if the gist of the complaint is "self-dealing".

> In a fiduciary self-dealing action, the "presumption of unfairness" attaches to the transactions of the fiduciary shifting the burden to the defendant to prove that the plaintiff will not recover. If the presumption cannot be rebutted as a matter of law at the temporary injunction stage, then the injunction should be granted since the plaintiff, by simply presenting a prima facie case of the existence of a fiduciary relationship and a probable breach of that duty has adduced sufficient facts tending to support his right to recover on the merits. *Cf. Camp v. Shannon, 348 S.W.2d 517, 519 (Tex. 1961); and, Jenkins v. Transdel Corp., 2004 WL 1404364(Tex.App. – Austin 2004, no pet.)*(exculpatory provision would not defeat showing of "probable right to recover" where some evidence that agreement including the clause was induced by fraud).

## DEMAND FOR SHOW OF PROOF

19. At paragraph 46 of Defendants' answer, Defendants affirmatively plead conformance with "applicable provisions of the Trust and sub-trust instruments" and at paragraph 50 Defendants affirmatively claim:

> "Defendants' alleged actions and omissions were undertaken in good faith, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further the purposes of the Trust and sub-trusts."

Plaintiff Exhibit 29 at USCA5 p.179-278 shows the provisions of the Brunsting trust. Defendants are invited to answer this application for injunction and to show that their actions, as confessed by their accountings, are consistent with their affirmative defense claims in items 46 and 50 of Defendants' answer.

## REQUEST FOR RELIEF

20. Due to the lack of proper inventory, proper accounting, and full and complete disclosure, it is imperative that this Court act quickly to protect the Brunsting family of trusts from being further wasted by the present acting trustee Defendants. Injunction is the only way to protect the beneficiaries and the trust estate assets from further damage in the event the Defendants will not be able to adequately respond to the trusts' injuries. There is no other remedy at law that will prevent the irreparable injury that will result if the requested relief is not granted.

21. Wherefore, Plaintiff prays the Court issue the attached proposed order, or issue its own orders upon such terms as the Court deems most beneficial in protecting the trust assets and the rights of the beneficiaries.

Monday, March 11, 2013

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net



20-20566.586

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| versus | §<br>§ | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | §<br>§ | |

**INJUNCTIVE ORDERS**

**[PROPOSED]ORDER FOR TEMPORARY RESTRAINT, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION**

This matter comes before the Court on Plaintiff's reapplication for preliminary injunction. Having reviewed the papers in support of and in opposition to (if any), the Court finds that Plaintiff Candace Louise Curtis has demonstrated both a strong likelihood of success on the merits, and the possibility that Plaintiff faces immediate irreparable injury from Defendants' conduct. Accordingly Plaintiff is entitled to provisional injunctive relief, and the Court GRANTS Plaintiff's motion as follows:

1. Upon finding that Plaintiff, Candace Louise Curtis, has carried her burden of showing (a) a possibility that Plaintiff faces irreparable injury and (b) a likelihood of success on the merits, this Preliminary Injunction is granted pursuant to Federal Rule of Civil Procedure 65, 15 U.S.C. §1116(a), and the inherent equitable powers of the Court.

2. The Court hereby preliminarily RESTRAINS AND ENJOINS Defendants, their agents, servants, employees, attorneys, and all others in active concert or participation with Defendant Amy Brunsting and/or Defendant Anita Brunsting,including all financial institutions holding money or assets of any kind in the name and/or for the benefit of the Brunsting Family Living Trust (the Trust), or any derivative, sub, or resulting trust, who receive actual notice of this order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other devise, shall be restrained from engaging in the following acts or practices, to wit: transferring, spending, hypothecating, concealing, encumbering, withdrawing, removing, dissipating, distributing, or allowing the transfer, removal, withdrawal or encumbering from any financial institution or from any other entity or location or from the jurisdiction of this Court, any money, cash, stocks, bonds, assets, notes, equipment, funds, receipts, reports, accounts receivable, policies of insurance, trust agreements, trust documents or other property, real, personal or mixed, wherever situated, belonging to the Brunsting Family Living Trust or any trust created under it, until further order of this court.

**PRODUCTION OF ACCOUNTING AND TRANSACTION RECORDS**

3. Defendants Anita Kay Brunsting and Amy Ruth Brunsting are hereby ordered to produce before this Court, a true, accurate and complete listing of all

assets of the Brunsting Family Living Trust and any trust created under or held by the Trust, with all supporting documentation, and to provide a true, accurate and complete statement of all transactions involving the Brunsting Family Living Trust as of the death of Elmer Brunsting, April, 2009, with all supporting documentation, and are to provide copies of all said documents and records to Plaintiff.

4. Said accounting shall conform to Texas Property Code §113.152 and be certified by the trustees as accurately reflecting the trusts affairs.

> § 113.152. CONTENTS OF ACCOUNTING.
> A written statement of accounts shall show:
> (1) all trust property that has come to the trustee's knowledge or into the trustee's possession and that has not been previously listed or inventoried as property of the trust;
> (2) a complete account of receipts, disbursements, and other transactions regarding the trust property for the period covered by the account, including their source and nature, with receipts of principal and income shown separately;
> (3) a listing of all property being administered, with an adequate description of each asset;
> (4) the cash balance on hand and the name and location of the depository where the balance is kept; and
> (5) all known liabilities owed by the trust.

**PRODUCTION OF TRUST TAX RETURNS, FARM MANAGEMENT RECORDS AND FARM LEASES**

5. Defendants are hereby ordered to produce before this Court, all trust tax returns beginning with year ending 2007, all farm management records, and all farm leases beginning with year ending 2007.

**PRODUCTION OF TRUST DOCUMENTS**

6. Defendants Anita Kay Brunsting and Amy Ruth Brunsting are hereby ordered to produce true, accurate and complete copies of all documents relating to the Brunsting Family Living Trust and all sub-trusts, and to provide copies of all said documents and records to Plaintiff.

**REPATRIATION OF ASSETS**

7. If Defendants have removed any assets from the jurisdiction of this Court, whether personally owned or trust owned, Defendants are to identify and return said assets to the jurisdiction of this court.

Date:_____

_____
The Honorable Kenneth M. Hoyt
United States District Court Judge

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis

Plaintiff,

v.

Case No.: 4:12−cv−00592
Judge Kenneth M. Hoyt

Anita Kay Brunsting, et al.

Defendant.

TYPE OF CASE: Civil

---

## NOTICE OF SETTING

**TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR THE PLACE, DATE AND TIME SET FORTH BELOW.**

**Before the Honorable**

Kenneth M. Hoyt

**PLACE:**
Courtroom 11A
United States District Court
515 Rusk Ave
Houston, TX

**DATE:** 4/9/13

**TIME:** 09:00 AM

**TYPE OF PROCEEDING:** Injunction Hearing
Motion for Temporary Restraining Order − #35

Date: March 22, 2013

David J. Bradley, Clerk

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED

APR 01 2013

David J. Bradley, Clerk of Court

United States District Court for the Southern District of Texas
Houston Division Civil Action No. 4:12-cv-00592

Curtis v Brunsting, et al.

I the undersigned do declare that I am beyond the age of majority and not a party to the above action.

On March 27, 2013 I served a copy of the attached Rule 11 Motion and Application for Order upon the persons named below by placing a true copy in the United States Mail with postage fully prepaid at American Canyon California.

Addressed to:

David J. Bradley
Clerk of Court
P. O. Box 61010
Houston, TX 77208

Bernard Lilse Mathews, III
Attorney at Law
Green & Mathews, LLP
14550 Torrey Chase Blvd., Suite 245
Houston, Texas 77014

Respectfully submitted 3/27/2013



Rik Munson
218 Landana St
American Canyon
CA 94503
925-349-8348

Proof of Service Wednesday, March 27, 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES COURTS
SOUTHERN DISTRICT OF TEXAS
FILED
APR 01 2013
David J. Bradley, Clerk of Court

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| versus | § | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | § | |

**APPLICATION FOR ORDER TO SHOW CAUSE AND RULE 11 MOTION FOR SANCTIONS**

1. Federal Rule of Civil Procedure 11 authorizes federal courts to issue sanctions against parties or their attorneys who file pleadings, motions, or other papers that are filed for an improper purpose or lack a required level of evidentiary or legal support. The aim of Rule 11 is to deter frivolous filings, to "curb abuses of the judicial system,"[1] and to require litigants to refrain from conduct that frustrates Rule 11's goal of the "just, speedy, and inexpensive determination of every action."[2]

**HISTORY OF THE ACTION**

2. Plaintiff Curtis filed her petition before this equitable Court on February 27, 2012, seeking relief in the form of accountings, answers to information requests and monetary damages for known acts and omissions.

[1] *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 397 (1990).
[2] Fed. R. Civ. P. 1; Fed. R. Civ. P. 11 advisory committee's notes (1993)

3. Curtis' suit contends that all the information in this case was uniquely in the possession of Defendants.

4. On March 6, 2012 Defendants' counsel, Bernard Lisle Matthews III, Esq., filed an alleged emergency motion for removal of lis pendens.

5. As stated before the Fifth Circuit Court of Appeals, Defendants' counsel Bernard Matthews perpetrated a fraud upon the District Court in the opening paragraph of his alleged "emergency" motion stating:

> [Note: This Motion is brought subject to the Trustees contention that this Court lacks subject matter jurisdiction due to the fact that Texas Probate Code §115.001 (7)confers exclusive jurisdiction over matters related to questions "arising in the administration or distribution of a trust" to the State District Court, and by analogy this case should not be considered under the Probate Exception to Federal Court Jurisdiction, Marshall v. Marshall, 126 S.Ct. 1735, 1748 (2006). These issues will be raised by a separate Motion to Dismiss under FRCP 12(b)]

6. In denying Plaintiff's application for injunction for want of service the court stated:

> Before the Court is the ex parte application of the plaintiff, Candace Louise Curtis, for a temporary restraining order and injunction. The record shows that the defendants have not been served with process. Moreso, it appears that the Court lacks subject matter jurisdiction over the claim(s) asserted. Therefore, the application for a temporary restraining order and for injunction are denied.

7. It appears that Defendants' counsel, Bernard Mathews, was intentionally manipulating the Court's previous expression of concern over whether the court had subject matter jurisdiction, when he knowingly misstated Texas Property Code

§115.001, claiming it to be the Probate Code, and then bootstrapped a route test theory that was very harshly reversed by the Supreme Court on the second page of the Supreme Court opinion to which he cited.[3]

> "Nevertheless, the Ninth Circuit in the instant case read the probate exception broadly to exclude from the federal courts' adjudicatory authority "not only direct challenges to a will or trust, but also questions which would ordinarily be decided by a probate court in determining the validity of the decedent's estate planning instrument." *392 F.3d 1118, 1133 (2004)*. The Court of Appeals further held that a State's vesting of exclusive jurisdiction over probate matters in a special court strips federal courts of jurisdiction to entertain any "probate related matter," including claims respecting "tax liability, debt, gift, [or] tort." *Id., at 1136*. **We hold that the Ninth Circuit had no warrant from Congress, or from decisions of this Court, for its sweeping extension of the probate exception**". *(emphasis Curtis)*

8. On March 8, 2012 Curtis' complaint was dismissed sua sponte, possibly due to the Court's reliance upon the false assertions made before the Court under Rule 11, by officer of said Court, Bernard Mathews.

## MATHEW'S CORALATIVE ACTION

9. On March 2, 2012 Defendants' counsel Bernard Matthews filed a complaint in the Harris County District Court, claiming breach of fiduciary on behalf of the plaintiff, in Reginald D. Parr vs. Sherry Evon Dunegan, Harris County District Court case number 2012-13022.

[3] *Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735, 1736*

10. In that case Mr. Parr is suing Miss Dunegan for breach of fiduciary in the administration of a Texas trust. The trust in that case was drawn up by the law firm of Vacek and Freed.

11. It would seem to follow that an attorney preparing a complaint for the Harris County District Court, involving a substantively identical case to that of Plaintiff Curtis, would know that trusts are not heard exclusively before the probate court, would know the difference between the property code and the probate code and, having read the supreme court opinion in Marshall v. Marshall before signing his pleading, would know his route test assertions were false.

12. Defendants filed their "emergency" motion claiming to be trustees and that the property to which the lis pendens related was to be liquidated in order to distribute proceeds to the heirs, and that Plaintiff's only intent was to frustrate that sale.

13. The lis pendens at issue was amongst the papers filed with the court, but was never on file with the County Recorder as to frustrate a sale. Plaintiff Curtis has, to date, received no distribution from the proceeds of the sale of the house.

14. Upon dismissal of Plaintiff Curtis' action, Mathews promptly interfered with Curtis' subpoenas, preventing Curtis from obtaining information.

15. Plaintiff Curtis asks this court to take judicial notice of the asset schedules received from the Defendants, attached to Plaintiff's application for injunction, and to note the absence of any distributions to Plaintiff Curtis.

**SHOW CAUSE ORDER**

16. Plaintiff Curtis respectfully requests that this Court order Bernard Lyle Mathews III to appear before this court to Show Cause why the conduct complained of has not violated Rule 11(b).

17. Curtis further prays that Mathews be held in contempt for willfully violating Rule 11 and that he be sanctioned for his conduct.

18. Curtis further prays that Mathews be held to produce subpoenas and other necessary process to obtain the information sought by Curtis, and that he be held to pay the cost for producing the electronic and other records requested by Curtis' three subpoenas: (1) to SBC Global for the email records of Nelva Brunsting, showing that she was both lucid and frugal while Defendants were defrauding her of her wealth and station, and that she was not being informed of Defendants' true activities; (2) To Computershare stock trading corporation for transaction records involving securities that were not in the trust, but somehow found their way onto spreadsheets as if in the trust, without first having been submitted to probate for pour-over; (3) Bank of America for records of access to the Brunsting safe deposit

box, where the original trust instruments were kept, and for checking, new account opening, and other banking transaction records.

19. On February 24, 2013, Plaintiff emailed a draft copy of the above Rule 11 Motion to Bernard Lisle Mathews III at his electronic filing email address, texlawyer@gmail.com.

Respectfully submitted.

March 27, 2013

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants*. | § | |

MEMORANDUM AND RESPONSE OF DEFENDANTS TO PLAINTIFF'S "RENEWED APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, AND ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION"

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting respond to Inst. #35 ("the Renewed Application") filed by Plaintiff.

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING.

1. This is a diversity action and a suit among sisters involving a family trust. Plaintiff, a trust beneficiary, sues her sisters, Trustees. The real property of the Trust, a farm, is located in Iowa. There are other holdings of stock and bank accounts. The Court recently conducted a status conference and entered a docket control order. Plaintiff has sent some requests for production to Defendants, which are not yet due.

STATEMENT OF THE ISSUES TO BE RULED ON, AND THE STANDARD OF REVIEW THAT APPLIES.

2. At issue is a request for injunctive relief. "A preliminary injunction may be issued to protect the plaintiff from irreparable injury and to preserve the district court's power to

render a meaningful decision after a trial on the merits."[1] It is, however, "extraordinary" relief. Granting or refusing a temporary injunction is in the sound discretion of this Court.[2]

This Court "balances the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction."[3] Additionally, the Fifth Circuit has also established four prerequisites for grant of a preliminary injunction: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest.[4]

ARGUMENT:

PLAINTIFF'S REQUEST FOR INJUNCTIVE AND OTHER RELIEF SHOULD BE DENIED.

3. The purpose of injunctive relief is to preserve the status quo and not to adjudicate the merits. Plaintiff's request does not seek to maintain the status quo, but to materially alter it. Further, her requests for relief reach the merits; she requests, for example, that

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[1] *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir. 1974).

[2] *Nalco Chemical Co. v. Hall*, 347 F.2d 90 (5th Cir. 1965).

[3] *Wooten v. Ohler*, 303 F.2d 759, 762 (5th Cir. 1962).

[4] *Queen v. Ocwen Loan Servicing, LLC*, 12-CV-2049, 2012 WL 5198358 (S.D. Tex. Oct. 19, 2012) (Ellison, J.), citing *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572–73 (5th Cir. 1974) (attached to Appendix).

Defendants marshal their proof in support of an affirmative defense advanced in their Answer.[5] Plaintiff also seeks to compel an accounting, and seeks documents such as tax returns and farm records for a period beginning two years before the sisters' father's death. These latter requests are discovery matters (and discovery has been sent by Plaintiff to Defendants), not matters of equitable relief.

Plaintiff also seeks "repatriation" of Defendants' "personal assets."[6] But following Supreme Court precedent, the Fifth Circuit has held several times, as a general federal rule of equity, that a court may not reach a defendant's assets unrelated to the underlying litigation and freeze them so that they may be preserved to satisfy a potential money judgment.[7]

4. Plaintiff's underlying complaint seeks money damages, punitive damages, and "legal fees and costs" from the Trustees.[8] Plaintiff seeks injunctive relief that includes a request to restrain Defendants, as trustees, from any actions in connection with the trusts – her requested "asset freeze." And Plaintiff requests that financial institutions and others, that are not parties before this Court, likewise be enjoined from any actions in connection with the Family Trust.

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[5] See Inst. #35 (Renewed Application) at 9 (demanding a "show of proof").

[6] See Inst. #35, proposed Order, at numbered paragraph 7.

[7] *See In re Fredeman Litig.*, 843 F.2d 821, 824 (5th Cir. 1988), citing *De Beers in Federal Savings & Loan Insurance Corp. v. Dixon*, 325 U.S. 212, 65 S.Ct. 1130, 89 L.Ed. 1566 (1945).

[8] See Inst. # 1 at 12.

Plaintiff cannot establish any of the four prerequisites to the issuance of a preliminary injunction. Regarding the likelihood Plaintiff will prevail on the merits, Plaintiff acknowledges that she has received spreadsheets; accounting information; lists of assets as of December 2012; and schedules reflecting transfers, deposits, electronic fund transfers, gifts, payment of Iowa state and federal taxes, and payments of their brother's medical bills from 2010 to 2012.[9] Plaintiff apparently disputes the accuracy of the spreadsheets (she refers in her Affidavit to "anomalies" and "false assertions" that "raise questions").[10] Questions raised, or the lack of additional information, does not entitle Plaintiff to a prejudgment asset freezing of the Trust.[11] The presence of this documentary evidence – that she received from Defendants – does not establish a likelihood Plaintiff will prevail on the merits of her suit for money damages.

Nor do these claims and concerns establish irreparable harm. The claim of an irreparable injury must be harm that is actual and imminent, not speculative or remote.[12] In addition to the speculative nature of Plaintiff's concerns and "questions," she has not explained why money damages are not measurable or adequate. Plaintiff will presumably

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[9] See Inst. #35 ("Renewed Application) at 3. She has attached 30 pages of these documents to her Application.

[10] See Inst. #34 (affidavit).

[11] Plaintiff also claims in her affidavit that she has not received information from "Carl Brunsting [her brother] that may have been produced in any of the three state court actions and Plaintiff is concerned about that fact." Inst. #34 at 2. It is unclear why her brother's non-disclosures have relevance to this Application.

[12] *Watson v. Federal Emergency Mgmt. Agency*, 437 F.Supp.2d 638, 648 (S.D. Tex. 2006).

have an adequate opportunity at a trial on the merits, after discovery, to try and prove she suffered some compensable injury from the administration of the Trust. Defendants will have their opportunity to prove their defenses, including the fact they have administered the Trust properly, and in good faith according to its terms and the Texas Trust Code, along with the application of any exculpatory provisions in the Trust applicable to alleged errors of judgment or mistake of fact or law or ordinary negligence. "The possibility that adequate compensatory . . . relief will be available at a later date, in the ordinary course of litigation, weighs heavily against a claim of irreparable harm."[13]

Thus, irreparable harm – which must be proven *likely* if injunctive relief will be granted [14] – is absent here.

A preliminary injunction is an extraordinary and drastic remedy which should not be granted unless the movant clearly carries the burden of persuasion.[15] Plaintiff Curtis has not met her burden for injunctive relief, or shown entitlement to the other varied relief she requests in her proposed Order; moreover, the public interest would not be served by entry of the proposed Order. Defendants request the Court deny the Renewed Application.

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[13] *Sampson v. Murray* 415 U.S. 61, 90, 94 S.Ct. 937, 39 L.Ed.2d 166 (1974).

[14] *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 22, 129 S.Ct. 365, 172 L.Ed.2d 249 (2008).

[15] *Planned Parenthood of Houston & S.E. Tex. v. Sanchez*, 403 F.3d 324, 329 (5th Cir. 2005); *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572–73 (5th Cir. 1974).

5. Finally, Rule 65 directs that the Court may issue a preliminary injunction "only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined . . . ." Plaintiff's motion is absent any suggestion as to what would be a proper amount of security to protect these Defendants during the litigation. While Defendants claim there is no need to enter an injunction, based on the Application before the Court, any injunction against them would require appropriate security.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court deny the Renewed Application, and any request for preliminary injunctive relief, and grant Defendants any other and further relief as this Court may find proper.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
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State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

2012 WL 5198358
Only the Westlaw citation is currently available.
United States District Court,
S.D. Texas,
Houston Division.

Derek QUEEN et al., Plaintiffs,
v.
OCWEN LOAN SERVICING, LLC, Defendant.

Civil Action No. 12–cv–2049. | Oct. 19, 2012.

**Attorneys and Law Firms**

Walter Earl Strickland, Jr., Attorney at Law, Houston, TX, for Plaintiffs.

Papool S. Chaudhari, Reyes Browne, Dallas, TX, for Defendant.

**Opinion**

**MEMORANDUM AND ORDER**

KEITH P. ELLISON, District Judge.

***1** Pending before the Court is Defendant's Motion to Dismiss. (Doc. No. 3). This case is brought by Plaintiffs Derek Queen, et al. ("Plaintiffs"), who seek to enjoin a foreclosure of property. After considering the motion, all responses thereto, and the applicable law, the Court finds that Defendant's Motion to Dismiss must be **GRANTED.**

**I. BACKGROUND**

In July 2006, Plaintiffs obtained a loan from Argent Mortgage Company on the property, 3313 Calumet Street, Houston, Texas 77004 (the "Property"). (Doc. No. 1, Ex. B pp. 3–7, *hereinafter* "Complaint" p. 2.) Argent Mortgage Company later conveyed the mortgage lien to Ocwen Loan Servicing, LLC ("Defendant"). (*Id.*) Plaintiffs do not contest that Defendant has a lien on the Property. (*Id.*) After Plaintiffs defaulted on the loan, Defendant served them with notice of a foreclosure sale. (*Id.*) Plaintiffs do not contend that Defendant failed to comply with statutory or common law foreclosure requirements. Rather, Plaintiffs acknowledge that Defendant was "in compliance with the procedures surrounding a foreclosure sale." (*Id.*) The foreclosure sale was set for July 3, 2012. (*Id.*) The Harris County Court granted a temporary restraining order enjoining the foreclosure sale until July 13, 2012. (Doc. No. 1, Ex. B.) Though the temporary restraining order has expired, Defendant has not yet foreclosed on the Property.

Plaintiffs allege that Defendant refused to discuss payments to redress the delinquency, and charged interest and fees that added approximately $6,000 to the amount owed. (Compl. p. 3.) At the time of the scheduled foreclosure sale, Plaintiffs claim that the amount owed was in dispute. (*Id.*) Plaintiffs request that the Defendant be enjoined from foreclosing on the Property because they can "have another mortgage company in 60–90 days ready, willing and able to refinance the loan as soon as Defendant can produce an accurate payoff." (*Id.*)

Plaintiffs filed suit in state court, and Defendant timely removed to federal court. (Doc. No. 1.) Defendant then filed this Motion to Dismiss. (Doc No. 3.)

**II. LEGAL STANDARD**

"To survive a Rule 12(b)(6) motion to dismiss, a complaint 'does not need detailed factual allegations,' but must provide the plaintiff's grounds for entitlement to relief-including factual allegations that when assumed to be true 'raise a right to relief above the speculative level.' " *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir.2007) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007)). That is, a complaint must contain sufficient factual matter that, if it were accepted as true, would "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570). A claim need not give rise to "probability," but need only plead sufficient facts to allow the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly*, 550 U.S. at 556). A pleading also need not contain detailed factual allegations, but it must go beyond mere "labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555 (citation omitted).

***2** While the court must accept well-pleaded facts as true, *Iqbal*, 556 U.S. at 678, it should neither "strain to find inferences favorable to the plaintiffs" nor "accept 'conclusory allegations, unwarranted deductions, or legal conclusions.' " *R2 Investments LDC v. Phillips*, 401 F.3d 638, 642 (5th Cir.2005) (quoting *Southland Sec. Corp. v. Inspire Ins. Solutions, Inc.*, 365 F.3d 353, 362 (5th Cir.2004)). A court should not evaluate the merits of the allegations, but must

satisfy itself only that plaintiff has adequately pled a legally cognizable claim. *United States ex rel. Riley v. St. Luke's Episcopal Hosp.*, 355 F.3d 370, 376 (5th Cir.2004).

**III. ANALYSIS**

Plaintiffs seek to enjoin a foreclosure of the Property to allow themselves more time to refinance the debt. Defendant argues that this is not a cognizable claim, and the complaint should be dismissed because no cause of action has been pled.

**A. Temporary Injunction**

Plaintiffs request a temporary injunction enjoining Defendant from selling the property "so long as the Plaintiffs close on refinancing the property within a reasonable time." (Compl. p. 4.) "A preliminary injunction may be issued to protect the plaintiff from irreparable injury and to preserve the district court's power to render a meaningful decision after a trial on the merits." *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572 (5th Cir.1974). Granting or refusing a temporary injunction is in the sound discretion of the trial judge. *Nalco Chemical Co. v. Hall*, 347 F.2d 90 (5th Cir.1965). In exercising that discretion, the judge "balances the conveniences of the parties and possible injuries to them according as they may be affected by the granting or withholding of the injunction." *Yakus v. United States*, 321 U.S. 414, 440, 64 S.Ct. 660, 88 L.Ed. 834 (1944); *Wooten v. Ohler*, 303 F.2d 759, 762 (5th Cir.1962). The Fifth Circuit has also laid out four prerequisites for the "extraordinary relief of preliminary injunction." *Allison v. Froehlke*, 470 F.2d 1123 (5th Cir.1972). The four prerequisites are as follows: (1) a substantial likelihood that plaintiff will prevail on the merits, (2) a substantial threat that plaintiff will suffer irreparable injury if the injunction is not granted, (3) that the threatened injury to plaintiff outweighs the threatened harm the injunction may do to defendant, and (4) that granting the preliminary injunction will not disserve the public interest. *Canal Auth. of State of Fla. v. Callaway*, 489 F.2d 567, 572–73 (5th Cir.1974) (citations omitted).

Plaintiffs fail to plead the first prerequisite since they do not plead a claim on which they are likely to prevail on the merits. Plaintiffs seek to enjoin Defendant from foreclosure until they can refinance the Property. The purpose of the injunction is not to protect Plaintiffs from irreparable injury or maintain the status quo until a trial on the merits; it is simply to gain relief from foreclosure. There is no recognized cause of action under the Texas Property Code that would require a lien holder to allow a homeowner time to refinance property before a foreclosure sale. *See* Tex. Prop.Code § 51.002. Plaintiffs have not pled a legal claim and no extraordinary circumstance exists to warrant the issuance of a temporary injunction. Therefore Defendant's motion to dismiss this claim must be granted.

**B. Negligent Misrepresentation**

***3** Plaintiffs plead negligent misrepresentation in their response to the motion to dismiss. However, this is a new cause of action that was not raised in the complaint and cannot be pled for the first time in a response to a motion. The Court need not determine the merits of this claim at this time.

**IV. CONCLUSION**

For the reasons discussed above, Defendant's Motion to Dismiss is **GRANTED.** Plaintiffs are granted leave to file an amended complaint, consistent with this Memorandum and Order, by October 29, 2012.

**IT IS SO ORDERED.**

**End of Document**

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER DENYING PLAINTIFF'S**
**RENEWED APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, AND ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION**

BEFORE THE COURT is Plaintiff's Renewed Application for injunctive and other relief. The Court has considered the Application and the Response of Defendants Anita Kay Brunsting and Amy Ruth Brunsting. The Court gave notice and set the matter for hearing, at which time Plaintiff *pro se* and Counsel for Defendants appeared.

After consideration of the Renewed Application, the evidence submitted, the arguments, and other matters, the Court finds the Renewed Application should be DENIED.

DONE this _____ day of April, 2013, at Houston, Texas.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

NOTICE OF STATE COURT PROCEEDING FILED AGAINST THESE PARTIES PLAINTIFF AND DEFENDANT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting would advise the Court of the institution of a state court suit on April 9, 2013. This notice is provided in supplementation of the information given at a temporary restraining order hearing held on April 9, 2013.

1. At the hearing on Plaintiff's request for a temporary restraining order, Dkt. # 40, counsel for Defendants referenced the existence of a Harris County District Court lawsuit Carl Brunsting had filed against certain attorneys.

Late in the afternoon on April 9, after the hearing was completed, counsel was forwarded a copy of a new suit filed in Harris County Probate Court against Defendants Anita Kay Brunsting and Amy Ruth Brunsting (individually and as Successor Trustees of the Trust); Plaintiff Candace Curtis; and non-party Carole Brunsting. The suit seeks declaratory relief; demands a trust accounting; seeks money damages against Defendants; contains claims of negligence, tortious interference with inheritance, conspiracy, and

conversion; requests injunctive relief and a constructive trust; and requests an award of attorney's fees. A copy of the suit is attached.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court take notice of this filing.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
*gvie@millsshirley.com*
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

PROBATE COURT 4

NO. 412.249-401

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

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| | | |
|---|---|---|
| CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting | § | IN PROBATE COURT |
| 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 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; | § | NUMBER FOUR (4) OF |
| 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 |

2013 APR -9 PM 2:33

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

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"),[1] and his mother, Nelva E. Brunsting ("Nelva").[2] 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

[1]Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

[2]Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.



20-20566.614

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.

## 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 resistence 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

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.

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

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 minium 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



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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



20-20566.628

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) - (l).

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 §
§
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 8th day of April, 2013, to certify which witness my hand and official seal.

SHAWN M. TEAGUE
MY COMMISSION EXPIRES
April 3, 2015

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

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Candace Louise Curtis

Plaintiff,

v.

Anita Kay Brunsting et al.

Defendants.

Civil No. 4:12-cv-00592

Judge Kenneth M. Hoyt

Case Manager: Cynthia Horace

Court Reporter:

Proceeding: Evidentiary Hearing

**EXHIBIT LIST OF DEFENDANTS**

| No. | Description | Offer | Object | Date ADMIT | Date N/ADMIT |
|---|---|---|---|---|---|
| 1 | Brunsting Family Irrevocable Trust | | | | |
| 2 | Resignation of Trustee/Acceptance of Successor Trustee | | | | |
| 3 | April 27, 2012 email | | | | |
| 4 | April 29, 2012 email | | | | |
| 5 | Email from Nelva regarding gift | | | | |
| 6 | | | | | |
| 7 | | | | | |
| 8 | | | | | |
| 9 | | | | | |
| 10 | | | | | |
| 11 | | | | | |
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| 14 | | | | | |

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' MOTION FOR APPROVAL OF TAX PAYMENTS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move for an Order permitting the payment of tax related debts, consistent with the Court's ruling on April 9, 2013.

1. At the temporary restraining order hearing on April 9, Defendants' counsel and Defendant Anita Kay Brunsting advised the Court that tax payments from the Trust were due in the immediate future. The Court directed Defendants to move for an Order authorizing the payments from Trust funds.

2. The decedent's trust has a federal tax payment due of $23,906. The decedent's trust also has an Iowa state tax payment due of $4797. The survivor's trust has a federal tax payment of $20 due.

The decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536. The survivor's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3523.

3. Accordingly, Defendants move for entry of the attached Order permitting the timely payments of these debts. As instructed by the Court, all beneficiaries will be served with a copy of this Motion.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
*gvie@millsshirley.com*
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail. Additionally, non-party beneficiaries will be served by mail, email if known, and by copy to any attorney-of-record for those parties in state court litigation.

*/s/ George W. Vie III*
George W. Vie III

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF TAX PAYMENTS**

BEFORE THE COURT is Defendants' Motion for Approval of Tax Payments, as discussed at the temporary restraining order hearing on April 9, 2013. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

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

The decedent's trust federal tax payment in the amount of $23,906.00;

The decedent's trust Iowa state tax payment in the amount of $4797.00;

The survivor's trust federal tax payment in the amount of $20.00.

The decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536. The survivor's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3523.

DONE this _____ day of April, 2013, at Houston, Texas.

KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants.* | § | |

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

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The decedent's trust Iowa state tax payment in the amount of $4797.00;

The survivor's trust federal tax payment in the amount of $20.00.

The decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536. The survivor's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3523.

DONE this 11th day of April, 2013, at Houston, Texas.

KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**MEMORANDUM AND ORDER**
**PRELIMINARY INJUNCTION**

## I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

## II. BACKGROUND

### *A. Procedural Background*

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a



20-20566.639

recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

***B. Contentions of the Parties***

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

## III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

## IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

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.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants*. | § | |

JOINT NOTICE OF AGREED CERTIFIED PUBLIC ACCCOUNTANT FIRM PURSUANT TO COURT'S ORDER FOR ACCOUNTING

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting, joined by Plaintiff, would advise the Court that the parties have agreed to a Certified Public Accounting firm that could potentially provide accounting services, as directed by the Court.

1. That CPA is:

Jeff Compton, Compston & Wendler, P.C.

Two Houston Center, 909 Fannin, Ste 3275

Houston, Texas 77010

713.659.5080

http://www.jacompton.com/

2. The parties have not contacted the firm to determine the cost of the accounting.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court take notice of this filing.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
*gvie@millsshirley.com*
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail.

*/s/ George W. Vie III*
George W. Vie III

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER**

The Court directed the parties to agree, if they could, on an accountant to account for the income and expenses of the Brunsting Trust. The agreement was to be made and the Court informed on or before April 16, 2013. When the parties failed to designate, the Court contacted an accountant, for appointment by the Court. The parties' joint notice [Dkt. No. 46] that they have agreed on an accountant is tardy, fails to seek approval of the Court and does not carry the signature of the plaintiff who has accused the defendants' of fraudulent conduct.

In light of the accusations in the pleadings and the Court's instructions, the Court is of the opinion that the best course forward is a Court appointed accountant who will be responsible to the Court. The Court, therefore, rejects the parties "agreed" notice as an appointment. An Order designating an accountant will be entered shortly.

It is so Ordered.

SIGNED on this 29th day of April, 2013.

Kenneth M. Hoyt
United States District Judge



20-20566.646

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
MAY 1 2013
David J. Bradley, Clerk of Court

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Individually and as Co-Trustee<br>Plaintiff, | § | |
| versus | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| ANITA KAY BRUNSTING,<br>AMY RUTH BRUNSTING,<br>CAROLE ANN BRUNSTING,<br>CANDACE L. KUNZ-FREED,<br>ALBERT E. VACEK, JR.,<br>VACEK & FREED, PLLC,<br>THE VACEK LAW FIRM<br>BERNARD LILSE MATHEWS III,<br>And DOES 1 – 94<br>Defendants. | § | |

**PLAINTIFF'S FIRST AMENDED COMPLAINT**
**Motion to Amend Complaint**

## PARTIES

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California.

2. Defendant Anita Brunsting resides in the county of Victoria; Defendant Amy Brunsting resides in the county of Comal; Defendant Carole Brunsting resides in the county of Harris; Defendant Bernard Mathews practices law as a partner in the firm of Green and Mathews LLP in the county of Harris, and is concurrently listed on the Vacek & Freed website as a staff attorney; Defendant(s)



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Albert E. Vacek, Jr. and Candace L. Kunz-Freed conduct business as Vacek & Freed PLLC in the county of Harris.

3. Defendants Amy, Anita, and Carole Brunsting are the siblings of Plaintiff Curtis and, along with brother Carl Brunsting, co-successor beneficiaries under their Parents' trust and estate plans.

## JURISDICTION AND VENUE

## JURISDICTION

4. This matter was originally brought in equity as breach of fiduciary and related equitable claims that included a common law tort claim under diversity jurisdiction pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2). Plaintiff hereby incorporates those claims by reference as if fully restated herein, but with newly discovered evidence presents additional and alternate claims. Additionally, Plaintiff is informed and believes Defendants are not de jure trustees.

5. This complaint now alleges violations of the wire, mail and securities laws of the United States as expressed in Chapter 63 of Title 18 of the United States Code, and Plaintiff is seeking to pursue additional remedies under 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act").

6. This court has federal question jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1367 and Section 27 of the Exchange Act[1] (15 U.S.C. §78aa) and exclusive jurisdiction over these claims, as this action arises under Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) and the causes of action implied therefrom.

7. In connection with the acts and omissions alleged in this complaint Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the internet, the mails, interstate telephone communications, and the facilities of the national securities markets.

**VENUE**

8. The acts complained of involve alleged administration of the family trust(s) established by Elmer and Nelva Brunsting of Houston Texas. The United States District Court for the Southern District of Texas, Houston Division, is therefore a proper venue under 28 USC §1391(a)(1).

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[1] Securities Exchange Act of 1934, 15 U.S.C. §§78a-78kk (1982)

9. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. §1391(b) and (c), in that substantial acts in furtherance of the alleged fraud and/or its affects have occurred within this District.

## NATURE OF ACTION

10. This action was brought as a diversity action alleging breach of fiduciary duty, extrinsic and constructive fraud, and intentional infliction of emotional distress, but Plaintiff now pleads additional and alternative causes.

## HISTORY OF THE CASE

11. In 1996 Elmer Brunsting and his wife Nelva Brunsting created a living trust for their benefit and for the benefit of their 5 children. The stated co-successor beneficiary distribution was to be equal, 1/5 for each of the five Brunsting children: Candace, Carole, Carl, Amy, and Anita. The trust was also structured to preserve the Brunsting legacy for Elmer and Nelva's grandchildren.

12. Elmer and Nelva Brunsting restated their trust in 2005 and amended it for the first time in 2007. The 2007 amendment was the last known trust instrument signed by both Elmer and Nelva, and it changed references from Anita Riley to Anita Brunsting, and amended section IV replacing Amy Brunsting with Candace Curtis as co-successor trustee with Carl Brunsting.

13. Plaintiff Curtis' father Elmer H. Brunsting died April 1, 2009, at which time the family trust became irrevocable, pursuant to Article III.

14. On or about August 25, 2010 a number of documents were drawn up by the firm of Vacek & Freed, wherein changes to the trust were implemented without notice to Curtis. These alleged amendments disrupt the dispositive provisions of the irrevocable family trust and the irrevocable decedent's trust, which had been created from the family trust upon the death of Elmer Brunsting.

15. On October 23, 2010 Curtis received a number of trust documents in pdf format, attached to emails from Anita Brunsting. These had been requested by Plaintiff in anticipation of an upcoming conference call regarding changes to the trust.

16. On October 25, 2010 a teleconference was organized by Candace Kunz-Freed and Vacek & Freed employee, Summer Peoples[2]. The call was held behind Nelva's back and it became apparent that the intent was to have Nelva declared incompetent, rather than to discuss changes to the trust. Co-trustee Carl Brunsting, the personal representative of both Elmer and Nelva's estates, was also not present and is believed to have been intentionally excluded from that teleconference. The

[2] Plaintiff's Exhibit 6 with original Affidavit.

purported changes to the trust had already been made two months prior to the conference call.

17. In December of 2011, in response to demands for accounting, Curtis received certified mail copies of the alleged same trust documents as the pdf documents received on October 23, 2010, along with other previously undisclosed documents dated December 21, 2010.[3]

18. On February 27, 2012, Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress alleging that defendants, Anita and Amy, acting as trustees for their Parents' trust, failed to notice her of actions adversely affecting her beneficial interests, refused to provide copies of non-protected trust instruments and refused to account for trust assets, or to report on any other acts of administration.

19. On March 8, 2012 Curtis' complaint was dismissed under the probate exception to federal diversity jurisdiction and Curtis promptly filed notice of appeal.

20. On March 9, 2012 Curtis brother Carl Brunsting filed a petition for depositions before suit in the Harris County District Court, case #2012-14538.

---

[3] While this matter was pending appeal it was brought to Curtis' attention that signature pages for the alleged same copy of trust documents bear different signatures raising questions of authenticity.

21. On April 2, 2012 the Houston firm of Vacek and Freed filed the Will of Elmer Brunsting [#412248] and a purported Will for Nelva Brunsting [#412249] with the Harris County Probate Court.

22. On or about April 5, 2012 Plaintiff received a number of documents by email, addressed to herself, Carl's attorney Bobbie Bayless, and Carole Brunsting, from Defendants' counsel Bernard Mathews, in response to the state court filing by Carl Brunsting.

23. These documents were allegedly offered to satisfy accounting requirements under the Texas Property Code and included spreadsheet like pages labeled as Schedules A through J. These flat spreadsheet looking documents show an enormous number of asset transfers and include evidence of self-dealing and comingling of trust assets.

24. On August 15, 2012 Carl Brunsting filed an application to probate wills and issue letters testamentary into the Harris County Probate Court [#412248 & #412249] and on August 28, 2012 the Harris County Probate Court issued letters testamentary naming Carl Henry Brunsting independent executor.

25. On December 26, 2012 Maureen McCutcheon of Mills Shirley filed an appearance in the Probate court on behalf of Defendants Amy and Anita as trustees, but did not identify any particular trust.

26. On January 9, 2013 the Fifth Circuit Court of Appeals published their opinion Reversing and Remanding for further proceedings.

27. On January 29, 2013 Bobbie Bayless of the Houston based law firm of Bayless and Stokes filed a civil suit against Candace Kunz-Freed and the law firm of Vacek & Freed on behalf of Carl Brunsting as executor of the Brunsting Estate, alleging violations of the DTPA, Violations of the Texas Penal Code and other civil claims.

28. This matter was returned from the Fifth Circuit on January 30, 2013 for further proceedings. Plaintiff Curtis then reapplied for an injunction and the court set the matter for hearing on April 9, 2013, wherein a hearing was held and injunctive relief ordered.

29. After the April 9 hearing in the federal District Court an action was filed in the Harris County Probate Court [#412249401] naming Amy, Anita and Carole Brunsting as defendants and seeking injunctive relief over the trust in the custody of this Court.

## DEFENDANTS

### DEFENDANTS ANITA, AMY, AND CAROLE BRUNSTING

30. It is unclear and will have to be more specifically ascertained as to when each individual defendant involved themselves in the conspiracy, or to what extent

they are liable or culpable, but there is evidence of each of their involvement to varying degrees despite every effort to obfuscate and conceal their conduct.

31. The three Defendants Brunsting entered together into a conspiracy with the Defendant Lawyer/Notary Candace Kunz-Freed to defraud Nelva Brunsting, the Brunsting estate and the Brunsting family of trusts, in order to loot the trusts for their own unjust self-enrichment.

32. Defendants did secretly and fraudulently displace Nelva Brunsting from her proper standing as Trustee of the family trusts and did transfer assets to the benefit of one or more defendants and to the detriment and injury of Plaintiff, Nelva Brunsting, the Brunsting estate and the Brunsting family of trusts.

33. Defendants acted maliciously, intentionally, and with reckless indifference to the rights of Plaintiff, Nelva Brunsting, the Brunsting estate and the Brunsting family of trusts.

34. Defendants are individually and severally liable to Plaintiff, to Carl Brunsting, the Brunsting estate and to the Brunsting family of trusts, for real damages to the trust(s) plus $1,000 per theft incident under the Texas Theft Liability Act at Title 6, Chapter 134 Civil Practice and Remedies Code. Further, Defendants are liable to Plaintiff for Exemplary Damages due to the malicious, indifferent and wholly uncivilized nature of their egregious acts.

**DEFENDANT CAROLE BRUNSTING**

35. Carole is alleged to have held a medical power of attorney for Nelva Brunsting and signature authority on an account labeled Carole/Mom which was apparently set up as a joint right of survivorship account. The account appears on the schedules released in April 2012 and may have been used to pay the personal obligations of Carole Brunsting.

36. The full extent of Carole's involvement is still under investigation but she is none-the-less named herein as a joint tortfeasor based upon evidence of her participation at various stages.

**DEFENDANT CANDACE KUNZ-FREED**

37. Defendant Candace Kunz-Freed is an attorney with the Vacek Law firm and a partner in Vacek & Freed PLLC. Defendant Candace Kunz-Freed is also a public official in that she is a Texas Notary Public.

38. Plaintiff is informed and believes Candace Kunz-Freed assisted Defendants Brunsting in rupturing the Brunsting family of trusts by creating documents improperly disrupting the dispositive provisions of Elmer and Nelva's estate plan.

39. Defendant Candace Kunz-Freed provided substantial assistance in such conspiracy resulting in the transfer of assets for the benefit of one or more Defendants to the injury of Plaintiff, and did do so knowingly, willfully and with

reckless indifference to the rights of Plaintiff and did receive compensation for her participation in said conspiracy.

40. Defendant Candace Kunz-Freed cultivated conflicting interests and when she did she left the law. When she left the law her public office and her license to practice law did not follow her. Candace Kunz-Freed did not simply assist the fraud, she enabled it, as without her involvement the injuries complained of would not have occurred.

**DEFENDANT ALBERT R. VACEK, JR**

41. Defendant Albert Vacek Jr. is an attorney with and the presumed owner of the Vacek Law firm, and a partner in Vacek & Freed PLLC.

42. Albert Vacek Jr., conducting business as Vacek & Freed PLLC and the Vacek Law Firm, advertises and sells estate planning products and services. Vacek warrants the merchantability of his products as protecting clients' assets from outsiders who might "want to take them"[4] and as protection for families and beneficiaries from predators "who want to take their inheritance away from them, to shield families and heirs from creditors, con artists, death and estate taxes, lawsuits, probate, divorce and other threats to maintaining and passing personal wealth.

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[4] http://www.vacek.com/files/3-21___3-23_embassy.pdf

43. Albert Vacek Jr. places a copyright notice on his trust instruments thereby claiming full rights and responsibilities in warranting his products' merchantability and fitness.

44. Albert Vacek Jr. actively markets his products and services through seminars. Elmer and Nelva Brunsting were consumers[5] and Albert Vacek Jr., Vacek & Freed PLLC, and the Vacek Law Firm are vendors of products and services.

45. Elmer and Nelva Brunsting, in reliance upon Vacek's seminar assurances, "spiced with interesting examples and anecdotes"[6], purchased the Vacek & Freed estate, asset, and beneficiary protecting products that included a family trust and other estate planning instruments.

**DEFENDANTS VACEK & FREED PLLC AND THE VACEK LAW FIRM**

46. Vacek & Freed, PLLC, the Vacek Law Firm, and Albert Vacek Jr. are liable under the doctrine of Respondeat Superior.

**DEFENDANT BERNARD LILSE MATHEWS III**

47. Defendant Bernard Lilse Mathews III provided substantial assistance in such conspiracy, by seeking to improperly influence the Court by misstating both law

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[5] As this term is defined by the applicable statutes and just plain common sense.
[6] Quote taken from Vacek Seminar advertisement on web site. Vacek.com

and fact, resulting in improper dismissal and nearly a full year delay, during which time additional injurious actions were taken by Defendants for their own unjust self-enrichment, to the harm of Plaintiff. It has come to Plaintiff's attention that Mr. Mathews is listed as a staff attorney on the Vacek & Freed letterhead and website, despite the fact that he enters this matter under the letterhead of Green and Mathews. Further, Mr. Mathews knew or should have known that he was substantially assisting the conspiracy involving Defendants Brunsting and the firm of Vacek & Freed PLLC, when he misstated the law after having filed an identical lawsuit on behalf of the plaintiff, in the Harris County District Court. The trust documents in both cases were drawn up by Vacek & Freed PLLC. Whether or not Mr. Mathews' conduct can be considered a predicate act will be determined through discovery or established at trial.

**ACTS OF AGENTS**

48. When it is alleged that defendants did any act, it is meant that defendants performed or participated in the act, or defendants' officers, agents or employees performed or participated in the act on behalf of, in concert with, and/or under the authority of, defendants.

49. Plaintiff is informed and believes Defendants are either liable as principals or did substantially assist fraud, fraudulent misrepresentation, misapplication of

fiduciary, breach of fiduciary, theft, conversion, extortion, falsification of legal documents (forgery), fraudulent concealment, undue influence, elder abuse, identity theft, tortious interference with beneficial interests, tortious interference with expectancy, tortious interference with fiduciary obligations, unjust self-enrichment, misfeasance of a public officer, malfeasance of a public officer, aiding and abetting the misfeasance and malfeasance of a public officer, wire, mail, and securities fraud with full scienter, and did conspire to accomplish such acts and/or did substantially aid the commission of such acts or are liable for such acts by the application of doctrines of Respondeat Superior, under the common law doctrines of Aiding and Abetting, and pursuant to state and federal statute including but not limited to: the Texas Deceptive Trade Practices Act (DTPA) and Title 15 U.S.C. §52 - Dissemination of false advertisements and 15 USC § 45 - Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce,[7]

## CAUSES OF ACTION AND CLAIMS

## CONSPIRACY AND FRAUD

Plaintiff is informed and believes:

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[7] Not presently alleged or plead herein, but potentially falling under Title 18 sections 1961-1968.

50. Defendants conspired to rupture the Irrevocable Brunsting Family Trust and in fact ruptured, looted, and despoiled that trust.

51. Defendants conspired to rupture the Irrevocable Elmer H. Brunsting Decedent's Trust and, in fact, did rupture, loot and despoil that trust.

52. Defendants conspired to rupture the revocable Nelva E. Brunsting Survivor's Trust and, in fact, did rupture, loot, and despoil that trust.

53. Defendants conspired to rupture the Brunsting Family of trusts for their own benefit and to the injury of Plaintiff and by such conspiracy did wrongfully effect the electronic transfer of assets, including cash, and securities traded under the laws of the United States, for their own use and benefit and to the injury of Plaintiff.

54. Defendants either participated directly as principals in the conspiracy or provided substantial assistance to such conspiracy, resulting in the transfer of assets for the benefit of one or more Defendants and to the injury of Plaintiff, and did so participate knowingly, willfully, maliciously and with reckless indifference to the rights of Plaintiff.

55. Plaintiff is informed and believes that Defendants, acting individually and in concert, conspired to wrongfully remove Nelva Brunsting from her lawful and proper position as sole trustee for the Brunsting Family of trusts and to insert Anita and Amy in her stead. In order to accomplish their scheme, documents were drawn

up by employees of Vacek & Freed PLLC that removed Nelva as trustee and disrupted the dispositive provisions of Elmer and Nelva Brunsting's estate plan. Neither Nelva Brunsting, nor successor co-trustees Carl or Candace, were noticed of the actions of Defendants.

56. Securities in the form of Exxon stocks were transferred out of the name of the Brunsting family trust, with Nelva Brunsting as trustee, into accounts held in the name of Anita Brunsting as trustee for the Decedent's and Survivor's trusts. Assets were then distributed amongst Amy, Anita, Carole, and Candace in uneven proportions, and there is no evidence of any distribution to brother Carl Brunsting. These asset transfers and distributions were not noticed to, and no detailed information regarding those acts was ever conveyed to Plaintiff.

57. Curtis' attempts to obtain information from Defendants Brunsting have been met with silence, and silence can only be equated with fraud where there is a duty to speak.

**CONSTRUCTIVE FRAUD AND FRAUDULENT CONCEALMENT**

58. Until April 9, 2013, with only the two exceptions noted in Plaintiff's renewed application for injunction, Defendants Brunsting have been absolutely silent in all matters regarding trust property and administration.

59. Defendants Anita and Amy are co-beneficiaries and also claim to be trustees, meaning they are conflicted, and they failed to notice co-beneficiary Curtis of actions allegedly changing her standing by removing her as successor co-trustee and appointing Defendants in her stead.

60. Defendants papers claim Curtis' beneficial and other interest in the Irrevocable Brunsting Family Living Trust, the Elmer H. Brunsting Irrevocable Decedent's Trust, and the Nelva E. Brunsting Survivor's Trust have been diminished, but failed to inform Curtis of those alleged changes prior to their implementation.

61. Plaintiff did not receive advance notice of alleged actions diminishing her beneficial interest or obligations as Defendants concealed those actions, and due to conflicts of interest have committed constructive fraud rendering those instruments void.

62. Plaintiff did not receive advance notice and did not grant approval for self-dealing asset transfers, as Defendants concealed those actions.

63. Defendants acted to diminish Plaintiff's rights without notice and concealed those actions from Curtis. The acts of constructive fraud benefited one or more Defendants to the injury of Plaintiff, and Defendants participated in the fraud knowingly, willfully, maliciously, and with reckless indifference to the rights of Plaintiff.

64. The Constructive Fraud Doctrine requires Defendants to show proof that Plaintiff received advance notice of those alleged actions. In the absence of notice Defendants are liable for constructive fraud and the vitiated instruments are void ab initio, and fall as a matter of right.

**ELDER ABUSE, UNDUE INFLUENCE, FALSE INSTRUMENTS**

Plaintiff is informed and believes:

65. Nelva Brunsting was diagnosed with cancer in October of 2009. She was in her eighth decade and thus of advanced age.

66. Defendants Amy, Anita, and Carole Brunsting are the issue of Elmer and Nelva Brunsting and, as such, owed the most basic of fiduciary duties to Elmer and Nelva Brunsting.

67. Defendants Brunsting exploited their confidential relationship with Nelva and her frail, weak and deteriorating physical condition, to exercise dominion and control over Nelva, her estate and the family trusts, improperly seizing control and secretly transferring assets to themselves.

68. By virtue of the confidential relationship and the Defendants' dominance over Nelva Brunsting, Defendants conspired with trust lawyer Candace Kunz-Freed to create documents which were not the intent or desire of Elmer or Nelva and were designed solely for the benefit of the Defendants.

69. These documents, in the form in which they were received, appear to contain digital images where there should be a copy of an actual signature, leading Plaintiff to question the authenticity and validity of certain critical documents affecting her interests.

70. When Nelva was informed of Defendants' acts she contacted Freed to correct the situation. Defendants subsequently made arrangements to have the competency of a very lucid Nelva Brunsting examined, but no declaration of incompetence was forthcoming from her doctors.

71. Defendants Brunsting used their falsified instruments to improperly seize control of the family trusts and to transfer assets to themselves. The bulk of the assets Defendants Brunsting improperly liquidated and/or transferred to themselves were securities traded under the laws of the United States, and the circumstances surrounding the mechanics of certain asset transfers makes Defendants' knowledge of the impropriety of their acts evident and, therefore, conclusive of scienter.

72. The bulk of the assets Defendants Brunsting improperly liquidated for their own benefit and/or transferred to themselves without Nelva's knowing consent, were securities traded under the laws of the United States. The transactions were mostly effected electronically.

**BREACH OF FIDUCIARY DUTY**

73. Plaintiff and Defendants Brunsting are siblings. Plaintiff was designated successor co-trustee with her brother Carl in the last valid amendment to the Family Trust, when both Elmer and Nelva Brunsting replaced Amy Brunsting with Candace Curtis in the list of successor trustees.

74. Defendants' true standing is in question, but Defendant Amy Brunsting filed a declaration into this Court claiming that she and her sister Anita are co-trustees for the Brunsting family of trusts.

75. Defendants Amy and Anita Brunsting have exercised the powers of trustees, whether de jure or de facto, and have assumed the obligations of trustees in addition to the fiduciary obligations of the sibling relationship.

76. Defendants Amy and Anita Brunsting owe fiduciary duties to Plaintiff under the law of the Trusts, whether trustees de jure or de facto.

77. Defendants Amy and Anita Brunsting owe fiduciary duties to Plaintiff under the common law as applicable to trusts in general, whether trustees de jure or de facto.

78. Defendants Amy and Anita Brunsting owe fiduciary duties to Plaintiff under the Texas property statutes, whether trustees de jure or de facto.

79. Defendants Amy and Anita Brunsting breached their fiduciary duties to Plaintiff and said breaches proximately caused injury to the Plaintiff and/or benefited one or more Defendants.

**Breach of Duties of Loyalty**

80. The obligations a trustee owes to a beneficiary are first defined by the trust instrument itself, second are the obligations prescribed by statute and third but not least are the obligations defined by the common law, as exemplified in treatise and case law decisions. Each act or omission resulting in a breach of fiduciary often violates more than one duty trustees owed to Plaintiff.

81. Every act or omission complained of herein violates a particularized duty owed to Plaintiff and is also a breach of the duty of loyalty, the duty of good faith and fair play, and the duty to avoid conflicts of interest, in addition to the specific acts complained of herein.

**Breach of Duty to Inform and to Notice**

82. See Constructive Fraud and Fraudulent Concealment – paragraphs 58-64.

**Breach of Duty to Account**

83. Defendants failed to account biannually as required by the trust.

84. Defendants failed to account after a written request, as required by statute, and failed to account annually, as required by statute.

85. Defendants failed to provide a full, true, complete and accurate accounting as required by the terms of the trust and the common law, and failed to meet the minimum requirements as defined by statute.

**Breach of Duty to Keep and Maintain Accurate Books and Records**

86. Defendants failed to establish, keep or maintain accurate books and records as required by the trust, common law and statute, and thus cannot account easily, if at all.

**Breach of Duty of Impartiality**

87. Defendants self-dealt and comingled assets to the exclusion of other beneficiaries without notice and consent.

**Breach of Duty to Administer the Trust in the Best Interest of Beneficiaries**

88. There is no evidence that Defendants considered the wellbeing or needs of the Plaintiff in any way whatsoever and substantial evidence that Defendants Brunsting placed their own personal interests above those of Nelva Brunsting.

**AIDING AND ABETTING BREACH OF FIDUCIARY**

Plaintiff is informed and believes:

89. Defendant Candace Kunz-Freed substantially assisted Defendants Brunsting in facilitating the improper seizure of control over the family trusts and the improper transfer of assets to Defendants.

90. Defendant Candace Kunz-Freed knowingly participated with Defendants in breaching fiduciary duties and the misapplication of fiduciary, and is thus liable as a principal, for substantially aiding and abetting the improper acts.

91. Without the substantial assistance of Candace Kunz-Freed, the damages complained of herein would not have been suffered.

**TORTIOUS INTERFERENCE WITH FIDUCIARY OBLIGATIONS**

92. Carl Brunsting fell ill from encephalitis and Curtis lives in California. Defendants used that opportunity to improperly seize control of Nelva Brunsting, The Brunsting Estate and the Brunsting family of trusts.

93. Defendants used falsified instruments to imposter themselves as trustees and to improperly seize control of Nelva Brunsting, the Brunsting Estate and the Brunsting family of trusts, thus tortiously interfering with Plaintiff Curtis' fiduciary obligations as a named successor co-trustee for the Brunsting family of trusts.

**10(b) 10(b)-5.3 SECURITIES EXCHANGE ACT OF 1934**

94. Defendants conspired to create deceptive instruments and those instruments were used to improperly effect the transfer of publicly traded securities in

contravention of the securities laws of the United States. Plaintiff suffered loss by these acts and is thus entitled to recovery under the implied causes of action pursuant to 10(b) and 10(b)-5 of the Securities Exchange Act of 1934 (15 USC 78(j) and the right of claims implied therefrom (17 C.F.R. § 240.10b-5).

95. Further, Anita Brunsting is believed to have made false statements of qualification and eligibility to engage in securities transactions, and that she knowingly forged and participated in the forgery of the signatures of others to improperly buy, sell and effect the transfer of publicly traded securities.

96. Anita Brunsting performed these acts with complete scienter.

**VIOLATION OF TEXAS PENAL CODE §32.45 (B) & (C)(7)**

**MISAPPLICATION OF FIDUCIARY IN EXCESS OF $200,000.00**

97. An offense under this section is not merely a civil tort but a felony in the second degree if the value of property is $100,000.00 or more but less than $200,000.00, and a felony in the first degree if the value of property is more than $200,000.00.

98. Defendants violated this Texas penal statute by misapplying fiduciary property to their own benefit when that property was owned by various trusts and was held for the benefit of Nelva Brunsting and her estate.

99. Plaintiff, as a named successor co-trustee and co-successor beneficiary, suffered damages proximately caused by Defendants' violation of these penal statutes while Defendants profited from these acts and are thus liable to Plaintiff for a variety of damages including but not limited to the Texas Theft Liability Act.

**UNJUST SELF ENRICHMENT, TORTIOUS INTERFERENCE WITH BENEFICIAL INTERESTS, TORTIOUS INTERFERENCE WITH EXPECTANCY**

100. Defendants unjustly enriched themselves ultimately injuring Plaintiff's expected enjoyment of beneficial interests. Defendants acted intentionally, maliciously and for their own benefit without regard for the rights of Plaintiff or the fiduciary obligations they volunteered to owe Plaintiff.

**TORTIOUS INTERFERENCE WITH FIDUCIARY OBLIGATIONS**

101. Defendants Brunsting entered into a conspiracy with Candace Freed to improperly seize control of the Brunsting family of trusts and in pursuit thereof did falsify instruments claiming to appoint themselves as trustees and did thereby seize control of the family of trusts, tortiously interfering with Plaintiff's fiduciary obligations as a de jure successor trustee. Defendants all had conflicts of interest and chose to serve themselves to the exclusion of those for whom they owed fiduciary obligations and such conduct is the proximate cause of Plaintiff's injuries both directly and indirectly.

**TRESPASS DE BONIS, REPLEVIN AND TROVER**

102. Amy and Anita entered into a conspiracy with Candace Freed to falsify documents and did use those documents to trespass upon the office of trustee thereby exercising wrongful control over assets belonging to Nelva Brunsting and the Brunsting family of trusts and did self-deal and also comingle trust assets with their own so as to be in some instances inseparable.

103. Defendants Brunsting's trespasses were the proximate cause of the injuries complained of and the burden is upon Defendants to separate comingled trust property from their own, as Plaintiff is entitled to recovery and repatriation of all comingled assets with awards of damages. Plaintiff is entitled to recovery under all three theories of trespasses above stated and also under the theory of conversion.

**CONVERSION**

104. Defendants by way of conversion have retained money and personal property of Nelva Brunsting, the Brunsting Estate and the Brunsting Family of Trusts and have exercised dominion and control over such property as their own to the exclusion of the rightful owners.

105. On numerous occasions Defendants converted to Defendants' personal use property owned by the Brunsting family of trusts including the Family trust, the

Elmer H. Brunsting Irrevocable Decedent's Trust, the Nelva E. Brunsting Survivor's Trust.

106. The property consists of real estate, cash, and various stocks, including Exxon and Chevron, and other securities traded through Edward Jones.

107. The property is worth in excess of $300,000.00 Therefore, the Plaintiff demands judgment against the Defendants for repayment of actual value, plus estimated lost income, plus interest, plus costs, plus $1,000.00 per incident under the Texas Theft Liability Act.

108. Plaintiff is informed and believes Carole Brunsting engaged and participated in various acts of conversion and was involved in the conspiracy.

**DECEPTIVE CLAIMS AND FALSE ADVERTISEMENTS,**

109. Albert Vacek Jr., Candace L. Kunz-Freed, Vacek & Freed, PLLC, and The Vacek Law Firm are liable to Plaintiff under the Texas Deceptive Trade Practices Act and Title 15 U.S.C. §52 - Dissemination of false advertisements and 15 USC § 45 - Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.

110. Albert Vacek Jr., the Vacek Law Firm and Vacek & Freed, PLLC (Vacek), has placed a copyright on the form and content of the trust instruments sold to Elmer and Nelva. Vacek products are advertised as trust and estate management and asset protection vehicles. Through his web site and through seminars Vacek

tells prospective clients of the advantages of purchasing the firms products and services.

111. Vacek sells "peace of mind" with a myriad of assurances. The firm sold "peace of mind" to Elmer and Nelva Brunsting while actively cultivating conflicting associations and undertaking activities in direct conflict of interest with the fiduciary obligations owed and assurances of merchantability made to Elmer and Nelva Brunsting.

112. Vacek advertises its products and services as estate planning instruments and managerial services, facilitating avoidance of litigation, avoidance of excess taxes and the legitimate avoidance of the costs and delay associated with probate proceedings. As can be seen in the Harris County Probate Court, various Harris County District Court actions, in Candace Curtis' federal suit, and as exemplified by the very structure and form of the instruments themselves, it is clear that Vacek's design is either intentionally flawed and intended to foster and assure trust and estate looting and litigation, or so carelessly and negligently designed as to guarantee it.

113. Candace Kunz-Freed actively participated with Amy and Anita Brunsting in falsifying documents improperly removing control of the Brunsting trusts from Nelva Brunsting, the true and rightful trustee, and facilitating the improper transfer

of control away from Nelva Brunsting and facilitating the transfer of assets to imposter trustees Amy and Anita Brunsting, and others.

114. Elmer and Nelva Brunsting were consumers and Vacek & Freed were manufacturers, retailers and vendors under the above state and federal statutes and under the Uniform Commercial Code. The five Brunsting heirs were amongst the class of intended beneficiaries of the Vacek & Freed estate planning products as stated therein and, passing their wealth and legacy was the secondary purpose for which the Vacek products were purchased by Elmer and Nelva Brunsting.

## REQUEST FOR RELIEF

**WHEREFORE**, Plaintiff prays for judgment and relief as follows:

115. Plaintiff demands a show of proof and seeks an order from this honorable Court directing Defendants, individually and severally, to produce and certify before this Court the alleged original documents signed by Nelva Brunsting on August 25, 2010 and December 21, 2010 along with the other original trust documents in the proposed order attached.

116. Plaintiff prays the Court grant declaratory and injunctive relief as appropriate.

117. Plaintiff prays the Court award compensatory damages in favor of Plaintiff against Defendant(s) for the actual damages sustained as a result of the wrongful

conduct alleged, in an amount to be determined, as established through discovery or at trial, together with interest thereon, from each Defendant for each offense found, and

118. Plaintiff prays for an amount in total damages for all claims and all theories of recovery including multiples from Defendants in an aggregate amount greater than $5,000,000.00 (Five Million Dollars), or such damages as are fair and reasonable, against each Defendant in personam and against each Defendant in proportion to his or her adjudged measure of the liability as determined by this Court, or by jury as the case may be.

119. Plaintiff prays this Court award legal fees and costs to Plaintiff.

Plaintiff prays for such other and further relief as the Court may deem equitable and proper.

**DECLATORY JUDGEMENT**

120. Plaintiff herein alleges that that she is informed and believes sufficient evidentiary basis exists for questioning the validity of trust amending instruments created after the death of Elmer Brunsting April 1, 2009. Plaintiff herein joins in and approves the request of Probate Court appointed Executor Carl Brunsting in his Probate Court Petition seeking declaratory relief from Defendants Brunsting.

**CONSTRUCTIVE TRUST**

121. Plaintiff herein joins the request of Carl Brunsting in his Probate Court Petition in seeking the imposition of a constructive trust over the assets to which Plaintiff 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 other 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.

**DISGORGEMENT OF FEES**

122. Plaintiff requests that all compensation paid to the alleged trustees be disgorged and that triple the attorney's fees paid by the trust to Vacek & Freed PLLC be disgorged and returned to the trusts because of the reduced value of the services provided.

***COMPENSATORY AND OTHER DAMAGES***

123. Defendants in this case have fraudulently concealed their activities from Plaintiff and the damages are thus impossible to predict in advance of Defendants' full, true, and complete disclosure and accounting or, in the alternative, a detailed forensic investigation.



20-20566.677

124. Plaintiff is entitled to treble damages under the Texas Deceptive Trade Practices Act and is entitled to recovery of costs, and therefore prays for such damages as are fair and reasonable in light of all the facts as revealed through discovery or shown at trial.

**EXEMPLARY DAMAGES**

125. Plaintiff herein claims exemplary damages are justified by fraud, malice and/or gross negligence and prays for an award of such damages as are fair and reasonable[8].

**PUNITIVE DAMAGES**

126. Plaintiff cannot ascertain the damages thus concealed and therefore prays for such damages as are fair and reasonable in regards to all remedies.

127. Plaintiff prays for fees and costs in addition to all claims for damages. Plaintiff's attached Addendum to Affidavit is hereby incorporated herein as if fully restated.

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[8] TEXAS CIVIL PRACTICE AND REMEDIES CODE § 41.003

April 29, 2013

Respectfully submitted,

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net



20-20566.679

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

MAY - 1 2013

David J. Bradley, Clerk of Court

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| v | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | § | |

**APPLICATION FOR JOINDER OF PARTIES AND ACTIONS**
**DEMAND FOR SHOW OF PROOF OF STANDING**

## PARTIES

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California.

2. Defendant Anita Brunsting resides in the county of Victoria. Defendant Amy Brunsting resides in the county of Comal. Parties to be joined either reside or conduct business in the county of Harris.

## NATURE OF ACTION

3. This action was brought as a diversity action alleging breach of fiduciary duty, extrinsic and constructive fraud, and intentional infliction of emotional distress, against Defendants who claim to be trustees of the family trusts. The action now appears to include violations of state and federal criminal statutes that consist of the improper transfer of securities traded under the securities laws of the United States.

## JURISDICTION

4. This matter was originally brought in equity, as breach of fiduciary and related equitable claims, and included a common law tort claim under diversity jurisdiction pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2).

5. Plaintiff is now informed and believes this Court has federal question jurisdiction over the subject matter of this equity action pursuant to 28 U.S.C. §§1331 and 1367 and 27 of the Exchange Act[1] (15 U.S.C. §78aa), and that this Court has exclusive jurisdiction over these claims, as there now appears to be cause for claims arising under Section 10(b) of the Exchange Act of 1934 (15 U.S.C. §§78j(b)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5), and the right of claims implied therefrom, as hereinafter more fully appears.

6. In connection with the newly discovered acts and omissions alleged in this Application for Joinder, Plaintiff is informed and believes Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the internet, the mails, interstate telephone communications, and the facilities of the national securities markets to improperly transfer securities traded under the laws of the United States.

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[1] Securities Exchange Act of 1934, 15 U.S.C. §§78a-78kk (1982)

**VENUE**

7. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. §1391(b) and (c). Substantial acts in furtherance of the alleged fraud and/or its effects have occurred within this District.

8. The acts complained of involve alleged administration of the family trust(s) established by Elmer and Nelva Brunsting of Houston, Texas. The United States District Court for the Southern District of Texas Houston Division is, therefore, a proper venue under 28 USC §1391(a)(1).

**HISTORY OF THE CASE - OVERLAPPING STATE ACTIONS**

9. This action involves a dispute over changes made to a family trust and damages resulting therefrom.

10. On February 27, 2012, Plaintiff Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas, seeking an accounting and alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress in that Defendants, her siblings Anita and Amy Brunsting, acting as trustees for their parents' trust, failed to notice her of actions adversely affecting her beneficial interests, refused to provide copies of non-protected trust instruments, refused to account for trust assets or to report any other activities related to the family trusts. The case was dismissed March 8, 2012 and Curtis filed an appeal.

11. On January 9, 2013 the Fifth Circuit Court of Appeals published their opinion Reversing and Remanding to this Court for further proceedings.

12. On January 29, 2013 Bobbie Bayless, of the Houston based law firm of Bayless and Stokes, filed a civil suit in the Harris County District Court #2012-05455, against Candace Kunz-Freed and the law firm of Vacek & Freed, on behalf of Carl Brunsting as executor of the Brunsting Estate alleging violations of the DTPA, Violations of the Texas Penal Code, and other civil claims.

13. This matter was returned from the Fifth Circuit on January 30, 2013 for further proceedings. Plaintiff Curtis then reapplied for an injunction and the court set the matter for hearing on April 9, 2013, wherein a hearing was held and injunctive relief ordered.

14. After the hearing in the federal District Court an action was filed in the Harris County Probate Court #412249 naming Amy, Anita and Carole Brunsting as defendants and seeking injunctive relief over the trust in the custody of this Court.

## PENDENT JURISDICTION

15. The Supreme Court shaped the contours of the modern pendent jurisdiction doctrine in United Mine Workers v. Gibbs[2]. The Court held that when a federal court has subject matter jurisdiction over a substantial federal claim, it has the

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[2] United Mine Workers v. Gibbs 383 U.S. 715 (1966). The Court expanded the "unnecessarily grudging" approach to pendent jurisdiction set forth in Hurn v. Oursler, 289 U.S. 238 (1933).383 U.S. at 725. In Hurn, the Court held that a federal court had power to hear the entire case only when federal and state claims were "in support of a single cause of action." 289 U.S. at 246.

discretionary power to adjudicate state law claims arising out of "a common nucleus of operative facts".[3] This federal court thus has jurisdiction over the subject matter of the state court proceedings, as this federal claim and the state law claims derive from the same operative set of facts.

**EXCLUSIVE FEDERAL JURISDICTION**

16. Courts have long assumed the existence of exclusive federal jurisdiction over private actions implied from section 10(b) of the Securities Exchange Act of 1934[4]and rule 10(b)-5.3

> 1. Section 10(b) [15 U.S.C. §78j(b)] provides:
>
> It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange-
>
> (b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.15 U.S.C. §78j(b)(1982) [hereinafter 10(b)].
>
> 2. Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78kk (1982) [hereinafter 1934 Act].
>
> 3. Rule l0b-5, promulgated by the Securities and Exchange Commission ("SEC") in 1942, provides: It shall be unlawful for any

---

[3] 383 U.S. at 725, 726.
[4] Securities Exchange Act of 1934, 15 U.S.C. §§78a-78kk (1982)

person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Whether a court has supplemental jurisdiction is determined by the following test: "'a federal court has jurisdiction over an entire action, including state-law claims, wherever the federal-law and state law claims in the case 'derive from a common nucleus of operative fact' and are 'such that [a plaintiff] would ordinarily be expected to try them all in one judicial proceeding.'" ***Once the court has determined supplemental jurisdiction is proper under subsection (a) or (b), subsection (c) provides the list of circumstances under which the court can decline to exercise such supplemental jurisdiction:

(c) The district court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction;

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

## SUPPLEMENTAL JURISDICTION

17. Section **27** as currently codified provides:

> The district courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created **by** this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created **by** this chapter or the rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291 and 1292 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts.

## DEMAND FOR SHOW OF PROOF OF STANDING

18. Plaintiff Curtis is informed and believes that Nelva Brunsting signed neither the documents dated August 25, 2010, nor the documents dated December 21, 2010.

19. The alleged copies of trust documents received from Defendant Anita Brunsting October 23, 2010, and some of the hard copies of the alleged same documents received on or about December of 2011, bear distinctly different

signatures[5]. Curtis is informed and believes that some pertinent documents have been digitally altered and that they are not photo copies of the original, wet signed documents, nor do they bear valid digital signature stamps.

20. Federal Rules of Evidence 1002 requires production of the original documents, and because of a genuine question as to the authenticity of the alleged copies, Rule 1003, providing for the admissibility of duplicates, does not apply.

21. If Defendants cannot produce valid documents actually signed by Nelva Brunsting, demonstrating they have standing before this equitable Court as de jure trustees, then it must be presumed that they are not.

22. Candace Kunz-Freed is believed to have drawn up documents dated August 25, 2010 and December 21, 2010, that Defendants are using to claim to be trustees, and Freed is also the notary public that verified the alleged signatures of Nelva Brunsting on those instruments.

## PRAYER FOR RELIEF

## JOINDER

23. FRCP Rule 19 requires the joinder of necessary parties and Rule 20 allows joinder of parties.

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[5] See attached page 37 from the Qualified Beneficiary Designation and page 14-6 from the 2005 Restatement.

WHEREFORE, Plaintiff prays this honorable Court take judicial notice of state court proceedings filed subsequent to this federal complaint, as explained herein, and exercise its Supplemental Jurisdiction[6] over the state court actions and remove those actions to this Court as (1) those actions are founded upon the same set of operative facts involving the same nucleus of persons (2) there is no concurrent state court jurisdiction over 10(b)-5 actions and, thus, this Court has exclusive jurisdiction over such claims and (3) without joinder separate courts issuing findings of facts and conclusions of law upon the same set of operative facts may produce contradictory and confusing results and (4) in consideration of res judicata, collateral estoppel, economy of the courts and uniformity of decision.

24. Plaintiff requests this Court order state court actions be joined before this Court, that state court plaintiff Carl Brunsting is joined in this Court as a co-plaintiff and that state court defendants be joined in this action as co-defendants for all claims, findings of facts and conclusions of law.

25. That the Securities Exchange Act violations alleged upon information and belief and the right of private claims implied therefrom be incorporated into the complaint before this Court.

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[6] 28 USC 1367, The language of 1367(a) gives court's jurisdiction over joinder of parties when joinder is not within 1332.

26. That Defendants be ordered to produce before this court the wet signed original documents dated August 25, 2010 and December 21, 2010 alleged to have been signed by Nelva Brunsting.

27. Plaintiff so moves this court.

Respectfully submitted, April 29, 2013

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED
MAY - 1 2013
David J. Bradley, Clerk of Court

| | | |
|---|---|---|
| Candace Louise Curtis | § | |
| Individually and as Co-Trustee | § | |
| Plaintiff, | § | |
| versus | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| Anita Kay Brunsting, et al. | § | |
| Defendants. | § | |

**PLAINTIFF'S VERIFIED AFFIDAVIT IN SUPPORT OF AMENDED COMPLAINT AND IN SUPPORT OF APPLICATION FOR JOINDER**

This is an Addendum to my initial Affidavit and is to be considered as a continuation and not a replacement.

In my original Affidavit and Complaint I stated that all of the information in this case was uniquely in the possession of the Defendants, who had assumed the office of co-trustees. I also stated that there was no legitimate reason why my sisters would refuse to answer, account or even speak about the family trusts, either before or after the death of our Mother on November 11, 2011. They repeatedly insisted that I not discuss the trust with our brother Carl, who I believe is a proper successor co-trustee based upon the last instrument actually signed by both of our Parents.

After my request for information I received no current meaningful information and was forced to file suit on February 27, 2012 in order to compel answer and accounting. There was nothing else I could do to protect my beneficial interests. The action was dismissed in March 2012 and in April 2012 I received the first shocking evidence of impropriety and the reasons for all of the secrecy

became dreadfully apparent. They were stealing the family inheritance while our Mother was weakening and dying of cancer.

The Brunsting family trust assets lost value of more than half a million dollars in the last 15 months of our Mother's life, not including the lost income and dividends, or the tax liabilities created.

Primary amongst all of the ridiculous excuses for the Brunsting Defendants' self-dealing, comingling, and outright theft, was "that was a gift" from Mother. Anita had the audacity to claim that over $40,000.00 in what appear to be her own personal credit card obligations, paid via electronic funds transfer directly from Mother's trust bank account, was justified by an imaginary compensation agreement she had with Mother for 2% of the value of the trust. The problems with that excuse are that none of them bothered to tell Carl or I before the fact, and because they are in a position of conflicting interests. Their failure to notice that they were accepting or taking anything unequally is the determining factor under which their conduct is judged.

In a March 2011 email from Anita[1] she says,

> *"I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her... I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl."*

[1] Plaintiff Exhibit 9 USCA5 p51

If Mother was no longer trustee and no longer had access to the trust, how did she gift anything from the trust? If Mother had instructed Vacek & Freed to make changes to the trust, why would Anita have to explain the changes to her?

Amy, Anita and Carole each had a duty to notify the other beneficiaries before accepting any unusual benefits from the trust and trust law, like property law, makes this very simple. Whether or not Defendants Amy and Anita were ever de jure or de facto trustees makes no difference. Because of the conflict of interest, taking from the trust without notifying those equally stationed and equally entitled is stealing, and we need look no further than the question of consent. They never noticed me of their acts, and their self-dealing and co-mingling are all tainted by constructive fraud.

**Let's talk about the original trust documents. Where are they?** Amy and Anita's attorney filed his objection to discovery with his exhibits electronically, just prior to the hearing on my application for injunction on April 9, 2013. I was provided with a copy of Mr. Vie's exhibits at the hearing and did not have an opportunity to review the exhibits then, nor the pleadings he had filed electronically just before the hearing, nor any of the 4,922 pages of "voluntary disclosure" contained on a CD Mr. Vie also gave me at the same time. Mr. Vie filed his objection to disclosure the morning of the injunction hearing and handed me the CD acknowledging the fact that even under discovery it was the last day for compliance.

Exhibit 1 contained major portions of the Irrevocable Life Insurance Trust, for which Anita was the sole trustee[2]. My original Affidavit addresses Anita's incompetence and infidelity regarding that trust. However, that trust is no longer in existence and is not part of this litigation.

[2] Plaintiff's original exhibit 24 (USCA5 Pages 90-156)

That exhibited document, the Irrevocable Life Insurance Trust, does not contain the signature page for the Irrevocable Life Insurance Trust at Article XI page 11-4, but it does contain portions from the 2005 Restatement of the Brunsting Family Living Trust beginning with Article XII and ending with the signature page, page 14-6, from the 2005 restatement[3].

This alleged signature page is distinctly different from signature page 14-6 on the 2005 restatement[4] that I received as an email attachment from Anita on October 23, 2010. Plaintiff Exhibit 24 was received by US mail more than 12 months after Exhibit 29 was received as an email attachment. The obvious question here is why is there more than one alleged original signature page for the 2005 Restatement?

There are numerous other signature page anomalies that have to be addressed here. While this action was pending appeal it was brought to my attention that some of the 12 documents received from Anita Brunsting[5] via email[6] as pdf attachments, on October 23, 2010, contained different signatures from the signature pages on the hard copies of the alleged same documents received from Anita Brunsting by certified mail sometime around December of 2011.

Page 14-6 was the second anomaly discovered. The first anomaly brought to my attention was signature page 37 of the Qualified Beneficiary Designation[7] dated August 25, 2010. The copy I filed with the court was the one received October 23, 2010 via email, as a digital pdf, and the one received as a hard copy more than one year later was printed double sided, as mentioned in my original

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[3] Plaintiff original Exhibit 24 Located at page 155 of the Record on Appeal in USCA5 12-20164
[4] Plaintiff Exhibit 29 Located at page 276 of the Record on Appeal in USCA5 12-20164
[5] Affidavit list of documents received USCA5 p.27, also emails @ Plaintiff exhibit 7 ROA-USCA5 p.42-47.
[6] The digital copies were received October 23, 2010 from akbrunsting@suddenlink.net and were emailed to occurtis@sbcglobal.net.
[7] Plaintiff Exhibit P-40 ROA USCA5 pgs. 363-399

Affidavit, when it was mistaken for a duplicate of Plaintiff Exhibit 40[8]. It is not a duplicate because the signature pages are different[9].

My assistant Rik Munson is a retired senior network engineer, certified by both Novell (CNE/CNA) and Microsoft (MCSE). He conducted an analysis of the digital documents received October 23, 2010 and discovered what appeared to be digital signature stamps on nearly every signature page, indicating that these were not photo copies (or scanned copies) of original wet signed documents.

Based upon these anomalies thought to signify forgery and fraud, on November 26, 2012, in compliance with Title 18 §4, Munson filed complaint TCR1353937817850 with the Securities and Exchange Commission (SEC) alleging possible improper transfer of securities. This complaint was updated in January 2013 with TCR1360513046085 alleging forgery of documents used by Anita Brunsting to transfer various securities to accounts in her name and into the names of others.

In the midst of these two SEC complaints, Munson opened an online support ticket with Adobe Systems Incorporated[10], the owner of the patent on the portable document format (pdf), and uploaded selected digital documents from the October 23, 2010 pdf attachments for further analysis.

Adobe Systems technical support confirmed Munson's belief that the signatures on the examined documents were scanned to pdf, stamped with a digital image of a signature, printed and then rescanned to digital pdf files.

After updating his TCR with the SEC, Munson called the corporate offices for Adobe Systems Incorporated in San Jose California, specifically requesting a top level information systems technical analysis of the digital documents for

[8] Plaintiff Exhibit 48
[9] Plaintiff Exhibit 47
[10] Plaintiff Exhibit 58

litigation purposes in this federal court suit. After receiving a call back from an Adobe engineer and following instructions to upload one of the suspicious files, Munson received a call back from the same engineer a couple days later. After an extended discussion it was determined that Munson's initial observation was most likely correct and that an examination of the original documents would be needed to verify their authenticity.

I then instructed Munson to obtain copies of the notary logs from Candace Kunz-Freed for August 25, 2010 and for December 21, 2010, which are public record. Upon request[11], Freed's initial response was an indication of obfuscation[12] and we were forced to send a second request[13]. The log pages we received[14] raise a number of additional questions of document authenticity.

Since our brother Carl became ill in July 2010, my sisters have used various tactics to distract from their activities and to break down my relationships and communications, first with Carl and his family, and then with Mother[15].

Consequently I did not receive any of the information obtained by Carl's attorney Bobbie Bayless eight or 9 months ago, until my assistant took it upon himself to contact her directly. On March 28, 2013, just twelve days before the injunction hearing, Carl's attorney was very gracious in sharing information.

Amongst the documents I was seeing for the first time was a forgery of my very own signature, two times, on an Exxon stock transfer form dated June 8, 2011[16]. The only way I know about this document now is because Bobbie Bayless obtained it from Computershare in Carl's petition for deposition before suit.

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[11] Plaintiff Exhibit 61
[12] Plaintiff Exhibit 62
[13] Plaintiff Exhibit 63
[14] Plaintiff Exhibits 64 and 65
[15] Plaintiff Exhibit 67
[16] Plaintiff Exhibit 59

At the injunction hearing on April 9, 2013, the deadline for compliance with discovery, George Vie handed me a CD containing 4,922 Bates stamped documents. This is the same day he filed an objection to "Discovery" saying it was not due. Mr. Vie is apparently unaware that I am entitled to the same information as every other beneficiary, before any question of compelling disclosure by litigation enters into the equation. I am still trying to get some specific information.

Upon review of the CD, it is now crystal clear that Anita was an original successor trustee[17] and that she was removed by our Parents and replaced with Carl and Amy as successor co-trustees in the 2005 restatement[18]. It is also clear that Amy was removed by our Parents and replaced with Carl and me in the 2007 amendment[19]. What also seems apparent is that the only information we have validating Amy and Anita's claim to have been returned to the office of successor co-trustee are documents of questionable authenticity.

Exhibit 51, received from Defendants, shows an account titled NELVA E BRUNSTING SURVIVORS TRUST AMY RUTH BRUNSTING TRTEE ANITA K BRUNSTING TRTEE U/A 11/22/2011. Mother died 11/11/11. Why was a new survivor's trust created eleven days after the demise of the surviving grantor?

Exhibits 55-57 contain an article and advertisements from the Vacek.com website promising everything he did not deliver in this case.

Exhibit 60 shows Anita verifying her net worth excluding her primary residence at 1.7 Million Dollars, and her occupation as a homemaker, for purposes of trading in Edward Jones securities.

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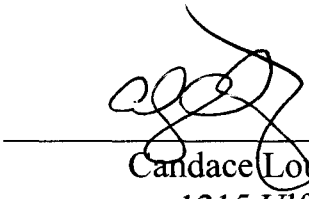
[17] Plaintiff Exhibit 66
[18] Plaintiff Exhibit 29 USCA5 p178-279
[19] Plaintiff Exhibit 35 USCA5 321-322

Respectfully submitted,



Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

I, the undersigned affiant Candace Louise Curtis, declare and state under penalty of perjury that the statements made herein and those made in my amended complaint are true, correct and based upon personal knowledge except for those things alleged upon information and belief and as to those things, I believe they are true as well.

Candace Louise Curtis

I, the undersigned affiant Rik Munson, declare and state under penalty of perjury that the statements made by Mrs. Curtis herein regarding the matters stated are true and correct as they relate to my activities.

Rik Munson

JYOTI NISCHAL
Commission # 1949967
Notary Public - California
Napa County
My Comm. Expires Aug 29, 2015

State of California County of NAPA
Subscribed and sworn to (or affirmed) before me on this 29 day of APRIL, 2013, by RIK MUNSON
proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.
Signature Jyoti Nischal
(Seal)

# CALIFORNIA JURAT

**STATE OF: CALIFORNIA**
**COUNTY OF:** Contra Costa

**SUBSCRIBED AND SWORN TO (OR AFFIRMED) BEFORE ME ON THIS** 29th **DAY OF** April, **2013 BY** Candace Louise Curtis, **PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE TO BE THE PERSON(S) WHO APPEARED BEFORE ME.**

JEANNINE M. BIRGE
COMM. #1998475
NOTARY PUBLIC • CALIFORNIA
ALAMEDA COUNTY
Commission Expires NOV 17, 2016

SIGNATURE: JEANNINE M. BIRGE, NOTARY PUBLIC

SEAL

TITLE OF DOCUMENT: Plaintiff's Verified Affidavit in Support of Amended Complaint and in Support of Application for Toddler

TOTAL NUMBER OF PAGES INCLUDING ATTACHMENT: TEN

NOTARY COMMISSION EXPIRATION DATE: NOVEMBER 17, 2016

NOTARY COMMISSION NUMBER: 1998475

# UNITED STATES DISTRICT COURT

Southern DISTRICT OF Texas

Candace Curtis

V.

Anita Brunsting et al,

## EXHIBIT AND WITNESS LIST

Case Number: 2012-00592

| PRESIDING JUDGE | PLAINTIFF'S ATTORNEY | DEFENDANT'S ATTORNEY |
|---|---|---|
| Kenneth Hoyt | Pro se | George Vie III |
| TRIAL DATE (S) | COURT REPORTER | COURTROOM DEPUTY |
| March 3, 2014 | | |

| PLF. NO. | DEF. NO. | DATE OFFERED | MARKED | ADMITTED | DESCRIPTION OF EXHIBITS* AND WITNESSES |
|---|---|---|---|---|---|
| 9 | | 2/27/2012 | | | email admissions of Anita withholding trust docs and explaining trust changes to Nelva |
| 24 | | 2/27/2012 | | | Signature page 14-6 of the 2005 restatement Located at page 155 of the Record on Appeal |
| 29 | | 2/27/2012 | | | Signature page 14-6 of the 2005 restatement Located at page 276 of the Record on Appeal |
| 40 | | 2/27/2012 | | | Signature Page 37 from QBD 8/25/2010 received Oct 23,2010 af email attached pdf |
| 47 | | 4/29/2013 | | | Signature Page 37 from QBD 8/25/2010 received US mail December 2011 double sided |
| 48 | | 2/27/2012 | | | Original affidavit in support of complaint Page 10 of 13 |
| 49 | | 4/29/2013 | | | Another digital image of an alleged Nelva signature |
| 50 | | 4/29/2013 | | | Signature page 11-4, Irrevocable life insurance trust |
| 51 | | 4/29/2013 | | | Brunsting000065, BofA_New survivors trust re; agreement 11/22/11 |
| 52 | | 4/29/2013 | | | Brunsting002439 Edward Jones Wired funds Withdrawal Notification |
| 53 | | 4/29/2013 | | | Brunsting000077, Online Banking Decedents trust |
| 54 | | 4/29/2013 | | | Brunsting000074, Survivors trust bank statement (established 11/22/11 |
| 55 | | 4/29/2013 | | | Vacek.com Advertisement |
| 56 | | 4/29/2013 | | | Vacek.com Advertisement |
| 57 | | 4/29/2013 | | | Vacek.com Article on using In Terrorem Clause to disinherit |
| 58 | | 4/29/2013 | | | Adobe Portal Support Incident printout Case 0184064797 & 0183862056 |
| 59 | | 4/29/2013 | | | Forgery of Plaintiff's signature |
| 60 | | 4/29/2013 | | | Edward Jones Statement to Verify information on account. Anita worth 1.7 Million |
| 61 | | 4/29/2013 | | | Notary Log Request letter to Freed |
| 62 | | 4/29/2013 | | | Freed reply to request |
| 63 | | 4/29/2013 | | | 2nd request for Freed Notary Log |
| 64 | | 4/29/2013 | | | Freed notary log request compliance letter |

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

AO 187A (Rev. 7/87)

# EXHIBIT AND WITNESS LIST – CONTINUATION

| Candace Curtis | vs. | Anita Brunsting et al, | CASE NO. 2012-00592 |
|---|---|---|---|

| PLF. NO. | DEF. NO. | DATE OFFERED | MARKED | ADMITTED | DESCRIPTION OF EXHIBITS AND WITNESSES |
|---|---|---|---|---|---|
| 65 | | 4/29/2013 | | | Freed Notary Log scanned to PDF |
| 66 | | 4/29/2013 | | | 1996 Certificate of trust filed Metlife. Anita was an original successor trustee removed in 2005 |
| 67 | | 4/29/2013 | | | Email 3 days bfore Nelva's death trying tom get information about where is Mom? |
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**From:** Candace Curtis (occurtis@sbcglobal.net)
**To:** occurtis@sbcglobal.net;
**Date:** Sat, February 18, 2012 11:29:12 AM
**Cc:**
**Subject:** Fw: New Development

----- Forwarded Message -----
**From:** Anita Brunsting <akbrunsting@suddenlink.net>
**To:** Candace Curtis <occurtis@sbcglobal.net>; Amy <at.home3@yahoo.com>; Carole Brunsting <cbrunsting@sbcglobal.net>
**Sent:** Tue, March 8, 2011 7:15:32 PM
**Subject:** RE: New Development

I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl $13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid $13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.

I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.

I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

**P-9**

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee



EXHIBIT
P-24_p55
USCA5 155

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee



EXHIBIT
P-29_p102
USCA5 276

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas



EXHIBIT
P-40_p37
USCA5 399

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011



EXHIBIT
P-47
20-20566.706

beneficiary and not from the trustees, who still refuse to fully answer, and the bulk of which were obtained from Anita in October 2010.

**Ordered by Document Date**

AKB denotes documents received via email from Anita on 10/23/10
CHB denotes documents received from Carl in January 2012
All other documents were received from Anita pursuant to my demand letters, and received on the date noted

AKB Quit Claim Deed, State of Iowa, signed by EHB and NEB 10/29/96 and recorded in Sioux County Iowa 11/18/96 (P-23, 7 pgs.), which contained 3 asset schedules, A, B, C, all blank

The Brunsting Family Irrevocable Trust dated February 12, 1997 (life insurance trust) received from Anita on or about 1/26/2011, Anita Kay Riley trustee. (P-24, 53 pgs.)

AKB Affidavit of Trust made 1/12/2005 (only first page) (P-25)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees. (P-26, 2 pgs.)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees UNSIGNED WITH AMY RUTH TSCHIRHART CROSSED OUT (P-27, 2 pgs.)

AKB Affidavit of Trust made 1/12/05, with selected provisions attached, Article IV Our Trustees, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-28, 32 pgs.)

AKB The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-29 102 pgs.)

The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed), received from Anita Kay Brunsting on or about 12/21/11 (duplication of P-29, printed front and back – copy omitted)

AKB Transfer To Grantor Trust Subject To Withdrawal Contribution Agreement, UNSIGNED, dated 01/12/05 (P-30, 2 pgs.)



EXHIBIT
P-48

AGREED AND UNDERSTOOD
3/11/11, 2011:

Nelva E. Brunsting

NELVA E. BRUNSTING, Grantor and Founder, under the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended

AGREED AND UNDERSTOOD
March 10, 2011:

Anita Brunsting

Anita Brunsting, Trustee, under the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended

EXHIBIT
P-49

BRUNSTING002349
20-20566.708

**Section M. Generation Skipping Transfers**

The Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this irrevocable trust agreement and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. We approve this irrevocable trust agreement in all particulars and request the Trustee to execute it. This instrument is to be effective upon the date recorded immediately below.

Dated: February 12, 1997

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ANITA KAY RILEY, Trustee



EXHIBIT
P-50
20-20566.709

H



NELVA E BRUNSTING SURVIVORS TRUST
AMY RUTH BRUNSTING TRTEE
ANITA K BRUNSTING TRTEE U/A 11/22/2011

Account Number: 5860 2756 3523

## Regular Checking Additions

| Deposits and Other Additions | Date Posted | Amount($) |
|---|---|---|
| Deposit | 01-11 | 6,215.87 |

**Total Deposits and Other Additions $6,215.87**

## Regular Checking Subtractions

| Check # | Posting Date | Amount($) | Check # | Posting Date | Amount($) |
|---|---|---|---|---|---|
| 111 | 01-25 | 425.94 | 113* | 01-23 | 740.77 |

**Total Checks Posted $1,166.71**

* Gap in sequential check numbers.

| Other Subtractions | Date Posted | Amount($) |
|---|---|---|
| Hc Prop Tax Des:hcpt1000 ID:b-0985600000031 Indn:Nelva Brunsting Surviv Co ID:40223600 Ppd | 01-19 | 1,285.05 |
| Stream Energy-TX Bill Payment | 01-20 | 59.96 |
| AT&T Bill (Sbc-AR,KS,MO,OK,TX) Bill Payment | 01-31 | 86.00 |
| Bank Of America Credit Card Bill Payment | 02-02 | 269.84 |

**Total Other Subtractions $1,700.85**

## Daily Balance Summary

| Date | Balance($) | Date | Balance($) | Date | Balance($) |
|---|---|---|---|---|---|
| Beginning | 18,740.79 | 01-20 | 23,611.65 | 01-31 | 22,358.94 |
| 01-11 | 24,956.66 | 01-23 | 22,870.88 | 02-02 | 22,089.10 |
| 01-19 | 23,671.61 | 01-25 | 22,444.94 | | |

EXHIBIT
P-51

BRUNSTING000065

12555 Manchester Road
St. Louis, MO 63131-3710
www.edwardjones.com

Edward Jones

November 22, 2011

ANITA KAY BRUNSTING TTEE
U/A DTD 10/10/1996
NELVA E BRUNSTING SURVIVORS TR
NELVA E BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904-3049

NC_W

Account: 653-13555-1-6

**WIRED FUNDS WITHDRAWAL NOTIFICATION**

In our ongoing efforts to achieve quality, accuracy and protect your assets, this letter is being provided to confirm activity that recently occurred in your account. If the following information is correct, no further action is necessary.

Wired funds were issued from your account.

| | |
|---|---|
| Date | November 21, 2011 |
| Bank Name | BANK OF AMERICA NT AND SA NEW |
| Bank Account Registration | ANITA KAY BRUNSTING TTEE |
| Amount | $25,112.57 |
| Fees | $25.00 |

This letter is intended to confirm the above specific activity and may not reflect all transactions for a given date. Please refer to your monthly statement for a complete transaction listing.

If this information is correct, no further action is necessary. If this information does not match your records, please direct inquiries to:

Client Relations Department
Phone Number: 1-800-803-3333
Monday - Friday 7 a.m. - 7 p.m. Central

Thank you for allowing Edward Jones to assist with your financial needs.

Sincerely,

Client Relations

EXHIBIT
P-52

BRUNSTING002439

Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118


Statement Period
11-22-11 through 12-12-11
B 07 0 A P PA 7 0138066
Number of checks enclosed: 0
Account Number: 5860 2756 3536

13099 001 SCM999 I 4 0

ELMER H BRUNSTING DECEDENTS TRUST
ANITA K BRUNSTING TRTEE
AMY RUTH BRUNSTING TRTEE U/A 10/10/1996
203 BLOOMINGDALE CIR
VICTORIA, TX 77904-3049

Our Online Banking service allows you to check balances, track account activity and more.
**With Online Banking you can also view up to 18 months of this statement online and even turn off delivery of your paper statement.**
Enroll at www.bankofamerica.com.

**Customer Service Information**
**www.bankofamerica.com**

For additional information or service, you may call:
1.800.432.1000 Customer Service
1.800.288.4408 TDD/TTY Users Only
1.800.688.6086 En Español

Or you may write to:
Bank of America, N.A.
P.O. Box 25118
Tampa, FL 33622-5118

## Deposit Accounts

### Regular Checking

ELMER H BRUNSTING DECEDENTS TRUST ANITA K BRUNSTING TRTEE
AMY RUTH BRUNSTING TRTEE U/A 10/10/1996

### Your Account at a Glance

| | | |
|---|---|---|
| Account Number | | 5860 2756 3536 |
| Beginning Balance on 11-22-11 | $ | 0.00 |
| Deposits and Other Additions | + | 381.32 |
| **Ending Balance on 12-12-11** | **$** | **381.32** |

### Regular Checking Additions

| Deposits and Other Additions | Date Posted | Amount($) |
|---|---|---|
| Deposit | 11-22 | 381.32 |

**Total Deposits and Other Additions $381.32**

EXHIBIT
P-53

H

NELVA E BRUNSTING SURVIVORS TRUST
AMY RUTH BRUNSTING TRTEE
ANITA K BRUNSTING TRTEE U/A 11/22/2011


Statement Period
03-10-12 through 04-09-12
B 05 E I E PI 5

Account Number: 5860 2756 3523

## Regular Checking Additions

| Deposits and Other Additions | Date Posted | Amount($) |
|---|---|---|
| Deposit | 03-12 | 100.00 |
| Online Banking transfer from Chk 3536 Confirmation# 4049713782 | 03-12 | 10,000.00 |
| Deposit | 03-13 | 10,040.00 |
| Deposit | 03-13 | 10,000.00 |
| Deposit | 03-13 | 237.16 |
| Deposit | 03-14 | 433,129.32 |
| Deposit | 03-23 | 162.73 |

**Total Deposits and Other Additions $463,669.21**

## Regular Checking Subtractions

| Check # | Posting Date | Amount($) | Check # | Posting Date | Amount($) |
|---|---|---|---|---|---|
| 116 | 03-19 | 2,175.00 | 118* | 03-21 | 14.80 |

**Total Checks Posted $2,189.80**

* Gap in sequential check numbers.

| Service Charges and Other Fees | Date Posted | Amount($) |
|---|---|---|
| Returned Item Chargeback Fee | 03-16 | 12.00 |

**Total Service Charges and Other Fees $12.00**

| Other Subtractions | Date Posted | Amount($) |
|---|---|---|
| Online Banking transfer to Chk 3536 Confirmation# 1875543361 | 03-14 | 20,000.00 |
| Cpenergy Entex Des:Cpe ACH Check #:0117 Indn:000003850291 Co ID:9413994001 Arc | 03-15 | 158.09 |
| Return Item Chargeback | 03-16 | 70.30 |
| Stream Energy-TX Bill Payment | 03-26 | 39.19 |

**Total Other Subtractions $20,267.58**

## Daily Balance Summary

| Date | Balance($) | Date | Balance($) | Date | Balance($) |
|---|---|---|---|---|---|
| Beginning | 5,035.86 | 03-15 | 448,384.25 | 03-23 | 446,274.88 |
| 03-12 | 15,135.86 | 03-16 | 448,301.95 | 03-26 | 446,235.69 |
| 03-13 | 35,413.02 | 03-19 | 446,126.95 | | |
| 03-14 | 448,542.34 | 03-21 | 446,112.15 | | |

**EXHIBIT**
**P-54**

BRUNSTING000074

# Are you CONCERNED about
# PROTECTING YOUR ESTATE and YOUR BENEFICIARIES?

**If your estate plan is out of date or based on a simple will (or no will at all), you should review and update it. But first, attend this free seminar, especially if you:**

- Have a **handicapped** or **disabled child** or other beneficiary
- Have a child who is **not a good money manager**
- Have a **successful child** who has a sizable net worth
- Have a child whose **marriage is rocky**
- Are in **poor health** and concerned about who will make decisions
- **Own real estate** in several counties or states
- Own **property in joint tenancy**
- Want to know how to **avoid guardianships**
- Have both **community and separate property issues**
- Have **children by a prior marriage**
- Are concerned about **in-laws and step-children**
- Have **large tax-deferred accounts** (IRA's, Annuities, etc.)
- Don't want **HIPAA to sabotage** your estate plan
- Want to **protect you <u>and</u> your assets and property** from outsiders who might want to take them away from you
- Want to **<u>minimize death taxes</u>** on taxable estates

## COMMENTS FROM PREVIOUS ATTENDEES ABOUT THE PRESENTATION

"Very excellent presentation-spiced with interesting examples and anecdotes", D.L.C, Houston, TX

"Well organized, informative, useful and practical seminar presented in an interesting and even entertaining manner!", L.A.H., Baytown, TX

"Very well done, interesting and educational – time passed by so fast - Great, Thanks!", J.K.M., Hempstead, TX

"This was incredibly enlightening. An excellent presentation, thank you for opening this to the public." A.P., Houston, TX

"Sure wish I'd had this seminar before I had my trust created. Excellent presentation and Q & A", J.B., Baytown, TX

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**EXHIBIT P-55**

**"...excellent presentation—spiced with interesting examples and anecdotes."** D.L.C., Houston, TX

# SAFEGUARD YOUR ESTATE!

## AVOID COMMON AND *COSTLY* MISTAKES MANY PEOPLE MAKE

Learn how a properly designed estate plan can protect from:

- Forcing your family through **court** if you are *disabled*
- Forcing your family through **court** if you *die*
- Falling prey to the uncertainty of the new "permanent" death tax law
- Failing to **protect your beneficiaries from predators** who want to take their inheritance away from them (divorce, lawsuits, creditors, etc.)
- Allowing **HIPAA to sabotage** your estate plan
- Failing to assure that your beneficiaries take advantage of the **maximum income tax "stretch out"** and protecting your loved ones from **losing your IRA** to divorce, lawsuits, creditors, etc.
- Failing to **protect you and your assets and property** from outsiders who might want to take them away from you
- Failing to **minimize death taxes** on taxable estates



Mr. Vacek is Board Certified as a specialist in Estate Planning and Probate Law by the Texas Board of Legal Specialization

Act Now! Space is Limited • Call 281-531-5800 To Reserve Your Seat

Attorney Albert E. Vacek, Jr. has practiced estate planning for over 41 years and has designed and prepared customized estate plans for over 9,000 people. *It's no coincidence that many families have turned to his law firm to set up their trust or upgrade their original trust when they wanted greater asset protection for their loved ones!*

**You'll definitely want to hear what he has to say - - and take action soon**

Thursday, March 21 at 7:00 pm or Saturday, March 23 at 10:00 am
**EMBASSY SUITES** (I-10 and Kirkwood)
11730 Katy Freeway
Houston, Texas 77079

Vacek & Freed, PLLC
Attorneys at Law
Phone: 281.531.5800 1.800-229-3002
11777 Katy Freeway, Suite 300 South, Houston, Texas 77079
www.vacek.com

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**EXHIBIT P-56**



20-20566.715

chron.com

# 'In terrorem' clause is one way to cut heir out of will

By ALBERT E. VACEK JR.
HOUSTON CHRONICLE

Nov. 6, 2009, 10:42PM

Curry Glassell, the daughter of oilman and arts benefactor Alfred Glassell, is disputing his last will in a high-profile Houston court battle that will have serious consequences for Houston's arts groups as well as for the Glassell family. One of the issues at stake is what is called an "in terrorem" clause in the will (also known as a forfeiture clause) that provides that anyone who contests the will is to lose whatever bequest has been granted to him or her — hence, the "terror" that will result if one does not follow the directives of the will. The will of the recently and tragically deceased John O'Quinn also contains a no contest clause.

Many people who are not specialists in estate planning law would tend to take such a clause at face value and believe that, if their lawyer includes such a clause in their will, their chosen heirs will be protected forever from the possibility of litigation challenging the will. Unfortunately, this is not the case.

An "in terrorem" clause sounds great and offers apparent reassurance to those who rely on a will, but it is no panacea. In fact, a new Texas law that went into effect on June 19, 2009, reduces the effectiveness of these clauses even further by clarifying that they do not apply if an attack on the will is made and maintained in good faith and on the basis that probable cause exists. On the other hand, an "in terrorem" clause may still apply if a lawsuit challenging a will is deemed to be just a frivolous nuisance suit designed to extort more money from the beneficiaries.

Unhappy heirs or potential heirs who decide to challenge a will often do so either on the basis that the testator was unduly influenced by a beneficiary, or that he or she was suffering from diminished capacity at the time the will was made and did not really know what he was doing — as in the recent New York case involving the estate of wealthy socialite and philanthropist Brooke Astor. In that case, the jury agreed with prosecutors that Brooke Astor's son took advantage of her reduced mental capacity to trick her into changing her will to his benefit.

There are other, better ways to protect a will from a challenge than just relying on an "in terrorem" clause. One method is to, in a sense, buy off a potential challenger by leaving him or her something of value so that he or she will be tempted to take the money rather than file a lawsuit and await the uncertain outcome of litigation.

Another tactic is for the testator (the person making the will) to be entirely frank with heirs and potential heirs while he or she is still alive, and let them know exactly what to expect, so there will be no nasty surprises or disappointment down the road. If a potential heir is to be disinherited or left very little in comparison to others, the will should state that fact plainly, so that a challenger cannot claim that the testator was not in his or her right mind and simply forgot about his oldest son or youngest grandchild. Such a clause might state that the testator had adequately provided for the heir during his lifetime, or that he is leaving the potential heir some small amount, or even that the potential heir is to receive nothing, in the words of the infamous Leona Helmsley will, "for reasons well known to them."

In every case, all the required formalities should be carefully observed, such as, for example, making sure the will is signed in the presence of impartial witnesses. It's also a good idea for any testator to design and execute a plan to provide for heirs well in advance of serious illness and death so there can be little question later that he or she didn't know what he was doing.

Testators should also consider a living trust as a

EXHIBIT
P-57

chron.com

valuable tool to minimize the possibility of a contest. Typically, living trusts are harder to contest than wills.

Few testators have $500 million to bequeath, as did Alfred Glassell, or the many millions probably involved in the John O'Quinn estate.

But whatever amount a testator may have to leave to loved ones, whether large or small, a proper will should include every possible protection to ensure that his or her wishes will be observed.

*Vacek is a board-certified estate planning and probate attorney who has been practicing in Houston for more than 38 years.*

EXHIBIT
P-57_2 of 2

- *More company info (www.adobe.com/aboutadobe/?promoid=JZPLK)*

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- *Adobe Marketing Cloud sales [opens in a new window]*

*Welcome, Rik Munson (www.adobe.com/account.html)*
*My cart (www.adobe.com/go/gnav_mycart_en_us)*
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*Sign in (www.adobe.com/cfusion/membership/index.cfm?loc=en_us&nl=1) Privacy (www.adobe.com/privacy.html) My Adobe (www.adobe.com/go/gnav_myadobe_en_us)*

# Customer Support Portal

## Rik Munson, 1600 Riviera driveWalnut Creek, Walnut Creek

## Recent activity

| Updated | |
|---|---|
| 2/22/13 | *Case #0184064797: general info (www.adobe.com/cfusion/support/index.cfm?event=casedetail&id=0184064797&loc=en_us)* **Withdrawn** |
| 12/5/12 | *Case #0183862056: Chat:issue with Digital Signing the PDF (www.adobe.com/cfusion/support/index.cfm?event=casedetail&id=0183862056&loc=en_us)* **Withdrawn** |

**Self-Help Resources**

*Adobe Flash Player support (www.adobe.comhttp://www.adobe.cor/support/flashplayer/)*

*Adobe Reader support (www.adobe.comhttp://www.adobe.cor/support/reader/)*

*Download and installation (www.adobe.comhttp://www.adobe.cor/support/download-install/index.html)*

*Activation and deactivation (www.adobe.comhttp://www.adobe.cor/activation/index.html)*

*Check the status of an order (www.adobe.comhttp://adobe.com/go/orderstatus)*

*Search the knowledgebase (www.adobe.comhttp://www.adobe.cor/go/gntray_supp_kb)*

EXHIBIT P-58



20-20966.718

**Computershare**

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

New Holder/Recipient Information

Account 1

| | | | | | |
|---|---|---|---|---|---|
| Account Type | Individual | Shares to Transfer | | | 160 |
| | Holder | SSN/EIN | 457-25-1860 | | |
| First Name | Anita | Middle Initial | | | |
| Last Name | Brunsting | | | | |
| Street Address | 203 Bloomingdale Circle | | | | |
| City | Victoria | State | TX | Zip | 77904 |

*Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

| Signature of Holder | Date (mm/dd/yyyy) |
|---|---|
| Anita Brunsting | 06/07/2011 |

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this form. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE: IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in DRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

| Signature of New Holder/Recipient | Date (mm/dd/yyyy) |
|---|---|
| Anita Brunsting | 06/07/2011 |

Account 2

| | | | | | |
|---|---|---|---|---|---|
| Account Type | Individual | Shares to Transfer | | | 160 |
| | Holder | SSN/EIN | 509-56-6240 | | |
| First Name | Candace | Middle Initial | | | |
| Last Name | Curtis | | | | |
| Street Address | 1215 Ulfinian Way | | | | |
| City | Martinez | State | CA | Zip | 94553 |

*Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

| Signature of Holder | Date (mm/dd/yyyy) |
|---|---|
| Candace Curtis | 06/08/2011 |

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this form. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE: IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in DRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

| Signature of New Holder/Recipient | Date (mm/dd/yyyy) |
|---|---|
| Candace Curtis | 06/08/2011 |

**EXHIBIT P-59**

1245 JJ Kelley Memorial Dr.
St. Louis, MO 63131-3600
(314) 515-6240
www.edwardjones.com

Edward Jones

072369 ECV001B4
ANITA KAY BRUNSTING TTEE
U/A DTD 10/10/1996
ELMER H BRUNSTING DECEDENTS TR
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904-3049

May 22, 2012

Thank you for continuing to let Edward Jones help you prepare for your financial future. In order to provide you with quality service, we are required to verify the information we have on file related to this account. This helps Edward Jones better assist you in making financial decisions.

We're contacting you because either your financial advisor recently updated your account information or it has been three years since we last verified your information.

Please review the enclosed pages, which list your account information. If the information is correct, you do not need to return this letter. However, if changes are needed, please print the new information on the attached pages and sign and return them in the postage-paid return envelope or fax to 877-888-0981 so that we can update our records. **Please do not enclose cash, checks or other securities with this letter.** Please note that any information you share with Edward Jones is confidential. For more information on our privacy policy, please visit www.edwardjones.com. We have also enclosed information titled "Account Safety" that provides helpful reminders for maintaining account records.

As the primary account holder, you will receive all correspondence. You may elect to access all your Edward Jones accounts, updated every day with the latest information, through Edward Jones Online Account Access. This free service, available at www.edwardjones.com, allows you to select electronic delivery for certain types of information, specifically statements, proxies, etc.

Again, thank you for your business and your confidence in Edward Jones. We look forward to serving your investment needs.

Sincerely,

Ronald L. Gorgen
Principal, Compliance Division

072369 ECV001B4 010773

EXHIBIT
P-60_1 of 4

BRUNSTING003982

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EXHIBIT
P-60_2 of 4



20-20566.721

1245 JJ Kelley Memorial Dr.
St. Louis, MO 63131-3600
(314) 515-6240
www.edwardjones.com

Edward Jones

Account Type: TRUST
Account Number: 653-13579
Branch Number: 06539

Date: May 22, 2012

**Enter current information for all persons listed on the account. Please sign and return in the postage-paid envelope or fax to 877-888-0981 only those pages requiring updates to the information you see printed. For your protection, do not enclose cash, checks, securities or other material.**

1. **Name and MAILING Address (first, middle, last):**
ANITA KAY BRUNSTING TTEE
U/A DTD 10/10/1996
ELMER H BRUNSTING DECEDENTS TR
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904-3049

2. **Account Objectives** (see definition of terms):
You have selected an Edward Jones Advisory Solutions - Fund Model account. Your account objectives were determined by information provided when you completed the Advisory Solutions Investment Objective Questionnaire and are contained on your Advisory Solutions Client Agreement. If you do not believe you have selected an Edward Jones Advisory Solutions - Fund Model account, or your objectives have changed, please make a note on this letter and return in the postage paid envelope.

3. **Net Worth** (must exclude value of primary residence):
$1,700,000

4. **Annual Income**:
$64,000

5. **Prior Investment Experience** (see definition of terms):
(4)Extensive Experience

*6. **Risk Profile** (see definition of terms):
(3)MODERATE

7. **Approximate dollar amount of assets held in the account expected to be withdrawn within three years:**
$0

*8. **Investment Time Horizon** (see definition of terms):
(C)6-10 Years

9. **Is any account holder:**
**a. an Edward Jones employee or related to an Edward Jones employee?** NO

**b. employed or related to someone employed by an NYSE (New York Stock Exchange) member financial institution?** NO

**c. employed or related to someone employed by an NASD (National Association of Security Dealers) member financial institution?** NO

Client's Signature:_____ Date:_____

EXHIBIT
P-60_3 of 4

BRUNSTING003984

20-20566.722

072389 ECV001B4 010774

US89

1245 JJ Kelley Memorial Dr.
St. Louis, MO 63131-3600
(314) 515-6240
www.edwardjones.com

Edward Jones

Account Type: TRUST
Account Number: 653-13579
Branch Number: 06539

Date: May 22, 2012

**Enter current information for all persons listed on the account. Please sign and return in the postage-paid envelope or fax to 877-888-0981 only those pages requiring updates to the information you see printed. For your protection, do not enclose cash, checks, securities or other material.**

1. **Legal Name & Home Address, no PO Box:**
(first, middle, last)

ANITA KAY BRUNSTING

203 BLOOMINGDALE CIRCLE

VICTORIA, TX 779043049

2. **Date of Birth:** 08/07/1963

3. **Home Telephone Number:** 361-550-7132

4. **Current Occupation:** HOMEMAKER

5. **Current Employer Name:** NA

Client's Signature:_____ Date: _____

EXHIBIT
P-60_4 of 4



20-20566.723

Rik Munson
218 Landana Street
American Canyon CA 94503

To
Candace Kunz-Freed
14800 St Marys Ln Ste 230
Houston, Tx 77099

Tuesday, December 11, 2012
Certified Mail #7012 2210 0000 1342 6586

Dear Ms. Kunz- Freed

I will need to see your notary log book entries for August 25, 2010 and for December 21, 2010.

According to the Secretary of State the maximum fee is fifty cents per page. I am enclosing a money order for $10.00 as a deposit for fees along with a self addressed return envelope with postage fully prepaid.

If the number of pages exceeds 20 please notify me that I may make the necessary fee adjustment.

Respectfully

Rik Munson
218 Landana St
American Canyon CA 94503

EXHIBIT
P-61
20-20566.724

# VACEK & FREED, PLLC

ALBERT E. VACEK, JR.*
SUSAN S. VACEK
CANDACE L. KUNZ-FREED
PAUL J. BROWER
JULIE A. MATHIASON
BERNARD L. MATHEWS, III, *Of Counsel*
*Board Certified Estate Planning and Probate Law
Texas Board of Legal Specialization

11777 Katy Freeway, Suite 300 South
Houston, Texas 77079

(281) 531-5800
1-800-229-3002

Telefax (281) 531-5885
E-mail Address: consult@vacek.com

December 19, 2012

Mr. Rik Munson
218 Landana St.
American Canyon, CA 94503

Dear Mr. Munson:

I am in receipt of your request for copies of my notary pages that correspond to book entries for August 25, 2010 and December 21, 2010. Unfortunately, I am unable to fulfill your request for said copies in order to protect the privacy and maintain the confidentiality of my other clients who also signed documents those dates and thus signed my notary book. If you will be so kind as to identify the specific client for whom you are interested in obtaining these public records, then I will redact the other clients' names and personal information with which you are not concerned.

Enclosed you will find your envelope and money order, which are being returned to you. Please note that any check payable to me for a copy of my notary records should be made payable to the law firm, VACEK & FREED, PLLC. There are four (4) pages total that correspond to these dates you request, so please remit payment of $2.00 for these copies. Finally, note that we have moved offices and our current office address is as identified in the letterhead above.

Sincerely,

Candace L. Kunz-Freed

Candace L. Kunz-Freed

CLF/sp
Enclosures

EXHIBIT
P-62

20-20566.725

Rik Munson
218 Landana Street
American Canyon CA 94503

To
Candace Kunz-Freed
11777 Katy Freeway Ste 300 S.
Houston, Tx 77079

cc: John Steen
Notary Public Unit
Secretary of State
P.O. Box 13375
Austin, Texas 78711-3375

Certified Mail #7012 2210 0000 1342 6593

Dear Ms. Kunz- Freed

You recently responded to certified mail letter 7012 2210 0000 1342 6586, wherein I requested copies of your notary log book entries for August 25, 2010 and for December 21, 2010.

I received a reply on December 24, 2012 in which you expressed concerns over the privacy of certain of your clients. You further intimated that any check payable for a copy of your notary records should be made payable to the law firm, VACEK & FREED, PLLC.

Ms. Freed your Texas State Bar Association number is 24041282 and your Texas state Notary ID is 126053214. I should not have to instruct you on the notary laws in Texas. You renewed your Notary license when it expired in March 2011 and the address you gave to the Secretary of State is 14800 St Marys Ln, Ste 230, Houston, TX 77099. If this is not correct please update your information with the Secretary so that it is correct.

The Secretary of State has addressed your concerns and long since posted the information on the government's website for all to see[1]. The notary book belongs to the notary public. The employer is not the owner of a notary's record book or

[1] http://www.sos.state.tx.us/statdoc/forms/notary-public-ed-info.pps

EXHIBIT
P_63
Page 1 of 3

seal, even if the employer paid for the materials. Tex. Atty. Gen. Op. GA-0723. A Texas notary public is required by law to maintain a record book containing information on every notarization performed and is required to authenticate every official act with the seal of office. The record book is public information and a notary is required to produce copies of the book upon request. Therefore, the book and seal should remain in the possession of the notary at all times.

The Attorney General Opinion cited above may be found on the Attorney General's website[2]. For more information on the records of notaries public, consult the Secretary of State. As their FAQ says, Texas notaries public are governed by Chapter 406 of the Government Code[3], Chapter 121 of the Civil Practice and Remedies Code[4] and the secretary of state's administrative rules found in 1 Texas Administrative Code Chapter 87[5], as well as other applicable state and federal laws.

Under section 406.014 of the Texas Government Code, a notary public is required to maintain a record book which includes the following information:

1. Date of each instrument notarized;
2. Date of the notarization;
3. Name of the signer, grantor or maker;
4. Residence of the signer, grantor or maker;
5. Whether the signing party was personally known, identified by a governmental identification card, or was introduced and the name of the introducing party;
6. Name and residence of the grantee; and Brief description of the instrument.

These requests concern any and all log book pages containing entries for August 25, 2010 and all log book pages containing entries for December 21, 2011. Please also inform me of the number of pages and the cost to produce copies of your notary log from June1, 2010 through April 15, 2012 inclusive.

Please be advised that this request is being made on behalf of John Q. Public who is the owner of the information in the requested public records. Both the object and the subject of these requests are the official acts entered by the Notary Public Candace Kuntz-Freed as evidenced by the notary log required by the Texas Government Code cited above. The law requires the notary to produce copies of the public records containing the legally required information without redaction.

---

[2] https://www.oag.state.tx.us/opinions/opinions/50abbott/op/2009/htm/ga-0723.htm
[3] http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.406.htm
[4] http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.121.htm
[5] http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=4&ch=87

EXHIBIT
P-63

If Mr. Public experiences any further difficulties in obtaining a suitable reply to this request he will file a notary complaint. If you have any further reservations in complying with this request I suggest you might direct your questions and concerns directly to Texas Secretary of State John Steen.

According to the Secretary the maximum fee is fifty cents per page. I am enclosing the same money order for $10.00 as a deposit for fees along with a self addressed return envelope with postage fully prepaid. Payment is made to Candace Kunz-Freed the Notary Public to whom these requests are made and not to the law firm of Vacek & Freed having nothing to do with these requests.

If the number of pages exceeds 20 please notify me that I may make the necessary fee deposit adjustments.

I will expect your compliance with this inquiry within fifteen days of your receipt of this second request as required by Texas state law.

Respectfully

Rik Munson
218 Landana St
American Canyon CA 94503

**EXHIBIT**
**P-63**

# VACEK & FREED, PLLC

ALBERT E. VACEK, JR.*
SUSAN S. VACEK
CANDACE L. KUNZ-FREED
PAUL J. BROWER
JULIE A. MATHIASON
BERNARD L. MATHEWS, III, *Of Counsel*
*Board Certified Estate Planning and Probate Law
Texas Board of Legal Specialization

11777 Katy Freeway, Suite 300 South
Houston, Texas 77079

(281) 531-5800
1-800-229-3002

Telefax (281) 531-5885
E-mail Address: consult@vacek.com

January 15, 2013

Mr. Rik Munson
218 Landana St.
American Canyon, CA 94503

Dear Mr. Munson:

Per your request, enclosed are copies of my notary pages for book entries dated August 25, 2010 and December 21, 2010. The additional pages you request for dates June 1, 2010 through April 15, 2012 total 24 pages. Please remit the exact fee of $12.00 for these additional pages, if you so request them. You will need to once again provide a self-addressed return envelope for these additional copies.

Finally, you will find a check for $8.00 payable to you for the return of the money order you previously submitted, less the cost of the four pages included herein. I am unable to hold these funds on account.

Sincerely,

Candace L. Kunz-Freed

Candace L. Kunz-Freed

CLF/sp
Enclosures

EXHIBIT
P-64

| | Notarization Date/Time | Document Date | Type of Notarization | Name of Signer | Signer's Signature | Signer's Address and Telephone Number |
|---|---|---|---|---|---|---|
| 161 | 11/22/10 | 11/22/10 | | Shelley Gates | X Shelley Gates | 14311 Islandwoods Dr, Houston TX 77095 |
| 162 | 11/24/10 | 11/24/10 | | Floy Stockdick | X Floy Stockdick | 6011 Franz Katy, TX 77493 |
| 163 | 11/24/10 | 11/24/10 | | Roseanne Lopez | X Roseanne Lopez | 6005 Franz Katy, TX 77493 |
| 164 | 12/1/10 | 12/1/10 | | Dr. C.V. Beghtol | X CVBeghtol | 11434 Valley Spring Houston TX 77043 |
| 165 | 12/9/10 | 12/9/10 | | M. Chan | X M Chan | 21326 Roschelle Houston/Katy TX 77450 |
| 166 | 12/14/10 | 12/14/10 | | Irene Kovar | X Irene Kovar | |
| 167 | 12/21/10 | 12/21/10 | | Nelva Brunsting | X Nelva E. Brunsting | 13630 Pinerock Houston TX 77077 |
| 168 | 12/21/10 | 12/21/10 | | Anita Brunsting | X Anita Brunsting | 203 Bloomingdale Cir Victoria, TX 77904 |
| 169 | 12/22/10 | 12/22/10 | | Herbert C. McKay | X Herbert C. McKay | 8010 Neff St. Houston, Texas |
| 170 | 12/29/10 | 12/29/10 | | Kyung Jacobs | Kyung Jacobs | 8326 Ash Garden Ct. Houston TX 77083 |
| 171 | 12/30/10 | 12/30/10 | | J.W. Burns | X J.W. Burns | 10806 Inwood Hou. TX 77042 |
| 172 | 1/03/11 | 1/03/11 | | Kyung Jacobs | X Kyung Jacobs | 8326 Ash Garden Ct. Houston, TX 77083 |
| 173 | 1/26/11 | 1/26/11 | | John Sutherland | X [illegible] | 415 Coachman Lane Hou TX 77024 |
| 174 | 1/26/11 | 1/26/11 | | Ellen Sutherland Baddi | X Ellen Sutherland Baddi | Podere Binacco 58020 Scarlino (GR) Italy |
| 175 | 1/26/11 | 1/26/11 | | Karen Lee Cook | X Karen Lee Cook | 3210 Deer Trail Ringer TX 77867 |
| 176 | 2/9/11 | 2/9/11 | | M. Chan | X M Chan | 21326 Rose Hollow Ln Katy TX 77450 |

EXHIBIT P-65

| Type of Identification ☐ D.L. ☐ I.D. Card ☐ Personally Known ☐ Credible Witness ☐ Passport ☐ Other | Description of Document, Additional Information, or Comments | Fee | Signer's Right Thumbprint | |
|---|---|---|---|---|
| ersonal Knowledge | HIPAA → PAT TRUSTEES DESIGNATION OF SUCCESSOR TEE Certi. of Tr. | $ ~~0~~ | 161 Top of Thumbprint | 162 Top of Thumbprint |
| ersonal Knowledge | Qualified Benef. Design. | $ | | |
| ersonal Knowledge | Appt. of Succ Trustees Qualified Benef. Designation | $ | 163 Top of Thumbprint | 164 Top of Thumbprint |
| rsonal Knowledge | Funding Pkg. COTS(ST)DT, LT(3) MedPOA, HIPAA, QBD, APPT SUCC TEE GWD's and AF Knowl. | $ | | |
| ersonal Knowledge | Amended Affidavit/Oath. | $ | 165 Top of Thumbprint | 166 Top of Thumbprint |
| ersonal Knowledge | Appt. of Succ Tee Resignation documents. | $ | | |
| ersonal Knowledge | COT's (3) Acceptance as ~~Trustee~~ Succ | $ | 167 Top of Thumbprint | 168 Top of Thumbprint |
| ersonal Knowledge | | $ | | |
| ersonal Knowledge | Beneficiary form for Chase IRA | $ | 169 Top of Thumbprint | 170 Top of Thumbprint |
| ersonal Knowledge | Birth Certificate Correction | $ | | |
| P.K. | | $ | 171 Top of Thumbprint | 172 Top of Thumbprint |
| rsonal Knowledge | Farmers Insurance Claim Trustee Stmt for LT | $ | | |
| ersonal Knowledge | Resignation of Tee Med POA | $ | 173 Top of Thumbprint | 174 Top of Thumbprint |
| ersonal Knowledge | Accept of Succ Co Tee COT, Delegation of Auth | $ | | |
| ersonal Knowledge | Accept of Succ Co Tee Accept of Delegation COT | $ | 175 Top of Thumbprint | 176 Top of Thumbprint |
| ersonal Knowledge | Funding (PM2) Med POA; COT's (3) Deed HS, Deed other, Assign P/P. | $ | | |

Case 4:12-cv-00592 Document 50-2 Filed on 05/01/13 in TXSD Page 16 of 23

20-20566.732

| | Notarization Date/Time | Document Date | Type of Notarization | Name of Signer | Signer's Signature | Signer's Address and Telephone Number |
|---|---|---|---|---|---|---|
| 129 | 7/20/10 | 7/20/10 | in office | Robert Holmes | X Robert W Holmes | 13218 Verbena Houston TX 77083 |
| 130 | 7/23/10 | 7/23/10 | in office | Nancy Kanistanaux | X Nancy G. Kanistanaux | 1873 Birchwood Dr. Okemos, MI 48864 |
| 131 | 7/27/10 | 7/27/10 | | Carol L. Hayes | X Carol L. Hayes | 6206 Summerfield Ln Spring, TX 77379 |
| 132 | 7/27/10 | 7/27/10 | | Karen Renee Hayes | X Karen Renee Hayes | 13819 CADY COURT HOUSTON, TX 77077 |
| 133 | 7/27/10 | 7/27/10 | | Lisa Hanney | X Lisa Hanney | 5706 Lone Cedar Kingwood, TX 77345 |
| 134 | 8/3/10 | 8/3/10 | in office | Laurie Godbold | X Laurie Godbold | 8148 Willow Forest Dr. Tomball TX 77375 |
| 135 | 8/10/10 | 8/10/10 | " " | " " | Laurie Godbold | " " |
| 136 | 8/17/10 | 8/17/10 | | Irene R. Goddard | X Irene R. Goddard | 1510 Breezy Bend Katy TX 77494 |
| 137 | | | | Fred Ben Himbury | Fred Ben Himbury | |
| 138 | | | | Patricia Rhea Mullins | Patricia Rhea Mullins | |
| 139 | | | | Suzan Faye Stringer | Suzan Faye Stringer | |
| 140 | | | | Phyllis Himburg Delaro | Phyllis Himburg Delaro | |
| 141 | 8/25/10 | | | Nelva Brunstrong | X Nelva E. Brunstrong | 13630 Piping Rock Houston TX 77079 |
| 142 | 8/26/10 | | | Betty Jean Barney | X Betty Jean Barney | 8915 Opelika Houston TX 77080 |
| 143 | 9/2/10 | | | Mark R. Yarbrough | X Mark R. Yarbrough | 4201 Monterey Oaks Blvd #1221 Austin Tx 78749 |
| 144 | 9/8/10 | | | Jeffrey J. Yarbrough | X Jeffrey J. Yarbrough Jr | 2617 Piping Rock Tr. Austin TX 78748 |

Case 4:12-cv-00592 Document 50-2 Filed on 05/01/13 in TXSD Page 17 of 23

20-20566.733

| Type of Identification (☐ D.L. ☐ I.D. Card ☐ Personally Known ☐ Credible Witness ☐ Passport ☐ Other) | Description of Document, Additional Information, or Comments | Fee | Signer's Right Thumbprint | |
|---|---|---|---|---|
| Personal Knowledge | Merrill Lynch DT<br>Merrill Lynch ST | $<br>$ | Top of Thumbprint 129 | Top of Thumbprint 130 |
| ~~Personal~~ Knowledge | COT for Hayes Fut | $ | Top of Thumbprint 131 | Top of Thumbprint 132 |
| Personal Knowledge | COT for Hayes FLT | $ | | |
| ~~Personal~~ Knowledge<br>~~COTS(8)~~<br>Personal Knowledge | COT for Hayes Family Living Trust<br>COTS(8) Funding Bks. | $<br>$ | Top of Thumbprint 133 | Top of Thumbprint 134 |
| " " | Funding forms | $ — | Top of Thumbprint 135 | Top of Thumbprint 136 |
| Personal Knowledge | Funding Bk. | $ | | |
| | | $<br>$ | Top of Thumbprint 137 | Top of Thumbprint 138 |
| | | $<br>$ | Top of Thumbprint 139 | Top of Thumbprint 140 |
| P.K. | | $ | Top of Thumbprint 141 | Top of Thumbprint 142 |
| Personal Knowledge CC | QBD, COTS(3) MEDPOA, DGPOA, APPT SUCC TEE DEED | $ | | |
| Personal Knowledge | SS4 COTS<br>Aff of Heir Mtr. Vehicle (2) | $ | Top of Thumbprint 143 | Top of Thumbprint 144 |
| Personal Knowledge | SS4<br>Aff. Heirship for Mtr. Veh (2) | $ | | |

# Certificate of Trust

The undersigned Founders hereby certify the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER H. BRUNSTING and NELVA E. BRUNSTING, Founders and initial Trustees. Either Founder while acting as Trustee may conduct business on behalf of the trust without the consent of any other Trustee. The full legal name of our trust for purposes of transferring assets into the trust, holding title of assets and conducting business for and on behalf of the trust, shall be known as:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. Should either original Trustee fail or cease to serve as Trustee by reason of death, disability or for any reason, the remaining original Trustee will continue to serve alone.

3. If both of the original Trustees fail or cease to serve as Trustee by reason of death, disability or for any reason, then the following individuals or entities will serve as Trustee in the following order:

   First, ANITA KAY RILEY
   Second, CARL HENRY BRUNSTING
   Third, AMY RUTH TSCHIRHART

4. The Trustee(s) under the trust agreement are authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in trust name. All powers of the Trustee(s) are fully set forth in Article Twelve of the trust agreement.

5. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee(s) over trust property.

6. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance. A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certify that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on October 10, 1996.

Elmer H. Brunsting
ELMER H. BRUNSTING,
Founder and Trustee

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on October 10, 1996, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Witness my hand and official seal.

Shannon E. Sweeney
Notary Public, State of Texas

SHANNON E. SWEENEY
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
FEB. 25, 1998

EXHIBIT
P-66

BRUNSTING001517

**From:** Candace Curtis (occurtis@sbcglobal.net)
**To:** at.home3@yahoo.com; akbrunsting@suddenlink.net; cbrunsting@sbcglobal.net;
**Date:** Tue, November 8, 2011 11:38:04 AM
**Cc:**
**Subject:** Mother

I am sorry for any animosity I have created over the last week. I have only been seeking information about her status. When I am unable to reach her by phone I never know why because I am not in the information loop.

I have been trying to call Mother just to say hello. The phone numbers I have been given are never answered. If she is unable to talk, please let me know and I will stop trying. If one of you, or a caregiver, is with her and she's awake, I would really appreciate a cell phone call so I could say hi to her. If it's not already too late, it may be the last time I speak to her while she still knows who I am.

My fears are based upon information I have gathered speaking to one of you, or Tino, or Robert. It appears that everyone sees the situation in a slightly different light. I have no idea what is best for Mother. All I know is that when I put myself in Mother's shoes I become Dorothy - "THERE'S NO PLACE LIKE HOME"

C

EXHIBIT
P-67

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis | § | |
| Individually and as Co-Trustee | § | |
| Plaintiff, | § | |
| versus | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| Anita Kay Brunsting, et al. | § | |
| | § | |
| Defendants. | § | |

**PROPOSED ORDER FOR SUPPLEMENTAL JURISDICTION AND JOINDER**

Having considered Plaintiff's Motion to Amend Complaint and Join Additional Parties, the Court being fully advised, and good cause shown:

IT IS HEREBY ORDERED that Plaintiff's Motion to Amend Complaint is GRANTED; Plaintiff having demonstrated that compelling justification exists to warrant an amendment to verified complaint.

IT IS HEREBY ORDERED that Plaintiff is granted leave to file Verified Amended Complaint with this Court.

Plaintiff's Motion for Joinder is GRANTED; Plaintiff having demonstrated that compelling justification exists to warrant the exercise of Supplemental Jurisdiction and Joinder of state court actions to this suit.

IT IS HEREBY ORDERED that Plaintiff is granted leave to join the following state court actions and parties pursuant to Fed. R. Civ. P. 19(a):

(1) Carl Brunsting vs. Candace Kunz-Freed
Harris County District Court Case No. 2013-05455
(2) Carl Brunsting vs. Anita Kay Brunsting, Amy Ruth Brunsting and Carole Ann Brunsting Defendants; Candace Curtis Nominal Defendant
Harris County Probate Case No. 412-249401

IT IS HEREBY ORDERED that Plaintiff is granted leave to join the following parties (a):

(1) Carole Ann Brunsting Defendant
(2) Candace Kunz-Freed Defendant
(3) Albert Vacek Jr. Defendant
(4) Vacek & Freed PLLC Defendant
(5) Bernard Lisle Mathews Defendant
(6) Carl Brunsting Plaintiff

SIGNED on the _____ day of _____, 2013, at Houston, Texas.

_____
Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis | § | |
| Individually and as Co-Trustee | § | |
| Plaintiff, | § | |
| versus | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| Anita Kay Brunsting, et al. | § | |
| Defendants. | § | |

**PROPOSED ORDER FOR PRODUCTION OF ORIGINAL DOCUMENTS**

The Court has reviewed Plaintiff's Application for exercise of Supplemental Jurisdiction and Joinder, and good cause having been shown, the Court issues the following order:

Defendants are to produce before the Court the documents physically signed by Elmer and/or Nelva Brunsting identified below, verified under penalty of perjury to be the original wet signed trust instruments.

(1) The Brunsting Family Living Trust (BFLT) dated October 10, 1996
(2) Restatement of the Brunsting Family Living Trust dated January 12, 2005
(3) Affidavit of Trust dated January 12, 2005
(4) Certificate of Trust dated January 12, 2005
(5) (Pour-Over Will) Last Will of Elmer H. Brunsting January 12, 2005
(6) Living Will of Nelva Brunsting January 12, 2005
(7) Durable Power of Attorney for Nelva Brunsting
(8) First Amendment to BFLT dated September 6, 2007
(9) Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment under Living Trust Agreement dated June 15, 2010.
(10) Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment under Living Trust Agreement dated August 25, 2010
(11) Appointment of Successor Trustees dated August 25, 2010



20-20566.738

(12) Certificate of Trust for the Nelva E Brunsting Survivor's Trust dated August 25, 2010
(13) Certificate of Trust for the Elmer H Brunsting Decedent's Trust dated August 25, 2010
(13) Certificate of Trust for the Brunsting Family Living Trust dated August 25, 2010
(14) Information Concerning Medical Power of Attorney dated August 25, 2010.
(15) Resignation of Nelva Brunsting dated December 21, 2010
(16) Appointment of Successor Trustee dated December 21, 2010
(17) Acceptance of Appointment as Trustee for Anita Brunsting dated December 21, 2010
(18) Acceptance of Appointment as Trustee for Amy Brunsting
(19) Any Power of Attorney for Nelva Brunsting
(20) Agreement dated 11/22/11

SIGNED on the _____ day of _____, 2013, at Houston, Texas.

_____
Kenneth M. Hoyt
United States District Judge

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

# UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States District Court
Southern District of Texas
FILED
MAY 01 2013
David J. Bradley, Clerk of Court

Candace Louise Curtis
*Plaintiff*
v.
Anita Brunsting et al.,
*Defendant*

Civil Action No. 4:12-cv-00592

## NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: Candace Kunz-Freed 11777 Katy Freeway Suite 300 South Houston, Texas 77079
*(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)*

**Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

**What happens next?**

If you return the signed waiver, I will file it with the court. The action will then proceed as if you had been served on the date the waiver is filed, but no summons will be served on you and you will have 60 days from the date this notice is sent (see the date below) to answer the complaint (or 90 days if this notice is sent to you outside any judicial district of the United States).

If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 04/28/2013

*Signature of the attorney or unrepresented party*

Candace Curtis
*Printed name*

1215 Ulfinian Way
Martinez CA 94553
*Address*

occurtis@sbcglobal.net
*E-mail address*

925-759-9020
*Telephone number*

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

United States District Court
Southern District of Texas
FILED
MAY 01 2013
David J. Bradley, Clerk of Court

# UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Candace Louise Curtis
*Plaintiff*

v.

Anita Brunsting et al.,
*Defendant*

Civil Action No. 4:12-cv-00592

## NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: Carole Ann Brunsting 5822 Jason St. Houston, TX 77074
*(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)*

**Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

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Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 04/28/2013

*Signature of the attorney or unrepresented party*

Candace Curtis
*Printed name*

218 Landana Street
American Canyon CA 94503
*Address*

occurtis@sbcglobal.net
*E-mail address*

925-759-9020
*Telephone number*

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

United States District Court
Southern District of Texas
FILED
MAY 01 2013
David J. Bradley, Clerk of Court

# UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Candace Louise Curtis
*Plaintiff*
v.
Anita Brunsting et al.,
*Defendant*

Civil Action No. 4:12-cv-00592

## NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: Albert Vacek Jr. & Vacek & Freed P.L.L.C. 11777 Katy Freeway Suite 300 South Houston, Texas 77079
*(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)*

**Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

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Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 04/28/2013

*Signature of the attorney or unrepresented party*

Candace Curtis
*Printed name*

1215 Ulfinian Way
Martinez CA 94553
*Address*

occurtis@sbcglobal.net
*E-mail address*

925-759-9020
*Telephone number*

AO 398 (Rev. 01/09) Notice of a Lawsuit and Request to Waive Service of a Summons

# UNITED STATES DISTRICT COURT

for the

Southern District of Texas

United States District Court
Southern District of Texas
FILED

MAY 0 1 2013

David J. Bradley, Clerk of Court

Candace Louise Curtis
*Plaintiff*
v.
Anita Brunsting et al.,
*Defendant*

Civil Action No. 4:12-cv-00592

## NOTICE OF A LAWSUIT AND REQUEST TO WAIVE SERVICE OF A SUMMONS

To: Bernard Lilse Mathews, III & Green & Mathews, LLP 14550 Torrey Chase Blvd., Suite 245 Houston, Texas 77014
*(Name of the defendant or - if the defendant is a corporation, partnership, or association - an officer or agent authorized to receive service)*

**Why are you getting this?**

A lawsuit has been filed against you, or the entity you represent, in this court under the number shown above. A copy of the complaint is attached.

This is not a summons, or an official notice from the court. It is a request that, to avoid expenses, you waive formal service of a summons by signing and returning the enclosed waiver. To avoid these expenses, you must return the signed waiver within 30 days *(give at least 30 days, or at least 60 days if the defendant is outside any judicial district of the United States)* from the date shown below, which is the date this notice was sent. Two copies of the waiver form are enclosed, along with a stamped, self-addressed envelope or other prepaid means for returning one copy. You may keep the other copy.

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If you do not return the signed waiver within the time indicated, I will arrange to have the summons and complaint served on you. And I will ask the court to require you, or the entity you represent, to pay the expenses of making service.

Please read the enclosed statement about the duty to avoid unnecessary expenses.

I certify that this request is being sent to you on the date below.

Date: 04/28/2013

*Signature of the attorney or unrepresented party*

Candace Curtis
*Printed name*

218 Landana Street
American Canyon CA 94503
*Address*

occurtis@sbcglobal.net
*E-mail address*

925-759-9020
*Telephone number*

**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| **CANDACE LOUISE CURTIS**<br>**Individually and as Co-Trustee**<br><br>**Plaintiff,**<br><br>**VS.**<br><br>**ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, CAROLE ANN BRUNSTING, CANDACE L. KUNZ-FREED, ALBERT E. VACEK, JR., VACEK & FREED, PLLC, THE VACEK LAW FIRM, BERNARD LILSE MATHEWS III, AND DOES 1 - 94**<br><br>**Defendants.** | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | **CIVIL ACTION NO. 4:12-CV-00592** |

**ORDER PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 53, APPOINTING WILLIAM G. WEST AS MASTER TO PERFORM AN ACCOUNTING**

(Relates to Docket No. 47)

For the reasons set forth in the Court's Order entered on April 29, 2013 and appearing as Docket Entry No. 47 in the above-styled case, the Court finds that the issues in dispute require an accounting, that such an accounting will be helpful to the Court's consideration of the issues in dispute and the resolution of the case, that the appointment of a master to prepare such an accounting is necessary and in the best interests of all parties, and that the parties failed to timely designate a party to prepare such an accounting as expressly instructed by the Court. The Court further finds that as evidenced by the Affidavit of William G. West, that there are no grounds under 28 U.S.C. § 455 that would disqualify William G. West from serving as a master in this case. It is therefore Ordered as follows:

1. William G. West ("West") is hereby appointed as master pursuant to Rule 53 of the Federal Rules of Civil Procedure, and is to proceed with all reasonable diligence.

2. The parties shall have ten (10) days from the entry of this order in which to file any objections to the appointment of West. Any such objection(s) may include a request for a hearing.

3. West's duties are to undertake an analysis of the Brunsting Trust, including, but not limited to, its books and records and thereafter create an accounting of the income and expenses of the trust since December 21, 2010. In order to aid in West's performance of said duties, the parties shall comply with all of West's reasonable requests for information and/or assistance.

4. West shall be authorized to communicate *ex parte* with the Court or any of the parties.

5. West shall complete his investigation and submit his report(s) directly to the Court by July 31, 2013 or on such other date(s) as the permitted by the Court. West will provide copies of the report(s) to other parties only as directed by the Court. The report shall contain a summary of the activities undertaken by West, the detailed accounting information described in paragraph 3 above, and an invoice for all of West's compensation, expenses, and attorneys' fees. West shall retain all files related to his investigation for a period of 3 years after the submission of his final report(s).

6. West shall be compensated at an hourly rate of $260.00 and any staff working directly under his supervision will be charged at their regular rates (staff rates are currently $95.00-$230.00 per hour). West shall also be entitled to recover all expenses and attorneys' fees incurred and related to his appointment by the Court. The parties shall bear the cost of West's compensation, expenses, and attorneys' fees. The Court shall have the right to allocate all such compensation, expenses, and attorneys' fees as appropriate, and regardless of any such allocation West shall be entitled to recover all of his compensation, expenses, and attorneys' fees from the Brunsting Trust, and shall be entitled to payment of all such compensation, expenses, and attorneys' fees directly from the Brunsting Trust immediately upon the completion of his work.

7. West shall be granted all of the powers and authority proscribed in Rule 53(c) of the Federal Rules of Civil Procedure.

8. West has been appointed to prepare his report(s) for the Court and not for any of the parties. Therefore, West is accountable only to the Court. As such, West is entitled to and hereby granted the same judicial immunity as this Court itself, and West shall not be responsible to any party provided his report is made in good faith. Further, in the event that any claims are asserted against West related to his appointment, investigation, and/or preparation of his report(s), West shall be entitled to a defense and indemnity, to be allocated and funded in the same manner as his compensation described in paragraph 5 above.

SIGNED on this 9th day of May, 2013.

THE HONORABLE KENNETH M. HOYT,
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' MEMORANDUM AND RESPONSE IN OPPOSITION TO PLAINTIFF'S "APPLICATION FOR JOINDER OF PARTIES AND ACTIONS" AND TO MOTION TO AMEND COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting respond in opposition to an "Application for Joinder of Parties and Actions" (Inst. #49, "the Application"), and to the Motion to Amend Complaint which is referenced in the title of Plaintiff's First Amended Complaint (Inst. #48).

STATEMENT OF THE NATURE AND STAGE OF THE PROCEEDING.

1. This is a diversity action and a suit among sisters involving a family trust. The Court recently entered a temporary restraining order regarding the assets of the trust, and thereafter ordered an independent accountant to gather the financial records and provide an accounting of trust income and expenses since December 21, 2010. (Inst. # 45, 55). The Court had entered a docket control order before the hearing on the temporary relief, and that order includes a deadline for joinder of parties. Plaintiff has timely moved to join parties and to add claims in this suit.

There are two state court suits related to the proceedings here, filed in Harris County Probate Court and Harris County District Court. The Harris County suit was discussed briefly at the temporary restraining order hearing, and is brought by the executor of the Brunsting estate against certain attorneys.[1] A second action was filed the day after the temporary restraining order hearing in Probate Court, in which Defendants and their sister Carole Brunsting are named as defendants and the executor of the Brunsting estate is plaintiff.[2] Plaintiff Candace Brunsting is also named a defendant in that state court litigation as a "nominal defendant only."[3]

STATEMENT OF THE ISSUES TO BE RULED ON, AND THE STANDARD OF REVIEW THAT APPLIES.

2. At issue is Plaintiff's Application, which seeks to add certain non-parties to this suit and to allege new causes of action against these Defendants. The Application also relates to an amended complaint that Plaintiff has filed, without leave, in which new claims against new parties are alleged, and other new claims are asserted. Although no formal motion for leave to amend has been filed, the Application refers to the claims in the First Amended Complaint and the complaint has the additional title "Motion to Amend Complaint." There is no certificate of conference for either the Application or the Amended Complaint/Motion to Amend Complaint, as required by LR 7.1(D), and

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[1] See Inst. #49 (Application) at 4, paragraph 12.

[2] A copy of the petition in the Harris County Probate Court suit is attached to Inst. #41, by which Defendants provided notice to the Court of the state suit's filing.

[3] See Appendix Tab 1 to Inst. #41.

Plaintiff did not confer with Defendant's counsel before the instruments were filed. The amended complaint has no discussion of why leave should be granted to amend the original complaint on file.

The standard of review for amendment of pleadings is provided by Rule 15(a), which states that the Court "should freely give leave when justice so requires." The grant or denial of a motion under Rule 15(a) is reviewed for abuse of discretion.[4] Rule 15(a), however, is inapposite where a party never requests leave to amend, either in a formal motion or within the body of an amended complaint.[5] "[F]ailing to request leave from the court when leave is required makes a pleading more than technically deficient. The failure to obtain leave results in an amended complaint having no legal effect."[6]

Joinder of parties is governed by Rule 19 and 20, both of which are cited in Plaintiff's Application.[7] Rule 19(a) relates to the joinder of necessary parties. Under that rule, the Court is to determine whether an absent person "who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction" should be joined as a "required party." If the Court finds in the affirmative, that person

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[4] *Foman v. Davis,* 371 U.S. 178, 182, 83 S.Ct. 227, 230, 9 L.Ed.2d 222 (1962).

[5] *Suter v. Univ. of Texas at San Antonio*, 495 Fed. App'x. 506 (5th Cir. 2012).

[6] *Id.*, citing *U.S. ex rel. Mathews v. HealthSouth Corp.*, 332 F.3d 293, 296 (5th Cir. 2003).

[7] See Inst. #49 (Application) at 8.

must be joined, unless joinder is not feasible, and then the Court must determine under Rule 19(b) whether to proceed without the absent person or to dismiss the action.[8]

The first type of required party under Rule 19(a)(1) is one whose absence prevents the court from according complete relief among the existing parties.[9] The second type of required party under Rule 19(a)(1) is one who "claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest."[10]

Rule 20 governs permissive joinders of parties plaintiff or defendant. It incorporates a "same transaction or occurrence" test and a requirement of a common question of law or fact linking all claims.[11] Even when these tests are met, the Court has discretion to refuse joinder in the interest of avoiding prejudice and delay; ensuring judicial economy; or safeguarding principles of fundamental fairness.[12]

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[8] *See In re Chinese Manufactured Drywall Products Liab. Litig.*, 273 F.R.D. 380, 385 (E.D. La. 2011).

[9] *Id.* citing FED. R. CIV. P. 19(a)(1)(A).

[10] *Id.* at 386, citing FED. R. CIV. P. 19(a)(1)(B).

[11] *Acevedo v. Allsup's Convenience Stores, Inc.*, 600 F.3d 516, 521 (5th Cir. 2010).

[12] *Id.*

ARGUMENT:

PLAINTIFF'S REQUEST FOR JOINDER OF ADDITIONAL PARTIES AND NEW CLAIMS, AND LEAVE TO FILE THE PROPOSED AMENDED COMPLAINT, SHOULD BE DENIED.

3. Plaintiff seeks to add parties plaintiff and defendant to this suit. Essentially, Plaintiff asks this Court to "remove" the state court actions to this Court and to join those state court actions in this Court.[13] She wants to add as defendants her sister Carole, who is a defendant in the state court Probate suit, and the attorneys that are defendants in the Harris County district court suit; she wants to force joinder of her brother as co-plaintiff (and perhaps add his claims brought in the Harris County Probate Court suitor his District Court suit); and she wants to join attorney Mathews as a defendant (who previously represented these Defendants in this suit prior to the Court's order of dismissal).

4. Plaintiff has not shown that her proposed joinder involves necessary or required parties as described by Rule 19. She has not explained why these proposed parties, who are litigants in suits on file in state court, are required to be in this case. Plaintiff's amended complaint includes claims that all the proposed defendants conspired with each other to injure her and to "rupture" the trusts.[14] She also alleges her sister Carole's involvement is "under investigation" but that she is nevertheless named in the amended

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[13] See Inst. #49 (Application) at 8-9, paragraph 23 and 24. The state court actions are not subject to removal under 28 U.S.C. § 1441(a)(2), and in any event would require the consent of all defendants to removal.

[14] See Inst. #48 (Amended Complaint) at 15-16.

complaint "as a joint tortfeasor."[15]Assuming that all of these parties are thought by Plaintiff to be joint tortfeasors, the Supreme Court has long held it is not necessary for all alleged joint tortfeasors to be named as defendants in a single lawsuit.[16]

Moreover, it cannot be disputed by Plaintiff that the state lawsuits are already on file, and that all of the parties she wants to join are already parties plaintiff or defendant in those suits, and that she is a party to one of the suits, albeit as a nominal defendant. Indeed, it would likely be more efficient for Plaintiff to intervene in those cases as plaintiff than to join numerous parties in this case.

Further, there is no showing these other parties are necessary within the meaning of Rule 19 to provide complete relief in this action. Indeed the existence of one of the two suits and the presence of other beneficiaries was discussed with the Court at the temporary restraining order hearing, and the Court suggested the absence of those parties was not fatal to a prompt disposition of this matter.

5. Nor is joinder appropriate under Rule 20. Plaintiff's claims against the various proposed parties arise from dissimilar factual settings and varying transactions and occurrences. The proposed claims against the attorneys relate to alleged transactions and occurrences that they engaged in as counsel for Nelva Brunsting or the estate or the trusts. Plaintiff references DTPA claims under Texas law: those claims would have a different factual basis – resting on consumer status under the DTPA of her parents and the issue of

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[15] See Inst. #48 (Amended Complaint) at 10, paragraph 36.

[16] *Temple v. Synthes Corp., Ltd.*, 498 U.S. 5, 7, 111 S. Ct. 315, 316, 112 L. Ed. 2d 263 (1990).

duties owed and to whom – than the claims made against these Defendants in their capacity as trustees.[17] Additionally, other proposed claims against the attorneys relate to alleged marketing, false advertising, and representations made by them and allegedly relied on by Plaintiff's parents,[18] and theories of respondeat superior against the associated law firm.[19] Plaintiff also seeks disgorgement of fees paid to the law firm. These claims do not have a common nucleus of fact with the claims against these Defendants.

The proposed claims against Defendants' former attorney Mathews include allegations about his conduct representing Defendants in this court,[20] and raise issues of the discharge of the attorney's duties in litigation and claims of opposing parties. These proposed claims do not have a common nucleus of fact with the claims against these Defendants and would interject collateral matters into the suit.

6. "While leave to amend must be freely given, that generous standard is tempered by the necessary power of a district court to manage a case."[21] The Court may consider undue prejudice to the opposing party by virtue of allowance of the amendment. Defendants contend that permitting Plaintiff to duplicate here many of the claims asserted in two state court suits is prejudicial, and Defendants suggest such an amendment does not promote efficient, orderly administration of justice. Plaintiff's amendment raises issues

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[17] Inst. #48 (Amended Complaint) at 29.

[18] Inst. #48 (Amended Complaint) at 27-29.

[19] Inst. #48 (Amended Complaint) at 11-12.

[20] Inst. #48 (Amended Complaint) at 12-13.

[21] *Shivangi v. Dean Witter Reynolds, Inc.*, 825 F.2d 885, 891 (5th Cir. 1987).

of consumer status of decedents and whether a beneficiary has capacity and standing to pursue those claims. If those claims were severed under the Court's power granted by Rule 21, the result would be duplication of litigation.[22]

The Court may also consider futility of amendment. Plaintiff may not have standing or capacity to purse the claims against her parent's attorneys, and those claims are being prosecuted in state court by the executor. Further, Texas appellate courts have held that neither a party to a lawsuit nor his lawyer has a right of recovery against the opposing attorney arising from conduct engaged in as part of that attorney's duties in representing his client in that lawsuit.[23] Thus the proposed amendment against Defendants' former trial counsel in this case would be futile. There is also the questions of whether Plaintiff's proposed new claim under 15 U.S.C. § 78(j) for alleged violations of the Securities Act reaches all the Defendants where no public or private offering of securities to investors is at issue.

For all these reasons, Defendants oppose the granting of leave to file the Amended Complaint, Inst. #48.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court deny the Application for Joinder or Parties and Actions, and strike from the docket the

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[22] Severance under Rule 21 creates two separate actions or suits where previously there was but one. Where a single claim is severed out of a suit, it proceeds as a discrete, independent action. *United States v. O'Neil*, 709 F.2d 361, 368 (5th Cir. 1983).

[23] *Lewis v. Am. Exploration Co.*, 4 F. Supp. 2d 673, 676 (S.D. Tex. 1998).

Amended Complaint (Inst. #48) filed by the clerk before leave was granted. Defendants request any other and further relief as this Court may find proper.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
*gvie@millsshirley.com*
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail on May 21, 2013.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

Unpublished Disposition
495 Fed.Appx. 506 (Table)
NOTICE: THIS IS AN UNPUBLISHED OPINION.
(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA5 Rule 47 for rules regarding the citation of unpublished opinions.)
United States Court of Appeals,
Fifth Circuit.

Kelly Jo SUTER, Ph.D., Plaintiff–Appellant
v.
UNIVERSITY OF TEXAS AT SAN ANTONIO; George Perry, Ph.D.; James M. Bower, Ph.D.; Mathew J. Gdovin, Ph.D.; Robert W. Gracy, Ph.D.; J. Aaron Cassill, Ph.D.; Edwin J. Barea–Rodriguez, Ph.D., Defendants–Appellees.

No. 12–50212 | Summary Calendar. | Oct. 26, 2012.

**Synopsis**

**Background:** Female professor sued state university and university employees, in their individual capacities, alleging negligence, negligent misrepresentation, tortious interference with contract, breach of fiduciary duty, breach of contract, and violation of Equal Pay Act (EPA). The United States District Court for the Western District of Texas, 859 F.Supp.2d 851, granted summary judgment for defendants. Professor appealed.

**Holdings:** The Court of Appeals held that:

[1] professor's failure to move for leave to amend complaint, as required, resulted in amended complaint having no legal effect;

[2] professor failed to establish good cause for modification of district court's schedule to allow her late motions for leave to amend complaint;

[3] claims for negligence, negligent misrepresentation, and tortious interference with contract were barred by two-year statute of limitations under Texas law, regardless of whether discovery rule or legal injury rule applied;

[4] claims for breach of contract and breach of fiduciary duty accrued when start-up funding for research laboratory was not available to professor upon her employment date;

[5] discovery rule did not apply to toll limitations period on claims for breach of contract and breach of fiduciary duty; and

[6] university did not violate Equal Pay Act.

Affirmed.

West Headnotes (6)

**[1] Federal Civil Procedure**
Leave of court in general

Plaintiff's failure to move for leave to amend complaint, as required, resulted in amended complaint having no legal effect. Fed.Rules Civ.Proc.Rule 15(a), 28 U.S.C.A.

**[2] Federal Civil Procedure**
Time for amendment

**Federal Civil Procedure**
Order

Plaintiff did not act with due diligence with respect to right-to-sue letter from Equal Employment Opportunity Commission (EEOC), and thus failed to establish good cause for modification of district court's schedule to allow her late motions for leave to amend complaint, where plaintiff failed to inquire about letter for two months, even though she knew of impending deadline for filing motions to amend pleadings. Fed.Rules Civ.Proc.Rule 16(b)(4), 28 U.S.C.A.

**[3] Limitation of Actions**
Negligence

**Limitation of Actions**
Nature of harm or damage, in general

**Limitation of Actions**
Injuries to property

**Limitation of Actions**

Fraud as Ground for Relief

**Limitation of Actions**

What constitutes discovery of fraud

At the latest, professor learned of alleged mishandling of her start-up funds for research laboratory more than two years before she filed original complaint in action against state university and university employees, even if she did not then know of all defendants' acts and omissions, and therefore, under Texas law, professor's claims for negligence, negligent misrepresentation, and tortious interference with contract were barred by two-year statute of limitations regardless of whether discovery rule or legal injury rule applied.

**[4]** **Limitation of Actions**

Contract of employment

**Limitation of Actions**

Fraud as Ground for Relief

Under Texas law, professor's claims against state university and university employees for breach of contract and breach of fiduciary duty accrued when start-up funding for research laboratory was not available to professor upon her employment date, as she expected it to be. V.T.C.A., Civil Practice & Remedies Code §§ 16.004(a)(5), 16.051.

**[5]** **Limitation of Actions**

Contracts; warranties

**Limitation of Actions**

Fraud of person acting in official or fiduciary capacity

Information about availability of federal grant money to provide start-up funding for professor's research laboratory at state university was not inherently undiscoverable, since professor could have asked university employees or obtained information on grant program herself, and therefore, under Texas law, discovery rule did not apply to toll limitations period on professor's claims against university and university employees for breach of contract and breach of fiduciary duty, which were based upon unavailability of funding upon start of her employment with university. V.T.C.A., Civil Practice & Remedies Code §§ 16.004(a)(5), 16.051.

**[6]** **Labor and Employment**

Seniority system; job experience

**Labor and Employment**

Merit system; job rating system

Variances in pay received by female professor for state university and male professors with similar qualifications resulted from merit evaluations that were in turn based on professors' teaching, research, and service, as well as seniority, and therefore university did not violate Equal Pay Act. Equal Pay Act, § 3, 29 U.S.C.A. § 206.

**Attorneys and Law Firms**

***507** Regina Bacon Criswell, Esq., Law Office of Regina B. Criswell, San Antonio, TX, for Plaintiff–Appellant.

Lars Hagen, Assistant Attorney General, Office of the Attorney General, Austin, TX, for Defendants–Appellees.

Appeal from the United States District Court for the Western District of Texas, USDC No. 5:10–CV–692.

Before REAVLEY, DAVIS, and OWEN, Circuit Judges.

**Opinion**

PER CURIAM: *

Plaintiff–Appellant Kelly Jo Suter appeals the district court's grant of summary judgment in favor of Defendant–Appellees on her tort and contract claims and her claims under 42 U.S.C. § 1983 and the Equal Pay Act, 29 U.S.C. § 206. Suter is a biology professor at Defendant University of Texas at San Antonio ("UTSA" or "University"). Suter alleges that Defendants mishandled start-up funds that she expected would be available to her when she began employment at the University, which funds were meant to support her in establishing a research laboratory at UTSA. In particular, she alleges that the individual Defendants failed to fully inform her about or otherwise secure a key source of funding for her

research, namely a federal grant through the Research Centers in Minority Institutions (RCMI) program. Suter claims that as a result of Defendants' acts and omissions, she lost a year of research and suffered professional injury therefrom. She further alleges that she has suffered unequal treatment on the basis of gender, because two male professors at UTSA received RCMI funding even when she had not, and because there is a variance in pay for female and male professors. Suter filed suit on July 16, 2010.

Suter makes two contentions on appeal. First, she argues that the district court ***508** erred in twice denying her leave to amend her complaint. We review the district court's refusal to grant leave to amend for abuse of discretion. *Stripling v. Jordan Prod. Co.,* 234 F.3d 863, 872 (5th Cir.2000). Second, Suter argues that the district court erred in granting summary judgment to Defendants on her various claims. We review the district court's grant of summary judgment *de novo*. *Noble Energy, Inc. v. Bituminous Cas. Co.,* 529 F.3d 642, 645 (5th Cir.2008). For the reasons that follow, we AFFIRM.

## I.

At pretrial, the district court entered a scheduling order that set a deadline for "all motions to amend or supplement pleadings" by January 13, 2011. On that date, Suter filed a first amended complaint, but she neglected to file a motion for leave to amend. Suter filed her first motion for leave to amend thirty days later. Additionally, forty-eight days after the January 13 deadline, Suter filed a second amended complaint that was accompanied by a motion for leave to amend. The district court denied both motions and ordered that the two amended complaints be stricken from the record.

**[1]** Suter argues that, at the very least, the first amended complaint should have been the "live" complaint at trial because it was timely filed, even if it was not accompanied by a formal motion for leave to amend. Suter cites Federal Rule of Civil Procedure 15(a), which states that the district court "should freely give leave when justice so requires." FED.R.CIV.P. 15(a)(2). However, Rule 15(a) is inapposite because Suter never requested leave to amend, whether in a formal motion or within the body of her amended complaint. "[F]ailing to request leave from the court when leave is required makes a pleading more than technically deficient. The failure to obtain leave results in an amended complaint having no legal effect." *U.S. ex rel. Mathews v. HealthSouth Corp.,* 332 F.3d 293, 296 (5th Cir.2003); *see also U.S. ex rel. Willard v. Humana Health Plan of Tex., Inc.,* 336 F.3d 375, 387 (5th Cir.2003) ("A party who neglects to ask the district court for leave to amend cannot expect to receive such a dispensation from the court of appeals.")

**[2]** Failing that argument, Suter invokes Rule 16(b), which permits a district court to modify its schedule on a showing of good cause. FED.R.CIV.P. 16(b)(4); *S & W Enters., L.L.C. v. SouthTrust Bank of Ala., NA,* 315 F.3d 533, 536 (5th Cir.2003). Suter contends that although she was late in filing her two motions for leave, the district court nevertheless abused its discretion in denying those two motions because she could show good cause for her delay. However, the district court did not abuse its discretion in ruling that Suter had failed to show good cause. Suter's only meaningful explanation for why her motions were late was that she was waiting for a right-to-sue letter from the EEOC. Yet, as the district court pointed out, the good cause standard of Rule 16(b) "requires the 'party seeking relief to show that the deadlines cannot reasonably be met despite the diligence of the party needing the extension.' " *S & W Enters.,* 315 F.3d at 535 (citation omitted). Suter did not conduct due diligence with respect to the right-to-sue letter; indeed, she failed to inquire about the letter for two months even though she knew there was an impending deadline. Thus, the district court did not abuse its discretion in ruling that Suter had failed to show good cause, nor did it abuse its discretion in deciding to enforce its scheduling order.

## II.

Suter also contests the district court's grant of summary judgment to Defendants ***509** on her five state law claims and two federal law claims. First, Suter argues that the district court erred in ruling that her state law claims for negligence, negligent misrepresentation, tortious interference with contract, breach of fiduciary duty, and breach of contract were time-barred.

Under Texas law, tort claims for negligence, negligent misrepresentation, and tortious interference are subject to a two-year statute of limitations.[1] Claims for breach of fiduciary duty and breach of contract are subject to a four-year statute of limitations.[2] "Limitations begins to run upon accrual of the cause of action." *Barker v. Eckman,* 213 S.W.3d 306, 311 (Tex.2006). In most cases, the legal injury rule applies, under which "a cause of action accrues when a wrongful act causes an injury, regardless of when the

plaintiff learns of that injury or if all resulting damages have yet to occur." *Childs v. Haussecker,* 974 S.W.2d 31, 36–37 (Tex.1998); *see Murphy v. Campbell,* 964 S.W.2d 265, 270 (Tex.1997). In some rare cases when "the nature of the injury incurred is inherently undiscoverable and the evidence of injury is objectively verifiable," *Computer Assocs. Int'l, Inc. v. Altai, Inc.,* 918 S.W.2d 453, 456 (Tex.1996), the statute of limitations is tolled by the discovery rule, under which "a cause of action does not accrue until a plaintiff knows or, through the exercise of reasonable care and diligence, 'should have known of the wrongful act and resulting injury.' " *Childs,* 974 S.W.2d at 37 (citation omitted).

The district court did not explicate the accrual date for Suter's actions for negligence, negligent misrepresentation, and tortious interference. Instead, the court merely stated that, "[t]hough it is likely that any such claims arose before this time, in February 2008, the Plaintiff initiated the first of several formal complaints against University employees for mishandling her 'start-up' funds. It is clear that this is the *latest possible* time at which the Plaintiff knew, or should have known of the existence of any of these claims. Because the original complaint in this case was not filed until July of 2010, each such claim is barred by limitations." It appears that the district court assumed, implicitly and for the sake of argument, that the discovery rule applied to these three tort claims and held that even under the discovery rule the claims were time-barred. So construed, we agree with the district court's reasoning.

**[3]** Assuming that the discovery rule applies, the latest that the rule could have tolled limitations was when Suter learned about the mishandling of her funds. Suter argues on appeal that limitations could not have barred judgment against *all* the defendants because she only learned after July 2008 (and thus less than two years before July 2010) about certain defendants' acts and omissions regarding the mishandling of funds. In other words, Suter interprets the discovery rule to mean that a cause of action accrues not when a plaintiff learns of her injury, but rather when she learns about the specifics of each wrongful act that might have caused her injury. However, the Texas Supreme Court has expressly rejected that interpretation of the discovery rule and has clarified ***510** that the rule means "that accrual occurs when the plaintiff knew or should have known of the wrongfully caused injury." *KPMG Peat Marwick,* 988 S.W.2d at 749. Suter learned about the mishandling of her start-up funds, in particular Defendants' failure to provide RCMI funds to her, in February 2008, which is more than two years before July 16, 2010. She therefore cannot prevail on these three tort actions under the discovery rule, meaning she cannot prevail under the legal injury rule either. Her actions for negligence, negligent misrepresentation, and tortious interference are necessarily time-barred under Texas's two-year statute of limitations.

**[4]** In contrast, the district court did decide on an accrual date for Suter's breach of fiduciary duty and breach of contract claims. To wit, the district court concluded that the two causes of action accrued when Suter's start-up funds were not immediately available to her upon her employment date of July 1, 2006. We agree. Under the legal injury rule, the default accrual date for limitations would be the date on which an injury occurred. For breach of fiduciary duty and breach of contract claims, an injury occurs at the moment of breach. *Leigh v. Weiner,* 679 S.W.2d 46, 48–49 (Tex.App.1984) (breach of fiduciary duty); *Barker,* 213 S.W.3d at 311 (breach of contract). After Suter was hired, she expected all of her start-up funding, including the $100,000 in RCMI funds, to be made immediately available for the purposes of setting up her research laboratory. Indeed, Suter's main complaint is that she would not have accepted UTSA's employment offer had she known that the funds were not immediately available and that they were subject to a conditional carry-forward request. Thus, if any breach occurred, it occurred when the funds were not immediately available at the moment Suter expected them to be—that is, on July 1, 2006. This is therefore the date on which she suffered an injury and is the default accrual date for her breach of fiduciary duty and breach of contract claims.

However, this does not end our inquiry. Suter further argues that the discovery rule tolls the statute of limitations for these two causes of action. The district court disagreed with Suter, stating simply that "Plaintiff has failed to sufficiently plead [the discovery rule] or to plead facts that would properly put the defendant on notice of such a defense."[3] The discovery rule must be affirmatively pleaded in federal court, whether specifically or through "sufficient facts to put the defense on notice of the theories on which the complaint is based." *Colonial Penn Ins. Co. v. Mkt. Planners Ins. Agency, Inc.,* 1 F.3d 374, 376 (5th Cir.1993) (internal quotation marks and citation omitted). We need not decide whether Suter sufficiently pleaded the discovery rule, because we hold that even if she did, she has failed to establish the defense by proof on summary judgment.

Under Texas law, "[t]he discovery rule, in application, proves to be a very limited exception to statutes of limitations....

Generally, application has been permitted in those cases where the nature of the injury incurred is inherently undiscoverable and the evidence of injury is objectively verifiable. The requirement of inherent undiscoverability recognizes that the discovery rule exception should be permitted only in circumstances where 'it is difficult ***511** for the injured party to learn of the negligent act or omission.' " *Computer Assocs.*, 918 S.W.2d at 455–56 (citation omitted).

**[5]** While Suter claims, and Defendants do not dispute, that she learned about insufficiency of funds in October or November 2006, there is evidence that she was earlier put on notice about funding sources and deadlines. Most notably, Suter's employment offer letter, dated May 30, 2006, explicates that her $200,000 for equipment "[m]ust be spent within the RCMI grant cycle [.]" While the letter does not clarify the end of the then-current grant cycle, Suter at least should have been aware that there was a deadline for the funds, and she could have easily asked Defendants or others about the deadline. There is no evidence that Defendants would have misrepresented such information or otherwise withheld it from her. Moreover, Suter was never foreclosed from herself obtaining information on the RCMI program, since such federal grant money was administered through the National Institutes of Health (NIH), with the University acting only as its steward. While Suter might not have *actually* known about the deadline to use these funds, the evidence fails to prove that information about the funds was "inherently undiscoverable." *Id.* Therefore, we hold that even if Suter sufficiently pleaded the discovery rule, the rule would not apply to toll Suter's breach of fiduciary duty and breach of contract claims, and so those claims accrued on the date of the alleged breach, July 1, 2006. Because that is more than four years before Suter filed suit, these two actions are time-barred under Texas's four-year statute of limitations.

**[6]** Finally, Suter alleges that Defendants violated the Equal Pay Act. She specifically seeks damages from Defendant Edwin Barea–Rodriguez (Chair of the Department of Biology), in his individual capacity under 42 U.S.C. § 1983, for violating the Equal Pay Act. We agree with the district court's reasoning on these claims in toto.[4] To wit, the district court properly concluded that Defendants proved by a preponderance of the evidence that there was adequate justification for variances in pay between Suter and other professors with similar qualifications. In particular, differences in pay between Suter and Dr. Fidel Santamaria and Dr. Todd Troyer—her two male colleagues with whom she constitutes the RCMI "faculty development core"—are based on merit evaluations, a system under which Suter has even benefitted.[5] These merit evaluations are in turn based on a professor's teaching, research, and service, and the system also considers the seniority of professors—all of which proves affirmative defenses to a prima facie case under the Equal Pay Act. *See Siler–Khodr v. Univ. of Tex. Health Science Ctr. San Antonio,* 261 F.3d 542, 546 (5th Cir.2001) ("[T]he four affirmative defenses set forth in the Equal Pay Act [are] (1) a seniority system; (2) a merit system; (3) a system which measures earnings by quantity or quality of ***512** production; or (4) any other factor than sex.") (internal quotation marks and citation omitted). Accordingly, we affirm the district court's summary judgment for Defendants on Suter's Equal Pay Act and § 1983 claims.

AFFIRMED.

**Parallel Citations**

2012 WL 5285108 (C.A.5 (Tex.)), 289 Ed. Law Rep. 600

Footnotes

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

1 *See KPMG Peat Marwick v. Harrison Cnty. Hous. Fin. Corp.*, 988 S.W.2d 746, 750 (Tex.1999) (negligence); *Hendricks v. Thornton,* 973 S.W.2d 348, 364 & n. 19 (Tex.App.-Beaumont 1998, pet. denied) (negligent misrepresentation); *Milestone Props., Inc. v. Federated Metals Corp.*, 867 S.W.2d 113, 118–19 (Tex.App.-Austin 1993, no writ) (negligent misrepresentation); *Snyder v. Eanes Indep. Sch. Dist.*, 860 S.W.2d 692, 699 (Tex.App.-Austin 1993, writ denied) (tortious interference with contract).

2 TEX. CIV. PRAC. & REM.CODE ANN. §§ 16.004(a)(5) (breach of fiduciary duty), 16.051 (residual limitations period).

3 The district court and Defendants have also pointed out that Suter cannot prevail on a theory of fraudulent concealment. On appeal, Suter's arguments concerning fraudulent concealment are at most tangential. In any case, the theory does not alter our analysis. We therefore consider the discovery rule aside from any claim of fraud or concealment.

4 Suter specifically alleges that Barea–Rodriguez violated the Equal Pay Act because he "authorized and/or approved higher pay levels for male faculty" than for female faculty. The district court awarded summary judgment to Barea–Rodriguez on the ground that

Suter's § 1983 claim against him was a remedial redundancy, when she already had a claim against the University under the Equal Pay Act. We agree with this reasoning, but it is unnecessary to decide the outcome, as Defendants have sufficiently proved that Suter cannot prevail under the Equal Pay Act, whether against Barea–Rodriguez or any other defendant.

5 For example, in September 2010, Suter received a one-time bonus that was about $400 greater than Santamaria's, based on a better annual evaluation rating for Suter. Additionally, since the 2009 academic year, Suter has earned more than Troyer.

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

ORDER DENYING PLAINTIFF'S
"APPLICATION FOR JOINDER OF PARTIES AND ACTIONS"
AND TO MOTION TO AMEND COMPLAINT

BEFORE THE COURT is Plaintiff's Application for Joinder and Amended Complaint. The Court has considered the Application, the proposed amendment to the Original Complaint, and the Response of Defendants Anita Kay Brunsting and Amy Ruth Brunsting to the Application and any Motion for Leave to Amend.

After consideration of the Application and the Amended Complaint, and other matters, the Court finds the Application for Joinder of Parties, and Claims and leave to file the proposed Amended Complaint, should be DENIED. The Amended Complaint, having been docketed by the Clerk of the Court as Inst. #48 before leave was granted for its filing, is STRICKEN from the docket.

DONE this _____ day of _____, 2013, at Houston, Texas.

_____
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff,* | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants.* | § | |

ORDER DENYING PLAINTIFF'S
"APPLICATION FOR JOINDER OF PARTIES AND ACTIONS"
AND TO MOTION TO AMEND COMPLAINT

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After consideration of the Application and the Amended Complaint, and other matters, the Court finds the Application for Joinder of Parties, and Claims and leave to file the proposed Amended Complaint, should be DENIED. The Amended Complaint, having been docketed by the Clerk of the Court as Inst. #48 before leave was granted for its filing, is STRICKEN from the docket.

SIGNED on this 22nd day of May, 2013.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move for an Order permitting the payment of two invoices from a tax preparer, consistent with the Court's April 19, 2013, Order requiring Court's approval of all disbursement of funds from the Trust.

1. At the temporary restraining order hearing, Defendants advised the Court that tax payments from the Trust were due. The Court thereafter entered an Order authorizing the payments from Trust funds of federal and state taxes.

2. The decedent's trust and survivor's trust had employed Kroese & Kroese P.C., a CPA firm, to prepare the necessary tax returns. That firm has submitted invoices for its professional services, in the amount of $600 for the decedent's trust return and $400 for the survivor's trust return. The invoices are attached.

3. Accordingly, Defendants move for entry of the attached Order permitting the payments of these invoices. The disbursement for tax preparation of the decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536. The

disbursement for tax preparation of the survivor's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3523.

4. As instructed by the Court, all beneficiaries will be served with a copy of this Motion (through their counsel of record in the state court suits). The Master appointed by the Court will also be served.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
*gvie@millsshirley.com*
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail. Additionally, non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

KROESE KROESE P.C.
CERTIFIED PUBLIC ACCOUNTANTS

540 North Main Ave
Sioux Center, IA 51250
Phone: (712) 722-3375
E-mail: cpa@kk-cpa.com
Web: www.kk-cpa.com

Elmer H Brunsting Decedents Trust DTD
203 Bloomingdale Circle
Victoria, TX 77904

**Invoice Date:** 04/28/2013
**Invoice Number:** 49333

For professional service rendered as follows:

Preparation of 1041 Estates and Trusts Tax Return
Trust Work

| | |
|---|---|
| | $600.00 |
| **Invoice Total** | $600.00 |

| | |
|---|---|
| Beginning Balance | $0.00 |
| Invoices | 600.00 |
| Payments | 0.00 |
| Adjustments | 0.00 |
| Finance Charges | 0.00 |
| Net Due | $600.00 |

| Current | 31 - 60 Days | 61 - 90 Days | 91 - 120 Days | Over 120 Days | Total |
|---|---|---|---|---|---|
| 600.00 | 0.00 | 0.00 | 0.00 | 0.00 | $600.00 |

*Please return bottom portion with payment.*

**Elmer H Brunsting Decedents Trust DTD**

**Client Number:** 9706

**Invoice Date:** 04/28/2013
**Invoice Number:** 49333
**Amount Due:** $600.00
**Amount Enclosed:** $_____

BALANCE IS DUE IN FULL ON OR BY THE 20TH OF THE MONTH. A 1.5% per month finance charge is assessed on past due accounts.

EXHIBIT 1

KROESE KROESE P.C.
CERTIFIED PUBLIC ACCOUNTANTS

540 North Main Ave
Sioux Center, IA 51250
Phone: (712) 722-3375
E-mail: cpa@kk-cpa.com
Web: www.kk-cpa.com

Nelva E Brunsting Surviviors Trust
203 Bloomingdale Cir
Victoria, TX 77904

**Invoice Date:** 04/28/2013
**Invoice Number:** 49368

For professional service rendered as follows:

| | |
|---|---|
| Preparation of 1041 Estates and Trusts Tax Return | 400.00 |
| | $400.00 |
| **Invoice Total** | $400.00 |

| | |
|---|---|
| Beginning Balance | $0.00 |
| Invoices | 400.00 |
| Payments | 0.00 |
| Adjustments | 0.00 |
| Finance Charges | 0.00 |
| Net Due | $400.00 |

| Current | 31 - 60 Days | 61 - 90 Days | 91 - 120 Days | Over 120 Days | Total |
|---|---|---|---|---|---|
| 400.00 | 0.00 | 0.00 | 0.00 | 0.00 | $400.00 |

*Please return bottom portion with payment.*

**Nelva E Brunsting Surviviors Trust**

**Client Number:** 9963

**Invoice Date:** 04/28/2013
**Invoice Number:** 49368
**Amount Due:** $400.00
**Amount Enclosed:** $_____

BALANCE IS DUE IN FULL ON OR BY THE 20TH OF THE MONTH. A 1.5% per month finance charge is assessed on past due accounts.

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENTS**

BEFORE THE COURT is Defendants' Motion for Approval of the payment of two invoices from a tax preparer. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

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

Kroese & Kroese P.C.'s invoice 49333 in the amount of $600.00;

Kroese & Kroese P.C.'s invoice 49368 in the amount of $400.00.

Invoice 49333 will be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust). Invoice 49368 will be paid out of Bank of America Checking acct: xxxxxxxx3523 (survivor's trust).

Signed this _____ day of June, 2013.

KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants.* | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENTS**

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Kroese & Kroese P.C.'s invoice 49333 in the amount of $600.00;

Kroese & Kroese P.C.'s invoice 49368 in the amount of $400.00.

Invoice 49333 will be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust). Invoice 49368 will be paid out of Bank of America Checking acct: xxxxxxxx3523 (survivor's trust).

Signed this 10th day of June, 2013.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE HELD ON July 15, 2013 at 8:15 AM**

**Appearance for Other Party**

William G. West (Accountant)

The following rulings were made:

Pursuant to phone conference, the Court conferred with Mr. West concerning his report due at the end of the month. Upon receipt, a hearing date will be set to address any concerns of the parties.

It is so ORDERED.

SIGNED on this 15th day of July, 2013.

Kenneth M. Hoyt
United States District Judge



20-20566.773

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER**

Before the Court is the report of the Court-appointed accountant for the Brunsting Family Living Trust for the period December 21, 2010 through May 31, 2013. In light of the questions that may arise and objections or corrections that must be noted, the Court sets this matter for a hearing at 515 Rusk, Courtroom 11-A, on September 3, 2013, at 1:30 p.m. Objections to the report and the accountant's invoice shall be filed on or before August 27, 2013.

It is so Ordered.

SIGNED on this 5th day of August, 2013.

Kenneth M. Hoyt
United States District Judge



20-20566.774

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| **IN RE:** | § | |
| | § | |
| **CANDACE LOUISE CURTIS** | § | **CIVIL ACTION NO. 4:12-CV-592** |
| **Plaintiff** | § | |
| | § | |
| **VS.** | § | |
| | § | |
| **ANITA KAY BRUNSTING, et al,** | § | |
| **Defendants** | § | |

# REPORT OF MASTER

# ACCOUNTING OF INCOME/RECEIPTS AND EXPENSES/DISTRIBUTIONS OF THE BRUNSTING FAMILY LIVING TRUST FOR THE PERIOD DECEMBER 21, 2010 THROUGH May 31, 2013

**Report of William G. West, CPA**
**William G. West, P.C.**

**Dated July 31, 2013**

# REPORT OF ACCOUNTING OF INCOME/RECEIPTS AND EXPENSES/DISTRIBUTIONS OF THE BRUNSTING FAMILY LIVING TRUST

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## Exhibits


1. Statement of Income/Receipts and Expenses/Distributions for the period December 21, 2010 through May 31, 2013
2. Detail of Accounts for the period December 21, 2010 through May 31, 2013
3. Stock Distribution Analysis

## I. Introduction

On February 27, 2012, Candace Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress, alleging that the Brunsting Defendants acting as trustees for their parents' trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments and refused to account for trust assets, or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. The Plaintiff filed a notice of appeal. On January 30, 2013, the Fifth Circuit Court of Appeals reversed the dismissal. On April 19, 2013, the District Court issued a memorandum and order for preliminary injunction. In the order, the Court ordered the appointment of an independent firm or accountant to gather the financial records of the trust and provide an accounting of the income and expenses of the trust since December 21, 2010. The defendants were ordered to cooperate with the accountant in the process. On May 9, 2013, the Court ordered the appointment of William G. West as master to perform an accounting. Though the injunction order was signed in April, the master received substantial records through May 31, 2013, and has used that date as the ending date for the report. Therefore, the report covers the time period of December 21, 2010, through May 31, 2013, except for any periods for which information was not received as noted later in this report.

## II. Time Line of Records Received

On or about April 18, 2013, the accounting firm of William G. West, P.C., C.P.A. ("West") was contacted by the court concerning the preparation of the report contained herein since the parties to the suit had not mutually agreed upon the selection of an accountant. After discussing the case with the Judge and a conflict check, West agreed to accept the appointment. West then instructed his attorney to draft and prepare an order appointing him as master to perform an accounting of the income and expenses of the trust since December 21, 2010. This order was signed on May 9, 2013. Shortly thereafter, West reviewed the court docket and read certain pleadings filed in the case. On May 22, 2013, West contacted the attorney for the defendants, Mr. George Vie ("Vie"), to schedule a meeting to discuss the records and the collection of them. On May 29, 2013, West went to Vie's office for the meeting. At the meeting West was given a box of paper records containing bank statements, brokerage statements, statements for dividend reinvestment accounts and tax returns. He was also given a CD which were said to contain pdf copies of most of these records. West was also given a listing of records being turned over and those statements missing or not yet obtained. West was told the missing records were in the process of being obtained. West also requested copies of any electronic accounting or bookkeeping files the defendants may have for the trust. Subsequently, on or about June 4, 2013, West was emailed some Quicken accounting program files which he was able to successfully download and open in order to review. On or about June 6, 2013, West received additional records from Vie. During this time West contacted the plaintiff to discuss the case with her and request copies of any records of the trust she may have in her possession. Towards the end of June, West

contacted Vie for an update on the status of the receipt of missing records which had yet to be produced. Additional records were promised in the near future. On or about July 1st West received emails from the plaintiff containing pdf copies of various records. West found, that for the most part, he had these records already from Vie (the plaintiff had told West beforehand that most of the records she had, in fact, came from the defendants' attorney, except some her brother had given her). On July 5th Vie sent additional records to West (and pdf copies of same on CD). After review of these records received on July 5th, West sent an email to Vie inquiring as to when additional records would be received. West specifically addressed his concern that there were many bank disbursements for which he had no copies of cancelled checks or paid bill invoices to document said disbursements. On July 15, 2013, West sent another email addressing this same issue and received a letter from Vie in explanation of certain distributions. On July 24, 2013, Vie forwarded several more missing bank statements. Up until the submittal date of this report, West communicated with Vie for clarification on certain deposits or disbursements.

## III. Work Performed by Accountants

Upon receipt of the first batch of records from Vie, West had his staff reconcile the paper records received with those in pdf on the CD and with the scheduled listing of records turned over and those not yet turned over. When the Quicken files were received and opened, they were download, reviewed and converted into excel spreadsheets for use by West's staff. It is West's opinion that the Quicken files kept by the defendant(s) were more for use as an electronic checkbook to keep bank balances as opposed to a more fully integrated bookkeeping system. To some extent the Quicken files did serve as

an outline for the subsequent work done by West. West set up a client account in QuickBooks to serve as an accounting database to compile the income and expense report for the trust. Once the chart of accounts was set up, all of the cash receipt and cash disbursement activity reflected on the Quicken files and bank statements were entered into QuickBooks. Some of the disbursements from the bank accounts did not have cancelled checks associated with the bank statements. A great many disbursements did not have support to document them reflecting the recipient, what was being paid for and the like. West had to rely on descriptions he found in the Quicken records, bank statements or elsewhere in the documents given to him. West has also relied on information/explanations supplied to him in a letter by the defendants' attorney dated July 15, 2013. In summary, West was not given unrelated third party documentation for many of the disbursements run through the bank accounts. The entry of these receipts and disbursements was extremely time consuming; Approximately a thousand entries were made into the QuickBooks database in order to record them. These entries were made only after reviewing related documents provided and ascertaining how best to record the entries. Additionally, paid bills or invoices, if present for reviewing, were compared to the bank disbursements.

West was also given brokerage account statements for three Edward Jones accounts and twelve dividend reinvestment accounts for either Chevron or ExxonMobil. West's staff had to do a reconciliation of monthly or quarterly reports for each account and/or transfers between them. This activity was entered via journal entries. The entry of these stock type accounts was also extremely time consuming, approximately five hundred entries were made into the QuickBooks database in order to record them after a careful

review and analysis of the respective account statements covering a two and a half year time frame. Numerous work papers were prepared to analyze: 1. transfers between accounts; 2. stock dividends reinvested; and, 3. stocks which were either sold or distributed.

West has used his best judgment in classifying the receipts and disbursements into account categories on the income and expense report. West requested that the defendants provide him with all the accounting information of the trust(s) and he is relying upon the belief they have complied and there are no other available records to be turned over. West has relied on the information given to him and interpreted as best he could. West reserves the right to amend the report as needed as new and additional information becomes available.

**IV. Summary of Accounts Reviewed**

For the purposes of this Report, the following bank and stock accounts activity for the applicable periods have been recorded for the preparation of the income and expense report contained herein:

Bank of America account # [redacted]-1143

Bank of America account # [redacted]-3523

Bank of America account # [redacted]-8577

Bank of America account # [redacted]-9546

Bank of America account # [redacted]-6643

Bank of America account # [redacted]-3536

Edward Jones account # [redacted]5-1-6

Edward Jones account # [redacted]6-1-9

Edward Jones account # [redacted]9-1-8

Chevron dividend reinvestment account (Bank of New York)

Chevron dividend reinvestment account # C[redacted]9415

Chevron dividend reinvestment account # C[redacted]9407

Chevron dividend reinvestment account # C[redacted]9423

John Deere dividend reinvestment account

ExxonMobil dividend reinvestment account # C[redacted]0102

ExxonMobil dividend reinvestment account # C[redacted]6261

ExxonMobil dividend reinvestment account # C[redacted]6287

ExxonMobil dividend reinvestment account # C[redacted]7769

ExxonMobil dividend reinvestment account # C[redacted]7777

ExxonMobil dividend reinvestment account # C[redacted]3319

ExxonMobil dividend reinvestment account # C[redacted]3301

## V. Report Exceptions and Missing Documents

In our review, we noted that we did not receive copies of approximately thirteen checks. We relied upon other information provided by the defendants to reflect the payee and categorize the type of expense incurred. We were supplied with a limited number of paid bills and invoices supporting many of the disbursements and payments made. Again we relied on the various types of information provided to us to categorize the type of expense paid. We did not receive monthly statements for payments made on a Bank of America credit card. These payments are reflected in summary on the report (Exhibit 1) and also in

the detail of accounts (Exhibit 2). The categorization of these payments can be amended should the statements and supporting documents be received.

The following account statements were not received and the activity for the periods has not been recorded in the report:

Bank of America checking accounting #[redacted]-9546, 12/14/2011 to 5/31/13.

Edward Jones account #[redacted]5-1-6, 4/26/2013 to 5/31/2013.

Chevron dividend reinvestment account #[redacted]9423 12/31/2011 to 5/31/2013

ExxonMobil dividend reinvestment account #[redacted]6287 9/30/2012 to 5/31/2013

John Deere dividend reinvestment account (summary provided, but no monthly reports)

Met Life dividend reinvestment account (summary provided, but no monthly reports)

**VI. Stock Distributed/Dividend Reinvestment Account Information**

During the period, a number of Dividend Reinvestment Accounts ("DRP") were maintained. The information we received included accounts with Chevron Corporation ("CVX") shares, Exxon/Mobil Corporation ("XOM") shares, Deere and Company ("DE") shares and MetLife Inc ("MET") shares. When shares were distributed to the beneficiaries or parties in interest, the transaction was accounted for on the QuickBooks database at the fair market value at the time of the distribution or transfer. The fair market value was determined from historical records of stock prices at the close of the date of the transaction. These amounts may or may not be the actual amounts realized by the individuals receiving the stock. Please refer to Exhibit 3 in relation to this section.

At the beginning of the review period, there were 1,292.2088 shares of CVX and 4,010.20048 shares of XOM according to the records we received. According to account information provided to us 95 shares of MET were attributable to the estate and 9.5807 shares of DE were never transferred to the Nelva Brunsting Survivor's Trust.

During the review period, 675 shares of CVX were transferred as follows:

Anita Brunsting received 135 shares
Ann Brunsting UGMA received 135 shares
Jack Brunsting UGMA received 135 shares
Katie Riley UGMA received 135 shares
Luke Riley received 135 shares.

During the review period, 2,675 shares of XOM were transferred as follows:

Amy Brunsting received 1,120 shares
Carole Brunsting received 1,325 shares
Anita Brunsting received 160 shares
Candy Curtis received 160 shares.

Dividends were reinvested in stocks purchased at the fair market values at the time of the transactions as follows:

CVX shares purchased were 84.83095
XOM shares purchased were 60.51429
DE shares purchased were 0.04946

Partial shares were sold as follows:

XOM shares sold were 0.79847
DE shares sold were 0.9117

612 CVX shares were maintained in an account not under control of Anita Brunsting at the beginning of the review period, but were eventually transferred into the main CVX DRP account. A final accounting of 37.131 shares of CVX stock could not be determined since reports after 12/31/2011 were unavailable for one of the DRP accounts.

4.42786 shares of XOM were unaccounted for because reports after 9/30/2012 were unavailable from one of the DRP accounts.

95 shares of MET were attributed to the trust information, however the only reports reflecting information on these shares were dated late in the review period and did not show whether the shares were available to the estate at the beginning of the period.

Only 0.04946 shares of DE were attributed to the estate at the end of the period. No reports reflected the balance as of the beginning of the period and 8.669 shares were not accounted for during the period.

At the end of the review period, 1,276.88344 shares of CVX, 1,300.25643 shares of XOM, 0.04946 shares of DE and 95 shares of MET were available to the trust.

**VII. Comments on Certain Accounts**

In the Income/Receipts section of the report there are accounts titled *Long Term Capital Gains– Funds and Short Term Capital Gains– Funds.* These amounts do not represent sales made by the Trust, per se, but rather sales of securities made by stock or bond funds held in the Trust accounts and then passed on to the Trust.

In the Expense/Distributions section of the report there is an account titled *Cash/Check to Family Members*. This account represents cash, checks, electronic fund transfers paid or sent to family members or payments made for the benefit of family members, as best as West could ascertain. In Exhibit 2, the detail of accounts, there is a

listing of the payments found that fit this account category. In the information provided to West, *many* of the payments are noted as *reimbursement* to family members for expenses (trustee fees, legal fees, repairs, work performed, etc.) incurred on behalf of the trust and are noted as such in the memo section of the detail of accounts. Also the July 15, 2013, letter from Vie in explanation of certain distributions is referenced here in regard to certain distributions. It is important to note this section lists distributions out of bank accounts to or for the benefit of family members. It does not list distributions of stock which are listed separately in the last section of the Statement of Income/Receipts and Expenses/Distributions and the related Section VI above and in Exhibit 3.

An account titled *Payments to Credit Cards* is included in the Expense/Distributions section of the report. This account reflects payments made on credit cards for which we could not find supporting documentation *or* ascertain how the amounts should be allocated to other Expense/Disbursement accounts. Section V above addresses Bank of America credit card payments and lack of statements and supporting documents. There were also payments to a Bluebonnet credit card account (also referenced as "Cardmember Services" in information given to us), for which we were given monthly statements and some supporting documentation. Due to the general lack of supporting documents for these payments they have been placed into this account.

**VIII. Summation**

In this case I have been asked to prepare an accounting to help the Court consider the issues in dispute. I have undertaken an analysis of the books and records provided to me. It

is my belief that all my requests for information from the various parties were reasonable and that I made it clear I wanted all available records. This report has been based on all records received to date. The report can be amended should additional records be received if so directed by the Court. This report has been made in good faith.

Respectfully submitted on this 31st day of July, 2013.

**William G. West**



12345 Jones Rd., Suite 120
Houston, TX 77070

# EXHIBIT 1

# Brunsting Family Living Trust

## Statement of Income/Receipts & Expenses/Disbursements

### December 21, 2010 through May 31, 2013

| | |
|---|---|
| **Income/Receipts** | |
| **Farm/Rental Income** | $127,790.41 |
| **Investment Income** | |
| **Dividend Income** | 28,321.46 |
| **Interest Income** | 3,085.05 |
| **Long Term Capital Gains - Funds** | 1,047.31 |
| **Short Term Capital Gains- Funds** | 489.10 |
| **Stock Sales less Broker Fees** | 183,662.79 |
| **Total Investment Income** | 216,605.71 |
| **Miscellaneous Income** | 6,460.73 |
| **Pension Income** | 8,303.58 |
| **Proceeds from Sale of Home** | 433,392.05 |
| **Social Security Income** | 17,800.00 |
| **Tax Refunds** | 19,816.87 |
| **Total Income/Receipts** | 830,169.35 |
| **Expenses/Disbursements** | |
| **Automobile Expense** | 2,965.76 |
| **Bank & Brokerage Charges** | 8,540.62 |
| **Checks/Cash to Family Members** | 108,924.91 |
| **Dues and Subscriptions** | 278.47 |
| **Food/Dining/Groceries** | 5,958.67 |
| **Funeral** | 3,556.29 |
| **Household** | 1,237.20 |
| **Insurance Expense** | 4,737.88 |
| **Lawn Care** | 1,262.00 |
| **Legal Fees** | 36,312.44 |
| **Medical Expenses** | |
| **In Home Care** | 119,232.61 |
| **Medical Supplies** | 65.47 |
| **Medical Expenses - Other** | 2,568.98 |
| **Total Medical Expenses** | 121,867.06 |
| **Miscellaneous Expenses** | 6,753.72 |
| **Office Supplies** | 63.70 |
| **Payments to Credit Cards** | |
| **Bank of America Credit Cards** | 14,042.99 |
| **Bluebonnet Credit Union Cred Cd** | 11,986.96 |
| **Total Payments to Credit Cards** | 26,029.95 |

# Brunsting Family Living Trust
## Statement of Income/Receipts & Expenses/Disbursements
### December 21, 2010 through May 31, 2013

| | |
|---|---|
| **Personal Care** | 798.14 |
| **Pet Care** | |
| **Pet Food and Supplies** | 69.68 |
| **Veterinary Expenses** | 1,976.24 |
| **Total Pet Care** | 2,045.92 |
| **Postage** | 78.15 |
| **Professional Fees** | 7,563.86 |
| **Repairs and Maintenance** | 783.31 |
| **Supplies** | 29.83 |
| **Taxes** | |
| **Taxes - Federal** | 53,416.00 |
| **Taxes - Property** | 9,811.99 |
| **Taxes - State** | 4,793.00 |
| **Total Taxes** | 68,020.99 |
| **Telephone Expense** | 4,519.17 |
| **Utilities** | |
| **Cable TV** | 776.41 |
| **Electricity** | 2,259.90 |
| **Gas** | 942.66 |
| **Water** | 2,537.22 |
| **Total Utilities** | 6,516.19 |
| **Total Expenses/Disbursements** | 418,844.23 |
| **Net of Income/Receipts & Expenses/Disbursements** | 411,325.12 |
| **Less Stock Distributed to Family Members** | |
| **Value of Stock Transferred Out** | 298,976.80 |
| **Net of Income/Receipts & Expenses/Disbursements Less Value of Stock Distributed** | **$112,348.32** |

# EXHIBIT 2

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| **Ordinary Income/Expense** | | | | | | | |
| **Income** | | | | | | | |
| **Farm/Rental Income** | | | | | | | |
| General Journal | 3/1/2011 | EJ20120458 | | Invest inc - Farm | Nelva | 15,540.40 | 15,540.40 |
| General Journal | 9/29/2011 | EJ20120476 | | Farm inc - invest inc | Nelva | 15,510.00 | 31,050.40 |
| General Journal | 10/5/2012 | EJ20120442 | | Farm Rent | Elmer | 26,437.50 | 57,487.90 |
| General Journal | 1/11/2013 | EJ20120437 | | Farm Rent | Elmer | 13,902.51 | 71,390.41 |
| General Journal | 3/2/2013 | EJ20120450 | | Farm Rent | Elmer | 29,962.50 | 101,352.91 |
| General Journal | 3/5/2013 | EJ20120438 | | Farm Rent | Elmer | 26,437.50 | 127,790.41 |
| Total Farm/Rental Income | | | | | | 127,790.41 | 127,790.41 |
| **Investment Income** | | | | | | | |
| **Dividend Income** | | | | | | | |
| General Journal | 12/21/2010 | EJ20101223 | | Dividends on Capital Income Builder Fund A | Survivor | 60.19 | 60.19 |
| General Journal | 12/22/2010 | EJ20101212 | | Dividends on Dodge & Cox Intl Stock Fund | Elmer | 368.36 | 428.55 |
| General Journal | 12/22/2010 | EJ20101212 | | Dividends on Dodge & Cox Income Fund | Elmer | 325.77 | 754.32 |
| General Journal | 12/27/2010 | EJ20101213 | | Dividend on Investment Co of America Cl F1 | Elmer | 112.43 | 866.75 |
| General Journal | 12/27/2010 | EJ20101213 | | Dividend on Pioneer Fund Cl Y | Elmer | 62.73 | 929.48 |
| General Journal | 12/28/2010 | EJ20101214 | | Dividend on New World Fund Cl F1 | Elmer | 77.32 | 1,006.80 |
| General Journal | 12/30/2010 | EJ20101215 | | Dividend on Oppnhmr Cmd Strat Ttl Rtn Cl Y | Elmer | 200.58 | 1,207.38 |
| General Journal | 12/31/2010 | EJ20101216 | | Dividend from Oppenheimer Intl Bond Fund Y | Elmer | 33.39 | 1,240.77 |
| General Journal | 12/31/2010 | EJ20101216 | | Dividend on Money Market | Elmer | 0.01 | 1,240.78 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in Fed Money Market Instl Cl | Elmer | 0.05 | 1,240.83 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in DWS Small Cap Value Fund Instl | Elmer | 4.39 | 1,245.22 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in ING Global Real Estate Fund I | Elmer | 146.39 | 1,391.61 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in JPMorgan Core Bond Fund | Elmer | 78.79 | 1,470.40 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in JP Morgan High Yield Fd | Elmer | 35.40 | 1,505.80 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in T Rowe Price New Inc Fd | Elmer | 73.83 | 1,579.63 |
| General Journal | 1/28/2011 | EJ20110128 | | Dividends on Dow Chemical Co | Survivor | 24.60 | 1,604.23 |
| General Journal | 1/31/2011 | EJ20110130 | | Dividends on Stryker Corp | Survivor | 33.51 | 1,637.74 |
| General Journal | 2/1/2011 | EJ 20110201 | | Dividends on Deere & Co Stk | Survivor | 573.65 | 2,211.39 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from JPMorgan Core Bond Fund | Elmer | 75.01 | 2,286.40 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from JPMorgan High Yield Fund | Elmer | 31.82 | 2,318.22 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from Oppenheimer Intl Bond Fund | Elmer | 26.65 | 2,344.87 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from T Rowe Price New Income Fund | Elmer | 63.83 | 2,408.70 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on JPMorgan Core Bond Fund | Elmer | 73.22 | 2,481.92 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on JPMorgan High YieldFd | Elmer | 28.77 | 2,510.69 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 25.14 | 2,535.83 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on T Rowe Price New Income Fund | Elmer | 66.69 | 2,602.52 |
| General Journal | 3/7/2011 | EJ20110304 | | Dividend on Investment Co of America Cl F1 | Elmer | 81.32 | 2,683.84 |
| General Journal | 3/10/2011 | EJ20110321 | | Dividends on Chevron Corp | Survivor | 66.96 | 2,750.80 |
| General Journal | 3/11/2011 | DR12110301 | | Dividends on Chevron Stock | Family | 930.39 | 3,681.19 |
| General Journal | 3/21/2011 | EJ20110322 | | Dividends on Capital Income Builder Fund A | Survivor | 40.69 | 3,721.88 |
| General Journal | 3/25/2011 | EJ20110307 | | Dividends on Columbia Mid Cap Value Fd Cl Z | Elmer | 5.86 | 3,727.74 |
| General Journal | 3/25/2011 | EJ20110307 | | Dividends on DWS Small Cap Value Fund Instl | Elmer | 29.55 | 3,757.29 |
| General Journal | 3/25/2011 | EJ20110307 | | Dividends on Pioneer Fund Cl Y | Elmer | 55.34 | 3,812.63 |
| General Journal | 3/28/2011 | EJ20110309 | | Dividends From Thornburg Invt Value Fd | Elmer | 4.67 | 3,817.30 |
| General Journal | 3/29/2011 | EJ20110310 | | Dividends from Dodge & Cox Income Fund | Elmer | 273.60 | 4,090.90 |
| General Journal | 3/30/2011 | EJ20110311 | | Dividends on T Rowe Price Equity Fd | Elmer | 68.64 | 4,159.54 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on JPMorgan Core Bond Fund | Elmer | 75.49 | 4,235.03 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on JPMorgan High Yield Fd | Elmer | 33.22 | 4,268.25 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on Oppenheimer Intl Bond Fund | Elmer | 26.87 | 4,295.12 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on T Rowe Price New Income Fund | Elmer | 66.69 | 4,361.81 |
| General Journal | 4/4/2011 | EJ20110402 | | Dividends on ING Global Real Estate Fund I | Elmer | 54.86 | 4,416.67 |
| General Journal | 4/29/2011 | EJ20110425 | | Dividends on Stryker Corp | Survivor | 33.62 | 4,450.29 |
| General Journal | 4/29/2011 | EJ20110425 | | Dividends on Dow Chemical Corp | Survivor | 24.60 | 4,474.89 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on Deere & Co | Survivor | 435.05 | 4,909.94 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on JPMorgan Core Bond Fund | Elmer | 73.68 | 4,983.62 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 34.05 | 5,017.67 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 27.64 | 5,045.31 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on T Rowe Price New Income Fund | Elmer | 72.37 | 5,117.68 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on JPMorgan Core Bond Fund | Elmer | 75.94 | 5,193.62 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on JPMorgan High Yield Fund | Elmer | 33.56 | 5,227.18 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on Oppenheimer Intl Bond Fund | Elmer | 26.54 | 5,253.72 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on T Rowe Price New Income Fund | Elmer | 66.95 | 5,320.67 |
| General Journal | 6/10/2011 | EJ20110622 | | Dividend Reinvestment on XOM Stk 7777 | Survivor | 461.53 | 5,782.20 |
| General Journal | 6/10/2011 | EJ20110622 | | Dividend Reinvestment on CVX Stk | Nelva | 547.75 | 6,329.95 |
| General Journal | 6/10/2011 | EJ20110622 | | Dividend Reinvestment on CVX Stk 9415 | Elmer | 461.45 | 6,791.40 |
| General Journal | 6/13/2011 | EJ20110602 | | Dividends on Investment Co of America Cl F1 | Elmer | 81.34 | 6,872.74 |
| General Journal | 6/23/2011 | EJ20110603 | | Dividends on Columbia Mid Cap Value Fd Cl Z | Elmer | 13.58 | 6,886.32 |
| General Journal | 6/24/2011 | EJ20110605 | | Dividends on Pioneer Fund | Elmer | 70.20 | 6,956.52 |
| General Journal | 6/28/2011 | EJ20110608 | | Dividends on Dodge & Cox Income Fund | Elmer | 264.88 | 7,221.40 |
| General Journal | 6/29/2011 | EJ20110609 | | Dividends on T Rowe Price Equity Income Fd | Elmer | 83.36 | 7,304.76 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 71.68 | 7,376.44 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 30.38 | 7,406.82 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on Oppenheimer Intl Bond Fund | Elmer | 27.12 | 7,433.94 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on T Rowe Price New Income Fund | Elmer | 70.47 | 7,504.41 |
| General Journal | 7/5/2011 | EJ20110702 | | Dividends on ING Global Real Estate Fund I | Elmer | 52.94 | 7,557.35 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on Deere & Co | Survivor | 254.20 | 7,811.55 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 69.82 | 7,881.37 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 31.82 | 7,913.19 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 27.92 | 7,941.11 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on T Rowe Price New Income Fund | Elmer | 69.49 | 8,010.60 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 73.97 | 8,084.57 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 32.63 | 8,117.20 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 25.71 | 8,142.91 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on T Rowe Price New Income Fund | Elmer | 70.82 | 8,213.73 |
| General Journal | 9/9/2011 | EJ20110136 | | Exxon Invest Inc | Survivor | 274.01 | 8,487.74 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 9/9/2011 | EJ20110921 | | Dividend Reinvestment of XOM Stk 7777 | Survivor | 313.80 | 8,801.54 |
| General Journal | 9/9/2011 | EJ20110921 | | Dividend Reinvestment of Chevron Stk | Nelva | 28.50 | 8,830.04 |
| General Journal | 9/9/2011 | EJ20110921 | | Dividend Reinvestment of Chevron Stk 9415 | Elmer | 465.04 | 9,295.08 |
| General Journal | 9/19/2011 | EJ20110904 | | Dividends on Investment Co of America Cl F1 | Elmer | 83.95 | 9,379.03 |
| General Journal | 9/23/2011 | EJ20110908 | | Dividend on Pioneer Fund Cl Y | Elmer | 78.19 | 9,457.22 |
| General Journal | 9/27/2011 | EJ20110907 | | Dividends on Columbia Mid Cap Value Fd Cl Z | Elmer | 14.76 | 9,471.98 |
| General Journal | 9/28/2011 | EJ20110909 | | Dividends on Dodge & Cox Income Fund | Elmer | 186.06 | 9,658.04 |
| General Journal | 9/29/2011 | EJ20110910 | | Dividends on T Rowe Price Equity Income Fd | Elmer | 88.37 | 9,746.41 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 42.25 | 9,788.66 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 28.14 | 9,816.80 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 26.16 | 9,842.96 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on Pimco Tot Ret Fd IV Inst Cl | Elmer | 2.25 | 9,845.21 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on T Rowe Price New Income Fund | Elmer | 65.22 | 9,910.43 |
| General Journal | 10/4/2011 | EJ20111002 | | Dividends on ING Global Real Estate Fund I | Elmer | 49.75 | 9,960.18 |
| General Journal | 10/4/2011 | EJ20111002 | | Dividends on Loomis Sayles Invt Grade Bd Y | Elmer | 27.14 | 9,987.32 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on Deere & Co | Survivor | 254.20 | 10,241.52 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 42.38 | 10,283.90 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 27.09 | 10,310.99 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 22.68 | 10,333.67 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on Pimco Tot Ret Fd IV Inst Cl | Elmer | 10.42 | 10,344.09 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on T Rowe Price New Income Fund | Elmer | 50.00 | 10,394.09 |
| General Journal | 11/2/2011 | EJ20111102 | | Dividends on Loomis Sayles Invt Grade Bd Y | Elmer | 28.43 | 10,422.52 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on JP Morgan Core Bond | Elmer | 40.15 | 10,462.67 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on JP Morgan High Yield | Elmer | 29.67 | 10,492.34 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on Oppenheimer Intl Bd | Elmer | 23.27 | 10,515.61 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on Pimco Total Return IV | Elmer | 13.84 | 10,529.45 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on T Rowe Price New Income | Elmer | 50.92 | 10,580.37 |
| General Journal | 12/2/2011 | EJ20111213 | | Dividend on Loomis Sayles Inv Grade Bd | Elmer | 28.43 | 10,608.80 |
| General Journal | 12/9/2011 | EJ20110152 | | Exxon Div Income | Survivor | 274.01 | 10,882.81 |
| General Journal | 12/9/2011 | EJ20111215 | | Dividend on MFS Research International | Elmer | 335.71 | 11,218.52 |
| General Journal | 12/9/2011 | EJ20111221 | | Dividend Reinvestment of XOM Stk 7777 | Survivor | 315.83 | 11,534.35 |
| General Journal | 12/9/2011 | EJ20111221 | | Dividend Reinvestment of Chevron Stk | Nelva | 29.84 | 11,564.19 |
| General Journal | 12/9/2011 | EJ20111221 | | Dividend Reinvestment of Chevron Stk 9415 | Elmer | 487.02 | 12,051.21 |
| General Journal | 12/13/2011 | EJ20111216 | | Dividend on Columbia Mid Cap Value | Elmer | 26.01 | 12,077.22 |
| General Journal | 12/14/2011 | EJ20111217 | | Dividend on T Rowe Prce Equity Income | Elmer | 95.96 | 12,173.18 |
| General Journal | 12/20/2011 | EJ20111220 | | Dividend on DWS Small Cap Value | Elmer | 66.58 | 12,239.76 |
| General Journal | 12/21/2011 | EJ20111221 | | Dividend on Dodge & Cox Intl Stock | Elmer | 580.68 | 12,820.44 |
| General Journal | 12/21/2011 | EJ20111221 | | Dividend on Dodge & Cox Income | Elmer | 196.04 | 13,016.48 |
| General Journal | 12/22/2011 | EJ20111222 | | Dividend on Oppengeimer Common Strat Total Ret | Elmer | 285.22 | 13,301.70 |
| General Journal | 12/23/2011 | EJ20111223 | | Dividend on Investment Co of America | Elmer | 116.38 | 13,418.08 |
| General Journal | 12/23/2011 | EJ20111223 | | Dividend on Pioneer Fund | Elmer | 95.42 | 13,513.50 |
| General Journal | 12/27/2011 | EJ20111224 | | Dividend on Thornburg Value | Elmer | 7.84 | 13,521.34 |
| General Journal | 12/28/2011 | EJ20111225 | | Dividend on Loomis Sayles Inv Grade Bd | Elmer | 67.05 | 13,588.39 |
| General Journal | 12/28/2011 | EJ20111225 | | Dividend on New World | Elmer | 73.75 | 13,662.14 |
| General Journal | 12/30/2011 | EJ20111226 | | Dividend on Oppenheimer Intl Bd | Elmer | 118.46 | 13,780.60 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Morgan Fed Money Mkt | Elmer | 0.03 | 13,780.63 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on ING Global Real Estate | Elmer | 39.90 | 13,820.53 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Morgan Core Bond | Elmer | 41.21 | 13,861.74 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Morgan High Yield | Elmer | 30.00 | 13,891.74 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Pimco Total Return IV | Elmer | 13.97 | 13,905.71 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on T Rowe Price New Income | Elmer | 57.12 | 13,962.83 |
| General Journal | 1/10/2012 | EJ20120104 | | Dividends on Pimco Total Return IV | Elmer | 2.85 | 13,965.68 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on JPMorgan Core Bond Select Cl | Elmer | 37.79 | 14,003.47 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on JPMorgan High Yield Select Cl | Elmer | 25.27 | 14,028.74 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on Oppenheimer Intle Bd | Elmer | 25.02 | 14,053.76 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on Pimco Total Return IV INst Cl | Elmer | 15.86 | 14,069.62 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on T Rowe Price New Income | Elmer | 47.63 | 14,117.25 |
| General Journal | 2/2/2012 | EJ20120202 | | Dividends on Loomis Sayles Inv Grade Bd Y | Elmer | 27.89 | 14,145.14 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on JP Morgan Core Bond Select Cl | Elmer | 36.71 | 14,181.85 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on JP Morgan High Yield Select Cl | Elmer | 27.26 | 14,209.11 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on Oppenheimer Intl Bd | Elmer | 23.99 | 14,233.10 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on Pimco Total Return IV Inst Cl | Elmer | 17.35 | 14,250.45 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on T Rowe Price New Income | Elmer | 49.53 | 14,299.98 |
| General Journal | 3/2/2012 | EJ20120302 | | Dividends on Loomis Sayles Inv Grade Bd Y | Elmer | 27.36 | 14,327.34 |
| General Journal | 3/7/2012 | EJ20110154 | | Exxon div income | Survivor | 274.01 | 14,601.35 |
| General Journal | 3/9/2012 | EJ20120321 | | Dividend Reinvestment of XOM Stk 7777 | Survivor | 317.68 | 14,919.03 |
| General Journal | 3/9/2012 | EJ20120321 | | Dividend Reinvestment of CVX Stk 9415 | Survivor | 490.82 | 15,409.85 |
| General Journal | 3/15/2012 | EJ20120304 | | Dividends on Investment Co of America | Elmer | 78.17 | 15,488.02 |
| General Journal | 3/23/2012 | EJ20120305 | | Dividends on Pioneer Fund | Elmer | 77.25 | 15,565.27 |
| General Journal | 3/26/2012 | EJ20120306 | | Dividends on Columbia Mid Cap Value | Elmer | 10.25 | 15,575.52 |
| General Journal | 3/28/2012 | EJ20120307 | | Dividends on Dodge & Cox Income | Elmer | 189.13 | 15,764.65 |
| General Journal | 3/28/2012 | EJ20120307 | | Dividends on T Rowe Price Equity | Elmer | 93.48 | 15,858.13 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on JP Morgan Core Bond | Elmer | 37.99 | 15,896.12 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on JP Morgan High Yield | Elmer | 28.66 | 15,924.78 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on Oppenheimer Intl Bd | Elmer | 27.30 | 15,952.08 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on Pimco Total Return IV | Elmer | 17.89 | 15,969.97 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on T Rowe Price New Income | Elmer | 51.76 | 16,021.73 |
| General Journal | 4/3/2012 | EJ20120402 | | Dividends on ING Global Real Estate | Elmer | 42.05 | 16,063.78 |
| General Journal | 4/3/2012 | EJ20120402 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.75 | 16,091.53 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on JP Morgan Core Bond | Elmer | 34.52 | 16,126.05 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on JP Morgan High Yield | Elmer | 23.81 | 16,149.86 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on Oppenheimer Intl Bd | Elmer | 22.93 | 16,172.79 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on Pimco Total Return IV | Elmer | 14.59 | 16,187.38 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on T Rowe Price New Income | Elmer | 47.45 | 16,234.83 |
| General Journal | 5/2/2012 | EJ20120502 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.39 | 16,262.22 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on JP Morgan Core Bond | Elmer | 33.99 | 16,296.21 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 57.74 | 16,353.95 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on Oppenheimer Intl Bd | Elmer | 24.63 | 16,378.58 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on Pimco Total Return IV | Elmer | 15.12 | 16,393.70 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on T Rowe Price New Income | Elmer | 50.82 | 16,444.52 |
| General Journal | 6/4/2012 | EJ20120602 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.34 | 16,471.86 |
| General Journal | 6/11/2012 | EJ20120604 | | Dividends on Investment Co of America | Elmer | 52.65 | 16,524.51 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in XOM Stk 7769 | Elmer | 332.31 | 16,856.82 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in XOM Stk 7777 | Survivor | 387.38 | 17,244.20 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in CVX Stk 9415 | Elmer | 549.72 | 17,793.92 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in CVX Stk 9407 | Elmer | 101.37 | 17,895.29 |
| General Journal | 6/18/2012 | EJ20120605 | | Dividends on Capital World Growth & Income | Elmer | 147.46 | 18,042.75 |
| General Journal | 6/22/2012 | EJ20120606 | | Dividends on Pioneer Fund | Elmer | 53.57 | 18,096.32 |
| General Journal | 6/25/2012 | EJ20120607 | | Dividends on Columbia Mid Cap Value | Elmer | 31.55 | 18,127.87 |
| General Journal | 6/27/2012 | EJ20120609 | | Dividends on Capital World Bond | Elmer | 30.40 | 18,158.27 |
| General Journal | 6/27/2012 | EJ20120609 | | Dividends on Dodg & Cox Income | Elmer | 128.94 | 18,287.21 |
| General Journal | 6/28/2012 | EJ20120610 | | Dividends on T Rowe Price Equity Income | Elmer | 96.35 | 18,383.56 |
| General Journal | 6/29/2012 | EJ20120611 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 58.09 | 18,441.65 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on JP Morgan Core Bond | Elmer | 32.90 | 18,474.55 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.05 | 18,491.60 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on Pimco Total Return IV | Elmer | 14.25 | 18,505.85 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on T Rowe Price New Income | Elmer | 46.81 | 18,552.66 |
| General Journal | 7/3/2012 | EJ20120702 | | Dividends on ING Global Real Estate | Elmer | 51.95 | 18,604.61 |
| General Journal | 7/3/2012 | EJ20120702 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.87 | 18,631.48 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on JPMorgan Fed Mon Mkt | Elmer | 0.04 | 18,631.52 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on JPMorgan Core Bond | Elmer | 35.33 | 18,666.85 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 58.45 | 18,725.30 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on Oppenheimer Intl Bd | Elmer | 16.06 | 18,741.36 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on Pimco Total Return IV | Elmer | 11.10 | 18,752.46 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on T Rowe Price New Income | Elmer | 42.96 | 18,795.42 |
| General Journal | 8/2/2012 | EJ20120802 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.14 | 18,822.56 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on JP Morgan Core Bond | Elmer | 33.06 | 18,855.62 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 58.81 | 18,914.43 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on Oppenheimer Intl Bd | Elmer | 18.18 | 18,932.61 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on Pimco Total Return IV | Elmer | 11.75 | 18,944.36 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on T Rowe Price New Income | Elmer | 46.82 | 18,991.18 |
| General Journal | 9/5/2012 | EJ20120902 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.89 | 19,019.07 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in XOM Stk 7769 | Elmer | 334.71 | 19,353.78 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in XOM Stk 7777 | Survivor | 390.17 | 19,743.95 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in CVX Stk 9415 | Elmer | 554.60 | 20,298.55 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in CVX Stk 9407 | Elmer | 114.44 | 20,412.99 |
| General Journal | 9/17/2012 | EJ20120904 | | Dividends on Investment Co of America | Elmer | 52.67 | 20,465.66 |
| General Journal | 9/21/2012 | EJ20120905 | | Dividends on Pioneer Fund | Elmer | 50.19 | 20,515.85 |
| General Journal | 9/24/2012 | EJ20120906 | | Dividends on Capital World Growth & Income | Elmer | 57.95 | 20,573.80 |
| General Journal | 9/26/2012 | EJ20120908 | | Dividends on Columbia Mid Cap Value | Elmer | 40.07 | 20,613.87 |
| General Journal | 9/26/2012 | EJ20120908 | | Dividends on Dodge & Cox Income | Elmer | 124.92 | 20,738.79 |
| General Journal | 9/27/2012 | EJ20120909 | | Dividends on T Rowe Price Equity Income | Elmer | 89.99 | 20,828.78 |
| General Journal | 9/28/2012 | EJ20120910 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 59.16 | 20,887.94 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on JP Morgan Core Bond | Elmer | 31.95 | 20,919.89 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on Oppenheimer Intl Bd | Elmer | 13.87 | 20,933.76 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on Pimco Total Return IV | Elmer | 9.14 | 20,942.90 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on T Rowe Price New Income | Elmer | 36.25 | 20,979.15 |
| General Journal | 10/2/2012 | EJ20121002 | | Dividends on ING Global Real Estate | Elmer | 46.97 | 21,026.12 |
| General Journal | 10/2/2012 | EJ20121002 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.30 | 21,052.42 |
| General Journal | 10/9/2012 | EJ20121004 | | Dividends on Capital World Bond | Elmer | 23.09 | 21,075.51 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on JP Morgan Core Bond | Elmer | 30.84 | 21,106.35 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 59.51 | 21,165.86 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.63 | 21,183.49 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on Pimco Total Return IV | Elmer | 12.79 | 21,196.28 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on T Rowe Price New Income | Elmer | 40.84 | 21,237.12 |
| General Journal | 11/2/2012 | EJ20121102 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.21 | 21,263.33 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on JP Morgan Core Bond | Elmer | 30.90 | 21,294.23 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 59.87 | 21,354.10 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.62 | 21,371.72 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on Pimco Total Return IV | Elmer | 13.77 | 21,385.49 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on T Rowe Price New Income | Elmer | 42.81 | 21,428.30 |
| General Journal | 12/4/2012 | EJ20121202 | | Dividends on Loomis Sales Inv Grade Bd | Elmer | 26.84 | 21,455.14 |
| General Journal | 12/4/2012 | EJ20121202 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 60.23 | 21,515.37 |
| General Journal | 12/7/2012 | EJ20121204 | | Dividends on Blackrock Cap App | Elmer | 45.22 | 21,560.59 |
| General Journal | 12/7/2012 | EJ20121204 | | Dividends on Oppenheimer Rising Divid Fd Y | Elmer | 57.90 | 21,618.49 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment XOM Stk 6261 | Elmer | 334.71 | 21,953.20 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment XOM Stk 3301 | Nelva | 390.17 | 22,343.37 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment CVX Stk 9415 | Elmer | 4.36 | 22,347.73 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment CVX Stk 9407 | Elmer | 4.35 | 22,352.08 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment CVX Stk 9423 | Elmer | 1,110.22 | 23,462.30 |
| General Journal | 12/12/2012 | EJ20121206 | | Dividends on MFS Research International | Elmer | 316.70 | 23,779.00 |
| General Journal | 12/14/2012 | EJ20121208 | | Dividends on Columbia Mid Cap Value | Elmer | 33.89 | 23,812.89 |
| General Journal | 12/14/2012 | EJ20121208 | | Dividends on T Rowe Price Equity Income | Elmer | 111.31 | 23,924.20 |
| General Journal | 12/17/2012 | EJ20121209 | | Dividends on Capital World Growth & Income | Elmer | 97.20 | 24,021.40 |
| General Journal | 12/17/2012 | EJ20121209 | | Dividends on Fidelity New Insights | Elmer | 13.61 | 24,035.01 |
| General Journal | 12/20/2012 | EJ20121210 | | Dividends on Dodge & Cox Intl Stock | Elmer | 303.81 | 24,338.82 |
| General Journal | 12/20/2012 | EJ20121210 | | Dividends on DWS Small Cap Value | Elmer | 75.04 | 24,413.86 |
| General Journal | 12/20/2012 | EJ20121210 | | Dividends on Dodge & Cox Income | Elmer | 109.20 | 24,523.06 |
| General Journal | 12/21/2012 | EJ20121211 | | Dividends on Capital World Bond | Elmer | 31.56 | 24,554.62 |
| General Journal | 12/24/2012 | EJ20121212 | | Dividends on Investment Co of America | Elmer | 137.47 | 24,692.09 |
| General Journal | 12/24/2012 | EJ20121212 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 75.83 | 24,767.92 |
| General Journal | 12/27/2012 | EJ20121213 | | Dividends on New World | Elmer | 110.57 | 24,878.49 |
| General Journal | 12/28/2012 | EJ20121214 | | Dividends on Oppenheimer Rising Divid Fd Y | Elmer | 43.70 | 24,922.19 |
| General Journal | 12/28/2012 | EJ20121214 | | Dividends on Pimco Total Return IV | Elmer | 65.59 | 24,987.78 |
| General Journal | 12/31/2012 | EJ20121215 | | Dividends on Oppenheimer Intl Bd | Elmer | 15.74 | 25,003.52 |
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on ING Global Real Estate | Elmer | 201.20 | 25,204.72 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on JP Morgan Core Bond | Elmer | 36.97 | 25,241.69 |
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on Pimco Total Return IV | Elmer | 10.56 | 25,252.25 |
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on T Rowe Price New Income | Elmer | 38.09 | 25,290.34 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on JP Morgan Core Bond | Elmer | 28.70 | 25,319.04 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 60.59 | 25,379.63 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.37 | 25,397.00 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on Pimco Total Return IV | Elmer | 8.54 | 25,405.54 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on T Rowe Price New Income | Elmer | 35.87 | 25,441.41 |
| General Journal | 2/4/2013 | EJ20130202 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.43 | 25,467.84 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on JP Morgan Core Bond | Elmer | 29.95 | 25,497.79 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 60.95 | 25,558.74 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on Oppenheimer Intl Bd | Elmer | 16.53 | 25,575.27 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on Pimco Total Return IV | Elmer | 9.68 | 25,584.95 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on T Rowe Price New Income | Elmer | 37.06 | 25,622.01 |
| General Journal | 3/4/2013 | EJ20130302 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.61 | 25,649.62 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on XOM Stk 3319 | Elmer | 1.72 | 25,651.34 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on XOM Stk 6261 | Elmer | 336.88 | 25,988.22 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on XOM Stk 3301 | Nelva | 392.70 | 26,380.92 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on CVX Stk 9415 | Elmer | 4.41 | 26,385.33 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on CVX Stk 9407 | Elmer | 4.39 | 26,389.72 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on CVX Stk 9423 | Elmer | 1,122.04 | 27,511.76 |
| General Journal | 3/14/2013 | EJ20130304 | | Dividends on Investment Co of America | Elmer | 53.50 | 27,565.26 |
| General Journal | 3/18/2013 | EJ20130305 | | Dividends on Capital World Growth & Income | Elmer | 61.70 | 27,626.96 |
| General Journal | 3/22/2013 | EJ20130307 | | Dividends on DWS Small Cap Value | Elmer | 42.72 | 27,669.68 |
| General Journal | 3/25/2013 | EJ20130308 | | Dividends on Columbia Mid Cap Value | Elmer | 25.46 | 27,695.14 |
| General Journal | 3/27/2013 | EJ20130309 | | Dividends on Capital World Bond | Elmer | 23.47 | 27,718.61 |
| General Journal | 3/27/2013 | EJ20130309 | | Dividends on Dodge & Cox Income | Elmer | 111.08 | 27,829.69 |
| General Journal | 3/27/2013 | EJ20130309 | | Dividends on T Rowe Price Equity Income | Elmer | 77.55 | 27,907.24 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on JP Morgan Core Bond | Elmer | 30.02 | 27,937.26 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 61.31 | 27,998.57 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.62 | 28,016.19 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on Pimco Total Return IV | Elmer | 12.00 | 28,028.19 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on T Rowe Price New Income | Elmer | 37.30 | 28,065.49 |
| General Journal | 4/2/2013 | EJ20130402 | | Dividends on ING Global Real Estate | Elmer | 40.72 | 28,106.21 |
| General Journal | 4/2/2013 | EJ20130402 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.34 | 28,133.55 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on JP Morgan Core Bond | Elmer | 30.08 | 28,163.63 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 61.67 | 28,225.30 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.94 | 28,243.24 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on Pimco Total Return IV | Elmer | 13.27 | 28,256.51 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on T Rowe Price New Income | Elmer | 38.30 | 28,294.81 |
| General Journal | 5/2/2013 | EJ20130502 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.65 | 28,321.46 |
| Total Dividend Income | | | | | | 28,321.46 | 28,321.46 |
| **Interest Income** | | | | | | | |
| General Journal | 12/27/2010 | EJ 20101202 | | Interest on VK Bld Amer Bonds | Survivor | 67.90 | 67.90 |
| General Journal | 12/27/2010 | EJ 20101202 | | Interest on Invsco Bld Amer Bds | Survivor | 23.70 | 91.60 |
| General Journal | 12/31/2010 | EJ 20101203 | | Interest for December | Survivor | 0.03 | 91.63 |
| General Journal | 1/20/2011 | EJ 20110102 | | Interest on Toyota Moter Cr Corp | Survivor | 25.00 | 116.63 |
| General Journal | 1/25/2011 | EJ 20110103 | | Interest on VK Bld Amer Bonds | Survivor | 67.90 | 184.53 |
| General Journal | 1/25/2011 | EJ 20110103 | | Interest on VK Bld Amer Bonds | Survivor | 51.00 | 235.53 |
| General Journal | 2/22/2011 | EJ 20110204 | | Interest on Toyota Motor Cr Corp | Survivor | 25.00 | 260.53 |
| General Journal | 2/22/2011 | EJ 20110204 | | Interest on Money Market Fund | Survivor | 0.01 | 260.54 |
| General Journal | 2/25/2011 | EJ 20110205 | | Interest on VK Bld Amer Bonds Incm | Survivor | 68.04 | 328.58 |
| General Journal | 2/25/2011 | EJ 20110205 | | Interest on Invsco Bld Amer Bonds Incm | Survivor | 50.90 | 379.48 |
| General Journal | 3/15/2011 | EJ 20110301 | | Interest on GMAC Smartnotes | Survivor | 317.25 | 696.73 |
| General Journal | 3/21/2011 | EJ 20110302 | | Interest on Toyota Motor Cr Corp | Survivor | 25.00 | 721.73 |
| General Journal | 3/25/2011 | EJ 20110303 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.90 | 789.63 |
| General Journal | 3/25/2011 | EJ 20110303 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 51.00 | 840.63 |
| General Journal | 4/14/2011 | EJ 20110402 | | Accrued Int - Sale of Toyota Motor Cr Corp | Survivor | 20.00 | 860.63 |
| General Journal | 4/14/2011 | EJ 20110402 | | Accrued Interest Sale of GMAC SmartNotes | Survivor | 51.11 | 911.74 |
| General Journal | 4/15/2011 | EJ20110421 | | Interest on GE Capital Corp Internotes | Survivor | 333.13 | 1,244.87 |
| General Journal | 4/20/2011 | EJ 20110403 | | Proceeds from Sale of In Fin Auth Rev Parkview Hlth | Survivor | 387.29 | 1,632.16 |
| General Journal | 4/25/2011 | EJ 20110404 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.76 | 1,699.92 |
| General Journal | 4/25/2011 | EJ 20110404 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 50.90 | 1,750.82 |
| General Journal | 5/13/2011 | EJ20110521 | | Sell GE Capital Corp Internotes | Survivor | 51.82 | 1,802.64 |
| General Journal | 5/13/2011 | EJ20110521 | | Sell GMAC Smartnotes | Survivor | 277.50 | 2,080.14 |
| General Journal | 5/23/2011 | EJ20110523 | | Interest on Money Market Funds | Survivor | 0.93 | 2,081.07 |
| General Journal | 5/25/2011 | EJ20110502 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.76 | 2,148.83 |
| General Journal | 5/25/2011 | EJ20110502 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 51.00 | 2,199.83 |
| General Journal | 6/21/2011 | EJ20110621 | | Interest on Money Market Funds | Survivor | 0.30 | 2,200.13 |
| General Journal | 6/27/2011 | EJ20110604 | | Interest on VK Bld Amer Bonds | Survivor | 67.90 | 2,268.03 |
| General Journal | 6/27/2011 | EJ20110604 | | Interest on Invsco Bld Amer Bds | Survivor | 50.90 | 2,318.93 |
| General Journal | 7/25/2011 | EJ20110701 | | Interest on VK Bld Amer Bonds | Survivor | 67.76 | 2,386.69 |
| General Journal | 7/25/2011 | EJ20110701 | | Interest on VK Bld Amer Bonds | Survivor | 51.00 | 2,437.69 |
| General Journal | 8/1/2011 | EJ20110801 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.76 | 2,505.45 |
| General Journal | 8/1/2011 | EJ20110801 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 50.90 | 2,556.35 |
| General Journal | 9/26/2011 | EJ20110901 | | Interest on VK Bld Amer Bonds Incm | Survivor | 68.04 | 2,624.39 |
| General Journal | 9/26/2011 | EJ20110901 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 50.90 | 2,675.29 |
| General Journal | 10/13/2011 | EJ20111001 | | Accrued Inerest in Sale of VK Bld Amer Bonds | Survivor | 6.72 | 2,682.01 |
| General Journal | 10/25/2011 | EJ20111002 | | Interest in VK Bld Amer Bonds Incm | Survivor | 67.90 | 2,749.91 |
| General Journal | 10/25/2011 | EJ20111002 | | Interest in Invsco Bld Amer Bds Incm | Survivor | 51.10 | 2,801.01 |
| General Journal | 11/16/2011 | EJ20111103 | | Proceeds from Sale of Invsco Bld Amer Bds | Survivor | 10.20 | 2,811.21 |
| General Journal | 11/21/2011 | EJ20111105 | | Interest on Money Market Funds | Survivor | 0.05 | 2,811.26 |
| General Journal | 11/25/2011 | EJ20111106 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 51.00 | 2,862.26 |
| General Journal | 10/10/2012 | EJ20120422 | | Interest income | Survivor | 0.27 | 2,862.53 |
| General Journal | 10/12/2012 | EJ20120443 | | Interest Earned | Elmer | 1.17 | 2,863.70 |
| Deposit | 10/23/2012 | | | October Interest | Survivor | 17.34 | 2,881.04 |
| General Journal | 11/7/2012 | EJ20120424 | | Interest inc | Survivor | 5.72 | 2,886.76 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 11/9/2012 | EJ20120445 | | Interest inc | Elmer | 1.08 | 2,887.84 |
| Deposit | 11/21/2012 | | | November Interest | Survivor | 26.47 | 2,914.31 |
| General Journal | 12/7/2012 | EJ20120425 | | Interest inc | Survivor | 6.13 | 2,920.44 |
| General Journal | 12/11/2012 | EJ20120446 | | Interest Earned | Elmer | 1.23 | 2,921.67 |
| Deposit | 12/20/2012 | | | December Interest | Survivor | 20.08 | 2,941.75 |
| General Journal | 1/9/2013 | EJ20120427 | | Interest inc | Survivor | 6.75 | 2,948.50 |
| General Journal | 1/11/2013 | EJ20120447 | | Interest Earned | Elmer | 1.19 | 2,949.69 |
| Deposit | 1/23/2013 | | | January Interest | Survivor | 23.32 | 2,973.01 |
| General Journal | 2/6/2013 | EJ20120428 | | Interest inc | Survivor | 5.74 | 2,978.75 |
| General Journal | 2/8/2013 | EJ20120448 | | Interest Earned | Elmer | 1.08 | 2,979.83 |
| Deposit | 2/20/2013 | | | February Interest | Survivor | 19.23 | 2,999.06 |
| General Journal | 3/8/2013 | EJ20120430 | | Interest Earned | Survivor | 6.15 | 3,005.21 |
| General Journal | 3/12/2013 | EJ20120449 | | Interest Earned | Elmer | 1.66 | 3,006.87 |
| Deposit | 3/21/2013 | | | March Interest | Survivor | 19.91 | 3,026.78 |
| General Journal | 4/9/2013 | EJ20120432 | | Interest Earned | Survivor | 6.55 | 3,033.33 |
| General Journal | 4/11/2013 | EJ20120452 | | Interest Earned | Elmer | 1.77 | 3,035.10 |
| Deposit | 4/22/2013 | | | April Interest | Survivor | 21.98 | 3,057.08 |
| General Journal | 5/9/2013 | EJ20120433 | | Interest Earned | Survivor | 5.90 | 3,062.98 |
| General Journal | 5/13/2013 | EJ20120453 | | Interest Earned | Elmer | 1.46 | 3,064.44 |
| Deposit | 5/22/2013 | | | May Interest | Survivor | 20.61 | 3,085.05 |
| Total Interest Income | | | | | | 3,085.05 | 3,085.05 |
| **Long Term Capital Gains - Funds** | | | | | | | |
| General Journal | 12/31/2010 | EJ20101216 | | LTCG from Oppenheimer Intl Bond Fund Y | Elmer | 75.11 | 75.11 |
| General Journal | 12/8/2011 | EJ20111214 | | LTCG on T Rowe Price New Income | Elmer | 77.13 | 152.24 |
| General Journal | 12/16/2011 | EJ20111218 | | LTCG on JP Morgan Core Bond | Elmer | 26.07 | 178.31 |
| General Journal | 12/16/2011 | EJ20111218 | | LTCG on JP Morgan High Yield | Elmer | 58.93 | 237.24 |
| General Journal | 12/19/2011 | EJ20111219 | | LTCG on Credit Suisse Comm Ret Strat | Elmer | 6.24 | 243.48 |
| General Journal | 12/20/2011 | EJ20111220 | | LTCG on DWS Small Cap Value | Elmer | 42.21 | 285.69 |
| General Journal | 12/28/2011 | EJ20111225 | | LTCG on Loomis Sayles Inv Grade Bd | Elmer | 47.77 | 333.46 |
| General Journal | 6/26/2012 | EJ20120608 | | LTCG on Baron Small Cap | Elmer | 2.48 | 335.94 |
| General Journal | 11/30/2012 | EJ20121104 | | LTCG on Baron Small Cap | Elmer | 152.76 | 488.70 |
| General Journal | 12/10/2012 | EJ20121205 | | LTCG on T Rowe Price New Income | Elmer | 85.71 | 574.41 |
| General Journal | 12/13/2012 | EJ20121207 | | LTCG on Pimco Total Return IV | Elmer | 26.80 | 601.21 |
| General Journal | 12/14/2012 | EJ20121208 | | LTCG on JP Morgan Core Bond | Elmer | 16.83 | 618.04 |
| General Journal | 12/20/2012 | EJ20121210 | | LTCG on DWS Small Cap Value | Elmer | 76.86 | 694.90 |
| General Journal | 12/21/2012 | EJ20121211 | | LTCG on Capital World Bond | Elmer | 41.81 | 736.71 |
| General Journal | 12/24/2012 | EJ20121212 | | LTCG on Investment Co of America | Elmer | 176.84 | 913.55 |
| General Journal | 12/24/2012 | EJ20121212 | | LTCG on Loomis Sayles Inv Grade Bd | Elmer | 62.90 | 976.45 |
| General Journal | 12/31/2012 | EJ20121215 | | LTCG on Oppenheimer Intl Bd | Elmer | 31.01 | 1,007.46 |
| General Journal | 3/22/2013 | EJ20130307 | | LTCG on DWS Small Cap Value | Elmer | 39.85 | 1,047.31 |
| Total Long Term Capital Gains - Funds | | | | | | 1,047.31 | 1,047.31 |
| **Short Term Capital Gains- Funds** | | | | | | | |
| General Journal | 1/24/2011 | EJ20110107 | | STCG on Fidelity New Insights Fd Instl | Elmer | 1.98 | 1.98 |
| General Journal | 2/14/2011 | EJ20110204 | | STCG on Fidelity New Insights Fd Instl | Elmer | 22.38 | 24.36 |
| General Journal | 12/8/2011 | EJ20111214 | | STCG on T Rowe Price New Income | Elmer | 38.56 | 62.92 |
| General Journal | 12/16/2011 | EJ20111218 | | STCG on JP Morgan High Yield | Elmer | 36.12 | 99.04 |
| General Journal | 12/28/2011 | EJ20111225 | | STCG on Loomis Sayles Inv Grade Bd | Elmer | 16.95 | 115.99 |
| General Journal | 12/10/2012 | EJ20121205 | | STCG on T Rowe Price New Income | Elmer | 68.57 | 184.56 |
| General Journal | 12/13/2012 | EJ20121207 | | STCG on Pimco Total Return IV | Elmer | 173.87 | 358.43 |
| General Journal | 12/14/2012 | EJ20121208 | | STCG on JP Morgan Core Bond | Elmer | 1.54 | 359.97 |
| General Journal | 12/17/2012 | EJ20121209 | | STCG on Fidelity New Insights | Elmer | 86.18 | 446.15 |
| General Journal | 12/20/2012 | EJ20121210 | | STCG on DWS Small Cap Value | Elmer | 14.89 | 461.04 |
| General Journal | 12/21/2012 | EJ20121211 | | STCG on Capital World Bond | Elmer | 22.74 | 483.78 |
| General Journal | 12/24/2012 | EJ20121212 | | STCG on Loomis Sayles Inv Grade Bd | Elmer | 5.32 | 489.10 |
| Total Short Term Capital Gains- Funds | | | | | | 489.10 | 489.10 |
| **Stock Sales less Broker Fees** | | | | | | | |
| General Journal | 1/4/2011 | EJ 20110101 | | Sale of Deere & Co Stock | Survivor | 10,082.45 | 10,082.45 |
| General Journal | 1/4/2011 | EJ 20110101 | | Commission on Sale of Deere & Co Stock | Survivor | -208.11 | 9,874.34 |
| General Journal | 1/4/2011 | EJ 20110101 | | Transaction Fee on Sale of Deere & Co Stock | Survivor | -4.95 | 9,869.39 |
| General Journal | 2/8/2011 | EJ 20110202 | | Sell 275 Shares Deere & Co | Survivor | 25,563.45 | 35,432.84 |
| General Journal | 2/8/2011 | EJ 20110202 | | Commission on Sale of 275 Shares Deere & Co | Survivor | -460.63 | 34,972.21 |
| General Journal | 2/8/2011 | EJ 20110202 | | Transaction Fee on Sale of 275 Shares Deere & Co | Survivor | -4.95 | 34,967.26 |
| General Journal | 4/14/2011 | EJ 20110402 | | Principal Amt Sale of Toyota Motor Cr Corp | Survivor | 5,000.00 | 39,967.26 |
| General Journal | 4/14/2011 | EJ 20110402 | | Transaction Fee - Sale of Toyota Motor Cr Corp | Survivor | -4.95 | 39,962.31 |
| General Journal | 4/14/2011 | EJ 20110402 | | Principal Amt Sale of GMAC SmartNotes | Survivor | 8,730.00 | 48,692.31 |
| General Journal | 4/14/2011 | EJ 20110402 | | Transaction Fee - Sale of GMAC SmartNotes | Survivor | -4.95 | 48,687.36 |
| General Journal | 4/20/2011 | EJ 20110403 | | Proceeds from Sale of In Fin Auth Rev Parkview Hlth | Survivor | 14,824.35 | 63,511.71 |
| General Journal | 4/20/2011 | EJ 20110403 | | Transaction Fee from Sale of In Fin Auth Rev Parkview Hlth | Survivor | -4.95 | 63,506.76 |
| General Journal | 5/13/2011 | EJ20110521 | | Transaction Fee on Sale of GE Capital Corp Internotes | Survivor | -4.95 | 63,501.81 |
| General Journal | 5/13/2011 | EJ20110521 | | Transaction Fee on Sale of GMAC Smartnotes | Survivor | -4.95 | 63,496.86 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale Chevron Corp | Survivor | -199.66 | 63,297.20 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale Chevron Corp | Survivor | -4.95 | 63,292.25 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Stryker Corp | Survivor | -228.32 | 63,063.93 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Stryker Corp | Survivor | -4.95 | 63,058.98 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Dow Chemical | Survivor | -146.44 | 62,912.54 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Dow Chemical | Survivor | -4.95 | 62,907.59 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Gen Motors Warrants (WSA) | Survivor | -50.00 | 62,857.59 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Gen Motors Warrants (WSA) | Survivor | -4.95 | 62,852.64 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Gen Motors Warrants (WSB) | Survivor | -50.00 | 62,802.64 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Gen Motors Warrants (WSB) | Survivor | -4.95 | 62,797.69 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Gen Motors Common | Survivor | -4.95 | 62,792.74 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Gen Motors Common | Survivor | -50.00 | 62,742.74 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on GE Capital Corp Internotes | Survivor | -46.87 | 62,695.87 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on GMAC SmartNotes | Survivor | -272.55 | 62,423.32 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Chevron Corp (CVX) | Survivor | 204.61 | 62,627.93 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Dow Chemical (DOW) | Survivor | 151.39 | 62,779.32 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Gen Motors Warrants (WSA) | Survivor | 54.95 | 62,834.27 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Gen Motors Warrants (WSB) | Survivor | 54.95 | 62,889.22 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Gen Motors Co (GM) | Survivor | 54.95 | 62,944.17 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Stryker Corp (SYK) | Survivor | 233.27 | 63,177.44 |
| General Journal | 6/10/2011 | EJ20110601 | | Sales Price on Sale of 623 Sh Deere & Company | Survivor | 51,039.90 | 114,217.34 |
| General Journal | 6/10/2011 | EJ20110601 | | Commission on Sale of 623 Sh Deere & Company | Survivor | -643.86 | 113,573.48 |
| General Journal | 6/10/2011 | EJ20110601 | | Transaction Fee on Sale of 623 Sh Deere & Company | Survivor | -4.95 | 113,568.53 |
| General Journal | 6/10/2011 | EJ20110123 | | Exxon IDC000946776 Invest Inc | Survivor | 896.76 | 114,465.29 |
| General Journal | 7/28/2011 | EJ20110721 | | Redeem Gen Motors Co Warrant (WSB) | Survivor | 12.93 | 114,478.22 |
| General Journal | 7/28/2011 | EJ20110721 | | Redeem Gen Motors Co Warrant (WSA) | Survivor | 17.87 | 114,496.09 |
| General Journal | 7/28/2011 | EJ20110721 | | Redeem Gen Motors Co Common | Survivor | 0.37 | 114,496.46 |
| General Journal | 10/13/2011 | EJ20111001 | | Proceeds from Sale of VK Bld Amer Bonds | Survivor | 14,492.80 | 128,989.26 |
| General Journal | 10/26/2011 | EJ20111003 | | Sale Price in Sale of Deere & Co Stock | Survivor | 30,470.12 | 159,459.38 |
| General Journal | 10/26/2011 | EJ20111003 | | Commission in Sale of Deere & Co Stock | Survivor | -458.73 | 159,000.65 |
| General Journal | 10/26/2011 | EJ20111003 | | Transaction Fee in Sale of Deere & Co Stock | Survivor | -4.95 | 158,995.70 |
| General Journal | 10/28/2011 | EJ20111022 | | Redeem Gen Motors Warrant (WSB) | Survivor | 8.33 | 159,004.03 |
| General Journal | 10/28/2011 | EJ20111022 | | Redeem Gen Motors Warrant (WSA) | Survivor | 11.92 | 159,015.95 |
| General Journal | 10/28/2011 | EJ20111022 | | Redeem Gen Motors Common | Survivor | 19.85 | 159,035.80 |
| General Journal | 11/15/2011 | EJ20111102 | | Sale of Deere & Co Stock | Survivor | 14,381.25 | 173,417.05 |
| General Journal | 11/15/2011 | EJ20111102 | | Commission on Sale of Deere & Co Stock | Survivor | -266.15 | 173,150.90 |
| General Journal | 11/15/2011 | EJ20111102 | | Transacton Fee on Sale of Deere & Co Stock | Survivor | -4.95 | 173,145.95 |
| General Journal | 11/16/2011 | EJ20111103 | | Proceeds from Sale of Invsco Bld Amer Bds | Survivor | 10,508.70 | 183,654.65 |
| General Journal | 1/9/2012 | EJ20120121 | | Commission on Sale of Gen Motors Common | Survivor | -2.10 | 183,652.55 |
| General Journal | 1/9/2012 | EJ20120121 | | Transaction Fee on Sale of Gen Motors Common | Survivor | -4.95 | 183,647.60 |
| General Journal | 1/27/2012 | EJ20120122 | | Adjust Value on Gen Motors Common | Survivor | 7.02 | 183,654.62 |
| General Journal | 6/15/2012 | EJ20120621 | | Redeem Motors Liq Co Guc Tr Ben Int | Survivor | 8.17 | 183,662.79 |
| Total Stock Sales less Broker Fees | | | | | | 183,662.79 | 183,662.79 |
| Total Investment Income | | | | | | 216,605.71 | 216,605.71 |
| **Miscellaneous Income** | | | | | | | |
| Deposit | 12/31/2010 | | | Deposit | Nelva | 70.30 | 70.30 |
| General Journal | 3/11/2011 | EJ20120460 | | Invest inc | Nelva | 390.64 | 460.94 |
| General Journal | 4/11/2011 | EJ20120463 | | Online Banking Transfer from chking Acct 2839 | Nelva | 1,500.00 | 1,960.94 |
| General Journal | 6/9/2011 | EJ20110122 | | Invest Inc | Survivor | 4.18 | 1,965.12 |
| General Journal | 6/28/2011 | EJ20120471 | | Invest inc. | Nelva | 725.64 | 2,690.76 |
| General Journal | 8/18/2011 | EJ20120473 | | Invest inc | Nelva | 702.72 | 3,393.48 |
| General Journal | 9/19/2011 | EJ20120475 | | Invest inc | Nelva | 507.76 | 3,901.24 |
| General Journal | 11/9/2011 | EJ20110147 | | Invest Inc | Survivor | 30.40 | 3,931.64 |
| General Journal | 1/3/2012 | EJ20120436 | | Counter credit - invest inc | Elmer | 495.72 | 4,427.36 |
| General Journal | 3/7/2012 | EJ20110153 | | Other income | Survivor | 20.49 | 4,447.85 |
| General Journal | 3/13/2012 | EJ20120411 | | --Split-- | Survivor | 237.16 | 4,685.01 |
| General Journal | 4/16/2012 | EJ20120440 | | fed - Invest inc | Elmer | 383.45 | 5,068.46 |
| General Journal | 5/17/2012 | EJ20120418 | | Invest Income | Survivor | 30.40 | 5,098.86 |
| General Journal | 6/5/2012 | EJ20120419 | | Invest inc | Survivor | 71.04 | 5,169.90 |
| General Journal | 10/15/2012 | EJ20120444 | | Invest inc | Elmer | 57.86 | 5,227.76 |
| General Journal | 10/26/2012 | EJ20120423 | | Invest inc | Survivor | 24.04 | 5,251.80 |
| General Journal | 11/22/2012 | EJ20120435 | | Invest inc | Elmer | 381.32 | 5,633.12 |
| General Journal | 12/24/2012 | EJ20120426 | | Inv inc - Chevron and Metlife | Survivor | 104.26 | 5,737.38 |
| General Journal | 3/1/2013 | EJ20120429 | | Inv inc - John Deere | Survivor | 71.61 | 5,808.99 |
| General Journal | 3/13/2013 | EJ20120439 | | Other inc | Elmer | 495.72 | 6,304.71 |
| General Journal | 4/5/2013 | EJ20120431 | | Deposit --Split-- | Survivor | 54.22 | 6,358.93 |
| General Journal | 4/5/2013 | EJ20120451 | | Hull Co-op Invest inc | Elmer | 101.80 | 6,460.73 |
| Total Miscellaneous Income | | | | | | 6,460.73 | 6,460.73 |
| **Pension Income** | | | | | | | |
| Deposit | 12/31/2010 | | | Pension ID [redacted]9128 | Nelva | 594.41 | 594.41 |
| Deposit | 12/31/2010 | | | Minnesota Life Annuity | Nelva | 91.78 | 686.19 |
| General Journal | 1/31/2011 | BOA20110105 | | Net Pension Receipt | Survivor | 600.71 | 1,286.90 |
| General Journal | 2/2/2011 | BOA20110106 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 1,378.68 |
| General Journal | 2/28/2011 | BOA20110111 | | Benefits DES: Pension ID:[redacted]0518 | Survivor | 600.71 | 1,979.39 |
| General Journal | 3/1/2011 | BOA20110112 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 2,071.17 |
| General Journal | 3/31/2011 | BOA20110114 | | Benefits DES:Pension ID[redacted]0208 | Survivor | 600.71 | 2,671.88 |
| General Journal | 4/1/2011 | BOA20110115 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 2,763.66 |
| General Journal | 4/29/2011 | EJ20110110 | | Benefits DES:Pension ID[redacted]0518 | Survivor | 600.71 | 3,364.37 |
| General Journal | 4/29/2011 | EJ20110111 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 3,456.15 |
| General Journal | 5/31/2011 | EJ20110118 | | Benefits DES:Pension ID:[redacted]0508 | Survivor | 600.71 | 4,056.86 |
| General Journal | 6/1/2011 | EJ20110119 | | Minnesota Life DES: Annuity ID:0 | Survivor | 91.78 | 4,148.64 |
| General Journal | 6/30/2011 | EJ20110124 | | Benefits DES:Pension ID:[redacted]0218 | Survivor | 600.71 | 4,749.35 |
| General Journal | 7/1/2011 | EJ20110125 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 4,841.13 |
| General Journal | 7/29/2011 | EJ20110128 | | Benefits DES:Pension ID:[redacted]0528 | Survivor | 600.71 | 5,441.84 |
| General Journal | 8/1/2011 | EJ20110129 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 5,533.62 |
| General Journal | 8/31/2011 | EJ20110134 | | Benefits DES:Pension ID:[redacted]0168 | Survivor | 600.71 | 6,134.33 |
| General Journal | 9/1/2011 | EJ20110135 | | Minnesota Life DES: Annuity ID:0 | Survivor | 91.78 | 6,226.11 |
| General Journal | 9/30/2011 | EJ20110141 | | Minnesota Life DES: Annuity ID:0 | Survivor | 91.78 | 6,317.89 |
| General Journal | 9/30/2011 | EJ20110142 | | Benefits DES:Pension ID:[redacted]2468 | Survivor | 600.71 | 6,918.60 |
| General Journal | 10/31/2011 | EJ20110144 | | Benefits DES:Pension ID:[redacted]3478 | Survivor | 600.71 | 7,519.31 |
| General Journal | 11/1/2011 | EJ20110145 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 7,611.09 |
| General Journal | 11/1/2011 | EJ20110157 | | Minnesota Life Des:Annuity ID:0 | Survivor | 91.78 | 7,702.87 |
| General Journal | 11/30/2011 | EJ20110149 | | Benefits DES:Pension ID:[redacted]3368 | Survivor | 600.71 | 8,303.58 |
| Total Pension Income | | | | | | 8,303.58 | 8,303.58 |
| **Proceeds from Sale of Home** | | | | | | | |
| General Journal | 3/12/2012 | EJ20120408 | | Option fee for house - Other inc | Survivor | 100.00 | 100.00 |
| General Journal | 3/14/2012 | EJ20120413 | | Sale of house - Other income | Survivor | 433,129.32 | 433,229.32 |
| General Journal | 3/23/2012 | EJ20120414 | | Sale of house --Split-- | Survivor | 162.73 | 433,392.05 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Total Proceeds from Sale of Home | | | | | | 433,392.05 | 433,392.05 |
| **Social Security Income** | | | | | | | |
| General Journal | 2/3/2011 | EJ20120457 | | Soc Security ID:2 | Nelva | 1,780.00 | 1,780.00 |
| General Journal | 3/3/2011 | EJ20120459 | | Social Security | Nelva | 1,780.00 | 3,560.00 |
| General Journal | 4/1/2011 | EJ20120462 | | Social Security | Nelva | 1,780.00 | 5,340.00 |
| General Journal | 5/2/2011 | EJ20120464 | | Social Security | Nelva | 1,780.00 | 7,120.00 |
| General Journal | 6/3/2011 | EJ20120465 | | Social Security | Nelva | 1,780.00 | 8,900.00 |
| General Journal | 7/1/2011 | EJ20120469 | | Social Security | Nelva | 1,780.00 | 10,680.00 |
| General Journal | 8/3/2011 | EJ20120472 | | Social Security | Nelva | 1,780.00 | 12,460.00 |
| General Journal | 9/2/2011 | EJ20120474 | | Social Security | Nelva | 1,780.00 | 14,240.00 |
| General Journal | 10/3/2011 | EJ20120477 | | Social Security | Nelva | 1,780.00 | 16,020.00 |
| General Journal | 11/3/2011 | EJ20120478 | | Social Security | Nelva | 1,780.00 | 17,800.00 |
| Total Social Security Income | | | | | | 17,800.00 | 17,800.00 |
| **Tax Refunds** | | | | | | | |
| General Journal | 1/3/2011 | BOA20110101 | | US Treasury 310 DES | Survivor | 1,780.00 | 1,780.00 |
| General Journal | 1/11/2012 | EJ20110159 | | Tax Refund | Survivor | 6,215.87 | 7,995.87 |
| General Journal | 4/16/2012 | EJ20120441 | | Federal tax refund | Elmer | 6,913.00 | 14,908.87 |
| General Journal | 4/25/2012 | EJ20120416 | | Federal Tax Refund | Survivor | 4,908.00 | 19,816.87 |
| Total Tax Refunds | | | | | | 19,816.87 | 19,816.87 |
| Total Income | | | | | | 830,169.35 | 830,169.35 |
| **Expense** | | | | | | | |
| **Automobile Expense** | | | | | | | |
| Check | 1/18/2011 | EFT | Exxon Mobil | Auto:Fuel | Nelva | 20.93 | 20.93 |
| Check | 1/27/2011 | EFT | Chevron | Fuel | Nelva | 20.86 | 41.79 |
| Check | 1/31/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 62.86 |
| Check | 2/8/2011 | EFT | Exxon Mobil | Fuel | Nelva | 20.06 | 82.92 |
| Check | 2/9/2011 | EFT | Nnt Hare Repai | Auto Service | Nelva | 574.65 | 657.57 |
| Check | 2/10/2011 | EFT | Exxon Mobil | Fuel | Nelva | 10.67 | 668.24 |
| Check | 2/14/2011 | EFT | Chevron | Fuel | Nelva | 20.10 | 688.34 |
| Check | 2/23/2011 | EFT | Exxon Mobil | Fuel | Nelva | 20.36 | 708.70 |
| Check | 3/2/2011 | EFT | Exxon Mobil | Fuel | Nelva | 21.69 | 730.39 |
| Check | 3/7/2011 | EFT | Chevron | Fuel | Nelva | 22.98 | 753.37 |
| Check | 3/14/2011 | EFT | Chevron | Fuel | Nelva | 22.20 | 775.57 |
| Check | 3/14/2011 | EFT | Exxon Mobil | Fuel | Nelva | 22.20 | 797.77 |
| Check | 3/21/2011 | EFT | Chevron | Fuel | Nelva | 21.50 | 819.27 |
| Check | 3/21/2011 | EFT | Chevron | Fuel | Nelva | 24.55 | 843.82 |
| Check | 3/23/2011 | EFT | Chevron | Fuel | Nelva | 24.66 | 868.48 |
| Check | 3/28/2011 | EFT | Chevron | Fuel | Nelva | 21.76 | 890.24 |
| Check | 3/29/2011 | EFT | Chevron | Fuel | Nelva | 22.76 | 913.00 |
| Check | 4/1/2011 | EFT | Chevron | Fuel | Nelva | 24.65 | 937.65 |
| Check | 4/8/2011 | EFT | Exxon Mobil | Fuel | Nelva | 54.60 | 992.25 |
| Check | 4/14/2011 | EFT | Chevron | Fuel | Nelva | 21.02 | 1,013.27 |
| Check | 4/18/2011 | EFT | Chevron | Fuel | Nelva | 23.88 | 1,037.15 |
| Check | 4/18/2011 | EFT | Exxon Mobil | Fuel | Nelva | 22.51 | 1,059.66 |
| Check | 4/25/2011 | EFT | Fastop | Fuel | Nelva | 2.90 | 1,062.56 |
| Check | 4/25/2011 | EFT | Fastop | Fuel | Nelva | 50.84 | 1,113.40 |
| Check | 4/25/2011 | EFT | Exxon Mobil | Fuel | Nelva | 59.02 | 1,172.42 |
| Check | 4/25/2011 | EFT | Chevron | Fuel | Nelva | 14.05 | 1,186.47 |
| Check | 5/3/2011 | EFT | Exxon Mobil | Fuel | Nelva | 28.78 | 1,215.25 |
| Check | 5/6/2011 | EFT | Exxon Mobil | Fuel | Nelva | 23.63 | 1,238.88 |
| Check | 5/9/2011 | EFT | Exxon Mobil | Fuel | Nelva | 27.80 | 1,266.68 |
| Check | 5/9/2011 | EFT | Chevron | Fuel | Nelva | 28.76 | 1,295.44 |
| Check | 5/16/2011 | EFT | Chevron | Fuel | Nelva | 29.32 | 1,324.76 |
| Check | 5/16/2011 | EFT | Exxon Mobil | Fuel | Nelva | 24.64 | 1,349.40 |
| Check | 5/20/2011 | EFT | Chevron | | Nelva | 23.73 | 1,373.13 |
| Check | 5/23/2011 | EFT | Chevron | Fuel | Nelva | 24.40 | 1,397.53 |
| Check | 5/23/2011 | EFT | Chevron | Fuel | Nelva | 2.90 | 1,400.43 |
| Check | 5/24/2011 | EFT | Chevron | Fuel | Nelva | 23.33 | 1,423.76 |
| Check | 5/25/2011 | EFT | TX Med Ctr Garage | Parking | Nelva | 6.00 | 1,429.76 |
| Check | 5/26/2011 | EFT | TX Med Ctr Garage | parking | Nelva | 6.00 | 1,435.76 |
| Check | 5/27/2011 | EFT | TX Med Ctr Garage | parking | Nelva | 5.00 | 1,440.76 |
| Check | 5/31/2011 | EFT | TX Med Ctr Garage | parking | Nelva | 6.00 | 1,446.76 |
| Check | 5/31/2011 | EFT | Chevron | Fuel | Nelva | 24.48 | 1,471.24 |
| Check | 5/31/2011 | EFT | TX Med Ctr Garage | parking | Nelva | 2.00 | 1,473.24 |
| Check | 6/3/2011 | EFT | Chevron | Fuel | Nelva | 24.00 | 1,497.24 |
| Check | 6/6/2011 | EFT | Exxon Mobil | Fuel | Nelva | 43.12 | 1,540.36 |
| Check | 6/7/2011 | EFT | Chevron | Fuel | Nelva | 22.92 | 1,563.28 |
| Check | 6/8/2011 | EFT | Exxon Mobil | Fuel | Nelva | 22.08 | 1,585.36 |
| Check | 6/13/2011 | EFT | Exxon Mobil | Fuel | Nelva | 23.84 | 1,609.20 |
| Check | 6/14/2011 | EFT | Exxon Mobil | Fuel | Nelva | 29.37 | 1,638.57 |
| Check | 6/15/2011 | EFT | Chevron | Fuel | Nelva | 26.47 | 1,665.04 |
| Check | 6/20/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.60 | 1,690.64 |
| Check | 6/21/2011 | EFT | Chevron | Fuel | Nelva | 26.58 | 1,717.22 |
| Check | 6/27/2011 | EFT | Chevron | Fuel | Nelva | 25.13 | 1,742.35 |
| Check | 6/28/2011 | EFT | Chevron | Fuel | Nelva | 22.70 | 1,765.05 |
| Check | 7/1/2011 | EFT | Chevron | Fuel | Nelva | 26.25 | 1,791.30 |
| Check | 7/5/2011 | EFT | Shell | Fuel | Nelva | 23.05 | 1,814.35 |
| Check | 7/5/2011 | EFT | Chevron | Fuel | Nelva | 26.86 | 1,841.21 |
| Check | 7/8/2011 | EFT | Chevron | Fuel | Nelva | 25.68 | 1,866.89 |
| Check | 7/11/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 1,887.96 |
| Check | 7/13/2011 | EFT | Chevron | Fuel | Nelva | 23.37 | 1,911.33 |
| Check | 7/18/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.35 | 1,936.68 |
| Check | 7/19/2011 | EFT | Chevron | Fuel | Nelva | 30.18 | 1,966.86 |
| Check | 7/20/2011 | EFT | Chevron | Fuel | Nelva | 24.10 | 1,990.96 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 7/25/2011 | EFT | Chevron | Fuel | Nelva | 26.07 | 2,017.03 |
| Check | 7/27/2011 | EFT | Chevron | Fuel | Nelva | 24.45 | 2,041.48 |
| Check | 8/1/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.68 | 2,067.16 |
| Check | 8/1/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 2,088.23 |
| Check | 8/2/2011 | EFT | Chevron | Fuel | Nelva | 20.62 | 2,108.85 |
| Check | 8/8/2011 | EFT | Chevron | Fuel | Nelva | 25.37 | 2,134.22 |
| Check | 8/9/2011 | EFT | Chevron | Fuel | Nelva | 26.27 | 2,160.49 |
| Check | 8/10/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.53 | 2,186.02 |
| Check | 8/15/2011 | EFT | Chevron | Fuel | Nelva | 25.41 | 2,211.43 |
| Check | 8/17/2011 | EFT | Chevron | Fuel | Nelva | 26.21 | 2,237.64 |
| Check | 8/22/2011 | EFT | Chevron | Fuel | Nelva | 25.52 | 2,263.16 |
| Check | 8/23/2011 | EFT | Chevron | Fuel | Nelva | 22.25 | 2,285.41 |
| Check | 8/25/2011 | EFT | Chevron | Fuel | Nelva | 15.14 | 2,300.55 |
| Check | 8/29/2011 | EFT | Chevron | Fuel | Nelva | 20.14 | 2,320.69 |
| Check | 8/31/2011 | EFT | Chevron | Fuel | Nelva | 20.16 | 2,340.85 |
| Check | 9/6/2011 | EFT | Chevron | Fuel | Nelva | 21.50 | 2,362.35 |
| Check | 9/6/2011 | EFT | Chevron | Fuel | Nelva | 16.07 | 2,378.42 |
| Check | 9/6/2011 | EFT | Chevron | Fuel | Nelva | 14.34 | 2,392.76 |
| Check | 9/7/2011 | EFT | Chevron | Fuel | Nelva | 21.15 | 2,413.91 |
| Check | 9/13/2011 | EFT | Exxon Mobil | Fuel | Nelva | 23.96 | 2,437.87 |
| Check | 9/15/2011 | EFT | Chevron | Fuel | Nelva | 20.57 | 2,458.44 |
| Check | 9/19/2011 | EFT | Chevron | Fuel | Nelva | 20.23 | 2,478.67 |
| Check | 9/22/2011 | EFT | Chevron | Fuel | Nelva | 23.31 | 2,501.98 |
| Check | 9/27/2011 | EFT | Chevron | Fuel | Nelva | 25.07 | 2,527.05 |
| Check | 9/30/2011 | EFT | Chevron | Fuel | Nelva | 23.30 | 2,550.35 |
| Check | 10/3/2011 | EFT | Chevron | Fuel | Nelva | 25.22 | 2,575.57 |
| Check | 10/5/2011 | EFT | Exxon Mobil | Fuel | Nelva | 20.11 | 2,595.68 |
| Check | 10/6/2011 | EFT | Chevron | Fuel | Nelva | 20.52 | 2,616.20 |
| Check | 10/11/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 2,637.27 |
| Check | 10/12/2011 | EFT | Chevron | Fuel | Nelva | 22.02 | 2,659.29 |
| Check | 10/12/2011 | EFT | Exxon Mobil | Fuel | Nelva | 2.14 | 2,661.43 |
| Check | 10/14/2011 | EFT | Chevron | Fuel | Nelva | 24.70 | 2,686.13 |
| Check | 10/17/2011 | EFT | Chevron | fuel | Nelva | 21.07 | 2,707.20 |
| Check | 10/17/2011 | EFT | Chevron | Fuel | Nelva | 20.92 | 2,728.12 |
| Check | 10/19/2011 | ET\FT | Chevron | Fuel | Nelva | 21.78 | 2,749.90 |
| Check | 10/26/2011 | eft | Exxon Mobil | fUEL | Nelva | 20.25 | 2,770.15 |
| Check | 10/27/2011 | EFT | Chevron | Fuel | Nelva | 20.99 | 2,791.14 |
| Check | 10/31/2011 | EFT | Chevron | Fuel | Nelva | 22.72 | 2,813.86 |
| Check | 10/31/2011 | EFT | Chevron | Fuel | Nelva | 21.06 | 2,834.92 |
| Check | 11/2/2011 | EFT | Chevron | Fuel | Nelva | 20.90 | 2,855.82 |
| Check | 11/4/2011 | EFT | Chevron | Fuel | Nelva | 19.91 | 2,875.73 |
| Check | 11/7/2011 | EFT | Chevron | Fuel | Nelva | 22.79 | 2,898.52 |
| Check | 11/9/2011 | EFT | Chevron | Fuel | Nelva | 20.41 | 2,918.93 |
| Check | 11/14/2011 | eft | Chevron | fUEL | Nelva | 25.76 | 2,944.69 |
| Check | 11/14/2011 | eft | Chevron | Fuel | Nelva | 21.07 | 2,965.76 |
| Total Automobile Expense | | | | | | 2,965.76 | 2,965.76 |
| **Bank & Brokerage Charges** | | | | | | | |
| Check | 12/23/2010 | EFT | Bank of America | External Transfer Fee | Nelva | 3.00 | 3.00 |
| General Journal | 12/28/2010 | EJ20101214 | | Offset Admin Fee | Elmer | -13.88 | -10.88 |
| Check | 12/30/2010 | EFT | Bank of America | Check Order | Nelva | 27.00 | 16.12 |
| General Journal | 1/6/2011 | EJ20110106 | | Advisory Solutions Program Fee | Elmer | 305.91 | 322.03 |
| Check | 1/13/2011 | EFT | Bank of America | Check Order | Nelva | 26.00 | 348.03 |
| Check | 1/19/2011 | EFT | Bank of America | NSF Returned Item Fee for Activity | Nelva | 35.00 | 383.03 |
| Check | 1/19/2011 | EFT | Bank of America | NSF Overdraft Item Fee For Activity | Nelva | 35.00 | 418.03 |
| Check | 1/19/2011 | EFT | Bank of America | NSF: Returned Item Fee for Activity | Nelva | 35.00 | 453.03 |
| Check | 1/20/2011 | EFT | Bank of America | External Transfer Fee | Survivor | 3.00 | 456.03 |
| General Journal | 1/27/2011 | EJ20110108 | | Offset of Admin Fee | Elmer | -12.41 | 443.62 |
| General Journal | 1/27/2011 | EJ20120456 | | Fee Refund Nbkhuz8 - Reimbursement | Nelva | -105.00 | 338.62 |
| General Journal | 2/4/2011 | EJ20110203 | | Redeem JPM Fed Money Market Instl Cl | Elmer | 297.60 | 636.22 |
| General Journal | 2/23/2011 | EJ20110205 | | Fee Offset Less Admin Fee | Elmer | -11.67 | 624.55 |
| General Journal | 3/4/2011 | EJ20110303 | | Redeem JPM Fed Money Market Inst | Elmer | 273.03 | 897.58 |
| General Journal | 3/11/2011 | DR12110301 | | Svc Fee on Reinvestment of Dividends on Chevron Stock | Family | 3.00 | 900.58 |
| General Journal | 3/23/2011 | EJ20110306 | | Fee Offset Less Admin Fee | Elmer | -13.01 | 887.57 |
| General Journal | 4/5/2011 | EJ20110403 | | Redeem JPM Fed Money Market Instl Cl | Elmer | 300.68 | 1,188.25 |
| General Journal | 4/21/2011 | EJ20110404 | | Fee Offset Less Admin Fee | Elmer | -11.70 | 1,176.55 |
| General Journal | 5/5/2011 | EJ20110502 | | Redeem JPM Fed Money Market Instl | Elmer | 295.92 | 1,472.47 |
| General Journal | 5/17/2011 | EJ20110503 | | Fee Offset Less Admin Fee | Elmer | -12.12 | 1,460.35 |
| General Journal | 6/1/2011 | EJ20110602 | | Minimum Balance Fee | Survivor | 3.00 | 1,463.35 |
| General Journal | 6/1/2011 | EJ20110601 | | Redeem JPM Fed Money Market Instl Cl | Elmer | 305.34 | 1,768.69 |
| Check | 6/14/2011 | EFT | Bank of America | External Transfer Fee - 3 Day bank charge | Survivor | 3.00 | 1,771.69 |
| General Journal | 6/22/2011 | EJ20110604 | | Fee Offset Less Admin Fee | Elmer | -11.59 | 1,760.10 |
| Check | 6/23/2011 | EFT | Bank of America | Check order fee | Nelva | 23.00 | 1,783.10 |
| General Journal | 7/8/2011 | EJ20110703 | | Redeemed JPM Fed Money Market Instl Cl | Elmer | 288.60 | 2,071.70 |
| Check | 7/20/2011 | EFT | Bank of America | Safebox Fee | Survivor | 8.00 | 2,079.70 |
| General Journal | 7/26/2011 | EJ20110704 | | Fee Offset Less Admin Fee | Elmer | -12.20 | 2,067.50 |
| Check | 7/27/2011 | EFT | Bank of America | External transfer fee - 3 Day | Survivor | 3.00 | 2,070.50 |
| General Journal | 8/4/2011 | EJ20110802 | | Redeemed JPM Fed Money Market Instl Cl | Elmer | 302.09 | 2,372.59 |
| General Journal | 8/25/2011 | EJ20110803 | | Fee Offset Less Admin Fee | Elmer | -11.67 | 2,360.92 |
| General Journal | 9/7/2011 | EJ20110902 | | Redeemed JPM Fed Money Market Instl C | Elmer | 279.62 | 2,640.54 |
| General Journal | 9/22/2011 | EJ20110906 | | Fee Offset Less Admin Fee | Elmer | -13.30 | 2,627.24 |
| General Journal | 10/6/2011 | EJ20111003 | | Redeemed JPM Fed Money Market Instl Cl | Elmer | 260.78 | 2,888.02 |
| General Journal | 10/25/2011 | EJ20111005 | | Fee Offset Less Admin Fee | Elmer | -14.31 | 2,873.71 |
| General Journal | 11/1/2011 | EJ20110145 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 2,965.49 |
| Check | 11/3/2011 | EFT | Bank of America | check order | Nelva | 23.00 | 2,988.49 |
| General Journal | 11/4/2011 | EJ20111103 | | Redeemed JPM Fed Money Market Instl Cl | Elmer | 264.30 | 3,252.79 |
| Check | 11/7/2011 | EFT | Bank of America | Wire transfer fee | Survivor | 25.00 | 3,277.79 |
| Check | 11/7/2011 | EFT | Bank of America | Wire transfer fee | Survivor | 25.00 | 3,302.79 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 11/8/2011 | eft | Bank of America | External transfer fee - 3 Day | Survivor | 3.00 | 3,305.79 |
| Check | 11/9/2011 | EFT | Bank of America | TX Tlr payment to Sdb 2575 banking | Survivor | 25.00 | 3,330.79 |
| General Journal | 11/10/2011 | EJ20110148 | | Safe Deposit Box Rent Refund Fde | Survivor | -82.00 | 3,248.79 |
| Check | 11/14/2011 | EFT | Bank of America | Safe box fee | Survivor | 135.00 | 3,383.79 |
| General Journal | 11/18/2011 | EJ20111104 | | Estate Service Fee | Survivor | 100.00 | 3,483.79 |
| General Journal | 11/21/2011 | EJ20111105 | | Wire Transfer Fee | Survivor | 25.00 | 3,508.79 |
| Check | 11/21/2011 | EFT | Bank of America | wire transfer fee | Survivor | 12.00 | 3,520.79 |
| General Journal | 11/22/2011 | EJ20111104 | | Fee Offset Less Admin Fee | Elmer | -13.47 | 3,507.32 |
| Check | 12/1/2011 | Debit | Bank of America-Brun... | Check order | Survivor | 26.00 | 3,533.32 |
| General Journal | 12/9/2011 | EJ20111211 | | Estate Valuation Fee | Survivor | 50.00 | 3,583.32 |
| General Journal | 12/23/2011 | EJ20111223 | | Fee Offset Less Admin Fee | Elmer | -13.85 | 3,569.47 |
| General Journal | 12/31/2011 | EJ20111204 | | Redeem JPMorgan Fed Money Market Istl Cl | Elmer | 256.62 | 3,826.09 |
| General Journal | 1/6/2012 | EJ20120103 | | Redeemed JP Morgan Fed Mon Mkt | Elmer | 264.78 | 4,090.87 |
| Check | 1/11/2012 | EFT | Bank of America | | Elmer | 14.00 | 4,104.87 |
| General Journal | 1/19/2012 | EJ20120105 | | Fee Offset Less Admin Fee | Elmer | -13.09 | 4,091.78 |
| General Journal | 2/3/2012 | EJ20120203 | | Redeemed JP Morgan Fed Mon Mkt Instl Cl | Elmer | 269.92 | 4,361.70 |
| General Journal | 2/24/2012 | EJ20120204 | | Fee Offset Less Admin Fee | Elmer | -12.21 | 4,349.49 |
| General Journal | 2/28/2012 | EJ20120221 | | Annual Service Fee | Survivor | 40.00 | 4,389.49 |
| Check | 3/5/2012 | TXFR | Bank of America | External transfer fee - 3 day | Survivor | 3.00 | 4,392.49 |
| General Journal | 3/6/2012 | EJ20120303 | | Redeem JP Morgan Fed Mon Mkt Instl Cl | Elmer | 260.41 | 4,652.90 |
| Check | 3/15/2012 | EFT | Bank of America | | Elmer | 31.00 | 4,683.90 |
| Check | 3/16/2012 | EFT | Bank of America | Returned Irem Chargeback Fee | Survivor | 12.00 | 4,695.90 |
| Check | 3/16/2012 | EFT | Bank of America | Returned Item Chargeback - Met Life dupl check | Survivor | 70.30 | 4,766.20 |
| General Journal | 3/28/2012 | EJ20120307 | | Fee Offset Less Admin Fee | Elmer | -12.62 | 4,753.58 |
| General Journal | 4/5/2012 | EJ20120403 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 283.77 | 5,037.35 |
| General Journal | 4/20/2012 | EJ20120404 | | Fee Offset Less Admin Fee | Elmer | -11.53 | 5,025.82 |
| General Journal | 5/4/2012 | EJ20120503 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 272.29 | 5,298.11 |
| General Journal | 5/30/2012 | EJ20120506 | | Fee Offset Less Admin Fee | Elmer | -11.98 | 5,286.13 |
| General Journal | 6/5/2012 | EJ20120603 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 272.55 | 5,558.68 |
| General Journal | 6/25/2012 | EJ20120607 | | Fee Offset Les Admin Fee | Elmer | -12.29 | 5,546.39 |
| General Journal | 7/6/2012 | EJ20120703 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 259.71 | 5,806.10 |
| Check | 7/17/2012 | EFT | Bank of America | External transfer fee - 3 Day | Survivor | 3.00 | 5,809.10 |
| General Journal | 7/27/2012 | EJ20120704 | | Fee Offset Less Admin Fee | Elmer | -16.56 | 5,792.54 |
| General Journal | 8/3/2012 | EJ20120803 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 275.06 | 6,067.60 |
| General Journal | 8/23/2012 | EJ20120804 | | Fee Offset Less Admin Fee | Elmer | -16.69 | 6,050.91 |
| General Journal | 9/7/2012 | EJ20120903 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 281.37 | 6,332.28 |
| General Journal | 9/25/2012 | EJ20120907 | | Fee Offset Less Admin Fee | Elmer | -16.75 | 6,315.53 |
| General Journal | 10/4/2012 | EJ20121003 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 278.62 | 6,594.15 |
| General Journal | 10/24/2012 | EJ20121006 | | Fee Offset Less Admin Fee | Elmer | -17.20 | 6,576.95 |
| General Journal | 11/6/2012 | EJ20121103 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 288.03 | 6,864.98 |
| General Journal | 11/30/2012 | EJ20121104 | | Fee Offset Less Admin Fee | Elmer | -17.01 | 6,847.97 |
| General Journal | 12/6/2012 | EJ20121203 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 275.75 | 7,123.72 |
| General Journal | 12/21/2012 | EJ20121211 | | Fee Offset Less Admin Fee | Elmer | -17.22 | 7,106.50 |
| General Journal | 1/7/2013 | EJ20130102 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 290.80 | 7,397.30 |
| General Journal | 1/25/2013 | EJ20130104 | | Fee Offset Less Admin Fee | Elmer | -16.98 | 7,380.32 |
| General Journal | 2/5/2013 | EJ20130203 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 299.80 | 7,680.12 |
| General Journal | 2/22/2013 | EJ20130204 | | Fee Offset Less Admin Fee | Elmer | -17.22 | 7,662.90 |
| General Journal | 2/28/2013 | EJ20130222 | | Annual Fee | Survivor | 40.00 | 7,702.90 |
| General Journal | 3/7/2013 | EJ20130303 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 273.58 | 7,976.48 |
| General Journal | 3/19/2013 | EJ20130306 | | Fee Offset Less Admin Fee | Elmer | -18.33 | 7,958.15 |
| General Journal | 4/9/2013 | EJ20130403 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 306.53 | 8,264.68 |
| General Journal | 4/18/2013 | EJ20130404 | | Fee Offset Less Admin Fee | Elmer | -17.32 | 8,247.36 |
| Check | 4/30/2013 | EFT | Bank of America | Monthly Fee | Nelva | 12.00 | 8,259.36 |
| General Journal | 5/7/2013 | EJ20130503 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 298.51 | 8,557.87 |
| General Journal | 5/28/2013 | EJ20130504 | | Fee Offset Less Admin Fee | Elmer | -17.25 | 8,540.62 |
| Total Bank & Brokerage Charges | | | | | | 8,540.62 | 8,540.62 |
| **Checks/Cash to Family Members** | | | | | | | |
| Check | 12/21/2010 | 6849 | Amy Brunsting Tschir... | Christmas Gifts | Nelva | 200.00 | 200.00 |
| Check | 12/21/2010 | EFT | Amy Brunsting Tschir... | Transfer Confirmation #6403973884 | Nelva | 7,000.00 | 7,200.00 |
| Check | 12/31/2010 | ATM | Cash | TX Tr Cash Withdrawal at Banking Center Town and Country | Nelva | 25.00 | 7,225.00 |
| Check | 1/12/2011 | ATM | Cash | ATM 01/11 #000007185 | Nelva | 40.00 | 7,265.00 |
| Check | 1/19/2011 | EFT | Amy Tschirhart | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 6,000.00 | 13,265.00 |
| Check | 1/25/2011 | ATM | Cash | ATM - Cash 01/25 #000006811 | Nelva | 10.00 | 13,275.00 |
| Check | 1/25/2011 | 115 | Cash | CAsh | Nelva | 100.00 | 13,375.00 |
| Check | 2/22/2011 | 140 | Cash | Cash | Nelva | 100.00 | 13,475.00 |
| Check | 3/14/2011 | 149 | Candace Curtis | | Nelva | 25.00 | 13,500.00 |
| Check | 3/20/2011 | 7007 | Amy Brunsing | Reimbursement for supplies | Survivor | 40.00 | 13,540.00 |
| Check | 4/7/2011 | EFT | Candace Curtis | Gifts Given/ref acct 2272/ties to G Vie letter/sch's dated 7/15/13 | Survivor | 3,000.00 | 16,540.00 |
| Check | 4/21/2011 | EFT | Best uy | Tino phone | Nelva | 376.38 | 16,916.38 |
| Check | 5/10/2011 | 7014 | TDECU | Luke Truck, ties to G Vie letter/sch's dated 7/15/13 | Survivor | 5,443.22 | 22,359.60 |
| Check | 5/27/2011 | 7016 | The Victoria Col | Luke college -in lieu of Anita Trustee fee per G Vie letter | Survivor | 461.00 | 22,820.60 |
| Check | 6/2/2011 | EFT | Iowa 529 | Kt college - Ach DES:Contribution ID:0000 | Survivor | 500.00 | 23,320.60 |
| Check | 6/3/2011 | EFT | Am-Honda | For Katie DES:PMT ID:000001032223 ties to G Vie letter/sch's ... | Survivor | 5,750.51 | 29,071.11 |
| Check | 6/6/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPAY ID:11... | Survivor | 2,358.75 | 31,429.86 |
| Check | 6/8/2011 | TXFR | Candace Curtis | Candy Curtis to ckg ...2272 ties to G Vie letter/sch's dated 7/15... | Survivor | 2,000.00 | 33,429.86 |
| Check | 6/13/2011 | TXFR | Amy Tschirhart | Reimbursement - Supplies to fix house | Survivor | 100.00 | 33,529.86 |
| Check | 6/23/2011 | 240 | Luke Riley | Household yard work | Nelva | 25.00 | 33,554.86 |
| Check | 6/27/2011 | EFT | Bank of America Cre... | in lieu of Anita Trustee fee as per G Vie letter $ amt. transposed... | Survivor | 2,364.34 | 35,919.20 |
| Check | 7/6/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPAY ID:114... | Survivor | 2,976.35 | 38,895.55 |
| Check | 7/15/2011 | EFT | Bank of America Cre... | Cr Card pymt in lieu of Trustee fee Anita, G Vie letter and Trust ... | Survivor | 7,242.83 | 46,138.38 |
| Check | 7/18/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letterDES:EPAY ID:115... | Survivor | 1,998.19 | 48,136.57 |
| Check | 7/26/2011 | EFT | Amy Tschirhart | Reimbursement supplies to fix house | Survivor | 100.00 | 48,236.57 |
| Check | 8/24/2011 | EFT | Candace Curtis | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 50,236.57 |
| Check | 8/24/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 75.00 | 50,311.57 |
| Check | 8/25/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 15.00 | 50,326.57 |
| Check | 8/25/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 15.00 | 50,341.57 |
| Check | 8/26/2011 | EFT | UTSA Admissions | Luke college - Education | Survivor | 575.00 | 50,916.57 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 9/6/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:117... | Survivor | 999.04 | 51,915.61 |
| Check | 9/7/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 125.00 | 52,040.61 |
| Check | 9/8/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 550.00 | 52,590.61 |
| Check | 9/23/2011 | EFT | Bank of America Cre... | in lieu of Anita Trustee fee as per G Vie letter date on his sch 9/7 | Survivor | 4,767.36 | 57,357.97 |
| Check | 10/4/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:119... | Survivor | 2,390.35 | 59,748.32 |
| Check | 10/5/2011 | EFT | Candace Curtis | to chk 2839`` | Nelva | 500.00 | 60,248.32 |
| Check | 10/18/2011 | 356 | Nelva Brunsting | Cash | Nelva | 50.00 | 60,298.32 |
| Check | 10/19/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:120... | Survivor | 2,033.30 | 62,331.62 |
| Check | 10/21/2011 | 7032 | Vehs Bankd Boosters | Katy band | Survivor | 280.00 | 62,611.62 |
| Check | 10/26/2011 | EFT | Candace Curtis | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 64,611.62 |
| Check | 11/1/2011 | TXFR | Luke Riley | Luke College ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 66,611.62 |
| Check | 11/3/2011 | EFT | Bank of America Cre... | in lieu of Anita Trustee fee as per G Vie letter his sch had 10/6 d... | Survivor | 102.52 | 66,714.14 |
| Check | 11/7/2011 | EFT | Anita Brunsting | Legal fees Wire Type:Wire Out Date:111107 T to anita for futu... | Survivor | 10,000.00 | 76,714.14 |
| Check | 11/7/2011 | EFT | Amy Brunsing | Legal fees Wire TyoeL Wire Out Date:111107 T to amy for f... | Survivor | 10,000.00 | 86,714.14 |
| Check | 11/7/2011 | EFT | Amy Tschirhart | Reimbursement - for supplies to fix house | Survivor | 1,000.00 | 87,714.14 |
| Check | 11/8/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID: 121... | Survivor | 3,274.51 | 90,988.65 |
| Check | 11/10/2011 | EFT | Candace Curtis | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 92,988.65 |
| Check | 1/25/2012 | 111 | Amy Brunsing | Reimbursement - moving/repair expenses | Survivor | 425.94 | 93,414.59 |
| Check | 2/27/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 10,000.00 | 103,414.59 |
| Check | 3/2/2012 | TXFR | Amy Brunsing | Reimbursement trust expenses | Survivor | 841.45 | 104,256.04 |
| Check | 3/2/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 2,537.50 | 106,793.54 |
| Check | 3/5/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 10,000.00 | 116,793.54 |
| Check | 3/6/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 3,117.50 | 119,911.04 |
| General Journal | 3/13/2012 | EJ20120410 | Amy Brunsting | Reimbursement | Survivor | -10,000.00 | 109,911.04 |
| General Journal | 3/13/2012 | EJ20120412 | Anita Brunsting | Reimbursement | Survivor | -10,040.00 | 99,871.04 |
| Check | 4/16/2012 | 122 | Candace Curtis | Remainder of Life Ins Trust - Other Income | Survivor | 60.00 | 99,931.04 |
| Check | 4/16/2012 | 123 | Carl Brunsting | Remainder of Life Ins Trust | Survivor | 60.00 | 99,991.04 |
| Check | 4/16/2012 | 124 | Amy Brunsing | Remainder of Life Ins Trust - Other Inc | Survivor | 60.00 | 100,051.04 |
| Check | 4/16/2012 | 125 | Carole Brunsting | Remainder of Life Ins Trust - Other Inc | Survivor | 60.00 | 100,111.04 |
| Check | 4/16/2012 | 127 | Anita Brunsting | Remainder of Life Ins Trust - Other Inc | Survivor | 44.65 | 100,155.69 |
| Check | 4/20/2012 | EFT | Carole Brunsting | Moving Expenses Reimbursement | Survivor | 1,563.50 | 101,719.19 |
| Check | 4/25/2012 | 131 | Anita Brunsting | Legal fees Reimbursement for Retainer to Chip Mathews | Survivor | 5,000.00 | 106,719.19 |
| Check | 4/25/2012 | 130 | Anita Brunsting | Reimbursement for UPS to mail boxes to S Mills | Survivor | 102.11 | 106,821.30 |
| Check | 5/16/2012 | 101 | Anita Brunsting | Reimbursement for 1/2 farm tax | Elmer | 1,679.43 | 108,500.73 |
| Check | 7/16/2012 | TXFR | Amy Brunsing | Trust expenses - Reimbursement | Survivor | 353.43 | 108,854.16 |
| Check | 9/10/2012 | 139 | Anita Brunsting | Reimburse postage | Survivor | 61.75 | 108,915.91 |
| Check | 9/10/2012 | 140 | Anita Brunsting | Stamps reimbursement | Survivor | 9.00 | 108,924.91 |
| Total Checks/Cash to Family Members | | | | | | 108,924.91 | 108,924.91 |
| **Dues and Subscriptions** | | | | | | | |
| Check | 3/15/2011 | 154 | Birds and Blooms | | Nelva | 10.00 | 10.00 |
| Check | 4/25/2011 | 187 | Doon Press | | Nelva | 26.50 | 36.50 |
| Check | 8/17/2011 | 294 | Houston Chronicle | | Nelva | 138.00 | 174.50 |
| Check | 8/18/2011 | 292 | Time Magazine | | Nelva | 20.00 | 194.50 |
| Check | 9/21/2011 | 322 | Iowa Outdoors | | Nelva | 15.00 | 209.50 |
| Check | 9/10/2012 | 137 | Houston Chronicle | final payment - subscription | Survivor | 68.97 | 278.47 |
| Total Dues and Subscriptions | | | | | | 278.47 | 278.47 |
| **Food/Dining/Groceries** | | | | | | | |
| Check | 12/21/2010 | 6848 | Randalls | | Nelva | 60.51 | 60.51 |
| Check | 1/10/2011 | EFT | Randalls | 01/09 #000555055 | Nelva | 234.97 | 295.48 |
| Check | 1/18/2011 | EFT | Kroger | | Nelva | 32.33 | 327.81 |
| Check | 1/24/2011 | EFT | Randalls | 01/23 #000635058 | Nelva | 35.89 | 363.70 |
| Check | 1/24/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 366.99 |
| Check | 1/31/2011 | EFT | Randalls | | Nelva | 51.87 | 418.86 |
| Check | 1/31/2011 | EFT | Randalls | | Nelva | 47.24 | 466.10 |
| Check | 1/31/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 469.39 |
| Check | 2/7/2011 | EFT | Randalls | | Nelva | 71.64 | 541.03 |
| Check | 2/14/2011 | EFT` | Randalls | | Nelva | 23.68 | 564.71 |
| Check | 2/14/2011 | EFT | Randalls | | Nelva | 76.92 | 641.63 |
| Check | 2/18/2011 | EFT | Kroger | | Nelva | 27.33 | 668.96 |
| Check | 2/22/2011 | EFT | Subway | Dining | Nelva | 3.25 | 672.21 |
| Check | 2/22/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 5.83 | 678.04 |
| Check | 2/22/2011 | EFT | Randalls | | Nelva | 47.02 | 725.06 |
| Check | 2/22/2011 | EFT | Wal-Mart | | Nelva | 46.27 | 771.33 |
| Check | 2/22/2011 | EFT | Randalls | | Nelva | 8.68 | 780.01 |
| Check | 2/22/2011 | EFT | Walgreens | | Nelva | 28.12 | 808.13 |
| Check | 2/24/2011 | EFT | Randalls | | Nelva | 24.39 | 832.52 |
| Check | 3/7/2011 | EFT | Randalls | | Nelva | 24.30 | 856.82 |
| Check | 3/7/2011 | EFT | Chick-fil-a #0103 | | Nelva | 3.29 | 860.11 |
| Check | 3/7/2011 | EFT | Randalls | | Nelva | 9.77 | 869.88 |
| Check | 3/7/2011 | eft | Wal-Mart | | Nelva | 11.89 | 881.77 |
| General Journal | 3/7/2011 | EJ20120461 | | DEBIT 1943 | Nelva | -6.48 | 875.29 |
| Check | 3/8/2011 | eft | Subway | | Nelva | 3.25 | 878.54 |
| Check | 3/14/2011 | EFT | Randalls | | Nelva | 29.21 | 907.75 |
| Check | 3/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 14.16 | 921.91 |
| Check | 3/14/2011 | EFT | Randalls | | Nelva | 13.23 | 935.14 |
| Check | 3/14/2011 | EFT | Taco Cabana | Dining | Nelva | 6.48 | 941.62 |
| Check | 3/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 944.91 |
| Check | 3/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 1.83 | 946.74 |
| Check | 3/14/2011 | EEFT | Taco Cabana | Dining | Nelva | 8.63 | 955.37 |
| Check | 3/16/2011 | EFT | Randalls | | Nelva | 60.94 | 1,016.31 |
| Check | 3/16/2011 | EFT | Randalls | | Nelva | 12.44 | 1,028.75 |
| Check | 3/18/2011 | EFT | Randalls | | Nelva | 69.77 | 1,098.52 |
| Check | 3/21/2011 | EFT | Taco Cabana | Dining | Nelva | 22.68 | 1,121.20 |
| Check | 3/21/2011 | EFT | Taco Cabana | Dining | Nelva | 23.77 | 1,144.97 |
| Check | 3/21/2011 | EFT | Wal-Mart | | Nelva | 114.67 | 1,259.64 |
| Check | 3/21/2011 | EFT | Randalls | | Nelva | 18.37 | 1,278.01 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 3/21/2011 | EFT | Randalls | | Nelva | 13.11 | 1,291.12 |
| Check | 3/28/2011 | EFT | Randalls | | Nelva | 36.05 | 1,327.17 |
| Check | 3/29/2011 | EFT | Subway | Dining | Nelva | 4.33 | 1,331.50 |
| Check | 3/30/2011 | EFT | Randalls | | Nelva | 8.85 | 1,340.35 |
| Check | 4/4/2011 | EFT | Wal-Mart | | Nelva | 37.28 | 1,377.63 |
| Check | 4/4/2011 | EFT | Randalls | | Nelva | 34.54 | 1,412.17 |
| Check | 4/4/2011 | EFT | Randalls | | Nelva | 52.52 | 1,464.69 |
| Check | 4/5/2011 | EFT | Subway | Dining | Nelva | 3.25 | 1,467.94 |
| Check | 4/6/2011 | EFT | Randalls | | Nelva | 34.97 | 1,502.91 |
| Check | 4/8/2011 | EFT | Randalls | | Nelva | 15.87 | 1,518.78 |
| Check | 4/11/2011 | EFT | Subway | Dining | Nelva | 3.79 | 1,522.57 |
| Check | 4/11/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 1.83 | 1,524.40 |
| Check | 4/11/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 1.83 | 1,526.23 |
| Check | 4/11/2011 | EFT | Randalls | | Nelva | 16.56 | 1,542.79 |
| Check | 4/11/2011 | EFT | Randalls | | Nelva | 51.94 | 1,594.73 |
| Check | 4/12/2011 | EFT | Subway | Dining | Nelva | 3.25 | 1,597.98 |
| Check | 4/12/2011 | EFT | Randalls | | Nelva | 34.69 | 1,632.67 |
| Check | 4/13/2011 | EFT | Randalls | | Nelva | 67.04 | 1,699.71 |
| Check | 4/14/2011 | EFT | Randalls | | Nelva | 24.03 | 1,723.74 |
| Check | 4/15/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 10.25 | 1,733.99 |
| Check | 4/18/2011 | EFT | Randalls | | Nelva | 26.45 | 1,760.44 |
| Check | 4/18/2011 | EFT | Randalls | | Nelva | 23.16 | 1,783.60 |
| Check | 4/18/2011 | EFT | Randalls | | Nelva | 17.30 | 1,800.90 |
| Check | 4/22/2011 | EFT | Randalls | | Nelva | 57.60 | 1,858.50 |
| Check | 4/25/2011 | EFT | Subway | Dining | Nelva | 3.79 | 1,862.29 |
| Check | 4/25/2011 | EFT | Subway | Dining | Nelva | 3.79 | 1,866.08 |
| Check | 4/25/2011 | EFT | Taco Cabana | Dining | Nelva | 22.68 | 1,888.76 |
| Check | 4/25/2011 | EFT | Randalls | | Nelva | 86.07 | 1,974.83 |
| Check | 5/2/2011 | EFT | Randalls | | Nelva | 140.07 | 2,114.90 |
| Check | 5/3/2011 | EFT | Randalls | | Nelva | 36.75 | 2,151.65 |
| Check | 5/6/2011 | EFT | Randalls | | Nelva | 17.30 | 2,168.95 |
| Check | 5/9/2011 | EFT | Randalls | | Nelva | 33.74 | 2,202.69 |
| Check | 5/9/2011 | EFT | Randalls | | Nelva | 55.52 | 2,258.21 |
| Check | 5/11/2011 | EFT | Randalls | | Nelva | 10.39 | 2,268.60 |
| Check | 5/16/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 2,271.89 |
| Check | 5/16/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 2,275.18 |
| Check | 5/18/2011 | EFT | Randalls | | Nelva | 42.56 | 2,317.74 |
| Check | 5/20/2011 | EFT | Randalls | | Nelva | 21.87 | 2,339.61 |
| Check | 5/23/2011 | EFT | Randalls | | Nelva | 57.35 | 2,396.96 |
| Check | 5/25/2011 | EFT | Randalls | Dining | Nelva | 43.52 | 2,440.48 |
| Check | 5/31/2011 | EFT | Randalls | | Nelva | 31.71 | 2,472.19 |
| Check | 6/3/2011 | EFT | Randalls | | Nelva | 23.46 | 2,495.65 |
| Check | 6/6/2011 | EFT | Kroger | | Nelva | 32.17 | 2,527.82 |
| Check | 6/6/2011 | EFT | Randalls | | Nelva | 23.97 | 2,551.79 |
| Check | 6/6/2011 | EFT | Randalls | | Nelva | 20.00 | 2,571.79 |
| Check | 6/6/2011 | EFT | Fastop | Dining | Nelva | 4.25 | 2,576.04 |
| Check | 6/13/2011 | EFT | McDonald's | Dining | Nelva | 13.46 | 2,589.50 |
| Check | 6/13/2011 | EFT | Kroger | | Nelva | 3.05 | 2,592.55 |
| Check | 6/13/2011 | EFT | Randalls | | Nelva | 43.77 | 2,636.32 |
| Check | 6/13/2011 | EFT | Randalls | | Nelva | 54.05 | 2,690.37 |
| Check | 6/14/2011 | EFT | McDonald's | Dining | Nelva | 2.17 | 2,692.54 |
| Check | 6/20/2011 | EFT | Randalls | | Nelva | 24.19 | 2,716.73 |
| Check | 6/24/2011 | EFT | Randalls | | Nelva | 41.68 | 2,758.41 |
| Check | 6/28/2011 | EFT | Randalls | | Nelva | 50.83 | 2,809.24 |
| Check | 7/1/2011 | EFT | Randalls | | Nelva | 18.92 | 2,828.16 |
| Check | 7/5/2011 | EFT | Randalls | | Nelva | 25.61 | 2,853.77 |
| Check | 7/5/2011 | EFT | Randalls | | Nelva | 34.05 | 2,887.82 |
| Check | 7/6/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 5.13 | 2,892.95 |
| Check | 7/8/2011 | EFT | Randalls | | Nelva | 46.61 | 2,939.56 |
| Check | 7/11/2011 | EFT | Randalls | | Nelva | 52.99 | 2,992.55 |
| Check | 7/11/2011 | EFT | McDonald's | Dining | Nelva | 2.48 | 2,995.03 |
| Check | 7/11/2011 | EFT | Randalls | | Nelva | 29.80 | 3,024.83 |
| Check | 7/18/2011 | EFT | Randalls | | Nelva | 35.41 | 3,060.24 |
| Check | 7/18/2011 | EFT | Randalls | | Nelva | 25.14 | 3,085.38 |
| Check | 7/18/2011 | EFT | Wal-Mart | | Nelva | 260.73 | 3,346.11 |
| Check | 7/21/2011 | EFT | Randalls | | Nelva | 45.34 | 3,391.45 |
| Check | 7/25/2011 | EFT | Randalls | | Nelva | 43.38 | 3,434.83 |
| Check | 7/25/2011 | EFT | Randalls | | Nelva | 60.57 | 3,495.40 |
| Check | 7/25/2011 | EFT | Kolache Factory | Dining | Nelva | 3.76 | 3,499.16 |
| Check | 7/28/2011 | EFT | Randalls | | Nelva | 31.23 | 3,530.39 |
| Check | 7/28/2011 | EFT | Randalls | | Nelva | 26.20 | 3,556.59 |
| Check | 7/29/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 1.83 | 3,558.42 |
| Check | 8/1/2011 | EFT | Randalls | | Nelva | 47.94 | 3,606.36 |
| Check | 8/1/2011 | EFT | Walgreens | | Nelva | 20.99 | 3,627.35 |
| Check | 8/1/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 3,630.64 |
| Check | 8/2/2011 | EFT | Randalls | | Nelva | 29.74 | 3,660.38 |
| Check | 8/4/2011 | EFT | McDonald's | Dining | Nelva | 2.17 | 3,662.55 |
| Check | 8/5/2011 | EFT | Randalls | | Nelva | 24.92 | 3,687.47 |
| Check | 8/8/2011 | EFT | Randalls | | Nelva | 30.29 | 3,717.76 |
| Check | 8/8/2011 | EFT | Randalls | 08/06 | Nelva | 57.90 | 3,775.66 |
| Check | 8/10/2011 | EFT | Randalls | | Nelva | 21.76 | 3,797.42 |
| Check | 8/15/2011 | EFT | Randalls | | Nelva | 58.34 | 3,855.76 |
| Check | 8/15/2011 | EFT | Randalls | | Nelva | 46.75 | 3,902.51 |
| Check | 8/17/2011 | EFT | HEB | | Nelva | 34.39 | 3,936.90 |
| Check | 8/17/2011 | EFT | HEB | | Nelva | 19.77 | 3,956.67 |
| Check | 8/22/2011 | EFT | Randalls | | Nelva | 39.52 | 3,996.19 |
| Check | 8/22/2011 | EFT | Randalls | | Nelva | 44.99 | 4,041.18 |
| Check | 8/24/2011 | EFT | Randalls | | Nelva | 44.36 | 4,085.54 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 8/24/2011 | EFT | Randalls | | Nelva | 28.74 | 4,114.28 |
| Check | 8/25/2011 | EFT | Randalls | | Nelva | 18.33 | 4,132.61 |
| Check | 8/29/2011 | EFT | Randalls | | Nelva | 36.15 | 4,168.76 |
| Check | 9/2/2011 | EFT | Randalls | | Nelva | 21.71 | 4,190.47 |
| Check | 9/6/2011 | EFT | Randalls | | Nelva | 33.12 | 4,223.59 |
| Check | 9/6/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 4,226.88 |
| Check | 9/6/2011 | EFT | Randalls | | Nelva | 68.27 | 4,295.15 |
| Check | 9/7/2011 | EFT | Randalls | | Nelva | 50.29 | 4,345.44 |
| Check | 9/8/2011 | EFT | Randalls | | Nelva | 14.60 | 4,360.04 |
| Check | 9/9/2011 | EFT | Chick-fil-a #0103 | | Nelva | 3.29 | 4,363.33 |
| Check | 9/12/2011 | EFT | Randalls | | Nelva | 92.24 | 4,455.57 |
| Check | 9/12/2011 | EFT | Randalls | | Nelva | 20.00 | 4,475.57 |
| Check | 9/19/2011 | EFT | Randalls | | Nelva | 42.84 | 4,518.41 |
| Check | 9/23/2011 | EFT | Walgreens | | Nelva | 11.99 | 4,530.40 |
| Check | 9/26/2011 | EFT | Wal-Mart | | Nelva | 133.75 | 4,664.15 |
| Check | 9/26/2011 | EFT | Randalls | | Nelva | 23.57 | 4,687.72 |
| Check | 9/28/2011 | EFT | Randalls | | Nelva | 14.06 | 4,701.78 |
| Check | 9/28/2011 | EFT | Randalls | | Nelva | 18.90 | 4,720.68 |
| Check | 9/30/2011 | EFT | Randalls | | Nelva | 28.77 | 4,749.45 |
| Check | 9/30/2011 | EFT | Randalls | | Nelva | 19.06 | 4,768.51 |
| Check | 10/3/2011 | EFT | Wal-Mart | | Nelva | 55.92 | 4,824.43 |
| Check | 10/3/2011 | EFT | Randalls | | Nelva | 32.16 | 4,856.59 |
| Check | 10/3/2011 | EFT | HEB | | Nelva | 20.75 | 4,877.34 |
| Check | 10/3/2011 | EFT | Randalls | | Nelva | 8.95 | 4,886.29 |
| Check | 10/4/2011 | EFT | Randalls | | Nelva | 38.92 | 4,925.21 |
| Check | 10/7/2011 | EFT | Randalls | | Nelva | 39.04 | 4,964.25 |
| Check | 10/11/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 4,967.54 |
| Check | 10/11/2011 | EFT | Randalls | | Nelva | 26.50 | 4,994.04 |
| Check | 10/11/2011 | EFT | Randalls | | Nelva | 14.06 | 5,008.10 |
| Check | 10/12/2011 | ET | Randalls | | Nelva | 25.47 | 5,033.57 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 65.96 | 5,099.53 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 45.32 | 5,144.85 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 28.98 | 5,173.83 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 28.05 | 5,201.88 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 17.30 | 5,219.18 |
| Check | 10/17/2011 | EFT | McDonald's | Dining | Nelva | 6.26 | 5,225.44 |
| Check | 10/19/2011 | EFT | Randalls | | Nelva | 27.71 | 5,253.15 |
| Check | 10/20/2011 | EFT | Chick-fil-a #0103 | dINING | Nelva | 3.29 | 5,256.44 |
| Check | 10/21/2011 | eft | Randalls | | Nelva | 7.61 | 5,264.05 |
| Check | 10/21/2011 | eft | Chick-fil-a #0103 | dINING | Nelva | 3.29 | 5,267.34 |
| Check | 10/24/2011 | EFT | Randalls | | Nelva | 41.88 | 5,309.22 |
| Check | 10/24/2011 | eft | Chick-fil-a #0103 | dINING | Nelva | 3.29 | 5,312.51 |
| Check | 10/25/2011 | eft | Randalls | | Nelva | 52.17 | 5,364.68 |
| Check | 10/26/2011 | eft | Randalls | | Nelva | 42.23 | 5,406.91 |
| Check | 10/26/2011 | EFT | Subway | Dining | Nelva | 14.70 | 5,421.61 |
| Check | 10/31/2011 | EFT | Randalls | | Nelva | 94.10 | 5,515.71 |
| Check | 10/31/2011 | EFT | Randalls | | Nelva | 20.33 | 5,536.04 |
| Check | 10/31/2011 | EFT | Randalls | | Nelva | 6.90 | 5,542.94 |
| Check | 11/1/2011 | EFT | Randalls | | Nelva | 33.16 | 5,576.10 |
| Check | 11/2/2011 | EFT | Randalls | Fuel | Nelva | 25.78 | 5,601.88 |
| Check | 11/4/2011 | EFT | Randalls | | Nelva | 10.00 | 5,611.88 |
| Check | 11/4/2011 | EFT | Randalls | | Nelva | 53.01 | 5,664.89 |
| Check | 11/7/2011 | EFT | Au Bon Pain-memo | Dining | Nelva | 3.94 | 5,668.83 |
| Check | 11/7/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 5,672.12 |
| Check | 11/7/2011 | EFT | McDonald's | Dining | Nelva | 1.08 | 5,673.20 |
| Check | 11/7/2011 | EFT | Randalls | | Nelva | 33.51 | 5,706.71 |
| Check | 11/7/2011 | EFT | Randalls | | Nelva | 34.35 | 5,741.06 |
| Check | 11/8/2011 | EFT | Randalls | | Nelva | 17.84 | 5,758.90 |
| Check | 11/8/2011 | EFT | McDonald's | Dining | Nelva | 6.70 | 5,765.60 |
| Check | 11/8/2011 | EFT | Randalls | | Nelva | 48.45 | 5,814.05 |
| Check | 11/9/2011 | EFT | HEB | | Nelva | 43.40 | 5,857.45 |
| Check | 11/14/2011 | eft | Randalls | | Nelva | 32.71 | 5,890.16 |
| Check | 11/14/2011 | eft | Randalls | | Nelva | 30.92 | 5,921.08 |
| Check | 11/14/2011 | eft | Randalls | | Nelva | 22.41 | 5,943.49 |
| Check | 11/14/2011 | EFT | McDonald's | Dining | Nelva | 8.60 | 5,952.09 |
| Check | 11/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 5,955.38 |
| Check | 11/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 5,958.67 |
| Total Food/Dining/Groceries | | | | | | 5,958.67 | 5,958.67 |
| **Funeral** | | | | | | | |
| Check | 11/12/2011 | 7033 | Memorial Oaks | | Survivor | 1,595.00 | 1,595.00 |
| Check | 11/14/2011 | 7035 | Memorial Oaks | | Survivor | 1,511.29 | 3,106.29 |
| Check | 11/15/2011 | 7036 | Memorial Oaks | Organist | Survivor | 150.00 | 3,256.29 |
| Check | 11/15/2011 | 7037 | Bob Johnson | pastor | Survivor | 300.00 | 3,556.29 |
| Total Funeral | | | | | | 3,556.29 | 3,556.29 |
| **Household** | | | | | | | |
| Check | 1/20/2011 | 111 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 70.00 |
| Check | 2/11/2011 | 125 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 140.00 |
| Check | 2/18/2011 | 161 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 210.00 |
| Check | 2/22/2011 | EFT | Southwest Fertilizer | | Nelva | 8.73 | 218.73 |
| Check | 2/28/2011 | EFT | Southwest Fertilizer | | Nelva | 59.73 | 278.46 |
| Check | 2/28/2011 | EFT | Radio Shack | | Nelva | 94.13 | 372.59 |
| Check | 3/1/2011 | EFT | Home Depot | | Nelva | 20.55 | 393.14 |
| Check | 3/25/2011 | 169 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 463.14 |
| Check | 3/28/2011 | EFT | Southwest Fertilizer | | Nelva | 13.39 | 476.53 |
| Check | 4/6/2011 | EFT | Southwest Fertilizer | | Nelva | 9.73 | 486.26 |
| Check | 4/8/2011 | 179 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 556.26 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 4/18/2011 | EFT | Sou The Home | 04/16 #000457501 | Nelva | 22.83 | 579.09 |
| Check | 4/25/2011 | 196 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 649.09 |
| Check | 5/3/2011 | EFT | Southwest Fertilizer | | Nelva | 21.98 | 671.07 |
| Check | 5/9/2011 | 210 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 741.07 |
| Check | 5/23/2011 | 221 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 811.07 |
| Check | 6/3/2011 | 237 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 881.07 |
| Check | 6/27/2011 | EFT | Sou The Home | | Nelva | 161.36 | 1,042.43 |
| Check | 7/26/2011 | EFT | Southwest Fertilizer | Garden | Nelva | 25.88 | 1,068.31 |
| Check | 8/11/2011 | 300 | Maria Vaquera | Cleaning | Nelva | 50.00 | 1,118.31 |
| Check | 9/13/2011 | EFT | Southwest Fertilizer | Garden | Nelva | 18.89 | 1,137.20 |
| Check | 9/26/2011 | 336 | Maria Vaquera | Cleaning | Nelva | 50.00 | 1,187.20 |
| Check | 10/6/2011 | 345 | Maria Vaquera | Cleaning | Nelva | 50.00 | 1,237.20 |
| Total Household | | | | | | 1,237.20 | 1,237.20 |
| **Insurance Expense** | | | | | | | |
| Check | 1/5/2011 | EFT | State Farm Insurance | | Survivor | 299.93 | 299.93 |
| Check | 2/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 299.93 | 599.86 |
| Check | 3/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 299.93 | 899.79 |
| Check | 4/4/2011 | EFT | State Farm Insurance | PPD | Survivor | 301.36 | 1,201.15 |
| Check | 5/3/2011 | EFT | State Farm Insurance | | Survivor | 300.62 | 1,501.77 |
| Check | 6/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 300.62 | 1,802.39 |
| Check | 7/5/2011 | EFT | State Farm Insurance | PPD | Survivor | 300.62 | 2,103.01 |
| Check | 8/2/2011 | EFT | State Farm Insurance | | Survivor | 300.62 | 2,403.63 |
| Check | 9/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 2,693.67 |
| Check | 10/4/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 2,983.71 |
| Check | 11/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 3,273.75 |
| Check | 12/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 3,563.79 |
| Check | 1/5/2012 | EFT | State Farm Insurance | PPF | Survivor | 290.04 | 3,853.83 |
| Check | 2/2/2012 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 4,143.87 |
| Check | 3/2/2012 | EFT | State Farm Insurance | PPD | Survivor | 292.79 | 4,436.66 |
| Check | 4/3/2012 | EFT | State Farm Insurance | PPD | Survivor | 301.22 | 4,737.88 |
| Total Insurance Expense | | | | | | 4,737.88 | 4,737.88 |
| **Lawn Care** | | | | | | | |
| Check | 2/14/2011 | 133 | Mr. Phan Chan | Household | Nelva | 100.00 | 100.00 |
| Check | 3/11/2011 | 157 | Mr. Phan Chan | Household | Nelva | 100.00 | 200.00 |
| Check | 3/21/2011 | 160 | Nicolas | Yard work | Nelva | 52.00 | 252.00 |
| Check | 4/15/2011 | 190 | Mr. Phan Chan | mowing | Nelva | 100.00 | 352.00 |
| Check | 5/20/2011 | 222 | Mr. Phan Chan | mowing | Nelva | 100.00 | 452.00 |
| Check | 5/24/2011 | 226 | Fernando | yard work Home repair | Nelva | 35.00 | 487.00 |
| Check | 6/27/2011 | 255 | Mr. Phan Chan | mowing | Nelva | 125.00 | 612.00 |
| Check | 7/25/2011 | 280 | Mr. Phan Chan | mowing | Nelva | 125.00 | 737.00 |
| Check | 9/23/2011 | 337 | Mr. Phan Chan | Household | Nelva | 225.00 | 962.00 |
| Check | 10/21/2011 | 361 | Mr. Phan Chan | Household | Nelva | 100.00 | 1,062.00 |
| Check | 12/23/2011 | 105 | Mr. Phan Chan | 13630 Pinerock | Survivor | 200.00 | 1,262.00 |
| Total Lawn Care | | | | | | 1,262.00 | 1,262.00 |
| **Legal Fees** | | | | | | | |
| Check | 1/19/2011 | 7003 | Vacek & Freed PLLC | | Survivor | 880.15 | 880.15 |
| Check | 3/17/2011 | 7006 | Vacek & Freed PLLC | Legal Fees | Survivor | 340.00 | 1,220.15 |
| Check | 6/2/2011 | 7015 | Vacek & Freed PLLC | | Survivor | 575.59 | 1,795.74 |
| Check | 8/5/2011 | 7025 | Vacek & Freed PLLC | Retainer | Survivor | 1,000.00 | 2,795.74 |
| Check | 10/12/2011 | 7030 | DeKoster & DeKoster | farm contract | Survivor | 100.00 | 2,895.74 |
| Check | 12/20/2011 | 101 | Vacek & Freed PLLC | Retainer | Survivor | 4,500.00 | 7,395.74 |
| Check | 1/3/2012 | 110 | Herb Jamison | House appraisal | Survivor | 450.00 | 7,845.74 |
| Check | 4/20/2012 | 128 | Mills Shirley LLP | Suit | Survivor | 10,000.00 | 17,845.74 |
| Check | 4/20/2012 | 129 | Bernard Mathews | | Survivor | 1,029.60 | 18,875.34 |
| Check | 7/18/2012 | 135 | Mills Shirley LLP | | Survivor | 17,000.00 | 35,875.34 |
| Check | 3/21/2013 | 142 | Mills Shirley LLP | | Survivor | 437.10 | 36,312.44 |
| Check | 4/2/2013 | 143 | Mills Shirley LLP | George vie Candy's suit | Survivor | 10,000.00 | 46,312.44 |
| General Journal | 5/31/2013 | EJ20120434 | | From Mills Shirley - Reimbursement | Survivor | -10,000.00 | 36,312.44 |
| Total Legal Fees | | | | | | 36,312.44 | 36,312.44 |
| **Medical Expenses** | | | | | | | |
| **In Home Care** | | | | | | | |
| Check | 12/29/2010 | 6851 | Tino | Faustiino Vaquera, Jr | Nelva | 1,245.00 | 1,245.00 |
| Check | 12/29/2010 | 6852 | Michael Brooks | | Nelva | 855.00 | 2,100.00 |
| Check | 1/4/2011 | 6853 | Robert Cantu | | Survivor | 736.00 | 2,836.00 |
| Check | 1/7/2011 | 91 | Michael Brooks | | Nelva | 585.00 | 3,421.00 |
| Check | 1/10/2011 | 92 | Tino | | Nelva | 1,413.14 | 4,834.14 |
| Check | 1/11/2011 | 93 | Robert Cantu | | Nelva | 605.00 | 5,439.14 |
| Check | 1/13/2011 | 102 | Michael Brooks | | Nelva | 585.00 | 6,024.14 |
| Check | 1/18/2011 | 101 | Tino | | Nelva | 1,065.00 | 7,089.14 |
| Check | 1/18/2011 | 110 | Robert Cantu | | Nelva | 810.00 | 7,899.14 |
| General Journal | 1/19/2011 | EJ20120455 | | Return of Posted Check / Item (Robert Cantu | Nelva | -810.00 | 7,089.14 |
| Check | 1/21/2011 | 112 | Tino | | Nelva | 1,619.00 | 8,708.14 |
| Check | 1/21/2011 | 113 | Robert Cantu | | Nelva | 888.00 | 9,596.14 |
| Check | 1/24/2011 | 114 | Robert Cantu | | Nelva | 1,083.91 | 10,680.05 |
| Check | 1/27/2011 | 116 | Tino | | Nelva | 906.55 | 11,586.60 |
| Check | 1/28/2011 | 120 | Robert Cantu | | Nelva | 856.93 | 12,443.53 |
| Check | 2/1/2011 | 121 | Tino | | Nelva | 1,249.00 | 13,692.53 |
| Check | 2/1/2011 | 144 | Robert Cantu | | Nelva | 801.80 | 14,494.33 |
| Check | 2/2/2011 | 122 | Robert Cantu | | Nelva | 460.00 | 14,954.33 |
| Check | 2/4/2011 | 124 | Tino | | Nelva | 842.00 | 15,796.33 |
| Check | 2/7/2011 | 126 | Robert Cantu | | Nelva | 807.00 | 16,603.33 |
| Check | 2/11/2011 | 130 | Tino | | Nelva | 1,166.00 | 17,769.33 |
| Check | 2/11/2011 | 131 | Robert Cantu | | Nelva | 637.41 | 18,406.74 |
| Check | 2/14/2011 | 135 | Robert Cantu | | Nelva | 430.00 | 18,836.74 |

## Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 2/17/2011 | 138 | Tino | | Nelva | 1,454.42 | 20,291.16 |
| Check | 2/18/2011 | 136 | Robert Cantu | | Nelva | 771.23 | 21,062.39 |
| Check | 2/22/2011 | 162 | Tino | | Nelva | 1,067.57 | 22,129.96 |
| Check | 2/25/2011 | 141 | Tino | | Nelva | 826.72 | 22,956.68 |
| Check | 2/25/2011 | 143 | Robert Cantu | | Nelva | 510.00 | 23,466.68 |
| Check | 3/4/2011 | 146 | Robert Cantu | | Nelva | 538.68 | 24,005.36 |
| Check | 3/7/2011 | 148 | Tino | | Nelva | 1,704.19 | 25,709.55 |
| Check | 3/10/2011 | 155 | Michael Brooks | | Nelva | 285.00 | 25,994.55 |
| Check | 3/10/2011 | 156 | Robert Cantu | | Nelva | 1,045.67 | 27,040.22 |
| Check | 3/14/2011 | 158 | Tino | | Nelva | 1,253.02 | 28,293.24 |
| Check | 3/16/2011 | 159 | Michael Brooks | | Nelva | 55.00 | 28,348.24 |
| Check | 3/18/2011 | 163 | Robert Cantu | | Nelva | 289.78 | 28,638.02 |
| Check | 3/21/2011 | 164 | Tino | | Nelva | 1,248.70 | 29,886.72 |
| Check | 3/21/2011 | 165 | Michael Brooks | | Nelva | 367.50 | 30,254.22 |
| Check | 3/21/2011 | 166 | Robert Cantu | | Nelva | 360.00 | 30,614.22 |
| Check | 3/23/2011 | 167 | Michael Brooks | | Nelva | 67.50 | 30,681.72 |
| Check | 3/24/2011 | 168 | Robert Cantu | | Nelva | 490.86 | 31,172.58 |
| Check | 3/24/2011 | 170 | Tino | | Nelva | 50.00 | 31,222.58 |
| Check | 3/25/2011 | 172 | Tino | | Nelva | 1,636.77 | 32,859.35 |
| Check | 3/28/2011 | 173 | Michael Brooks | | Nelva | 65.00 | 32,924.35 |
| Check | 3/28/2011 | 174 | Robert Cantu | | Nelva | 701.91 | 33,626.26 |
| Check | 4/1/2011 | 175 | Tino | | Nelva | 1,689.00 | 35,315.26 |
| Check | 4/4/2011 | 177 | Robert Cantu | | Nelva | 1,303.48 | 36,618.74 |
| Check | 4/7/2011 | 178 | Michael Brooks | | Nelva | 184.00 | 36,802.74 |
| Check | 4/8/2011 | 180 | Tino | | Nelva | 1,475.00 | 38,277.74 |
| Check | 4/11/2011 | 181 | Robert Cantu | | Nelva | 1,042.10 | 39,319.84 |
| Check | 4/13/2011 | 185 | Michael Brooks | | Nelva | 75.00 | 39,394.84 |
| Check | 4/15/2011 | 189 | Michael Brooks | | Nelva | 91.00 | 39,485.84 |
| Check | 4/15/2011 | 191 | Tino | | Nelva | 1,704.81 | 41,190.65 |
| Check | 4/18/2011 | 192 | Michael Brooks | | Nelva | 195.00 | 41,385.65 |
| Check | 4/19/2011 | 194 | Michael Brooks | | Nelva | 216.50 | 41,602.15 |
| Check | 4/20/2011 | 195 | Michael Brooks | | Nelva | 75.00 | 41,677.15 |
| Check | 4/22/2011 | 197 | Michael Brooks | | Nelva | 202.00 | 41,879.15 |
| Check | 4/22/2011 | 198 | Tino | | Nelva | 2,156.83 | 44,035.98 |
| Check | 4/25/2011 | 199 | Robert Cantu | | Nelva | 215.00 | 44,250.98 |
| Check | 4/25/2011 | 200 | Michael Brooks | | Nelva | 300.00 | 44,550.98 |
| Check | 4/26/2011 | 202 | Shimeka Hughes | | Nelva | 1,080.00 | 45,630.98 |
| Check | 4/27/2011 | 203 | Michael Brooks | | Nelva | 60.00 | 45,690.98 |
| Check | 4/29/2011 | 204 | Robert Cantu | | Nelva | 645.00 | 46,335.98 |
| Check | 4/29/2011 | 205 | Michael Brooks | | Nelva | 90.00 | 46,425.98 |
| Check | 5/3/2011 | 208 | Robert Cantu | | Nelva | 202.50 | 46,628.48 |
| Check | 5/4/2011 | 207 | Tino | | Nelva | 1,721.11 | 48,349.59 |
| Check | 5/4/2011 | 209 | Michael Brooks | | Nelva | 270.00 | 48,619.59 |
| Check | 5/6/2011 | 211 | Tino | | Nelva | 743.00 | 49,362.59 |
| Check | 5/6/2011 | 212 | Michael Brooks | | Nelva | 67.50 | 49,430.09 |
| Check | 5/6/2011 | 213 | Robert Cantu | | Nelva | 225.00 | 49,655.09 |
| Check | 5/9/2011 | 214 | Robert Cantu | | Nelva | 902.30 | 50,557.39 |
| Check | 5/9/2011 | 215 | Michael Brooks | | Nelva | 202.00 | 50,759.39 |
| Check | 5/12/2011 | 216 | Michael Brooks | | Nelva | 45.00 | 50,804.39 |
| Check | 5/13/2011 | 217 | Tino | | Nelva | 1,320.53 | 52,124.92 |
| Check | 5/13/2011 | 218 | Robert Cantu | | Nelva | 255.00 | 52,379.92 |
| Check | 5/16/2011 | 219 | Robert Cantu | | Nelva | 868.81 | 53,248.73 |
| Check | 5/16/2011 | 220 | Michael Brooks | | Nelva | 217.50 | 53,466.23 |
| Check | 5/20/2011 | 223 | Tino | | Nelva | 1,483.53 | 54,949.76 |
| Check | 5/23/2011 | 227 | Robert Cantu | | Nelva | 1,026.00 | 55,975.76 |
| Check | 5/23/2011 | 228 | Michael Brooks | | Nelva | 207.00 | 56,182.76 |
| Check | 5/25/2011 | 229 | Michael Brooks | | Nelva | 219.50 | 56,402.26 |
| Check | 5/25/2011 | 231 | Michael Brooks | | Nelva | 227.50 | 56,629.76 |
| Check | 5/27/2011 | 232 | Tino | | Nelva | 1,621.50 | 58,251.26 |
| Check | 5/31/2011 | 235 | Robert Cantu | | Nelva | 796.86 | 59,048.12 |
| Check | 5/31/2011 | 236 | Katrina Harper | | Nelva | 360.00 | 59,408.12 |
| Check | 6/3/2011 | 239 | Tino | | Nelva | 1,215.36 | 60,623.48 |
| Check | 6/7/2011 | 241 | Robert Cantu | | Nelva | 1,115.00 | 61,738.48 |
| Check | 6/7/2011 | 242 | Katrina Harper | | Nelva | 360.00 | 62,098.48 |
| Check | 6/10/2011 | 243 | Tino | | Nelva | 1,110.00 | 63,208.48 |
| Check | 6/13/2011 | 244 | Robert Cantu | | Nelva | 720.00 | 63,928.48 |
| Check | 6/13/2011 | 246 | Katrina Harper | | Nelva | 600.00 | 64,528.48 |
| Check | 6/16/2011 | 247 | Daisy Harper | | Nelva | 720.00 | 65,248.48 |
| Check | 6/17/2011 | 248 | Robert Cantu | | Nelva | 930.00 | 66,178.48 |
| Check | 6/20/2011 | 250 | Katrina Harper | | Nelva | 870.00 | 67,048.48 |
| Check | 6/21/2011 | 249 | Daisy Harper | | Nelva | 40.00 | 67,088.48 |
| Check | 6/22/2011 | 252 | Cameo Caregivers | | Nelva | 68.00 | 67,156.48 |
| Check | 6/23/2011 | 256 | Tino | | Nelva | 1,170.00 | 68,326.48 |
| Check | 6/27/2011 | 257 | Robert Cantu | | Nelva | 926.19 | 69,252.67 |
| Check | 6/27/2011 | 258 | Katrina Harper | | Nelva | 360.00 | 69,612.67 |
| Check | 6/29/2011 | 259 | Tino | | Nelva | 1,121.65 | 70,734.32 |
| Check | 7/1/2011 | 263 | Robert Cantu | | Nelva | 930.00 | 71,664.32 |
| Check | 7/5/2011 | 265 | Katrina Harper | | Nelva | 450.00 | 72,114.32 |
| Check | 7/5/2011 | 266 | Robert Cantu | | Nelva | 60.00 | 72,174.32 |
| Check | 7/7/2011 | 269 | Tino | | Nelva | 1,166.70 | 73,341.02 |
| Check | 7/8/2011 | 270 | Robert Cantu | | Nelva | 915.00 | 74,256.02 |
| Check | 7/11/2011 | 271 | Katrina Harper | | Nelva | 465.00 | 74,721.02 |
| Check | 7/15/2011 | 273 | Robert Cantu | | Nelva | 720.00 | 75,441.02 |
| Check | 7/18/2011 | 274 | Katrina Harper | | Nelva | 673.50 | 76,114.52 |
| Check | 7/21/2011 | 275 | Tino | | Nelva | 1,172.66 | 77,287.18 |
| Check | 7/21/2011 | 276 | Tino | | Nelva | 100.00 | 77,387.18 |
| Check | 7/22/2011 | 272 | Tino | | Nelva | 1,300.06 | 78,687.24 |
| Check | 7/22/2011 | 278 | Robert Cantu | | Nelva | 165.00 | 78,852.24 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 7/22/2011 | 279 | Katrina Harper | | Nelva | 465.00 | 79,317.24 |
| Check | 7/25/2011 | 277 | Daisy Harper | | Nelva | 60.00 | 79,377.24 |
| Check | 7/25/2011 | 281 | Robert Cantu | | Nelva | 765.00 | 80,142.24 |
| Check | 7/28/2011 | 282 | Tino | | Nelva | 705.00 | 80,847.24 |
| Check | 8/1/2011 | 283 | Robert Cantu | | Nelva | 1,018.00 | 81,865.24 |
| Check | 8/1/2011 | 284 | Katrina Harper | | Nelva | 1,062.47 | 82,927.71 |
| Check | 8/4/2011 | 288 | Tino | | Nelva | 907.50 | 83,835.21 |
| Check | 8/8/2011 | 289 | Robert Cantu | | Nelva | 930.00 | 84,765.21 |
| Check | 8/9/2011 | 290 | Katrina Harper | | Nelva | 465.00 | 85,230.21 |
| Check | 8/11/2011 | 291 | Tino | | Nelva | 1,125.00 | 86,355.21 |
| Check | 8/15/2011 | 301 | Robert Cantu | | Nelva | 946.00 | 87,301.21 |
| Check | 8/15/2011 | 302 | Katrina Harper | | Nelva | 450.00 | 87,751.21 |
| Check | 8/18/2011 | 303 | Tino | | Nelva | 1,146.83 | 88,898.04 |
| Check | 8/19/2011 | 304 | Robert Cantu | | Nelva | 172.50 | 89,070.54 |
| Check | 8/19/2011 | 306 | Katrina Harper | | Nelva | 459.50 | 89,530.04 |
| Check | 8/22/2011 | 308 | Robert Cantu | | Nelva | 735.00 | 90,265.04 |
| Check | 8/24/2011 | 309 | Tino | | Nelva | 1,110.00 | 91,375.04 |
| Check | 8/29/2011 | 311 | Robert Cantu | | Nelva | 1,004.00 | 92,379.04 |
| Check | 8/30/2011 | 312 | Katrina Harper | | Nelva | 517.50 | 92,896.54 |
| Check | 9/1/2011 | 313 | Tino | | Nelva | 1,162.50 | 94,059.04 |
| Check | 9/6/2011 | 314 | Katrina Harper | | Nelva | 173.00 | 94,232.04 |
| Check | 9/6/2011 | 315 | Robert Cantu | | Nelva | 750.00 | 94,982.04 |
| Check | 9/6/2011 | 316 | Daisy Harper | | Nelva | 80.00 | 95,062.04 |
| Check | 9/6/2011 | 317 | Katrina Harper | | Nelva | 440.00 | 95,502.04 |
| Check | 9/8/2011 | 318 | Tino | | Nelva | 1,193.59 | 96,695.63 |
| Check | 9/12/2011 | 319 | Robert Cantu | | Nelva | 750.00 | 97,445.63 |
| Check | 9/13/2011 | 328 | Katrina Harper | | Nelva | 628.15 | 98,073.78 |
| Check | 9/15/2011 | 330 | Tino | | Nelva | 1,034.67 | 99,108.45 |
| Check | 9/19/2011 | 332 | Robert Cantu | | Nelva | 715.00 | 99,823.45 |
| Check | 9/20/2011 | 334 | Katrina Harper | | Nelva | 576.00 | 100,399.45 |
| Check | 9/22/2011 | 335 | Tino | | Nelva | 1,054.46 | 101,453.91 |
| Check | 9/26/2011 | 338 | Robert Cantu | | Nelva | 784.86 | 102,238.77 |
| Check | 9/27/2011 | 339 | Katrina Harper | | Nelva | 630.00 | 102,868.77 |
| Check | 9/29/2011 | 340 | Tino | | Nelva | 810.29 | 103,679.06 |
| Check | 10/3/2011 | 341 | Robert Cantu | | Nelva | 976.34 | 104,655.40 |
| Check | 10/4/2011 | 342 | Katrina Harper | | Nelva | 576.57 | 105,231.97 |
| Check | 10/6/2011 | 344 | Tino | | Nelva | 1,030.00 | 106,261.97 |
| Check | 10/7/2011 | 346 | Robert Cantu | | Nelva | 165.00 | 106,426.97 |
| Check | 10/11/2011 | 348 | Robert Cantu | | Nelva | 570.00 | 106,996.97 |
| Check | 10/11/2011 | 349 | Katrina Harper | | Nelva | 581.66 | 107,578.63 |
| Check | 10/11/2011 | 350 | Robert Cantu | | Nelva | 240.00 | 107,818.63 |
| Check | 10/14/2011 | 351 | Robert Cantu | | Nelva | 515.00 | 108,333.63 |
| Check | 10/17/2011 | 352 | Robert Cantu | | Nelva | 570.00 | 108,903.63 |
| Check | 10/18/2011 | 353 | Katrina Harper | | Nelva | 985.00 | 109,888.63 |
| Check | 10/19/2011 | 357 | Tino | | Nelva | 1,342.50 | 111,231.13 |
| Check | 10/21/2011 | 358 | Katrina Harper | | Nelva | 165.00 | 111,396.13 |
| Check | 10/24/2011 | 363 | Robert Cantu | | Nelva | 860.00 | 112,256.13 |
| Check | 10/25/2011 | 364 | Katrina Harper | | Nelva | 370.00 | 112,626.13 |
| Check | 10/26/2011 | 365 | Tino | | Nelva | 1,187.19 | 113,813.32 |
| Check | 10/31/2011 | CHK | Unknown payee | | Nelva | 793.00 | 114,606.32 |
| Check | 10/31/2011 | 366 | Katrina Harper | | Nelva | 165.00 | 114,771.32 |
| Check | 11/1/2011 | 375 | Katrina Harper | | Nelva | 540.00 | 115,311.32 |
| Check | 11/4/2011 | 376 | Tino | | Nelva | 1,235.29 | 116,546.61 |
| Check | 11/7/2011 | 377 | Robert Cantu | | Nelva | 885.00 | 117,431.61 |
| Check | 11/8/2011 | 401 | Katrina Harper | | Nelva | 360.00 | 117,791.61 |
| Check | 11/14/2011 | 431 | Latoya Harper | | Nelva | 90.00 | 117,881.61 |
| Check | 11/14/2011 | 432 | Katrina Harper | | Nelva | 810.00 | 118,691.61 |
| Check | 11/14/2011 | 433 | Robert Cantu | | Nelva | 541.00 | 119,232.61 |
| Total In Home Care | | | | | | 119,232.61 | 119,232.61 |
| **Medical Supplies** | | | | | | | |
| Check | 1/3/2011 | 6847 | Medical Aids | | Survivor | 32.48 | 32.48 |
| Check | 1/19/2011 | 104 | Duke Medical Equipm... | | Nelva | 2.54 | 35.02 |
| Check | 4/22/2011 | 184 | Duke Medical Equipm... | | Nelva | 17.75 | 52.77 |
| Check | 7/7/2011 | 7023 | Duke Medical Equipm... | | Survivor | 7.62 | 60.39 |
| Check | 7/7/2011 | 251 | Duke Medical Equipm... | Supplies | Nelva | 5.08 | 65.47 |
| Total Medical Supplies | | | | | | 65.47 | 65.47 |
| **Medical Expenses - Other** | | | | | | | |
| Check | 1/10/2011 | EFT | Walgreens | Food & Dining Groceries POS DEB 1943 01/03/11 00027165 | Nelva | 21.62 | 21.62 |
| Check | 1/18/2011 | 103 | Memorial City Hermann | | Nelva | 220.00 | 241.62 |
| Check | 1/19/2011 | 105 | Memorial Clinical Ass... | Doctor | Nelva | 8.02 | 249.64 |
| Check | 1/19/2011 | 108 | Radiology West | Doctor | Nelva | 1.23 | 250.87 |
| Check | 1/20/2011 | 106 | Memoria City Surgical... | Doctor | Nelva | 39.74 | 290.61 |
| Check | 2/2/2011 | 118 | Memorial Pathology C... | Doctor | Nelva | 7.10 | 297.71 |
| Check | 2/7/2011 | 117 | Rosewood Family Ph... | Doctor | Nelva | 65.00 | 362.71 |
| Check | 2/9/2011 | 127 | Schleicher Dental | Dentist | Nelva | 105.00 | 467.71 |
| Check | 2/17/2011 | 134 | Medical Chest Associ... | Doctor | Nelva | 15.01 | 482.72 |
| Check | 3/8/2011 | 151 | Memorial City Hermann | | Nelva | 181.58 | 664.30 |
| Check | 3/10/2011 | 150 | Radiology West | | Nelva | 5.37 | 669.67 |
| Check | 3/14/2011 | 153 | ACS Primary Care | | Nelva | 7.56 | 677.23 |
| Check | 4/18/2011 | 188 | ACS Primary Care | | Nelva | 7.23 | 684.46 |
| Check | 4/19/2011 | 183 | Medical Chest Associ... | Doctor | Nelva | 19.52 | 703.98 |
| Check | 4/22/2011 | 193 | Cardiologist Assoc of ... | | Nelva | 28.60 | 732.58 |
| Check | 6/23/2011 | 254 | Memorial Clinical Ass... | Doctor | Nelva | 5.76 | 738.34 |
| Check | 7/1/2011 | 260 | Schleicher Dental | Dental | Nelva | 143.00 | 881.34 |
| Check | 7/6/2011 | 7024 | Medical Chest Associ... | Medical: Doctor | Survivor | 4.12 | 885.46 |
| Check | 8/5/2011 | 285 | Dr. Achari | Doctor | Nelva | 24.98 | 910.44 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 8/15/2011 | 298 | memorial Hermann M... | | Nelva | 13.47 | 923.91 |
| Check | 8/16/2011 | 299 | ACS Primary Care | | Nelva | 7.23 | 931.14 |
| Check | 8/19/2011 | 297 | Azmat Khan MDPA | Doctor | Nelva | 10.13 | 941.27 |
| Check | 8/29/2011 | 310 | Legends Pharmacy | | Nelva | 42.00 | 983.27 |
| Check | 9/13/2011 | 323 | Dentex | Doctor | Nelva | 155.40 | 1,138.67 |
| Check | 9/13/2011 | 324 | Memorial City Hermann | | Nelva | 25.00 | 1,163.67 |
| Check | 9/16/2011 | 321 | ACS Primary Care | Doctor | Nelva | 6.87 | 1,170.54 |
| Check | 9/22/2011 | 327 | Memorial City Hermann | | Nelva | 59.77 | 1,230.31 |
| Check | 9/28/2011 | 320 | Dr. Khawaja | Doctor | Nelva | 28.04 | 1,258.35 |
| Check | 10/18/2011 | 355 | OC Pharmacy | Medicine | Nelva | 10.00 | 1,268.35 |
| Check | 10/19/2011 | 354 | Oncology Consultants | Doctor | Nelva | 22.48 | 1,290.83 |
| Check | 11/7/2011 | EFT | Mht Nutrit Svcs H | | Nelva | 8.12 | 1,298.95 |
| Check | 11/10/2011 | 371 | Dr. Achari | Doctor | Nelva | 29.30 | 1,328.25 |
| Check | 11/10/2011 | 372 | Northwoods Urology | Doctor | Nelva | 84.97 | 1,413.22 |
| Check | 11/14/2011 | 374 | Medical Chest Associ... | Doctor | Nelva | 34.42 | 1,447.64 |
| Check | 12/6/2011 | 7041 | Justin Alexander | for kt - reimburse Medical | Survivor | 40.00 | 1,487.64 |
| Check | 12/15/2011 | 103 | Memorial City Hermann | Doctor | Survivor | 41.72 | 1,529.36 |
| Check | 12/22/2011 | 107 | Kelsey-Seybold Clinic | Doctor | Survivor | 13.92 | 1,543.28 |
| Check | 12/22/2011 | 108 | Memorial City Hermann | Doctor | Survivor | 226.40 | 1,769.68 |
| Check | 12/22/2011 | 109 | ACS Primary Care | Doctor | Survivor | 6.87 | 1,776.55 |
| Check | 1/23/2012 | 113 | Northwoods Urology | Doctor | Survivor | 740.77 | 2,517.32 |
| Check | 2/24/2012 | 112 | Dr. Annie Uralil | Doctor | Survivor | 44.06 | 2,561.38 |
| Check | 4/16/2012 | 120 | Houston Progressive ... | Doctor | Survivor | 2.20 | 2,563.58 |
| Check | 4/16/2012 | 121 | Medical Chest Associ... | Doctor | Survivor | 5.40 | 2,568.98 |
| Total Medical Expenses - Other | | | | | | 2,568.98 | 2,568.98 |
| Total Medical Expenses | | | | | | 121,867.06 | 121,867.06 |
| **Miscellaneous Expenses** | | | | | | | |
| Check | 1/18/2011 | 107 | Hull Co-op | Misc | Nelva | 238.50 | 238.50 |
| Check | 11/14/2011 | WDRL | Withdrawal | NO INFORMATION GIVEN FOR THIS TRANSACTION AND BA... | Nelva | 6,500.00 | 6,738.50 |
| Check | 11/14/2011 | EFT | Houston Metro Ca | Misc | Nelva | 15.22 | 6,753.72 |
| Total Miscellaneous Expenses | | | | | | 6,753.72 | 6,753.72 |
| **Office Supplies** | | | | | | | |
| Check | 1/13/2011 | EFT | Bank of America | Check Order | Survivor | 15.00 | 15.00 |
| Check | 12/31/2012 | 141 | Office Depot | Printer Ink | Survivor | 48.70 | 63.70 |
| Total Office Supplies | | | | | | 63.70 | 63.70 |
| **Payments to Credit Cards** | | | | | | | |
| **Bank of America Credit Cards** | | | | | | | |
| Check | 2/1/2011 | EFT | Bank of America Cre... | | Nelva | 43.29 | 43.29 |
| Check | 3/1/2011 | EFT | Bank of America Cre... | Household | Survivor | 282.47 | 325.76 |
| Check | 3/18/2011 | EFT | Bank of America Cre... | | Nelva | 84.82 | 410.58 |
| Check | 4/1/2011 | EFT | Bank of America Cre... | Payment | Survivor | 38.00 | 448.58 |
| Check | 5/2/2011 | EFT | Bank of America Cre... | | Survivor | 2,967.61 | 3,416.19 |
| Check | 6/1/2011 | EFT | Bank of America Cre... | Credit card | Survivor | 6,355.65 | 9,771.84 |
| Check | 9/1/2011 | EFT | Bank of America Cre... | | Survivor | 3,256.32 | 13,028.16 |
| Check | 11/7/2011 | EFT | Bank of America Cre... | | Survivor | 323.88 | 13,352.04 |
| Check | 12/2/2011 | EFT | Bank of America Cre... | | Survivor | 359.79 | 13,711.83 |
| Check | 2/2/2012 | EFT | Bank of America Cre... | | Survivor | 269.84 | 13,981.67 |
| Check | 3/2/2012 | EFT | Bank of America Cre... | | Survivor | 61.32 | 14,042.99 |
| Total Bank of America Credit Cards | | | | | | 14,042.99 | 14,042.99 |
| **Bluebonnet Credit Union Cred Cd** | | | | | | | |
| Check | 1/18/2011 | EFT | Bank of America Cre... | Payment | Nelva | 725.00 | 725.00 |
| General Journal | 1/19/2011 | EJ20120455 | | Return of Posted Check / Item (R - BOA Cr Cd payment | Nelva | -725.00 | 0.00 |
| Check | 1/21/2011 | EFT | Bank of America Cre... | Payment | Nelva | 725.00 | 725.00 |
| Check | 3/14/2011 | 152 | Bluebonnet Credit Uni... | Credit card | Nelva | 3,248.57 | 3,973.57 |
| Check | 3/15/2011 | 312 | Cardmember Serv | Credit Card | Nelva | 111.00 | 4,084.57 |
| Check | 5/26/2011 | 225 | Bluebonnet Credit Uni... | Credit card | Nelva | 1,852.24 | 5,936.81 |
| Check | 5/27/2011 | EFT | Bluebonnet Credit Uni... | w/medical | Survivor | 1,864.49 | 7,801.30 |
| Check | 6/21/2011 | 9000 | Cardmember Serv | payment | Nelva | 195.00 | 7,996.30 |
| Check | 7/18/2011 | EFT | Bluebonnet Credit Uni... | w medical | Survivor | 175.47 | 8,171.77 |
| Check | 8/16/2011 | EFT | Bluebonnet Credit Uni... | with medical | Survivor | 1,172.08 | 9,343.85 |
| Check | 9/19/2011 | EFT | Bluebonnet Credit Uni... | w/medical | Survivor | 790.04 | 10,133.89 |
| Check | 10/18/2011 | EFT | Bluebonnet Credit Uni... | w/medical | Survivor | 687.84 | 10,821.73 |
| Check | 11/29/2011 | EFT | Bluebonnet Credit Uni... | includes medical | Survivor | 1,165.23 | 11,986.96 |
| Total Bluebonnet Credit Union Cred Cd | | | | | | 11,986.96 | 11,986.96 |
| Total Payments to Credit Cards | | | | | | 26,029.95 | 26,029.95 |
| **Personal Care** | | | | | | | |
| Check | 2/25/2011 | 139 | Silvana | Hair | Nelva | 52.00 | 52.00 |
| Check | 5/27/2011 | 230 | Silvana | hair | Nelva | 25.00 | 77.00 |
| Check | 6/13/2011 | EFT | Target | Shopping-Clothing | Nelva | 53.12 | 130.12 |
| Check | 6/13/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 125.93 | 256.05 |
| Check | 6/20/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 61.70 | 317.75 |
| Check | 6/20/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 251.94 | 569.69 |
| General Journal | 6/21/2011 | EJ20120468 | | ATM - Target - Shopping - Clothing | Nelva | -53.12 | 516.57 |
| Check | 6/21/2011 | EFT | Target | Shopping - Clothing | Nelva | 30.84 | 547.41 |
| General Journal | 7/11/2011 | EJ20120470 | | ATM JCPenney Shopping - Clothing | Nelva | -140.42 | 406.99 |
| Check | 7/11/2011 | EFT | Stein Mart | Shopping - Clothing | Nelva | 102.77 | 509.76 |
| Check | 7/11/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 80.05 | 589.81 |
| Check | 7/18/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 208.33 | 798.14 |
| Total Personal Care | | | | | | 798.14 | 798.14 |
| **Pet Care** | | | | | | | |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| **Pet Food and Supplies** | | | | | | | |
| Check | 2/28/2011 | EFT | Petsmart | Food & Dining:Groceries | Nelva | 36.79 | 36.79 |
| Check | 7/29/2011 | EFT | Petsmart | | Nelva | 32.89 | 69.68 |
| Total Pet Food and Supplies | | | | | | 69.68 | 69.68 |
| **Veterinary Expenses** | | | | | | | |
| Check | 5/23/2011 | EFT | Houston Veterinary | Carole covered healthcare worked pay when this acct was low - ... | Nelva | 1,019.72 | 1,019.72 |
| Check | 6/14/2011 | EFT | Houston Veterinary | Carole had to cover worker pay - Reimbursement | Nelva | 216.80 | 1,236.52 |
| General Journal | 6/15/2011 | EJ20120467 | | ATM - Checkcard 0612 Houston Veterinary | Nelva | -433.60 | 802.92 |
| Check | 9/19/2011 | EFT | Equine Sports Med | Carole covered worker pay - Reimbursement | Nelva | 812.50 | 1,615.42 |
| Check | 10/3/2011 | EFT | Greenway Animal C | Carole covered worker pay - Reimbursement | Nelva | 360.82 | 1,976.24 |
| Total Veterinary Expenses | | | | | | 1,976.24 | 1,976.24 |
| Total Pet Care | | | | | | 2,045.92 | 2,045.92 |
| **Postage** | | | | | | | |
| Check | 3/21/2012 | 118 | Postmaster | Estate tax info to Rich | Survivor | 14.80 | 14.80 |
| Check | 4/16/2012 | 126 | Postmaster | Mailing Cert Life Ins Checks | Survivor | 12.60 | 27.40 |
| Check | 6/27/2012 | 134 | Postmaster | Trust docs | Survivor | 29.19 | 56.59 |
| Check | 7/18/2012 | 136 | Postmaster | Papers to lawyer | Survivor | 15.45 | 72.04 |
| Check | 4/4/2013 | 144 | Postmaster | contract to g. vie | Survivor | 6.11 | 78.15 |
| Total Postage | | | | | | 78.15 | 78.15 |
| **Professional Fees** | | | | | | | |
| Check | 6/9/2011 | 7017 | Kroese & Kroese | Mom - Tax preparations | Survivor | 561.93 | 561.93 |
| Check | 6/9/2011 | 7018 | Kroese & Kroese | Decedents trust Tax preparation | Survivor | 1,123.87 | 1,685.80 |
| Check | 9/5/2011 | 7029 | Kroese & Kroese | farm lease Tax preparation | Survivor | 203.06 | 1,888.86 |
| Check | 10/20/2011 | 7031 | Kroese & Kroese | Tax preparation | Survivor | 700.00 | 2,588.86 |
| Check | 3/11/2012 | 116 | Kroese & Kroese | Farm appraisal/mgmt | Survivor | 2,175.00 | 4,763.86 |
| Check | 4/13/2012 | 119 | Kroese & Kroese | Tax preparation | Survivor | 1,050.00 | 5,813.86 |
| Check | 5/16/2012 | 102 | Kroese & Kroese | Accounting services | Elmer | 750.00 | 6,563.86 |
| Check | 5/16/2012 | 103 | Kroese & Kroese | Accounting services - farm contract and trust advice | Elmer | 1,000.00 | 7,563.86 |
| Total Professional Fees | | | | | | 7,563.86 | 7,563.86 |
| **Repairs and Maintenance** | | | | | | | |
| Check | 6/13/2011 | EFT | Sears | Home appliance repair | Nelva | 134.93 | 134.93 |
| Check | 8/16/2011 | 295 | P&M Air Conditioning | Home repair | Nelva | 148.38 | 283.31 |
| Check | 2/29/2012 | 115 | Durapier | Leveling house - home repair | Survivor | 500.00 | 783.31 |
| Total Repairs and Maintenance | | | | | | 783.31 | 783.31 |
| **Supplies** | | | | | | | |
| Check | 1/31/2011 | EFT | Lowe's | Garden | Nelva | 0.95 | 0.95 |
| Check | 2/22/2011 | EFT | Lowe's | Garden | Nelva | 22.99 | 23.94 |
| Check | 6/27/2011 | EFT | Lowe's | Garden | Nelva | 5.89 | 29.83 |
| Total Supplies | | | | | | 29.83 | 29.83 |
| **Taxes** | | | | | | | |
| **Taxes - Federal** | | | | | | | |
| Check | 1/25/2011 | 7001 | United States Treasury | 2010 Estimated Taxes | Survivor | 2,840.00 | 2,840.00 |
| Check | 4/15/2011 | 7010 | United States Treasury | Decedents trust 2010 tax | Survivor | 7,095.00 | 9,935.00 |
| Check | 4/15/2011 | 7011 | United States Treasury | Decedents trust 2011 tax qtr est | Survivor | 1,780.00 | 11,715.00 |
| Check | 4/15/2011 | 7012 | United States Treasury | Surv Trust 2011 tax qtr est | Survivor | 3,095.00 | 14,810.00 |
| Check | 4/15/2011 | 7013 | United States Treasury | Surv Trust 2010 tax | Survivor | 3,620.00 | 18,430.00 |
| Check | 6/9/2011 | 7020 | United States Treasury | Surv Trust 2010 tax qtrly Tax:Fed | Survivor | 3,620.00 | 22,050.00 |
| Check | 6/9/2011 | 7022 | United States Treasury | Dec Trust 2010 tax qtrly Tax:Fed | Survivor | 1,780.00 | 23,830.00 |
| Check | 9/5/2011 | 7027 | United States Treasury | Sept mom's trust pmt | Survivor | 2,100.00 | 25,930.00 |
| Check | 9/5/2011 | 7028 | United States Treasury | Sept dad's trust pmt | Survivor | 1,780.00 | 27,710.00 |
| Check | 12/15/2011 | 104 | United States Treasury | Tax:Fed | Survivor | 1,780.00 | 29,490.00 |
| Check | 4/4/2013 | 146 | United States Treasury | Tax:Fed | Survivor | 20.00 | 29,510.00 |
| Check | 4/14/2013 | 104 | United States Treasury | | Elmer | 23,906.00 | 53,416.00 |
| Total Taxes - Federal | | | | | | 53,416.00 | 53,416.00 |
| **Taxes - Property** | | | | | | | |
| Check | 1/19/2011 | 7004 | Tax Assessor-Collector | 098-560-000-0031 | Survivor | 1,112.87 | 1,112.87 |
| Check | 3/2/2011 | 145 | Wilchester West Fund | Tax:zzzzzz | Nelva | 365.23 | 1,478.10 |
| Check | 4/8/2011 | EFT | County Treasurer | DES: TAX ID: 971 farm | Survivor | 1,387.40 | 2,865.50 |
| Check | 6/9/2011 | 7019 | Wilchester West Fund | Tax:ZZZZZ 13630 Pinerock | Survivor | 327.00 | 3,192.50 |
| Check | 10/4/2011 | EFT | County Treasurer | DES:Tax ID:119 farm | Survivor | 1,598.40 | 4,790.90 |
| Check | 11/23/2011 | EFT | Spring Branch ISD | DES: checkpaymt Tax:ZZZZZZZZ | Survivor | 227.24 | 5,018.14 |
| Check | 12/15/2011 | 102 | Wilchester West Fund | Tax:zzzzzzzz 13630 Pinerock | Survivor | 359.00 | 5,377.14 |
| Check | 1/19/2012 | 114 | HC Property Tax | | Survivor | 1,285.05 | 6,662.19 |
| Check | 10/15/2012 | EFT | County Treasurer | DES: Tax ID: 166 | Elmer | 1,586.40 | 8,248.59 |
| Check | 3/18/2013 | EFT | County Treasurer | DES: Tax ID: 178 - Farm Tax | Elmer | 1,563.40 | 9,811.99 |
| Total Taxes - Property | | | | | | 9,811.99 | 9,811.99 |
| **Taxes -State** | | | | | | | |
| Check | 2/1/2011 | 7002 | State of Iowa Treasurer | | Survivor | 330.00 | 330.00 |
| Check | 6/9/2011 | 7021 | Treasurer State of Iowa | | Survivor | 47.00 | 377.00 |
| Check | 9/5/2011 | 7026 | Treasurer State of Iowa | mom | Survivor | 230.00 | 607.00 |
| General Journal | 4/23/2012 | EJ20120415 | | Deposit Iowa Tax Refund | Survivor | -690.00 | -83.00 |
| Check | 9/10/2012 | 138 | Treasurer State of Iowa | Amended taxes | Survivor | 79.00 | -4.00 |
| Check | 4/14/2013 | 105 | Treasurer State of Iowa | | Elmer | 4,797.00 | 4,793.00 |
| Total Taxes -State | | | | | | 4,793.00 | 4,793.00 |
| Total Taxes | | | | | | 68,020.99 | 68,020.99 |
| **Telephone Expense** | | | | | | | |
| Check | 1/24/2011 | EFT | Verizon | | Nelva | 106.42 | 106.42 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 1/27/2011 | EFT | AT&T | | Survivor | 68.68 | 175.10 |
| Check | 2/24/2011 | EFT | Verizon | | Nelva | 172.35 | 347.45 |
| Check | 2/28/2011 | 7008 | AT&T | (SBC-AR, KS,MO,OK,TX) B | Survivor | 76.39 | 423.84 |
| Check | 3/15/2011 | EFT | AT&T | (SBC-AR,KS,MO,OK,TX) B | Survivor | 70.42 | 494.26 |
| Check | 3/28/2011 | EFT | Verizon | | Nelva | 138.92 | 633.18 |
| Check | 4/21/2011 | EFT | Verizon | | Nelva | 72.88 | 706.06 |
| Check | 4/26/2011 | EFT | AT&T | (SBC-AR,KS,MO,OK,TS) B | Survivor | 176.85 | 882.91 |
| Check | 5/9/2011 | EFT | AT&T | | Survivor | 177.21 | 1,060.12 |
| Check | 5/27/2011 | EFT | AT&T | | Survivor | 95.73 | 1,155.85 |
| Check | 6/6/2011 | EFT | Verizon | | Nelva | 225.00 | 1,380.85 |
| Check | 6/9/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 154.09 | 1,534.94 |
| Check | 6/28/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) B | Survivor | 86.12 | 1,621.06 |
| Check | 7/5/2011 | EFT | Verizon | | Nelva | 282.03 | 1,903.09 |
| Check | 7/11/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 224.42 | 2,127.51 |
| Check | 7/27/2011 | EFT | AT&T | Bill(SBC-AR, KS, MO, OK, TX) B | Survivor | 82.16 | 2,209.67 |
| Check | 8/2/2011 | EFT | Verizon | | Nelva | 245.03 | 2,454.70 |
| Check | 8/10/2011 | EFT | AT&T | DES:Payment ID: 787780565AUS | Survivor | 170.89 | 2,625.59 |
| Check | 8/25/2011 | EFT | Verizon | | Nelva | 242.00 | 2,867.59 |
| Check | 8/26/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) bill payment | Survivor | 84.47 | 2,952.06 |
| Check | 9/12/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 168.71 | 3,120.77 |
| Check | 9/23/2011 | EFT | Verizon | | Nelva | 137.66 | 3,258.43 |
| Check | 9/26/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) B | Survivor | 84.47 | 3,342.90 |
| Check | 10/11/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 184.35 | 3,527.25 |
| Check | 11/1/2011 | EFT | Verizon | | Nelva | 189.54 | 3,716.79 |
| Check | 11/8/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) B | Survivor | 84.44 | 3,801.23 |
| Check | 11/10/2011 | EFT | AT&T | DES:Payment ID: 787780565AUS | Survivor | 168.24 | 3,969.47 |
| Check | 11/23/2011 | EFT | Verizon | | Nelva | 192.13 | 4,161.60 |
| Check | 12/5/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK,TX) B | Survivor | 90.82 | 4,252.42 |
| Check | 12/28/2011 | EFT | AT&T | Bill(SBC-AR,KS,MO,OK,TX) B | Survivor | 108.59 | 4,361.01 |
| Check | 1/31/2012 | EFT | AT&T | Bill (SBC-AR,KS,MO,OK,TX) B | Survivor | 86.00 | 4,447.01 |
| Check | 2/14/2012 | EFT | AT&T | Bill (SBC-AR,KS,MO,OK,TX) | Survivor | 72.16 | 4,519.17 |
| Total Telephone Expense | | | | | | 4,519.17 | 4,519.17 |
| **Utilities** | | | | | | | |
| **Cable TV** | | | | | | | |
| Check | 1/5/2011 | EFT | Comcast | | Survivor | 64.04 | 64.04 |
| Check | 1/27/2011 | EFT | Comcast | | Survivor | 59.77 | 123.81 |
| Check | 2/25/2011 | EFT | Comcast | | Survivor | 67.65 | 191.46 |
| Check | 3/23/2011 | EFT | Comcast | | Survivor | 63.71 | 255.17 |
| Check | 4/26/2011 | EFT | Comcast | | Survivor | 63.71 | 318.88 |
| Check | 4/26/2011 | EFT | Comcast | | Survivor | 63.71 | 382.59 |
| Check | 5/26/2011 | EFT | Comcast | | Survivor | 11.52 | 394.11 |
| Check | 5/31/2011 | EFT | Comcast | | Survivor | 11.52 | 405.63 |
| Check | 6/28/2011 | EFT | Comcast | Elmer H Brunsting | Survivor | 52.20 | 457.83 |
| Check | 7/28/2011 | EFT | Comcast | Elmer | Survivor | 63.72 | 521.55 |
| Check | 8/29/2011 | EFT | Comcast | | Survivor | 63.72 | 585.27 |
| Check | 9/28/2011 | EFT | Comcast | | Survivor | 63.72 | 648.99 |
| Check | 10/28/2011 | EFT | Comcast | | Survivor | 63.71 | 712.70 |
| Check | 11/29/2011 | EFT | Comcast | | Survivor | 63.71 | 776.41 |
| Total Cable TV | | | | | | 776.41 | 776.41 |
| **Electricity** | | | | | | | |
| Check | 1/21/2011 | EFT | Stream Energy of TX | | Survivor | 134.05 | 134.05 |
| Check | 2/18/2011 | EFT | Stream Energy of TX | Utilities: Gas & Electric | Survivor | 106.89 | 240.94 |
| Check | 3/15/2011 | EFT | Stream Energy of TX | | Survivor | 100.71 | 341.65 |
| Check | 4/18/2011 | EFT | Stream Energy of TX | | Survivor | 93.99 | 435.64 |
| Check | 5/19/2011 | EFT | Stream Energy of TX | | Survivor | 174.61 | 610.25 |
| Check | 6/17/2011 | EFT | Stream Energy of TX | Bill payment | Survivor | 217.04 | 827.29 |
| Check | 7/18/2011 | EFT | Stream Energy of TX | Bill payment | Survivor | 166.12 | 993.41 |
| Check | 8/17/2011 | EFT | Stream Energy of TX | bill payment | Survivor | 308.10 | 1,301.51 |
| Check | 9/16/2011 | EFT | Stream Energy of TX | bill payment | Survivor | 344.55 | 1,646.06 |
| Check | 10/17/2011 | EFT | Stream Energy of TX | | Survivor | 217.43 | 1,863.49 |
| Check | 11/15/2011 | EFT | Stream Energy of TX | payment | Survivor | 160.68 | 2,024.17 |
| Check | 12/28/2011 | eft | Stream Energy of TX | PAYMENT | Survivor | 81.95 | 2,106.12 |
| Check | 1/20/2012 | EFT | Stream Energy of TX | | Survivor | 59.96 | 2,166.08 |
| Check | 2/17/2012 | EFT | Stream Energy of TX | | Survivor | 19.10 | 2,185.18 |
| Check | 3/26/2012 | EFT | Stream Energy of TX | | Survivor | 39.19 | 2,224.37 |
| Check | 4/25/2012 | EFT | Stream Energy of TX | Payment | Survivor | 25.00 | 2,249.37 |
| Check | 6/7/2012 | 133 | Stream Energy of TX | | Survivor | 10.53 | 2,259.90 |
| Total Electricity | | | | | | 2,259.90 | 2,259.90 |
| **Gas** | | | | | | | |
| Check | 1/19/2011 | 7005 | Entex | | Survivor | 130.42 | 130.42 |
| Check | 4/18/2011 | EFT | Entex | PPD | Nelva | 323.62 | 454.04 |
| Check | 6/22/2011 | EFT | Entex | PPD | Nelva | 73.47 | 527.51 |
| Check | 8/15/2011 | 296 | Entex | | Nelva | 52.48 | 579.99 |
| Check | 9/14/2011 | 325 | Entex | | Nelva | 42.59 | 622.58 |
| Check | 11/23/2011 | EFT | Entex | PPD | Survivor | 65.66 | 688.24 |
| Check | 12/22/2011 | 106 | Centerpoint Energy | PPD | Survivor | 54.62 | 742.86 |
| Check | 3/11/2012 | 117 | Centerpoint Energy | PPD | Survivor | 158.09 | 900.95 |
| Check | 6/7/2012 | 132 | Entex | PPD | Survivor | 41.71 | 942.66 |
| Total Gas | | | | | | 942.66 | 942.66 |
| **Water** | | | | | | | |
| Check | 12/23/2010 | EFT | City of Houston Water | | Nelva | 52.74 | 52.74 |
| Check | 1/21/2011 | EFT | City of Houston Water | | Survivor | 80.94 | 133.68 |
| Check | 3/1/2011 | EFT | City of Houston Water | Water Bill | Survivor | 52.74 | 186.42 |
| Check | 4/4/2011 | EFT | City of Houston Water | | Survivor | 90.34 | 276.76 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 5/11/2011 | eft | City of Houston Water | WATER BILL | Survivor | 99.74 | 376.50 |
| Check | 6/9/2011 | EFT | City of Houston Water | DES: Water bill I | Survivor | 130.35 | 506.85 |
| Check | 6/22/2011 | 7710 | Electchk | Bcf - 14411 We 06/ Westh, Houston, TX #000032384 | Survivor | 314.57 | 821.42 |
| Check | 7/11/2011 | EFT | City of Houston Water | DES:Water bill I | Survivor | 282.51 | 1,103.93 |
| Check | 8/8/2011 | EFT | City of Houston Water | DES: water bill I | Survivor | 277.78 | 1,381.71 |
| Check | 9/8/2011 | EFT | City of Houston Water | DES:water bill I | Survivor | 265.10 | 1,646.81 |
| Check | 10/12/2011 | EFT | City of Houston Water | DES:water bill I | Survivor | 227.06 | 1,873.87 |
| Check | 11/10/2011 | EFT | City of Houston Water | DES: water bill I | Survivor | 201.70 | 2,075.57 |
| Check | 12/9/2011 | EFT | City of Houston Water | DES:Water bill I | Survivor | 252.42 | 2,327.99 |
| Check | 1/9/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 115.49 | 2,443.48 |
| Check | 2/13/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 47.13 | 2,490.61 |
| Check | 3/19/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 20.42 | 2,511.03 |
| Check | 4/12/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 26.19 | 2,537.22 |
| Total Water | | | | | | 2,537.22 | 2,537.22 |
| Total Utilities | | | | | | 6,516.19 | 6,516.19 |
| Total Expense | | | | | | 418,844.23 | 418,844.23 |
| Net Ordinary Income | | | | | | 411,325.12 | 411,325.12 |
| **Other Income/Expense** | | | | | | | |
| **Other Expense** | | | | | | | |
| **FMV of Stocks Transferred Out** | | | | | | | |
| General Journal | 5/11/2011 | EJ20110522 | | Distribute 1,120 Sh Exxon Stock to Amy Brunsting | Survivor | 90,854.40 | 90,854.40 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 1,325 Sh Exxon to Carole Brunsting | Elmer | 110,597.75 | 201,452.15 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 160 Sh Exxon to Candy Curtis | Survivor | 13,355.20 | 214,807.35 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 160 Sh Exxon to Anita Brunsting | Survivor | 13,355.20 | 228,162.55 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Ann Brunsting | Nelva | 14,162.85 | 242,325.40 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Anita Brunsting | Nelva | 14,162.85 | 256,488.25 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Jack Brunsting | Nelva | 14,162.85 | 270,651.10 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Katie Riley | Nelva | 14,162.85 | 284,813.95 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Luke Riley | Nelva | 14,162.85 | 298,976.80 |
| Total FMV of Stocks Transferred Out | | | | | | 298,976.80 | 298,976.80 |
| Total Other Expense | | | | | | 298,976.80 | 298,976.80 |
| Net Other Income | | | | | | -298,976.80 | -298,976.80 |
| **Net Income** | | | | | | **112,348.32** | **112,348.32** |

# EXHIBIT 3

Curtis V Brunsting

Stock Distribution Analysis

Exhibit 3

| Approximate | Exxon/Mobil | | Chevron Corporation | | Totals | |
|---|---|---|---|---|---|---|
| Date | Shares | Value | Shares | Value | Shares | Value |
| Amy Brunsting | | | | | | |
| 5/11/2011 | 1,120.00000 | 90,854.40 | | | 1,120.00000 | 90,854.40 |
| Carole Brunsting | | | | | | |
| 6/15/2011 | 1,325.00000 | 110,597.75 | | | 1,325.00000 | 110,597.75 |
| Candy Curtis | | | | | | |
| 6/15/2011 | 160.00000 | 13,355.20 | | | 160.00000 | 13,355.20 |
| Ann Brunsting | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| Jack Brunsting | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| Katie Riley | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| Luke Riley | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| Anita Brunsting | | | | | | |
| 6/15/2011 | 160.00000 | 13,355.20 | 135.00000 | 14,162.85 | 295.00000 | 27,518.05 |
| Totals | 2,765.00000 | 228,162.55 | 675.00000 | 70,814.25 | 3,440.00000 | 298,976.80 |
| Recap by Date | | | | | | |
| 5/11/2011 | 1,120.00000 | 90,854.40 | | | 1,120.00000 | 90,854.40 |
| 6/15/2011 | 1,325.00000 | 110,597.75 | | | 1,325.00000 | 110,597.75 |
| 6/15/2011 | 320.00000 | 26,710.40 | 675.00000 | 70,814.25 | 995.00000 | 97,524.65 |
| | 2,765.00000 | 228,162.55 | 675.00000 | 70,814.25 | 3,440.00000 | 298,976.80 |

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENTS
TO PAY PROPERTY TAX BILLS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move for an Order permitting the payment of four invoices from Randall J. Jacobsma, Sioux County Treasurer, Orange City, Iowa, consistent with the Court's Order requiring approval of all disbursements of funds from the Trust (Dkt. #45).

1. The decedent's trust has received invoices for property taxes from July 2012 through June 30, 2013, for four parcels of land in Sioux County, Iowa, referenced as 1002101003, 1002126001, 1002151002, and 1002176001. These parcels are assets of the Trust.

The invoices from Randall J. Jacobsma, Sioux County Treasurer, directed to the Elmer H. Brunsting Decedent's Trust are attached. Movants seek leave to pay the taxes due for the next six months on each parcel.

2. Accordingly, Defendants move for entry of the attached Order permitting the payments of these invoices. The disbursement for property taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536.

3. As instructed by the Court, all beneficiaries will be served with a copy of this Motion (through their counsel of record in the state court suits).

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
Fed. Id. No. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844
*gvie@millsshirley.com*

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail. Additionally, non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

*Include this STUB with September 2013 payment.*

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077
Phone: 712-737-3505

2012 CT

Receipt # **614382**

**TAX DUE: Sept 1, 2013 or Full Year**
**Penalty Begins: Oct 1, 2013**

| FULL YEAR | SEPT 1, 2013 |
|---|---|
| $612.00 | $306.00 |

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904

012676

Dist: 210 Parcel: 1002101003

*Include this STUB with March 2014 payment.*

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077
Phone: 712-737-3505

2012 CT

Receipt # **614382**

**TAX DUE: March 1, 2014**
**Penalty Begins: April 1, 2014**

| MAR 1, 2014 |
|---|
| $306.00 |

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904

Dist: 210 Parcel: 1002101003

**SIOUX COUNTY TAX BILL for SEPTEMBER 2013 and MARCH 2014.** ***Please keep it in a safe place.*** Send the correct stubs along with your check for payment. If your taxes are paid by your Bank in Escrow, this is for your information only. SEE REVERSE SIDE.
Based on January 1, 2012 valuations. Taxes for July 1, 2012 through June 30, 2013. Payable September 2013 and March 2014.

**PARCEL**

**Dist/Parcel: 210 1002101003** District Name BOYDEN-HULL WELCOME
**Receipt# 614382** Type 2012 CT Location Class A
Cont.
Sec/Twp/Rng 02- 096- 45 Deed BRUNSTING, ELMER H. Mail BRUNSTING, ELMER H.
Legal: NW NW EXC TR 542.5' X 660' Net Acres 26.64 Address # 00033055

**VALUATIONS AND TAXES:**

| | This Year | | Last Year | |
|---|---|---|---|---|
| | Assessed | Taxable | Assessed | Taxable |
| Land: | 46,620 | 27,941 | 46,620 | 26,826 |
| Buildings: | 0 | 0 | 0 | 0 |
| Dwelling: | 0 | 0 | 0 | 0 |
| Less Military Credit: | | 0 | | 0 |
| **NET TAXABLE VALUE:** | 46,620 | 27,941 | 46,620 | 26,826 |
| Value Times Levy Rate of: | | 23.2243300 | | 23.3328100 |
| EQUALS GROSS TAX OF: | | $648.91 | | $625.93 |
| Less Credits of: Homestead: | | $.00 | | $.00 |
| Low Income/Elderly Credit: | | $.00 | | $.00 |
| Ag Land Credit: | | $37.47- | | $32.95- |
| Family Farm Credit: | | $.00 | | $.00 |
| Prepaid Tax: | | $.00 | | |

**TAX DUE:**
A Other taxes unpaid NO
X Special Assessments due NO
Drainage due NO
D Tax sale certificate NO
U
E

OWNERS DEED: BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904
CONT:

| | | |
|---|---|---|
| **NET ANNUAL TAXES:** | **$612.00** | **$592.00** |
| Ag Dwelling Tax: | $.00 | $.00 |

Emergency Management Dollars County $163,417.00

| TAXING AUTHORITY: | % Total | Distribution of your current & prior year taxes This Year | Last Year | TOTAL property taxes levied by taxing authority This Year | Prior | Percent +/- |
|---|---|---|---|---|---|---|
| BOYDEN HULL COMM SCH | 62.418 | $382.00 | $371.51 | 2,551,463 | 2,465,523 | 3.486+ |
| COUNTY GENERAL BASIC FUND | 16.160 | $98.90 | $94.87 | 5,070,066 | 4,840,672 | 4.739+ |
| COUNTY RURAL BASIC FUND | 10.338 | $63.27 | $60.89 | 1,728,935 | 1,647,544 | 4.940+ |
| COUNTY SERVICES FUND | 3.216 | $19.68 | $19.76 | 1,009,122 | 1,008,520 | 0.060+ |
| NORTHWEST IOWA COMM COLLEGE | 2.974 | $18.20 | $16.33 | 2,328,413 | 2,062,277 | 12.905+ |
| DEBT SERVICE | 1.575 | $9.64 | $8.04 | 583,802 | 533,247 | 9.481+ |
| WELCOME TOWNSHIP | 1.296 | $7.93 | $7.78 | 13,216 | 12,715 | 3.940+ |
| COUNTY ASSESSOR FUND | 1.219 | $7.46 | $7.21 | 382,476 | 368,162 | 3.888+ |
| COUNTY AG EXTENSION FUND | 0.789 | $4.83 | $4.71 | 247,616 | 240,591 | 2.920+ |
| STATE BANGS | 0.015 | $0.09 | $0.08 | 4,458 | 4,272 | 4.354+ |

YOU MAY PAY ONLINE AT ***www.iowatreasurers.org***

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077

Receipt # **614382**

DUE Sept 1, 2013 **$306.00** Date Paid: _____ CHECK #: _____

DUE March 1, 2014 **$306.00** Date Paid: _____ CHECK #: _____

Retain this lower portion for your records. Enter the date paid and your check number for your information. Keep in a safe place.

*Include this STUB with September 2013 payment.*

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077
Phone: 712-737-3505

2012 CT

Receipt # **614383**

**TAX DUE: Sept 1, 2013 or Full Year**
**Penalty Begins: Oct 1, 2013**

| FULL YEAR | SEPT 1, 2013 |
|---|---|
| $806.00 | $403.00 |

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904

Dist: 210 Parcel: 1002126001

*Include this STUB with March 2014 payment.*

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077
Phone: 712-737-3505

2012 CT

Receipt # **614383**

**TAX DUE: March 1, 2014**
**Penalty Begins: April 1, 2014**

| MAR 1, 2014 |
|---|
| $403.00 |

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904

Dist: 210 Parcel: 1002126001

**SIOUX COUNTY TAX BILL for SEPTEMBER 2013 and MARCH 2014.** ***Please keep it in a safe place.*** Send the correct stubs along with your check for payment. If your taxes are paid by your Bank in Escrow, this is for your information only. SEE REVERSE SIDE.
Based on January 1, 2012 valuations. Taxes for July 1, 2012 through June 30, 2013. Payable September 2013 and March 2014.

**PARCEL**

**Dist/Parcel: 210 1002126001** District Name BOYDEN-HULL WELCOME
**Receipt# 614383** Type 2012 CT Location Class A
Cont. Deed BRUNSTING, ELMER H. Mail BRUNSTING, ELMER H.
Sec/Twp/Rng 02- 096- 45 Net Acres 35.50 Address # 00033055
Legal: NE NW

**VALUATIONS AND TAXES:**

| | This Year | | Last Year | |
|---|---|---|---|---|
| | Assessed | Taxable | Assessed | Taxable |
| Land: | 61,440 | 36,823 | 61,440 | 35,353 |
| Buildings: | 0 | 0 | 0 | 0 |
| Dwelling: | 0 | 0 | 0 | 0 |
| Less Military Credit: | | 0 | | 0 |
| **NET TAXABLE VALUE:** | 61,440 | 36,823 | 61,440 | 35,353 |
| Value Times Levy Rate of: | | 23.2243300 | | 23.3328100 |
| EQUALS GROSS TAX OF: | | $855.19 | | $824.88 |
| Less Credits of: Homestead: | | $.00 | | $.00 |
| Low Income/Elderly Credit: | | $.00 | | $.00 |
| Ag Land Credit: | | $49.38- | | $44.84- |
| Family Farm Credit: | | $.00 | | $.00 |
| Prepaid Tax: | | $.00 | | |

**TAX DUE:**
A Other taxes unpaid NO
X Special Assessments due NO
Drainage due NO
D Tax sale certificate NO
U
E

OWNERS DEED: BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904
CONT:

| | | |
|---|---|---|
| **NET ANNUAL TAXES:** | **$806.00** | **$780.00** |
| Ag Dwelling Tax: | $.00 | $.00 |

Emergency Management Dollars County $163,417.00

| TAXING AUTHORITY: | % Total | Distribution of your current & prior year taxes This Year | Last Year | TOTAL property taxes levied by taxing authority This Year | Prior | Percent +/- |
|---|---|---|---|---|---|---|
| BOYDEN HULL COMM SCH | 62.420 | $503.10 | $489.48 | 2,551,463 | 2,465,523 | 3.486+ |
| COUNTY GENERAL BASIC FUND | 16.159 | $130.24 | $124.98 | 5,070,066 | 4,840,672 | 4.739+ |
| COUNTY RURAL BASIC FUND | 10.339 | $83.33 | $80.23 | 1,728,935 | 1,647,544 | 4.940+ |
| COUNTY SERVICES FUND | 3.216 | $25.92 | $26.04 | 1,009,122 | 1,008,520 | 0.060+ |
| NORTHWEST IOWA COMM COLLEGE | 2.974 | $23.97 | $21.52 | 2,328,413 | 2,062,277 | 12.905+ |
| DEBT SERVICE | 1.576 | $12.70 | $10.59 | 583,802 | 533,247 | 9.481+ |
| WELCOME TOWNSHIP | 1.297 | $10.45 | $10.25 | 13,216 | 12,715 | 3.940+ |
| COUNTY ASSESSOR FUND | 1.218 | $9.82 | $9.51 | 382,476 | 368,162 | 3.888+ |
| COUNTY AG EXTENSION FUND | 0.789 | $6.36 | $6.21 | 247,616 | 240,591 | 2.920+ |
| STATE BANGS | 0.014 | $0.11 | $0.11 | 4,458 | 4,272 | 4.354+ |

YOU MAY PAY ONLINE AT ***www.iowatreasurers.org***

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077

Receipt # **614383**

DUE Sept 1, 2013 **$403.00** Date Paid: _____ CHECK #: _____

DUE March 1, 2014 **$403.00** Date Paid: _____ CHECK #: _____

**Retain this lower portion for your records. Enter the date paid and your check number for your information. Keep in a safe place.** PAGE 2 OF 4

*Include this STUB with September 2013 payment.*

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077
Phone: 712-737-3505

2012 CT

Receipt # **614384**

**TAX DUE: Sept 1, 2013 or Full Year**
**Penalty Begins: Oct 1, 2013**

| FULL YEAR | SEPT 1, 2013 |
|---|---|
| $894.00 | $447.00 |

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904

Dist: 210 Parcel: 1002151002

*Include this STUB with March 2014 payment.*

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077
Phone: 712-737-3505

2012 CT

Receipt # 614384

**TAX DUE: March 1, 2014**
**Penalty Begins: April 1, 2014**

| MAR 1, 2014 |
|---|
| $447.00 |

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904

Dist: 210 Parcel: 1002151002

**SIOUX COUNTY TAX BILL for SEPTEMBER 2013 and MARCH 2014.** ***Please keep it in a safe place.*** Send the correct stubs along with your check for payment. If your taxes are paid by your Bank in Escrow, this is for your information only. SEE REVERSE SIDE.
Based on January 1, 2012 valuations. Taxes for July 1, 2012 through June 30, 2013. Payable September 2013 and March 2014.

**PARCEL**

**Dist/Parcel: 210 1002151002** District Name BOYDEN-HULL WELCOME
**Receipt# 614384** Type 2012 CT Location Class A
Cont. Deed BRUNSTING, ELMER H. Mail BRUNSTING, ELMER H.
Sec/Twp/Rng 02-096-45 Net Acres 38.08 Address # 00033055
Legal: SW NW

**VALUATIONS AND TAXES:**

| | This Year | | Last Year | |
|---|---|---|---|---|
| | Assessed | Taxable | Assessed | Taxable |
| Land: | 68,110 | 40,821 | 68,110 | 39,191 |
| Buildings: | 0 | 0 | 0 | 0 |
| Dwelling: | 0 | 0 | 0 | 0 |
| Less Military Credit: | | 0 | | 0 |
| **NET TAXABLE VALUE:** | 68,110 | 40,821 | 68,110 | 39,191 |
| Value Times Levy Rate of: | | 23.2243300 | | 23.3328100 |
| EQUALS GROSS TAX OF: | | $948.04 | | $914.44 |
| Less Credits of: Homestead: | | $.00 | | $.00 |
| Low Income/Elderly Credit: | | $.00 | | $.00 |
| Ag Land Credit: | | $54.74- | | $50.16- |
| Family Farm Credit: | | $.00 | | $.00 |
| Prepaid Tax: | | $.00 | | |

**TAX DUE:**
A Other taxes unpaid NO
X Special Assessments due NO
Drainage due NO
D Tax sale certificate NO
U
E

OWNERS DEED: BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904
CONT:

| | | | |
|---|---|---|---|
| **NET ANNUAL TAXES:** | **$894.00** | **$864.00** | |
| Ag Dwelling Tax: | $.00 | $.00 | Emergency Management Dollars County $163,417.00 |

| TAXING AUTHORITY: | Distribution of your current & prior year taxes % Total | This Year | Last Year | TOTAL property taxes levied by taxing authority This Year | Prior | Percent +/- |
|---|---|---|---|---|---|---|
| BOYDEN HULL COMM SCH | 62.419 | $558.03 | $542.20 | 2,551,463 | 2,465,523 | 3.486+ |
| COUNTY GENERAL BASIC FUND | 16.158 | $144.45 | $138.45 | 5,070,066 | 4,840,672 | 4.739+ |
| COUNTY RURAL BASIC FUND | 10.338 | $92.42 | $88.87 | 1,728,935 | 1,647,544 | 4.940+ |
| COUNTY SERVICES FUND | 3.216 | $28.75 | $28.84 | 1,009,122 | 1,008,520 | 0.060+ |
| NORTHWEST IOWA COMM COLLEGE | 2.974 | $26.59 | $23.84 | 2,328,413 | 2,062,277 | 12.905+ |
| DEBT SERVICE | 1.575 | $14.08 | $11.73 | 583,802 | 533,247 | 9.481+ |
| WELCOME TOWNSHIP | 1.296 | $11.59 | $11.35 | 13,216 | 12,715 | 3.940+ |
| COUNTY ASSESSOR FUND | 1.219 | $10.90 | $10.53 | 382,476 | 368,162 | 3.888+ |
| COUNTY AG EXTENSION FUND | 0.790 | $7.06 | $6.88 | 247,616 | 240,591 | 2.920+ |
| STATE BANGS | 0.015 | $0.13 | $0.12 | 4,458 | 4,272 | 4.354+ |

YOU MAY PAY ONLINE AT ***www.iowatreasurers.org***

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077

Receipt # 614384

DUE Sept 1, 2013 **$447.00** Date Paid: _____ CHECK #: _____

DUE March 1, 2014 **$447.00** Date Paid: _____ CHECK #: _____

**Retain this lower portion for your records. Enter the date paid and your check number for your information. Keep in a safe place.**

*Include this STUB with September 2013 payment.*

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077
Phone: 712-737-3505

2012 CT

Receipt # **614385**

**TAX DUE: Sept 1, 2013 or Full Year**
**Penalty Begins: Oct 1, 2013**

| FULL YEAR | SEPT 1, 2013 |
|---|---|
| $918.00 | $459.00 |

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904

Dist: 210 Parcel: 1002176001

*Include this STUB with March 2014 payment.*

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077
Phone: 712-737-3505

2012 CT

Receipt # **614385**

**TAX DUE: March 1, 2014**
**Penalty Begins: April 1, 2014**

| MAR 1, 2014 |
|---|
| $459.00 |

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904

Dist: 210 Parcel: 1002176001

**SIOUX COUNTY TAX BILL for SEPTEMBER 2013 and MARCH 2014.** ***Please keep it in a safe place.*** Send the correct stubs along with your check for payment. If your taxes are paid by your Bank in Escrow, this is for your information only. SEE REVERSE SIDE.
Based on January 1, 2012 valuations. Taxes for July 1, 2012 through June 30, 2013. Payable September 2013 and March 2014.

**PARCEL**

**Dist/Parcel: 210 1002176001** District Name BOYDEN-HULL WELCOME
**Receipt# 614385** Type 2012 CT Location Class A
Cont.
Sec/Twp/Rng 02- 096- 45 Deed BRUNSTING, ELMER H. Mail BRUNSTING, ELMER H.
Legal: SE NW Net Acres 40.00 Address # 00033055

**VALUATIONS AND TAXES:**

| | This Year Assessed | This Year Taxable | Last Year Assessed | Last Year Taxable |
|---|---|---|---|---|
| Land: | 69,920 | 41,905 | 69,920 | 40,233 |
| Buildings: | 0 | 0 | 0 | 0 |
| Dwelling: | 0 | 0 | 0 | 0 |
| Less Military Credit: | | 0 | | 0 |
| **NET TAXABLE VALUE:** | 69,920 | 41,905 | 69,920 | 40,233 |
| Value Times Levy Rate of: | | 23.2243300 | | 23.3328100 |
| EQUALS GROSS TAX OF: | | $973.22 | | $938.75 |
| Less Credits of: Homestead: | | $.00 | | $.00 |
| Low Income/Elderly Credit: | | $.00 | | $.00 |
| Ag Land Credit: | | $56.19- | | $49.48- |
| Family Farm Credit: | | $.00 | | $.00 |
| Prepaid Tax: | | $.00 | | |

**TAX DUE:**
A Other taxes unpaid NO
X Special Assessments due NO
Drainage due NO
D Tax sale certificate NO
U
E

OWNERS DEED: BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 77904
CONT:

| | | | |
|---|---|---|---|
| **NET ANNUAL TAXES:** | **$918.00** | **$890.00** | |
| Ag Dwelling Tax: | $.00 | $.00 | Emergency Management Dollars County $163,417.00 |

| TAXING AUTHORITY: | Distribution of your current & prior year taxes % Total | This Year | Last Year | TOTAL property taxes levied by taxing authority This Year | Prior | Percent +/- |
|---|---|---|---|---|---|---|
| BOYDEN HULL COMM SCH | 62.419 | $573.01 | $558.51 | 2,551,463 | 2,465,523 | 3.486+ |
| COUNTY GENERAL BASIC FUND | 16.160 | $148.35 | $142.60 | 5,070,066 | 4,840,672 | 4.739+ |
| COUNTY RURAL BASIC FUND | 10.338 | $94.90 | $91.54 | 1,728,935 | 1,647,544 | 4.940+ |
| COUNTY SERVICES FUND | 3.216 | $29.52 | $29.71 | 1,009,122 | 1,008,520 | 0.060+ |
| NORTHWEST IOWA COMM COLLEGE | 2.974 | $27.30 | $24.56 | 2,328,413 | 2,062,277 | 12.905+ |
| DEBT SERVICE | 1.575 | $14.46 | $12.09 | 583,802 | 533,247 | 9.481+ |
| WELCOME TOWNSHIP | 1.296 | $11.90 | $11.69 | 13,216 | 12,715 | 3.940+ |
| COUNTY ASSESSOR FUND | 1.219 | $11.19 | $10.85 | 382,476 | 368,162 | 3.888+ |
| COUNTY AG EXTENSION FUND | 0.789 | $7.24 | $7.09 | 247,616 | 240,591 | 2.920+ |
| STATE BANGS | 0.014 | $0.13 | $0.13 | 4,458 | 4,272 | 4.354+ |

YOU MAY PAY ONLINE AT ***www.iowatreasurers.org***

SIOUX COUNTY TREASURER
RANDALL J. JACOBSMA
PO BOX 77
ORANGE CITY, IA 51041-0077

Receipt # **614385**

DUE Sept 1, 2013 **$459.00** Date Paid: _____ CHECK #: _____

DUE March 1, 2014 **$459.00** Date Paid: _____ CHECK #: _____

**Retain this lower portion for your records. Enter the date paid and your check number for your information. Keep in a safe place.**



20-20566-819

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENTS TO PAY PROPERTY TAX BILLS**

BEFORE THE COURT is Defendants' Motion for Approval of Disbursements to Pay Property Tax Bills. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

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

An invoice in the amount of $306.00 from Randall J. Jacobsma, Sioux County Treasurer, Orange City, Iowa, for property taxes to be paid on or after September 1, 2013, on land in Sioux County, Iowa, referenced as Parcel 1002101003;

An invoice in the amount of $403.00 from Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or after September 1, 2013, on land in Sioux County, Iowa, referenced as Parcel 1002126001;

An invoice in the amount of $447.00 from Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or after September 1, 2013, on land in Sioux County, Iowa, referenced as Parcel 1002151002;

An invoice in the amount of $459.00 from Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or after September 1, 2013, on land in Sioux County, Iowa, referenced as Parcel 1002176001.

These four invoices are to be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust).

DONE this _____ day of August, 2013, at Houston, Texas.

KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' MOTION FOR APPROVAL AND RENEWAL OF FARM LEASE UNDER EXISTING TERMS ON AUGUST 31, 2013

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move for an Order permitting the renewal of the present farm lease on a 141 acre tract in Iowa, consistent with the Court's Order requiring approval of all transactions of a financial nature (Dkt. #45).

1. The decedent's trust has previously entered into an Iowa State Bar Association Farm Lease that will renew on August 31, 2013. The lease is with tenant Doyle Wissink, in Hull, Iowa, under which Mr. Wissink leases 141 acres (but not the farm building) with possession for a period of 1 year commencing March 1, 2013, and ending February 28, 2014.

Under the terms of the lease, the trust is paid $425 an acre for the 141 acres, with one payment of $29,962.50 on March 1 and a similar payment on October 1 of the lease year.

2. The lease automatically renews from year-to-year, upon the same terms and conditions. Defendants request approval to renew the lease on its existing terms, and in

support of that request states that the existing lease amount is appropriate since grain prices have lowered, relevant land prices have stabilized, and the rent was increased last year when the lease was made.

3. Accordingly, Defendants move for entry of the attached Order permitting the renewal of the Farm Lease between Anita Brunsting, Trustee and Grantor, and Doyle Wissink, Grantee, under the terms of the August 31, 2012, lease in the Official Form No. 135 of the Iowa State Bar Association. A copy is attached.

4. As instructed by the Court, all beneficiaries will be served with a copy of this Motion (through their counsel of record in the state court suits).

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
Fed. Id. No. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844
*gvie@millsshirley.com*

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail. Additionally, non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

# FARM LEASE

**THE IOWA STATE BAR ASSOCIATION**
**Official Form No. 135**
**Recorder's Cover Sheet**

**Preparer Information:** (Name, address and phone number)
John G. De Koster, 1102 Main Street, P.O. Box 801, Hull, IA 51239, Phone: (712) 439-2511

**Taxpayer Information:** (Name and complete address)
Elmer H. Brunsting Decedent's Trust, Anita Brunsting, Trustee, c/o Kroese & Kroese, 540 North Main Avenue, Sioux Center, IA 51250

**Return Document To:** (Name and complete address)
John G. De Koster, 1102 Main Street, P.O. Box 801, Hull, IA 51239, Phone: (712) 439-2511

**Grantors:**
Anita Brunsting, Trustee

**Grantees:**
Doyle Wissink

**Legal description:** See Page 2

**Document or instrument number of previously recorded documents:**

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IOWADOCS®

# FARM LEASE - CASH OR CROP SHARES

THIS LEASE ("Lease") is made between Elmer H. Brunsting Decedent's Trust, dated April 1, 2009, Anita Brunsting, Trustee, ("Landlord"), whose address for the purpose of this Lease is c/o Kroese & Kroese, 540 North Main Avenue, Sioux Center, IA 51250, and Doyle Wissink, ("Tenant"), whose address for the purpose of this Lease is 3414 340th Street, Hull, IA 51239.

THE PARTIES AGREE AS FOLLOWS:

1. **PREMISES AND TERM.** Landlord leases to Tenant the following real estate situated in Sioux County, Iowa (the "Real Estate"):

The Northwest Quarter (NW¼) of Section Two (2), Township Ninety-six (96) North, Range Forty-five (45) West of the Fifth P.M., except the farm building site therein,

and containing 141 **(total)(tillable) acres,** more or less, with possession by Tenant for a term of 1 years to commence on 03/01/13, and end on February 28th, 2014. The Tenant has had or been offered an opportunity to make an independent investigation as to the acres and boundaries of the premises. In the event that possession cannot be delivered within fifteen (15) days after commencement of this Lease, Tenant may terminate this Lease by giving the Landlord notice in writing.

2. **RENT**. Tenant shall pay to Landlord as rent for the Real Estate (the "Rent"):

a. Total annual cash rent of $ 59,925.00 payable, unless otherwise agreed, as follows: $29,962.50 on 1st day of March, $ 29,962.50 on 1st day of October, and $ _____ on _____ day of _____; or

b. Crop share - XXXX

Tenant shall not sell such crops unless Landlord agrees otherwise. Tenant shall notify Landlord of Tenant's intention to sell crop at least three (3) business days prior to sale of the crop (with business days being described as Monday through Friday, except any Iowa or federal holidays). Tenant shall pay the full rent for the crop year in which the crop is produced, whether due or not, at the time of sale pursuant to Landlord's consent to release Landlord's security interests. Upon payment in full Landlord shall release Landlord's lien on the crop produced in that crop year on the premises. The parties agree that by the Landlord releasing the lien as to the crop in one year, the Landlord in no way releases the lien or agrees to release the lien in any prior or subsequent year.

Tenant shall sign and deliver to Landlord a list of potential buyers of the crops upon which Landlord has been granted a security interest in this lease. Unless Landlord otherwise consents, Tenant will not sell these crops to a buyer who is not on the potential list of buyers unless Tenant pays the full rent due for the crop year to the Landlord at or prior to the date of sale. Landlord may give notice to the potential buyers of the existence of this security interest.

Landlord is further granted the power, coupled with an interest, to sign on behalf of Tenant as attorney-in-fact and to file one or more financing statements under the Iowa Uniform Commercial Code naming Tenant as Debtor and Landlord as Secured Party and describing the collateral herein specified. Tenant consents to the financing statement being filed immediately after execution of this Lease.

4. **INPUT COSTS AND EXPENSES.** Tenant shall prepare the Real Estate and plant such crops in a timely fashion as may be directed by Tenant **(Landlord) (Tenant)**. Tenant shall only be entitled to pasture or till those portions of the Real Estate designated by Landlord. All necessary machinery and equipment, as well as labor, necessary to carry out the terms of this lease shall be furnished by and at the expense of the Tenant. The following materials, in the amounts required by good husbandry, shall be acquired by Tenant and paid for by the parties as follows:

| | % Landlord | % Tenant |
|---|---|---|
| (1) Commercial Fertilizer | 0 | 100 |
| (2) Lime and Trace Minerals | 0 | 100 |
| (3) Herbicides | 0 | 100 |
| (4) Insecticides | 0 | 100 |
| (5) Seed | 0 | 100 |
| (6) Seed cleaning | 0 | 100 |
| (7) Harvesting and/or Shelling Expense | 0 | 100 |
| (8) Grain Drying Expense | 0 | 100 |
| (9) Grain Storage Expense | 0 | 100 |
| (10) Other | 0 | 100 |

Phosphate and potash on oats or beans shall be allocated 100 % the first year and 0 % the second year, and on all other crops allocated 100 % the first year and 0 % the second year. Lime and trace minerals shall be allocated over 1 years. If this Lease is not renewed, and Tenant does not therefore receive the full allocated benefits, Tenant shall be reimbursed by Landlord to the extent Tenant has not received the benefits. Tenant agrees to furnish, without cost, all labor, equipment and application for all fertilizer, lime, trace minerals and chemicals _____.

5. **PROPER HUSBANDRY; HARVESTING OF CROPS; CARE OF SOIL, TREES, SHRUBS AND GRASS**. Tenant shall farm the Real Estate in a manner consistent with good husbandry, seek to obtain the best crop production that the soil and crop season will permit, properly care for all growing crops in a manner consistent with good husbandry, and harvest all crops on a timely basis. In the event Tenant fails to do so, Landlord reserves the right, personally or by designated agents, to enter upon the Real Estate and properly care for and harvest all growing crops, charging the cost of the care and harvest to the Tenant, as part of the Rent. Tenant shall timely control all weeds, including noxious weeds, weeds in the fence rows, along driveways and around buildings throughout the premises. Tenant shall comply with all terms of the conservation plan and any other required environmental plans for the leased premises. Tenant shall do what is reasonably necessary to control soil erosion including, but not limited to, the maintenance of existing watercourses, waterways, ditches, drainage areas, terraces and tile drains, and abstain from any practice which will cause damage to the Real Estate.

Upon request from the Landlord, Tenant shall by August 15 of each lease year provide to the Landlord a written listing showing all crops planted, including the acres of each crop planted, fertilizers, herbicides and insecticides applied showing the place of application, the name and address of the applicator, the type of application and the quantity of such items applied on the lease premises during such year.

Tenant shall distribute upon the poorest tillable soil on the Real Estate, unless directed otherwise by Landlord, all of the manure and compost from the farming operation suitable to be used. Tenant shall not remove from the Real Estate, nor burn, any straw, stalks, stubble, or similar plant materials, all of which are recognized as the property of Landlord. Tenant may use these materials, however, upon the Real Estate for the farming operations. Tenant shall protect all trees, vines and shrubbery upon the Real Estate from injury by Tenant's cropping operation or livestock.

Tenant shall maintain accurate yield records for the real estate, and upon request, during or after lease term, shall disclose to Landlord, all yield base information required for participation in government programs.

6. **DELIVERY OF GRAIN.** If this lease is a crop share lease, Tenant, without cost to Landlord, shall deliver Landlord's grain pursuant to request, at reasonable times, to the elevator at _____.

7. **LANDLORD'S STORAGE SPACE.** If this lease is a crop share lease, Landlord reserves _____ % of all crib and granary space for storage of the rent share crops.

8. **ENVIRONMENTAL.**

a. Landlord. To the best of Landlord's knowledge to date:

i) Neither Landlord nor, Landlord's former or present tenants, are subject to any investigation concerning the premises by any governmental authority under any applicable federal, state, or local codes, rules, and regulations pertaining to air and water quality, the handling, transportation, storage, treatment, usage, or disposal of toxic or hazardous substances, air emissions, other environmental matters, and all zoning and other land use matters.

ii) Any handling, transportation, storage, treatment, or use of toxic or hazardous substances that has occurred on the premises has been in compliance with all applicable federal, state, and local codes, rules, and regulations.

iii) No leak, spill release, discharge, emission, or disposal of toxic or hazardous substances has occurred on the premises.

iv) The soil, groundwater, and soil vapor on or under the premises is free of toxic or hazardous substances except for chemicals (including without limitation fertilizer, herbicides, insecticides) applied in conformance with good farming methods, applicable rules and regulations and the label directions of each chemical.

Landlord shall hold Tenant harmless against liability for removing solid waste disposal sites existing at the execution of this Lease, with the exception that Tenant shall be liable for removal of solid waste disposal sites to the extent that the Tenant created or contributed solid waste disposal site at any time.

Landlord shall assume liability and shall indemnify and hold Tenant harmless against any liability or expense arising from any condition which existed, whether known or unknown, at the time of execution of the lease which is not a result of actions of the Tenant or which arises after date of execution but which is not a result of actions of the Tenant.

Landlord shall disclose in writing to Tenant the existence of any known wells, underground storage tanks, hazardous waste sites, and solid waste disposal sites. Disclosure may be provided by a properly completed groundwater hazard statement to be supplemented if changes occur.

b. Tenant. Tenant shall comply with all applicable environmental laws concerning application, storage and handling of chemicals (including, without limitation, herbicides and insecticides) and fertilizers. Tenant shall apply any chemicals used for weed or insect control at levels not to exceed the manufacturer's recommendation for the soil types involved. Farm chemicals **~~(may)~~ (may not)** be stored on the premises for more than one year. Farm chemicals for use on other properties **~~(may)~~ (may not)** be stored on this property. Chemicals stored on the premises shall be stored in clearly marked, tightly closed containers. No chemicals or chemical containers will be disposed of on the premises. Application of chemicals for agricultural purposes per manufacturer's recommendation shall not be construed to constitute disposal.

Tenant shall employ all means appropriate to insure that well or ground water contamination does not occur, and shall be responsible to follow all applicator's licensing requirements. Tenant shall install and maintain safety check valves for injection of any chemicals and/or fertilizers into an irrigation system (injection valve only, not main well check valve). Tenant shall properly post all fields (when posting is required) whenever chemicals are applied by ground or air. Tenant shall haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements. Tenant shall not dispose of waste oil, tires, batteries, paint, other chemicals or containers anywhere on the premises. Solid waste **~~(may)~~ (may not)** be disposed of on the premises. Dead livestock **~~(may)~~ (may not)** be buried on the premises. If disposal of solid waste or burial of dead animals is permitted as stated in the previous two sentences, the disposal or burial shall be in compliance with all applicable environmental laws. Tenant shall not use waste oil as a means to suppress dust on any roads on or near the premises. No underground storage tanks, except human waste septic systems that meet current codes, rules, and regulations, shall be maintained on the premises.

Tenant shall immediately notify Landlord of any chemical discharge, leak, or spill which occurs on premises. Tenant shall assume liability and shall indemnify and hold Landlord harmless for any claim or violation of standards which results from Tenant's use of the premises. Tenant shall assume defense of all claims, except claims resulting from Landlord's negligence, in which case each party shall be responsible for that party's defense of any claim. After termination, Tenant shall remain liable for violations which occurred during the term of this Lease.

**In the absence of selection of an alternative where choices are provided in this paragraph 8b, the choice of word "may" shall be presumed unless that presumption is contrary to applicable environmental laws and regulations.**

9. **TERMINATION OF LEASE.** This Lease shall automatically renew upon expiration from year-to-year, upon the same terms and conditions unless either party gives due and timely written notice to the other of an election not to renew this Lease. If renewed, the tenancy shall terminate on March 1 of the year following, provided that the tenancy shall not continue because of an absence of notice in the event there is a default in the performance of this Lease. All notices of termination of this Lease shall be as provided by law.

10. **POSSESSION AND CONDITION AT END OF TERM.** At the termination of this Lease, Tenant will relinquish possession of the Real Estate to the Landlord. If Tenant fails to do so Tenant agrees to pay Landlord $ 200.00 per day, as liquidated damages until possession is delivered to Landlord. At the time of delivery of the Real Estate to Landlord, Tenant shall assure that the Real Estate is in good order and condition, and substantially the same as it was when received by Tenant at the commencement of this Lease, excusable or insurable loss by fire, unavoidable accidents and ordinary wear, excepted.

11. **LANDLORD'S RIGHT OF ENTRY AND INSPECTION**. In the event notice of termination of this Lease has been properly served, Landlord may enter upon the Real Estate or authorize someone else to enter upon the Real Estate to conduct any normal tillage or fertilizer operation after Tenant has completed the harvesting of crops even if this is prior to the date of termination of the lease. Landlord may enter upon the Real Estate at any reasonable time for the purpose of viewing or seeding or making repairs, or for other reasonable purposes.

12. **VIOLATION OF TERMS OF LEASE.** If Tenant or Landlord violates the terms of this Lease, the other may pursue the legal and equitable remedies to which each is entitled. Tenant's failure to pay any Rent when due shall cause all unpaid Rent to become immediately due and payable, without any notice to or demand upon Tenant.

13. **REPAIRS.** Tenant shall maintain the fences on the leased premises in good and proper repair. Landlord shall furnish necessary materials for repairs that Landlord deems necessary within a reasonable time after being notified of the need for repairs. Tenant shall haul the materials to the repair site without charge to Landlord.

14. **NEW IMPROVEMENTS.** All buildings, fences and improvements of every kind and nature that may be erected or established upon the Real Estate during the term of the Lease by the Tenant shall constitute additional rent and shall inure to the Real Estate, becoming the property of Landlord unless the Landlord has agreed in writing prior to the erection that the Tenant may remove the improvement at the end of the lease.

15. **WELL, WINDMILL, WATER AND SEPTIC SYSTEMS.** Tenant shall maintain all well, windmill, water and septic systems on the Real Estate in good repair at Tenant's expense except damage caused by windstorm or weather. Tenant shall not be responsible for replacement or installation of well, windmill, water and septic systems on the Real Estate, beyond ordinary maintenance expenses. Landlord does not guarantee continuous or adequate supplies of the water for the premises.

16. **EXPENSES INCURRED WITHOUT CONSENT OF LANDLORD.** No expense shall be incurred for or on account of the Landlord without first obtaining Landlord's written authorization. Tenant shall take no actions that might cause a mechanic's lien to be imposed upon the Real Estate.

17. **NO AGENCY.** Tenant is not an agent of the Landlord.

18. **TELEVISION AND RADIO.** Tenant may install and remove, without causing material injury to the premises, Tenant's television reception antennas, microwave dishes, and radio reception and transmission antennas.

19. **ACCOUNTING.** The method used for dividing and accounting for the harvested grain shall be the customary and usual method used in the locale.

20. **ATTORNEY FEES AND COURT COSTS.** If either party files suit to enforce any of the terms of this Lease, the prevailing party shall be entitled to recover court costs and reasonable attorneys' fees,

21. **CHANGE IN LEASE TERMS.** The conduct of either party, by act or omission, shall not be construed as a material alteration of this Lease until such provision is reduced to writing and executed by both parties as addendum to this Lease.

22. **CONSTRUCTION.** Words and phrases herein, including the acknowledgement, are construed as in the singular or plural and as the appropriate gender, according to the context.

23. **NOTICES.** The notices contemplated in this Lease shall be made in writing and shall either be delivered in person, or be mailed in the U.S. mail, certified mail to the recipient's last known mailing address, except for the notice of termination set forth in Section 9, which shall be governed by the Code of Iowa.

24. **ASSIGNMENT.** Tenant shall not assign this Lease or sublet the Real Estate or any portion thereof without prior written authorization of Landlord.

25. **CERTIFICATION.** Tenant certifies that it is not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and it is not engaged in this transaction, directly or indirectly on behalf of, or instigating or facilitation this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Tenant hereby agrees to defend, indemnify and hold harmless Landlord from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to any breach of the foregoing certification.

26. **ADDITIONAL PROVISIONS.**

A. Tenant shall report to Kroese & Kroese, acting on Landlord's behalf, on or before August 1 in each year of this Lease, a listing of all fertilizer and chemicals applied on the subject premises. Said report shall include the names of the chemicals and fertilizers, amounts applied and any application records, including grid sampling that the Tenant may have or may be able to obtain.

B. Prior to the end of each calendar year during the term of this Lease, Tenant shall report to Kroese & Kroese, acting on Landlord's behalf, the yield of all crops planted on the subject premises as certified for purposes of Federal Crop Insurance or as certified to the Farm Service Agency.

DATED: Aug. 31, 2012

TENANT:

Doyle Wissink

Doyle Wissink

LANDLORD: ELMER H. BRUNSTING DECEDENT'S TRUST

By Anita Kay Brunsting

Amy R Brunsting 10/13/12

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, _____, by _____

_____

_____.

_____

_____, Notary Public

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, _____,

by _____

as _____

of _____.

If a corporation: Said person(s) acknowledged that the corporation (has no seal) (has a seal which is affixed hereto).

_____

_____, Notary Public

[ATTACH OTHER APPROPRIATE ACKNOWLEDGEMENT(S) HERE]

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL AND RENEWAL OF FARM LEASE UNDER EXISTING TERMS ON AUGUST 31, 2013**

BEFORE THE COURT is Defendants' Motion for entry of an Order permitting the renewal of the present farm lease on a 141 acre tract in Iowa. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

ORDERED that the Trustees have authority to permit the renewal of the Farm Lease between Anita Brunsting, Trustee and Grantor, and Doyle Wissink, Grantee, under the terms of the August 31, 2012, lease in the Official Form No. 135 of the Iowa State Bar Association. The Trustees may execute a lease document if necessary to effectuate the renewal of the Farm Lease under its present terms.

DONE this _____ day of August, 2013, at Houston, Texas.

KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants.* | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENTS TO PAY PROPERTY TAX BILLS**

BEFORE THE COURT is Defendants' Motion for Approval of Disbursements to Pay Property Tax Bills. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

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

An invoice in the amount of $306.00 from Randall J. Jacobsma, Sioux County Treasurer, Orange City, Iowa, for property taxes to be paid on or after September 1, 2013, on land in Sioux County, Iowa, referenced as Parcel 1002101003;

An invoice in the amount of $403.00 from Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or after September 1, 2013, on land in Sioux County, Iowa, referenced as Parcel 1002126001;

An invoice in the amount of $447.00 from Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or after September 1, 2013, on land in Sioux County, Iowa, referenced as Parcel 1002151002;

An invoice in the amount of $459.00 from Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or after September 1, 2013, on land in Sioux County, Iowa, referenced as Parcel 1002176001.

These four invoices are to be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust).

SIGNED on this 27th day of August, 2013.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

RESPONSE OF DEFENDANTS TO REPORT OF MASTER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting file this Response to the Report of the Master. Defendants desire to clarify certain matters in the report and to provide to the Court relevant background information they provided to the Master and on which the Master relied in his report. To the extent necessary under Rule 53, and to the extent the Court treats any part of the Master's report as a finding of fact, Defendant's clarifying information may also be considered an objection to the related finding of fact, under Rule 53(f)(2) and (3).

RESPONSES TO MATTERS NOTED IN THE REPORT

1. In section II of the Report, at page 3, the Master notes that counsel for Defendants provided a letter in explanation of certain distributions on 7/15/2013. In section III of the Report, at page 4, the Master notes that he relied on information and explanations supplied in the 7/15/2013 letter. Another reference to the letter is made in Section VII at page 10. In order that the Court may have the benefit of that information, a true copy of the letter to the Master is attached as Appendix Item 1.

2. In section V of the Report, the Master notes certain exceptions to the Report and references missing documents. The Defendants have complied in good faith with the requests of the Master for information and assistance, which were all reasonable requests. The following explanations or comments address certain of the Master's noted exceptions.

A. At page 6, the Master notes that he did not receive monthly statements for payments on a Bank of America credit card. The payments to the Bank of America credit card were for Defendant Anita Brunsting's trustee fee compensation. The Master was advised of the payments to a personal card in the 7/15/2013 letter at paragraph 1. Other prior counsel for the Trust had calculated a reasonable fee for Ms. Brunsting, as also related in the 7/15/2013 letter. The payments to the credit cards are documented on the bank statements provided to the Master, as he notes.

B. At page 7, the Master notes that statements were not received for Bank of America checking account ending in 9546, from 12/14/2011 to the effective date of the Report. As noted in the 7/15/2013 letter, the Trustee was not a signatory on this account; rather, Defendants' mother placed their sister Carole Brunsting on the account as a Joint Tenant with Right of Survivorship, so Carole could assist with Mrs. Brunsting's day-to-day expenses. The Trustee did transfer funds into this account for her mother and Carole to write checks or make withdrawals for her mother's needs. Defendants believe the referenced account was closed approximately January 2012 but do not have the final statement. It was not obtained by their sister before the Master's tender of the report, but likely can be obtained.

C. The Master further notes that statements were not received for an account with Edward Jones ending in 5-1-6, after 4/26/2013 to the effective date of the Report. Defendants respond that no statements have been posted by Edward Jones after 4/26/2013, and therefore there are no documents that could be provided after that date and through May 31, 2013.

D. The Master further notes that statements were not received for a Chevron dividend investment account ending in 9423, from 12/31/2011 to 5/31/2013. Defendants respond that they are missing statements from 9/11/2012 through 6/9/2013, and no additional statements have been posted by Computershare. Defendants were not able to determine from Computershare why no statements have been posted, but did provide the transaction history to the Master to evidence of dividend reinvestment and that no funds had been removed from the account.

E. The Master notes that statements were missing for an ExxonMobil dividend reinvestment account ending in 6287, from 9/30/2012 to 5/31/2013. Defendants respond that they provided statements to the Master from 9/12/2012 to 5/10/2013 as part of a transmittal of supplemental documents on 7/5/2013. The fact that additional records were provided on 7/5/2013 is referenced at Section II, page 5, of the Master's report. Defendants' transmittal letter to the Master is attached as Appendix Item 2.

F. The Master notes that statements were missing for a John Deere dividend reinvestment account. Defendants comment that they did provide a May 2013 statement to the Master.

3. In Section VI of the Report, addressing Stock Distributed, the Master notes "[a] final accounting of 37.131 shares of CVX stock could not be determined since reports after 12/31/2011 were unavailable for one of the DRP accounts." Defendants respond that they believe the Master is referring to the shares in the survivor's trust Chevron account ending in 7657. The Defendants only have a tax statement for 2012 and did provide a 6/10/2013 statement as referenced in Appendix Item 2. There are currently 38.334668 shares in this account.

4. Additionally in Section VI, at page 9, the Master notes that 95 shares of Met Life Inc. shares were attributed to the Trust "however the only reports reflecting information on these shares were dated late in the review period and did not show whether the shares were available to the estate at the beginning of the period." Defendants did provide the Master in the initial set of documents with an accounting ("the Vacek accounting") that has a schedule B. That schedule is a survivor's trust asset list and there notes a December 2010 value for the same 95 shares of Met Life Inc. stock. This is some evidence as to the shares available at the beginning of the Master's report period.

5. Additionally in Section VI, at page 9, the Master notes that "[o]nly 0.04946 shares of [Deere and Company] were attributed to the estate at the end of the period. No reports reflected the balance as of the beginning of the period and 8.669 shares were not accounted for during the period." Defendants did provide a transaction history at Bates number AABrunsting.Financials004272; also the Vacek accounting shows 9.5807 shares in December 2010 and 9.7125 shares March 2012, while the transaction history provided

to the Master on 7/5/13 evidences 9.9117 shares in the survivor's trust (and none in the decedent's trust). Defendants believe the shares are accounted for.

6. In Section VII, at page 10 the Master notes that he prepared an account titled *Payments to Credit Cards* in the Expense/Distributions section of the Report, and that this account references payments to a Bluebonnet credit card account. The Master does note monthly statements and some supporting documentation were provided for the credit card account. Defendants add that this was their mother's personal credit card and that she allowed caretakers to use it as needed to purchase groceries, medical supplies, and other similar necessaries.

7. Finally, Defendants would emphasize that as to the Stock Distribution Analysis, attached as Exhibit 3 to the Master's Report, all of the distributions noted on that exhibit were during the life of Defendants' mother and at Mrs. Nelva Brunsting's directions. These distributions continued Nelva Brunsting's prior history of gifting and are discussed in several paragraphs of the 7/15/2013 letter.

CONCLUSION AND RELIEF SOUGHT.

8. Defendants are individuals, not financial professionals. They concede, as the Master notes, that they used the Quicken electronic files to maintain Trust records but neither they nor their parents had used a more fully integrated bookkeeping system. Still, Defendants have endeavored to meet their obligations under the Trust in good faith, notwithstanding the number of accounts involved; the transferences upon death of their parents; the transition of client records that resulted from Computershare purchasing BNYMellon; a life insurance trust, farm lease, and other matters. They have provided all

documents they had access to or were able to obtain from providers and vendors within the period of the Report.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court take notice of this filing.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
Fed. Id. No. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844
*gvie@millsshirley.com*

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail. Additionally, non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

MILLS SHIRLEY L.L.P.

ESTABLISHED 1846

GEORGE W. VIE III
PARTNER
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ONE CITY CENTRE
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July 15, 2013

Re: Case No. 4:12-cv-00592; *Candace Louise Curtis v. Anita Kay Brunsting et al* – In the United States District Court for the Southern District of Texas, Houston Division

Mr. William G. West, C.P.A. & Bankruptcy Trustee
Southern District of Texas
12345 Jones Road, Suite 120
Houston, TX 77070

Dear Mr. West:

We previously delivered three binders, a folder, CDs (Bates #s AABrunsting.Financials 002359-004082) and a chart of the Brunsting accounts to you as requested and pursuant to the Court's order. We also delivered an additional binder and CD (Bates #s AABrunsting.Financials 004083-0042832). We want to provide the following information to assist you in your review of the documentation and to provide some background and context you otherwise might not have.

1. Under the terms of the Living Trust and its sub-trusts, the Trustee is entitled to a fee. Anita Brunsting became Successor Trustee on December 21, 2010. Ms. Brunsting consulted with Vacek & Freed, the attorneys who prepared the Living Trust and its sub-trusts, to determine the percentage amount of her fee. Instead of taking her $41,070.08 Trustee's fee in cash, Ms. Brunsting paid her personal credit cards with trust assets and paid for some of her children's college expenses beginning May 5, 2011, through November 8, 2011. During this period, two percent of the trust value was $45,826.00; thus we contend the Trustee's fee was reasonable. (**See Bates 002346**).

2. Mr. and Mrs. Brunsting had a history of making financial gifts to their five children as well as their seven grandchildren. Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their mid-30s); and Carl's daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses. Mrs. Brunsting continued gifting when she was

Trustee. The financial documents we have provided will not show all of the gifts to the older children and the older grandchildren, since many gifts were made prior to Mr. Brunsting's death. Because Anita and Amy are the youngest children and, in turn, their children are the youngest grandchildren, gifts to them may seem to predominate, when in fact all previous gifts to the older children and older grandchildren may not be reflected in the records. (**See Bates 002341-002343**). Further, prior to Anita becoming Trustee, Mr. and Mrs. Brunsting gave Candace Curtis at least $42,000.00 and loaned her an additional $20,000.00 against her inheritance. After Anita became Trustee, her mother requested that an additional $11,000.00 in gifts be made to Candace Curtis (detailed below). See enclosed spreadsheet detailing gifts.

3. When Anita Brunsting became Trustee in December 2010, Mrs. Brunsting wanted to continue her history of gifting to her children and grandchildren. In May 2011, at her mother's direction, Anita transferred stock from the Survivor's Trust to Amy so that Amy could pay off her mortgage, and in June 2011 transferred stock from the Decedent's Trust to Carole so that Carole could update her home and pay off her mortgage. Note that Mrs. Brunsting wanted to ensure that Amy's and Carole's homes were paid off as she and her husband did the same for Anita in approximately 2005. (**See Bates 002342-002343**). Amy and her husband divorced and Mrs. Brunsting was concerned about the welfare of Amy and her children since Amy's ex-husband terminated his parental rights and was not paying any child support. Mrs. Brunsting also instructed Anita to make gifts to Amy's two children, J.B. and A.B. , and for Anita's two children, Katie Riley and Luke Riley for future car and college expenses. Each of the four grandchildren received 135 shares of Chevron stock from the Survivor's Trust in June 2011. (**See Bates 002343**) Before Anita transferred the stock at her mother's instructions, she consulted with attorney Candace Freed of Vacek & Freed, the attorneys who prepared the Living Trust and its sub-trusts, and accountant Rich Rikkers confirming it was not improper to make these transfers.

4. In November 2010, Mrs. Brunsting sent an e-mail to Amy Brunsting stating Mrs. Brunsting was gifting Amy $13,000.00, although the transfer was not complete until 2011. Specifically, $7,000.00 was given on December 31, 2010, and $6,000.00 was given on January 19, 2011 (**See Bates 002333, 002360**).

5. Mrs. Brunsting informed Anita that she had been giving money to Candace and instructed her to continue to give Candace what she needed. In April 2011, Anita gave $3,000.00 to Candace Curtis. (**See Bates 002334,002374**) In June 2011, Anita gave $2,000.00 to Candace Curtis. (**See Bates 002336, 002384**). In August 2011, Anita gave $2,000.00 to Candace Curtis. (**See Bates 002337, 002395**) In October 2011, Anita gave $2,000.00 to Candace Curtis. (**See Bates 002338, 002404**) In November 2011, Anita gave $2,000.00 to Candace Curtis. In November 2011, Mrs. Brunsting instructed Anita to give $2,000.00 for her son,

Luke Riley's education. (**See Bates 002339, 002408-002409**). Anita distributed $12,585.60 in Exxon stock from the survivor's trust to Candace Curtis in June 2011 for a reserve to help Candace Curtis with expenses, should Mrs. Brunsting passed away.

6. In approximately July 2010, Carl Brunsting became very ill. He was hospitalized and, for a period of time, lived with Mrs. Brunsting instead of his wife, Drina Brunsting. Mrs. Brunsting paid almost $47,000.00 for personal care providers for Carl. (**See Bates 002344-002345**).

7. Anita Brunsting resides in Victoria, Texas, approximately two hours and approximately 120 miles from her parents' home in Houston. Because Anita could not be with her mother on a daily basis, it was not practical for Anita to oversee her mother's daily incidentals. Thus, Mrs. Brunsting placed Carole Brunsting as a Joint Tenant with Right of Survivorship on one of her Bank of America accounts (ending in 9546), so Carole could assist with Mrs. Brunsting's day-to-day expenses. Since Anita was not a signatory on this account she, as Trustee, transferred funds into this account for her mother and Carole to write checks or make withdrawals for her mother's needs. Note that on April 7, 2011, a $3,000.00 gift was given to Candace Curtis from this account. (**See Bates 002336-002340**). (This is in addition to the gifts to Candace Curtis described above.)

8. The Brunsting family home was sold in March 2012 and $433,129.52 was deposited into the Survivor's Trust at Bank of America (account ending in 3523). (**See Bates 002439**) Because the deposits would exceed the FDIC limit, Anita Brunsting transferred $167,000.00 to a Bank of America account ending in 3536. (**See Bates 002459, 002524**) However, this is an account of the Decedent's Trust, not the Survivor's Trust, so the funds were then transferred to a Survivor's Trust savings account at Bank of America (account ending in 8577). (**See Bates 002527, 002576**).

If you have any questions regarding the funds or transfers between accounts, my clients and I will be happy to answer them.

Thank you.

Sincerely,

*/s/ George W. Vie III*

George W. Vie III

255001/100925.3

| Date | Gift | Stock price | amount | Person | purpose |
|---|---|---|---|---|---|
| **Mom/Dad were trustees** | | | | | |
| 12/21/2010 | trxfr | | $ 7,000.00 | Amy Brunsting | mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights |
| 1/4/2011 | trxfr | | $ 6,000.00 | Amy Brunsting | mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights |
| 6/22/2009 | | | $ 1,000.00 | Amy Brunsting | college fund |
| 7/14/2009 | | | $ 1,000.00 | Amy Brunsting | college fund |
| 11/14/2007 | chk# 5715 | | $ 5,000.00 | Amy Brunsting | unsolicited gift |
| 1/20/2006 | chk# 5143 | | $ 200.00 | Amy Brunsting | |
| 2/11/2002 | chk# 3526 | | $ 200.00 | Amy Brunsting | college fund |
| 12/31/2002 | chk# 3911 | | $ 200.00 | Amy Brunsting | college fund |
| | **Total Amy Brunsting** | | $ 20,600.00 | | |
| 10/2/2009 | **chk# 6359** | | $ 1,000.00 | **Andy Curtis** | |
| 2/8/2010 | chk# 6518 | | $ 5,000.00 | Anita Brunsting | unsolicited gift |
| 6/24/2009 | chk# 6278 | | $ 1,000.00 | Anita Brunsting | graduation gift to me for finishing my doctorate |
| 7/14/2009 | chk# 6294 | | $ 1,000.00 | Anita Brunsting | college fund |
| 9/8/2009 | chk# 6338 | | $ 1,000.00 | Anita Brunsting | college fund |
| 10/19/2009 | chk# 6403 | | $ 1,250.00 | Anita Brunsting | |
| 1/20/2006 | chk# 5142 | | $ 200.00 | Anita Brunsting | college fund |
| 1/31/2006 | chk# 5155 | | $ 150.00 | Anita Brunsting | mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one |
| 2/21/2006 | chk# 5172 | | $ 150.00 | Anita Brunsting | mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one |
| 4/1/2006 | chk# 5233 | | $ 150.00 | Anita Brunsting | mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one |
| 1/10/2003 | chk# 3920 | | $ 200.00 | Anita Brunsting | college fund |
| 2/11/2002 | chk# 3527 | | $ 200.00 | Anita Brunsting | college fund |
| | **Total Anita Brunsting** | | $ 10,300.00 | | |
| 3/17/2010 | chk # 6386 | | $ 750.00 | Candy Curtis | |
| 1/27/2009 | chk # 6124 | | $ 2,000.00 | Candy Curtis | |
| 7/29/2009 | chk# 6309 | | $ 4,000.00 | Candy Curtis | |
| 7/8/2008 | chk # 5917 | | $ 2,000.00 | Candy Curtis | |
| 8/3/2009 | chk# 5944 | | $ 1,500.00 | Candy Curtis | |
| 7/6/2001 | trxfr | | $ 20,000.00 | Candy Curtis | |
| 1/19/2010 | | | $ 5,000.00 | Candy Curtis | |
| 3/29/2010 | | | $ 7,000.00 | Candy Curtis | |
| 6/22/2010 | | | $ 20,000.00 | Candy Curtis | Taken against inheritance (documentation on file w/ Vacek & Freed) expenses, divorce |
| | **Total Candy Curtis** | | $ 62,250.00 | | |
| 11/10/2005 | chk# 5070 | | $ 10,000.00 | Carl Brunsting | |
| 3/12/2003 | chk# 3986 | | $ 9,000.00 | Carl Brunsting | |
| 4/9/2003 | chk# 4017 | | $ 11,000.00 | Carl Brunsting | |
| 9/17/2001 | chk# 3347 | | $ 2,000.00 | Carl Brunsting | |
| 10/6/2010 | | | $ 25,000.00 | Carl Brunsting | medical bills |
| 2010-2011 | | | $ 21,899.61 | Carl Brunsting | paid one medical bill ($1565.70) and to caretakers directly for his care from 7/13/2010 through 1/9/2011, (additional days occurred from Jan-April 2011 than included payment to caretakers as well as groceries and his medical supplies, but specific dates in this time period were not recorded) |
| | **Total Carl Brunsting** | | $ 78,899.61 | | |
| 6/27/2009 | chk# 6285 | | $ 2,000.00 | Carole Brunsting | |
| 2/12/2009 | chk# 5794 | | $ 500.00 | Carole Brunsting | |
| 3/18/2008 | chk# 5821 | | $ 250.00 | Carole Brunsting | |
| 11/13/2007 | chk# 5713 | | $ 600.00 | Carole Brunsting | |
| 1/5/2006 | chk# 5129 | | $ 1,000.00 | Carole Brunsting | loan? |
| 7/1/2006 | chk# 5287 | | $ 1,200.00 | Carole Brunsting | |
| 3/23/2005 | chk# 4785 | | $ 450.00 | Carole Brunsting | |
| 12/8/2005 | chk# 5090 | | $ 1,500.00 | Carole Brunsting | |
| 7/2/2005 | chk# 4901 | | $ 350.00 | Carole Brunsting | |
| 10/2/2005 | chk# 5016 | | $ 2,500.00 | Carole Brunsting | |
| 10/21/2003 | chk# 4232 | | $ 1,000.00 | Carole Brunsting | |
| 12/12/2002 | chk# 9878 ? | | $ 1,500.00 | Carole Brunsting | |
| 12/17/2002 | chk# 3883 ? | | $ 5,000.00 | Carole Brunsting | |
| 3/23/2010 | | | $ 7,000.00 | Carole Brunsting | |
| 5/18/2010 | | | $ 1,000.00 | Carole Brunsting | |
| 10/1/2010 | | | $ 20,000.00 | Carole Brunsting | original intent to take against inheritance, but no letter/documentation found to date; will be treated as a gift; to fix house |
| | **Total Carole Brunsting** | | $ 45,850.00 | | |
| 10/2/2009 | **chk# 6358** | | $ 1,000.00 | **Kevan Curtis** | |

| Date | Gift | Stock price | amount | Person | purpose |
|---|---|---|---|---|---|
| **Anita became trustee Dec. 2011** | | | | | |
| 5/11/2011 | 1120 shares exxon Survivors trust | $ 81.12 | 90854.4 | Amy Brunsting | to pay off house |
| | Total Amy Brunsting | | $ 90,854.40 | | |
| | | | | | |
| 5/10/2011 | | | $ 5,443.22 | Anita Brunsting | pay off Luke's truck |
| 6/3/2011 | | | $ 5,750.51 | Anita Brunsting | pay off Honda for Katie |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Anita Brunsting | borrowed against inheritance - for college expenses |
| 6/15/2011 | 160 shares exxon Survivors trust | $ 78.66 | $ 12,585.60 | Anita Brunsting | borrowed against inheritance - for college expenses |
| | Total Anita Brunsting | | $ 37,360.33 | | |
| | | | | | |
| 4/7/2011 | | | $ 3,000.00 | Candy Curtis | property taxes |
| 6/8/2011 | | | $ 2,000.00 | Candy Curtis | new bed? |
| 6/15/2011 | 160 shares exxon Survivors trust | $ 78.66 | $ 12,585.60 | Candy Curtis | for reserve after mom passed away to keep helping her w/ expenses if trust money was not available |
| 8/24/2011 | | | $ 2,000.00 | Candy Curtis | expenses |
| 10/26/2011 | | | $ 2,000.00 | Candy Curtis | medical bills |
| 11/10/2011 | | | $ 2,000.00 | Candy Curtis | travel to see mom |
| | Total Candy Curtis | | $ 23,585.60 | | |
| | | | | | |
| 6/15/2011 | 1325 shares exxon Decedents trust | $ 78.66 | $ 104,224.50 | Carole Brunsting | to pay off/fix house |
| | Total Carole Brunsting | | $ 104,224.50 | | |
| | | | | | |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | J.B (grandchild) | gift for future car/college exp |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | A.B. (grandchild) | gift for future car/college exp |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Katie Riley UGMA (grandchild) | gift for college exp |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Luke Riley (grandchild) | gift for college exp |

# Appendix Tab 2

MILLS SHIRLEY L.L.P.

ESTABLISHED 1846

400 WASHINGTON BUILDING
2228 MECHANIC STREET
P.O. BOX 1943 (77553)
GALVESTON, TEXAS 77550
(409) 763-2341
FACSIMILE (409) 763-2879
www.millsshirley.com

*Maureen Kuzik McCutchen*
*Partner*
*Board Certified Estate Planning and Probate Law*
*mmccutchen@millsshirley.com*
*Direct Line 409-761-4023; Houston Line 713-571-4223*

July 5, 2013

Re: Case No. 4:12-cv-00592; *Candace Louise Curtis v. Anita Kay Brunsting et al* – In the United States District Court for the Southern District of Texas, Houston Division

Mr. William G. West, C.P.A. & Bankruptcy Trustee
Southern District of Texas
12345 Jones Road, Suite 120
Houston, TX 77070

Dear Mr. West:

Enclosed are a binder and a CD (Bates #s AABrunsting.Financials004083-004283) containing additional financial documents. We are working with our clients to obtain the outstanding statements as quickly as possible.

- **Bank of America account #[redacted]1143**
  - December 1, 2010 - December 31, 2010 statement
  - January 1, 2012 - January 31, 2012 statement
  - February 1, 2012 - February 29, 2012 statement
  - Missing March 1, 2012 – March 31, 2012, April 1, 2012 – April 30, 2012 (requested from Bank of America)
  - *Note account was closed in April 2012, not April 2013 – Quicken account erroneously noted it was closed in 2013*

- **Bank of America account #[redacted]3523**
  - May 10, 2013 - June 7, 2013 statement
  - Copy of retainer refund and deposit slip
  - **Complete**

- **Bank of America account #[redacted]3536**
  - May 14, 2013 – June 11, 2013 statement
  - **Complete**

- **Bank of America account #[redacted]8577**
  - April 23, 2013 – May 22, 2013 statement
  - May 23, 2013 – June 20, 2013 statement
  - **Complete**

- **Bank of America account #[redacted]9546**
  - December 31, 2010 – December 14, 2011 statements
  - The statement reflecting the $1,540.47 deposit on January 3, 2012, is in the possession of Carol Brunsting. Anita Brunsting was not on this account. We requested the statement from Carole Brunsting and the deposit into the account and hope to have it shortly.

- **Bank of America account #[redacted]6643**
  - Missing April 14, 2011 and March 16, 2012 statements
  - This account was owned by the Brunsting Life Insurance Trust and is not part of this lawsuit. All proceeds of this account were evenly distributed to the five Brunsting children.

- **Edward Jones account[redacted]5-1-6**
  - November 26, 2011 – December 31, 2011
  - Missing April 26, 2013, to date statements because no statements have been posted by Edward Jones
  - **Complete**

- **Edward Jones account [redacted]6-1-9**
  - Missing May 31, 2013, to date statements because no statements have been posted by Edward Jones
  - **Complete**

- **Edward Jones account [redacted]9-1-8**
  - November 26, 2011 – December 31, 2011
  - Missing May 31, 2013, to date statements because no statements have been posted by Edward Jones
  - **Complete**

- **Edward Jones Portfolio Summary November 26, 2011 – December 31, 2011**

- **Bluebonnet Visa [redacted]-6626**
  - this account was closed in December 2011 – the last statement shows a zero balance
  - **Complete**

- **Chevron/Computershare [redacted]9423**
  - June 10, 2013
  - Missing September 11, 2012 – June 9, 2013 statements – no additional statements are available, please refer to transaction history
  - **Complete**

- **John Deere/Computershare [redacted]6354**
  - May 1, 2013
  - Missing February 3, 2010 to April 30, 2013
  - Note the Trustee had major difficulties obtaining statements from BNY Mellon
  - There were only 9 shares of stock in this account

- **Exxon/Computershare [redacted]0102**
  - March 24, 2011 to date statements – Mrs. Nelva Brunsting split this account between [redacted]**7769 and** [redacted]7777 in March 2011 so there are no statements after March 2011
  - **Complete**

  - **Exxon/Computershare [redacted]7769**
    - June 11, 2011, June 15, 2011
    - March 24, 2011 Direct Registration Advice (2)
    - March 24, 2011 Account Summary
    - June 15, 2011 Direct Registration Advice
    - June 11, 2012 Account Summary
    - September 12, 2012 Direct Registration Advice
    - September 12, 2012 Account Summary
    - October 10, 2012 Account Summary
    - No other statements available
    - Note that in September 2012, Amy Brunsting was added as a Co-Trustee and the account was changed to [redacted]**6261** and [redacted]**3319,** so there are no statements after September 2012
    - **Complete**

      - **Exxon/Computershare [redacted]6261**
        - September 12, 2012 Reinvestment Confirmation
        - September 12, 2012 Account Summary
        - December 10, 2012 Account Summary
        - 2012 Form 1099
        - March 11, 2013 Statement
        - June 10, 2013 Statement
        - **Complete**

      - **Exxon/Computershare [redacted]3319**
        - October 10, 2012 Direct Registration Advice
        - October 22, 2012 Reinvestment Confirmation
        - December 10, 2012 Account Summary
        - March 11, 2013 Statement
        - June 10, 2013 Statement
        - **Complete**

- **Exxon/Computershare [redacted]7777**
  - September 10, 2012 Account Summary
  - September 12, 2012 Account Summary (2)
  - statements after September 12, 2012 - Amy Brunsting was added as a Co-Trustee and the account was changed to [redacted]**6287** and [redacted]**3301** so there are no statements after September 2012
  - **Complete**

- **Exxon/Computershare [redacted]6287**
  - September 12, 2012 Reinvestment Confirmation
  - September 12, 2012 Account Summary
  - March 11, 2013 Statement
  - June 10, 2013 Statement
  - Missing statements from September 12, 2012, to March 10, 2013
  - Please refer to transaction history

- **Exxon/Computershare [redacted]3301**
  - March 11, 2013 Statement
  - June 10, 2013 Statement
  - **Complete**

- **Computershare/Chevron/Exxon - Decedent's Trust Recent Transactions**

- **Computershare/Chevron/Deere/Exxon – Survivor's Trust Recent Transactions**

Please let me know if you have questions. Thank you.

Sincerely,

Maureen Kuzik McCutchen

MKM/mn/254612/100925.3
Enclosures

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER FOR EXPEDITED RESPONSE**

The defendant's motion for approval and renewal of farm lease (#65) has been filed. A response to this motion is required on an expedited basis. The response is due on or at the hearing set for September 3, 2013 at 1:30 p.m.

SIGNED on this 28th day of August, 2013.

Kenneth M. Hoyt
United States District Judge



20-20566.852

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
AUG 29 2013
Clerk

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| | § | |
| v | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | § | |

**PLAINTIFF'S RESPONSE TO THE REPORT OF MASTER AND APPLICATIONS FOR ORDERS**

## 1. Statement of the Case

1.1 Plaintiff and Defendants are siblings. Their parents, Elmer and Nelva Brunsting, created a living trust for their benefit and for the benefit of their five children. The stated co-successor beneficiary distribution was to be equal, 1/5 for each of the five Brunsting children: Candace, Carole, Carl, Amy, and Anita. The trust was also structured to preserve the Brunsting legacy for Elmer and Nelva's grandchildren.

1.2 Plaintiff Curtis' father died April 1, 2009 and her mother died November 11, 2011.

1.3 On February 27, 2012, Plaintiff filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of



20-20566.853

emotional distress, alleging that the Defendants, acting as trustees for their parents' trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments, and refused to account for trust assets or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. The Plaintiff filed a notice of appeal. On January 30, 2013, the Fifth Circuit Court of Appeals reversed the dismissal. On April 19, 2013, the District Court issued a memorandum and order for preliminary injunction. In the order, the Court ordered the appointment of an independent firm or accountant to gather the financial records of the trust and provide an accounting of the income and expenses of the trust since December 21, 2010. The defendants were ordered to cooperate with the accountant in this process.

1.4 On May 9, 2013, the Court ordered the appointment of William G. West as Master to perform an accounting. The Report of Master[1], dated July 31, 2013, was submitted to the Court and the Court set this matter for hearing on September 3, 2013, with a deadline for filing objections to the report and the accountant's invoice on or before August 27, 2013.

[1] Case 4:12-cv-00592 Document 62 Filed in TXSD on 08/08/13

## 2. The Report of Master

2.1 The Report of Master ("Report") corroborates Plaintiff's claims that Defendants have refused to account for trust assets, to report on any other acts of administration, concealed information that they have a fiduciary duty to disclose, and that Defendants failed to keep accurate books and records, and therefore are unwilling or unable to account.

2.2 The Report indicates to Plaintiff that Defendants have failed to keep any books whatsoever, and cannot or will not produce all of the records necessary for a full, true and complete accounting of trust assets, income, and expenditures. Many of these records they have simply claimed as "missing", after numerous requests from the Master to provide the information.

2.3 Therefore, on the basis of the absence of records, as shown by the Report, Plaintiff objects to the accounting provided by Defendants as incomplete, and hereby challenges all transactions.

## 3. General Challenge to Validity of Transactions

3.1 Defendants' inability or unwillingness to disclose supporting evidence that would give the accounting veracity, continues to inform this Plaintiff's belief that Defendants have something to hide.

3.2 Plaintiff hereby generally challenges all transactions, including but not limited to those claimed to be gifts, reimbursements, trustee compensation, and legal expenses. Plaintiff specifically challenges all transactions from which Defendants personally benefited.

## 4. Known Assets of the Trust Unaccounted For

4.1 Plaintiff has personal knowledge that U.S. Treasury Series EE/E Savings Bonds existed after the death of Nelva Brunsting and have not appeared on any schedule of assets to date.

## 5. Application for Order to Obtain Records Regarding U.S. Treasury Bonds

5.1 Plaintiff moves this court for an order for procurement of the records on file with the U.S. Treasury, pursuant to the attached proposed order.

## 6. Application for Order to Obtain Additional Records and Records Noted in the Master's Report to be "Missing"

6.1 The extent to which the trust assets have been mismanaged cannot be determined without complete transparency and documentation. Plaintiff therefore moves this court for an order for procurement of additional and "missing" records pursuant to the attached proposed order.

## 7. Challenge to Validity of Securities Transactions

7.1 The Report reflects stock distributions to the Defendants and their children. Plaintiff specifically challenges all stock transactions from which Defendants personally benefited. Defendants did not notice Plaintiff, nor obtain her consent, for distributions that benefited the Defendants substantially more than, and to the exclusion of, other co-beneficiaries.

## 8. Other Relief Requested

8.1 Plaintiff requests that Defendants be ordered to bear the costs associated with the execution of these orders.

8.2 Plaintiff further requests that the Preliminary Injunction remain in full force and effect.

8.3 Plaintiff further respectfully requests that this Court grant any other available relief that it finds reasonable or necessary under the totality of the circumstances.

Respectfully submitted, Monday, August 26, 2013

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | §<br>§ | |

**ORDER**

BEFORE THE COURT is Plaintiff's Application for Order to Obtain Records Regarding U.S. Treasury Bonds. After consideration, the court finds it should be granted.

It is therefore,

ORDERED that the Special Master obtain the U.S. Department of Treasury's complete transaction records for any and all Treasury Bonds issued to ELMER H. BRUNSTING, NELVA E. BRUNSTING, AND ELMER H. BRUNSTING OR NELVA E. BRUNSTING TR U/A DTD 10-10-96, and all Treasury Securities issued under their respective TINs.

SIGNED on this _____ day of _____, 2013.

_____
Kenneth M. Hoyt
United States District Judge



20-20566.858

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | §<br>§ | |

**ORDER**

BEFORE THE COURT is Plaintiff's Application for Order to Obtain Additional Records, and Records Noted in the Master's Report to be "Missing". After consideration, the Court finds it should be granted.

It is therefore,

ORDERED that the Special Master obtain the following records from the respective custodians of those records:

1. All account statements listed on page 7 of the Master's report as "not received".
2. All account statements and supporting transaction receipts for credit card accounts paid from the trust, specifically including but not limited to, the Blue Bonnet account 40376601013896626, held in the names of Nelva E. Brunsting and Elmer H. Brunsting, the Bank of America credit card bearing the last four digits 4254, in the name of Nelva E. Brunsting, and the Blue Bonnet account with the last four digits 5805, holder unknown.
3. Records of Social Security and Medicare payments withheld and paid on behalf of caregivers compensated by the trust.



20-20566.859

4. All IRS Forms 56 filed in connection with the "ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, and any related trust(s) created thereunder.

5. Itemized billing statements for all legal fees, accounting fees, farm management fees, private investigators, and other consultants, if any, paid from the trust during the accounting period. If fees were classified as retainers for work yet to be performed, this Order shall include itemized statements of work that was performed against those retainers whether inside or outside the accounting period.

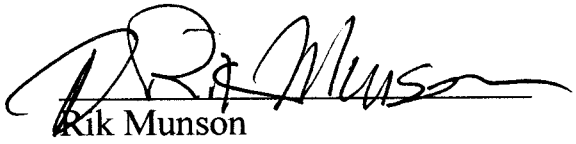
6. All Engagement Letters in connection with legal, accounting, farm management, private investigation, and other consulting services, if any, provided during the accounting period, regardless of the effective date of the engagement.

SIGNED on this _____ day of _____, 2013.

_____
Kenneth M. Hoyt
United States District Judge

## CERTIFICATE OF SERVICE

I, Rik Munson, hereby certify that a true and correct copy of Plaintiff's Response to the Report of Master and attached proposed orders have been forwarded to Defendants' Counsel of Record, George W. Vie III, 1021 Main, Suite 1950, Houston, Texas 77002, via Certified Mail, Return Receipt Requested, on August 26, 2013.



Rik Munson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
AUG 29 2013
Clerk

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | §<br>§ | |

**PLAINTIFF'S RESPONSE TO THE REPORT OF MASTER AND APPLICATIONS FOR ORDERS**

## 1. Statement of the Case

1.1 Plaintiff and Defendants are siblings. Their parents, Elmer and Nelva Brunsting, created a living trust for their benefit and for the benefit of their five children. The stated co-successor beneficiary distribution was to be equal, 1/5 for each of the five Brunsting children: Candace, Carole, Carl, Amy, and Anita. The trust was also structured to preserve the Brunsting legacy for Elmer and Nelva's grandchildren.

1.2 Plaintiff Curtis' father died April 1, 2009 and her mother died November 11, 2011.

1.3 On February 27, 2012, Plaintiff filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of



20-20566.862

emotional distress, alleging that the Defendants, acting as trustees for their parents' trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments, and refused to account for trust assets or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. The Plaintiff filed a notice of appeal. On January 30, 2013, the Fifth Circuit Court of Appeals reversed the dismissal. On April 19, 2013, the District Court issued a memorandum and order for preliminary injunction. In the order, the Court ordered the appointment of an independent firm or accountant to gather the financial records of the trust and provide an accounting of the income and expenses of the trust since December 21, 2010. The defendants were ordered to cooperate with the accountant in this process.

1.4 On May 9, 2013, the Court ordered the appointment of William G. West as Master to perform an accounting. The Report of Master[1], dated July 31, 2013, was submitted to the Court and the Court set this matter for hearing on September 3, 2013, with a deadline for filing objections to the report and the accountant's invoice on or before August 27, 2013.

[1] Case 4:12-cv-00592 Document 62 Filed in TXSD on 08/08/13

## 2. The Report of Master

2.1 The Report of Master ("Report") corroborates Plaintiff's claims that Defendants have refused to account for trust assets, to report on any other acts of administration, concealed information that they have a fiduciary duty to disclose, and that Defendants failed to keep accurate books and records, and therefore are unwilling or unable to account.

2.2 The Report indicates to Plaintiff that Defendants have failed to keep any books whatsoever, and cannot or will not produce all of the records necessary for a full, true and complete accounting of trust assets, income, and expenditures. Many of these records they have simply claimed as "missing", after numerous requests from the Master to provide the information.

2.3 Therefore, on the basis of the absence of records, as shown by the Report, Plaintiff objects to the accounting provided by Defendants as incomplete, and hereby challenges all transactions.

## 3. General Challenge to Validity of Transactions

3.1 Defendants' inability or unwillingness to disclose supporting evidence that would give the accounting veracity, continues to inform this Plaintiff's belief that Defendants have something to hide.

3.2 Plaintiff hereby generally challenges all transactions, including but not limited to those claimed to be gifts, reimbursements, trustee compensation, and legal expenses. Plaintiff specifically challenges all transactions from which Defendants personally benefited.

## 4. Known Assets of the Trust Unaccounted For

4.1 Plaintiff has personal knowledge that U.S. Treasury Series EE/E Savings Bonds existed after the death of Nelva Brunsting and have not appeared on any schedule of assets to date.

## 5. Application for Order to Obtain Records Regarding U.S. Treasury Bonds

5.1 Plaintiff moves this court for an order for procurement of the records on file with the U.S. Treasury, pursuant to the attached proposed order.

## 6. Application for Order to Obtain Additional Records and Records Noted in the Master's Report to be "Missing"

6.1 The extent to which the trust assets have been mismanaged cannot be determined without complete transparency and documentation. Plaintiff therefore moves this court for an order for procurement of additional and "missing" records pursuant to the attached proposed order.

## 7. Challenge to Validity of Securities Transactions

7.1 The Report reflects stock distributions to the Defendants and their children. Plaintiff specifically challenges all stock transactions from which Defendants personally benefited. Defendants did not notice Plaintiff, nor obtain her consent, for distributions that benefited the Defendants substantially more than, and to the exclusion of, other co-beneficiaries.

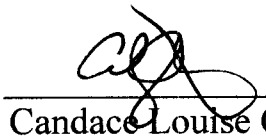
## 8. Other Relief Requested

8.1 Plaintiff requests that Defendants be ordered to bear the costs associated with the execution of these orders.

8.2 Plaintiff further requests that the Preliminary Injunction remain in full force and effect.

8.3 Plaintiff further respectfully requests that this Court grant any other available relief that it finds reasonable or necessary under the totality of the circumstances.

Respectfully submitted, Monday, August 26, 2013



Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | §<br>§ | |

**ORDER**

BEFORE THE COURT is Plaintiff's Application for Order to Obtain Records Regarding U.S. Treasury Bonds. After consideration, the court finds it should be granted.

It is therefore,

ORDERED that the Special Master obtain the U.S. Department of Treasury's complete transaction records for any and all Treasury Bonds issued to ELMER H. BRUNSTING, NELVA E. BRUNSTING, AND ELMER H. BRUNSTING OR NELVA E. BRUNSTING TR U/A DTD 10-10-96, and all Treasury Securities issued under their respective TINs.

SIGNED on this _____ day of _____, 2013.

_____
Kenneth M. Hoyt
United States District Judge



20-20566.867

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | §<br>§ | |

**ORDER**

BEFORE THE COURT is Plaintiff's Application for Order to Obtain Additional Records, and Records Noted in the Master's Report to be "Missing". After consideration, the Court finds it should be granted.

It is therefore,

ORDERED that the Special Master obtain the following records from the respective custodians of those records:

1. All account statements listed on page 7 of the Master's report as "not received".
2. All account statements and supporting transaction receipts for credit card accounts paid from the trust, specifically including but not limited to, the Blue Bonnet account 40376601013896626, held in the names of Nelva E. Brunsting and Elmer H. Brunsting, the Bank of America credit card bearing the last four digits 4254, in the name of Nelva E. Brunsting, and the Blue Bonnet account with the last four digits 5805, holder unknown.
3. Records of Social Security and Medicare payments withheld and paid on behalf of caregivers compensated by the trust.



20-20566.868

4. All IRS Forms 56 filed in connection with the "ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, and any related trust(s) created thereunder.

5. Itemized billing statements for all legal fees, accounting fees, farm management fees, private investigators, and other consultants, if any, paid from the trust during the accounting period. If fees were classified as retainers for work yet to be performed, this Order shall include itemized statements of work that was performed against those retainers whether inside or outside the accounting period.

6. All Engagement Letters in connection with legal, accounting, farm management, private investigation, and other consulting services, if any, provided during the accounting period, regardless of the effective date of the engagement.

SIGNED on this _____ day of _____, 2013.

_____
Kenneth M. Hoyt
United States District Judge

## CERTIFICATE OF SERVICE

I, Rik Munson, hereby certify that a true and correct copy of Plaintiff's Response to the Report of Master and attached proposed orders have been forwarded to Defendants' Counsel of Record, George W. Vie III, 1021 Main, Suite 1950, Houston, Texas 77002, via Certified Mail, Return Receipt Requested, on August 26, 2013.

Rik Munson

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER**

Before the Court is the Defendants' Response to the Report of the Master, in which the Defendants address certain matters raised in the Master's Report, Sections V and VI. To the extent the Defendants' Response in paragraphs 2(A) through (F) and paragraphs 3 through 5 constitute objections to any findings of fact under Rule 53(c) of the Federal Rules of Civil Procedure, those matters are recommitted to the Master for consideration of the Defendants' Response. The Master may, within 10 days of the entry of this Order, submit an amended report addressing any of the matters recommitted, or shall notify the Court that no amendment of the Report is necessary. The Court will reserve any action to adopt, modify, or reject the Report, in whole or in part, until the expiration of the 10 day period.

SIGNED on this ____ day of _____, 2013.

KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

United States District Court
Southern District of Texas
FILED
SEP 03 2013
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | §<br>§ | |

**PLAINTIFF'S OBJECTION TO DEFENDANTS' MOTION FOR APPROVAL OF RENEWAL OF FARM LEASE UNDER EXISTING TERMS ON AUGUST 31, 2013**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiff has received notice of Defendants' motion and the Court's ORDER FOR EXPEDITED RESPONSE, and Plaintiff objects to the granting of Defendants' motion on the following ground:

1. Defendants' motion is untimely. It was filed approximately 72 hours before auto-renewal of the existing Lease. Under Iowa Statute[1] Defendants' have already defaulted on notice for the termination of the existing Lease and, therefore, the Lease has automatically renewed as a matter of Iowa law.

A lease can be terminated either by mutual agreement of the parties (whether via a written lease or oral agreement) or in accordance with the statutory provision

[1] Iowa Code §562.7

for the service of notice, which required written notice to be delivered on or before September 1 to terminate the tenancy on March 1.

Under Iowa law, if the lease is not terminated by either of these methods, and involves 40 acres or more, the lease automatically renews for another year on the same terms and conditions as the original lease. [2]

2. Although the Motion is moot, Plaintiff would like to address Defendants' contentions.

Defendants support their request by stating that "the existing lease amount is appropriate since grain prices have lowered, relevant land prices have stabilized, and the rent was increased last year when the lease was made".

Regarding grain prices, according to *Ag Decision Maker* dated August 2013[3], published by the Iowa State University Extension and Outreach Department (attached), cash corn prices received by Iowa farmers were $6.19 per bushel in August 2011 and $7.17 per bushel in 2012. In 2013, the preliminary marketing year average calculated through mid-July is $7.00 per bushel.

Regarding relevant land price stabilization, the March 31, 2013 edition of the *Cedar Valley Business Monthly Online*[4] (attached) reports that Iowa farmland prices are up 17%.

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[2] Iowa Code §562.6
[3] Plaintiff Exhibit 70 attached
[4] Plaintiff Exhibit 71 attached

Plaintiff cannot comment on existing rent, and whether or not it is appropriate, as Plaintiff has requested copies of all farm leases on numerous occasions and has never received any lease other than the one before the Court. It should be noted that approximately two months before Plaintiff's father Elmer died, an email from Rich Rikkers to Nelva, on February 5, 2009[5] (attached), suggests since Elmer cannot sign "why don't you go ahead and sign and I will notarize it here…" and "Just sign Elmer's name and send it back."

These indications of impropriety, and the lack of a page number or notarial acknowledgment on the signature page of the proffered lease is alarming, and suggests the need to examine the original lease where a change of tenancy was made.

3. Plaintiff cannot comprehend Defendants' purpose behind the filing of this motion and can only envision Defendants are attempting to legitimize their cumulative failure to notice and their execution of a lease without proper authority. Plaintiff prays the Court deny Defendants' motion.

Respectfully submitted,

By:/s/

Candace L. Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

[5] Plaintiff Exhibit 73 attached

## CERTIFICATE OF SERVICE

I, Rik Munson, hereby certify that a true and correct copy of the foregoing has been forwarded to Defendants' Counsel of Record, George W. Vie III, 1021 Main, Suite 1950, Houston, Texas 77002, via email and U.S Mail, on September 3, 2013.

/s/ R. D. Munson
Rik Munson

Ag Decision Maker

File A2-11
August 2013
www.extension.iastate.edu/agdm

# Iowa Cash Corn and Soybean Prices

Table 1. Cash corn prices, $/bushel (received by Iowa farmers). 1925-2013

The annual averages are a simple average of the monthly coefficients and are not weighted according to the amount of grain Iowa farmers sold each month.

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec | Avg * Cal Yr | Avg ** Mktg Yr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1925 | $1.06 | $1.10 | $1.03 | $0.91 | $0.98 | $1.03 | $0.99 | $0.98 | $0.88 | $0.70 | $0.61 | $0.57 | $0.91 | $0.62 |
| 1926 | 0.60 | 0.57 | 0.54 | 0.53 | 0.56 | 0.57 | 0.62 | 0.73 | 0.69 | 0.67 | 0.58 | 0.57 | 0.60 | 0.68 |
| 1927 | 0.58 | 0.59 | 0.57 | 0.58 | 0.69 | 0.85 | 0.88 | 0.95 | 0.90 | 0.83 | 0.69 | 0.74 | 0.74 | 0.84 |
| 1928 | 0.72 | 0.76 | 0.81 | 0.85 | 0.98 | 0.95 | 0.94 | 0.89 | 0.89 | 0.77 | 0.66 | 0.66 | 0.82 | 0.77 |
| 1929 | 0.71 | 0.78 | 0.78 | 0.76 | 0.75 | 0.76 | 0.81 | 0.86 | 0.90 | 0.84 | 0.71 | 0.69 | 0.78 | 0.73 |
| 1930 | 0.69 | 0.69 | 0.64 | 0.69 | 0.68 | 0.69 | 0.68 | 0.84 | 0.85 | 0.74 | 0.56 | 0.59 | 0.70 | 0.55 |
| 1931 | 0.56 | 0.51 | 0.50 | 0.48 | 0.47 | 0.45 | 0.47 | 0.43 | 0.37 | 0.28 | 0.35 | 0.32 | 0.43 | 0.29 |
| 1932 | 0.32 | 0.29 | 0.29 | 0.27 | 0.25 | 0.23 | 0.25 | 0.25 | 0.21 | 0.14 | 0.13 | 0.12 | 0.23 | 0.22 |
| 1933 | 0.12 | 0.12 | 0.13 | 0.20 | 0.31 | 0.30 | 0.47 | 0.37 | 0.36 | 0.24 | 0.32 | 0.35 | 0.27 | 0.40 |
| 1934 | 0.37 | 0.36 | 0.37 | 0.36 | 0.38 | 0.47 | 0.51 | 0.67 | 0.71 | 0.71 | 0.75 | 0.90 | 0.55 | 0.79 |
| 1935 | 0.87 | 0.84 | 0.80 | 0.83 | 0.82 | 0.77 | 0.76 | 0.76 | 0.73 | 0.68 | 0.48 | 0.46 | 0.73 | 0.59 |
| 1936 | 0.47 | 0.49 | 0.49 | 0.48 | 0.51 | 0.51 | 0.76 | 1.06 | 1.04 | 0.99 | 1.01 | 1.03 | 0.74 | 1.09 |
| 1937 | 1.09 | 1.11 | 1.10 | 1.24 | 1.23 | 1.14 | 1.17 | 0.97 | 0.86 | 0.46 | 0.41 | 0.43 | 0.93 | 0.47 |
| 1938 | 0.47 | 0.45 | 0.43 | 0.44 | 0.44 | 0.44 | 0.46 | 0.39 | 0.41 | 0.33 | 0.34 | 0.38 | 0.42 | 0.37 |
| 1939 | 0.39 | 0.35 | 0.35 | 0.36 | 0.39 | 0.40 | 0.36 | 0.36 | 0.48 | 0.39 | 0.40 | 0.44 | 0.39 | 0.49 |
| 1940 | 0.47 | 0.47 | 0.48 | 0.51 | 0.56 | 0.56 | 0.55 | 0.55 | 0.55 | 0.52 | 0.51 | 0.47 | 0.52 | 0.54 |
| 1941 | 0.49 | 0.49 | 0.49 | 0.55 | 0.59 | 0.61 | 0.62 | 0.63 | 0.64 | 0.58 | 0.60 | 0.64 | 0.58 | 0.70 |
| 1942 | 0.70 | 0.72 | 0.72 | 0.73 | 0.74 | 0.75 | 0.76 | 0.76 | 0.74 | 0.69 | 0.68 | 0.74 | 0.73 | 0.84 |
| 1943 | 0.82 | 0.83 | 0.87 | 0.92 | 0.94 | 0.94 | 0.94 | 0.94 | 0.94 | 0.94 | 0.92 | 1.00 | 0.92 | 0.99 |
| 1944 | 1.00 | 1.00 | 1.00 | 1.01 | 1.01 | 1.01 | 1.02 | 1.02 | 1.02 | 1.02 | 0.95 | 0.95 | 1.00 | 0.98 |
| 1945 | 0.95 | 0.94 | 0.95 | 0.96 | 0.97 | 1.00 | 1.01 | 1.02 | 1.02 | 1.02 | 1.00 | 0.96 | 0.98 | 1.18 |
| 1946 | 0.98 | 0.99 | 1.01 | 1.03 | 1.25 | 1.29 | 1.95 | 1.66 | 1.63 | 1.63 | 1.13 | 1.10 | 1.30 | 1.51 |
| 1947 | 1.10 | 1.12 | 1.43 | 1.56 | 1.50 | 1.80 | 1.96 | 2.16 | 2.40 | 2.23 | 2.24 | 2.54 | 1.84 | 2.19 |
| 1948 | 2.60 | 1.90 | 2.11 | 2.20 | 2.16 | 2.15 | 1.95 | 1.85 | 1.71 | 1.30 | 1.13 | 1.19 | 1.85 | 1.20 |
| 1949 | 1.20 | 1.04 | 1.11 | 1.16 | 1.15 | 1.15 | 1.18 | 1.10 | 1.09 | 1.04 | 0.97 | 1.10 | 1.11 | 1.17 |
| 1950 | 1.13 | 1.13 | 1.15 | 1.20 | 1.28 | 1.29 | 1.35 | 1.34 | 1.35 | 1.32 | 1.36 | 1.44 | 1.28 | 1.50 |
| 1951 | 1.51 | 1.55 | 1.56 | 1.58 | 1.58 | 1.56 | 1.58 | 1.60 | 1.61 | 1.60 | 1.61 | 1.63 | 1.58 | 1.61 |
| 1952 | 1.60 | 1.54 | 1.54 | 1.60 | 1.63 | 1.68 | 1.66 | 1.63 | 1.61 | 1.43 | 1.35 | 1.41 | 1.56 | 1.40 |
| 1953 | 1.39 | 1.33 | 1.37 | 1.38 | 1.41 | 1.38 | 1.39 | 1.40 | 1.44 | 1.29 | 1.30 | 1.39 | 1.37 | 1.40 |
| 1954 | 1.39 | 1.40 | 1.40 | 1.41 | 1.44 | 1.46 | 1.45 | 1.47 | 1.49 | 1.44 | 1.32 | 1.36 | 1.42 | 1.37 |
| 1955 | 1.36 | 1.35 | 1.30 | 1.33 | 1.38 | 1.40 | 1.40 | 1.32 | 1.29 | 1.16 | 1.19 | 1.22 | 1.31 | 1.30 |
| 1956 | 1.21 | 1.21 | 1.21 | 1.33 | 1.41 | 1.43 | 1.44 | 1.47 | 1.44 | 1.21 | 1.21 | 1.20 | 1.31 | 1.21 |
| 1957 | 1.19 | 1.14 | 1.14 | 1.18 | 1.20 | 1.21 | 1.20 | 1.18 | 1.07 | 1.00 | 0.88 | 0.85 | 1.10 | 0.96 |
| 1958 | 0.78 | 0.78 | 0.83 | 1.00 | 1.07 | 1.12 | 1.09 | 1.09 | 1.05 | 0.98 | 0.86 | 0.97 | 0.97 | 1.01 |
| 1959 | 0.97 | 0.97 | 1.00 | 1.06 | 1.06 | 1.09 | 1.06 | 1.07 | 1.02 | 0.97 | 0.92 | 0.89 | 1.01 | 0.96 |
| 1960 | 0.90 | 0.88 | 0.90 | 0.96 | 1.00 | 1.03 | 1.04 | 1.01 | 1.00 | 0.96 | 0.80 | 0.85 | 0.94 | 0.94 |
| 1961 | 0.90 | 0.93 | 0.93 | 0.90 | 0.98 | 1.00 | 1.01 | 1.00 | 0.99 | 0.96 | 0.93 | 0.93 | 0.96 | 0.96 |
| 1962 | 0.93 | 0.93 | 0.94 | 0.96 | 0.97 | 0.98 | 1.00 | 0.96 | 0.98 | 0.98 | 0.92 | 0.98 | 0.96 | 1.03 |
| 1963 | 1.01 | 1.03 | 1.03 | 1.04 | 1.05 | 1.11 | 1.14 | 1.13 | 1.16 | 1.04 | 1.00 | 1.03 | 1.06 | 1.07 |
| 1964 | 1.05 | 1.04 | 1.07 | 1.11 | 1.12 | 1.10 | 1.06 | 1.07 | 1.10 | 1.07 | 1.03 | 1.12 | 1.08 | 1.13 |

Source: USDA National Agricultural Statistics Service, Iowa Field Office

EXHIBIT
P-70

IOWA STATE UNIVERSITY
Extension and Outreach

Ann Johanns
extension program specialist
641-732-5574
aholste@iastate.edu

Table 1. Cash corn prices, $/bushel (received by Iowa farmers), continued.

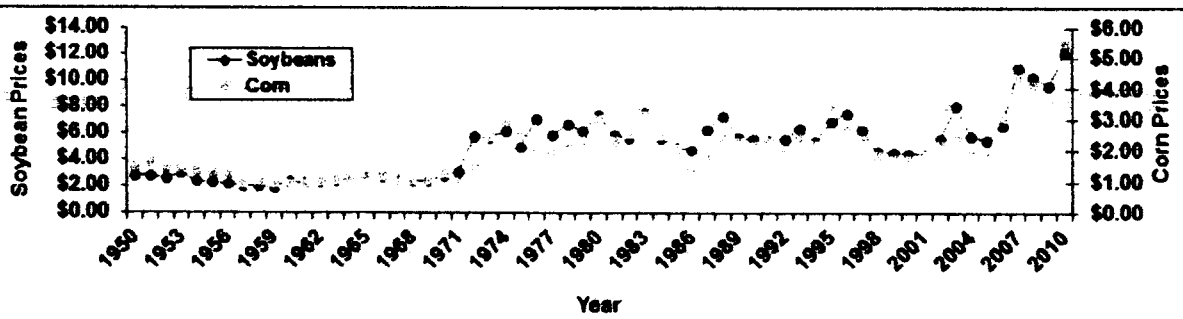
| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec | Avg * Cal Yr | Avg ** Mktg Yr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1965 | $1.13 | $1.14 | $1.15 | $1.18 | $1.20 | $1.19 | $1.15 | $1.11 | $1.11 | $1.06 | $1.01 | $1.09 | $1.13 | $1.13 |
| 1966 | 1.14 | 1.13 | 1.09 | 1.14 | 1.16 | 1.16 | 1.22 | 1.27 | 1.28 | 1.23 | 1.20 | 1.25 | 1.19 | 1.21 |
| 1967 | 1.24 | 1.20 | 1.22 | 1.20 | 1.21 | 1.23 | 1.18 | 1.06 | 1.06 | 1.02 | 0.95 | 0.99 | 1.13 | 1.02 |
| 1968 | 1.00 | 1.01 | 1.02 | 1.05 | 1.08 | 1.06 | 1.02 | 0.96 | 0.97 | 0.97 | 1.00 | 1.02 | 1.01 | 1.06 |
| 1969 | 1.06 | 1.06 | 1.05 | 1.07 | 1.15 | 1.14 | 1.14 | 1.13 | 1.09 | 1.05 | 1.04 | 1.04 | 1.09 | 1.10 |
| 1970 | 1.07 | 1.06 | 1.05 | 1.08 | 1.12 | 1.15 | 1.18 | 1.21 | 1.31 | 1.24 | 1.24 | 1.31 | 1.17 | 1.31 |
| 1971 | 1.36 | 1.38 | 1.36 | 1.34 | 1.32 | 1.38 | 1.31 | 1.13 | 1.01 | 0.94 | 0.94 | 1.05 | 1.21 | 1.04 |
| 1972 | 1.04 | 1.04 | 1.05 | 1.08 | 1.10 | 1.09 | 1.10 | 1.09 | 1.16 | 1.10 | 1.14 | 1.35 | 1.11 | 1.50 |
| 1973 | 1.30 | 1.26 | 1.28 | 1.31 | 1.51 | 1.93 | 1.96 | 2.65 | 2.00 | 2.06 | 2.14 | 2.31 | 1.81 | 2.48 |
| 1974 | 2.51 | 2.67 | 2.59 | 2.30 | 2.40 | 2.53 | 2.91 | 3.34 | 3.26 | 3.44 | 3.27 | 3.24 | 2.87 | 2.94 |
| 1975 | 3.01 | 2.82 | 2.63 | 2.65 | 2.67 | 2.65 | 2.70 | 2.94 | 2.76 | 2.54 | 2.30 | 2.30 | 2.66 | 2.52 |
| 1976 | 2.37 | 2.43 | 2.44 | 2.42 | 2.59 | 2.69 | 2.78 | 2.60 | 2.60 | 2.27 | 2.01 | 2.22 | 2.45 | 2.16 |
| 1977 | 2.30 | 2.30 | 2.28 | 2.24 | 2.20 | 2.09 | 1.84 | 1.56 | 1.59 | 1.67 | 1.85 | 1.89 | 1.98 | 1.98 |
| 1978 | 1.92 | 1.95 | 2.19 | 2.18 | 2.26 | 2.25 | 2.12 | 1.92 | 1.90 | 1.87 | 1.96 | 1.99 | 2.04 | 2.14 |
| 1979 | 1.99 | 2.04 | 2.08 | 2.18 | 2.24 | 2.38 | 2.55 | 2.45 | 2.36 | 2.28 | 2.20 | 2.22 | 2.25 | 2.37 |
| 1980 | 2.34 | 2.23 | 2.26 | 2.29 | 2.31 | 2.41 | 2.65 | 2.85 | 2.91 | 2.88 | 2.98 | 3.14 | 2.60 | 3.06 |
| 1981 | 3.10 | 3.11 | 3.17 | 3.21 | 3.20 | 3.10 | 3.08 | 2.78 | 2.42 | 2.33 | 2.29 | 2.30 | 2.84 | 2.37 |
| 1982 | 2.38 | 2.32 | 2.35 | 2.48 | 2.51 | 2.49 | 2.41 | 2.17 | 2.09 | 1.99 | 2.09 | 2.15 | 2.29 | 2.57 |
| 1983 | 2.25 | 2.47 | 2.64 | 2.90 | 3.00 | 2.96 | 3.03 | 3.27 | 3.21 | 3.06 | 3.11 | 3.08 | 2.92 | 3.15 |
| 1984 | 3.08 | 3.00 | 3.15 | 3.28 | 3.28 | 3.25 | 3.21 | 3.05 | 2.84 | 2.56 | 2.46 | 2.44 | 2.97 | 2.55 |
| 1985 | 2.52 | 2.51 | 2.58 | 2.62 | 2.60 | 2.56 | 2.52 | 2.34 | 2.25 | 2.11 | 2.14 | 2.16 | 2.41 | 2.11 |
| 1986 | 2.20 | 2.19 | 2.20 | 2.21 | 2.30 | 2.21 | 1.90 | 1.48 | 1.26 | 1.24 | 1.40 | 1.42 | 1.83 | 1.40 |
| 1987 | 1.36 | 1.30 | 1.36 | 1.44 | 1.55 | 1.60 | 1.51 | 1.35 | 1.36 | 1.46 | 1.54 | 1.61 | 1.45 | 1.86 |
| 1988 | 1.66 | 1.74 | 1.78 | 1.79 | 1.85 | 2.30 | 2.66 | 2.57 | 2.52 | 2.52 | 2.45 | 2.46 | 2.19 | 2.45 |
| 1989 | 2.51 | 2.48 | 2.53 | 2.48 | 2.50 | 2.43 | 2.36 | 2.17 | 2.14 | 2.11 | 2.15 | 2.17 | 2.34 | 2.30 |
| 1990 | 2.15 | 2.15 | 2.26 | 2.45 | 2.56 | 2.55 | 2.54 | 2.41 | 2.19 | 2.10 | 2.09 | 2.13 | 2.30 | 2.22 |
| 1991 | 2.15 | 2.21 | 2.32 | 2.27 | 2.33 | 2.27 | 2.23 | 2.30 | 2.25 | 2.23 | 2.25 | 2.26 | 2.26 | 2.31 |
| 1992 | 2.30 | 2.40 | 2.48 | 2.44 | 2.42 | 2.41 | 2.26 | 2.06 | 2.04 | 1.98 | 1.93 | 1.90 | 2.22 | 2.02 |
| 1993 | 1.94 | 1.93 | 2.03 | 2.10 | 2.08 | 2.04 | 2.15 | 2.14 | 2.11 | 2.19 | 2.40 | 2.65 | 2.15 | 2.45 |
| 1994 | 2.66 | 2.72 | 2.68 | 2.60 | 2.55 | 2.53 | 2.21 | 2.07 | 2.05 | 2.01 | 1.97 | 2.04 | 2.34 | 2.22 |
| 1995 | 2.08 | 2.13 | 2.21 | 2.27 | 2.33 | 2.44 | 2.54 | 2.53 | 2.60 | 2.71 | 2.78 | 2.96 | 2.47 | 3.44 |
| 1996 | 3.00 | 3.25 | 3.33 | 3.66 | 4.02 | 4.08 | 4.39 | 4.46 | 3.95 | 2.84 | 2.61 | 2.52 | 3.51 | 2.69 |
| 1997 | 2.59 | 2.55 | 2.72 | 2.72 | 2.61 | 2.47 | 2.34 | 2.41 | 2.44 | 2.44 | 2.45 | 2.45 | 2.52 | 2.33 |
| 1998 | 2.44 | 2.47 | 2.47 | 2.37 | 2.28 | 2.20 | 2.08 | 1.81 | 1.72 | 1.87 | 1.92 | 1.94 | 2.13 | 1.87 |
| 1999 | 1.94 | 1.96 | 1.98 | 1.97 | 1.95 | 1.90 | 1.66 | 1.65 | 1.59 | 1.58 | 1.65 | 1.77 | 1.80 | 1.76 |
| 2000 | 1.77 | 1.91 | 1.97 | 1.98 | 2.07 | 1.86 | 1.58 | 1.43 | 1.46 | 1.66 | 1.83 | 1.89 | 1.78 | 1.77 |
| 2001 | 1.86 | 1.87 | 1.88 | 1.83 | 1.72 | 1.66 | 1.79 | 1.83 | 1.81 | 1.78 | 1.80 | 1.91 | 1.81 | 1.90 |
| 2002 | 1.88 | 1.86 | 1.89 | 1.86 | 1.84 | 1.88 | 2.03 | 2.27 | 2.43 | 2.25 | 2.22 | 2.22 | 2.05 | 2.23 |
| 2003 | 2.19 | 2.23 | 2.23 | 2.26 | 2.31 | 2.27 | 2.09 | 2.04 | 2.12 | 2.05 | 2.15 | 2.27 | 2.18 | 2.43 |
| 2004 | 2.33 | 2.55 | 2.67 | 2.79 | 2.80 | 2.77 | 2.48 | 2.23 | 2.14 | 2.16 | 2.00 | 1.99 | 2.41 | 1.99 |
| 2005 | 2.04 | 1.88 | 1.98 | 1.95 | 1.92 | 1.95 | 2.00 | 1.84 | 1.81 | 1.78 | 1.74 | 1.87 | 1.90 | 1.95 |
| 2006 | 1.87 | 1.95 | 2.02 | 2.04 | 2.06 | 2.11 | 2.09 | 2.04 | 2.08 | 2.43 | 2.84 | 3.03 | 2.22 | 3.09 |
| 2007 | 3.04 | 3.46 | 3.34 | 3.39 | 3.53 | 3.44 | 3.29 | 3.26 | 3.23 | 3.26 | 3.43 | 3.74 | 3.37 | 4.40 |
| 2008 | 3.97 | 4.50 | 4.61 | 4.98 | 5.07 | 5.40 | 5.26 | 5.34 | 5.16 | 4.48 | 4.35 | 4.21 | 4.78 | 4.13 |
| 2009 | 4.44 | 3.96 | 3.98 | 3.93 | 4.06 | 4.04 | 3.65 | 3.30 | 3.23 | 3.67 | 3.72 | 3.68 | 3.81 | 3.57 |
| 2010 | 3.76 | 3.66 | 3.61 | 3.46 | 3.52 | 3.42 | 3.50 | 3.61 | 4.01 | 4.28 | 4.61 | 4.86 | 3.86 | 5.46 |
| 2011 | 5.07 | 5.59 | 5.32 | 6.20 | 6.25 | 6.30 | 6.19 | 6.84 | 6.63 | 5.65 | 5.75 | 5.78 | 5.96 | 6.35 |
| 2012 | 5.99 | 6.21 | 6.23 | 6.23 | 6.31 | 6.37 | 7.17 | 7.89 | 6.84 | 6.82 | 7.02 | 6.92 | 6.67 | 7.00 |
| 2013' | 7.06 | 7.00 | 7.13 | 7.10 | 7.06 | 7.09 | 7.00 | | | | | | 7.06 | |

* Average based on calendar year (Jan. 1 - Dec. 31)

** Average based on marketing year (Sept. 1 - Aug. 31)

' Preliminary, marketing year average calculated through mid-July 2013

Figure 1. Average Iowa corn and soybean prices by marketing year. 1950-2011




Source: USDA National Agricultural Statistics Service, Iowa Field Office

Table 2. Cash soybean prices, $/bushel (received by Iowa farmers). 1925-2013

The annual averages are a simple average of the monthly coefficients and are not weighted according to the amount of grain Iowa farmers sold each month.

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec | Avg * Cal Yr | Avg ** Mktg Yr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1925 | $3.30 | $3.00 | $2.70 | $3.00 | $2.80 | $2.60 | $3.60 | $3.20 | $2.90 | $3.20 | $1.96 | $2.80 | $2.92 | $2.68 |
| 1926 | 3.00 | 2.65 | 2.53 | 2.65 | 2.70 | 2.80 | 2.70 | 2.30 | 2.60 | 2.00 | 2.50 | 2.10 | 2.54 | 2.48 |
| 1927 | 2.20 | 2.20 | 2.50 | 2.50 | 2.70 | 3.00 | 2.80 | 2.70 | 2.50 | 2.25 | 2.00 | 1.95 | 2.44 | 2.15 |
| 1928 | 1.90 | 1.90 | 2.20 | 2.15 | 2.25 | 2.25 | 2.20 | 2.20 | 2.30 | 1.90 | 1.90 | 1.80 | 2.08 | 2.00 |
| 1929 | 1.90 | 1.80 | 1.95 | 2.05 | 2.10 | 2.35 | 2.10 | 1.80 | 1.80 | 1.75 | 1.55 | 1.50 | 1.89 | 1.78 |
| 1930 | 1.65 | 1.85 | 1.75 | 1.90 | 2.10 | 2.15 | 1.75 | 1.60 | 1.70 | 1.50 | 1.35 | 1.50 | 1.73 | 1.29 |
| 1931 | 1.50 | 1.30 | 1.20 | 1.25 | 1.25 | 1.10 | 0.95 | 0.90 | 0.75 | 0.55 | 0.39 | 0.41 | 0.96 | 0.55 |
| 1932 | 0.42 | 0.50 | 0.51 | 0.60 | 0.70 | 0.65 | 0.55 | 0.60 | 0.55 | 0.45 | 0.40 | 0.39 | 0.53 | 0.59 |
| 1933 | 0.39 | 0.38 | 0.46 | 0.55 | 0.75 | 0.90 | 1.00 | 0.85 | 0.70 | 0.60 | 0.60 | 0.65 | 0.65 | 1.11 |
| 1934 | 0.65 | 0.90 | 1.10 | 1.10 | 1.15 | 2.05 | 2.05 | 1.80 | 1.20 | 0.80 | 0.85 | 1.10 | 1.23 | 1.18 |
| 1935 | 1.35 | 1.50 | 1.50 | 1.40 | 1.40 | 1.35 | 1.10 | 0.60 | 0.55 | 0.60 | 0.65 | 0.65 | 1.05 | 0.72 |
| 1936 | 0.70 | 0.70 | 0.70 | 0.65 | 0.70 | 0.70 | 0.94 | 1.15 | 1.10 | 1.00 | 1.10 | 1.25 | 0.89 | 1.28 |
| 1937 | 1.40 | 1.45 | 1.45 | 1.60 | 1.60 | 1.35 | 1.15 | 0.90 | 0.80 | 0.80 | 0.80 | 0.80 | 1.18 | 0.81 |
| 1938 | 0.80 | 0.85 | 0.85 | 0.80 | 0.90 | 0.85 | 0.80 | 0.70 | 0.65 | 0.65 | 0.60 | 0.65 | 0.76 | 0.68 |
| 1939 | 0.65 | 0.65 | 0.70 | 0.75 | 0.85 | 0.80 | 0.70 | 0.55 | 0.65 | 0.70 | 0.80 | 0.95 | 0.73 | 0.84 |
| 1940 | 1.00 | 0.93 | 0.98 | 0.98 | 0.97 | 0.81 | 0.66 | 0.60 | 0.62 | 0.62 | 0.81 | 0.76 | 0.81 | 0.93 |
| 1941 | 0.84 | 0.79 | 0.83 | 1.00 | 1.15 | 1.20 | 1.25 | 1.25 | 1.65 | 1.40 | 1.40 | 1.45 | 1.18 | 1.59 |
| 1942 | 1.60 | 1.75 | 1.75 | 1.70 | 1.70 | 1.60 | 1.55 | 1.53 | 1.50 | 1.55 | 1.55 | 1.57 | 1.61 | 1.60 |
| 1943 | 1.57 | 1.57 | 1.61 | 1.61 | 1.69 | 1.70 | 1.65 | 1.62 | 1.66 | 1.80 | 1.80 | 1.80 | 1.67 | 1.84 |
| 1944 | 1.83 | 1.83 | 1.87 | 1.89 | 1.89 | 1.89 | 1.89 | 1.90 | 1.92 | 2.05 | 2.05 | 2.05 | 1.92 | 2.07 |
| 1945 | 2.05 | 2.10 | 2.10 | 2.10 | 2.10 | 2.13 | 2.10 | 2.10 | 2.05 | 2.05 | 2.10 | 2.10 | 2.09 | 2.14 |
| 1946 | 2.10 | 2.10 | 2.10 | 2.10 | 2.15 | 2.15 | 2.25 | 2.45 | 2.14 | 2.29 | 3.14 | 2.76 | 2.31 | 2.97 |
| 1947 | 2.94 | 3.00 | 3.70 | 3.65 | 2.98 | 3.05 | 3.00 | 3.00 | 3.02 | 3.14 | 3.44 | 3.70 | 3.22 | 3.45 |
| 1948 | 4.13 | 2.95 | 3.23 | 3.65 | 3.70 | 3.92 | 3.71 | 2.82 | 2.60 | 2.27 | 2.35 | 2.39 | 3.14 | 2.27 |
| 1949 | 2.25 | 2.04 | 2.10 | 2.05 | 2.17 | 2.11 | 2.25 | 2.70 | 2.14 | 2.10 | 2.04 | 2.14 | 2.17 | 2.37 |
| 1950 | 2.16 | 2.18 | 2.32 | 2.50 | 2.70 | 2.80 | 2.94 | 2.43 | 2.25 | 2.03 | 2.52 | 2.73 | 2.46 | 2.79 |
| 1951 | 2.87 | 3.09 | 3.13 | 3.13 | 3.14 | 2.94 | 2.83 | 2.76 | 2.62 | 2.61 | 2.76 | 2.81 | 2.89 | 2.78 |
| 1952 | 2.76 | 2.75 | 2.72 | 2.64 | 2.69 | 2.97 | 2.95 | 3.06 | 2.85 | 2.69 | 2.71 | 2.73 | 2.79 | 2.66 |
| 1953 | 2.67 | 2.59 | 2.77 | 2.78 | 2.74 | 2.63 | 2.41 | 2.38 | 2.33 | 2.40 | 2.59 | 2.81 | 2.59 | 3.02 |
| 1954 | 2.80 | 2.95 | 3.18 | 3.51 | 3.57 | 3.48 | 3.40 | 3.20 | 2.45 | 2.48 | 2.53 | 2.53 | 3.01 | 2.39 |
| 1955 | 2.52 | 2.55 | 2.47 | 2.35 | 2.28 | 2.27 | 2.15 | 2.14 | 1.98 | 2.05 | 2.07 | 2.09 | 2.24 | 2.35 |
| 1956 | 2.19 | 2.23 | 2.35 | 2.61 | 2.96 | 2.87 | 2.41 | 2.37 | 2.05 | 2.08 | 2.26 | 2.26 | 2.39 | 2.20 |
| 1957 | 2.30 | 2.21 | 2.24 | 2.23 | 2.18 | 2.14 | 2.18 | 2.21 | 2.07 | 2.00 | 1.99 | 2.00 | 2.15 | 2.04 |
| 1958 | 2.01 | 2.00 | 2.06 | 2.12 | 2.10 | 2.08 | 2.06 | 2.03 | 1.94 | 1.92 | 1.94 | 2.02 | 2.02 | 2.02 |
| 1959 | 2.03 | 2.04 | 2.06 | 2.08 | 2.10 | 2.07 | 2.04 | 1.96 | 1.87 | 1.91 | 1.97 | 1.92 | 2.00 | 1.92 |
| 1960 | 1.94 | 1.93 | 1.93 | 1.96 | 1.92 | 1.90 | 1.89 | 1.93 | 1.90 | 1.88 | 1.89 | 1.95 | 1.92 | 2.39 |
| 1961 | 2.22 | 2.48 | 2.61 | 3.04 | 2.94 | 2.63 | 2.55 | 2.53 | 2.28 | 2.17 | 2.29 | 2.33 | 2.51 | 2.31 |
| 1962 | 2.34 | 2.32 | 2.34 | 2.36 | 2.33 | 2.31 | 2.32 | 2.31 | 2.29 | 2.20 | 2.27 | 2.32 | 2.31 | 2.36 |
| 1963 | 2.36 | 2.42 | 2.43 | 2.38 | 2.42 | 2.43 | 2.39 | 2.37 | 2.40 | 2.50 | 2.63 | 2.53 | 2.44 | 2.45 |
| 1964 | 2.60 | 2.54 | 2.51 | 2.42 | 2.31 | 2.32 | 2.31 | 2.31 | 2.45 | 2.49 | 2.54 | 2.68 | 2.46 | 2.64 |

Table 2. Cash soybean prices, $/bushel (received by Iowa farmers) continued.

| Year | Jan | Feb | Mar | Apr | May | Jun | Jul | Aug | Sept | Oct | Nov | Dec | Avg * Cal Yr | Avg ** Mktg Yr |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1965 | $2.70 | $2.75 | $2.81 | $2.79 | $2.65 | $2.68 | $2.65 | $2.49 | $2.43 | $2.28 | $2.34 | $2.47 | $2.59 | $2.75 |
| 1966 | 2.62 | 2.71 | 2.66 | 2.74 | 2.86 | 3.02 | 3.38 | 3.53 | 2.90 | 2.77 | 2.82 | 2.85 | 2.91 | 2.72 |
| 1967 | 2.77 | 2.68 | 2.71 | 2.67 | 2.65 | 2.67 | 2.63 | 2.52 | 2.51 | 2.44 | 2.44 | 2.49 | 2.60 | 2.51 |
| 1968 | 2.52 | 2.55 | 2.54 | 2.54 | 2.56 | 2.52 | 2.51 | 2.51 | 2.45 | 2.33 | 2.40 | 2.41 | 2.49 | 2.45 |
| 1969 | 2.44 | 2.45 | 2.45 | 2.49 | 2.54 | 2.49 | 2.50 | 2.49 | 2.32 | 2.19 | 2.22 | 2.23 | 2.40 | 2.40 |
| 1970 | 2.31 | 2.35 | 2.37 | 2.44 | 2.49 | 2.56 | 2.70 | 2.62 | 2.61 | 2.71 | 2.80 | 2.69 | 2.55 | 2.64 |
| 1971 | 2.80 | 2.86 | 2.85 | 2.73 | 2.79 | 2.95 | 3.17 | 3.07 | 2.90 | 2.94 | 2.84 | 2.94 | 2.90 | 3.11 |
| 1972 | 2.90 | 2.97 | 3.14 | 3.35 | 3.34 | 3.30 | 3.32 | 3.37 | 3.31 | 3.06 | 3.40 | 3.99 | 3.29 | 5.81 |
| 1973 | 4.12 | 5.44 | 6.02 | 6.11 | 8.25 | 10.10 | 6.65 | 9.30 | 5.75 | 5.49 | 5.10 | 5.60 | 6.49 | 5.71 |
| 1974 | 5.80 | 6.00 | 5.85 | 5.05 | 5.15 | 5.09 | 6.09 | 7.52 | 7.34 | 8.19 | 7.45 | 7.13 | 6.39 | 6.16 |
| 1975 | 6.25 | 5.73 | 5.30 | 5.63 | 4.95 | 4.91 | 5.25 | 5.82 | 5.35 | 4.88 | 4.48 | 4.20 | 5.23 | 5.03 |
| 1976 | 4.41 | 4.43 | 4.37 | 4.45 | 4.88 | 6.17 | 6.69 | 6.08 | 6.62 | 5.80 | 6.06 | 6.54 | 5.54 | 7.07 |
| 1977 | 6.76 | 6.95 | 7.71 | 8.62 | 9.20 | 8.40 | 6.76 | 5.42 | 5.18 | 5.35 | 5.51 | 5.57 | 6.79 | 5.90 |
| 1978 | 5.63 | 5.41 | 6.05 | 6.27 | 6.67 | 6.68 | 6.28 | 6.15 | 6.12 | 6.16 | 6.35 | 6.40 | 6.18 | 6.68 |
| 1979 | 6.42 | 6.77 | 6.98 | 6.86 | 6.93 | 7.15 | 7.18 | 6.89 | 6.66 | 6.38 | 6.19 | 6.12 | 6.71 | 6.16 |
| 1980 | 6.18 | 5.95 | 5.73 | 5.49 | 5.66 | 5.82 | 6.63 | 7.10 | 7.47 | 7.51 | 8.00 | 7.76 | 6.61 | 7.43 |
| 1981 | 7.66 | 7.44 | 7.61 | 7.63 | 7.42 | 6.99 | 7.14 | 6.53 | 6.05 | 5.93 | 5.90 | 5.88 | 6.85 | 5.93 |
| 1982 | 5.95 | 5.86 | 5.90 | 6.05 | 6.16 | 6.01 | 5.94 | 5.49 | 5.21 | 5.04 | 5.20 | 5.33 | 5.68 | 5.74 |
| 1983 | 5.39 | 5.54 | 5.71 | 6.03 | 5.99 | 5.81 | 6.22 | 7.37 | 8.19 | 7.87 | 7.86 | 7.63 | 6.63 | 7.62 |
| 1984 | 7.82 | 7.19 | 7.69 | 7.68 | 8.08 | 7.98 | 6.96 | 6.43 | 6.06 | 5.99 | 5.87 | 5.68 | 6.95 | 5.66 |
| 1985 | 5.73 | 5.60 | 5.76 | 5.75 | 5.61 | 5.54 | 5.34 | 5.02 | 4.90 | 4.81 | 4.84 | 4.95 | 5.32 | 5.00 |
| 1986 | 5.04 | 5.05 | 5.14 | 5.13 | 5.16 | 5.10 | 5.02 | 4.87 | 4.75 | 4.42 | 4.51 | 4.59 | 4.90 | 4.78 |
| 1987 | 4.59 | 4.58 | 4.63 | 4.77 | 5.10 | 5.32 | 5.16 | 4.95 | 4.89 | 4.96 | 5.25 | 5.48 | 4.97 | 6.31 |
| 1988 | 5.54 | 5.86 | 5.96 | 6.25 | 6.79 | 8.14 | 8.34 | 8.23 | 7.89 | 7.57 | 7.45 | 7.53 | 7.13 | 7.25 |
| 1989 | 7.64 | 7.31 | 7.50 | 7.24 | 7.12 | 6.98 | 6.72 | 5.99 | 5.68 | 5.47 | 5.54 | 5.51 | 6.56 | 5.66 |
| 1990 | 5.47 | 5.40 | 5.54 | 5.70 | 5.90 | 5.81 | 5.89 | 5.95 | 5.93 | 5.82 | 5.65 | 5.58 | 5.72 | 5.62 |
| 1991 | 5.53 | 5.48 | 5.64 | 5.72 | 5.62 | 5.53 | 5.30 | 5.59 | 5.62 | 5.42 | 5.40 | 5.34 | 5.52 | 5.53 |
| 1992 | 5.41 | 5.47 | 5.62 | 5.57 | 5.76 | 5.85 | 5.54 | 5.35 | 5.30 | 5.19 | 5.30 | 5.40 | 5.48 | 5.65 |
| 1993 | 5.46 | 5.45 | 5.56 | 5.65 | 5.71 | 5.81 | 6.47 | 6.44 | 6.19 | 5.97 | 6.26 | 6.63 | 5.97 | 6.35 |
| 1994 | 6.63 | 6.62 | 6.65 | 6.51 | 6.69 | 6.66 | 5.87 | 5.51 | 5.39 | 5.28 | 5.33 | 5.33 | 6.04 | 5.45 |
| 1995 | 5.34 | 5.25 | 5.41 | 5.47 | 5.49 | 5.57 | 5.79 | 5.71 | 5.91 | 6.02 | 6.27 | 6.61 | 5.74 | 6.88 |
| 1996 | 6.56 | 6.85 | 6.88 | 7.23 | 7.58 | 7.39 | 7.57 | 7.72 | 7.84 | 6.89 | 6.80 | 6.80 | 7.18 | 7.47 |
| 1997 | 6.99 | 7.27 | 7.88 | 8.17 | 8.39 | 8.10 | 7.46 | 7.08 | 6.66 | 6.35 | 6.85 | 6.67 | 7.32 | 6.31 |
| 1998 | 6.53 | 6.43 | 6.36 | 6.22 | 6.17 | 6.09 | 6.00 | 5.35 | 5.19 | 5.14 | 5.39 | 5.28 | 5.85 | 4.74 |
| 1999 | 5.16 | 4.61 | 4.57 | 4.57 | 4.44 | 4.29 | 4.04 | 4.22 | 4.42 | 4.35 | 4.30 | 4.37 | 4.45 | 4.60 |
| 2000 | 4.44 | 4.67 | 4.82 | 4.95 | 5.17 | 4.88 | 4.47 | 4.32 | 4.53 | 4.41 | 4.60 | 4.75 | 4.67 | 4.50 |
| 2001 | 4.53 | 4.40 | 4.29 | 4.19 | 4.26 | 4.42 | 4.77 | 4.87 | 4.60 | 4.05 | 4.14 | 4.14 | 4.39 | 4.49 |
| 2002 | 4.11 | 4.15 | 4.29 | 4.36 | 4.57 | 4.84 | 5.26 | 5.40 | 5.37 | 5.20 | 5.40 | 5.42 | 4.86 | 5.60 |
| 2003 | 5.44 | 5.50 | 5.54 | 5.76 | 6.02 | 6.11 | 5.80 | 5.62 | 6.06 | 6.58 | 7.14 | 7.34 | 6.08 | 8.06 |
| 2004 | 7.62 | 8.39 | 9.44 | 9.67 | 9.72 | 9.34 | 8.58 | 6.80 | 5.96 | 5.62 | 5.36 | 5.32 | 7.65 | 5.84 |
| 2005 | 5.37 | 5.33 | 5.85 | 5.95 | 6.12 | 6.50 | 6.58 | 6.07 | 5.80 | 5.70 | 5.59 | 5.67 | 5.88 | 5.54 |
| 2006 | 5.72 | 5.53 | 5.48 | 5.47 | 5.60 | 5.54 | 5.52 | 4.84 | 5.11 | 5.48 | 6.07 | 6.27 | 5.55 | 6.62 |
| 2007 | 6.21 | 6.81 | 6.89 | 6.85 | 7.10 | 7.55 | 7.48 | 7.66 | 8.22 | 8.36 | 9.87 | 10.30 | 7.78 | 11.00 |
| 2008 | 10.10 | 11.60 | 11.10 | 11.70 | 12.00 | 13.10 | 13.00 | 12.60 | 11.10 | 10.40 | 9.91 | 9.54 | 11.35 | 10.26 |
| 2009 | 10.10 | 9.47 | 9.05 | 9.72 | 10.60 | 11.30 | 10.90 | 11.00 | 9.89 | 9.35 | 9.53 | 9.81 | 10.06 | 9.55 |
| 2010 | 9.66 | 9.30 | 9.27 | 9.33 | 9.35 | 9.39 | 9.69 | 10.00 | 9.87 | 9.98 | 10.90 | 11.60 | 9.86 | 12.08 |
| 2011 | 11.80 | 12.60 | 12.40 | 12.90 | 13.20 | 13.20 | 13.00 | 13.50 | 12.60 | 11.80 | 11.60 | 11.30 | 12.49 | 13.08 |
| 2012 | 11.80 | 12.10 | 12.80 | 13.60 | 13.80 | 13.70 | 15.00 | 16.80 | 14.40 | 14.10 | 14.30 | 14.30 | 13.89 | 14.58 |
| 2013 [1] | 14.10 | 14.60 | 14.60 | 14.40 | 14.90 | 15.20 | 15.50 | | | | | | 14.76 | |

* Average based on calendar year (Jan. 1 - Dec. 31)
** Average based on marketing year (Sept. 1 - Aug. 31)
[1] Preliminary, marketing year average calculated through mid-July 2013

. . . and justice for all
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Issued in furtherance of Cooperative Extension work, Acts of May 8 and July 30, 1914, in cooperation with the U.S. Department of Agriculture. Cathann A. Kress, director, Cooperative Extension Service, Iowa State University of Science and Technology, Ames, Iowa.

CEDAR VALLEY BUSINESS MONTHLY

FARMLAND

# Iowa farmland prices up 17 percent



MARCH 31, 2013 9:00 PM • BY GEORGE C. FORD, GEORGE.FORD@SOURCEMEDIA.NET

CEDAR RAPIDS, Iowa — The value of an average acre of Iowa farmland rose 9.4 percent since last September to $8,690 per acre, according to a new survey by the Iowa chapter of the Realtors Land Institute.

On a year-over-year basis, an average acre of Iowa farmland rose 17.1 percent in value from March 1, 2012, to March 1 of this year.

The average price of tillable farmland on March 1 ranged from a low of $5,928 an acre in south central Iowa to $10,415 an acre in northwest Iowa.

Northeast Iowa recorded the largest percentage change in values over the last six months with a 12.6 percent increase.

High quality crop land is selling for an average $12,661 per acre in Northeast Iowa, up from $11,216 on Sept. 1.

Statewide, high quality farmland is averaging $11,515 per acre, up from $10,524 in September.

The land is classified by potential corn production.

The average price of an acre of "unimproved" Iowa farmland — land con sidered tillable but with nothing planted on it — has more than doubled from the $4,208 per acre average recorded in 2008.

Troy Louwagie of Hertz Farm Management in Mount Vernon attributed the continued rise in average farmland values to several factors, including strong commodity prices, low long-term interest rates and limited amount of land offered for sale.

"We had a lot of land sales late in the fall as people were concerned about the fiscal cliff and potential adverse tax changes," Louwagie said.

"After Congress acted in early January and the tax changes weren't as severe and, in some cases, were beneficial, we saw land sales pick up. In fact, we've seen some really strong sales over the last three months."

Congress retained the $5 million threshold in net worth before estate taxes are imposed, continuing favorable tax treatment for the sale of farmland.

EXHIBIT
P-71



20-20566.880

**From:** Nelva Brunsting
**To:** Rich Rikkers
**Subject:** Re: Lease...
**Date:** Thursday, February 05, 2009 7:39:14 AM

---

Rick: Sorry about the delay. I wass depending on Carole for a witness but Elmer is back in the hospital and she's been taking care of medical matters for him, but will get the lease in the mail today.

--- On **Thu, 2/5/09, Rich Rikkers <richr@kk-cpa.com>** wrote:

> From: Rich Rikkers <richr@kk-cpa.com>
> Subject: Lease...
> To: elmernelva@sbcglobal.net
> Date: Thursday, February 5, 2009, 7:25 AM
>
> Nelva,
>
> Doyle needs that lease and I need that power of attorney for the FSA office so Doyle can get signed up for the farm program.
>
> If Elmer can't sign, why don't you go ahead and sign and I will notarize it here or we will forget about having it notarized.
>
> Just sign Elmer's name and send it back.
>
> Thanks,
>
> Rich
>
> *Richard Rikkers, CPA, MS, CSEP*
>
> *Kroese & Kroese, P.C.*
>
> *540 North Main*
>
> *Sioux Center IA 51250*
>
> *Bus. 712-722-3375*
>
> *Fax 712-722-3365*

EXHIBIT
P-73

"Helping You Attain Your Financial Goals"

...It's Our Commitment

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United States District Court
Southern District of Texas
FILED
SEP 03 2013
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| v | § | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | § | |

**PLAINTIFF'S OBJECTION TO DEFENDANTS' MOTION FOR ORDER TO RECOMMIT MATTERS TO MASTER FOR CONSIDERATION**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiff has received notice of Defendants' motion and proposed Order to recommit to the Master, matters of Defendants' Response to Report of Master, for further consideration and possible action. Plaintiff objects to the granting of Defendants' motion on the following ground:

1. Defendants' motion is misplaced and frivolous.

The Master's task was simply to provide an accounting of receipts and disbursements. Defendants either provided full and complete books and records to the Master, or they did not.

The Defendants' manufacture of justification is putting the cart before the horse and Plaintiff can see no purpose in Defendants providing rationalizations as a substitute for third party transaction records.

The Bates stamped documents referenced in the Appendix Tab I are Defendants' own Schedules, absent corroborative third party records. These same self-serving spreadsheets were received April 5, 2012, as "an accounting in the format required by Texas Trust Code §113.152", and do not even begin to meet the legal definition of transaction records for trust accounting purposes.

2. Plaintiff specifically objects to the matter being returned to the Master with the self-serving letter of bias dated July 15, 2013[1], stating "We want to provide the following information to assist you in review of the documentation and to provide some background and context you otherwise might not have."

Not only are the claims of fact inaccurate, value judgment as to the legitimacy of Defendants' trust administration was beyond the scope of the Court's accounting order. Plaintiff believes this exercise was clearly intended to improperly influence the classification of disbursements.

Defendants' Response in paragraphs 2A through F contains excuses and explanations, not transaction records relevant to the Master's accounting of receipts and disbursements.

Furthermore, whether distributions to family members were gifts, trustee compensation, or misapplications of fiduciary, and whether the letter's assertions are relevant, is a question of law and fact for the Court

[1] Case 4:12-cv-00592 Document 67-1 Filed in TXSD on 08/27/13 Page 2 of 6

After two years and eight months, and at a cost of nearly $50,000 dollars for the Defendants' incomplete accounting, Defendants now want this Court to send the matter back to the Master in another attempt to avoid providing third party transaction records and receipts, readily available to them upon request.

Plaintiff cannot fathom what Defendants may still be hiding, or what justice would be served by granting of this motion.

The doctrine of unclean hands bars a Court of equity from hearing the pleas of, or granting relief to, the unclean. Defendants were intentionally silent when they had a duty to speak and the doctrine of estopple by silence bars their speaking now, when speaking might help them to the disadvantage of Plaintiff to whom they owed the duty to speak when they were silent.

Plaintiff asks the court to deny Defendants' motion to recommit to the Master and further asks that Defendants be ordered to answer and to bear costs.

Respectfully submitted,

By:/s/

Candace L. Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

**CERTIFICATE OF SERVICE**

I, Rik Munson, hereby certify that a true and correct copy of the foregoing has been forwarded to Defendants' Counsel of Record, George W. Vie III, 1021 Main, Suite 1950, Houston, Texas 77002, via email and U.S Mail, on September 3, 2013.

/s/
Rik Munson

United States District Court
Southern District of Texas
FILED
SEP 03 2013
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| v | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants, | § | |

**PLAINTIFF'S EX PARTE MOTION FOR ORDER TO SHOW CAUSE AND APPLICATON FOR JUDGMENT OF CIVIL CONTEMPT**

TO THE HONORABLE UNITED STATES DISTRICT COURT JUDGE:

Plaintiff respectfully moves this Court for entry of an Order of Civil Contempt, based upon the Defendants' fraudulent concealment of information they have a fiduciary duty to disclose and for Defendants' Counsel's misrepresentation of fact before this Court.

**Statement of the Case**

Plaintiff and Defendants are three of five siblings: Candace, Carole, Carl, Amy and Anita. Their parents, Elmer and Nelva Brunsting, established The Brunsting Family Living Trust on October 10, 1996, superseded by restatement on January 12, 2005.

Elmer died April 1, 2009 and Nelva died November 11, 2011.

On February 27, 2013, Plaintiff filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of emotional distress.

On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. Plaintiff promptly filed notice of appeal. On January 30, 2103, the Circuit Court issued its mandate and reversed and remanded for further proceedings.

Injunctive relief was ordered at a hearing on April 9, 2103, and on April 19, 2103 this Court issued a Memorandum and Order Preliminary Injunction.

Pursuant to the Memorandum, on May 9, 2013 the Court ordered the appointment of William G. West as Master to "create an accounting of the income and expenses of the trust since December 21, 2010".

Upon submission of the Report of Master, dated July 31, 2013, the Court set this matter for a hearing on September 3, 2013 and further ordered that "objections to the report and the accountant's invoice shall be filed on or before August 27, 2013".

## 1. Defendants' Failure to Disclose

Plaintiff's requests for information began in October of 2010, thirteen months before the death of Nelva Brunsting. Those requests never received a satisfactory response and Plaintiff began to wonder why.

During the week following the death of Nelva Brunsting on November 11, 2011, Plaintiff became acutely aware that something was not quite kosher when Defendants absolutely refused to talk about the trust.

In Plaintiff's continuing quest for information, Plaintiff began to write demand letters. A common law demand was sent certified mail on December 19, 2011[1]. This demand was met with silence, so on January 3, 2012, Plaintiff made a statutory demand[2]. Defendants were given approximately two weeks to provide Plaintiff with an expression of their good faith intention to respond. Defendants' response was insufficient to the point of being nonresponsive and on February 27, 2012, Plaintiff filed suit into this Court seeking an accounting of the trust administration.

After the matter of dismissal was reversed and remanded, Plaintiff issued a written demand for disclosure pursuant to the common law and Defendants'

---

[1] Plaintiff Exhibit 17 Case 4:12-cv-00592 Document 1-2 Filed in TXSD on 02/27/12 Page 5 of 30
[2] Plaintiff Exhibit 20 Case 4:12-cv-00592 Document 1-2 Filed in TXSD on 02/27/12 Page 9 of 30

fiduciary obligations[3]. Plaintiff further continued with an expression that the request was only being made under the rules of discovery as a last resort.

Defendants' response seeks to take refuge in discovery objections. Defendants refused to provide a copy of the irrevocable trust indentures, offering in the alternative a visual inspection which neither meets their fiduciary duty to provide a copy, nor does it aid this Court regarding their claims of trust provisions or exculpatory clause defenses.

Defendants have an affirmative duty to provide the information requested and by seeking refuge under the rules of discovery, they have breached that affirmative fiduciary obligation.

**2. <u>Defendants Seek Refuge in Terms of the Trust</u>**

Defendants came before this Court on April 9, 2103 waiving Exhibit 1, a 66 page alleged copy of the Brunsting Family Living Trust. This document informs you that it is The Brunsting Family Irrevocable Trust, established February 12, 1997. The Brunsting Family Living Trust before this Court was established October 10, 1996.

Further, looking at Defendants' Exhibit 1, it is obvious that this instrument was printed from Plaintiff's exhibits in the Record on Appeal, and not produced for Counsel by his clients. Defendants' Exhibit 1is, in fact, part of The Brunsting

[3] Plaintiff Exhibit 68 five pages attached

Family Irrevocable Trust, a life insurance trust that has been settled and is not a part of this litigation.

Defendants seek refuge in terms of the trust, yet refuse to provide Plaintiff or this Court with an instrument that they are willing to claim is a copy of the wet signed original document. Defendants cannot take refuge in the terms of an instrument they refuse to produce before this Court. Where is the trust?

**3. Who is the Trust Attorney?**

On April 9, 2013, Mr. Vie asserted that Vacek & Freed were the trust attorneys[4], saying that he had offered a visual inspection of the trust at the offices of the trust attorneys (those attorneys in the other suit) rather than making an alleged copy available to Plaintiff and this Court.

Defendants' July 15, 2013 letter to the Master makes reference to other former trust counsel[5]. If Vacek & Freed are no longer "trust counsel" who is? When did this change occur? Was Counsel untruthful before this Court on April 9, 2013, or did Defendants disobey this Court's Order?

Did Defendants retain Mills Shirley as trust counsel after April 9, 2013, without the consent of this Court?

[4] Transcript April 9, 2013 page 38 lines 10-15
[5] Case 4:12-cv-00592 Document 67 Filed in TXSD on 08/27/13 Page 2 of 6, paragraph 2 last sentence

If this is the case, a dangerous conflict of interest has been created. The firm representing Defendants for breach of fiduciary in their individual capacities cannot also represent Defendants in the capacity of trustees who are charged with a duty of impartiality. Counsel defending Defendants for breach of fiduciary cannot be objective in regards to the administration of the trust. The jural relations appropriate to each of those distinct realms of discourse cannot be allowed to be confused.

**4. The Court Should Act Swiftly to Preserve its Dignity and Authority**

"If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." *Gompers* v. *Buck Stove & Range Co.*, 221 U.S. 418, 450 (1911).

Far from treating the Court's Order with obedience and respect, Defendants have disparagingly acted as if the preliminary injunction permits them to continue to perpetuate the same fraudulent concealment that compelled Plaintiff to seek preliminary injunction in the first place.

Defendants' attempt to defeat the purpose of the Court's Order and to further their presumed litigation strategy of concealing fiduciary information, is an affront to the Court's dignity and authority.

Any act designed to taint the course of justice and to produce a result from these proceedings other than what would result in the ordinary course of litigation may be considered a contempt of court. The Court accordingly should hold Defendants and their Counsel in civil contempt.

Plaintiff therefore requests that the Court order Defendants and their Counsel to appear and give any legal reason why this Court should not find them in contempt.

Plaintiff further asks that Defendants be removed as acting trustees and be ordered to surrender all trust property pursuant to the Court's instructions.

Plaintiff so moves this Court.

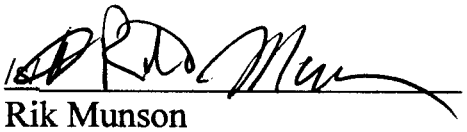
Respectfully submitted,

By:/s/

Candace L. Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

## CERTIFICATE OF SERVICE

I, Rik Munson, hereby certify that a true and correct copy of the foregoing has been forwarded to Defendants' Counsel of Record, George W. Vie III, 1021 Main, Suite 1950, Houston, Texas 77002, via email and U.S Mail, on September 3, 2013.



Rik Munson

## DEMAND FOR PRODUCTION OF DOCUMENTS

Beneficiary/Plaintiff Candace Louise Curtis requests that Defendants Anita Kay Brunsting and Amy Ruth Brunsting respond within 30 days to the demand that Defendants produce and provide Plaintiff with copies of the documents and records referenced below.

For purposes of this demand, the following terms are defined as stated:

Beneficiary includes successor beneficiaries and remaindermen[1].

Trustee includes only the Defendants and does not include an original trustee, an independent special co-trustee, or a trustee named in the Trust other than Defendants, unless specifically so stated.

Document or record means every form of expression, whether analog or digital, handwritten or typed, audio, video, copied or printed, in Defendants' possession or known by Defendants to exist, but does not include any unrecorded verbal statement.

## GENERAL DEMAND FOR DISCLOSURE

## PURSUANT TO PUBLIC POLICY IN CONFORMANCE WITH THE COMMON LAW

The following demand for disclosure of documents and records is first made as a beneficiary, and is to be construed as an equitable command to the alleged trustees under the common law[2]. This demand is a continuation of the common law demand made December 19, 2011.

## IN CONFORMANCE WITH STATUTE

The following demand for production of documents and records is secondly made only as a last resort under the laws governing a legal discovery request under

[1] Brunsting Family trust Article I, Page 1-2 to 1-3

[2] Texas Property Code Section 111.005 - Reenactment Of Common Law
§ 111.005. REENACTMENT OF COMMON LAW. If the law codified in this subtitle repealed a statute that abrogated or restated a common law rule, that common law rule is reestablished, except as the contents of the rule are changed by this subtitle.



EXHIBIT P-68

20-20566.895

Federal Rule Of Civil Procedure 34 (b) [F.R.C.P. 34(b)] This demand is to be construed as a continuation of the state statutory demand for documents and accounting records made January 3, 2012 and only becomes applicable if defendants breach their fiduciary obligations of disclosure under the common law.

(1) Defendants are to produce all documents in their possession or known by them to exist, purporting to be part of or related to the Brunsting Family Living Trust "the Trust", including but not limited to all sub-trusts, amendments, revisions, wills, diagrams, photographs, and descriptions. If none, say none and give the legal reason why any demanded document or record is not in Defendants' possession, does not exist, or why it is otherwise unavailable for scrutiny.

(2) Defendants are to produce a full, true and complete statement of inventory, listing all assets belonging to the Brunsting Family Living Trust "the Trust". The inventories should be supported by true and complete copies of all transactions involving trust property and should include all associated documents, vouchers, transaction records, and receipts. If none, say none and give the legal reason why any demanded document or record does not exist or why it is otherwise unavailable for scrutiny.

(3) There was a phone conference held on or about October 25, 2010. Defendants are to produce all documents and communications relating to that phone conference, in whatever form, electronic or otherwise, which indicate from and to whom the communications were sent. If none, say none and give the legal reason why any demanded document or record does not exist or why it is otherwise unavailable for scrutiny.

(4) Defendants are to produce all documents containing proposed amendments or revisions to the trust that did not become part of the trust, including but not limited to any document intending to disinherit Carl's daughter Marta or that Nelva refused to sign. If none, say none with an affirmative statement that no such document is known to have existed.

(5) Defendants are to produce copies of all documents, receipts, and transaction records relating to handling of any Exxon stock, which may tend to show how it was managed, when and by whom, using what instruments of authority and/or evidencing any other action which may tend to explain how the stocks were accessed, converted, or distributed to beneficiaries, with statements of individual amounts, when and how deposited to what accounts, and all other Exxon stock

associated records and receipts as of the death of Elmer Brunsting 4/1/2009, including specifically, but not limited to:

a. Any documents or records showing any communication with Plaintiff Curtis involving the transfer of Exxon stock into an account established in the name of Curtis.
b. Any evidence that Curtis consented to the use of her Social Security Number in the creation of that account, or that she in any way participated in the creation or funding of that account.
c. Transaction records showing the credentials that were used to create and fund that account.
d. Proof that Anita Brunsting was authorized to create and fund that account.
e. Proof that the Exxon stock that was transferred into an account in the name of Anita Brunsting was registered to the trust and not to Elmer and/or Nelva in their personal capacity.

If none, say none and give the legal reasons if any.

(6) Defendants are to produce copies of all documents, receipts, and transaction records explaining and documenting all trust transactions involving acquisition or sale of trust assets from April 1, 2009 to the present. If none, say none and give the legal reasons if any.

(7) Defendants are to produce a full, true and complete accounting of the Trust assets with adequate explanations of each act of the trustees when moving, transferring, liquidating, distributing or in any other way changing the status or condition of trust property from April 1, 2009 up until and including the present, including all trust tax returns. If none, say none and give the legal reasons if any.

**SPECIFIC DEMANDS FOR PRODUCTION**
**CERTIFIED MAIL RECEIPTS OR OTHER PROOFS OF NOTICE[3]**

(8) Defendants are to produce copies of all documents notifying beneficiaries of proposed changes to the trust after April 1, 2009. If none, say none and explain in detail the legal reason(s) why the trustees were not required to notice the

[3] Article 14 Section L. governs Notices and Section M governs Delivery of notice. All notices required to be given in this agreement shall be made in writing...

beneficiaries. Proof of Notice of actions intending to change the trust includes all notices regarding creation and endorsement of the following documents:

a. The First Restatement and Amendment to the Brunsting family trust dated January 12, 2005.
b. The Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment Under Living Trust Agreement dated August 25, 2010.
c. Appointment of Successor Trustees dated August 25, 2010.
d. Certificates of Trust dated August 25, 2010 for the Nelva E. Brunsting Survivor's trust, The Elmer H. Brunsting Decedent's trust and the Brunsting Family Trust.
e. The Pour Over Will of Elmer Brunsting dated January 12, 2005.
f. The Medical Power of Attorney for Nelva Brunsting dated August 25, 2010.
g. The Durable Power of Attorney for Nelva Brunsting dated August 25, 2010.
h. The Pour Over Will of Nelva Brunsting dated January 12, 2005.
i. Conveyance regarding transfer of an undivided 1/2 interest in the Iowa farm land dated August 25, 2010.

(9) Defendants are to produce copies of all certified mail notices notifying beneficiaries of any intended division or combination of trusts as required by and conforming to Sec. 112.057 et seq., of the Texas Property Code.

(10) Defendants are to produce copies of all documents notifying beneficiaries of a right to receive distributions from any trust, account or policy of insurance, after April 1, 2009.

(11) Defendants are to produce copies of all documents authored or signed by Nelva Brunsting indicating a desire to change her estate plan after April 1, 2009.

(12) Defendants are to produce copies of all documents in their possession or known by them to exist relating to the competency of Nelva Brunsting, including but not limited to the identity and report of any and every doctor who may have examined Nelva for competency.

## TRUST PROTECTOR

(13) Defendants are to produce copies of all documents in their possession or known by them to exist, appointing a trust protector, including but not limited to any and every document identifying the name, address and phone number of said trust protector. If none, say none and explain why not.

## SPECIAL CO-TRUSTEE

(14) Defendants are to produce copies of all documents appointing an independent special co-trustee, including but not limited to documents identifying the name, address and phone number of said independent special co-trustee if any. If none, say none and explain why not.

## SELF DEALING AND COMMINGLING

(15) Provide Proof of certified mail or other notices delivered to Candace Curtis or any beneficiary (1) informing a beneficiary of Defendants' intent, as trustees, to transfer assets to Defendants for their own personal use, and (2) provide written evidence of any agreement wherein Nelva Brunsting consented to trustee compensation for Defendants, as shown on the accounting schedules prepared by Defendants and/or Vacek & Freed, PLLC, and received by Plaintiff in April 2012.



20-20566.899

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis

Plaintiff,

v.

Case No.: 4:12−cv−00592
Judge Kenneth M. Hoyt

Anita Kay Brunsting, et al.

Defendant.

TYPE OF CASE: Civil

---

## NOTICE OF SETTING

**TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR THE PLACE, DATE AND TIME SET FORTH BELOW.**

**Before the Honorable**

Kenneth M. Hoyt

**PLACE:**
Courtroom 11A
United States District Court
515 Rusk Ave
Houston, TX

**DATE:** 10/2/13

**TIME:** 11:30 AM

**TYPE OF PROCEEDING:** Motion Hearing
Motion for Order to Show Cause − #74

Date: September 3, 2013

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| **CANDACE LOUISE CURTIS** | § | |
| ***Plaintiff,*** | § | |
| | § | **4-12-CV-00592** |
| | § | |
| **ANITA KAY BRUNSTING, and** | § | |
| **AMY RUTH BRUNSTING** | § | |
| ***Defendants.*** | § | |

**ORDER GRANTING APPROVAL OF DISBURSEMENTS TO SPECIAL MASTER & SPECIAL MASTER'S ATTORNEY**

BEFORE THE COURT the appointed Special Master has requested approval of the payment of two invoices from his accounting firm and the law firm of Munsch, Hardt, Kopf, & Harr, P.C. After consideration of the request the Court finds that, after the hearing conducted on September 3, 2013, the invoices should be paid for the reasons stated at the hearing. It is, Therefore,

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

**William G. West, P.C., C.P.A.** invoice 2498 in the amount of **$42,288.21**

**Munsch Hart Kopf & Harr, P.C.** invoice 10289925 in the amount of **$942.50**

Signed this 3rd day of September, 2013.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants.* | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL AND RENEWAL OF FARM LEASE UNDER EXISTING TERMS ON AUGUST 31, 2013**

BEFORE THE COURT is Defendants' Motion for entry of an Order permitting the renewal of the present farm lease on a 141 acre tract in Iowa. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

ORDERED that the Trustees have authority to permit the renewal of the Farm Lease between Anita Brunsting, Trustee and Grantor, and Doyle Wissink, Grantee, under the terms of the August 31, 2012, lease in the Official Form No. 135 of the Iowa State Bar Association. The Trustees may execute a lease document if necessary to effectuate the renewal of the Farm Lease under its present terms.

SIGNED on this 3rd day of September, 2013.

Kenneth M. Hoyt
United States District Judge

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis

Plaintiff,

v.

Case No.: 4:12−cv−00592
Judge Kenneth M. Hoyt

Anita Kay Brunsting, et al.

Defendant.

# Official Transcript Filed

An official transcript has been filed. It may contain information protected from public disclosure by law. *See* E−Government Act of 2002, Fed. R. Civ. P. 5.2(a) or Fed. R. Crim. P. 49.1(a).

Ninety days after a transcript has been filed, it will be electronically available to the public on PACER. To comply with the rules on privacy, the parties must redact protected information before it is available on PACER.

If redaction is needed, the parties must file a statement listing the items to be redacted, with the transcript's docket number and the item's location by page and line. It must be filed within 21 days of the transcript being filed. A suggested form is at www.txs.uscourts.gov.

Only these portions of data may be visibile:

- Last four digits of a social security number or taxpayer identification number;
- Year of a person's birth;
- Initials of a minor's name;
- Last four digits of an account number; and
- City and state of a home address in criminal cases.

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- Opening and closing statements made for his party;
- Statements by his party;
- Testimony of witnesses called by his party; and
- Other parts ordered by the court.

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*David J. Bradley*, Clerk

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis

v.

Case No.: 4:12−cv−00592
Judge Kenneth M. Hoyt

Anita Kay Brunsting, et al.

Defendant

---

**NOTICE OF RESETTING**

**TAKE NOTICE THAT A PROCEEDING IN THIS CASE HAS BEEN SET FOR THE PLACE, DATE AND TIME SET FORTH BELOW.**

**Before the Honorable**

Kenneth M. Hoyt

**PLACE:**
Courtroom 11A
United States District Court
515 Rusk Ave
Houston, TX

**DATE:** 10/2/13

**TIME:** 09:00 AM

**TYPE OF PROCEEDING:** Motion Hearing

Date: September 23, 2013

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' OPPOSITION TO
"EX PARTE MOTION FOR ORDER TO SHOW CAUSE AND APPLICATION FOR JUDGMENT OF CIVIL CONTEMPT"

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting file this Response in opposition to the Plaintiff's Motion seeking an order of civil contempt (Dkt. #74).

1. Without a conference before filing, Plaintiff has filed a motion for contempt against Defendants and counsel.[1] The alleged basis for the contempt findings are (a) the sufficiency of discovery objections or responses from Defendants; (b) the alleged failure to

[1] LR 7.1(D) requires that the movant confer with respondent before filing a motion, and that the motion contain an averment that counsel cannot agree about the disposition of the motion. Pro se status does not excuse Plaintiff from following the Local Rules or the Federal Rules. *Anderson v. Astrue*, 7:07-CV-0079-O, 2008 WL 2152024 (N.D. Tex. May 21, 2008). *See also LaBlanche v. Ahmad*, 4:11-CV-4504, 2012 WL 1717639 (S.D. Tex. May 11, 2012) (observing the United States District Court Guidelines for Litigants Without Lawyers do not take the place of a pro se litigant's responsibility to comply with the Local Rules, the Federal Rules of Civil Procedure and all other laws).

produce a copy of the "wet signed original of the trust;" (c) a reference to "former trust counsel" in a letter from Defendant's counsel to the Master; and (d) a claim that the Court's injunction has been violated by "fraudulent concealment" of fiduciary information.

2. Defendants have complied in good faith with their discovery obligations, including the production to Plaintiff (and the other beneficiaries who are not litigants in this Court) of all of the documents provided to the Master for its Report. This was a total of 4289 pages of underlying financial documents concerning trust activity. Many of those documents had previously been produced to Plaintiff, as noted in the Master's Report at page 3.[2] Defendants previously filed written responses to discovery requests, which responses were timely under the Federal Rules. Defendants have supplemented those responses to include the documents provided to the Master. None of these discovery disputes, if any still exist, merit or support civil contempt findings.

3. Regarding Plaintiff's complaints about a copy of the "wet signed original of the trust," it is not accurate to state the Defendants offered only a visual inspection of the trust instruments.[3] Rather, counsel offered inspection and copying of the instruments at the offices of Vacek & Freed PLLC. Counsel made this offer because Plaintiff has challenged the authenticity of copies of the trust documents which she otherwise already

---

[2] "On or about July 1st West received emails from the plaintiff containing pdf copies of various records. West found, that for the most part, he had these records already from Vie (*the plaintiff had told West beforehand that most of the records she had, in fact, came from the defendants' attorney, except some her brother had given her*)."

[3] See Ex Parte Motion at page 4.

has,[4] and inspection and copying at the offices of the attorneys that prepared the documents would hopefully cure that complaint. This offer was made prior to and at the preliminary injunction hearing (when the Court requested Plaintiff and counsel for Defendants confer),[5] and Plaintiff declined the offer.

Defendants remain ready to provide copying of the trust documents in a way that will cure Plaintiff's concerns.

4. In item 3 of her Ex Parte Motion, Plaintiff asks whether the undersigned attorneys are now trust counsel, and whether this was done without Court approval, and whether Defendant's counsel was untruthful at the preliminary injunction hearing on April 9, 2013. This all follows from a reference to Vacek & Freed PLLC, in a letter to the Master, as "former trust counsel." The Motion to Show Cause in this regard is simply based on Plaintiff's conjecture and speculation.

Mills Shirley LLP has not been retained as trust counsel, and counsel was not dishonest at the hearing in his references to Vacek & Freed PLLC. The reference to Vacek & Freed PLLC as "former trust counsel" was based on the fact that Carl Henry Brunsting, as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting, has filed suit against Defendants, Candace L. Kunz-Freed, Individually and

---

[4] Plaintiff attached to her complaint filed in February 2012 (Dkt. #1) affidavits of trust; certificates of trust; the Restatement of the Brunsting Family Living Trust; the First Amendment to the Restatement of the Brunsting Family Living Trust; The Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment under Living Trust Agreement; Appointments of Successor Trustees; Resignation of Original Trustee; and Acceptance by Successor Trustee, along with other documents.

[5] See attached email, with highlighted emphasis, as Appendix Tab 1.

Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC for professional negligence and other torts related to the Trust, the former Trustees, and the current Trustees.[6] Under those circumstances, Vacek & Freed PLLC would not be expected to continue to serve as trust counsel, and would not be asked to serve. If the Trustees need to employ new counsel in connection with the Trust, they would seek Court approval of the employment – but there has been no such need to date.

CONCLUSION AND RELIEF SOUGHT.

5. There has been no fraudulent concealment of fiduciary information. The trustees have continued to make reports to the beneficiaries, and have included the other beneficiaries, through counsel, in the filings and discovery made in this cause. Further, there has been no violation of the Court's injunction and no basis for a contempt judgment as requested by Plaintiff.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court deny Plaintiff's Motion seeking an order of civil contempt (Dkt. #74).

[6] Cause number 2013-05455, *Brunsting, Carl Henry v. Kunz-Freed, Candace*, in the 164th Judicial District of Harris County.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
Fed. Id. No. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844
*gvie@millsshirley.com*

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

**{In Archive} Documents to provide you**
George Vie to: Candace Curtis 04/04/2013 06:35 PM
Bcc: akbrunsting, at.home3, Maureen McCutchen

From: George Vie/Millsshirley
To: Candace Curtis <occurtis@sbcglobal.net>
Bcc: akbrunsting@suddenlink.net, at.home3@yahoo.com, Maureen McCutchen/Millsshirley@Millsshirley
Archive: This message is being viewed in an archive.

In connection with production of documents, I have Bates numbered documents from 1 to 4922.

I can email many of these documents, but not all of them, because the total file size of all is 246 MB. It is unlikely your mail box and ISP would permit that.

If you are available to receive a Fed Ex for Saturday delivery, I can prepare a CD tomorrow and ship it to you for Saturday delivery.

I can also provide some of the recent documents now by email (and include them also on CD) as many of the attachments 10MB or less. It would obviously be multiple emails.

What would you prefer?

Also, when you are here Tuesday for the preliminary injunction hearing do you want to arrange for inspection of original records?

George W. Vie III
Licensed in Hawai'i and Texas
*Board Certified (Texas), Civil Appellate Law*

Mills Shirley LLP
One City Centre
1021 Main Street, Suite 1950
Houston, Texas 77002
Direct Tel 713.571.4232 | 713.571.4218 | 409.761.4032
Fax 713.893.6095

http://www.millsshirley.com/Bio/GeorgeVie.asp

Candace Curtis | George, I have examined the prospect of pleadin... | 02/18/2013 08:52:26 PM

From: Candace Curtis <occurtis@sbcglobal.net>
To: gvie@millsshirley.com,
Date: 02/18/2013 08:52 PM
Subject: Second Thoughts

George,

I have examined the prospect of pleading opposing theories and have decided to go ahead and proceed in this case just the way it is.

I do not believe the defendants are trustees, but if they want to continue to claim to be

trustees then I will await your answer to the existing complaint. I will consider whether or not to change theories after I have had some discovery.

Tomorrow the court will need to know how much time you will require for your answer. I hope a couple weeks will be enough. Sorry for any inconvenience, it just doesn't seem practical make any changes at this time.

Candace

# Appendix Tab 2

2008 WL 2152024
Only the Westlaw citation is currently available.
United States District Court,
N.D. Texas,
Wichita Falls Division.

Allen L. ANDERSON, Plaintiff,
v.
Michael J. ASTRUE, Commissioner
of Social Security, Defendant.

No. 7:07-CV-0079-O ECF. | May 21, 2008.

**Attorneys and Law Firms**

Allen L. Anderson, Wichita Falls, TX, pro se.

Tami C. Parker, U.S. Attorney's Office, Fort Worth, TX, for Defendant.

**Opinion**

***MEMORANDUM OPINION & ORDER***

REED O'CONNOR, District Judge.

***1** Before this Court is the defendant, Michael J. Astrue's ("Defendant" or "Commissioner") Motion to Dismiss (doc. # 22), filed January 24, 2008. For the reasons stated herein, the motion is GRANTED.

**I.**

The plaintiff, Allen L. Anderson ("Plaintiff" or "Anderson"), filed this action on May 21, 2007 seeking to reinstate his social security benefits. Pl.'s Compl. at 1. The Commissioner states that he determined that Anderson's disability benefits should have ceased in January of 2005 because of an outstanding arrest warrant. Def's Br. at 2.; Def's App. at 3, 10-14. The Commissioner states that because Anderson was paid benefits until February of 2006, he also informed Plaintiff that Plaintiff owed $9,382.20 in overpaid benefits. *Id.* The Commissioner states that Anderson filed a request for reconsideration on March 22, 2006, which was denied on March 28, 2006, because Anderson did not provide proof that his warrant was satisfied. Def's Br. at 2; Def's App. at 4, 12. The Commissioner states that Anderson was instructed to complete a form to request a waiver of overpayment and return it by April 28, 2006, but that Anderson did not do so nor did Anderson appeal the denial. Def's Br. at 2; Def's App. at 12. The Commissioner states that approximately a year later on May 18, 2007, Anderson filed another request for reconsideration. Def's Br. at 2. The Commissioner states that Anderson was informed that the second request was treated as a duplicate request, and it was also denied because Anderson did not provide proof that his outstanding warrant was satisfied. *Id.* at 3; Def's App. at 13. The Commissioner states that because Plaintiff did not proceed through the administrative process, this Court lacks subject matter jurisdiction because the Commissioner has not issued a "final decision ... made after a hearing," as required under 42 U.S.C. § 405(g). Def's Br. at 1-2.

**II.**

"Federal courts are courts of limited jurisdiction. We must presume that a suit lies outside this limited jurisdiction, and the burden of establishing federal jurisdiction rests on the party seeking the federal forum." *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 916 (5th Cir.2001) (citations omitted). "Accordingly, the plaintiff constantly bears the burden of proof that jurisdiction does in fact exist." *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir.2001) (citing *Menchaca v. Chrysler Credit Corp.*, 613 F.2d 507, 511 (5th Cir.1980)). A federal court has subject matter jurisdiction over civil actions involving a federal question or diversity of citizenship. 28 U.S.C. §§ 1331-1332. Therefore, Plaintiff must present the Court with facts or claims sufficient to give rise to federal question jurisdiction or diversity of citizenship jurisdiction. *See* 28 U.S.C. §§ 1331-32; *Howery*, 243 F.3d at 916. Without the presence of such facts or claims, the Court does not have jurisdiction over the case. *See Howery*, 243 F.3d at 916.

***2** The Social Security Act confers jurisdiction on district courts to review "any final decision of the Commissioner of Social Security made after a hearing to which he was a party." 42 U.S.C. § 405(g). "[A] final decision of the [Commissioner] made after a hearing ... [is] central to the requisite grant of subject-matter jurisdiction-the statute empowers district courts to review a particular type of decision by the [Commissioner], that type being those which are 'final' and 'made after a hearing.' " *Weinberger v. Salfi*, 422 U.S. 749, 763-64, 95 S.Ct. 2457, 45 L.Ed.2d 522 (1975). "If a claimant fails to request review from the Council, there is no final decision and ... [the] claimant may not obtain judicial review because he has failed to exhaust

administrative remedies." *Sims v. Apfel*, 530 U.S. 103, 107, 120 S.Ct. 2080, 147 L.Ed.2d 80 (2000). *See also McQueen v. Apfel*, 168 F.3d 152, 155 (5th Cir.1999) ("A court should not review the Commissioner's final decision unless the claimant has exhausted his administrative remedies." (citing *Paul v. Shalala*, 29 F.3d 208, 210 (5th Cir.1994))).

**III.**

As the Commissioner points out, "Anderson's Complaint is void of any statement or exhibit that evidences the issuance of a 'final decision' by the Commissioner or how this Court otherwise has jurisdiction." Def.'s Br. at 6; *see* PL's Compl. at 1. "A pleading that states a claim for relief must contain ... a short and plain statement of the grounds for the court's jurisdiction ..." FED. R. CIV. P. 8(a)(1). Furthermore, "Anderson provided no evidence or argument that he provided [ ] a form [requesting a waiver of the overpayment of social security benefits] or that he appealed the matter to an ALJ." Def.'s Br. at 3. Anderson did not file a response and an accompanying brief addressing this Court's subject matter jurisdiction. "A response to an opposed motion must be accompanied by a brief that sets forth the responding party's contentions of fact and/or law, and argument and authorities." Local Rule 7.1(d). The party asserting jurisdiction bears the burden of proof for a Rule 12(b)(1) motion to dismiss. *Ramming*, 281 F.3d at 161. Since Plaintiff is proceeding *pro se*, the Court liberally construes his allegations and makes more allowances. *See Hughes v. Rowe*, 449 U.S. 5, 9, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980); *Sec. & Exch. Comm'n v. AMX, Int'l, Inc.*, 7 F.3d 71, 75 (5th Cir.1993). However, Plaintiff's *pro se* status does not excuse him from following the Local Civil Rules or the Federal Rules. *See Douglass v. United Servs. Auto. Ass'n*, 65 F.3d 452, 455 n. 4 (5th Cir.1995) ("The statement of facts and argument sections of Douglass' brief contain no citations to the record, contrary to FED. R.APP. P. 28(a)(4), (6). Although we liberally construe briefs filed by *pro se* litigants, we still require them to comply with the Federal Rules of Appellate Procedure.... Douglass is cautioned that disregard for the rules of appellate procedure may result in dismissal." (citations omitted)). As the Commissioner asserts, it does not appear that this Court has subject matter jurisdiction in this case, and Plaintiff has not shown to this Court that it is otherwise. Therefore, the Commissioner's motion to dismiss is granted.

**IV.**

***3** The Commissioner's motion to dismiss (doc. # 22) is granted, and Plaintiff's complaint is dismissed without prejudice.

SO ORDERED.

**End of Document**

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# Appendix Tab 3

2012 WL 1717639
Only the Westlaw citation is currently available.
United States District Court,
S.D. Texas,
Houston Division.

Shirly J. LaBLANCHE (Mother of Decedent) In the Estate of Kent R. LaBlanche, Deceased, Plaintiff,
v.
Dr. Zulfiqar AHMAD, M.D., Defendant.

Civ. Action No. 4:11–cv–4504. | May 11, 2012.

**Attorneys and Law Firms**

Shirley Lablanche, Houston, TX, pro se.

Matthew M. Prewett, Houston, TX, for Defendant.

**Opinion**

***MEMORANDUM AND ORDER***

KEITH P. ELLISON, District Judge.

***1** Before the Court is Defendant's Amended Motion to Dismiss Under Rules 12(b)(2), 12(b)(6), 9(b), and 12(b)(1) and Brief in Support ("Motion"). (Doc. No. 14.) After considering the Motion, Plaintiff's Response (Doc. No. 16), and the applicable law, the Court concludes that the Motion must be **GRANTED.**

**I. BACKGROUD**

Proceeding *pro se*, Shirley J. LaBlanche ("LaBlanche" or "Plaintiff") filed this lawsuit in federal court in December 2011, bringing claims against Dr. Zulfiqar Ahmad ("Ahmad" or "Defendant"). (Doc. No. 1.) Defendant filed a Motion to Dismiss (Doc. No. 8), which the Court denied without prejudice to refiling, while simultaneously granting Plaintiff leave to amend her Complaint to cure the defects observed by Defendant. Plaintiff filed an Amended Claim for Diversity: Fraud, Medical Fraud, and Medical Malpractice of Death Certificate ("Amended Complaint"). (Doc. No. 13.) In the Amended Complaint, Plaintiff alleges that Defendant fraudulently documented "Possible Atherosclerotic Heart Disease" as the cause of death on her son's ("the decedent") death certificate. (Am. Compl. at 1.) According to Plaintiff, the decedent was only hospitalized for kidney failure, and had never experienced heart disease issues. (*Id.*) Plaintiff avers that Defendant at no time found, documented, diagnosed, or treated the decedent for atherosclerotic heart disease. (*Id.*) Plaintiff accuses Defendant of illegally and fraudulently describing the heart failure as a "possibility," when the State of Arizona (where the Death Certificate is registered) requires doctors to list "causes." (*Id.* at 2.) Furthermore, Plaintiff complains, Defendant fraudulently listed "end stage of kidney disease" after the non-existent "Possible Atherosclerotic Heart Disease." (*Id.*) Plaintiff brings her lawsuit pursuant to this Court's diversity jurisdiction, as well as its subject matter jurisdiction for fraud, medical fraud, and medical malpractice. (*Id.*) As relief, Plaintiff seeks correction of the Death Certificate, as well as damages. (*Id.*)

Defendant filed an Amended Motion to Dismiss. (Doc. No. 14.) Plaintiff filed a one-paragraph Response. (Doc. No. 16.) In the Response, Plaintiff claims that the lawsuit should not be dismissed because she has complied with Federal Rules of Civil Procedure 12(b) (1), 12(b)(2), 12(b)(6), and 9(b). (Resp. to Mot. Dismiss at 1.) Furthermore, Plaintiff avers that she has met the requirements outlined in the United States District Court Guidelines for Litigants Without Lawyers ("Guidelines"). (*Id.*) Plaintiff attaches these Guidelines, and observes that she specifically conformed to the requirements outlined in the Guidelines for a *pro se* plaintiff's filing of a complaint. (Ex. A to Resp. to Mot. Dismiss, Southern District of Texas Guidelines for Litigants Without Lawyers ("Guidelines"), at 1.)

**II. LEGAL STANDARD**

"Absent a rule or statute to the contrary, ... a federal court [may] exercise jurisdiction over only those defendants who are subject to the jurisdiction of courts of the state in which the court sits." *Point Landing, Inc. v. Omni Capital Intern., Ltd.*, 795 F.2d 415, 419 (5th Cir.1986), *aff'd sub nom. Omni Capital Intern., Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 108 S.Ct. 404, 98 L.Ed.2d 415 (1987). Because the Texas long-arm statute, Tex. Civ. Prac. & Rem.Code Ann. §§ 17.041–17.045, is coterminous with the Due Process Clause of the Fourteenth Amendment to the United States Constitution, the Court's constitutional due process inquiry into personal jurisdiction also serves as an inquiry into personal jurisdiction under the Texas long-arm statute. *Command–Aire Corp. v. Ontario Mech. Sales & Service Inc.*, 963 F.2d 90, 93–94 (5th Cir.1992).

***2** Plaintiffs bear the burden of demonstrating facts sufficient to support personal jurisdiction over any

nonresident defendants. *United Galvanizing, Inc. v. Imperial Zinc Corp.*, No. H–08–0551, 2008 WL 4746334, at *3 (S.D.Tex. Oct.27, 2008). To comport with constitutional due process, plaintiffs must show that: (1) defendants purposefully availed themselves of the benefits and protections of Texas law, thereby establishing "minimum contacts" with Texas such that defendants could reasonably have anticipated being haled into court there; and (2) under the circumstances, the exercise of personal jurisdiction does "not offend traditional notions of fair play and substantial justice." *Command–Aire Corp.* ., 963 F.2d. at 94 (citing *Asahi Metal Industry Co. v. Superior Court of California*, 480 U.S. 102, 107 S.Ct. 1026, 94 L.Ed.2d 92 (1987); *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); and *Asarco, Inc. v. Glenara, Ltd.* ., 912 F.2d 784 (5th Cir.1990)). " 'There are two types of minimum contacts: those that give rise to specific personal jurisdiction and those that give rise to general personal jurisdiction.' " *Johnston v. Multidata Systems Intern. Corp.*, 523 F.3d 602, 609 (5th Cir.2008) (quoting *Lewis v. Fresne*, 252 F.3d 352, 358 (5th Cir.2001)).

Specific jurisdiction exists "[w]hen a nonresident defendant has purposefully directed its activities at the forum state and the litigation results from alleged injuries that arise out of or relate to those activities." *Cent. Freight Lines, Inc. v. APA Transp. Corp.*, 322 F.3d 376, 381 (5th Cir.2003) (citation omitted). "The non-resident's purposefully directed activities in the forum must be such that he could reasonably anticipate being haled into court in the forum state." *Clemens v. McNamee*, 615 F.3d 374, 378 (5th Cir.2010) (citing *Burger King*, 471 U.S. at 474). *See also Choice Healthcare, Inc. v. Kaiser Foundation Health Plan of Colo.*, 615 F.3d 364, 369 (5th Cir.2010) ("The 'purposeful availment' element ensures that a defendant will not be haled into court in a jurisdiction solely as a result of random, fortuitous, or attenuated contacts or the unilateral activity of another person or third party."). Further, specific jurisdiction "requires a sufficient nexus between the non-resident's contacts with the forum and the cause of action." *Clemens*, 615 F.3d at 378–79. Indeed, the non-resident defendant must purposefully avail herself of the privilege of conducting activities in the forum state. *Id.* at 379.

General jurisdiction, in contrast, can be exercised when a defendant's contacts with the forum state are substantial, continuous, and systematic, though unrelated to the litigation. *Cent. Freight Lines, Inc.*, 322 F.3d at 381. The "continuous and systematic contacts test is a difficult one to meet, requiring extensive contacts between a defendant and a forum." *Johnston*, 523 F.3d at 609.

Although the party seeking to invoke the power of the court bears the burden of proving that jurisdiction exists, a *prima facie* showing suffices, and the plaintiff need not establish jurisdiction by a preponderance of the evidence. *Luv N' Care, Ltd. v. Insta–Mix, Inc.*, 438 F.3d 465, 469 (5th Cir.2006) (citation omitted). Moreover, the "court must resolve all undisputed facts submitted by the plaintiff, as well as all facts contested in the affidavits, in favor of jurisdiction." *Id.* (citation omitted). " 'The court may determine the jurisdictional issue by receiving affidavits, interrogatories, depositions, oral testimony, or any combination of the recognized methods of discovery.' " *Alfred v. Moore & Peterson*, 117 F.3d 278, 281 (5th Cir.1997) (quoting *Stuart v. Spademan*, 772 F.2d 1185, 1192 (5th Cir.1985)).

## III. ANALYSIS

***3** Defendant attaches an affidavit explaining that Defendant is licensed to practice medicine in the State of Arizona, not Texas, and has never treated any patients in Texas. (Doc. No. 14–2, Ex. 1 to Mot. Dismiss, Tauqir Z. Ahmad Aff. ¶ 4.) Moreover, the affidavit explains, Defendant has never:

- Had an office mailing address, telephone number, facsimile number, or e-mail address in Texas;
- Maintained any agents, servants, or employees (actual or apparent) in Texas;
- Advertised or solicited any person or entity in Texas;
- Maintained a banking, savings, or investment account in Texas;
- Borrowed money from a financial institution in Texas;
- Owned, leased, rented, or controlled property in Texas;
- Paid or been obliged to pay taxes in Texas;
- Maintained, or been required to maintain, a registered agent for service in Texas;
- Recruited Texas residents, directly or through an intermediary located in Texas, for employment inside or outside of Texas;

- Engaged in tortious conduct, and/or committed a tort (in whole or in part), in Texas; or
- Conducted activities in Texas, much less done so continuously, systematically or substantially.

(*Id.*) Plaintiff provides no allegations or evidence to make a *prima facie* case that this Court has personal jurisdiction over Defendant. Importantly, the Guidelines for Litigants without Lawyers state that they do "not take the place of a pro se litigant's responsibility to comply with the Local Rules (L.R.), the Federal Rules of Civil Procedure (Fed.R.Civ.P.) and all other laws." (Guidelines, at 1.) Indeed, the Guidelines emphasize that they are "not legal advice" and that any plaintiff relies on them at their "own risk." (*Id.*)

Of course, as Plaintiff is "proceeding *pro se* in this case, the Court must construe the Complaint liberally, and it should be mindful that 'a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.' " *Ekberg v. Wells Fargo Bank, N.A.*, No. A–11–CA–573 LY, 2011 WL 5999375, at *4 (W.D.Tex. Nov.30, 2011) (quoting *Erickson v. Pardus*, 551 U.S. 89, 127 S.Ct. 2197, 167 L.Ed.2d 1081 (2007) (per curiam)). Yet in her Amended Complaint, Plaintiff merely alleges that Defendant fraudulently filled out an Arizona Death Certificate. (Am. Compl. at 1–2.) Plaintiff nowhere claims that the Death Certificate was filled out in Texas, that the decedent died in Texas, or that Defendant otherwise had any contacts with Texas sufficient to give rise to personal or specific jurisdiction. Furthermore, the Death Certificate itself-attached to Plaintiff's Amended Complaint-shows the place of death as Arizona. (Am Comp. at 4.) The Court finds that it does not have personal jurisdiction over Defendant.

**IV. CONCLUSION**

For the reasons explained above, the Motion is **GRANTED.** Plaintiff's claims are dismissed without prejudice.

***4 IT IS SO ORDERED.**

**End of Document**

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER**

BEFORE THE COURT is Plaintiff's Motion seeking an order of civil contempt (Dkt. #74). After consideration of the Motion, and the Defendants' Response in Opposition, the Court finds the Motion should be denied for the reasons stated in the Response. It is, therefore,

ORDERED that Plaintiff's "Ex Parte Motion for Order to Show Cause and Application for Judgment of Civil Contempt" is DENIED.

DONE this _____ day of September, 2013, at Houston, Texas.

KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis

Plaintiff,

v.

Case No.: 4:12−cv−00592
Judge Kenneth M. Hoyt

Anita Kay Brunsting, et al.

Defendant.

# Official Transcript Filed

An official transcript has been filed. It may contain information protected from public disclosure by law. *See* E−Government Act of 2002, Fed. R. Civ. P. 5.2(a) or Fed. R. Crim. P. 49.1(a).

Ninety days after a transcript has been filed, it will be electronically available to the public on PACER. To comply with the rules on privacy, the parties must redact protected information before it is available on PACER.

If redaction is needed, the parties must file a statement listing the items to be redacted, with the transcript's docket number and the item's location by page and line. It must be filed within 21 days of the transcript being filed. A suggested form is at www.txs.uscourts.gov.

Only these portions of data may be visibile:

- Last four digits of a social security number or taxpayer identification number;
- Year of a person's birth;
- Initials of a minor's name;
- Last four digits of an account number; and
- City and state of a home address in criminal cases.

Additional redactions require a separate motion and court approval.

A party may view the transcript at the public terminals in the clerk's office or buy it through www.txs.uscourts.gov or by calling (713) 250−5500 . A party is only responsible for reviewing the:

- Opening and closing statements made for his party;
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- Testimony of witnesses called by his party; and
- Other parts ordered by the court.

Redaction is your responsibility. The court, clerk, court reporter, or transcriber will not review this transcript for compliance.

*David J. Bradley*, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER**

Before the Court is the plaintiff's, Candace Louise Curtis, motion for an order to show cause and application for contempt against the defendants, Anita Kay Brunsting and Amy Ruth Brunsting, trustee and co-trustee of the Brunsting Family Living Trust. In principle, the plaintiff seeks to examine and copy the "original" signatures on the Trust documents and to remove the defendants in their capacities as a result of their failure to comply with the plaintiff's discovery requests.

The Court is satisfied that the injunction entered in this case preserves the assets of the Trust Estate. The Court is further satisfied that copies of all documents requested by the plaintiff have been produced. However, the plaintiff has failed to inspect the original documents that the defendants have made available to the plaintiff.

Finally, the Court is of the view that the plaintiff's failure to employ counsel hinders the necessary discourse between the plaintiff and the defendants and further prevents the parties from fulfilling their responsibilities to the Court, *i.e.*, to manage and process all pretrial matters necessary to a resolution of this case. Therefore, the Court Directs that the plaintiff employ



20-20566.922

counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. The plaintiff's motion is Denied without prejudice.

It is so Ordered.

SIGNED on this 3rd day of October, 2013.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENT
TO PAY PREPARER OF WRITTEN FARM LEASE

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move for an Order permitting the payment of an invoice from Kroese & Kroese, P.C., certified public accountants, consistent with the Court's Order requiring approval of all disbursements of funds from the Trust (Dkt. #45).

1. By previous Order the Court authorized the Decedent's trust to renew a farm lease and authorized the Trustees to execute a lease document (Dkt. #78). Kroese & Kroese, P.C. in connection with its farm management activities thereafter prepared a farm lease, which was subsequently executed by Defendant Anita Kay Brunsting. The lease has been produced to Plaintiff pro se and the attorneys for the trust beneficiaries. The invoice from Kroese & Kroese, P.C. is attached and Defendants seek leave to pay it.

2. Accordingly, Defendants move for entry of the attached Order permitting the payments of this invoice. The disbursement will be paid out of Bank of America Checking acct: xxxxxxxx3536.

3. As instructed by the Court, all beneficiaries will be served with a copy of this Motion (through their counsel of record in the state court suits).

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
Fed. Id. No. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844
*gvie@millsshirley.com*

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail. Additionally, non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

KROESE KROESE P.C.
CERTIFIED PUBLIC ACCOUNTANTS

540 North Main Ave
Sioux Center, IA 51250
Phone: (712) 722-3375
E-mail: cpa@kk-cpa.com
Web: www.kk-cpa.com

Elmer H Brunsting Decedents Trust DTD
203 Bloomingdale Circle
Victoria, TX 77904

**Invoice Date:** 09/28/2013
**Invoice Number:** 50902

For professional service rendered as follows:

| | |
|---|---|
| Farm Management | 840.00 |
| | $840.00 |
| **Invoice Total** | $840.00 |

| | |
|---|---|
| Beginning Balance | $0.00 |
| Invoices | 840.00 |
| Payments | 0.00 |
| Adjustments | 0.00 |
| Finance Charges | 0.00 |
| Net Due | $840.00 |

| Current | 31 - 60 Days | 61 - 90 Days | 91 - 120 Days | Over 120 Days | Total |
|---|---|---|---|---|---|
| 840.00 | 0.00 | 0.00 | 0.00 | 0.00 | $840.00 |

*Please return bottom portion with payment.*

**Elmer H Brunsting Decedents Trust DTD**

**Client Number:** 9706

**Invoice Date:** 09/28/2013

**Invoice Number:** 50902

**Amount Due:** $840.00

**Amount Enclosed:** $_____

BALANCE IS DUE IN FULL ON OR BY THE 20TH OF THE MONTH. A 1.5% per month finance charge is assessed on past due accounts.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENT TO PAY PREPARER OF WRITTEN FARM LEASE**

BEFORE THE COURT is Defendants' Motion for Approval of Disbursement to Pay Kroese & Kroese, P.C. for preparation and renewal of the farm lease. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

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

An invoice in the amount of $840.00 from Kroese & Kroese, P.C., referenced as invoice no. 50902.

This invoice is to be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust).

DONE this _____ day of November, 2013, at Houston, Texas.

_____
KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants.* | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENT TO PAY PREPARER OF WRITTEN FARM LEASE**

BEFORE THE COURT is Defendants' Motion for Approval of Disbursement to Pay Kroese & Kroese, P.C. for preparation and renewal of the farm lease. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

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

An invoice in the amount of $840.00 from Kroese & Kroese, P.C., referenced as invoice no. 50902.

This invoice is to be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust).

SIGNED on this 12th day of November, 2013.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States District Court
Southern District of Texas
FILED
DEC 05 2013
David J. Bradley, Clerk of Court

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| ANITA KAY BRUNSTING, et al. | § | |
| | § | |
| Defendants. | § | |

**PLAINTIFF'S MOTION FOR APPROVAL OF DISBURSEMENT TO PAY FEE RETAINER**

Plaintiff Curtis, in an effort to comply with this Court's directive[1], herein moves the Court for an order permitting the payment of a retainer for fees and expenses to the law firm of Ostrom/Sain forthwith, consistent with the Court's Order requiring approval of all disbursements of funds from the trust[2].

**GROUND FOR MOTION**

1. Communications with Defendants have proved fruitless. Rather than break down into meaningless discussions of fault, it seems the prudent course to appease the Court's directive. However, Plaintiff has no funds for paying a fee retainer to obtain counsel and cannot be compelled to perform the impossible.

[1] Dkt. # 87
[2] Dkt. # 78



20-20566.930

2. At the Application for Injunction hearing on April 9, 2013, the Court addressed Plaintiff's concern over Defendants paying their legal fees with trust assets when the trust is not liable.[3]

3. The Court has foreseen this motion in the affirmative[4]. Plaintiff therefore requests an Order consistent with this Court's Directive to Plaintiff Curtis to retain counsel, and further asks the Court to instruct Defendants to render payment from the trust forthwith and to maintain the appropriate transaction records.

4. As instructed by the Court, all beneficiaries will be served with a copy of this Motion (through their counsel of record in the state court suits).

**CONCLUSION AND RELIEF SOUGHT**

Plaintiff prays that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

By: _____
Candace Curtis, Plaintiff PRO SE

[3] Transcript of April 9, 2013 page 46 line 10; the Court: "if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate."

[4] Transcript of April 9, 2013 page 46 line 10; the Court: "if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate."

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that service will be served by email and regular mail. Additionally, non-party beneficiaries will be served by email copy to any attorney-of-record for those parties in state court litigation.

Rik W. Munson 12-1-2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| Plaintiff, | § | |
| | § | |
| v | § | CIVIL ACTION NO. 4:12-cv-00592 |
| | § | Jury |
| ANITA KAY BRUNSTING, et al. | § | |
| | § | |
| Defendants. | § | |

**ORDER GRANTING PLAINTIFF'S MOTION FOR APPROVAL OF DISBURSEMENT TO PAY FEE RETAINER**

BEFORE THE COURT is Plaintiff's Motion for Approval of Disbursement to Pay Fee Retainer. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

ORDERED that the Defendants have authority to pay, and shall pay, the following:

A fee retainer, in the amount of $5,000.00, to OSTROM/Sain. Payment is to be mailed forthwith to OSTROM/Sain, 5020 Montrose Blvd., Suite 310, Houston, Texas 77006.

DONE this _____ day of December, 2013, at Houston, Texas.

_____

Kenneth Hoyt,
Judge of the United States District Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**NOTICE OF SETTING**

The parties are hereby notified that a motion hearing is set for **December 18, 2013 at 8:30 a.m.** and will be handled as a **telephone conference.** Each party shall call in to the Court's "meet me" line. The call shall be placed to (713) 250-5126.

Date: December 12, 2013

DAVID BRADLEY, CLERK

By: C. Horace, Case Manager to
Judge Kenneth M. Hoyt



20-20566.934

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants*. | § | |

DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR APPROVAL TO PAY RETAINER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting file this Response to plaintiff's Motion which seeks leave to pay a retainer from the Trust for employment of counsel (Dkt. No. 90). Defendants do not oppose the relief sought but request a similar distribution to pay attorney's fees they have incurred since the Court's temporary injunction order entered April 19, 2013.

1. Without a conference before filing, plaintiff has filed a motion for leave to pay a retainer in the amount of $5000, from trust assets, for employment of counsel.[1]

[1] LR 7.1(D) requires that the movant confer with respondent before filing a motion, and that the motion contain an averment that counsel cannot agree about the disposition of the motion. Pro se status does not excuse plaintiff from following the Local Rules or the Federal Rules. *Anderson v. Astrue*, 7:07-CV-0079-O, 2008 WL 2152024 (N.D. Tex. May 21, 2008). *See also LaBlanche v. Ahmad*, 4:11-CV-4504, 2012 WL 1717639 (S.D. Tex. May 11, 2012).

2. Defendants do not oppose the relief sought. Defendant reserve the right to have the Court determine at a later date whether the attorney's fees and expenses of plaintiff paid from the Trust should be charged against her share of the Trust.

3. Defendants' counsel had received a retainer check in the amount of $10,000 issued on April 2, 2013, from the Survivor's Trust account (check #143 as noted in the Master's Report at page 13 of the Detail of Accounts, Legal Fees). In light of the Court's temporary injunction order and the discussions at the temporary injunction hearing, counsel for defendants reimbursed the Trust on May 24, 2013, by issuing a check to the Trust in the amount of $10,000 (shown as EJ20120434 in the Master's Report at page 13 of the Detail of Accounts, Legal Fees). Counsel has not been paid any fees or expenses in this case since the hearing on the temporary injunction.

4. As a matter of fairness, defendants request that the Court permit a check in the amount of $5000 to issue to their attorneys for attorney's fees incurred, such disbursement to be made on the same terms as the Court may order for plaintiff's requested retainer. The Court is requested to take judicial notice of the proceedings that have occurred before it at the temporary injunction hearing and thereafter in this regard.

CONCLUSION AND RELIEF SOUGHT.

5. Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court enter the Defendants' proposed Order in connection with Plaintiff's Motion.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
Fed. Id. No. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844
*gvie@millsshirley.com*

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail.

*/s/ George W. Vie III*
George W. Vie III

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER GRANTING APPROVAL OF DISBURSEMENTS**

BEFORE THE COURT is plaintiff's motion for approval of disbursement to pay a retainer for employment of counsel (Dkt. No. 90), and defendants' response. After consideration of the motion and response, the Court finds the plaintiff's motion should be granted on the following terms. It is, therefore,

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

A check for a retainer in in the amount of $5000 to Ostrom/Sain LLP, 5020 Montrose, Suite 310, Houston, TX 77006, for employment of counsel for plaintiff.

A check for attorney's fees and expenses incurred by defendants after the temporary injunction Order entered April 19, 2013, in the amount of $5000 to Mills Shirley LLP, 2228 Mechanic Street, Suite 400, Galveston, TX 77550.

These checks are to be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust).

Signed on this _____ day of December, 2013.

_____
Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

SUBMISSION OF AGREED PROPOSED ORDER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Counsel for defendants Anita Kay Brunsting and Amy Ruth Brunsting submits the following Agreed Proposed Order in connection with the pending motion of plaintiff for approval of disbursement to pay a retainer for employment of counsel (Dkt. No. 90), and defendants' response (Dkt. No. 92).

1. Consistent with the comments of the Court at the hearing on plaintiff's motion, counsel for defendants has conferred with Mr. Ostrom of Ostrom/Sain LLP regarding entry of an agreed order resolving the disbursement issue. Plaintiff and defendants have reached agreement on the form and substance of an order, which is now submitted to the Court for entry.

2. All beneficiaries will be served with a copy of this submission and proposed agreed order (through their counsel of record in the state court suits).

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting, *joined by plaintiff and with her consent*, request the Court take notice of this filing and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
Fed. Id. No. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844
*gvie@millsshirley.com*

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail. Additionally, non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ George W. Vie III*
George W. Vie III

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**AGREED ORDER GRANTING APPROVAL OF DISBURSEMENTS**

BEFORE THE COURT is the parties' agreed proposed order in connection with plaintiff's motion for approval of disbursement to pay a retainer for employment of counsel (Dkt. No. 90), and defendants' response (Dkt. No. 92). Consistent with the comments of the Court at the hearing on plaintiff's motion, and after consideration of the agreed proposed order, the Court finds the plaintiff's motion should be granted on the following terms. It is, therefore,

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

A check for a retainer in in the amount of $5000 to Ostrom/Sain LLP, 5020 Montrose, Suite 310, Houston, TX 77006, for employment of counsel for plaintiff.

A check for attorney's fees and expenses incurred by defendants after the temporary injunction Order entered April 19, 2013, in the amount of $5000 to Mills Shirley LLP, 2228 Mechanic Street, Suite 400, Galveston, TX 77550.

These checks are to be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust).

Neither plaintiff nor defendants, by requesting entry of an agreed proposed order, waive the right to have the Court determine at a later date whether the above distributions should be charged against the respective parties' share of the Trust.

Any other request by plaintiff or defendants for a distribution from the Trust for reimbursement or prepayment of attorney's fees and expenses incurred is subject to further order of the Court.

Signed on this 30th day of December, 2013.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER FOLLOWING TELEPHONE CONFERENCE**
**HELD ON December 18, 2013 at 8:30 AM**

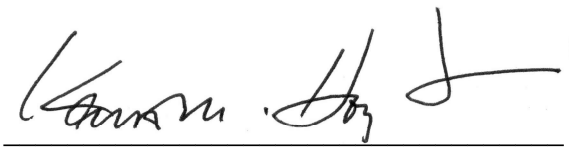
Appearances: Candace Curtis, Jason Ostrom, George William Vie, III

The following rulings were made:

Pursuant to phone conference, the parties agree to seek and agree upon an accommodation that satisfies the plaintiff's request for a disbursement for attorney's fees, if they can do so. The Court sanctions this process and sets December 30, 2013 as the deadline for filing any agreement.

It is so ORDERED.

SIGNED on this 18th day of December, 2013.



Kenneth M. Hoyt
United States District Judge



20-20566.943

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>PLAINTIFF, | §<br>§<br>§ | |
| V. | § | 4:12-CV-00592 |
| ANITA KAY BRUNSTING, AND<br>AMY RUTH BRUNSTING | §<br>§<br>§ | |

NOTICE OF APPEARANCE

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

NOTICE IS HEREBY MADE that the undersigned attorneys, will appear as the attorneys of record for Candace Louise Curtis, Plaintiff.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
JASON B. OSTROM
(Fed. Id. #33680)
(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

## CERTIFICATE OF SERVICE

In accordance with Texas Rules of Civil Procedure 21a, a copy of the foregoing instrument was forwarded by facsimile, hand-delivery, or certified mail, return receipt requested to the following on the 6th day of January, 2014:

Mr. George W. Vie III
(Fed. Id. #12402)
(TBA #20579310)
1021 Main, Suite 1950
Houston, Texas 77002
713.225.0547
713.225.0844 (Facsimile)

*/s/ Jason B. Ostrom*
Jason B. Ostrom
Nicole K. Sain Thornton

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff,* | § | |
| V. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants.* | § | |

**AGREED ORDER GRANTING APPROVAL OF DISBURSEMENTS**

BEFORE THE COURT is the parties' agreed proposed order in connection with plaintiff's motion for approval of disbursement to pay a retainer for employment of counsel (Dkt. No. 90), and defendants' response (Dkt. No. 92). Consistent with the comments of the Court at the hearing on plaintiff's motion, and after consideration of the agreed proposed order, the Court finds the plaintiff's motion should be granted on the following terms. It is, therefore,

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

A check for a retainer in in the amount of $5000 to Ostrom/Sain LLP, 5020 Montrose, Suite 310, Houston, TX 77006, for employment of counsel for plaintiff.

A check for attorney's fees and expenses incurred by defendants after the temporary injunction Order entered April 19, 2013, in the amount of $5000 to Mills Shirley LLP, 2228 Mechanic Street, Suite 400, Galveston, TX 77550.

These checks are to be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust).

Neither plaintiff nor defendants, by requesting entry of an agreed proposed order, waive the right to have the Court determine at a later date whether the above distributions should be charged against the respective parties' share of the Trust.

Any other request by plaintiff or defendants for a distribution from the Trust for reimbursement or prepayment of attorney's fees and expenses incurred is subject to further order of the Court.

SIGNED on this 6th day of January, 2014.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**NOTICE OF SETTING**

The parties are hereby notified that a status conference is set for **February 28, 2014 at 8:30 a.m.** and will be handled as a telephone conference. The filing or removing party, or its attorney if represented, is responsible for initiating the conference call and must have all other participating parties, or their counsel, if applicable, on the line when contacting the Court. ***Under no circumstances, should any party call the Court's conference line individually***. All conference calls are to be placed to **(713) 250-5613.**

Date: February 24, 2014

DAVID BRADLEY, CLERK

By: C. Horace, Case Manager to
Judge Kenneth M. Hoyt



20-20566.948

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE HELD ON February 28, 2014 at 8:30 AM**

Appearances: Jason B. Ostrom, George William Vie, III

The following rulings were made:

Pursuant to phone conference conducted this day, the plaintiff, who determines that additional parties and claims may be necessary for a complete resolution of the case, also fears loss of diversity jurisdiction on the part of the Court. In this regard, and with an eye toward resolving these concerns, the plaintiff is to report the nature and extent of this progress to the Court on or before March 30, 2014. Docket call is cancelled.

It is so ORDERED.

SIGNED on this 28th day of February, 2014.

Kenneth M. Hoyt
United States District Judge



20-20566.949

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENTS
TO PAY PROPERTY TAX BILLS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move for an Order permitting the payment of farm property taxes to four invoices from Randall J. Jacobsma, Sioux County Treasurer, Orange City, Iowa, consistent with the Court's Order requiring approval of all disbursements of funds from the Trust (Dkt. #45).

1. The decedent's trust must pay the April 1, 2014, installments on property taxes for four parcels of land in Sioux County, Iowa, referenced as 1002101003, 1002126001, 1002151002, and 1002176001. These parcels are assets of Elmer H. Brunsting Decedent's Trust.

Evidence of the payments that are due to Randall J. Jacobsma, Sioux County Treasurer, is attached. (Prior payment entries have been redacted). Movants seek leave to pay the taxes due for the next six months on each parcel, in the amount of $306 (parcel 1002101003); $403 (parcel 1002126001); $447 (parcel 1002151002); and $459 (parcel 1002176001).

2. Accordingly, Defendants move for entry of the attached Order permitting the payments of these invoices. The disbursement for property taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536.

3. As instructed by the Court, opposing counsel and all beneficiaries will be served with a copy of this Motion (through their counsel of record in the state court suits).

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
Fed. Id. No. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844
*gvie@millsshirley.com*

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ George W. Vie III*
George W. Vie III

# Appendix – Exhibit A

# Parcel Detail Information

Detail Information

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 779040000
NW NW

NW NW EXC TR 542.5' X 660'

**Parcel: 1002101003**

**District: 210**

| 2012 Real Estate Payment Details (Annual Amount: $612.00) | Amount |
|---|---|
| **Installment 1 - Delinquent on 10/01/2013** | $306.00 |
| **Interest and Fees for Installment 1** | |
| **Payment Applied for Installment 1** | ($306.00) |
| **Amount Due for Installment 1** | $0.00 |
| **Installment 2 - Delinquent on 04/01/2014** | $306.00 |
| **Interest and Fees for Installment 2** | $0.00 |
| **Payment Applied for Installment 2** | $0.00 |
| **Amount Due for Installment 2** | $306.00 |
| **Total Amount Payable Online:** | **$306.00** |

Online Payment Details

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# Parcel Detail Information

## Detail Information

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 779040000
NE NW

NE NW

**Parcel: 1002126001**

**District: 210**

| 2012 Real Estate Payment Details (Annual Amount: $806.00) | Amount |
|---|---|
| **Installment 1 - Delinquent on 10/01/2013** | $403.00 |
| **Interest and Fees for Installment 1** | |
| **Payment Applied for Installment 1** | ($403.00) |
| **Amount Due for Installment 1** | $0.00 |
| **Installment 2 - Delinquent on 04/01/2014** | $403.00 |
| **Interest and Fees for Installment 2** | $0.00 |
| **Payment Applied for Installment 2** | $0.00 |
| **Amount Due for Installment 2** | $403.00 |
| **Total Amount Payable Online:** | **$403.00** |

## Online Payment Details

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< Back

Sioux County Home Page

# Parcel Detail Information

Detail Information

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 779040000
SW NW

SW NW

**Parcel: 1002151002**

**District: 210**

| 2012 Real Estate Payment Details (Annual Amount: $894.00) | Amount |
|---|---|
| **Installment 1 - Delinquent on 10/01/2013** | $447.00 |
| **Interest and Fees for Installment 1** | |
| **Payment Applied for Installment 1** | ($447.00) |
| **Amount Due for Installment 1** | $0.00 |
| **Installment 2 - Delinquent on 04/01/2014** | $447.00 |
| **Interest and Fees for Installment 2** | $0.00 |
| **Payment Applied for Installment 2** | $0.00 |
| **Amount Due for Installment 2** | $447.00 |
| **Total Amount Payable Online:** | **$447.00** |

Online Payment Details

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Powered By: GTS

# Parcel Detail Information

Detail Information

BRUNSTING, ELMER H.
DECEDENTS TRUST
203 BLOOMINDALE CIR
VICTORIA TX 779040000
SE NW

SE NW

**Parcel: 1002176001**

**District: 210**

| 2012 Real Estate Payment Details (Annual Amount: $918.00) | Amount |
|---|---|
| **Installment 1 - Delinquent on 10/01/2013** | $459.00 |
| **Interest and Fees for Installment 1** | |
| **Payment Applied for Installment 1** | ($459.00) |
| **Amount Due for Installment 1** | $0.00 |
| **Installment 2 - Delinquent on 04/01/2014** | $459.00 |
| **Interest and Fees for Installment 2** | $0.00 |
| **Payment Applied for Installment 2** | $0.00 |
| **Amount Due for Installment 2** | $459.00 |
| **Total Amount Payable Online:** | **$459.00** |

Online Payment Details

Need Help? Request Assistance Online

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Powered By: GTS

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENTS TO PAY PROPERTY TAX BILLS**

BEFORE THE COURT is Defendants' Motion for Approval of Disbursements to Pay Property Tax Bills. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

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

$306.00 to Randall J. Jacobsma, Sioux County Treasurer, Orange City, Iowa, for property taxes to be paid on or before April 1, 2014, on land in Sioux County, Iowa, referenced as Parcel 1002101003;

$403.00 to Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or before April 1, 2014, on land in Sioux County, Iowa, referenced as Parcel 1002126001;

$447.00 to Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or before April 1, 2014, on land in Sioux County, Iowa, referenced as Parcel 1002151002;

$459.00 to Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or before April 1, 2014, on land in Sioux County, Iowa, referenced as Parcel 1002176001.

These four invoices are to be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust).

SIGNED on this _____ day of March, 2014.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF DISBURSMENTS TO PAY PROPERTY TAX BILLS**

Before the Court is Defendants' Motion for Approval of Disbursements to Pay Property Tax Bills. After consideration of the Motion, the Court finds it should be GRANTED for the reasons stated in the Motion.

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

$306.00 to Randall J. Jacobsma, Sioux County Treasurer, Orange City, Iowa, for property taxes to be paid on or before April 1, 2014, on land in Sioux County, Iowa, referenced as Parcel 1002101003;

$403.00 to Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or before April 1, 2014, on land in Sioux County, Iowa, referenced as Parcel 1002126001;

$447.00 to Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or before April 1, 2014, on land in Sioux County, Iowa, referenced as Parcel 1002151002;

$459.00 to Randall J. Jacobsma, Sioux County Treasurer, for property taxes to be paid on or before April 1, 2014, on land in Sioux County, Iowa, referenced as Parcel 1002176001.

These four invoices are to be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust).

SIGNED on this 10th day of March, 2014.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' SECOND MOTION FOR APPROVAL OF TAX PAYMENTS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move for an Order permitting the payment of tax-related debts, consistent with the Court's Order requiring approval of all disbursements of funds from the Trust (Dkt. #45).

1. At the temporary restraining order hearing on April 9, 2013, defendants' counsel and defendant Anita Kay Brunsting advised the Court that tax payments from the Trust were due in the immediate future. The Court directed defendants to move for an Order authorizing the payments from Trust funds. Thereafter, the Court entered an Order requiring approval of all disbursements.

2. Tax payments are again due. The decedent's trust has a 2013 federal tax payment due of $28,956. The decedent's trust also has an Iowa state tax payment due of $2139. The survivor's trust has a federal tax payment of $27 due.

The decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536. The survivor's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3523.

3. Accordingly, defendants move for entry of the attached Order permitting the timely payments of these debts. As instructed by the Court, all beneficiaries will be served with a copy of this Motion.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
*gvie@millsshirley.com*
Fed Id. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation

*/s/ George W. Vie III*
George W. Vie III

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER GRANTING DEFENDANTS' SECOND MOTION FOR APPROVAL OF TAX PAYMENTS**

BEFORE THE COURT is defendants' Second Motion for Approval of Tax Payments. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

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

The decedent's trust federal tax payment in the amount of $28,956.00;

The decedent's trust Iowa state tax payment in the amount of $2139.00;

The survivor's trust federal tax payment in the amount of $27.00.

The decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536. The survivor's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3523.

SIGNED on this _____ day of _____, 2014.

_____
Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER GRANTING DEFENDANTS' SECOND MOTION FOR APPROVAL OF TAX PAYMENTS**

Before the Court is defendants' Second Motion for Approval of Tax Payments. After consideration of the Motion, the Court finds it should be GRANTED for the reasons stated in the Motion.

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

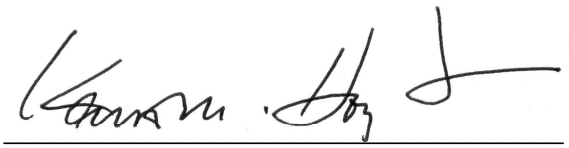
The decedent's trust federal tax payment in the amount of $28,956.00;

The decedent's trust Iowa state tax payment in the amount of $2139.00;

The survivor's trust federal tax payment in the amount of $27.00.

The decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536. The survivor's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3523.

SIGNED on this 27th day of March, 2014.



Kenneth M. Hoyt
United States District Judge



20-20566.963

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AND | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' MOTION FOR APPROVAL OF QUARTERLY TAX PAYMENTS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move for an Order permitting the payment of quarterly federal and Iowa state estimated income tax payments, consistent with the Court's Order requiring approval of all disbursements of funds from the Trust (Dkt. #45).

1. The Court has previously entered two orders (Dkt. #44, 102) permitting the decedent's trust and survivor's trust to make 2012 and 2013 federal and Iowa state tax payments when due in the respective tax years. Defendants now request approval to make quarterly estimated federal and state income tax payments for tax year 2014 liability for the decedent's trust, so as to avoid any future interest or penalties. (The survivor's trust income tax liability is sufficiently small that quarterly estimated payments are not necessary).

2. The quarterly estimated federal tax payment will be $7120. The quarterly estimated state tax payment will be $535. The decedent's trust estimated tax payments will be paid out of Bank of America Checking acct: xxxxxxxx3536.

3. Accordingly, defendants move for entry of the attached Order permitting the payment of quarterly estimated federal and state tax payments. As instructed by the Court, counsel for all beneficiaries will be served with a copy of this Motion.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
*gvie@millsshirley.com*
Fed Id. 12402
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation

*/s/ George W. Vie III*
George W. Vie III

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>*Plaintiff*, | § | |
| v. | § | 4-12-CV-00592 |
| ANITA KAY BRUNSTING, and<br>AMY RUTH BRUNSTING<br>*Defendants*. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF QUARTERLY ESTIMATED TAX PAYMENTS**

BEFORE THE COURT is defendants' Motion for leave to make quarterly estimated federal and Iowa state income tax payments for tax year 2014, applicable to the decedent's trust. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion. It is, therefore,

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

The decedent's trust quarterly estimated federal income tax payments in the amount of $7120 each quarter;

The decedent's trust Iowa quarterly estimated state income tax payment in the amount of $535 each quarter;

The decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536.

SIGNED on this _____ day of April, 2014.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF QUARTERLY ESTIMATED TAX PAYMENTS**

Before the Court is defendants' Motion for leave to make quarterly estimated federal and Iowa state income tax payments for tax year 2014, applicable to the decedent's trust. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion.

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

- The decedent's trust quarterly estimated federal income tax payments in the amount of $7120 each quarter;
- The decedent's trust Iowa quarterly estimated state income tax payment in the amount of $535 each quarter;
- The decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536.

SIGNED on this 16th day of April, 2014.

Kenneth M. Hoyt
United States District Judge



20-20566.967

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| *Plaintiff*, | § | |
| V. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, AND AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |
| *Defendants.* | § | |

DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENTS

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting move for an Order permitting the payment of two invoices from a tax preparer, consistent with the Court's Order requiring approval of all disbursements of funds from the Trust (Dkt. #45).

1. By Order entered March 27, the Court authorized payments from Trust funds of federal and Iowa state income taxes for tax year 2013.

2. The decedent's trust and survivor's trust employed Kroese & Kroese P.C., a CPA firm, to prepare the necessary 2013 income tax returns. Kroese & Kroese P.C. has submitted invoices for its professional services in the amount of $825 for the decedent's trust return and $350 for the survivor's trust return. The invoices are attached.

3. Defendants move for entry of the attached Order permitting the payments of these invoices. The disbursement for tax preparation of the decedent's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3536. The disbursement for tax preparation of the survivor's trust taxes will be paid out of Bank of America Checking acct: xxxxxxxx3523.

4. As instructed by the Court, all beneficiaries will be served with a copy of this Motion through their counsel of record in this case or in the state court suits.

CONCLUSION AND RELIEF SOUGHT.

Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court grant this Motion and enter the attached Order.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: */s/ George W. Vie III*
George W. Vie III
*gvie@millsshirley.com*
State Bar No. 20579310
1021 Main, Suite 1950
Houston, Texas 77002
Telephone: 713.225.0547
Fax: 713.225.0844

ATTORNEYS FOR DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail. Additionally, non-party beneficiaries will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ George W. Vie III*
George W. Vie III

# Appendix Tab 1

KROESE & KROESE P.C.
CERTIFIED PUBLIC ACCOUNTANTS

540 North Main Ave
Sioux Center, IA 51250
Phone: (712) 722-3375
E-mail: cpa@kk-cpa.com
Web: www.kk-cpa.com

Elmer H Brunsting Decedents Trust DTD
203 Bloomingdale Circle
Victoria, TX 77904

**Invoice Date:** 03/28/2014
**Invoice Number:** 55608

For professional service rendered as follows:

Preparation of 1041 Estates and Trusts Tax Return
Trust Work

| | |
|---|---|
| | $825.00 |
| **Invoice Total** | $825.00 |
| Beginning Balance | $0.00 |
| Invoices | 825.00 |
| Payments | 0.00 |
| Adjustments | 0.00 |
| Finance Charges | 0.00 |
| Net Due | $825.00 |

| Current | 31 - 60 Days | 61 - 90 Days | 91 - 120 Days | Over 120 Days | Total |
|---|---|---|---|---|---|
| 825.00 | 0.00 | 0.00 | 0.00 | 0.00 | $825.00 |

*Please return bottom portion with payment.*

**Elmer H Brunsting Decedents Trust DTD**

**Client Number:** 9706

**Invoice Date:** 03/28/2014

**Invoice Number:** 55608

**Amount Due:** $825.00

**Amount Enclosed:** $_____

BALANCE IS DUE IN FULL ON OR BY THE 20TH OF THE MONTH. A 1.5% per month finance charge is assessed on past due accounts.

KROESE & KROESE P.C.
CERTIFIED PUBLIC ACCOUNTANTS

540 North Main Ave
Sioux Center, IA 51250
Phone: (712) 722-3375
E-mail: cpa@kk-cpa.com
Web: www.kk-cpa.com

Nelva E Brunsting Surviviors Trust
203 Bloomingdale Cir
Victoria, TX 77904

**Invoice Date:** 03/28/2014
**Invoice Number:** 55685

For professional service rendered as follows:

| | |
|---|---|
| Preparation of 1041 Estates and Trusts Tax Return | 350.00 |
| | $350.00 |
| **Invoice Total** | $350.00 |

| | |
|---|---|
| Beginning Balance | $0.00 |
| Invoices | 350.00 |
| Payments | 0.00 |
| Adjustments | 0.00 |
| Finance Charges | 0.00 |
| Net Due | $350.00 |

| Current | 31 - 60 Days | 61 - 90 Days | 91 - 120 Days | Over 120 Days | Total |
|---|---|---|---|---|---|
| 350.00 | 0.00 | 0.00 | 0.00 | 0.00 | $350.00 |

*Please return bottom portion with payment.*

**Nelva E Brunsting Surviviors Trust**

**Client Number:** 9963

**Invoice Date:** 03/28/2014
**Invoice Number:** 55685
**Amount Due:** $350.00
**Amount Enclosed:** $_____

BALANCE IS DUE IN FULL ON OR BY THE 20TH OF THE MONTH. A 1.5% per month finance charge is assessed on past due accounts.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| | § | |
| ANITA KAY BRUNSTING, *et al,* | § | |
| | § | |
| Defendants. | § | |

**ORDER GRANTING DEFENDANTS' MOTION FOR APPROVAL OF DISBURSEMENTS**

Before the Court is defendants' Motion for approval of the payment of two invoices from a tax preparer. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion.

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

- Kroese & Kroese P.C.'s invoice 55608 in the amount of $850.00;
- Kroese & Kroese P.C.'s invoice 55685 in the amount of $350.00.

Invoice 55608 will be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust). Invoice 55685 will be paid out of Bank of America Checking acct: xxxxxxxx3523 (survivor's trust).

SIGNED on this _____ day of April, 2014.

Kenneth M. Hoyt
United States District Judge



20-20566.974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER GRANTING DEFENDATS' MOTION FOR APPROVAL OF DISBUREMENTS**

Before the Court is defendants' Motion for approval of the payment of two invoices from a tax preparer. After consideration of the Motion, the Court finds it should be granted for the reasons stated in the Motion.

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

- Kroese & Kroese P.C.'s invoice 55608 in the amount of $850.00;
- Kroese & Kroese P.C.'s invoice 55685 in the amount of $350.00.

Invoice 55608 will be paid out of Bank of America Checking acct: xxxxxxxx3536 (decedent's trust). Invoice 55685 will be paid out of Bank of America Checking acct: xxxxxxxx3523 (survivor's trust).

SIGNED on this 22nd day of April, 2014.

Kenneth M. Hoyt
United States District Judge



20-20566.975

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS,<br>PLAINTIFF | §<br>§ | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-00592 |
| | § | JUDGE KENNETH M. HOYT |
| ANITA KAY BRUNSTING,<br>AMY RUTH BRUNSTING,<br>AND DOES 1-100,<br>DEFENDANTS | §<br>§<br>§<br>§ | JURY TRIAL DEMANDED |

# MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candice Louis Curtis and files this Motion for Leave to File First Amended Petition pursuant to Federal Rule of Civil Procedure 15(a), and in support thereof would respectfully show as follows:

## I. INTRODUCTION

1. In light of recently discovered evidence in this case, Plaintiff moves this Court to permit her to file an amended complaint. The proposed amendment asserts an additional legal theory grounded in the same basic facts as the existing complaint, but that will ensure that all parties to be impacted by the ultimate judgment are participants. Moreover, because the claim to be asserted in the amendment appears to be meritorious, it would be in the interests of justice for this claim to be included in the case.

## II. BACKGROUND

2. In her Original Petition, Plaintiff brought causes of action against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust, stemming from

actions they took with regard to the Trust and Trust assets that harmed Plaintiff.

3. Through reviewing the hundreds of documents produced, Plaintiff has discovered that the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment ("Modification Documents") executed by Nelva Brunsting after her husband's death improperly attempted to change the terms of the then-irrevocable Trust. Plaintiff now seeks leave to file a Declaratory Judgment Action as to the validity of the Modification Documents.

## III. ARGUMENTS AND AUTHORITY

4. Leave to amend the pleadings "shall be freely given when justice so requires." FED. R. CIV. P. 15(a). The United States Supreme Court has long instructed that "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 183 (1962). The Ninth Circuit, moreover, has stated that the policy of permitting amendments "should be applied with 'extreme liberality.'" *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).

5. Rule 15(a) reinforces one of the fundamental policies underlying the Federal Rules - that pleadings are not an end in themselves, but instead are only a means of helping ensure that each case is decided on its merits. *See* 6 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1473, at 521 (2nd ed. 1990). Thus, "if the underlying facts relied upon by a plaintiff may be a proper subject for relief, he ought to be afforded an opportunity to test his claim on the merits." *Foman*, 371 U.S. at 182; *see also Frost v. Perry*, 919 F. Supp. 1459, 1468 (D. Nev. 1996) (stating that Rule 15 should be interpreted "very liberally, in order to permit meritorious actions to go forward, despite inadequacies in the pleadings").

6. Quite appropriately, "courts have not imposed any arbitrary timing restrictions on a party's request for leave to amend and permission has been granted under Rule 15(a) at various

stages of the litigation: following discovery; after a pretrial conference; . . . when the case is on the trial calendar and has been set for a hearing by the district court; at the beginning, during, and at the close of trial; after a judgment has been entered; and even on remand following an appeal." 6 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1488, at 652-57 (2d ed. 1990) (citations omitted). Thus, delay - either in seeking to amend or occasioned by an amendment - in itself cannot justify denial of leave to amend. *See, e.g., DCD Programs*, 833 F.2d at 186.

7. Given the liberal policy toward amendments, the burden of demonstrating why leave to amend should not be granted falls squarely on the nonmoving party. *See id.* at 187; Frost, 919 F. Supp. at 1469. In deciding whether the nonmovant has carried this burden, courts commonly consider the following four factors: (1) bad faith or dilatory motive on the part of the movant; (2) undue delay in filing the motion; (3) prejudice to the opposing party; and (4) the futility of the proposed amendment. *See, e.g., Roth v. Marquez*, 942 F.2d 617, 628 (9th Cir. 1991).

8. Plaintiff has not unduly delayed submitting the proposed amendment, as the evidence supporting the claim has only recently come to light. These facts warrant an amendment of the Plaintiff's pleadings.

9. The Defendants would not be unfairly prejudiced by such an amendment, and their counsel has indicated that he is not opposed to our Motion for Leave.

10. Plaintiff therefore seeks leave to file the First Amended Complaint attached hereto as Exhibit "A." Justice requires that Plaintiff be afforded an opportunity to test the merits of that claim.

## IV. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) grant leave to file the First

Amended Complaint attached hereto as Exhibit "A," and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
JASON B. OSTROM
(Fed. Id. #33680)
(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

## CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with opposing counsel and they are unopposed to this motion to amend the complaint.

*/s/ Jason B. Ostrom*
Jason B. Ostrom

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ Jason B. Ostrom*
Jason B. Ostrom

# Exhibit A

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS,<br>PLAINTIFF | §<br>§ | |
| VS. | §<br>§ | CIVIL ACTION NO. 4:12-CV-00592<br>JUDGE KENNETH M. HOYT |
| ANITA KAY BRUNSTING,<br>AMY RUTH BRUNSTING,<br>AND DOES 1-100,<br>DEFENDANTS | §<br>§<br>§<br>§ | JURY TRIAL DEMANDED |

# PLAINTIFF'S FIRST AMENDED PETITION

## I. PARTIES

1. Plaintiff, Candice Louis Curtis is a citizen of the State of California.

2. Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has answered and appeared herein.

3. Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has answered and appeared herein.

4. Necessary Party and involuntary plaintiff is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas and is expected to waive the issuance of citation. He is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

5. Necessary Party is Carole Ann Brunsting, who is a citizen of the State of Texas, and who can be served with citation at 5822 Jason St., Houston, Texas 77074. She is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

## II. JURISDICTION AND VENUE

6. This Court had jurisdiction of the state law claims alleged herein pursuant to 28 USC § 1332(a)(1) – 28 USC § 1332(b), and 28 USC § 1332(C)(2) in that this action is between parties who are citizens of different states and the amount in controversy exceeds the sum of $75,000.00, exclusive of interests and costs. Jurisdiction may be destroyed if all necessary parties are joined.

7. The Res in this matter includes assets belonging to the Brunsting Family Living Trust ("Trust") and assets belonging to the Estate of Nelva Brunsting, Deceased, under the care and control of Necessary Party Carl Brunsting.

## III. NATURE OF ACTION

8. This action arises out of the misappropriate and mismanagement of assets that belonged to Nelva Brunsting during her life and of assets that belonged to the Brunsting Family Trust, and the execution of invalid documents seeking to amend the Brunsting Family Trust.

## IV. CAUSES OF ACTION

9. Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff , Carl Brunsting, and Carole Brunsting, a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff's interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment

interest and costs of court.

10. Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.

11. Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.

12. Money Had and Received. Defendants have taken money that belongs in equity and good conscience to Plaintiff,and has done so with malice and through fraud. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.

13. Conversion. Defendants have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have

wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brusting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court costs, both individually and on behalf of the Decedent's Estate.

14. Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.

15. Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.

16. Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance

with the Texas Property Code.

## V. JURY DEMAND

17. Plaintiff hereby makes her demand for a jury trial in this matter.

## VI. PRAYER

18. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
JASON B. OSTROM
(Fed. Id. #33680)
(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

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ Jason B. Ostrom*
Jason B. Ostrom

UNITED STATES DISTRICT COURT
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2. Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has answered and appeared herein.

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4. Necessary Party and involuntary plaintiff is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas and is expected to waive the issuance of citation. He is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

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11. Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.

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17. Plaintiff hereby makes her demand for a jury trial in this matter.

## VI. PRAYER

18. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

OSTROM/Sain
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BY: */s/ Jason B. Ostrom*
JASON B. OSTROM
(Fed. Id. #33680)
(TBA #24027710)
NICOLE K. SAIN THORNTON
(TBA #24043901)
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Attorneys for Plaintiff

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ Jason B. Ostrom*
Jason B. Ostrom

UNITED STATES DISTRICT COURT
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| CANDACE LOUISE CURTIS,<br>PLAINTIFF | § | |
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| ANITA KAY BRUNSTING,<br>AMY RUTH BRUNSTING,<br>AND DOES 1-100,<br>DEFENDANTS | § | JURY TRIAL DEMANDED |

# MOTION TO REMAND

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candice Louis Curtis and files this Motion to Remand pursuant to Federal Rule of Civil Procedure 15(a), and in support thereof would respectfully show as follows:

## I. INTRODUCTION

1. Plaintiff filed her Original Petition bringing causes of action against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. Diversity jurisdiction existed between Plaintiff and Defendants.

2. Contemporaneously with this Motion, Plaintiff is filing her Motion for Leave to File First Amended Petition, which will add necessary parties to this case in order to have complete adjudication of all matters and to avoid inconsistent judgments. Necessary parties include Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting.

3. Plaintiff believes that the filing of the First Amended Petition and addition of necessary parties will destroy the diversity jurisdiction that is required by 28 U.S.C. § 1332(a).

4. Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased, is currently a party to

an action pending in Harris County Probate Court Number Four involving the same parties. Similar issues of fact and law are pending in that court.

## II. ARGUMENTS AND AUTHORITIES

5. Here, the interests of justice and comity with State courts counsel in favor of this Court abstaining from exercising further jurisdiction over this Action and remanding it to Harris County Probate Court Number Four.

6. The First Amended Petition seeks a declaration as to certain Trust documents, and complete relief as to this issue cannot be granted without the addition of necessary parties, which will destroy diversity jurisdiction.

7. If this Court retains this case despite the lack of diversity, it is possible that inconsistent judgments may be reached as between this Court and Harris County Probate Court Number Four where the Estate of Nelva Brunsting, Deceased is pending and where similar issues of fact and law are currently pending.

8. Because diversity jurisdiction will be destroyed via the First Amended Petition and because similar issues of fact and law are pending before Harris County Probate Court Number Four, equity mandates that this cause be remanded to Harris County Probate Court Number Four and consoldiated with the cause pending under Cause Number 412,249.

9. Counsel for Defendants Anita Brunsting and Amy Brunsting has been consulted and is not opposed to the remand.

## IV. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) remand this cause of action to Harris County Probate Court Number Four to be consolidated into Cause Number 412,249 and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
JASON B. OSTROM
(Fed. Id. #33680)
(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

## CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with opposing counsel and they are unopposed to this motion to remand.

*/s/ Jason B. Ostrom*
Jason B. Ostrom

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ Jason B. Ostrom*
Jason B. Ostrom

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

| | | |
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| ANITA KAY BRUNSTING,<br>AMY RUTH BRUNSTING,<br>AND DOES 1-100,<br>DEFENDANTS | § | JURY TRIAL DEMANDED |

## 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.

_____

JUDGE PRESIDING

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS,<br>PLAINTIFF | §<br>§ | |
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## ORDER GRANTING MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION

On this day the Court considered the Motion for Leave to File First Amended Petition filed by Plaintiff, Candice Louis Curtis seeking leave to file Plaintiff's First Amended Petition. The Court, having considered the same, is of the opinion and finds that Plaintiff's request to amend should be granted. It is therefore,

ORDERED that the Plaintiff is hereby granted leave to amend her Original Petition by filing her First Amended Petition in its stead.

SIGNED on this ____ day of _____, 2014.

_____
JUDGE PRESIDING

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER GRANTING MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION**

On this day, the Court considered the plaintiff's motion for leave to file first amended petition. The Court, having considered the same, is of the opinion and finds that plaintiff's request to amend should be GRANTED.

It is therefore, ORDERED that the plaintiff is hereby granted leave to amend her original petition by filing her first amended petition in its stead.

SIGNED on this 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge



20-20566.999

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**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.



20-20566.1000

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 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

United States District Court
Southern District of Texas
FILED
JUL 25 2016
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | Civil Action No. 4:12-cv-00592 |
| ANITA KAY BRUNSTING, et al<br>Defendants | §<br>§ | |

**PLAINTIFF CANDACE LOUISE CURTIS'**
**MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING.**

As the Plaintiff in the above-captioned matter, I respectfully ask the Court for permission to participate in electronic case filing ("e-filing") in this case. I hereby affirm that:

1. I have reviewed the requirements for e-filing and agree to abide by them.
2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.
3. I have regular access to the technical requirements necessary to e-file successfully:
   a. A computer with internet access;
   b. An email account on a daily basis to receive notifications from the Court and notices from the e-filing system.
   c. A scanner to convert documents that are only in paper format into electronic files;
   d. A printer or copier to create required paper copies such as chambers copies;
   e. A word-processing program to create documents; and
   f. A pdf reader and a pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.

Date: 7/23/2016

Respectfully submitted,

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

United States District Court
Southern District of Texas
FILED
JUL 25 2016
David J. Bradley, Clerk of Court

CANDACE L. CURTIS
218 Landana Street
American Canyon, CA 94503
925-759-9020
occurtis@sbcglobal.net

July 23, 2016
Ms. Cynthia Horace
Case Manager to Judge Kenneth M. Hoyt
United States District Clerk
P.O. Box 61010
Houston, TX 77208-1010

RE: Permission for Electronic Case Filing
Civil Action No. 4:12-cv-00592

Dear Ms. Horace:

I am a Pro se Plaintiff. I have Rule 11and Rule 60 Motions for filing in the above –referenced case, which has been closed.

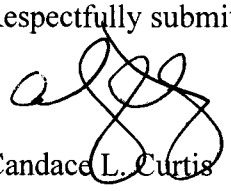
I have also filed a related case into this Court that is currently pending before Judge Bennett (4:16-cv-01969).

It would be impractical to file these motions on paper due to the large number of exhibits.

Electronic filing would be more cost effective, efficient, and would preserve the required pdf formatting making it more navigable for the Court.

Thank you for your attention to this matter.

Respectfully submitted,



Candace L. Curtis

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | Civil Action No. 4:12-cv-00592 |
| | § | |
| | § | [PROPOSED] ORDER GRANTING |
| v | § | MOTION FOR PERMISSION FOR |
| | § | ELECTRONIC CASE FILING |
| ANITA KAY BRUNSTING, et al<br>Defendants | § | |
| | § | DATE: |
| | § | TIME: |
| | § | COURTROOM: |
| | § | JUDGE: |

The Court has considered the Motion for Permission for Electronic Case Filing. Finding that good cause exists, the Motion is GRANTED.

IT IS SO ORDERED

DATED: _____

_____

United States District Judge

United States District Court
Southern District of Texas
**ENTERED**
July 29, 2016
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER**

Pending before the Court is the plaintiff's motion for permission for electronic case filing (Dkt. No. 113). After having reviewed the plaintiff's motion and the applicable law, the Court determines that motion should be denied.

It is so ORDERED.

SIGNED on this 29th day of July, 2016.

Kenneth M. Hoyt
United States District Judge



20-20566.1005

United States District Court
Southern District of Texas
FILED
AUG 03 2016
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| v | § | Civil Action No. 4:12-cv-00592 |
| ANITA KAY BRUNSTING, et al<br>Defendants | § | |

**PLAINTIFF CANDACE LOUISE CURTIS'**
**MOTION FOR RELIEF FROM ORDER PURSUANT TO FED. R. CIV. P. 60(b)(3), FED. R. CIV. P. 60(b)(6) AND FED. R. CIV. P. 60(d)(3)**

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## MOTION FOR RELIEF

1. Plaintiff Candace Louise Curtis (Curtis) respectfully moves this honorable Court, pursuant to Fed. R. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6), and Fed. R. Civ. P. 60(d)(3), praying for relief from this Court's order of July 22, 2014, approving Jason Ostrom's Motion for leave to file an amended complaint and Order to Remand the above captioned matter to Harris County Probate Court No. 4[1].

[1] Document Nos. 107, 111 and 112 in this Court's Record

2. This Motion relates to intentional misrepresentations made by Counsel before this Court, in effort to secure a remand to state court, as revealed by conduct in state court after that relief was granted.

## I. GROUND FOR PETITION

3. The above captioned matter was remanded from this Court to the Harris County Probate Court pursuant to a stipulation between the parties, accepted and approved by this Honorable Court.[2] That stipulation involved Plaintiff amending her complaint to pollute diversity in order to facilitate a remand and, in return, Defendants agreed the federal injunction and all orders of this Court would remain in full force and effect as if there had been no remand. (Exhibit 1: E1-E4)

4. Counsel represented to this Court that the purpose for the remand was to afford complete relief to the parties. Conduct by Defendants, the attorneys, and the state Court manifest the exact opposite intentions. Once in the state probate Court, Defendants immediately ignored this Court's rulings and the injunction, as if the injunction had never been issued, and now act as if the matter had never been before this honorable Court at all.

5. Defendants perpetrated a fraud upon this Court and upon Petitioner, in that they had no intentions of honoring the remand agreement, but promised to do so for the purposes of evading this Court's judgments and orders, thereby depriving Plaintiff of a legitimate judicial forum.

[2]Harris County Probate Court No. 4, case: 412249, 412249-401, 412249-402 6/6/2014 order granting Plaintiff's motion to remand, signed May 15, 2014 PBT-2014-188311

## II. JURISDICTION AND STATUTES OF LIMITATIONS

6. 28 U.S.C. §1447(d) does not prevent a district court from vacating a remand order that was obtained through fraud or misrepresentation.[3] The circumstances in which an order may be vacated pursuant to Rule 60(b) are as reasonably applied to remand orders as to any other orders procured by fraud.

7. Vacatur in this case would not be adverse to the goals of §1447(d) and would preserve the integrity of federal judicial proceedings.

8. A federal Court has inherent jurisdiction to vindicate its dignity and authority and such power has been held to be organic, requiring neither statute nor rule for its invocation.

9. This Court specifically retained jurisdiction to enforce the remand agreement, as reflected in the remand order.

10. The twelve month statute of limitations applicable to F.R.C.P. Rule 60(b)(3) does not apply in this case, as this Court retained jurisdiction through the end of the controversy between these parties by stipulation, as reflected in the Remand Order.

11. Even without the Court's order for continuing jurisdiction there is no statute of limitations applicable to F.R.C.P. Rule 60(b)(6) and 60(d)(3) relief, as those statute sections follow the general law of voids.

12. Fraud vitiates everything it touches and a judgement or order procured by intentional deception is recognized by these rules as void ab initio.

[3]Barlow v. Colgate Palmolive Co. 772 F.3d 1001, 1010 (4th Cir. 2014) (en banc).

## III. STANDARD OF REVIEW

13. Federal Rule of Civil Procedure 60(b) allows a party to seek relief from a final judgment for "(1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from the operation of judgment."

14. Motions filed under subsection (1), (2) or (3) must be made "no more than a year after the entry of the judgment or order or the date of the proceeding" from which relief is sought, while those filed under subsection (6) must instead be made "within a reasonable time". (Fed. R. Civ. P. 60(c)(l))

15. The standard of review on orders granting or denying Rule 60(b) relief is abuse of discretion. For findings of fact the standard of review is clear error[4] and for conclusions of law the standard for review is de novo.

16. Rule 60 motions should only be granted where (i) extraordinary circumstances exist and (ii) there is a showing that justice demands it.

17. Plaintiff is not a disgruntled litigant against whom adverse judgements have been entered. Plaintiff is a litigant whose motions cannot be answered by the Defendants or ruled against by the Court without reversal on appeal. Plaintiff is a litigant against whom the probate Court and the attorney officers of that Court have conspired against in effort to cheat justice and that is a matter of record.

18. A Motion under Rule 60(b)(6) brought within 120 days of obtaining proof of a fraud upon the federal Court is timely and the facts supporting this motion epitomize the very concept of extraordinary circumstances. Justice clearly demands vacatur as there is no other

[4] Federal Rule of Civil Procedure 52(a)

remedy available to Plaintiff within the context of this lawsuit and equity will not suffer a right to go without remedy.

19. Plaintiff seeks an honest judicial forum in which to pursue her claim of right, nothing more and nothing less.

## IV. NATURE AND STAGE OF THE PROCEEDINGS

20. Plaintiff Curtis filed a Pro se Petition in the United States District Court for the Southern District of Texas, Houston Division, on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting.

21. On March 6, 2012 Vacek & Freed staff attorney Bernard Mathews, appearing under the letterhead "Green and Mathews", filed a motion for an emergency order accompanied by a false affidavit signed and verified by Defendant Amy Brunsting. (Exhibit 18: E1249-E1251)

22. In reliance upon the material misrepresentations contained therein, on March 8, 2012, this Honorable Court dismissed Plaintiff Curtis' Pro se Petition sua sponte under the probate exception to federal diversity jurisdiction. Plaintiff Curtis filed a timely notice of appeal.

23. On April 2, 2012 Vacek & Freed filed the Will of Elmer Brunsting [#412248] and a purported Will for Nelva Brunsting [#412249] with the Harris County Clerk at the insistence of Carl Brunsting's attorney Bobbie Bayless.

24. On March 9, 2012 Carl Brunsting, individually and on behalf of the estate of Nelva Brunsting, filed a petition to take depositions before suit in the Harris County District Court.

25. On January 9, 2013 the Fifth Circuit Court of Appeals in a unanimous decision reversed and remanded to this Court.[5] Plaintiff Curtis immediately filed for a protective order.

[5] Candace Curtis v Anita Brunsting et al., 710 F.3d 406

26. On January 29, 2013 Carl Brunsting filed suit against trust attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court, as Executor of the estate of Nelva Brunsting.

27. On April 9, 2013 this Honorable Court issued a protective order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's approval. (Exhibit 2: E5-E9)

28. Also on April 9, 2013 Carl Brunsting filed suit against Amy, Anita and Carole Brunsting in Harris County Probate Court No. 4, individually (412249-401) and as executor of the estate of Nelva Brunsting (412249).

29. Carl Brunsting's attorney, Bobbie Bayless, filed estate claims in the Harris County District Court against Candace Freed and Vacek & Freed P.L.L.C. alleging conspiracies involving Anita, Carole and Amy Brunsting, and then filed suit against Anita, Carole and Amy Brunsting in the Harris County Probate Court alleging a conspiracy involving Candace Freed. Not only did Bayless file claims against co-conspirators in separate Courts, she named federal Plaintiff Curtis a nominal defendant in her probate Court complaint.

30. Hearing on Plaintiff Curtis' Application for Order to Show Cause in the federal Court was held on or about October 2, 2013, however, due to a medical emergency Plaintiff Curtis' assistant was hospitalized in a coma and Plaintiff was unable to obtain the briefing materials before the hearing. Plaintiff was attempting to compel Defendants to bring forth the archetype of an instrument referred to as the "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", allegedly signed by Nelva Brunsting on 8/25/2010 (Hereinafter the 8/25/2010 QBD). (Exhibit 4: E11-E19)

31. This instrument is the subject of Defendants' pending no-evidence Motion for Partial Summary Judgment, which Defendants removed from calendar after Plaintiff Curtis filed answer with Motion and demand to produce evidence. Defendants continue to use the instrument to threaten the Plaintiffs while perpetually refusing to produce it and qualify the alleged instrument as evidence. The 8/25/2010 QBD instrument is of dubious origin and doubtful validity, but plays very prominently in Defendants' disingenuous posturing as hereinafter more fully appears.

32. At the hearing October 2, 2013 this Court expressed concern over Plaintiff's lack of preparation and directed Pro se Plaintiff Curtis to retain counsel so that the discovery process could proceed. Plaintiff Curtis had difficulty finding counsel within the Court's time frame and had the misfortune of retaining Jason Ostrom.

33. Upon appearing in the matter Mr. Ostrom conceived of an arrangement by which Defendants agreed to modification of Plaintiff's Petition to include her brother Carl Henry Brunsting, thus polluting diversity and facilitating a remand to the Harris County Probate Court.

34. In exchange, Defendants agreed to abide by the federal injunction and all orders of the federal Court and on that basis the Court approved the amended complaint and entered an order for remand to the Harris County Probate Court. (Exhibit 3: E10)

## V. THE PROCEEDINGS ARE IN STASIS BY DESIGN

35. Curtis v Brunsting is a lawsuit related only to the Brunsting Trusts.

36. There is no docket control order and no trial date in place in the trust litigation or in any related matter pending in the state courts. (Exhibit 19: E1252-E1253)

37. The office of Executor for the estate is vacant and the probate of the estate is the only claim the probate Court has to jurisdiction over the Brunsting trust litigation.

38. Defendant co-conspirators, Attorneys Vacek & Freed, are sequestered in the District Court, where there is no plaintiff, and the probate Court has refused to join the suits.

39. The Defendants' attorneys and Plaintiff Brunsting's attorney have scheduled summary judgment hearings and un-scheduled those hearings, but Curtis cannot get a hearing set on dispositive motions in that Court.

40. The probate Court has clearly colluded with the lawyers to validate the 8/25/2010 QBD without an evidentiary hearing, to create delay, to avoid evidentiary hearings, to exacerbate Plaintiff's costs and to apply Hobbs Act pressure. There is a clear "stream of benefits" at play here.

41. There is no current or proper accounting and no balance sheet has ever been produced.

42. Other than an Order modifying the federal injunction, in the two years this case has been in Harris County Probate Court No. 4 there have been no evidentiary hearings and no orders or judgements have been entered on the record.

43. Rather than set dispositive motions for hearing on Plaintiff Curtis' request, Plaintiff was ordered to a second mediation, with Defendants who have established an intractable record of having no intentions of honoring any legal or moral obligations.

44. Neither the lawyers nor the probate Court will make a distinction between the trust and the estate.

45. Resolution of the litigation and distributions from the trust are being held hostage to the payment of attorneys' fees in direct defiance of this Court's express orders and the purposes for the trust.

46. Defendants absolutely refuse to deposit income into an appropriate account for the beneficiary as ordered by this Court's injunction and continue to flaunt the law in their effort to game the judicial process as hereinafter more fully appears.

## VI. IN THE HARRIS COUNTY PROBATE COURT

47. Upon remand to the Harris County Probate Court, Defendants' Counsel filed a motion to modify the injunction to allow Defendants to pay the quarterly and annual taxes without the expense of petitioning the Court each time and a limited modification was granted relating only to payment of taxes and associated professional fees.

48. Jason Ostrom agreed to provide Plaintiff Curtis with a review of documents before they were filed, but did not communicate before, or even copy her after pleadings were filed. Plaintiff was forced to data mine to try to discover what was happening in the probate Court and received much of her information via email from Carl Brunsting.

49. The five Brunsting siblings then attended a mediation that ended with no prospect for resolution. Immediately thereafter, Defendants' attorneys with Mills Shirley filed a petition to be relieved as counsel of record, citing to non-specific conflicts of interest.

50. Then, without conferring and having never submitted a single invoice to Plaintiff Curtis, Jason Ostrom filed application for a distribution of $25,000 from the trust to pay his attorney fees and Carole Brunsting's attorney, Darlene Payne Smith, objected.

51. Ostrom then filed a second motion for a distribution of $45,000, after discussion with Curtis, and both Anita and Carole objected.

52. Anita's new counsel, Brad Featherston, argued that the trust was not liable to pay the attorney creditors of the beneficiary. (Exhibit 20: E1254-E1409) Anita attached a "version" of the alleged 8/25/2010 QBD and a copy of the 2005 Restatement.

53. Carole's objection contained as an exhibit, a "true and correct copy" of the 8/25/2010 QBD. Three distinctly different true and correct copies of the one alleged 8/25/2010 QBD are now in the record bearing different signature page 37's, as the attached exhibit shows. (Exhibit 4: E11-E19)

54. Mr. Ostrom was repeatedly advised that complete consolidation with Carl Brunsting was not authorized or proper because of a conflict of interest with Carl Brunsting's Counsel, Bobbie Bayless.

55. Curtis was also emphatic that her mother did not lack capacity but discovered in her data mining that the cases had been consolidated upon a verbal motion made at a previous hearing and, without notice to or consent from Plaintiff Curtis, against direct and adamant insistence from Plaintiff Curtis that her mother was not incompetent, Jason Ostrom filed an amended complaint in the probate Court raising question as to the competency of a very lucid Nelva Brunsting.

56. Plaintiff Curtis then discovered, after the fact, that Mr. Ostrom, in total and absolute disregard for his instructions, had moved in secret to re-plead, consolidate and had again compromised Plaintiff's claims.

57. Not only did Ostrom attempt to dissolve the distinction between the trust and the estate by using the estate heading in his "amended complaint", the changes made by Ostrom are the only basis for Defendants' attorneys and the probate Court to threaten Plaintiff Curtis with disinheritance, using violation of the no contest provisions in the alleged 8/25/2010 QBD (the forged extortion instrument[6]).

[6] In violation of 18 U.S.C. §1951(b) and 18 U.S.C. §2 and Texas Penal Codes §§31.02 & 31.03

58. Plaintiff Curtis immediately discharged Mr. Ostrom and resumed personal control of the litigation, but more than substantial damage had already been done by moving the matter to a corrupt Harris County Probate Court, as hereinafter more fully appears.

## VII. VACANCY IN THE OFFICE OF ADMINISTRATOR

59. At a brutal deposition before trial in the District Court, Carl Brunsting was unable to answer questions, clearly having failed to fully recover from the encephalitis illness and coma that created the Defendants' opportunity for all of the untoward conduct that spawned the causes for this litigation.

60. Carl thereafter resigned as executor on February 2, 2015, leaving the office vacant. The office remains vacant.

61. Defendants in the District Court, Vacek & Freed, immediately filed a motion for summary judgment citing Carl's disability as the equivalent of no evidence.

## VIII. THE PENDING DISPOSITIVE MOTIONS

62. On June 26, 2015 Defendants' new attorneys in Probate Court No. 4 filed a No-Evidence Motion for Partial Summary Judgment claiming that there is no evidence that the 8/25/2010 QBD is invalid. (Exhibit 5: E20-E28)

63. On or about July 1, 2015 Defendants disseminated a CD containing illegally obtained wiretap recordings[7] which were received by Plaintiff Curtis from Anita's counsel, Brad Featherston, via certified mail with signature required.

64. July 7, 2015 Carl Brunsting filed a Motion for Protective Order regarding the illegally obtained wiretap recordings. (Exhibit 8: E343-E393)

[7] It should be noted that this conduct violates Texas Penal Code §16.02 and 18 U.S.C. §§1341, 2511 and constitutes predicate acts.

65. On July 9, 2015 Carl Brunsting filed a motion for partial summary judgment focusing on improper financial transactions, but did not respond to Defendants' no-evidence motion. (Exhibit 6: E29-E288)

66. On July 13, 2015 Attorneys for Plaintiff Carl Brunsting and the Defendants filed notices setting hearing on their dispositive motions for August 3, 2015. (Exhibit 10: E404-E405)

67. Also on July 13, 2015 Plaintiff Curtis filed an answer to Defendants' no-evidence motion, with a motion and demand to produce evidence, demanding Defendants produce the archetype of the alleged 8/25/2010 QBD and qualify it as evidence. Defendants cannot produce the forged 8/25/2010 QBD instrument and qualify it as evidence and have steadfastly refused to do so for more than four years. (Exhibits 4: E11-E19 and 11: E406-E452)

## IX. THE FIRST COLLUSION

68. On July 22, 2015, while Plaintiff Curtis was in flight home to California, Carl Brunsting's counsel, Bobbie Bayless, arranged with Defendants' counsel to remove the summary judgment and demand to produce evidence motions from the August 3, 2015 calendar to hear an emergency motion for protective orders regarding the wiretap recordings.

69. The August 3, 2015 hearing thus became a hearing on the motion for a protective order to prevent further dissemination of the illegal wiretap recordings. (Exhibit 12: E453-E494)

70. On January 14, 2016 Temporary Administrator Gregory Lester filed a fabricated report to the court, and rather than confine himself to evaluating the merits of the estate's claims he took it upon himself to trespass on the individual litigation brought by Carl and Candace as beneficiaries of the Brunsting trusts. (Exhibit 9: E394-E403)

71. The "Report" attempts to legitimize all of Defendants' misapplications of fiduciary, attempts to legitimize Defendants' baseless claims, and relies heavily on the forged 8/25/2010 QBD, specifically referring to the "no contest clause" concluding that, if the Court ruled on the no contest clause Carl and Candace would "take nothing" and suggesting mediation to resolve the pending lawsuits.

72. In essence, the Gregory Lester report concludes that the estate's claims have no merit. If true, the probate Court would have no claim to jurisdiction over the inter vivos trust litigation. In point of fact the report of Temporary Administrator Gregory Lester is fraudulent and cannot be supported under the law of the trust, the record of the various lawsuits, the common law, or the trust code.

73. On January 25, 2016 Plaintiff Curtis filed a motion for summary judgment (Exhibit 14: E497-E1187) and emailed a request for setting to Judge Comstock asking to have all the dispositive motions set for hearing. (Exhibit 15: E1188)

74. Curtis' Motion also contains petitions for declaratory judgement regarding illicit instruments drafted by Candace Freed and used by Anita Brunsting to commit fraud.

75. As a necessary consideration to hearing of the declaratory judgment motions, Plaintiff Curtis also filed a separate motion to transfer the District Court case to probate Court No. 4, so that Defendant Candace Freed could defend her works and all of the accused co-conspirators would be in the same Court.

76. The Court set a hearing for March 9, 2016 to hear the transfer motion and for a status conference.

## X. SCHEME AND ARTIFICE TO DEFRAUD

77. Remand to state Court May 2014.

78. September 2014 Mills Shirley withdrew as counsel for Amy and Anita Brunsting.

79. February 2, 2015 Carl Brunsting resigned as executor of the estate, leaving the office vacant.

80. Plaintiff Curtis terminated the services of Jason Ostrom March 24, 2015.

81. On July 21, 2015 a hearing was held regarding the vacancy of the office of executor. Defendant Amy Brunsting and Plaintiff Candace Curtis are the next listed successor executors, but to avoid argument the parties agreed to the appointment of one Greg Lester, previously unknown to Plaintiff and recommended by the court, as an "independent" temporary administrator for the limited purpose of evaluating the estate claims.

82. On July 22, 2015, while Curtis was inflight home to California, the hearings on the dispositive motions and Curtis' Demand to Produce Evidence (Tex. Ev. Cd. §§1002, 1003) of the 8/25/2010 QBD were removed from calendar without notice to, or consent from, Plaintiff Curtis.

83. The August 3, 2015 hearing thus became a hearing on Carl Brunsting's **emergency** motion for a protective order regarding illegal wiretap recordings that had been disseminated in July 2015. (Exhibit 12: E453-E494)

84. On September 1, 2015 Temporary Administrator Greg Lester filed an application to retain counsel to assist him with his duties to the estate.

85. Hearing was set on Gregory Lester's Motion for September 10, 2015 and no transcript of that hearing has been made available. (Exhibit 13: E495-E496)

86. A March 9, 2016 status conference was scheduled on Curtis request to set the dispositive motions for hearing and on Curtis' application to snatch the district Court case.

87. At the March 9, 2016 status/setting conference Attorney Neal Spielman makes numerous disingenuous statements in opposition to Curtis' request to set the pending motions for summary judgement, but then he says things that are as revealing as they are troubling. (emphasis added for easy reference):

**Transcript March 9, 2016**

88. Page 12 beginning at line 22 (Exhibit 16: E1200)

> *MR. SPIELMAN : We all, collectively, the parties and their counsel at the time, we all agreed to Mr . Lester taking the role that he was taking. And Ms. Curtis, herself, I believe, on the record, spoke of having done her due diligence into every person that was suggested by any attorney that was in this room to serve in Mr. Lester's role, and it was Ms. Curtis' opinion that only Mr. Lester can serve in that role*
>
> *We all, as attorneys or as pro se parties, agreed that what the function that was designated to Mr. Lester was important, was necessary, and that we were going to live by and abide by the report that he wrote.*
>
> *The problem that I see right now, and one of the reasons I suspect why Mr. Mendel suggested that we go to mediation is in deference to and with respect for what Mr. Lester said in his report and what he seems to be trying to suggest to the parties as to what the future of this lawsuit might hold.*
>
> *I think that what we're seeing now is an effort to backtrack from the direction that Mr. Lester tried to set us on and some of the conclusions or recommendations that he made as to what some of these claims, particularly the ones that Ms. Curtis is attempting to bring forward in summary judgment, are going to actually look like.*
>
> *I think the effort to backtrack from what Mr. Lester was instructed to do/ordered to do and what he did, in retrospect, you have to wonder what was the point of even having done that if the parties, or a party, is now going to try to back away from the impact of what that was done?*

89. At Page 14 (E1203) beginning at Line 3 Spielman makes a revealing and disturbing statement indicating additional collusions:

> *One of the reasons we thought that mediation, like Mr. Lester suggested that mediation might work, is that the right mediator, he talked to talked about the idea of using a former judge -I think* ***we talked about that in the courtroom last time*** *-that the right mediator might help to explain, to educate, to unentrench anybody -whether that be me, whether that be Mr. Mendel, whether that be Ms.*

*Bayless, whether that be Ms. Brunsting, Ms. Curtis, whomever. I think Mr. Lester saw the wisdom in mediation. I think we see the wisdom in mediation. But the consternation or the concern at this point, again, is this issue that Ms. Curtis seems to be unwilling to appreciate, adapt, recognize, embrace what Mr. Lester concluded or recommended in his report; and if that's the case, then I wonder if, if spending the money that it takes to go to mediation makes sense.*

*Frankly, Judge, the most interesting thing that I heard Ms. Curtis say was on the issue of attorneys fees and that that doesn't matter to her; and that is exactly part of the point.* ***I think you were in the courtroom, Judge, the last time when Carole Brunsting made a very impassioned plea or explanation to the Court about how Ms. Curtis' pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is never going to lead to this being resolved****. lost my train of thought there for a second. I may have But the point here, Judge, is there seems to be no accountability on Ms. Curtis' behalf for the amount of money that is being spent in this case. Parties have, in the past, suggested, oh, let's not worry about the attorneys fees because that will all even out at the end of the story when everybody decides to divide by five, the corpus of the trust, and the winning parties or the prevailing parties can everything can be adjusted through the division of that estate. But, Your Honor,* ***if you look at what Mr. Lester recommended/suggested/reported in his report, there's now the very real possibility that there isn't going to be a divide-by-five scenario because of the no-contest clauses that are recognized as being properly drawn by the Vacek & Freed Law Firm****. And if that happens, Judge, then the trust is now spending its own money from those people, whether it be three or four, that are still going to get a portion of the estate, a portion of the trust proceeds when this is all said and done.*

*I'm rambling just a bit only because it's such a circular discussion -is how do we get this case finished given given the backtracking from everybodys willingness to vest Mr. Lester with the authority to proceed/ and now the one person who doesn't like what he said, after she filed motions for summary judgment that are direct contradiction to the conclusions that he reached. The very constant of having to come down here and respond to those to those motions for summary judgment the amount of money that that will waste is insulting, is offensive to the parties.*

*I'd love to come up with a creative idea to create some accountability/ perhaps, if it comes in the form of a sanction or perhaps it comes in the form of some kind of bond being posted so that if it turns out that one of the parties who is blowing things up as it were and creating this increased attorneys fees no longer has an interest in the estate with which we can even that out by the end of the day. Perhaps if Ms. Curtis is ordered to post a bond against her claims or to protect against the ability --our ability to recover fees from her if, as and when she loses her case perhaps then we can move forward with additional hearings additional motions and so forth.*

90. Page 17 (E1205) lines 1-13:

> *Keep in mind, Judge, that it's not simply --it's not as simple as getting a date for Ms. Curtis' summary judgment motions. There's been no discovery, in terms of depositions done in this case, not the least of which will be depositions from, perhaps, even from the lawyers in the other district court case who drafted the documents that can explain what all went into those documents, what Nelva Brunsting's state of mind was at the time. There's no way to respond to those summary judgment motions right now without the full weight of the discovery process moving forward and all of the money that that's going to cost.*

91. These claims are in direct opposition to the claims Defendants made in their No-evidence Motion. In Defendants' June 25, 2015 No-Evidence Motion for Partial Summary Judgment at page 1 item I (E20):

> *I. Summary of the Argument*
>
> *This litigation started more than thirty-eight (38) months ago. Plaintiffs had sufficient time for discovery in this suit and the three (3) other actions related to the 8/25/10 QBD (defined below). Plaintiffs challenge the 8/25/10 QBD on the following grounds, for which there is no evidence:*
>
> *foot note:*
>
> *1 Those three other proceedings are: (1) No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting; United States District Court for the Southern District of Texas, Houston Division; (2) CA No, 2012-14538; In re Carl Brunsting (202 Petition); 80TH Judicial District Court of Harris County, TX; and (3) CA No. 2013-05455; Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164TH Judicial District Court of Harris County, TX.*

92. However, the most disturbing thing in Mr. Spielman's diatribe were the references to dialogs at a previous hearing involving Mr. Lester, when there was no previous hearing involving Mr. Lester where these matters were properly before the Court.

> *One of the reasons we thought that mediation, like Mr. Lester suggested that mediation might work, is that the right mediator, he talked to talked about the idea of using a former judge -I think we talked about that in the courtroom last time -that the right mediator might help to explain, to educate, to unentrench anybody -*
>
> *... I think you were in the courtroom, Judge, the last time when Carole Brunsting made a very impassioned plea or explanation to the Court about how Ms. Curtis' pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is never going to lead to this being resolved*

## XI. THESE DISCUSSIONS WERE HIGHLY IMPROPER

93. Plaintiff Curtis is an heir and an interested person but not a party to the estate litigation.

94. Candace Louise Curtis v Anita Brunsting et al., (Curtis v Brunsting) was filed in the federal Court fourteen months prior to the first estate claims and having survived dismissal under the Probate Exception to federal diversity jurisdiction, it is inarguably established that Curtis v Brunsting is not connected to the probate of the estate (Exhibit 17: E1243-E1248) and is not subject to probate administration.

95. The only hearing that involved Greg Lester prior to March 9, 2016 was the September 10, 2015 hearing on Greg Lester's September 1, 2015 application to retain counsel to assist him in his fiduciary duties to the estate.

96. The only matter properly before the court on September 10, 2015 was whether or not Mr. Lester should have the authority to retain Jill Willard Young to assist him in his administration obligations to the estate.

97. Neither individual Plaintiff Candace Curtis nor individual Plaintiff Carl Brunsting was in attendance September 10, 2015, as neither is party to the estate litigation and neither objected to Mr. Lester retaining Jill Young to assist with his fiduciary duty to evaluate the estate's claims. That was the only issue properly before the Court on September 10, 2015 and did not include the matters Mr. Spielman states were discussed and where there was apparently an agreement made to treat the Gregory Lester report as if it were a jury verdict before it was even written.

98. Plaintiff has been unsuccessful in attempts to obtain a transcript of this September 10, 2015 hearing.

99. The inescapable conclusion here is that there were improper discussions outside of the presence of the Plaintiffs who were prejudiced by those discussions, involving matters not properly before the Court, wherein there were agreements made between the Court, Jill Willard Young, Neal Spielman, Bradley Featherston, Stephen Mendel and Gregory Lester to produce a fictitious report. They all apparently agreed to follow the as of yet unwritten report as if it were factual, that the false report would be used to further the extortion plot, that mediation would be forced upon Plaintiffs, that the costs of litigation for Plaintiff Curtis would be exacerbated, that there would be extended delay and, that another crony had been hand selected to act first as mediator and then as arbiter. First to "unentrench" Plaintiff Curtis from her stand upon rights and reliance upon the rule of law in the face of this all too obvious public corruption conspiracy and second, to deprive Plaintiff of substantive due process and access to the Court.

100. Defendants continue to use the forged 8/25/2010 QBD (extortion instrument) to threaten Plaintiffs with disinheritance, going so far as to refer to the September 10, 2015 conspiracy for the proposition that the instrument has been held valid:

**Transcript of March 9, 2016 Page 15 (E1203) lines 16-21:**

> *But, Your Honor, if you look at what Mr. Lester recommended/suggested/reported in his report, there's now the very real possibility that there isn't going to be a divide-by - five scenario because of the no - contest clauses that are recognized as being properly drawn by the Vacek & Freed Law Firm.*

## XII. FRAUD UPON PLAINTIFF AND THIS COURT

101. After Defendants claimed there was no evidence the forged 8/25/2010 QBD was invalid, Defendants removed their no-evidence motion from calendar knowing they cannot answer Plaintiff Curtis' demand to produce the thing, explain away the anomalies, and qualify it as evidence, and yet they continue to threaten Plaintiffs with the bogus instrument's "no contest

clause" with the transparent collusion of involuntary Plaintiff Carl Brunsting's Attorney and the probate Court.

102. The probate plan is thus, according to Mr. Spielman, to subject Plaintiffs to endless delay and expense until the Plaintiff victims agree to pay fee ransoms to the attorneys who are holding the beneficiaries' property hostage.

103. Defendants have not willingly honored any agreements, not the trust agreement, not the remand agreement, and cannot be expected to honor any mediated settlement agreement.

104. Defendants knew when they agreed to honor the federal injunction and the Orders entered by this Court as a condition of the remand, that they had no intentions of honoring any legal or moral obligations. Defendants refuse to honor the federal injunction and the orders of this Court even after having promised to do so as a condition of the remand stipulation and Defendants' own pleadings in the probate Court are conclusive evidence of the existence of that fact.

105. Defendants will not, because they cannot, bring forth the archetype of the 8/25/2010 QBD and qualify the thing as evidence. If they could answer Plaintiff Curtis' Motion and Demand to Produce Evidence they certainly would have done so.

106. Instead, Defendants' attorneys conspired with the Court to avoid evidentiary hearings knowing they cannot produce the forged 8/25/2010 QBD extortion instrument and qualify it as evidence, and continue to use it to threaten and intimidate Plaintiffs Curtis and Carl Brunsting.

107. Mr. Spielman confessed on March 9, 2016 that the attorneys conspired at the hearing on application to retain Jill Young, with the probate Court Judges, the Court's crony administrator Gregory Lester, and Jill Young, entering into an illicit agreement to produce a

fictitious "report" and to subsequently treat the fiction as if it were the equivalent of a jury verdict, and this all occurred before the "Report" was even written.

108. Thus, after removing their no-evidence summary judgement motion from calendar knowing their precious 8/25/2010 QBD is a forgery and that they cannot produce the heinous thing and qualify it as evidence, Defendants' attorneys none-the-less continued to use the no-contest clause ruse in the forged 8/25/2010 "extortion instrument", to threaten and attempt to intimidate the Plaintiff victims, who they know full well are owed fiduciary obligations by these Defendants.

109. It is important to note that there are known trust assets that remain unaccounted for. For example, none of the quasi-accountings received from the Defendants reflect the accounts receivable for a $100,000 loan Anita received from the trust in 1999.[8]

110. Moreover, an amendment to the 1996 trust dated April 30, 1999, disclosed by Vacek & Freed in the District Court lawsuit, specifically identifies the $100,000 loan as an advance on Anita's inheritance. That trust amendment was never disclosed by Anita Brunsting in the course of Curtis v Brunsting or the estate suits in the probate Court.

111. A covert letter to the Special Master dated July 15, 2015[9] claims Nelva wanted to continue a history of gifting by paying off Amy and Carole's homes as "she and her husband did the same for Anita in approximately 2005" (Exhibit 21: E1410-E1412) when the public record shows the loan occurred July 1, 1999.

## XIII. REQUEST FOR JUDICIAL NOTICE

112. Plaintiff Curtis respectfully asks this Court to take Judicial Notice of her first amended complaint filed Pro se May 1, 2013. That amendment was rejected for filing because

[8] Victoria County Clerk Official Records Instrument #199908618 dated July 1, 1999
[9] Case 4:12-cv-00592 Document 67-1 Filed in TXSD on 08/27/13

Plaintiff Curtis failed to document her efforts to obtain Defendants' consent for the amended complaint. Plaintiff at that time was asking to amend her complaint to bring the matter under federal question jurisdiction based upon evidence obtained after the initial filing. The Jurisdictional Statement in that pre-Ostrom amendment to Curtis' complaint reads as follows:[10]

> *4. This matter was originally brought in equity as breach of fiduciary and related equitable claims that included a common law tort claim under diversity jurisdiction pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2). Plaintiff hereby incorporates those claims by reference as if fully restated herein, but with newly discovered evidence presents additional and alternate claims. Additionally, Plaintiff is informed and believes Defendants are not de jure trustees.*
>
> *5. This complaint now alleges violations of the wire, mail and securities laws of the United States as expressed in Chapter 63 of Title 18 of the United States Code, and Plaintiff is seeking to pursue additional remedies under 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act").*
>
> *6. This court has federal question jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1367 and Section 27 of the Exchange Act (15 U.S.C. §78aa) and exclusive jurisdiction over these claims as this action arises under Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) and the causes of action implied therefrom.*
>
> *7. In connection with the acts and omissions alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the internet, the mails, interstate telephone communications, and the facilities of the national securities markets.*

113. Attorney Jason Ostrom represented to this Court that the purpose for a remand was to afford complete relief to the parties. When Mr. Ostrom made those representations he was well acquainted with the Harris County Probate Court and its officers, and knew full well there would be no remedy flowing from that Court for anyone but attorneys and court cronies.

114. Ostrom's true motivation for remand was apparently to obstruct justice in pursuit of attorney fees, not to provide any form of relief to the parties.

---

[10] Document No. 48 in this Court's Record

115. Every attorney who has been involved in this case has tried to get the Brunsting Trust removed from an honorable federal Court to Harris County's Probate Court. The reasons at this juncture are crystal clear and have nothing to do with the honest administration of justice.

## XIV. CONCLUSION

116. Both Plaintiffs' and Defendants' attorneys' intentional misrepresentations before this honorable Court, that the purpose for a remand was to provide complete relief to the parties, unfairly and unnecessarily polluted diversity to procure the Remand Orders, and in so doing deprived Plaintiff Curtis of a legitimate judicial forum to which she was and is entitled in this case.

117. Everyone involved in this case except Plaintiff Curtis has taken advantage of Carl Brunsting's illness, the Defendants, the Defendants' attorneys, the District Court Defendants and the probate Court.

118. There have been no evidentiary hearings and no rulings have been entered on any substantive issues in the probate Court. The Defendants are paying exorbitant trust income taxes due to the refusal to deposit income into an appropriate account for the beneficiary, as this honorable Court's injunction commands.

119. The attorneys have docketed and un-docketed motions for summary judgment but Plaintiff Cutis cannot buy a hearing, or a scheduling order or a trial date, or an accounting, or respect for the federal injunction, nor respect for any of her rights, and there appears to be no remedy for the parties to be found at the hands of the Harris County Probate Cartel.

120. If there is such a magical document as this 8/25/2010 QBD, that trumps federal injunctions and the Orders of a federal Judge, renders remand agreements nugatory, removes fiduciary obligations, forecloses beneficial interests, taints the blood of innocent remaindermen,

amends what can only be amended by a court of competent jurisdiction and revokes what can only be revoked by a court of competent jurisdiction, the Defendants and their attorneys should be brought before an honorable Court where they will actually be compelled to produce the supernatural thing and qualify it as evidence.

121. Wherefore Plaintiff Curtis respectfully requests that the Court vacate the order granting filing of the amended complaint[11] for fraud upon Plaintiff Curtis and upon this honorable Court, in the interest of justice pursuant to Rules 60(b)(3), (b)(6) and (d)(3) of the Federal Rules of Civil Procedure, voiding the subsequent Remand Order[12] as a matter of right, and restoring this case to this honorable Court's docket.

122. Wherefore Plaintiff Curtis further prays the Court issue the attached proposed order or issue its own orders upon such terms as the Court deems most beneficial to the purposes of Equity and Justice and most beneficial to the public policy considerations in upholding the dignity and authority of this Honorable Court.

Plaintiff/Petitioner so moves,

Petitioner hereby verifies, under penalty of perjury pursuant to the laws of the United States of America and Federal Rules of Civil Procedure Rule 11, that the above statements based upon personal knowledge are true and correct, and as to those things asserted on information and belief, affiant believes those things to be true as well.

[Signatures on the following page]

[11] Document No. 111 in this Courts record
[12] Document No. 112 in this Courts record

Respectfully submitted,

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 2ND day of July 2016, to the following via U.S.P.S. Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
steve@mendellawfirm.com

Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

CANDACE L. CURTIS

Respectfully submitted,

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 1st day of August 2016, to the following via U.S.P.S. Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
steve@mendellawfirm.com

Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

CANDACE L. CURTIS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | Civil Action No. 4:12-cv-00592 |
| ANITA KAY BRUNSTING, et al<br>Defendants | §<br>§ | |

ORDER VACATING LEAVE TO FILE FIRST AMENDED PETITION

On this day, the Court considered Plaintiff's Petition for Vacatur of this Court's Order granting leave for Plaintiff to file a First Amended Petition. The Court, having considered the matter fully, is of the opinion and finds that Plaintiff's request to amend should have been denied. It is therefore, ORDERED that the Court's Order of 15th day May, 2014 granting leave for Plaintiff to file a First Amended Petition is hereby vacated.

It is so Ordered

SIGNED on this _____, 2016

Kenneth M. Hoyt United States District Judge

**EXHIBITS**

EXHIBIT 1 – Motion for Leave to File First Amended Petition.....E1-E4

EXHIBIT 2 – Memorandum and Order Preliminary Injunction.....E5-E9

EXHIBIT 3 – Order Granting Motion for Leave to File First Amended Petition.....E10

EXHIBIT 4 – QBD Signature Page 37 Anomalies.....E11-E19

EXHIBIT 5 – Defendants' Joint No-Evidence Motion.....E20-E28

EXHIBIT 6 – Carl Brunsting's Motion for Partial Summary Judgment.....E29-E288

EXHIBIT 7 – April 9, 2013 Transcript.....E289-E342

EXHIBIT 8 – Carl Brunsting's Motion for Protective Order.....E343-E393

EXHIBIT 9 – Report of Temporary Administrator.....E394-E403

EXHIBIT 10 – Notice of Oral Hearing August 3, 2015.....E404-E405

EXHIBIT 11 – Curtis' Response and Motion to Produce Evidence.....E406-E452

EXHIBIT 12 – August 3, 2015 Transcript.....E453-E494

EXHIBIT 13 – Notice of Hearing September 10, 2015.....E495-E496

EXHIBIT 14 – Curtis' Motion for Partial Summary Judgment.....E497-E1187

EXHIBIT 15 – Curtis' Request for Hearing Date.....E1188

EXHIBIT 16 – March 9, 2016 Transcript.....E1189-E1242

EXHIBIT 17 – Fifth Circuit Opinion No. 12-20164.....E1243-E1248

EXHIBIT 18 – Amy Brunsting Affidavit.....E1249-E1251

EXHIBIT 19 – Agreed Docket Control Order 412,249-401.....E1252-E1253

EXHIBIT 20 – Anita Brunsting's Response to Motions for Distributions.....E1253-E1409

EXHIBIT 21 – Defendants' July 15, 2013 Letter to the Special Master.....E1410-E1412

# EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS,<br>PLAINTIFF | §<br>§<br>§ | |
| VS. | §<br>§ | CIVIL ACTION NO. 4:12-CV-00592<br>JUDGE KENNETH M. HOYT |
| ANITA KAY BRUNSTING,<br>AMY RUTH BRUNSTING,<br>AND DOES 1-100,<br>DEFENDANTS | §<br>§<br>§<br>§ | JURY TRIAL DEMANDED |

# MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candice Louis Curtis and files this Motion for Leave to File First Amended Petition pursuant to Federal Rule of Civil Procedure 15(a), and in support thereof would respectfully show as follows:

## I. INTRODUCTION

1. In light of recently discovered evidence in this case, Plaintiff moves this Court to permit her to file an amended complaint. The proposed amendment asserts an additional legal theory grounded in the same basic facts as the existing complaint, but that will ensure that all parties to be impacted by the ultimate judgment are participants. Moreover, because the claim to be asserted in the amendment appears to be meritorious, it would be in the interests of justice for this claim to be included in the case.

## II. BACKGROUND

2. In her Original Petition, Plaintiff brought causes of action against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust, stemming from

# EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**MEMORANDUM AND ORDER**
**PRELIMINARY INJUNCTION**

## I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

## II. BACKGROUND

### *A. Procedural Background*

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a



20-20566.1038

recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

***B. Contentions of the Parties***

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,



20-20566.1039

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

## III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway,* 489 F.2d at 572-73.

## IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document



20-20566.1040

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

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.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.



20-20566.1041

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge



20-20566.1042

# EXHIBIT 3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER GRANTING MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION**

On this day, the Court considered the plaintiff's motion for leave to file first amended petition. The Court, having considered the same, is of the opinion and finds that plaintiff's request to amend should be GRANTED.

It is therefore, ORDERED that the plaintiff is hereby granted leave to amend her original petition by filing her first amended petition in its stead.

SIGNED on this 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge



20-20566.1044

# EXHIBIT 4

## Signature preceded by CAN

***This one only connects to Anita***

**P229**
Attached to Anita's 156 page objection filed December 5, 2014
**Can with no Bates stamp** (received from Anita on December 21, 2011)

---

## Both signatures are Above the line

***This one connects to Carole, Freed & Amy***

---

**P192**
In Carole's 133 page objection filed Feb. 17, 2015

**P7168** **V&F000389** **Curtis P-76**
Vacek & freed production

**P12755**
Frost Bank document Production given to them by Amy

---

## Both signatures are On the Line

***This one connects to Freed and Anita***
**P443**
Obtained by Blackburn from Vacek & Freed

**P1015**
Copy of P-40_p37 USCA5 was received from Anita Brunsting via email October 23, 2010

**P-40_p37 USCA5 Case 4:12-cv-00592 Document 1-13 Filed in TXSD on 02127/12 Page 7 of 20**
Attached to Curtis original federal complaint. Exhibit was received from Anita Brunsting via email October 23, 2010

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

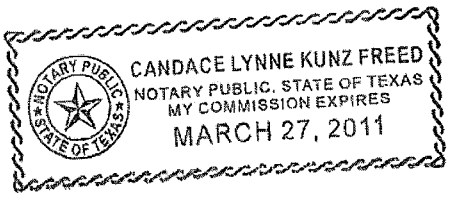
***ACCEPTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.




Candace Lynne Kunz Freed

Notary Public, State of Texas



20-20566.1047

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COUNTY OF HARRIS

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Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

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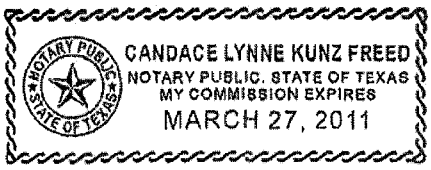


Candace L Kunz Freed

Notary Public, State of Texas




20-20566.1049

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***EXECUTED*** and effective on August 25, 2010.

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Founder and Beneficiary

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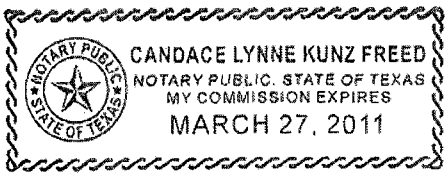


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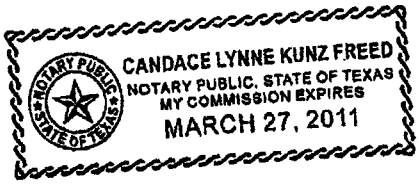


Candace Lynne Kunz Freed

Notary Public, State of Texas



EXHIBIT
P-76

P7168

V&F 000389

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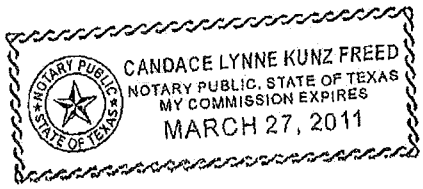


Candace Lynne Kunz Freed

Notary Public, State of Texas

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Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

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CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace L Kunz Freed
Notary Public, State of Texas



EXHIBIT
P-40_p37
USCA5 399

# EXHIBIT 5

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 | § | |

# Anita & Amy Brunsting's Joint
# No-Evidence Motion for Partial Summary Judgment

Defendants, Anita Brunsting and Amy Brunsting ("Defendants"), file this joint no-evidence motion for partial summary judgment and would respectfully show the Court as follows:

## I. Summary of the Argument

This litigation started more than thirty-eight (38) months ago. Plaintiffs had sufficient time for discovery in this suit and the three (3) other actions[1] related to the 8/25/10 QBD (defined below). Plaintiffs challenge the 8/25/10 QBD on the following grounds, for which there is no evidence:

1. Nelva's signature on the 8/25/10 QBD was forged.

2. Nelva lacked capacity when she executed the 8/25/10 QBD.

3. Nelva was unduly influenced into executing the 8/25/10 QBD.

4. Nelva was fraudulently induced into executing the 8/25/10 QBD.

5. Nelva executed the 8/25/10 QBD under duress.

[1] Those three other proceedings are: (1) No. 4:12-CV-00592; *Candace Louise Curtis v. Anita Kay Brunsting*; United States District Court for the Southern District of Texas, Houston Division; (2) CA No, 2012-14538; *In re Carl Brunsting* (202 Petition); 80TH Judicial District Court of Harris County, TX; and (3) CA No. 2013-05455; *Carl Henry Brunsting v. Candace Freed & Vacek & Freed*; 164TH Judicial District Court of Harris County, TX.

## II. Background

This is a family dispute among five (5) siblings of the Brunsting family: Carl, Candace, Carol, Anita, and Amy. The dispute involves a trust created by their parents: Elmer Brunsting ("Elmer") and Nelva Brunsting ("Nelva").

Elmer and Nelva created the Brunsting Family Living Trust on or about October 10, 1996. The trust was restated on January 12, 2005 (the "Family Trust"). Elmer and Nelva served as trustees of the Family Trust until 2008, when Elmer lost the ability to handle his financial affairs and Nelva served as trustee alone. In 2008, Nelva appointed Carl and Anita to serve as successor co-trustees.

Shortly after Elmer died in April 2009, in accordance with the Family Trust, successor trusts resulted: the Elmer H. Brunsting Decedent'sTrust ("Elmer's Decedent's Trust"); and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Nelva served as the trustee of both trusts, with Carl and Anita to serve as successor co-trustees.

In May 2010, Candace wrote, "[Nelva] has saved my house for me a few years in a row now by giving me the money to pay the property taxes. This time I told her she should take it out of my inheritance (that's what Daddy always said). She said no, she could help me." Candace then continued, "[Nelva] always wants to know what I spend all my money on. Why I have no savings. Why I didn't plan better. [Nelva] treats me like such a FAILURE." Apparently, Nelva thought Candace was a spendthrift and not good at handling her own financial affairs.

In or about July 2010, Carl was hospitalized for an extended period of time due to herpes encephalitis, an acute infection and inflamation of his brain. As a result, Carl's mental capacity and cognitive abilities were severely compromised. Carl continues to suffer from residual symptoms, which is why his wife Drina was substituted into this case as his attorney-in-fact.

In accordance with the Family Trust, on August 25, 2010, Nelva executed a Qualified

Beneficiary Designation and Exercise of Testamentary Powers of Appointment (the "8/25/10 QBD"). In short, the document is an exercise of Nelva's testamentary powers of appointment as contemplated by the Family Trust. The document was notarized by Nelva's attorney, Ms. Freed.[2] The chief change that prompted plaintiffs' challenge to the 8/25/10 QBD is that the co-trustees for Carl's and Candace's interest under the trust changed from: (1) Anita and Carl; to (2) Anita and Amy. Apparently, the change in co-trustees from Anita and Carl to Anita and Amy offends Carl and Candace.

Carl and Candace ("Plaintiffs") brought several proceedings alleging every conceivable means to challenge the 8/25/10 QBD. Candace filed a case in Federal Court in February 2012. Carl originally filed a Rule 202 Petition in March 2012. In January 2013, Carl filed a lawsuit against Nelva's attorneys that drafted the 8/25/10 QBD. Carl filed this litigation in this Court in April 2013. Thus, Carl and Candace have had more than thirty-eight (38) months in four (4) separate proceedings to gather evidence regarding the 8/25/10 QBD.

## III. Argument & Authorities

This motion relates solely to plaintiffs challenges to the 8/25/10 QBD. It is important to put matters into perspective on plaintiffs' claims related to the 8/25/10 QBD. Ordinarily the laundry list of challenges a contestant makes to an instrument is when there is a disproportionate change in the distribution of property. Here, the 8/25/10 QBD does not affect the percentage of assets each child will receive in trust nor the distributions standards. For plaintiffs, the sole impact is the change in co-trustees from: (1) Anita and Carl; to (2) Anita and Amy.

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[2] The attorneys' name is Candace Lynne Kunz Freed. Ms. Freed is used to prevent confusion between Nelva's attorney, Candace Freed, and Nelva's daughter, Candace Curtis, since they share the same first name.

Plaintiffs' challenges to the 8/25/10 QBD center on the contention that Nelva would never have appointed Amy to serve in Carl's place as a co-trustee. However, plaintiffs ignore the fact that Carl suffered from herpes encephalitis in July 2010, which caused Carl's substantially diminished physical and mental capacity.

**A. No Evidence Nelva's Signature on the 8/25/10 QBD was Forged.**

Plaintiffs allege the 8/25/10 QBD was forged.

A document is forged if a person signs the document so that it purports to be the act of another who did not authorize the act.[3] The burden of proof rest on those seeking to set aside the instrument to show forgery.[4]

There is no competent summary judgment evidence to support that someone other than Nelva executed the 8/25/10 QBD. Accordingly, this no-evidence motion for summary judgment must be granted.

**B. No Evidence Nelva Lacked Capacity When Executing 8/25/10 QBD.**

Plaintiffs allege Nelva lacked capacity when executing the 8/25/10 QBD.

The law presumes that a trustor has sufficient mental capacity at the time of execution to understand her legal rights.[5] Therefore, the burden of proof rests on those seeking to set aside the instrument to show lack of mental capacity at the time of execution.[6]

Here, plaintiffs must provide competent summary judgment evidence Nelva lacked sufficient

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[3] TEXAS PATTERN JURY CHARGES: EXPRESS TRUSTS PJC 235.4 (2014); *See In re Estate of Flores*, 76 S.W.3d 624, 630 (Tex. App.—Corpus Christi 2002, no pet.).

[4] *In re Estate of Flores*, 76 S.W.3d 624, 630 (Tex. App.—Corpus Christi 2002, no pet.)

[5] *Walker v. Eason*, 643 S.W.2d 390, 391 (Tex. 1982); *Bradshaw v. Naumann*, 528 S.W.2d 869, 873 (Tex. Civ. App.—Austin 1975, writ dism'd); and TEX. PROP. CODE § 112.007.

[6] *Walker v. Eason*, 643 S.W.2d 390, 391 (Tex. 1982).

mind and memory to understand the nature and consequences of her acts and the business she was transacting when she executed the 8/25/10 QBD.[7] Plaintiffs can provide no such evidence. Accordingly, this no-evidence motion for summary judgment must be granted.

**C. No Evidence Nelva was Unduly Influenced to Sign the 8/25/10 QBD.**

Plaintiffs alleged Nelva's execution of the 8/25/10 QBD was procured by undue influence.

"Undue influence" means that—

1. an influence existed and was exerted, and
2. the influence undermined or overpowered the mind of the person executing the document at the time of its execution, and
3. the person would not have executed the document but for such influence.[8]

The burden of proving undue influence is upon the party contesting its execution.[9]

Here, there is no evidence that Anita and/or Amy exerted any influence, much less undue influence, to make themselves trustees of Carl's and Candance's share of the trust after Nelva's death.

There is no evidence that, prior to its execution, Nelva had discussions with Anita and/or Amy regarding the terms of the 8/25/10 QBD.

There is no evidence that Anita and/or Amy contacted Nelva's attorney, Ms. Freed, and prescribed the terms or even discussed the terms of the 8/25/10 QBD.

There is no evidence that Anita and/or Amy participated in the drafting of the 8/25/10 QBD.

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[7] *See Mandell & Wright v. Thomas*, 441 S.W.2d 841, 845 (Tex. 1969).

[8] TEXAS PATTERN JURY CHARGES: EXPRESS TRUSTS PJC 235.3 (2014); *Rothermel v. Duncan*, 369 S.W.2d 917, 922 (Tex. 1963).

[9] *Rothermel v. Duncan*, 369 S.W.2d 917, 922 (citing *Scott v. Townsend*, 166 S.W. 1138 (Tex. 1914)).

There is no evidence that Anita and/or Amy were present when Nelva executed the 8/25/10 QBD.

Assuming, without admitting, there was an influence, there is no evidence that Nelva was mentally or physically compromised in August 2010, such that her free will was susceptible to being overcome.

Accordingly, this no-evidence motion for summary judgment must be granted.

**D. No Evidence Nelva Executed the 8/25/10 QBD as a Result of Fraud.**

Plaintiffs allege that Nelva executed the 8/25/10 QBD as a result of fraud. This type of allegation is a species of undue influence.[10] Nevertheless, in an abundance of caution and in the interest of judicial economy, Anita and Amy will specifically address plaintiffs' fraud claims as a separate allegation.

Fraud occurred if—

1. a person made a material misrepresentation, and
2. the misrepresentation was made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. the misrepresentation was made with the intention of inducing the trustor to sign the document, and

4. Trustor relied on the misrepresentation in signing the document.

"Misrepresentation" means:

A false statement of fact [or]

A promise of future performance made with an intent, at the time the promise was made, not to perform as promised [or]

A statement of opinion based on a false statement of fact [or]

---

[10] TEXAS PATTERN JURY CHARGES: WILL CONTESTS PJC 230.6; *Curry v. Curry*, 270 S.W.2d 208 (Tex. 1954).

A statement of opinion that the maker knows to be false [or]

An expression of opinion that is false, made by one claiming or implying to have special knowledge of the subject matter of the opinion.

"Special knowledge" means knowledge or information superior to that possessed by Trustor and to which Trustor did not have equal access.[11]

The contestant claiming fraud has the burden of proof.[12]

There is no evidence that Anita and/or Amy made any representation to Nelva with the intention of inducing Nelva to sign the 8/25/10 QBD.

Assuming, without admitting, that Anita and/or Amy made a representation to Nelva with the intention of inducing Nelva to sign the 8/25/10 QBD, there is no evidence such representation was false.

Assuming, without admitting, that Anita and/or Amy made a false representation, there is no evidence Nelva relied on the misrepresentation in executing the 8/25/10 QBD.

Accordingly, this no-evidence motion for summary judgment must be granted.

**E. No Evidence Nelva Signed 8/25/10 QBD Under Duress.**

Plaintiffs alleged the 8/25/10 QBD is invalid because Nelva executed it under duress.

Duress is the mental, physical, or economic coercion of another, causing that party to act contrary to his free will and interest.[13]

---

[11] TEXAS PATTERN JURY CHARGES: WILL CONTESTS PJC 230.6.

[12] TEXAS PATTERN JURY CHARGES: WILL CONTESTS PJC 230.6; *In re Estate of Graham*, 69 S.W.3d 598, 612 (Tex. App.—Corpus Christi 2001, no pet.).

[13] TEXAS PATTERN JURY CHARGES: CONTRACTS PJC 101.26; *Black Law Pipe Line Co. v. Union Construction Co.*, 538 S.W.2d 85 n.2 (Tex. 1976); *Brooks v. Taylor* 359 S.W.2d 539, 542 (Tex. Civ. App.–Amarillo 1962, writ ref'd n.r.e.); and *Housing Authority of City of Dallas v. Hubbell*, 325 S.W.2d 880, 905 (Tex. Civ. App. – Dallas 1959, writ ref'd n.r.e.).

The contestant claiming duress bears the burden of proof.[14]

As the Texas Pattern Jury Charge warns, duress is only reached if the alleged coercion can legally constitute duress.[15] "It is never duress to threaten to do that which a party has a legal right to do."[16]

There is no evidence that Anita and/or Amy used mental coercion to cause Nelva to act contrary to her own free will and interest in executing the 8/25/10 QBD.

There is no evidence that Anita and/or Amy used physical coercion to cause Nelva to act contrary to her own free will and interest in executing the 8/25/10 QBD.

There is no evidence that Anita and/or Amy used economic coercion to cause Nelva to act contrary to her own free will and interest in executing the 8/25/10 QBD.

Accordingly, this no-evidence motion for summary judgment must be granted.

## IV. Prayer

For these reasons, Defendants pray that their no-evidence motion for partial summary judgment be granted and that Defendants receive all other relief, general and special, legal and equitable, to which they or the trusts may be entitled.

[SIGNATURES ON FOLLOWING PAGE]

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[14] *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006).

[15] TEXAS PATTERN JURY CHARGES: CONTRACTS PJC 101.26.

[16] *Ulmer v. Ulmer*, 162 S.W.2d 944, 947 (Tex. 1942).

Respectfully Submitted,

/s/ Brad Featherston

Stephen A. Mendel (13930650)
Bradley E. Featherston (24038892)
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
Tel: 281-759-3213
Fax: 281-759-3214
stephen@mendellawfirm.com
brad@mendellawfirm.com

Counsel for Anita Kay Brunsting
In Capacities at Issue

Respectfully Submitted,

/s/ Neal Spielman (w/permission /s/ BEF)

Samuel S. Griffin, III (008473800)
Neal Spielman (00794678)
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
Tel: 281-870-1124
Fax: 281-870-1647
sgriffin@grifmatlaw.com
nspielman@grifmatlaw.com

Counsel for Amy Ruth Brunsting
In Capacities at Issue

## Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Candace Louis Curtis
218 Landana Street
American Canyon, CA 94503
Tel: 925-759-9020

*Pro Se*

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224; F: 713-522-2218

Attorney for Drina Brunsting,
Alleged Attorney in Fact for
Carl Brunsting

Darlene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010
O: 713-752-8640; F: 713-425-7945

Attorney for Carol Ann Brunsting

via e-service or email on June 26, 2015.

/s/ Brad Featherston

Bradley E. Featherston

# EXHIBIT 6

RV

DATA-ENTRY
PICK UP THIS DATE

FILED
7/9/2015 6:11:24 PM
Stan Stanart
County Clerk
Harris County

PROBATE COURT 4

07/13/2015:0809:P0080

NO. 412.249-401

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

| | | |
|---|---|---|
| CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting | § | IN PROBATE COURT |
| 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 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 | § | NUMBER FOUR (4) OF |
| | § | HARRIS COUNTY, TEXAS |

**CARL HENRY BRUNSTING'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

TO THE HONORABLE PROBATE COURT:

07/13/2015:0809:P0081

COMES NOW Drina Brunsting as attorney-in-fact for Carl Henry Brunsting, individually ("Carl"), filing this Motion for Partial Summary Judgment, and in support thereof would show as follows:

I.

**Summary Judgment Issues**

This is a case involving, among other things, a dispute about changes purportedly made to a trust of which all of the parties are beneficiaries, as well as the administration of that trust and disbursements made from that trust after the parties' mother resigned as trustee and Defendant, Anita Kay Brunsting ("Anita"),[1] took over the trustee duties. This Motion for Partial Summary Judgment seeks relief on two specific points at issue in this case.

1. Carl seeks a determination, as a matter of law, that the August 25, 2010 Qualified Beneficiary Designation is null and void because it violates the terms of the Brunsting Family Living Trust as restated on January 12, 2005 (the "Family Trust") which prohibits amendments after the death of the first founder.[2] Elmer, the first founder to die, died in 2009. (Exhibit 4, p. P4347).

2. Carl also seeks a determination, as a matter of law, that disbursements in 2011 of Exxon Mobil stock and Chevron stock were improper distributions for which Anita, as the trustee making the disbursements is liable, and for which the beneficiaries who

[1] The Brunsting family members, for simplification purposes only, will all be referred to herein by their first names.

[2] Because the Family Trust refers to settlors as founders, that terminology is being used in this motion.

07132015:0809:P0067

received benefits from those distributions are also liable pursuant to Tex. Prop. Code §114.031, including through an offset of the applicable beneficiary's liability against that beneficiary's remaining interest in the trust estate.

**II.**

**Summary Judgment Evidence**

The following summary judgment evidence is presented in support of this motion:

1. The Restatement of The Brunsting Family Living Trust dated January 12, 2005 (P317-403)[3] (Exhibit 1)
2. The First Amendment to the Restatement to the Brunsting Family Living Trust dated September 6, 2007 (P444-445) (Exhibit 2)
3. The Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated August 25, 2010 (P407-443) (Exhibit 3)
4. Documents produced by Computershare in Carl's pre-suit discovery action filed on March 9, 2012[4] (P4308-4396) (Exhibit 4)
5. Schedule F from the summaries of transactions provided by Anita on March 27, 2012 (P12168-12170) (Exhibit 5)

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[3] The page number references are to the documents as numbered and previously produced by Carl in discovery in this case.

[4] This exhibit as filed has been redacted to remove or limit sensitive information. Such redactions were not made on the documents when produced.

07/30/2015:0809:P0068

6. Anita's Responses to Candace Louise Curtis' First Written Interrogatories (Exhibit 6)

7. Acceptance By Successor Trustee dated December 21, 2010 (p. P446) (Exhibit 7)

**III.**

**8/25/10 Qualified Beneficiary Designation Is Void As a Matter of Law**

In 1996, Elmer and his wife Nelva E. Brunsting ("Nelva") created the Family Trust. In addition to the restated Family Trust dated January 12, 2005 (Exhibit 1), a further amendment was done on September 6, 2007 which changed the provision naming successor trustees (Exhibit 2). Carl and Amy had been named successor trustees in the Family Trust, with Candy named as a further potential successor co-trustee should either Carl or Amy be unable to serve (Exhibit 1, p. P239, Article IV, Section B). The 2007 amendment named Carl and Candy as successor trustees (Exhibit 2).

Article III of the Family Trust allowed it to be revoked or amended only so long as both founders were living. The Family Trust specified, however, that upon the death of the first founder, the Family Trust "shall not be subject to amendment, except by a court of competent jurisdiction." (Exhibit 1, P. P237, Article III, Section, B, first paragraph). The same section in Article III concerning amendments also addressed the issue of qualified beneficiary designations with the following explanation:

> "Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and *the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share*

07/13/2015:0803:P0004

*or interest alone.*" (emphasis added) (Exhibit 1, p. P237, Article III, Section B, second paragraph)

On April 1, 2009, Elmer Brunsting died, thus triggering the provision which stated that the trust had become irrevocable and could no longer be amended, including by way of a qualified beneficiary designation. Elmer's death also triggered the division of the Family Trust's assets into the Elmer H. Brunsting Decedent's Trust ("Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Survivor's Trust") (Exhibit 1, p. P257, Article VII, Section B).

In July 2010, when Carl became ill with encephalitis and was in no position to continue to moderate the contentious relationship between his sisters as he had done before, the Defendants took aggressive steps to take control of the Family Trust's assets to the exclusion of Carl, and in some respects, to the exclusion of Carl's other sibling, Candy. Those steps culminated in the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement prepared by Nelva's counsel.[5] Under that document, only Carl and Candy were stripped of rights they had been afforded under the Family Trust.

This was done despite the lack of ambiguity in Article III of the Family Trust. That Article provides that a qualified beneficiary designation is an amendment to the Family Trust and that no amendment could be made after Elmer died in 2009. Moreover, any confusion that might be caused

[5] A separate action was brought against Vacek & Freed and Candace Freed in 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 164th Judicial District Court of Harris County, Texas when that law firm refused to continue a tolling agreement until a resolution could be reached among the Brunsting siblings. That action can not continue to be prosecuted, however, until a successor personal representative is appointed to replace Carl. Some of the issues raised in this motion should make it clear why an action was brought against the attorneys who prepared an instrument in conflict with the provisions of the earlier instrument they, themselves had also prepared.

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by the title of the document executed on August 25, 2010 which included both the term "qualified beneficiary designation" and "exercise of testamentary powers of appointment" would seem to be dispelled by consulting the definitions contained in Article XIII of the Family Trust. The definition provided for a power of appointment indicates that is simply another name for a qualified beneficiary designation. That definition is found in Article XIII which reads as follows:

> 10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgments by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.
>
> The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.
>
> The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration. (Exhibit 1, p. P309, Article XIII, definition 10).

While that is really more of a recitation of the requirements than a definition, what it does make clear is that, under the terms of the Family Trust, a qualified beneficiary designation and a power of appointment are one and the same. Thus, regardless of whether it was called a qualified beneficiary designation, a power of appointment, or both, the Family Trust states that it is to be

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considered an amendment to the trust.[6] As such it was prohibited by the Family Trust after the death of one of the founders. The 8/25/10 Qualified Beneficiary Designation was prepared after Elmer's death and is, therefore, void as a matter of law.

**IV.**

**Stock Transfers Were Improper as a Matter of Law**

Anita took over the role of trustee from her mother on December 21, 2010. (Exhibit 7). Once Anita took over as trustee, she used her new position of control to make distributions of substantial portions of Exxon Mobil and Chevron stock to herself, her children, her sisters, and one of her sister's children, and to the exclusion of her ill brother, Carl, who, after his mother, was the one most in need of assistance. Those transactions were as follows:

1. Anita transferred 1120 shares of Exxon Mobil stock to Amy from the Survivor's Trust on May 9, 2011 (Exhibit 4, p. P4310, 7th paragraph; p. P4385-4386)
2. Anita transferred 160 shares of Exxon Mobil stock to herself from the Survivor's Trust on June 13, 2011 (Exhibit 4, p. P4310, 8th paragraph, p. P4387-4388)

[6] While Defendants may attempt to claim confusion because of the inclusion of language in Article VIII, Sections B and C suggesting the surviving founder would have some right to make powers of appointment (Exhibit 1, p. P262 and 264) , those provisions, at best, conflict with, but do not negate, the provisions indicating such to be just another name for a qualified beneficiary designation which is not allowed after the first founder's death because it would be an attempted amendment to a trust which is no longer revocable. (Exhibit 1, p. P237, Section B). And should Defendants attempt to assert that there is some different status given to a power of appointment pursuant to the terms of the Family Trust, that is not specified anywhere, nor was any distinction preserved by the 8/25/10 Qualified Beneficiary Designation itself.

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3. Anita transferred 135 shares of Chevron stock to herself from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12169, bottom of page under "Anita became trustee Dec. 2011")[7]

4. Anita transferred 135 shares of Chevron stock to Amy's minor daughter, Ann Brunsting, from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12170)

5. Anita transferred 135 shares of Chevron stock to Amy's minor son, Jack Brunsting, from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12170)

6. Anita transferred 135 shares of Chevron stock to her own minor daughter, Katie Riley, from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12170)

7. Anita transferred 135 shares of Chevron stock to her own son, Luke Riley, from the Survivor's Trust on June 14, 2011 (Exhibit 5, p. P12170)

8. Anita transferred 160 shares of Exxon Mobil stock to Candy from the Survivor's Trust on June 15, 2011 (Exhibit 4, p. P4310, 8th paragraph; p. P4387-4388)

[7] The proof of the transfers of Chevron stock must be taken from Anita's summaries provided on March 27, 20112 because Carl is aware of no transfer documents ever having been provided by Anita. Likewise, the documents concerning the Exxon Mobil stock transfers were not provided by Anita, but Carl had learned of those transfers from Candy and sought the records directly from Exxon Mobil's transfer agent through the pre-suit discovery action he filed on March 9, 2012. It was only after Anita received notice of that action that she provided her unsupported summary. The inadequacies of Anita's disclosures as a fiduciary, however, will be addressed at a later time.

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9. Anita transferred 1325 shares of Exxon Mobil stock to Carole from the Decedent's Trust on June 15, 2011 (Exhibit 4, p. P4310, 3rd paragraph; p. P4362; p. P4369-4370)

None of these transfers were authorized by the provisions of the Family Trust. One reason they are unauthorized is that all of the shares of stock, other than those transferred to Carole, were transferred from the Survivor's Trust. Article VIII of the Family Trust requires the Survivor's Trust to be administered solely for the surviving founder's benefit.[8] That Article requires distributions, whether of income[9] or principal to be for the founder's benefit as may be necessary for her education, health, maintenance, and support. (Exhibit 1, p. P261-263, Article VIII, Section B and C). These disbursements were not to the surviving founder or for her benefit[10] and thus were not authorized by the Family Trust.

And even if the Family Trust had provided for distributions from the Survivor's Trust to someone other than the surviving founder, these were distributions of principal. Therefore, Anita, as trustee, was required to follow the specified standards for disbursements for the surviving

[8] Once again, after the party vacancy has been cured, the issue of Vacek & Freed's role in the administration of the Family Trust is one which needs to be addressed in the case filed against that law firm, but it is clear that Vacek & Freed took on Anita's representation as trustee and that they also continued to represent Nelva until her death. In addition to the damages caused by these improper transfers, if the transfers are not reversed, the question of tax consequences raised by failing to use the Survivor's Trust only for Nelva's benefit will have to be explored.

[9] In addition to the lost value of the shares themselves, all shares were dividend-bearing shares during the period after they were transferred, and those amounts of income were also lost.

[10] In fact, there is a significant question concerning whether grandchildren would have been entitled, under any circumstances, to distributions from the Family Trust until the death of both founders. Article I, Section C limits descendants to the named children of Elmer and Nelva Brunsting and any children subsequently born to or adopted by Elmer and Nelva. (Exhibit 1, p. P234, last full paragraph).

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founder's education, health, maintenance, or support. (Exhibit 1, p. P262-263). Instead, Anita has admitted in her responses to Candy's interrogatories that she did not take anything into consideration, including whether the distributions were necessary or advisable even to the recipients,[11] much less to the surviving founder. Instead, Anita indicated such transfers were "made at Nelva Brunsting's instruction."[12] (Exhibit 6, Responses to Interrogatory Numbers 3, 4, 5). That is not a basis under the terms of the Family Trust for these transfers, even if they had been otherwise authorized transfers. Thus, these transfers resulted from Anita's breach of her fiduciary duties[13] and were improper as a matter of law.

And although the disbursement of 1325 shares of Exxon Mobil stock to Carole came from the Decedent's Trust, the terms of the Family Trust as to administration of the Decedent's Trust were still not followed. All net income from the Decedent's Trust was to be paid to the surviving founder, and only limited amounts of principal could also be disbursed to the surviving founder without the imposition of the guidelines set forth in Article IX. (Exhibit 1, p. P268-269, Article IX). So, even

[11] Leaving aside for the moment Nelva's health issues and her need for caregivers, as well as Carl's serious medical issues, Anita's summary reflects that none of these transfers were necessary. The June 14, 2011 transfers of Chevron stock to Amy's minor children were, according to Anita's own summary, a "gift for future car/college." (Exhibit 5, p. P12170). And the similar transfers to Anita's own children were described as "gift for college exp." (Exhibit 5, p. P12170). The gifts to Anita's children come on the heals of, or were made contemporaneously with, over $37,000 in other disbursements to Anita for college expenses and automobiles for her children. (Exhibit 5, p. P12169).

[12] That seems unlikely since there was no history of such distributions while Nelva was trustee, and one would assume the distributions would have been made by Nelva before she resigned had she truly wanted them to be made. Nevertheless, even if the allegation that Nelva instructed that the distributions be made is accepted as true, that does not relieve Anita of her fiduciary obligations under the provisions of the Family Trust. There is nothing in the Family Trust authorizing Anita to make such distributions on Nelva's instruction.

[13] This is the case without even examining the self-dealing nature of a number, if not all, of the transfers.

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if such a distribution had been authorized under certain standards, no attempt was even made to meet those standards because it was again done, without regard to the standards, but allegedly at Nelva's instruction. (Exhibit 6, Response to Interrogatory number 2). Moreover, there is further evidence that the transfer allegedly to "pay off/fix house" was not necessary, because Anita's summary indicates Carole had already been paid $20,000 from the Family Trust on October 1, 2010 for either a loan or a gift to "fix house" (Exhibit 5, p. P12169).

First of all, the transfer of Exxon stock did not properly meet the guidelines for all distributions from the Decedent's Trust which required the trustee to "give primary consideration to the Surviving Founder's health, education, maintenance and support, and thereafter to our descendants health, education, maintenance and support." (Exhibit 1, p. P268, Article IX, Section B). And since this was, at best, a discretionary distribution, the following guidelines had to be met:

> "Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.
>
> Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts *according to the respective needs of the Decedent's Trust beneficiaries* and shall not be charged against a beneficiary's ultimate share of trust property." (emphasis added) (Exhibit 1, p. P269, Article IX, Section C).

As stated, the beneficiary most in need of assistance, other than Nelva, was Carl but he received nothing. Since none of the transfers of stock met the standards required by the terms of the Family Trust, Anita, as the trustee making these distributions, is liable, as a matter of law, for all

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such distributions, including the one to Carole from the Decedent's Trust. And pursuant to Tex. Prop. Code §114.031, the beneficiaries receiving the improper distributions are also responsible for the damages caused by the distributions once those damages are established. That section provides as follows:

> (a) A beneficiary is liable for loss to the trust if the beneficiary has:
>
> (1) misappropriated or otherwise wrongfully dealt with the trust property;
>
> (2) expressly consented to, participated in, or agreed with the trustee to be liable for a breach of trust committed by the trustee;
>
> (3) failed to repay an advance or loan of trust funds;
>
> (4) failed to repay a distribution or disbursement from the trust in excess of that to which the beneficiary is entitled; or
>
> (5) breached a contract to pay money or deliver property to the trustee to be held by the trustee as part of the trust.
>
> (b) Unless the terms of the trust provide otherwise, the trustee is authorized to offset a liability of the beneficiary to the trust estate against the beneficiary's interest in the trust estate, regardless of a spendthrift provision in the trust.

## V.

## Conclusion

The Qualified Beneficiary Designation of 8/25/10 fails, as a matter of law, as an attempted amendment to the Family Trust after the death of one of the founders. The transfers by Anita of significant stock holdings to the detriment of Nelva and the exclusion of Carl notwithstanding his

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life-threatening illness were not authorized by the terms of the Family Trust and, as a matter of law, create liability for Anita as trustee and for the beneficiaries who, at a minimum, have received distributions in excess of that to which they are allowed under the terms of the Family Trust.

WHEREFORE, PREMISES CONSIDERED, Carl requests that the Court grant his Motion for Partial Summary Judgment, and for such other and further relief to which Carl may be entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless
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bayless@baylessstokes.com

*Attorneys for Drina Brunsting, attorney-in-fact for Carl Henry Brunsting*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 9th day of July, 2015, as follows:

Bradley Featherston
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
*via U.S. First Class Mail*

Darlene Payne Smith
Lori A. Walsh
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, Texas 77010
*via U.S. First Class Mail*

Stephen A. Mendel
Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
*via U.S. First Class Mail*

Candace Curtis, *Pro Se*
218 Landana St.
American Canyon, California 94503
*via U.S. First Class Mail*

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

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NO. 412.249-401

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

| | | |
|---|---|---|
| CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting | § | IN PROBATE COURT |
| 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 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 | § | NUMBER FOUR (4) OF |
| | § | HARRIS COUNTY, TEXAS |

**AFFIDAVIT OF BOBBIE G. BAYLESS IN SUPPORT OF CARL HENRY BRUNSTING'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

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THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned official, on this day personally appeared BOBBIE G. BAYLESS, who is personally known to me, and first being duly sworn according to law, upon her oath deposed and said:

A. "My name is BOBBIE G. BAYLESS. I am over eighteen years of age, have never been convicted of a crime, and am fully competent to make this affidavit. I have personal knowledge of the statements contained herein, which are all true and correct.

B. I am an attorney with the law firm of Bayless & Stokes and the attorney representing Drina Brunsting as attorney-in-fact for Carl Henry Brunsting, individually ("Carl") in this action.

C. In the course of my representation of Carl, I have obtained the following documents, true and correct copies of which are attached to Carl's motion:

1. The Restatement of The Brunsting Family Living Trust dated January 12, 2005 provided by Vacek & Freed (P317-403) (Exhibit 1)

2. The First Amendment to the Restatement to the Brunsting Family Living Trust dated September 6, 2007 provided by Vacek & Freed (P444-445) (Exhibit 2)

3. The Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated August 25, 2010 provided by Vacek & Freed (P407-443) (Exhibit 3)

4. Documents produced by Computershare in Carl's pre-suit discovery action filed on March 9, 2012 (P4308-4396) (Exhibit 4)

5. Schedule F from the summaries of transactions provided by Anita's counsel on March 27, 2012 (P12168-12170) (Exhibit 5)

6. Anita's Responses to Candace Louise Curtis' First Written Interrogatories in this proceeding (Exhibit 6)

7. Acceptance By Successor Trustee dated December 21, 2010 provided by Vacek & Freed (p. P446)
(Exhibit 7)

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/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

SWORN TO AND SUBSCRIBED before me on this the 9th day of July, 2015.

/s/ Shawn M. Teague
Notary Public in and for the
State of TEXAS
Printed Name: Shawn M. Teague
My Commission Expires: April 3, 2019

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# Exhibit 1

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# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

*Prepared By*

Albert E. Vacek, Jr.

The Vacek Law Firm, PLLC

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# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

## Article I

## Our Family Living Trust

**Section A. The Restatement of Our Trust**

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

**Section B. The Title of Our Trust**

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

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Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

**Section C. Our Beneficiaries and Family**

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

| Name | Birth Date |
|---|---|
| CANDACE LOUISE CURTIS | March 12, 1953 |
| CAROL ANN BRUNSTING | October 16, 1954 |
| CARL HENRY BRUNSTING | July 31, 1957 |
| AMY RUTH TSCHIRHART | October 7, 1961 |
| ANITA KAY RILEY | August 7, 1963 |

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

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during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

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# Article II

## Transfers of Assets to Our Trust

**Section A. Our Initial Contribution**

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

**Section B. Additions to Our Trust**

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

**Section C. Our Separate and Community Accounts**

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

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# Article III

## Our Right to Amend or Revoke This Trust

### Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

### Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

### Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

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deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

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# Article IV

# Our Trustees

**Section A. Original Trustees**

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

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A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

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On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

**Section F. Documentary Succession of Our Trustees**

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

**Section G. Our Trustees' Compensation**

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

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**Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

**Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

**Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

**Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.





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**Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

**Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance**

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

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deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

**3. Determination of "Incompetence" or "Incapacity"**

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

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estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

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such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

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# Article V

## Insurance Policies and Retirement Plans

### Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

#### 1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

#### 2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

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**Section B. Upon the Death of a Founder**

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

**1. Collection of Non-Retirement Death Proceeds**

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

**2. Retirement Plan Elections**

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

**3. Collection Proceedings**

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

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in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

**4. Payor's Liability**

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

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**Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets**

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

**1. Minimum Distribution**

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

**2. Distribution Restrictions**

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

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of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

**3. Exclusion of Older Adopted "Descendants"**

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

**4. Payment of Estate Taxes of Plan Participant**

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

**5. Delivery of Trust to Plan Administrator**

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

**6. Distribution to the Beneficiaries**

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

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of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

**7. Distribution of More Than the Minimum Distribution**

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

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# Article VI

## For So Long As We Both Shall Live

**Section A. Our Use of Income and Assets**

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

**Section B. If One or Both of Us Are Disabled**

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

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Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

**Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

**Section D. Residence Homestead**

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;

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3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.

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# Article VII

# Upon the Death of One of Us

**Section A. Settlement of Affairs**

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

**1. Deceased Founder's Probate Estate**

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

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of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

**2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

**3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

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of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

**Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

**1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

**a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

**b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

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### 2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

### Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

### Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

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### Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

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**Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

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Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

**Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

**1. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

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**2. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

**3. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

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# Article VIII

## Administration of the Survivor's Trust

**Section A. Creation of Two Survivor's Shares**

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

**1. Survivor's Share One**

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

**2. Survivor's Share Two**

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

**Section B. Administration of Survivor's Share One**

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

**1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

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**2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. *Principal Distributions in Our Trustee's Discretion***

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

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**Section C. Administration of Survivor's Share Two**

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

**1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

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**2. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

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### 3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

## Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

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Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

### 1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

EXHIBIT

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

**2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

**3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

**a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

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**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

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c. **Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

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# Article IX

## Administration of the Decedent's Trust

**Section A. Use of Income and Principal**

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

**Section B. Guidelines for All Distributions**

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.





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If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

**Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

**Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

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appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

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# 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:

| Beneficiary | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| ANITA KAY RILEY | 1/5 |

**Section B. Distribution to our Beneficiaries**

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

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ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.



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iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

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i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

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However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.





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3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

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CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

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BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. *Distributions of Net Income*

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.





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In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

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TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

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will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

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such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

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**Section C. Administration of the Share of a Descendant of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

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2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.





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**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

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| Beneficiary | Share% |
|---|---|
| CENTRAL COLLEGE OF IOWA<br>Pella, Iowa | 100% |

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

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# Article XI

## Protection of Beneficial Interests

### Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

### Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

### Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

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Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

**Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

**1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

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## 2. Methods of Distribution

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

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The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

**3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

**Section E. Application to Founders**

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

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# Article XII

## Our Trustees' Powers and Authority

### Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

### Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

### Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

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### Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

### Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

### Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

### Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

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determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

**Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

**Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

**Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

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Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

**Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

**Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

**Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

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liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

**Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

**Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

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**Authority to Sell or Lease and Other Dispositive Powers**

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

**Warranties and Covenants**

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

**Trustee's Compensation**

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

**Employment and Delegation of Authority to Agents**

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

**Power to Release or Abandon Property or Rights, and to Pursue Claims**

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

**Nominal Title and Use of Nominees**

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

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**Power to Lend Money and Guarantee Obligations**

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

**Power to Borrow**

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

**Payment of Indebtedness and Settlement Costs**

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

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The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

**Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

**Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

**Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

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**Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

**Tax Elections**

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

**Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

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the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

**Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

**Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

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The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

**Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

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**Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

**Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

**Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

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The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

**Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

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by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

**Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

**Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

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**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

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**Section Q. Retirement Plan Elections**

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

**Section R. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

**1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

**2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

**3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

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newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

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# Article XIII

## Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

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4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

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10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

    The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

    The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

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# Article XIV

## Miscellaneous Matters

**Section A. Distribution of Personal Belongings by Memorandum**

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

**Section B. Special Bequests**

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

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**Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

**Section D. *Jurisdiction***

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

**Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

**Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

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**Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

**Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

**Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

**Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

**Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.





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**Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

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as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

**Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

**Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

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**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

Elmer H. Brunsting
ELMER H. BRUNSTING, Founder

Nelva E. Brunsting
NELVA E. BRUNSTING, Founder

Elmer H. Brunsting
ELMER H. BRUNSTING, Trustee

Nelva E. Brunsting
NELVA E. BRUNSTING, Trustee

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THE STATE OF TEXAS

*COUNTY OF HARRIS*

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA B. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman
Notary Public, State of Texas

CHARLOTTE ALLMAN
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
AUG. 1, 2006

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# Exhibit 2

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FIRST AMENDMENT TO THE RESTATEMENT TO
THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

Elmer H. Brunsting
ELMER H. BRUNSTING,
Founder and Trustee

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Candace L Kunz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

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EXHIBIT "A"

# Article IV

# Our Trustees

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

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# Exhibit 3

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**QUALIFIED BENEFICIARY DESIGNATION AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT UNDER LIVING TRUST AGREEMENT**

**Section 1. Exercise of General Power of Appointment and Qualified Beneficiary Designation**

I, NELVA E. BRUNSTING, the surviving Founder (herein also referred to as "Trustor" and "Founder") of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B.4 of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to administer and distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST as set forth in Section 3 of this document.

The BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, is incorporated herein by reference for all purposes (herein sometimes referred to as "the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996," and the "Trust Agreement").

**Section 2. Exercise of Limited Power of Appointment and Qualified Beneficiary Designation**

I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named

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the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, I direct my Trustee to administer and distribute the balance of the principal and undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST, except for any portion which has been disclaimed by me, as set forth in Section 3 of this document.

**Section 3. Provisions for Distribution and Administration of the Survivor's Trust and the Decedent's Trust**

**DISTRIBUTION OF TRUST ASSETS**

**A. Beneficiaries**

The Trustee shall divide the remainder of the Trust Estate into separate shares hereinafter individually referred to as Personal Asset Trusts, as follows:

| Beneficiaries | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| ANITA KAY BRUNSTING | 1/5 |

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**B. Division into Separate Shares**

My Trustee shall distribute the share for each of my beneficiaries in a separate Personal Asset Trust for the benefit of each beneficiary as provided in this Section 3. If a named beneficiary fails to survive me, then that share shall be distributed as set forth below as if it had been an original part thereof. The decisions of the Trustee as to the assets to constitute each such share shall be conclusive, subject to the requirement that said shares shall be of the respective values specified.

**1. Share for CANDACE LOUISE CURTIS**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CANDACE LOUISE CURTIS, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CANDACE LOUISE CURTIS fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CANDACE LOUISE CURTIS, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**2. Share for CAROL ANN BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CAROL ANN BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CAROL ANN BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CAROL ANN BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**3. Share for AMY RUTH TSCHIRHART**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of AMY RUTH TSCHIRHART, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If AMY

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RUTH TSCHIRHART fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of AMY RUTH TSCHIRHART, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**4. Share for CARL HENRY BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CARL HENRY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CARL HENRY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CARL HENRY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**5. Share for ANITA KAY BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of ANITA KAY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If ANITA KAY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of ANITA KAY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

## PERSONAL ASSET TRUST PROVISIONS

A. Establishment of the Personal Asset Trust:

A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified



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to be made to said beneficiary's Personal Asset Trust first occurs. The Personal Asset Trust shall be held, administered and distributed as set forth under this Agreement. After a beneficiary's Personal Asset Trust is established, any further distribution specified to be made to said beneficiary's Personal Asset Trust under any other provisions of this Agreement shall be added to and become a part of said existing Personal Asset Trust, to be held, administered and distributed as if it had been an original part thereof. The Personal Asset Trust may be referred to by either using the name of the beneficiary for whom such trust is created or such other name as is designated by the Trustee. Notwithstanding the foregoing, if the Trustee exercises his or her right to create a separate and distinct Personal Asset Trust for said beneficiary (pursuant to the paragraph of this Agreement entitled "Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners"), any further distributions specified to be made to said beneficiary's Personal Asset Trust may, in the Trustee's sole and absolute discretion, instead be partly or entirely made to such newly created Personal Asset Trust.

B. Trustor's Intent in Establishing Personal Asset Trusts: The Trustor's intended purposes in creating a Personal Asset Trust for a beneficiary are as follows:

1. To protect and conserve trust principal;

2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary;

3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

4. To protect trust assets and income from claims of and interference from third parties;

5. To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;





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7. To give the beneficiary the ability to direct the distribution of wealth (during life or at death) to other individuals or charitable organizations (subject to any limitation provided elsewhere herein);

8. To allow for the prudent management of property if the beneficiary is incapacitated or otherwise unable to handle his or her own financial affairs because of alcohol or drug abuse or other reasons;

9. To protect the beneficiary from the unreasonable or negative influence of others, divorce claims, paternity or maternity suits or claims, and other lawsuits; and

10. To protect the beneficiary against claims of third parties.

C. Duty to Inform Beneficiary of Trust Benefits and Protections: Immediately prior to a Personal Asset Trust being established for a beneficiary hereunder, the then acting Trustee of the Trust shall, if at all practicable, have a private meeting or telephone call with such beneficiary to explain the above stated long-term purposes and benefits of the Personal Asset Trust and to advise such beneficiary how he or she may maintain the benefits and protections that such trust provides. The Trustee is directed to have an attorney assist the Trustee in conducting this meeting or call and the Trustor hereby authorizes the Trustee to employ the services of VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, for such purpose and waive any potential conflict that may otherwise deter them from acting; however, the Trustee is free to hire any other attorney, provided such attorney is an experienced estate planning specialist.

D. Designation of Trustee: Except for the Personal Asset Trusts created for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS, each beneficiary for whom a Personal Asset Trust is created shall act as sole Trustee of said trust. ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall act as Co-Trustees for the Personal Asset Trusts for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS. If either ANITA KAY BRUNSTING or AMY RUTH TSCHIRHART cannot serve for any reason, the remaining Co-Trustee shall serve alone. Both ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall have the right to appoint their own successor Trustee in writing. Notwithstanding the foregoing, each beneficiary who is acting as his or her own Trustee of his or her said trust shall have the right, at such time as said beneficiary is acting as sole Trustee and in said beneficiary's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said beneficiary as Co-Trustee of said trust. Said beneficiary shall also have the right, at any time and in said beneficiary's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said beneficiary appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said beneficiary shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a

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successor Trustee or Co-Trustee(s) in said beneficiary's place, as the case may be, in the event of said beneficiary's death, incompetency, inability or unwillingness to act; but, if said beneficiary is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c) and said beneficiary shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said beneficiary fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said beneficiary to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

E. Designation of Trustee for Primary Beneficiary's Issue: Notwithstanding the foregoing, upon attaining age thirty five (35) each of the descendants of a Primary Beneficiary (hereinafter sometimes referred to as "issue") shall act as sole Trustee of the Personal Asset Trust created for such issue. Said issue shall have the right, at such time as said issue is acting as sole Trustee and in said issue's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said issue as Co-Trustee of said trust. Said issue shall also have the right, at any time and in said issue's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said issue appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said issue shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a successor Trustee or Co-Trustee(s) in said issue's place, as the case may be, in the event of said issue's death, incompetency, inability or unwillingness to act; but, if said issue is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c)) and said issue shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said issue fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said issue to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

F. Administration of Personal Asset Trust: The Personal Asset Trust shall be held, administered and distributed by the Trustee appointed under this Section of the Trust Agreement as follows:

1. Discretionary Distributions of Income and/or Principal: The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for

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the benefit of the beneficiary for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as such Trustee shall deem appropriate for such distributees' health, support, maintenance and education. Any income not distributed shall be accumulated and added to principal. In exercising the discretions conferred in this paragraph, the Trustee may pay more to or apply more for some beneficiaries to the exclusion of others, if such Trustee deems this necessary or appropriate in light of the circumstances, the size of the Trust Estate and the probable future needs of the beneficiaries. The Trustee shall, before making any such distributions, consider the Trustor's intent in creating the trust, as set forth above in paragraph B.

2. Additional Guidelines for Distributions: In addition to the provisions set forth above for making discretionary distributions of income and/or principal, the Trustee shall be further guided as follows in making such distributions. Any such distributions shall be made in the sole and absolute discretion of the Trustee and shall be binding on all persons howsoever interested now or in the future in this trust.

a. Primary Beneficiary's Needs Considered First; Broad Interpretation of "Health, Education, Maintenance and Support": In exercising the discretionary powers to provide benefits under this trust, the Trustee shall take into consideration that the primary purpose in establishing this trust is to provide for the present and future welfare of the primary beneficiary, and secondly, the present and future welfare of the primary beneficiary's issue. Furthermore, the Trustee may take into account any beneficiary's character and habits and his or her willingness and action to support himself or herself in light of his or her particular abilities and disabilities, and the needs of other beneficiaries, if any, of the same trust. Finally, the Trustor requests that the Trustee be liberal in determining the needs of a beneficiary for health, support, maintenance and education and in conferring benefits hereunder. The term "health" need not take into account any private or governmental medical insurance or other medical payments to which a beneficiary may be entitled, and the Trustee may pay for the expense of providing health and medical insurance coverage for the beneficiary. The term "education" may include but is not limited to, all expenses incurred in connection with or by reason of a beneficiary's attendance at public or private elementary or high school, college, university or vocational, technical or other educational institution or specialized training programs (whether or not any such institution or program provider shall be a fully accredited educational institution), graduate or post-graduate education expenses, and all expenses incurred in providing such beneficiary with an education in a non-institutional setting; including,

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but not limited to, the expense of travel and charges for tutoring, tuition, room and board (whether or not charged by an educational institution at which such beneficiary shall be a student), laboratory fees, classroom fees, clothing, books, supplies, laboratory or other equipment or tools (including computer hardware and software) or other material or activities that the Trustee shall determine to be of educational benefit or value to such beneficiary. In determining the need for funds for education, the Trustee shall consider all direct and indirect expenses, including living expenses of the beneficiary and those persons who may be dependent upon said beneficiary. The terms "support" and "maintenance" may include but are not limited to investment in a family business, purchase of a primary residence, entry into a business, vocation or profession commensurate with a beneficiary's abilities and interests; recreational or educational travel; expenses incident to marriage or childbirth; and for the reasonably comfortable (but not luxurious) support of the beneficiaries. When exercising the powers to make discretionary distributions from the trust, the Trustee shall maintain records detailing the amount of each distribution made to any beneficiary from trust income and/or principal and the reasons for such distribution. The distributions made to a beneficiary shall not be allocated to or charged against the ultimate distributable share of that beneficiary (unless so provided in the primary beneficiary's exercise of his or her limited power of appointment).

b. Consider the Situation of the Beneficiary: In determining whether or not it is in the best interest of a beneficiary for any payment to be made to that beneficiary, the Trustee shall consider the financial responsibility, judgment and maturity of such beneficiary, including whether or not, at the time of such determination, such beneficiary: (i) is suffering from any physical, mental, emotional or other condition that might adversely affect the beneficiary's ability to properly manage, invest and conserve property of the value that would be distributed to said beneficiary; (ii) is at such time, or previously has been, a substantial user of or addicted to a substance the use of which might adversely affect the beneficiary's ability to manage, invest and conserve property of such a value; (iii) has demonstrated financial instability and/or inability to manage, invest and conserve the beneficiary's property; or (iv) is going through a period of emotional, marital or other stress that might affect the beneficiary's ability to manage, invest and conserve such property.

c. Consider Any Written Letter of Instructions from the Trustor: The Trustor may from time to time by written letter or other instrument, not constituting a holographic will or codicil or amendment to any trust, set forth instructions to the Trustee as to how the Trustor wishes the

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Trustee's discretion to be exercised. The Trustor recognizes and intends that such instructions shall only be directive in nature and not binding on the Trustee or any beneficiary hereunder; however, the Trustor requests, to the extent possible, that the Trustee be mindful of these instructions when administering the trust.

d. Loans, Use of Trust Property and Joint Purchases Preferred Over Distributions: The Trustee is directed, prior to making any distributions directly to or for the benefit of a beneficiary, to consider the alternatives of making a loan to the beneficiary, allowing the beneficiary the use of property of the Trust Estate (or such property to be acquired) and/or making a joint purchase of property with the beneficiary, pursuant to the paragraph below entitled "Special Trustee Powers."

e. Restrictions on Distributions That Discharge Legal Obligations of a Beneficiary: The primary beneficiary is expressly prohibited from making any distributions from the trust, either as Trustee or under any limited power of appointment, either directly or indirectly, in favor of anyone to whom the primary beneficiary owes a legal obligation, to satisfy, in whole or in part, such legal obligation. Any such distributions may only be made by the Trust Protector.

G. Primary Beneficiary's Limited Power of Appointment: The primary beneficiary shall have the following Limited Powers of Appointment. During the lifetime of the primary beneficiary, said beneficiary may appoint and distribute the accumulated income and/or principal to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions, and in such amounts or proportions as said beneficiary wishes. Upon the death of the primary beneficiary, the Trustee shall distribute any remaining balance, including accumulated income and principal, to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions and in such amounts or proportions as said beneficiary shall appoint by said beneficiary's last unrevoked Will, codicil or other written instrument executed prior to said beneficiary's death and specifically referring to this power of appointment. In the event there should be a failure of disposition of all or any portion of said income or principal, either in connection with the exercise or as a result of the nonexercise of the above testamentary limited power of appointment, all of said income and principal not disposed of shall be administered and distributed as set forth below in the paragraph entitled "Final Disposition of Trust." The terms of this paragraph may be limited by the Section of this Trust Agreement entitled "Trust Protector Provisions."

H. Final Disposition of Trust: If the primary beneficiary for whom the Personal Asset Trust has been created should die before complete distribution of said trust, and the beneficiary's above powers of appointment have not been fully exercised, said trust shall terminate and the remaining principal (including accumulated income added

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thereto) in said trust shall be held, administered and distributed for the benefit of the succeeding or contingent beneficiaries named, if any, pursuant to the respective paragraph set forth in Section 3.B. of this Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment establishing said beneficiary's share as if such beneficiary had been an original part thereof. Any share or portion thereof of any trust administered hereunder which is not disposed of under any of the foregoing provisions (or the provisions of the Article entitled "Trust Protector Provisions") shall be distributed pursuant to the paragraph of the Trust Agreement entitled "Ultimate Distribution."

I. Special Trustee Powers: With respect to each Personal Asset Trust created under this Section, and in addition to or in lieu of the powers and authority granted to the Trustee under any other provisions of the Trust Agreement, during the existence of the Personal Asset Trust and until such time of its termination the Trustee, in his or her sole and absolute discretion, shall have the powers and authority to do the following.

1. Permit Beneficiaries to Use Trust Assets: The Trustor desires that the beneficiaries of the trust be given the liberal use and enjoyment of trust property. To the extent deemed practical or advisable in the sole and absolute discretion of the Trustee, the primary beneficiary (or other beneficiaries) of each trust hereunder may have the right to the use, possession and enjoyment of (a) all of the tangible personal property at any time held by such trust, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, and (b) all real property that may at any time constitute an asset of such trust. Such use, possession and enjoyment may be without rent or other financial obligation. To the extent of the trust assets and unless the Trustee is relieved of such obligation by such beneficiary (or beneficiaries), which the Trustee may agree to do, the Trustee shall see to the timely payment of all taxes, insurance, maintenance and repairs, safeguarding and other charges related to the preservation and maintenance of each and every such property. The Trustor requests, but do not require, that any such use, possession or enjoyment by a beneficiary other than the primary beneficiary be subject to veto at any time by the primary beneficiary.

a. Hold and Maintain a Residence for the Use of Beneficiaries: The Trustee is specifically authorized to hold and maintain any residence (whether held as real property, condominium or cooperative apartment) for the use and benefit of any beneficiary of any trust. If the Trustee, in the Trustee's sole and absolute discretion, determines that it would be in the best interests of any beneficiary of any trust to maintain a residence for their use, but that the residence owned by the Trustee should not be used for such purpose, the Trustee is authorized to sell said residence and to apply the net proceeds of the sale to the purchase of such other residence or to make such other arrangements as the Trustee, in such Trustee's sole and absolute discretion, deems suitable

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for the purpose. Any proceeds of sale not needed for reinvestment in a residence as provided above shall be added to the principal of the trust and thereafter held, administered and disposed of as a part thereof. The Trustee is authorized to pay all carrying charges of such residence, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of any beneficiary of the trust; the Trustee may alternatively provide, by agreement with the beneficiary, that such charges and expenses, or a portion of them, are to be paid by the beneficiary. Having in mind the extent to which funds will be available for future expenditure for the benefit of the beneficiaries, the Trustee is authorized under this paragraph to expend such amounts as such Trustee shall, in his or her sole and absolute discretion, determine to maintain the current lifestyle of the beneficiaries and their personal care and comfort; the Trustor does not, however, desire that the Trustee assist the beneficiaries in maintaining a luxurious lifestyle.

2. Special Investment Authority: Notwithstanding any investment limitations placed on the Trustee under the Trust Agreement or the provisions of any state law governing this trust which may contain limitations such as the prudent investor rule, the Trustee is authorized to make the following types of investments of trust assets:

a. Closely Held Businesses: To continue to hold and operate, to acquire, to make investments in, to form, to sell, or to liquidate, at the risk of the Trust Estate, any closely held partnership, corporation or other business that a beneficiary is involved in as an owner, partner, employee, officer or director, as long as the Trustee deems it advisable. The Trustee shall not be liable in any manner for any loss, should such loss occur, resulting from the retention or investment in such business. In the absence of actual notice to the contrary, the Trustee may accept as correct and rely on financial or other statements rendered by any accountant for any such business. Any such business shall be regarded as an entity separate from the trust and no accounting by the Trustee as to the operation of such business shall be required to be made. The Trustee shall have these powers with respect to the retention and purchase of such business, notwithstanding any rule or law requiring diversification of assets. Additionally, the foregoing shall not be limited by the fact that the Trustee or related parties, or any of them, shall be owners, partners, employees, officers or directors of the business. This paragraph, however, shall not be deemed to be a limitation upon the right of the Trustee to sell the investment in any



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business if in the Trustee's sole and absolute discretion such sale is deemed advisable.

b. Tangible Personal Property: To acquire and/or continue to hold as an asset of the trust such items of tangible personal property as an investment or for the use of a beneficiary, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, home furniture and furnishings.

3. Permit Self-Dealing: Financial transactions, both direct and indirect, between any trust and any beneficiary and/or Trustee who is also a beneficiary of that trust (including, for example, the sole or joint purchase, sale or leasing of property, investments in mortgages, acquisitions of life insurance policies, employment in any capacity, lending, etc.), whether or not specifically described in the Trust Agreement as permitted between such parties, except to the extent expressly prohibited hereunder, are expressly authorized, notwithstanding any rule of law relating to self-dealing, provided only that the Trustee, in thus acting either on behalf of or with or for such trust, shall act in good faith to assure such trust receives in such transaction adequate and full consideration in money or money's worth. Furthermore, the Trustee shall have the power to employ professionals or other individuals to assist such Trustee in the administration of any trust as may be deemed advisable (and as more particularly described in the paragraph of the Trust Agreement entitled "Trustee Powers"), notwithstanding such person or entity may be, or is affiliated in business with, any Trustee or beneficiary hereunder. The compensation to which a Trustee who is also a beneficiary is entitled under the Trust Agreement shall not be reduced or offset by any employment compensation paid to such Trustee for services rendered outside the scope of such Trustee's ordinary fiduciary duties and responsibilities, or for reason of receiving sales or other fees or commissions on property sold to the trust by such Trustee (directly or indirectly), which sales are hereby authorized.

4. Make Loans: Loan money to any beneficiary, or to any estate, trust or company in which such person or any trust hereunder has an interest, or had an interest while living, for any purpose whatsoever (including but not limited to purchasing, improving, repairing and remodeling a principal residence or entering into, purchasing or engaging in a trade or business or professional career), with or without security and at such rate of interest as the Trustee shall determine in the exercise of reasonable fiduciary discretion, and, with respect to such loans and/or security interests, to renew, extend, modify and grant waivers. Notwithstanding the foregoing, and without limiting the ability of the Trustee to act in such Trustee's discretion under this paragraph, the Trustor hereby expresses his preference that, whenever economically feasible, any and all loans made pursuant to the provisions of this paragraph be adequately secured and bear interest at least at the higher of the "applicable federal rate"

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as set forth by the Internal Revenue Service for loans with similar payment terms and length or a fair market rate for such loans.

5. Take Actions With Respect to Properties and Companies Owned in Common With a Beneficiary or Others: The Trustee is specifically authorized, with or without the joinder of other owners of the property or securities that may be held in trust (and notwithstanding that one or more such other owners may be, directly or indirectly, a beneficiary or a fiduciary hereunder), to enter upon and carry out any plan (a) for the foreclosure, lease or sale of any trust property, (b) for the consolidation or merger, dissolution or liquidation, incorporation or reincorporation, recapitalization, reorganization, or readjustment of the capital or financial structure of any corporation, company or association, the securities of which, whether closely held or publicly traded, may form a part of such trust, or (c) for the creation of one or more holding companies to hold any such securities and/or properties (even if it leaves, following the termination of such trust, a trust beneficiary as a minority shareholder in such holding company), all as such Trustee may deem expedient or advisable for the furtherance of the interests of such trust and the carrying out of the Trustor's original intent as to such trust, its beneficiaries and as to those properties and/or securities. In carrying out such plan, such Trustee may deposit any such securities or properties, pay any assessments, expenses and sums of money, give investment letters and other assurances, receive and retain as investments of such trust any new properties or securities transferred or issued as a result thereof, and generally do any act with reference to such holdings as might be done by any person owning similar securities or properties in his own right, including the exercise of conversion, subscription, purchase or other rights or options, the entrance into voting trusts, etc., all without obtaining authority therefor from any court.

6. Right to Distribute to Entities: Any distribution from the trust, including a distribution upon trust termination (whether made by the Trustee or Trust Protector) may be made directly to an entity, such as a trust, "S" corporation, limited liability company or limited partnership, whether existing or newly created, rather than directly to the beneficiary (and if it is a newly created entity or one in which the Trust Estate holds an interest, the interest in the entity may be distributed to such beneficiary).

7. Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners: Without in any manner limiting any other power or right conferred upon the Trustee hereunder, the Trustee may divide a trust into separate trusts, and if a trust is held as, or divided into, separate trusts, the Trustee may, at any time prior to combining such trusts, treat the trusts in substantially different manners, including, without limitation, the right to: (a) make different tax elections (including the disproportionate allocation of the generation skipping tax exemption) with respect to each separate trust; (b)





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make disproportionate principal distributions; (c) exercise differently any other discretionary powers with respect to such separate trusts; (d) invest the property of such separate trusts in different investments, having different returns, growth potentials, or bases for income tax purposes; and (e) take any and all other actions consistent with such trusts being separate entities. Furthermore, the holder of any power of appointment with respect to any trust so divided may exercise such power differently with respect to the separate trusts created by the division of a trust.

## TRUST PROTECTOR PROVISIONS

A. Purpose of Trust Protector: The Trustor has established the position of Trust Protector for the reasons and purposes set forth below, which are intended as general guidelines only and in no way shall limit any other provisions relating to the Trust Protector.

1. Insulate the Trustee from Negative Influences: To protect the Trustee from the negative, or potentially negative, influences of third parties and to protect the Trust Estate and its beneficiaries from damaging, or potentially damaging, conduct by the Trustee.

2. Carry Out the Purposes of the Trust: To help ensure that the Trustor's purpose in establishing the Trust Agreement, as defined elsewhere herein, will be properly carried out.

3. Adapt to Changing Laws and Conditions: To adapt the provisions of the Trust Agreement to law changes, changes in interpretation of the law or other changing conditions that threaten to harm the Trust or its beneficiaries, keeping in mind the dispositive wishes of the Trustor and the Trustor's desires as expressed in the Trust Agreement.

B. Designation of Trust Protector: In addition to the Trustee and Special Co-Trustee provided in the Trust Agreement, there shall, from time to time, be a Trust Protector whose limited powers and duties are defined below. The order of succession of Trust Protector shall be as follows:

1. Initial Trust Protector: The Special Co-Trustee, at any time and in his sole and absolute discretion, may appoint a Trust Protector of the entire Trust or of any separate trust established hereunder (hereinafter the trust for whom a Trust Protector is appointed shall be referred to as "the affected trust") by a writing delivered to the Trustee of the affected trust. The Trustor requests that the Special Co-Trustee, prior to making the appointment, meet (in person or by telephone) with VACEK & FREED, PLLC, formerly the Vacek Law Firm,

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PLLC of Houston, Texas, to help ensure the appropriate selection of the initial Trust Protector.

2. Successor Trust Protector: Upon the removal, death, incompetency, inability or unwillingness to act of the initial Trust Protector (including a written resignation delivered to the Trustee of the affected trust), the next succeeding Trust Protector shall be appointed either by the Special Co-Trustee or by the *initial Trust Protector (except as limited by paragraph 4 below) in writing* delivered to the Trustee of the affected trust (the first such writing delivered to the Trustee shall control). All further successor Trust Protectors shall be appointed in the same manner, except that where the word "initial" is used in the foregoing sentence there shall be substituted the words "last appointed."

3. Qualifications to Act as Trust Protector: A Trust Protector may act once he has accepted, in writing, his appointment and, other than the case of the initial Trust Protector, has delivered a copy of his appointment and acceptance to the last appointed Trust Protector. Notwithstanding the foregoing, at no time may a Trust Protector be appointed or otherwise act if such person or entity is a currently acting Trustee or Special Co-Trustee or is a current beneficiary of the affected trust or is related to any such beneficiary in any of the following ways: as spouse, ancestor or issue, brother, sister, employee of such beneficiary or of any corporation, firm or partnership in which such beneficiary is an executive or has stock or other holdings which are significant from the viewpoint of control, or is otherwise "related or subordinate to" such beneficiary under IRC Sections 674(a) and (c) and the Regulations thereunder or any similar succeeding Sections or Regulations.

4. Removal of Trust Protector: The primary beneficiaries of the affected trust may by majority vote, and at any time and for any reason, remove the current Trust Protector by delivering to said Trust Protector and to the Special Co-Trustee a signed instrument setting forth the intended effective time and date of such removal. The Special Co-Trustee shall then appoint a successor Trust Protector in accordance with paragraph 2 above (the Trust Protector removed shall no longer have the power under paragraph 2 to appoint his successor). *The powers of removal under this paragraph may be limited by the paragraph* of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective."

5. Temporarily Filling a Trust Protector Vacancy: If at any time a vacancy in the office of Trust Protector has not yet been filled as otherwise provided above (including the time before the initial Trust Protector is appointed), such office may be filled promptly, on a temporary basis, by a bank or trust company experienced in trust administration or an attorney (or law firm) who is an experienced tax and/or estate planning specialist provided they meet the qualifications set forth in paragraph 3 above. The Trustor requests, but do not





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require, that VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or its successors or assigns, act as such temporary Trust Protector and the Trustor hereby waives any conflict of interest that may arise if VACEK & FREED, PLLC, or its successors or assigns, is also representing the Trustee of the affected trust and/or the Trustor. Any Trust Protector acting under this paragraph shall first notify the Trustee of the affected trust and only serve as Trust Protector until such time as a successor Trust Protector is appointed by the Special Co-Trustee in accordance with paragraph 2 above and there is delivered to the Trust Protector acting under this paragraph a written acceptance of such appointment signed by the successor Trust Protector.

C. Limited Powers of the Trust Protector: The Trust Protector shall not have all the broad powers of a Trustee; rather, the powers of the Trust Protector shall be limited to the powers set forth below. The Trustor directs the Trust Protector, prior to exercising any power, to consult with VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or another law firm or attorney specializing in estate planning and/or asset protection planning in order to be fully informed of the consequences of exercising such power.

1. Give Advance Notice to Affected Beneficiaries: Within a reasonable time prior to the exercise of any power under this paragraph C, the Trust Protector shall provide to the Trustee and the primary beneficiary or beneficiaries of the affected trust a written notice, setting forth the power intended to be exercised, the intended date of exercise and the reasons for exercise. The Trust Protector shall, in his sole and absolute discretion, determine what is "a reasonable time," as the Trustor recognizes that emergency situations may arise which may permit little or no time for advance notice or, as a practical matter, it may be too difficult to notify the beneficiary; the Trustor specifically waives this advance notice requirement when the particular beneficiary is "incapacitated" as defined below. Once notice is given, the Trust Protector shall not exercise the power prior to the date specified in the notice, unless the Trust Protector in his sole and absolute discretion determines that an emergency so warrants.

A person shall be deemed "incapacitated" if in the Trustee's sole and absolute discretion, it is impracticable for said person to give prompt, rational and prudent consideration to financial matters, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause.

A person shall be conclusively deemed "incapacitated" if a guardian of the person or his or her estate, or both, has been appointed by a court having jurisdiction over such matters or two (2) licensed physicians who are not related by blood or marriage to such person have examined said person and stated in writing that such incapacity exists; the Trust Protector may, but shall not be under any duty to, institute any inquiry into a person's possible

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incapacity (such as, but not limited to, by drug testing) or to obtain physician statements; and if he does, then the expense may be paid from the Trust Estate of said person's trust.

2. Postpone Distributions: Notwithstanding any other provisions of the Trust Agreement, except the paragraph herein entitled "Rule Against Perpetuities," the Trust Protector shall have the power to postpone any distribution of income and/or principal otherwise required to be made from the affected trust to any one or more of its beneficiaries (including as the result of exercise of a power of appointment or withdrawal right) and to postpone the termination of such trust which might otherwise be required if the Trust Protector, in his or her sole and absolute discretion, determines, after taking into consideration the Trustor's overall intent as expressed in the Trust Agreement, that there is a compelling reason to do so.

A "compelling reason" may include but is not limited to: the beneficiary requesting in writing that distributions be retained by the trust; the beneficiary being "incapacitated" as defined in paragraph 1 immediately above; the beneficiary contemplating, or in the process of filing for or has a pending bankruptcy; a pending or threatened divorce, paternity or maternity claim or other lawsuit; a creditor claim (including for unpaid taxes or reimbursement of government benefits); an existing judgment or lien; the fact the beneficiary is receiving (or may in the near future receive) government or other benefits that may be jeopardized; the beneficiary having demonstrated financial instability and/or inability to manage, invest or conserve the beneficiary's own property; the beneficiary being under the negative influence of third parties, such that the beneficiary's good judgement may be impaired; a serious tax disadvantage in making such distribution; or any other substantially similar reasons.

Any such postponement of distribution or termination may be continued by the Trust Protector, in whole or in part and from time to time, up to and including the entire lifetime of the beneficiary. While such postponement continues, all of the other provisions previously applicable to such trust shall continue in effect, except (a) any power of appointment or withdrawal shall be exercisable only with the approval of the Trust Protector and (b) distributions of income and/or principal shall only be made to or for the benefit of the beneficiary from time to time and in such amounts as the Trust Protector, in his or her sole and absolute discretion, deems appropriate for the best interests of the beneficiary; provided, however, the Trust Protector may, in his or her sole and absolute discretion, determine that the beneficiary's situation is extreme enough to warrant the establishment of a special needs trust pursuant to other provisions of this Section of the Trust Agreement.

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The Trust Protector may also, from time to time, make certain distributions which cannot be made by the primary beneficiary because of limits imposed in this Section entitled "Restrictions on Distributions That Discharge Legal Obligations of the Beneficiary."

3. Terminate a Trust Due to Unforeseen Conditions: The Trustor recognizes that some or all of the following conditions may arise in the future, although they cannot be foreseen at the time of creation of this Trust: (a) a radical, substantial and negative change in the political, economic or social order in the United States of America; (b) legislation or IRS or court decisions highly detrimental to a trust or beneficiary hereunder (including, for example, if the federal estate tax or IRA required minimum distribution rules are modified, repealed or no longer applicable and the non-tax reasons for the trust no longer justify the trust's existence); (c) a beneficiary's capability to prudently manage his own financial affairs or a radical, positive change in his situation regarding possible third party claims; (d) a beneficiary no longer has a need for (or the availability of) government benefits; and (e) other events that may greatly impair the carrying out of the intent and purposes of the Trust Agreement.

If any of the foregoing conditions occur, the Trust Protector may, in addition to the other powers granted him or her, in his sole and absolute discretion, and keeping in mind the Trustor's wishes and dispositive provisions of the Trust Agreement, terminate the affected trust, or a portion thereof, and distribute same to or for the benefit of the primary beneficiary thereof (notwithstanding any other provisions of the Trust Agreement), or to a newly created or existing Personal Asset Trust for that beneficiary.

4. Revise or Terminate a Trust So It Can Qualify as a "Designated Beneficiary" of an IRA or Retirement Plan: In the event that the affected trust does not qualify as a "designated beneficiary" of an IRA or other retirement plan as that term is used in IRC Section 401(a)(9), the Regulations thereunder and any successor Section and Regulations, the Trust Protector may, keeping in mind the Trustor's wishes and the dispositive provisions of the Trust Agreement: (a) revise or reform the terms of the Trust Agreement in any manner so that the affected trust will qualify as a "designated beneficiary" (any such revision or reformation may by its terms apply retroactively to the inception of the Trust Agreement or creation of any separate trust established hereunder); or (b) deem it to have been dissolved in part or in whole as of September 30 of the year following the year of the Trustor's death, with fee simple interest vesting outright in the primary beneficiary and the rights of all other persons who might otherwise have an interest as succeeding life income beneficiaries or as remaindermen shall cease.

If the beneficiary is still a minor, the Trustee may designate a custodian and transfer the principal and accrued income of the beneficiary's trust to the

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custodian for the benefit of the minor under the Texas Uniform Transfers to Minors Act until such beneficiary attains age 21. A receipt from the custodian shall be a complete discharge of the Trustee as to the amount so paid.

Notwithstanding any provisions of the Trust Agreement to the contrary, after the Trustor's death this Trust or any separate trust established hereunder shall not terminate and be distributed in full prior to September 30 of the year following the year of the Trustor's death pursuant to this paragraph if this will result in this Trust or any separate trust established hereunder not qualifying as a "designated beneficiary."

5. Modify Certain Other Trust Provisions: The Trust Protector shall have the power, in his or her sole and absolute discretion, at any time and from time to time, to delete, alter, modify, amend, change, add to or subtract from all or any part of the various paragraphs and provisions of the Trust Agreement and any trust created thereunder, effective (even retroactively) as of the date determined by the Trust Protector, for the following purposes.

   a. Change Income Tax Treatment of the Trust: The Trust Protector may, at any time, and from time to time, create, terminate and/or reinstate a power granted to a beneficiary, either prospectively or retroactively, enabling trust income to be income taxable to a beneficiary, even as income accumulates in the trust, if the Trust Protector deems this to be in the best interests of the affected trust and its beneficiaries.

   b. Protect a Disabled Beneficiary's Government Benefit by Establishing a Special Needs Trust: The Trust Protector may take any such actions he or she deems appropriate or necessary in connection with a beneficiary's qualification for, receipt of and/or possible future liability to reimburse government benefits (whether income, medical, disability or otherwise) from any agency (state, federal or otherwise), such as but not limited to Social Security, Medicaid, Medicare, SSI and state supplemental programs. In particular, but not by way of limitation, the Trust Protector may add new trust provisions to govern administration and distribution of assets for the benefit of the beneficiary (such as would create a "special needs trust").

   c. Protect a Beneficiary from Himself or from Creditors by Establishing a Spendthrift Trust or Eliminating Any General Power of Appointment: In the event there is a compelling reason to postpone distributions to a beneficiary pursuant to the paragraph of this Section entitled "Postpone Distributions," the Trust Protector may alternatively, in his or her sole discretion, add new trust provisions to govern administration and distribution of assets for the benefit of said beneficiary (such as would create a "spendthrift trust" in the form recognized by the laws of the

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state(s) in which trust assets are located). Furthermore, the Trust Protector may, in his or her sole discretion, in order to protect the beneficiaries of a Trust beneficiary, terminate and/or reinstate said Trust beneficiary's testamentary general power of appointment, if any, under the Section of this Trust Agreement entitled "Generation Skipping Tax Provisions."

6. Change Legal Jurisdiction of the Trust: The Trust Protector may change the situs of the affected trust to another jurisdiction by any such means deemed appropriate by the Trust Protector. This paragraph shall in no way limit the Trustee's power and authority to change the situs of this Trust or any separate trust established hereunder.

7. Remove and Reinstate a Trustee: The Trust Protector shall have the power at any time to remove the acting Trustee of the affected trust (but not the Special Co-Trustee) for any reason which he believes to be in the best interests of the beneficiaries. Such removal shall be stated in writing and delivered to the Trustee. The successor Trustee shall then be determined and appointed in accordance with the Section of the Trust Agreement entitled "Successor Trustees." At any time after the Trust Protector removes a Trustee, the Trust Protector may reinstate the previously removed Trustee and the order of successor Trustees shall be thereafter determined as if such reinstated Trustee was never removed.

8. Eliminate Own Powers: The Trust Protector shall have the power, on his own behalf and/or on behalf of all successor Trust Protectors, to release, renounce, suspend, reduce, limit and/or eliminate any or all of his enumerated powers and to make the effective date any date he wishes, including ab initio to the date of establishment of a trust hereunder or retroactively to the date of death of the Trustor, by a writing delivered to the Trustee of the affected trust.

9. Limitations on Above Powers: The Trust Protector may not exercise any power if he is compelled by a court or other governmental authority or agency to do so or is otherwise acting under the duress or undue influence of an outside force; if the Trust Protector is so compelled, or under such duress or influence, his powers shall become void prior to exercise; these limitations are in addition to those contained in the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective." The Trust Protector is directed not to exercise any of the foregoing powers if such exercise will result in any substantial, direct or indirect financial benefit to anyone who at the time of exercise is not an ancestor, spouse or issue of a primary beneficiary or is not already a present or contingent beneficiary of this Trust. The Trust Protector shall not exercise any power that may be construed as a general power of appointment to himself, his creditors, his estate or the creditors of his estate under IRC Sections 2041 and 2514, or that would otherwise cause the

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inclusion of any of the Trust Estate in the Trust Protector's taxable estate for estate, inheritance, succession or other death tax purposes.

D. Limited Liability of the Trust Protector: The Trust Protector shall not be held to the fiduciary duties of a Trustee. The Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, merely by reason of his appointment as Trust Protector and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Trust Protector to act. Furthermore, the Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Trust Protector a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care. In the event a lawsuit against the Trust Protector fails to result in a judgment against him, the Trust Protector shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

E. Compensation: The Trust Protector shall not be entitled to compensation merely as the result of his appointment. The Trust Protector shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Trust Protector shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

F. Waiver of Bond: No bond shall be required of any individual or entity acting as Trust Protector.

## MISCELLANEOUS PROVISIONS

A. Prohibition Against Contest: If any devisee, legatee or beneficiary under the Trust Agreement or any amendment to it, no matter how remote or contingent such beneficiary's interest appears, or any legal heir of the Trustor, or either of them, or any legal heir of any prior or future spouse of the Trustor (whether or not married to the Trustor at the time of the Trustor's death), or any person claiming under any of them, directly or indirectly does any of the following, then in that event the Trustor specifically disinherits each such person, and all such legacies, bequests, devises and interests given to that person under the Trust Agreement or any amendment to it shall be forfeited and shall be distributed as provided elsewhere herein as though he or she had predeceased the Trustor without issue:





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1. unsuccessfully challenges the appointment of any person named as a Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, or unsuccessfully seeks the removal of any person acting as a Trustee, Special Co-Trustee or Trust Protector;

2. objects in any manner to any action taken or proposed to be taken in good faith by the Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, whether the Trustee, Special Co-Trustee or Trust Protector is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

3. objects to any construction or interpretation of the Trust Agreement or any amendment to it, or the provisions of either, that is adopted or proposed in good faith by the Trustee, Special Co-Trustee or Trust Protector, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

4. claims entitlement to (or an interest in) any asset alleged by the Trustee to belong to the Trustor's estates (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), whether such claim is based upon a community or separate property right, right to support or allowance, a contract or promise to leave something by will or trust (whether written or oral and even if in exchange for personal or other services to the Trustor), "quantum meruit," constructive trust, or any other property right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

5. files a creditor's claim against the assets of the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

6. anyone other than the Trustor attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on the Trustor's life or any designation of beneficiaries for any bank or brokerage account, pension plan, Keogh, SEP or IRA account, employee benefit plan, deferred compensation plan, retirement plan, annuity or other Will substitute of the Trustor;

7. in any other manner contests this Trust or any amendment to it executed by the Trustor (including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence, or otherwise), or in any other manner,

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attacks or seeks to impair or invalidate this Trust, any such amendment or any of their provisions;

8. conspires with or voluntarily assists anyone attempting to do any of the above acts;

9. refuses a request of the Trustee to assist in the legal defense against any of the above actions.

Expenses to legally defend against or otherwise resist any above contest or attack of any nature shall be paid from the Trust Estate as expenses of administration. If, however, a person taking any of the above actions is or becomes entitled to receive any property or property interests included in the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), then all such expenses shall be charged dollar-for-dollar against and paid from the property or property interests that said person would be entitled to receive under the Trust Agreement or the Trustor's Will, whether or not the Trustee (or Executor under the Trustor's Will) was successful in the defense against such person's actions.

The Trustor cautions the Trustee against settling any contest or attack or any attempt to obtain an adjudication that would interfere with the Trustor's estate plan and direct that, prior to the settlement of any such action short of a trial court judgment or jury verdict, the Trustee seek approval of any such settlement from the appropriate court having jurisdiction over this Trust by way of declaratory judgment or any other appropriate proceeding under applicable Texas law. In ruling on any such petition for settlement, the Trustor requests the Court to take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the Trust Estate or from the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) under any theory and, therefore, no settlement should be approved by the Court unless it is proved by clear and convincing evidence that such settlement is in the best interest of the Trust Estate and the Trustor's estate plan.

In the event that any provision of this Section is held to be invalid, void or illegal, the same shall be deemed severable from the remainder of the provisions in this paragraph and shall in no way affect, impair or invalidate any other provision in this paragraph. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The provisions of this paragraph shall not apply to any disclaimer (or renunciation) by any person of any benefit (or right or power) under the Trust Agreement or any amendment to it.

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B. Compelled Exercise of Powers Not Effective: It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, notwithstanding any other provisions of the Trust Agreement, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will. An individual's agent may not exercise a power given to such individual under the Trust Agreement if such purported exercise is in response to or by reason of any such order or direction unless the order or direction was obtained by the agent in a proceeding in which the agent was the moving party or voluntarily acquiesced. Notwithstanding the above, if a Trustee's failure to exercise a power or to acquiesce in a beneficiary's exercise of a power may result in exposing a Trustee to serious personal liability (such as contempt of court or other sanctions), a Trustee may: (a) withdraw and permit the Special Co-Trustee to act instead in relation to such purported exercise of a power; (b) if the Special Co-Trustee would also be exposed to such liability, then the Trustee may notify the Trust Protector who may, in his discretion, act if permitted under the Trust Agreement; or (c) if neither the Special Co-Trustee nor the Trust Protector acts, then the Trustee may exercise or acquiesce in a beneficiary's exercise of a power.

C. Creditor's Rights – Spendthrift Provisions: Subject to the express grant herein of certain rights to withdraw or substitute assets and/or powers of appointment, if any, no beneficiary under the trusts created herein shall assign, transfer, alienate or convey, anticipate, pledge, hypothecate or otherwise encumber his or her interest in principal or income hereunder prior to actual receipt. To the fullest extent permitted by law:

(1) neither the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary, any beneficiary's spouse, ex-spouse or others, or be subject to any bankruptcy proceedings or claims of creditors of said persons (including said persons' spouses or ex-spouses), or be subject to any attachment, garnishment, execution, lien, judgment or other process of law; (2) no interest of any beneficiary shall be subject to claims of alimony, maternity, paternity, maintenance or support; and (3) no power of appointment or withdrawal or substitution shall be subject to involuntary exercise. Should the Trustee so desire, the Trustee may as a condition precedent, withhold payments of principal or interest under this Trust until personal order for payment is given or personal receipt furnished by each such beneficiary as to his or her share. The Trustee may, alternatively in the Trustee's sole and absolute discretion, deposit in any bank designated in writing by a beneficiary to his or her credit, income or principal payable to such beneficiary. The

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Trustee may, alternatively in the Trustee's sole and absolute discretion, hold and accumulate any income and/or principal so long as it may be subject to the claims, control or interference of third parties, up to and until the beneficiary's death, at which time it shall be distributed in accordance with the beneficiary's exercise of his or her power of appointment, if any, and/or pay to or for the benefit of the beneficiary only such sums as the Trustee deems necessary for said beneficiary's reasonable health, support, maintenance and education.

D. Trustee Power to Determine Principal and Income: The Trustee shall determine what is principal or income of the Trust Estate, and apportion and allocate any and all receipts and expenses between these accounts, in any manner the Trustee determines, regardless of any applicable state law to the contrary including any Principal and Income Act of Texas, or similar laws then in effect. In particular (but not by way of limitation), the Trustee shall have sole and absolute discretion to apportion and allocate all receipts and expenses between principal and income in whole or in part, including the right to: allocate capital gains; elect whether or not to set aside a reserve for depreciation, amortization or depletion, or for repairs, improvement or upkeep of any real or personal property, or for repayments of debts of the Trust Estate; and charge Trustee's fees, attorney's fees, accounting fees, custodian fees and other expenses incurred in the collection, care, management, administration, and protection of the Trust Estate against income or principal, or both. The exercise of such discretion shall be conclusive on all persons interested in the Trust Estate. The powers herein conferred upon the Trustee shall not in any event be so construed as allowing an individual to exercise the Trustee's sole and absolute discretion except in a fiduciary capacity.

E. Broad Trustee Power to Invest: It is the Trustor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Estate without being restricted to forms and investments that the Trustee may otherwise be permitted to make by law. The Trustee is empowered to invest and reinvest all or any part of the Trust Estate in such property as the Trustee in his discretion may select including but not limited to bank accounts, money market funds, certificates of deposit, government bonds, annuity contracts, common or preferred stocks, closely held businesses, shares of investment trusts and investment companies, corporate bonds, debentures, mortgages, deeds of trust, mortgage participations, notes, real estate, put and call options, commodities, commodities futures contracts and currency trading. When selecting investments, the Trustee may take into consideration the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the Trust Estate and its beneficiaries, the amount and nature of all assets available to beneficiaries from sources outside the Trust and the beneficiaries' economic circumstances as a whole, and shall exercise the judgment that a reasonable person would if serving in a like capacity under the same circumstances and having the same objectives. In addition to the investment powers conferred above, the Trustee is authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would

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be forbidden by the "prudent person" (or "prudent investor") rule. In making investments, the Trustee may disregard any or all of the following factors: (i) whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal; (ii) whether the acquisition or retention of a particular investment, or the trust investments collectively, is consistent with any duty of impartiality as to the different beneficiaries (the Trustor intends no such duty shall exist); (iii) whether the trust is diversified (the Trustor intends that no duty to diversify shall exist); and (iv) whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts (the Trustor intends the Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy). The Trustor's purpose in granting the foregoing broad authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustee shall not be liable for any loss in value of an investment merely because of the nature, class or type of the investment or the degree of risk presented by the investment, but shall be liable if the Trustee fails to meet the "reasonable person" standard set forth above or if the Trustee's procedures in selecting and monitoring the particular investment are proven by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

F. Special Co-Trustee Provisions: Notwithstanding anything in the Trust Agreement to the contrary, the powers, duties or discretionary authority granted hereunder to any Trustee shall be limited as follows:

1. Prohibited and Void Trustee Powers: Except where a beneficiary shall act as sole Trustee of his or her share, or unless limited by an ascertainable standard as defined in Code Section 2041 , no Trustee shall participate in the exercise of any discretionary authority to allocate receipts and expenses to principal or income, any discretionary authority to distribute principal or income, or any discretionary authority to terminate any trust created hereunder, if distributions could then be made to the Trustee or the Trustee has any legal obligation for the support of any person to whom distributions could then be made. Any other power, duty or discretionary authority granted to a Trustee shall be absolutely void to the extent that either the right to exercise such power, duty or discretionary authority or the exercise thereof shall in any way result in a benefit to or for such Trustee which would cause such Trustee to be treated as the owner of all or any portion of any of the trusts created herein for purposes of federal or state income tax, gift, estate or inheritance tax laws, or cause any disclaimer of an interest or benefit hereunder to be disqualified under Code Section 2518. Notwithstanding the foregoing, a beneficiary serving as Trustee may have and exercise a power, duty or discretionary authority that causes any Personal Asset Trust created hereunder to be a grantor trust with said beneficiary being treated as the owner for income tax purposes.



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Notwithstanding the foregoing, this paragraph shall not apply during the lifetime of the Trustor, nor shall it apply when the exercise of any power, duty, or discretionary authority relates to any provisions herein directed towards preserving the trust estate for beneficiaries named in the Trust Agreement in the event the Trustor should require long-term health care and/or nursing home care. Should a Trustee be prohibited from participating in the exercise of any power, duty, or discretionary authority, or should a power, duty or discretionary authority granted to a Trustee be absolutely void, as a result of the foregoing, then such power, duty or discretionary authority may be exercised in accordance with the following paragraphs.

2. Exercise of Power by an Existing Independent Co-Trustee: In the event that the right to exercise or the exercise of any power, duty or discretionary authority is prohibited or void as provided above, or is prohibited elsewhere in this Trust Agreement with respect to "incidents of ownership" of life insurance, or the Special Co-Trustee is given any other powers or authority under this paragraph "Special Co-Trustee Provisions," the remaining Co-Trustee, if any, shall have the right to exercise and may exercise said power, duty or discretionary authority, provided the Co-Trustee is independent within the meaning set forth in Section 674(c) of the Code, or any successor statute or regulations thereunder.

3. Exercise of Power if No Existing Independent Co-Trustee: In the event there is no independent Co-Trustee capable of exercising any power, duty or discretionary authority which is prohibited or void as provided above, or which is given to the Special Co-Trustee elsewhere herein, then the following procedure shall apply:

   a. Appointment of Special Co-Trustee: The next succeeding, Trustee or Co-Trustees, as the case may be, of the Trust (or, if only a particular, separate trust created under this Trust Agreement is affected by the exercise of such power, duty or authority, then the next succeeding Trustee or Co-Trustees of said separate trust) who is not disqualified under paragraph "2" above, shall serve as Special Co-Trustee of the Trust herein created.

4. Protect the Trust Estate by Appointment and Removal of an Independent Co-Trustee: In addition to any other powers granted to the Special Co-Trustee under the Trust Agreement, in the event that the Special Co-Trustee named above, in his sole and absolute discretion, determines that it is necessary in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries of any trust established under the Trust Agreement from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may appoint a Co-Trustee (to immediately act with the then existing Trustee) who is independent from the party to be protected within



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the meaning set forth in IRC Section 674(c). The Special Co-Trustee may appoint himself to act as such Co-Trustee if he is independent within the meaning of IRC Section 674(c). In addition, if the Special Co-Trustee, in his sole and absolute discretion, determines that it is no longer necessary for an independent Co-Trustee to act in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may remove any independent Co-Trustee whom was either appointed by another acting Trustee of the Trust pursuant to other provisions of the Trust Agreement (if any) or appointed by the Special Co-Trustee, and shall not be required to replace such removed independent Co-Trustee with another.

5. Limited Responsibilities of Special Co-Trustee: The responsibilities of the Special Co-Trustee shall be limited to the exercise of the Trustee power, duty or discretionary authority prohibited or void as provided in the Trust Agreement, and the Special Co-Trustee powers regarding the appointment and removal of an independent Co-Trustee as permitted above, and appointment of a Trust Protector as permitted in the Section of the Trust Agreement entitled "Trust Protector Provisions," and said Special Co-Trustee shall not be concerned with, nor shall have, any power, duty or authority with respect to any other aspects of administration of the Trust Estate.

6. Limited Liability of the Special Co-Trustee: The Special Co-Trustee shall not be held to the fiduciary duties of a Trustee. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, merely by reason of his appointment as Special Co-Trustee and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Special Co-Trustee to act. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust either now or in the future, for failing to properly or timely appoint a Trust Protector or to properly or timely advise a Trust Protector of any circumstances or facts that might impact a Trust Protector's decisions. Furthermore, the Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Special Co-Trustee a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care and in good faith. In the event a lawsuit against the Special Co-Trustee fails to result in a judgment against him, the Special Co-Trustee shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

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7. Compensation: The Special Co-Trustee shall not be entitled to compensation merely as the result of his appointment. The Special Co-Trustee shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Special Co-Trustee shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

8. Waiver of Bond: No bond shall be required of any individual or entity acting as Special Co-Trustee.

## GENERATION SKIPPING TAX PROVISIONS

Article XIV, Section R of the said Trust entitled "Generation Skipping Transfers" is hereby amended so that from henceforth Article XIV, Section R is replaced in its entirety with the provisions which follow.

A. Explanation of this Section: The purpose of this Section of the Trust Agreement and the desire of the Trustor is to eliminate or reduce the burden on the Trustor's family and issue resulting from the application of the federal generation skipping transfer tax under Chapter 13 of the Code, including any future amendments thereto (hereinafter referred to as the "GST Tax"). The Trustor directs the Trustee and any court of competent jurisdiction to interpret the provisions of this Section in accordance with the Trustor's desires stated above, since the Trustor, when creating this Trust, is aware that the provisions of said GST Tax are very complex and as yet there are few court rulings to aid in their interpretation. The Trustor requests that, before the Trustee or any beneficiary acts in accordance with the provisions of this Section, they seek professional advice from an attorney who specializes in estate planning, in order that they may avoid any unintentional triggering of negative GST Tax consequences.

B. Allocation of Trustor's GST Tax Exemptions: The Trustee (or such other person or persons whom Code provisions, Treasury Regulations or court rulings authorize to make elections or allocations with regard to the Trustor's GST Tax exemptions) is instructed to allocate such exemptions in good faith, without a requirement that such allocation be proportionate, equal or in any particular manner equitably impact any or all of the various transferees or beneficiaries of property subject to or affected by such allocations. When allocating such exemptions, the Trustee may include or exclude any property of which the Trustor is the transferor for GST Tax purposes, including property transferred before the Trustor's death, and may take into account prior transfers, gift tax returns and other relevant information known to the Trustee. It is recommended that, to the extent possible, any such trust allocated an inclusion ratio of zero shall contain any and all Roth IRAs. The Trustee is also directed, when allocating Trustor's GST Tax exemptions, to coordinate with the Executor of Trustor's estate and/or the Trustee of Trustor's revocable Living Trusts regarding the





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most appropriate use of said exemption; however, the Trustee's final determination shall be made in his or her sole and absolute discretion and shall be binding upon all parties howsoever interested in this Trust.

1. Trustee's Power to Combine and Divide Trusts: If a trust hereunder would be partially exempt from GST Tax by reason of an allocation of GST Tax exemption to it, before the allocation the Trustee in his discretion may divide the trust into two separate trusts of equal or unequal value, to permit allocation of the exemption solely to one trust which will be entirely exempt from GST Tax. The Trustee of any trust shall have authority, in the Trustee's sole discretion, to combine that trust with any other trust or trusts having the same exempt or nonexempt character, including trusts established (during life or at death) by the Trustor or any of his issue; and the Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts being combined do not have identical terms or if separate shares are otherwise deemed desirable by the Trustee. These powers to combine and divide trusts may be exercised from time to time, and may be used to modify or reverse their prior exercise. In deciding whether and how to exercise this authority the Trustee may take account of efficiencies of administration, generation-skipping and other transfer tax considerations, income tax factors affecting the various trusts and beneficiaries (including determination of life expectancy to be used for Retirement Assets required minimum distribution purposes), the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the Trustee may deem appropriate to these decisions. Prior to exercising any power to combine trusts under this paragraph, the Trustee shall take into consideration that, where possible and appropriate (keeping in mind the dispositive provisions of the Trust Agreement and the situation of the beneficiary), separate trusts should be maintained so that the trust beneficiaries may enjoy the benefit of distributions from any Retirement Assets being stretched out over their separate life expectancies; in particular, the Trustee shall not merge trusts when one provides for the payout to or for the beneficiary of all withdrawals from IRAs and other Retirement Assets, net of trust expenses, and another provides for the accumulation of income (including IRA and Retirement Asset withdrawals).

2. Same Terms and Provisions for Divided Trusts: Except as expressly provided in the Trust Agreement, when a trust otherwise to be established is divided under the foregoing provisions into exempt and non-exempt trusts or otherwise into separate trusts, each trust shall have the same provisions as the original trust from which it is established, and references in the Trust Agreement to the original trust shall collectively refer to the separate trusts derived from it.

3. Exempt (and Non-Exempt) Character of Property to be Preserved: On termination, partial termination, subdivision or distribution of any of the

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separate trusts created by the Trust Agreement, or when it is provided that separate trusts are to be combined, the exempt (zero inclusion ratio) or the non-exempt (inclusion ratio of one) generation-skipping character of the property of the trusts shall be preserved. Accordingly, when property is to be added to or combined with the property of another trust or trusts, or when additional trusts are to be established from one or more sources, non-exempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions, unless the Trustee believes that economic efficiency or other compelling considerations justify sacrificing their separate generation-skipping characteristics.

4. Trustee's Investment Power; Distributions: Without limiting the foregoing, the Trustor specifically authorizes (but do not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on whether they are funded by Roth IRAs or other assets and on their generation-skipping ratios, and to prefer making distributions from Retirement Assets other than Roth IRAs and from non-exempt trusts to beneficiaries who are non-skip persons for generation-skipping purposes and from exempt trusts to those who are skip persons. Upon division or distribution of an exempt trust and a nonexempt trust hereunder, the Trustee may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur. It is further recommended that to the extent that distributions would be made for the benefit of skip persons and such distributions would be exempt from GST Tax because such distributions are for the payment of medical expenses exempt under IRC Section 2503(e)(2)(B) or for the payment of tuition or educational expenses exempt under IRC Section 2503 (e)(2)(A), such payments to the extent possible be first made from a trust which has an inclusion ratio of one.

5. Trustee's Exoneration: The Trustor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

C. Beneficiary's General Power of Appointment: Should a beneficiary die prior to the creation of his or her separate share of the Trust Estate or die subsequent to the creation of such share but before complete distribution of such share, and as a result of said death a portion of the Trust Estate would be subject to GST Tax but for the provisions of this paragraph, the beneficiary may, pursuant to a general power of appointment exercised in his or her last Will (but not in a codicil) or other writing delivered to the Trustee prior to his or her death and specifically referring to the Trust Agreement, provide for such share to pass to the creditors of that beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to

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the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's share. This general power of appointment may be subject to termination and reinstatement by the Trust Protector. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of the Trust Agreement.

## TRUSTEES ENVIRONMENTAL POWERS

A. Trustee Authorized to Inspect Property Prior to Acceptance:

1. Actions at Expense of Trust Estate: Prior to acceptance of this Trust by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of the Trust Estate:

   a. Enter Property: To enter and inspect any existing or proposed asset of the Trust (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

   b. Review Records: To review records of the currently acting Trustee or of the Trustor (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

2. Rights Equivalent to Partner, Member or Shareholder: The right of the proposed or designated Trustee to enter and inspect assets and records of a partnership, limited liability company or corporation under this provision is equivalent to the right under state law of a partner, member or shareholder to inspect assets and records under similar circumstances.

3. Right to Still Refuse Acceptance of Trusteeship: Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of the Trust.

4. Right to Accept Trusteeship Over Other Assets Only: If an asset of the Trust is discovered upon environmental audit by the acting Trustee or any proposed or designated Trustee to be contaminated with hazardous waste or otherwise





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not in compliance with environmental law or regulation, the Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of the Trust. The Trustee, in his discretion, may petition a court to appoint a receiver or special Trustee to hold and manage the rejected asset, pending its final disposition.

5. Right to Reject Asset: Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to the Trustee.

B. Termination, Bifurcation or Modification of The Trust Due to Environmental Liability:

1. Trustee's Powers over Hazardous Waste Property: If the Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of any federal, state or local environmental law or regulation, the Trustee may take one or more of the following actions, if the Trustee, in the Trustee's sole and binding discretion, determines that such action is in the best interests of the Trust and its beneficiaries:

   a. Modify Trust: Modification of trust provisions, upon court approval, granting the Trustee such additional powers as are required to protect the Trust and its beneficiaries from liability or damage relating to actual or threatened violation of any federal, state or local environmental law or regulations, with it being the Trustors' desire that the Trustee keep in mind the Trustors' dispositive wishes expressed elsewhere in this Trust Agreement and that the Trustee consider and weigh any potentially negative federal and state income, gift, estate or inheritance tax consequences to the Trustee, Trust and its beneficiaries;

   b. Bifurcate Trust: Bifurcation of the Trust to separate said asset from other assets of the Trust Estate;

   c. Appoint a Special Trustee: Appointment of a special Trustee to administer said asset; and/or

   d. Abandon Property: Abandonment of such asset.

2. Terminate Trust or Distribute Other Assets: With court approval, the Trustee may terminate the Trust or partially or totally distribute the Trust Estate to beneficiaries.

3. Broad Discretion: It is the intent of the Trustors that the Trustee shall have the widest discretion in identification of and response to administration problems connected to potential environmental law liability to the Trust Estate and the



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Trustee, in order to protect the interests of the Trust, the Trustee and the beneficiaries of the Trust.

C. Trustee's Powers Relating to Environmental Laws: The Trustee shall have the power to take, on behalf of the Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. §9601 (25), or any successor statute, relating to any asset, which is or has been held by the Trustee as part of the Trust Estate.

D. Indemnification of Trustee from Trust Assets for Environmental Expenses:

1. Indemnification and Reimbursement for Good Faith Actions: The Trustee shall be indemnified and reimbursed from the Trust Estate for any liabilities, loss, damages, penalties, costs or expenses arising out of or relating to federal, state or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from the Trustee's intentional wrongdoing, bad faith or reckless disregard of his fiduciary obligation.

a. Environmental Expenses Defined: Environmental expenses shall include, but not be limited to:

(i) Costs of investigation, removal, remediation, response, or other cleanup costs of contamination by hazardous substances, as defined under any environmental law or regulation;

(ii) Legal fees and costs arising from any judicial, investigative or administrative proceeding relating to any environmental law or regulation;

(iii) Civil or criminal fees, fines or penalties incurred under any environmental law or regulation; and

(iv) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

b. Properties and Businesses Covered: This right to indemnification or reimbursement shall extend to environmental expenses relating to:

(i) Any real property or business enterprise, which is or has been at any time owned or operated by the Trustee as part of the Trust Estate; and

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(ii) Any real property or business enterprise, which is or has been at any time owned or operated by a corporation, limited liability company or partnership, in which the Trustee holds or has held at any time an ownership or management interest as part of the Trust Estate.

2. Right to Pay Expenses Directly from Trust: The Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of the Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

3. Right to Lien Trust Assets: The Trustee shall have a primary lien against assets of the Trust for reimbursement of environmental expenses, which are not paid directly from Trust assets.

E. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law: The Trustee shall not be liable to any beneficiary of the Trust or to any other party for any good faith action or inaction, relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however that the Trustee shall be liable for any such action, inaction or payment which is a breach of Trust and is committed in bad faith, or with reckless or intentional disregard of his fiduciary obligations.

F. Allocation of Environmental Expenses and Receipts Between Principal and Income: The Trustee may, in the Trustee's discretion, allocate between income and principal of the Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, the Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. The Trustee may, in the Trustee's discretion, create a reserve for payment of anticipated environmental expenses.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII and Article IX. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby





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ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

Nelva E. Brunsting
NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Candace Lynne Kunz Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

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# Exhibit 4

Computershare

Computershare Investor Services
250 Royall Street
Canton Massachusetts 02021
www.computershare.com

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July 05, 2012

BOBBIE G BAYLESS
ATTORNEY AT LAW
BAYLESS & STOKES
2931 FERNDALE
HOUSTON TX 77096

Company Name: EXXON MOBIL CORPORATION / XOM
Holder Account Number: [redacted]2102
Registration: Elmer H Brunsting Or Nelva E Brunsting TR Brunsting Fam Living Trust UA 10/10/96

Dear Ms. Bayless:

We are in receipt of your correspondence dated April 12, 2012 and June 22, 2012 regarding the matter of Carl Henry Brunsting, cause number 2012-14538.

Please note that Computershare contacted your firm on May 7, 2012 seeking clarification of your request from April. We did not receive any reply until your letter of June 22, 2012.

Below is a list of all ExxonMobil accounts held by Elmer Brunsting, Nelva Brunsting, or the Brunsting Family Trust. We have provided the account balances as of July 3, 2012. The closing price for ExxonMobil's common stock on that date was $86.28 per share.

Account Number: [redacted]566 (Historical File)
Registration: ELMER H BRUNSTING
Total Shares Held on July 3, 2012: 0 (Closed October 28, 1996)

Account Number: [redacted]2102
Registration: ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM LIVING TRUST UA 10/10/96
Total Shares Held on July 3, 2012: 0 (Closed March 24, 2011)

Account Number: [redacted]7769
Registration: ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING DECEDENT'S TRUST
Total Shares Held on July 3, 2012: 587.204777

Account Number: [redacted]7777
Registration: ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING SURVIVOR'S TRUST
Total Shares Held on July 3, 2012: 684.511319

P4308

07/13/2015:0809:P0228

Below is a list of additional accounts which received transfers from one of the accounts listed above.

Account Number: [redacted]6387
Registration: CANDACE CURTIS
Total Shares Held on July 3, 2012: 24.981004

Account Number: [redacted]9041
Registration: AMY R BRUNSTING
Total Shares Held on July 3, 2012: 104.058674

Account Number: [redacted]6352
Registration: ANITA BRUNSTING
Total Shares Held on July 3, 2012: 164.036963

Account Number: [redacted]6328
Registration: CAROLE A BRUNSTING
Total Shares Held on July 3, 2012: 1,325

**Account Number [redacted]1566**

This account was first opened on February 17, 1984. At that time, 300 shares of ExxonMobil's common stock were transferred to Elmer Brunsting. On August 14, 1987, the company went through a 2-for-1 split, generating an additional 300 shares. Between September 10, 1992 and October 28, 1996, dividends from this account were reinvested. An additional 121.648 were purchased during that period.

The account was closed on October 28, 1996, when all shares (721.648) were transferred to the Brunsting Family Trust (See account number [redacted]2102 below).

We have enclosed a certificate transcript and reinvestment statement covering the history of this account. Due to the age of this account, we no longer have any additional documentation. We were unable to determine the source of the original transfer in 1984 and we no longer have copies of the paperwork submitted in 1996. We have no record of the dividends paid prior to 1992 or any of the tax forms generated for this account.

**Account Number [redacted]2102**

This account was first opened on October 28, 1996, when the 721.648 shares were transferred from the account listed above. We have enclosed copies of the statements covering the full history from 1996 until it was closed in 2011. The only transactions that took place during this time were dividend reinvestments and 2 stock splits. We have also enclosed copies of Form 1099-DIV for years 2005 through 2011. We no longer have copies of the tax forms generated prior to 2005.

On March 18, 2011, we received a letter from Anita Brunsting, along with transfer forms requesting that we transfer a portion of this account to the Elmer H Brunsting Decedent's Trust and transfer the remaining shares to the Nelva E Brunsting Survivor's Trust. On March 24, 2011, 1908.232008 were shares transferred to account number [redacted]7769 and 2101.968469 shares were transferred to account number [redacted]7777.

We have enclosed a copy of the transfer forms and the accompanying letter. The mailing address on the old account was updated at the same time. We have also enclosed a copy of a notice confirming the address change.

**P4309**

07:320:5:0809:P0229

**Account Number [redacted]7769**

This account was first opened on March 24, 2011, when the 1908.232008 shares were transferred from the account listed above. We have enclosed statements covering the history of the account from that date to the present. As the new account was not initially enrolled in the dividend reinvestment plan, the fractional shares (0.232008 shares) were immediately liquidated, generating a check in the amount of $4.18.

Dividends were paid via direct deposit between June 10, 2011 and March 9, 2012. They were deposited into Bank of America account number [redacted]1143 via routing number 111000025 based on instructions submitted through our website. We have enclosed a screen print of Computershare's internal records with the details of these payments, a notice confirming the direct deposit information, and a copy of Form 1099-DIV for 2011.

On June 13, 2011, we received transfer forms directing us to transfer 1,325 shares from this account to Carole Brunsting. The shares were transferred to account number [redacted]6328 on June 15, 2011. We have enclosed a copy of the forms.

On March 3, 2012, the account was enrolled in dividend reinvestment through our website. We have enclosed a copy of a notice confirming this change. The June 11, 2012 divided was reinvested, as indicated on the most recent statement.

**Account Number [redacted]7777**

This account was first opened on March 24, 2011, when the 2101.968469 shares were transferred from account number [redacted]2102. We have enclosed statements covering the history of the account from that date to the present.

All dividends on this account were reinvested. Form 1099-DIV is included on the year end statement for 2011. Direct deposit instructions were added to this account via our website on April 11, 2011. However, as the account was enrolled in the reinvestment plan, no dividends from this account were ever direct deposited. We have enclosed a copy of the notice confirming the direct deposit information.

On May 9, 2011, we received transfer forms directing us to transfer 1,120 shares from this account to Amy Brunsting. The shares were transferred to account number [redacted]9041 on May 11, 2011. We have enclosed a copy of the forms.

On June 13, 2011, we received transfer forms directing us to transfer 160 shares from this account to Anita Brunsting and 160 shares to Candace Curtis. The shares were transferred to account numbers [redacted]6352 and [redacted]6387 respectively on June 15, 2011. We have enclosed a copy of the forms.

We have no record of any additional transactions or correspondence on these accounts or any additional accounts registered to Elmer Brunsting, Nelva Brunsting, or their trusts.

**Account Numbers [redacted]6387, [redacted]9041, [redacted]6352, and [redacted]6328**

As you requested documents reflecting the current ownership of shares formerly registered to the trust, we have enclosed a copy of the most recent statement for each of these accounts. If you need additional records from these accounts, please submit a new request clarifying what information or documents are to be provided.

**P4310**

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Computershare assesses a fee of $10.00 plus $0.25 per page for records sent in response to this type of request. We kindly ask that you submit a check in the amount of $24.25 made payable to "Computershare" and enclose a copy of this letter so we may accurately reference the original inquiry.

If you have any further questions, please contact us by phone at 800-252-1800. Representatives are available Monday through Friday, 8:30 AM to 5:00 PM Eastern Time.

Sincerely,

Norborth W McKearney
Manager
Computershare Shareholder Services

REF: BMV/UIB0001256900

Enclosures: Copy of Received Documents, Certificate Transcript, Statements, Forms 1099-DIV, Transfer Paperwork (4), Address Change Confirmation, Screen Print, Direct Deposit Confirmations (2), Dividend Reinvestment Confirmation

P4311

BOBBIE GRACE BAYLESS *
BOARD CERTIFIED CIVIL TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
NATIONAL BOARD OF TRIAL ADVOCACY
bayless@baylesstokes.com

**BAYLESS & STOKES**
ATTORNEYS AT LAW
2931 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@baylesstokes.com

*LICENSED IN TEXAS AND COLORADO

June 22, 2012

**Sent via Federal Express**

Computershare Investor Services, LLC
Attn: Legal Department
250 Royall Street
Canton, MA 02021

Re: Cause No. 2012-14538; ***In re: Carl Henry Brunsting***; In the 80th Judicial District Court of Harris County, Texas

Dear Sirs:

On April 12, 2012, after speaking with Catherine Dixon in your department, I sent additional documents and information relating to a request for information in the above-referenced case concerning the history of some Exxon Mobil Corporation stock. I have heard nothing further since that letter. I have enclosed a copy of that earlier letter and the Court's Order requiring Computershare to provide the information requested, as well as another copy of Exhibit E from the verified petition which outlines the requested information.

As you can see, in my April 12, 2012 letter, I also provided social security numbers for the individuals who originally owned the stock, but at some point the stock was moved to trusts and thereafter, at least in part, out to other parties. So to the extent your delay in responding has been because of the trusts' ownership of the stock, I wanted to provide you with that additional information. Initially, the trust would have been referred to as "The Brunsting Family Living Trust," but after the first grantor of that trust died, the names of "The Nelva Brunsting Survivor's Trust" and the "Elmer Brunsting Decedent's Trust" would have been used. I am enclosing statements with holder account numbers which I have obtained from other sources in the case in hopes that it will speed up your search. I do not intend, however, for your search to be limited to these accounts because, as I said, I believe these shares have been held by or transferred to other parties as well.

It has been sometime since this request was made. I need these documents as soon as possible, so if you have any questions, please contact me upon your receipt of this letter.

Very truly yours,

Bobbie G. Bayless

BGB/st
Enclosures
cc: Carl Brunsting (via email)

P4312

02-13-0015-0803 Pg 23 of 70

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
2931 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

*LICENSED IN TEXAS AND COLORADO

07132015:0809:P0232

UNOFFICIAL COPY

April 12, 2012

SCP

**Sent via Federal Express**

Computershare Investor Services, LLC
Attn: Legal Department
250 Royall Street
Canton, MA 02021

Re: Cause No. 2012-14538; ***In re: Carl Henry Brunsting***; In the 80th Judicial District Court of Harris County, Texas

Dear Sirs:

I spoke with Catherine Dixon this morning about the following documents which were previously filed with the court in the above-referenced matter:

1. Carl Henry Brunsting's Verified Petition to Take Depositions Before Suit; and
2. Notice to Computershare Investor Services of Hearing on Petition to Take Depositions Before Suit.

While these documents were previously sent via certified mail to Computershare Investor Services's registered agent in Texas, we had received no response. We have enclosed another copy of the documents so this can be addressed by your legal department as soon as possible. To simplify things, we have also enclosed an extra copy of Exhibit E to the Petition which outlines the documents we are asking Computershare, as transfer agent for Exxon Mobil Corporation, to provide. The social security number for Elmer Brunsting is [redacted]8905. The social security number for Nelva Brunsting is [redacted]4685.

Also enclosed is an Amended Notice of Hearing which resets the hearing in the matter for May 18, 2012.

Very truly yours,

Bobbie G. Bayless

BGB/st
Enclosures

P4313

cc: Carl Brunsting (via email)

**Documents to be Produced by Computershare as transfer agent for Exxon Mobil Corporation**

1. All documents reflecting the acquisition of any Exxon Mobil Corporation stock by Elmer Brunsting, Nelva Brunsting, and/or The Brunsting Family Living Trust.

2. All documents reflecting any transfers of all or any portion of the stock described in number 1 above.

3. All documents reflecting any sale or other liquidation of all or any portion of the stock described in number 1 above.

4. All documents reflecting the current ownership of all or any portion of the stock described in number 1 above.

5. All communications, including emails, concerning the stock described in number 1 above or any transfers of all or any portion of the stock described in number 1 above.

6. All documents authorizing the transfer of all or any portion of the stock described in number 1 above.

7. All documents evidencing the payment of dividends on the stock described in number 1 above.

**EXHIBIT E**

P4314

ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

010754

ELMER H BRUNSTING
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number
[redacted]1566 IND

Ticker Symbol
CUSIP

## Exxon Mobil Corporation - Certificate Transcript

COMMON STOCK as of 06 Jul 2012

| Issue Date | Acquisition Date | Number of Shares | Certificate Number | Issuance Reason | Surrender Date | Surrender Reason | Covered/ Noncovered | Cost Basis (USD) |
|---|---|---|---|---|---|---|---|---|
| 17 Feb 1984 | 17 Feb 1984 | 300.000000 | 00505201 | Transfer | 28 Oct 1996 | Transfer | Noncovered | |
| 14 Aug 1987 | 14 Aug 1987 | 300.000000 | 00201326 | | 28 Oct 1996 | Transfer | Noncovered | |

PLEASE SEE REVERSE SIDE FOR IMPORTANT DISCLOSURES AND DEFINITIONS.

P4315

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XOM_HIS

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**COST BASIS DISCLOSURE**

IRS regulations require that Computershare, and other brokers/agents, provide additional information to you and to the IRS when you sell certain securities. All covered and noncovered information set forth in this document is for informational purposes. The information is based on data in our records as of the date of this mailing. Cost basis data may be subject to change based on events such as wash sales, splits and spinoffs. Computershare cannot confirm the accuracy or completeness of noncovered transactions. If cost basis data was not available, the information was left blank. Any sales fees incurred are added to the oldest lot's cost basis. You should review your records for accurate information regarding the subject transactions and consult your tax advisor with any questions concerning your tax reporting obligations.

**DEFINITIONS**

**Acquisition Date:** The date the shares are considered acquired for cost basis purposes. This may be the original date you acquired the shares or may be adjusted for events such as wash sales. There may be multiple dates related to a single transaction if shares were acquired at different times or prices.

**Certificate Number:** A unique number printed on each certificate and recorded on the company's records.

**Cost Basis:** The amount that you paid for the shares/units, adjusted for changes such as wash sales, splits and spinoffs.

**Covered:** A term the IRS uses to refer to securities that must have their cost basis information directly reported on IRS Form 1099-B when a sale occurs.

**CUSIP:** A unique number assigned by the securities industry for a particular security (Committee on Uniform Security Identification Procedures).

**Holder Account Number:** Your unique account number for the account where your share holdings and transactions have been recorded.

**Issuance Reason:** Describes why the certificate was issued. If blank, the reason is not known.

**Issue Date:** The date the certificate was recorded/issued on the company's records.

**Noncovered:** A term used to describe securities that are not considered covered by the IRS and will not have cost basis reported on IRS Form 1099-B. You are still required to report gain/loss details on your income tax return. You may obtain the necessary information by reviewing historical purchase data, as you would have before the new regulations. Please consult your tax advisor for proper guidance.

**Number of Shares:** The number of shares included in the certificate. There may be details below this first number if multiple "lots" are included in this certificate.

**Surrender Date:** The date you surrendered/deposited your certificate, if the certificate is no longer outstanding.

**Surrender Reason:** Explains why this certificate was surrendered by you. If blank, the reason is not known.

**Ticker Symbol:** The symbol used on the stock exchange where this stock is traded.

**Uncertified Account:** If indicated on the front of this form that your account is not tax-certified, please send a completed IRS Form W-9 (or W-8 for foreign accounts) to us. This will help avoid future required tax withholding on dividend payments and sales proceeds. Information is available on our website or by contacting us.

**P4316**

01CYKA

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

001333

ELMER H BRUNSTING
13630 PINEROCK
HOUSTON TX 77079-6914

Holder Account Number
[redacted]1566

SSN/TIN Certified: Yes
Symbol: XOM

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## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]1566

### ▶ ACCOUNT SUMMARY

As of close of stock market on 04 May 2012

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 0.000000 | 0.000000 | 84.570000 | 0.00 |

### Transaction History

From: 01 Jan 1984 To: 04 May 2012

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 0.000000 |
| 10 Sep 1992 | Dividend Reinvestment | 432.00 | | | 432.00 | 63.160000 | 6.840000 | 6.840000 |
| 10 Dec 1992 | Dividend Reinvestment | 436.92 | | | 436.92 | 59.927000 | 7.291000 | 14.131000 |
| 10 Mar 1993 | Dividend Reinvestment | 442.17 | | | 442.17 | 64.149000 | 6.893000 | 21.024000 |
| 10 Jun 1993 | Dividend Reinvestment | 447.14 | | | 447.14 | 65.946000 | 6.780000 | 27.804000 |
| 10 Sep 1993 | Dividend Reinvestment | 452.02 | | | 452.02 | 65.077000 | 6.946000 | 34.750000 |
| 10 Dec 1993 | Dividend Reinvestment | 457.02 | Transaction Fee | 0.18 | 457.02 | 62.528000 | 7.309000 | 42.059000 |
| 10 Mar 1994 | Dividend Reinvestment | 462.28 | Transaction Fee | 0.18 | 462.28 | 65.507000 | 7.057000 | 49.116000 |
| 10 Jun 1994 | Dividend Reinvestment | 467.36 | Transaction Fee | 0.19 | 467.36 | 61.520000 | 7.597600 | 56.713000 |
| 10 Sep 1994 | Dividend Reinvestment | 472.83 | Transaction Fee | 0.20 | 472.83 | 59.665000 | 7.925000 | 64.638000 |
| 10 Dec 1994 | Dividend Reinvestment | 498.48 | Transaction Fee | 0.21 | 498.48 | 60.538000 | 8.234000 | 72.872000 |
| 10 Mar 1995 | Dividend Reinvestment | 504.85 | Transaction Fee | 0.20 | 504.85 | 63.969000 | 7.889000 | 80.761000 |
| 10 Jun 1995 | Dividend Reinvestment | 510.57 | Transaction Fee | 0.18 | 510.57 | 70.975000 | 7.194000 | 87.955000 |
| 11 Sep 1995 | Dividend Reinvestment | 515.97 | Transaction Fee | 0.18 | 515.97 | 70.416000 | 7.327000 | 95.282000 |
| 11 Dec 1995 | Dividend Reinvestment | 521.46 | Transaction Fee | 0.16 | 521.46 | 80.033000 | 6.516000 | 101.798000 |
| 11 Mar 1996 | Dividend Reinvestment | 526.35 | Transaction Fee | 0.16 | 526.35 | 80.978000 | 6.500000 | 108.298000 |
| 10 Jun 1996 | Dividend Reinvestment | 559.56 | Transaction Fee | 0.17 | 559.56 | 84.740000 | 6.603000 | 114.901000 |
| 10 Sep 1996 | Dividend Reinvestment | 564.77 | Transaction Fee | 0.17 | 564.77 | 83.704000 | 6.747000 | 121.648000 |
| 28 Oct 1996 | Book Or Plan Transfer | | | | | | -121.648000 | 0.000000 |

00TPPA (Rev. 12/11)

### How to Read Your Statement

Please see reverse side for important information

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

P4317

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[redacted]1566 IND

Page 2 of 2

XOM 193UDR

## 1 Transaction Request Form

Please check or complete all applicable sections.

**1A Sell Shares**

Sell this number of shares. Shares may be a combination of DRS and Plan shares.

OR

Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

**1B Withdraw from the Reinvestment Program**
(DRS shares will receive future dividends in cash.)

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

**1C Deposit Certificate(s) Into the Investment Plan**

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

**1D Authorized Signature(s)***

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### How to Request a Transaction

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Shares will be sold as promptly as practicable based on the terms of the plan. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST. PLEASE REFER TO THE PLAN PROSPECTUS/BROCHURE OR DRS BROCHURE REGARDING APPLICABLE FEES.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a certified copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is (are) legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

### Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

00TPQA (Rev. 8/11)

P4318

ExxonMobil

Computershare
Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of N.J.

001244

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]2102

SSN/TIN Certified: Yes
Symbol: XOM

001CB0003 4m3 wlx.075233_3612/001244/001436

## ExxonMobil Corporation - Summary of Account Holdings and Transaction Forms

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

### ▶ ACCOUNT SUMMARY

As of close of stock market on 31 Dec 2004

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 3,522.422000 | 3,522.422000 | | |

### Transaction History

From: 01 Jan 1998 To: 31 Dec 2004

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 0.000000 |
| 26 Oct 1998 | Book Or Plan Transfer | | | | | | 721.648000 | 721.648000 |
| 10 Dec 1998 | Dividend Reinvestment | 570.10 | Comp Paid Fees | 0.15 | 570.10 | 94.640000 | 6.024000 | 727.672000 |
| 10 Mar 1997 | Dividend Reinvestment | 574.88 | Comp Paid Fees | 0.14 | 574.88 | 100.855000 | 5.700000 | 733.372000 |
| 11 Apr 1997 | Stock Split | | | | | | 733.372000 | 1,466.744000 |
| 10 Jun 1997 | Dividend Reinvestment | 601.37 | Comp Paid Fees | 0.25 | 601.37 | 60.491000 | 9.941000 | 1,476.685000 |
| 10 Sep 1997 | Dividend Reinvestment | 605.44 | Comp Paid Fees | 0.24 | 605.44 | 64.063000 | 9.451000 | 1,486.136000 |
| 10 Dec 1997 | Dividend Reinvestment | 609.32 | Comp Paid Fees | 0.24 | 609.32 | 62.920000 | 9.684000 | 1,495.820000 |
| 10 Mar 1998 | Dividend Reinvestment | 613.29 | Comp Paid Fees | 0.24 | 613.29 | 63.134000 | 9.714000 | 1,505.534000 |
| 10 Jun 1998 | Dividend Reinvestment | 617.27 | Comp Paid Fees | 0.22 | 617.27 | 70.338000 | 8.776000 | 1,514.310000 |
| 10 Sep 1998 | Dividend Reinvestment | 620.87 | Comp Paid Fees | 0.24 | 620.87 | 85.712000 | 9.448000 | 1,523.758000 |
| 10 Dec 1998 | Dividend Reinvestment | 624.74 | Comp Paid Fees | 0.22 | 624.74 | 72.067000 | 8.666000 | 1,532.424000 |
| 10 Mar 1999 | Dividend Reinvestment | 628.29 | Comp Paid Fees | 0.23 | 628.29 | 68.630000 | 9.155000 | 1,541.579000 |
| 10 Jun 1999 | Dividend Reinvestment | 632.05 | Comp Paid Fees | 0.20 | 632.05 | 80.103000 | 7.890000 | 1,549.469000 |
| 10 Sep 1999 | Dividend Reinvestment | 635.26 | Comp Paid Fees | 0.20 | 635.26 | 79.900000 | 7.951000 | 1,557.420000 |
| 10 Dec 1999 | Dividend Reinvestment | 685.26 | Comp Paid Fees | 0.20 | 685.26 | 83.759000 | 8.181000 | 1,565.601000 |
| 10 Mar 2000 | Dividend Reinvestment | 688.86 | Comp Paid Fees | 0.22 | 688.86 | 76.740000 | 8.977000 | 1,574.578000 |
| 10 Jun 2000 | Dividend Reinvestment | 692.81 | Comp Paid Fees | 0.22 | 692.81 | 80.360000 | 8.621000 | 1,583.199000 |
| 11 Sep 2000 | Dividend Reinvestment | 696.61 | Comp Paid Fees | 0.21 | 696.61 | 83.141000 | 8.379000 | 1,591.578000 |
| 11 Dec 2000 | Dividend Reinvestment | 700.29 | Comp Paid Fees | 0.20 | 700.29 | 88.469000 | 7.916000 | 1,599.494000 |

00TPPA (Rev. 12/11)

### How to Read Your Statement

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

R4319

[redacted]2102 SL1 FID

X O M
2 1 4 U D R

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

OR

Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

### 1C Deposit Certificate(s) Into the Investment Plan

IMPORTANT:
You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### How to Complete this Form

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

### Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

GOVA2A-MOT (Rev. 6/11)

## 2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ELMER H BRUNSTING OR
NELVA E BRUNSTING TR BRUNSTING
FAM
Holder Account Number

[redacted]2102 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4320

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07 3205 - 0859 - 10239

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM LIVING TRUST UA 10/10/96

Holder Account Number
[redacted]2102

SSN/TIN Certified: Yes
Symbol: XOM

001(S0000) des1.mix.075233_3612/00134/001417/i

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

## Transaction History (cont.)

From: 01 Jan 1996 To: 31 Dec 2004

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| 09 Mar 2001 | Dividend Reinvestment | 703.78 | Comp Paid Fees | 0.21 | 703.78 | 83.855000 | 8.393000 | 1,607.887000 |
| 11 Jun 2001 | Dividend Reinvestment | 707.47 | Comp Paid Fees | 0.20 | 707.47 | 89.524000 | 7.876000 | 1,615.763000 |
| 11 Jul 2001 | Dividend Reinvestment | 32.32 | Comp Paid Fees | 0.01 | 32.32 | 86.512000 | 0.374000 | 1,616.137000 |
| 18 Jul 2001 | Stock Split | | | | | | 1,615.763000 | 3,231.900000 |
| 18 Jul 2001 | Stock Dividend | | | | | | 0.374000 | 3,232.274000 |
| 10 Sep 2001 | Dividend Reinvestment | 743.42 | Comp Paid Fees | 0.45 | 743.42 | 40.865000 | 18.192000 | 3,250.466000 |
| 10 Dec 2001 | Dividend Reinvestment | 747.61 | Comp Paid Fees | 0.49 | 747.61 | 38.016000 | 19.666000 | 3,270.132000 |
| 11 Mar 2002 | Dividend Reinvestment | 752.13 | Comp Paid Fees | 0.44 | 752.13 | 42.503000 | 17.572000 | 3,287.704000 |
| 10 Jun 2002 | Dividend Reinvestment | 756.17 | Comp Paid Fees | 0.48 | 756.17 | 39.361000 | 19.211000 | 3,306.915000 |
| 10 Sep 2002 | Dividend Reinvestment | 760.59 | Comp Paid Fees | 0.56 | 760.59 | 33.853600 | 22.467000 | 3,329.382000 |
| 10 Dec 2002 | Dividend Reinvestment | 765.76 | Comp Paid Fees | 0.55 | 765.76 | 34.545000 | 21.976000 | 3,351.358000 |
| 10 Mar 2003 | Dividend Reinvestment | 770.81 | Comp Paid Fees | 0.56 | 770.81 | 34.524000 | 22.327000 | 3,373.685000 |
| 10 Jun 2003 | Dividend Reinvestment | 843.42 | Comp Paid Fees | 0.57 | 843.42 | 37.179000 | 22.685000 | 3,396.370000 |
| 10 Sep 2003 | Dividend Reinvestment | 849.09 | Comp Paid Fees | 0.56 | 849.09 | 38.140000 | 22.262000 | 3,418.632000 |
| 10 Dec 2003 | Dividend Reinvestment | 854.66 | Comp Paid Fees | 0.58 | 854.66 | 37.024000 | 23.084000 | 3,441.716000 |
| 10 Mar 2004 | Dividend Reinvestment | 860.43 | Comp Paid Fees | 0.51 | 860.43 | 42.252000 | 20.364000 | 3,462.080000 |
| 10 Jun 2004 | Dividend Reinvestment | 934.76 | Comp Paid Fees | 0.54 | 934.76 | 43.618000 | 21.431000 | 3,483.511000 |
| 10 Sep 2004 | Dividend Reinvestment | 940.55 | Comp Paid Fees | 0.50 | 940.55 | 47.071000 | 19.982000 | 3,503.493000 |
| 10 Dec 2004 | Dividend Reinvestment | 945.94 | Comp Paid Fees | 0.47 | 945.94 | 49.974000 | 18.929000 | 3,522.422000 |

00TPPA (Rev. 12/11)

## How to Read Your Statement

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**Record Date** – The date on which you must have officially owned shares to receive the dividend.

**Payment Date** – The date the dividend was payable.

**Dividend Rate** – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

**Dividend Reinvestment Shares/Units** – Shares enrolled in dividend reinvestment.

**Gross Dividend** – The dividend paid on the Plan's dividend reinvestment shares.

**Net Dividend** – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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[redacted]2102 SL1 FID XOM 214UDR

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

## How to Request a Transaction

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

60IWA2A-MOT (Rev. 8/11)

## 2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
Holder Account Number

[redacted]2102 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4322

00000000XOM SPP1 [redacted]2102

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**ExxonMobil**

c/o EQUISERVE TRUST COMPANY, N.A.
P.O. BOX 43008
PROVIDENCE, RI 02940-3008

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ELMER H BRUNSTING OR
NELVA E BRUNSTING TR
BRUNSTING FAM LIVING TRUST
UA 10/10/96
13630 PINEROCK
HOUSTON, TX 77079-5914

How to read your statement.

# STATEMENT OF HOLDINGS

December 13, 2005



To access and manage your account, you can contact us :

By Internet: www.exxonmobil.equiserve.com

By Telephone: 800-252-1800

By Mail: COMPUTERSHARE
P.O. BOX 43008
PROVIDENCE, RI 02940-3008

SAVE THIS STATEMENT FOR YOUR FINANCIAL RECORDS

**EXXON MOBIL CORPORATION** Issue ID 330010 Account Number [redacted]1230

**Dividend Reinvestment Information**

| Issue Id | Security | Record Date | Payable Date | Shares Subject To Reinvestment | Rate | Fee Deducted | Tax Withheld | Net Dollars Reinvested |
|---|---|---|---|---|---|---|---|---|
| 330010 | COMMON | 11/10/2005 | 12/09/2005 | 3,572.1690 | 0.290000 | $0.00 | $0.00 | $1,035.93 |

**Account Activity as of 12/09/2005** **Current Dividend Option: FULL REINVESTMENT**

| Date | Transaction Description | Net Dollars | Price Per Share | Transaction Shares | ID Total Shares |
|---|---|---|---|---|---|
| 01/01/2005 | BEGINNING BALANCE | | | | 3,522.4220 |
| 03/10/2005 | DIVIDEND PURCHASE | $951.05 | $63.2060 | 15.0470 | 3,537.4690 |
| 06/10/2005 | DIVIDEND PURCHASE | $1,025.87 | $57.5440 | 17.8280 | 3,555.2970 |
| 09/09/2005 | DIVIDEND PURCHASE | $1,031.04 | $61.1110 | 16.8720 | 3,572.1690 |
| 12/09/2005 | DIVIDEND PURCHASE | $1,035.93 | $59.4590 | 17.4230 | 3,589.5920 |

Continued...

**EXXON MOBIL CORPORATION** **CASH INVESTMENT TRANSACTION FORM**

Issue ID: 330010 Account Number: [redacted]1230

ELMER H BRUNSTING OR
NELVA E BRUNSTING TR
BRUNSTING FAM LIVING TRUST
UA 10/10/96

CASH INVESTMENTS ONLY:
Make check payable to Computershare (amount enclosed in U.S. dollars drawn on a U.S. bank). Do not send cash, third party checks or money orders.

Amount Enclosed

Minimum: $50.00 Maximum: $250,000.00

IMPORTANT - ALL CASH INVESTMENTS MUST BE MAILED TO THIS ADDRESS. Do not send certificates or other correspondence to this address.

COMPUTERSHARE
P.O. BOX 219035
KANSAS CITY, MO 64121-9035

P4323

[redacted]001

07132015:0809:P0243

ExxonMobil

c/o EQUISERVE TRUST COMPANY, N.A.
P.O. BOX 43008
PROVIDENCE, RI 02940-3008

ELMER H BRUNSTING OR
NELVA E BRUNSTING TR
BRUNSTING FAM LIVING TRUST
UA 10/10/96

## STATEMENT OF HOLDINGS

December 13, 2005



To access and manage your account, you can contact us :

By Internet: www.exxonmobil.equiserve.com

By Telephone: 800-252-1800

By Mail: COMPUTERSHARE
P.O. BOX 43008
PROVIDENCE, RI 02940-3008

SAVE THIS STATEMENT FOR YOUR FINANCIAL RECORDS

How to read your statement.

**EXXON MOBIL CORPORATION** Issue ID 330010 Account Number [redacted]1230

**Total Holdings and Market Value as of 12/09/2005**

| | | | |
|---|---|---|---|
| Security | COMMON | Market Price Per Share | $58.5000 |
| Shares Held By You | 0.0000 | Market Value | $209,991.13 |
| Shares Held By Agent | 3,589.5920 | | |
| Total Account Shares | 3,589.5920 | | |

**Year-To-Date Summary for 2005**

| | |
|---|---|
| Gross Dividends | $4,043.89 |
| Tax Withheld | $0.00 |
| Additional Income | $1.69 |

P4324

07 13201 5:0809:P0244

ExxonMobil

c/o COMPUTERSHARE
P.O. BOX 43008
PROVIDENCE, RI 02940-3008

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

ELMER H BRUNSTING OR
NELVA E BRUNSTING TR
BRUNSTING FAM LIVING TRUST
UA 10/10/96
13630 PINEROCK
HOUSTON, TX 77079-5914

### Instructions for Recipient

**Account Number.** May show an account or other unique number the payer assigned to distinguish your account.
**Box 1a.** Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.
The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A but treat it as a plan distribution, not as investment income, for any other purpose.
**Box 1b.** Shows the portion of the amount in box 1a that may be eligible for the 15% or 5% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.
**Box 2a.** Shows total capital gain distributions (long-term)from a regulated investment company or real estate investment trust. Report the amounts shown in box 2a on Schedule D (Form 1040), line 13. But, if no amount is shown in boxes 2c-2dand your only capital gains and losses are capital gain distributions, you may be able to report the amounts shown in box 2a on line 13 of Form 1040 (line 10 of Form 1040A) rather than Schedule D. See the Form 1040/1040A instructions.
**Box 2b.** Shows the portion of the amount in box 2a that is unrecaptured section 1250 gain from certain depreciable real property. Report this amount on the Unrecaptured Section 1250 Gain Worksheet-Line19 in the Schedule D instructions (Form 1040).
**Box 2c.** Shows the portion of the amount in box 2a that is section 1202 gain from certain small business stock that may be subject to a 50% exclusion. See the Schedule D (Form 1040) instructions.
**Box 2d.** Shows 28% rate gain from sales or exchanges of collectibles. If required, use this amount when completing the 28% Rate Gain Worksheet-Line18 in the instructions for Schedule D (Form 1040).
**Box 3.** Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.
**Box 4.** Shows backup withholding. For example, a payer must backup withhold on certain payments at a 28% rate if you did not give your taxpayer identification number to the payer. See Form W-9,Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.
**Box 5.** Shows your share of expenses of a nonpublicly offered regulated investment company, generally a nonpublicly offered mutual fund. If you file Form 1040, you may deduct these expenses on the "Other expenses" line on Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1a.
**Box 6.** Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.
**Boxes 8 and 9.** Shows cash and noncash liquidation distributions.
**Nominees.** If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIVwith the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIVto each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.

☐ CORRECTED (if checked)

## Dividends and Distributions

PAYER'S name, street address, city, state, ZIP code and telephone no.

EXXON MOBIL CORPORATION
c/o COMPUTERSHARE
P.O. BOX 43008
PROVIDENCE, RI 02940-3008
800-252-1800

RECIPIENT'S name, street address, city, state, and ZIP code

ELMER H BRUNSTING OR
NELVA E BRUNSTING TR
BRUNSTING FAM LIVING TRUST
UA 10/10/96
13630 PINEROCK
HOUSTON, TX 77079-5914

| | |
|---|---|
| 1a Total ordinary dividends<br>$ 4,045.58 | 1b Qualified dividends<br>$ 4,045.58 |
| 2a Total capital gain distr.<br>$ 0.00 | 2b Unrecap. Sec. 1250 gain<br>$ 0.00 |
| 2c Section 1202 gain<br>$ 0.00 | 2d Collectibles (28%) gain<br>$ 0.00 |
| 3 Nondividend distributions<br>$ 0.00 | 4 Federal income tax withheld<br>$ 0.00 |
| 5 Investment expenses<br>$ 0.00 | 6 Foreign tax paid<br>$ 0.00 |
| 7 Foreign country or U.S possession | 8 Cash liquidation distributions<br>$ 0.00 |
| 9 Noncash liquidation distributions<br>$ 0.00 | PAYER'S Federal identification number<br>[redacted]9005 |
| RECIPIENT'S identification number<br>[redacted]8905 | Account Number (see instructions)<br>[redacted]1230 |

OMB No. 1545-0110

**2005**

Form **1099-DIV**

**Copy B**
**For Recipient**

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines it has not been reported.

P4345

**Form 1099-DIV(keep for your records)**

E1099T

07132015:0809:P0245

ExxonMobil

Computershare

Computershare Trust Company, N.A.
250 Royall Street
Canton Massachusetts 02021
Within the US, Canada & Puerto Rico 800 252 1800
Outside the US, Canada & Puerto Rico 781 575 2058
www.computershare.com/exxonmobil

033426

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number

[redacted]2102 FID

SSN/TIN Certified Yes
Symbol XOM

001CS0006_RPS.DLTX.XOM.01128_8364/033426/0366426

## Exxon Mobil Corporation - Statement of Holdings

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

### Dividend Information

| Record Date | Payment Date | Class Description | Shares/Units Participating in Dividend Reinvestment | Dividend Rate ($) | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 13 Nov 2006 | 11 Dec 2006 | Common | 3,645.057000 | 0.320000 | 1,166.42 | | 1,166.42 |

### Transaction History

From: 01 Jan 2006 To: 11 Dec 2006

| Date | Transaction Description | Transaction Amount ($) | Deduction Amount ($) | Deduction Type | Net Amount ($) | Price Per Share/Unit ($) | Total Transaction Shares/Units | Total Shares/Units Held |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions Dspp - Common Stock | | | | | | | | |
| 01 Jan 2006 | Balance Forward | | | | | | | 3,589.592000 |
| 10 Mar 2006 | Dividend Reinvestment | 1,148.67 | 0.48 | Comp Paid Fees | 1,148.67 | 60.043000 | 19.131000 | 3,608.723000 |
| 09 Jun 2006 | Dividend Reinvestment | 1,154.79 | 0.48 | Comp Paid Fees | 1,154.79 | 60.103000 | 19.214000 | 3,627.937000 |
| 11 Sep 2006 | Dividend Reinvestment | 1,160.94 | 0.43 | Comp Paid Fees | 1,160.94 | 67.812000 | 17.120000 | 3,645.057000 |
| 11 Dec 2006 | Dividend Reinvestment | 1,166.42 | 0.38 | Comp Paid Fees | 1,166.42 | 76.781302 | 15.191459 | 3,660.248459 |

### Summary of Holdings

Date: 11 Dec 2006

| Class Description | Certificated Shares/Units Held By You | Direct Registration/ Book Shares/Units | Dividend Reinvestment Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Value ($) |
|---|---|---|---|---|---|---|
| Dspp - Common Stock | 0.000000 | 0.000000 | 3,660.248459 | 3,660.248459 | 75.360000 | 275,836.32 |

43UDR XOM

IMPORTANT TAX RETURN DOCUMENT ATTACHED

Please see important PRIVACY NOTICE on reverse side of statement

00H5JA

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

☐ CORRECTED (if checked)

**Dividends and Distributions**

| | |
|---|---|
| 1a Total ordinary dividends $ 4632.59 | 1b Qualified dividends $ 4632.59 |
| 3 Nondividend distributions $ | 4 Federal income tax withheld $ |
| 6 Foreign tax paid $ | 7 Foreign country or U.S. possession |
| 8 Cash Liquidation Distribution $ | PAYER'S Federal identification number [redacted]005 |
| RECIPIENT'S identification number [redacted]8905 | Account number (see instructions) [redacted]2102 |

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

| | |
|---|---|
| Amount Paid By Check/EFT $ 0 | Amount Reinvested $ 4630.82 |
| Company Paid Fees $ 1.77 | Company Paid Service Charges $ |
| Discount on Reinvestment $ | |

OMB No. 1545-0110

2006

Form 1099-DIV

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4326

Form 1099-DIV (keep for your records)

Department of the Treasury - Internal Revenue Service

[redacted]2102 XOM 161UDR +

SL1 FID

A Partial Withdrawal (continue participation in the Plan); AND

ISSUE A CERTIFICATE FOR THIS NUMBER OF WHOLE SHARES | OR | *SELL THIS NUMBER OF SHARES

If you have Direct Registration Shares(DRS) and you have requested to sell a specific amount of shares, the Direct Registration Shares will be sold prior to your Plan shares. If you selected for all of your shares to be sold, we will sell both your DRS and Plan shares.

B Full Withdrawal (terminate participation in the Plan); AND

ISSUE A CERTIFICATE FOR ALL FULL SHARES AND A CHECK FOR FRACTIONAL SHARES | OR | *SELL ALL SHARES

C Deposit Certificate(s)

PLEASE INDICATE THE NUMBER OF SHARES TO BE DEPOSITED INTO YOUR PLAN ACCOUNT.

Signature 1 - Please keep signature within the box.

Signature 2 - Please keep signature within the box.

[redacted]

*Please note: All registered holders must sign for your instructions to be completed.*

Please detach this portion and mail to:
Computershare
PO Box 43078
Providence RI 02940-3078 +

*For sales requests for Partnerships or Corporations, please have your signature(s) medallion guaranteed or provide us with a copy of the corporate resolution/partnership agreement. Computershare Trust Company, N.A., as agent, upon written request, will provide the name of the executing broker dealer associated with the transaction(s), and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction(s), if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST. PLEASE REFER TO THE *PLAN PROSPECTUS/BROCHURE REGARDING APPLICABLE FEES.*

## I. Special Instructions

If you wish to have sale proceeds sent electronically to your financial institution please confirm the correct wire instructions with your financial institution. The wire instructions should include the bank name, address, bank account name, bank account number, and the bank's nine digit fed wire routing number. A written request to sell along with this information should be provided to Computershare. For foreign wires, please include the swift code and the bank code. The written instructions should be signed by all shareholders with a Medallion Guarantee Stamp. Please note you can also sell your shares and choose to have the funds wired by visiting the website on the front of this form and accessing your Investor Centre account. A $35.00 fee will be deducted from proceeds for a domestic wire and a $50.00 fee will be deducted from proceeds for a foreign wire.

If you wish to have the proceeds sent via courier service, a $20.00 fee will be deducted from your proceeds. Funds cannot be delivered to a P.O. Box or P.O. Zip codes.

If you want a certificate or check issued to someone other than the registered holder, you must include the name, address, date of birth and social security number of the person to whom the ownership is being transferred. Your signature(s) on the tear off section must be guaranteed by a member of a medallion signature program (bank or broker) approved by the Securities Transfer Association, Inc. A Notary public is not acceptable.

If you would like to write to us, please include your account number, daytime telephone number with area code, and the company name in your correspondence.

PLEASE KEEP THIS STATEMENT FOR COST BASIS AND TAX PURPOSES.

## II. Terms and Definitions

Note: Some definitions outlined below may not pertain to your investment Plan.

| | |
|---|---|
| SSN/TIN Certified | If your account is not certified, you must complete a W-9 or W-8BEN tax form or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Faxed W-8BEN forms are not acceptable. |
| Record Date | The date that establishes ownership on our records to receive the dividend. |
| Payment Date | The date the dividend is payable. |
| Dividend Rate | The dollar amount of the dividend paid per share or the rate of stock dividend or stock split. |
| Price Per Share | The price per share purchased or sold under the plan. |
| Total Transaction Shares | The number of shares acquired or sold through the plan. |
| Deduction Amount | An aggregate sum of all fees charged. |
| Value | The dollar amount as of the date referenced of all shares that are held for this security in the account. |

## III. Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

CONKSA

## Instructions for Recipient

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on *line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040)* or Schedule 1 (Form 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 5% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold *on certain payments at the applicable rate if you did not give your* taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 8: Shows cash liquidation distributions.

Nominees. *If this form includes amounts belonging to another person, you are* considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the 2006 General Instructions for Forms 1099, 1098, 5498, and W-2G.

P4327

Copy NOT FOR DISTRIBUTION

07132015:0809:P0247

**ExxonMobil**

**Computershare**

Computershare Trust Company, N.A.
250 Royall Street
Canton Massachusetts 02021
Within the US, Canada & Puerto Rico 800 252 1800
Outside the US, Canada & Puerto Rico 781 575 2058
www.computershare.com/exxonmobil

001542

**IMPORTANT TAX RETURN DOCUMENT ENCLOSED**

******AUTO**SCH 5-DIGIT 77079 000000006/000001542

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number

[redacted]2102 FID

SSN/TIN Certified Yes
Symbol XOM

001C50006_RPS.DLTX_PG1.XOM.131322_15368/001542/001542A

## Exxon Mobil Corporation - Statement of Holdings

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

### Dividend Information

Holder Account Number: [redacted]2102

| Record Date | Payment Date | Class Description | Shares/Units Participating in Dividend Reinvestment | Dividend Rate ($) | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 09 Nov 2007 | 10 Dec 2007 | Common | 3,707.094361 | 0.350000 | 1,297.48 | | 1,297.48 |

### Transaction History

From: 01 Jan 2007 To: 10 Dec 2007

| Date | Transaction Description | Transaction Amount ($) | Deduction Amount ($) | Deduction Type | Net Amount ($) | Price Per Share/Unit ($) | Total Transaction Shares/Units | Total Shares/Units Held |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| 01 Jan 2007 | Balance Forward | | | | | | | 3,660.248459 |
| 09 Mar 2007 | Dividend Reinvestment | 1,171.28 | 0.41 | Comp Paid Fees | 1,171.28 | 70.917151 | 16.516174 | 3,676.764633 |
| 11 Jun 2007 | Dividend Reinvestment | 1,286.87 | 0.39 | Comp Paid Fees | 1,286.87 | 83.331627 | 15.442756 | 3,692.207389 |
| 10 Sep 2007 | Dividend Reinvestment | 1,292.27 | 0.37 | Comp Paid Fees | 1,292.27 | 88.805431 | 14.886972 | 3,707.094361 |
| 10 Dec 2007 | Dividend Reinvestment | 1,297.48 | 0.36 | Comp Paid Fees | 1,297.48 | 89.793867 | 14.449539 | 3,721.543900 |

### Summary of Holdings

Date: 10 Dec 2007

| Class Description | Certificated Shares/Units Held By You | Direct Registration/ Book Shares/Units | Dividend Reinvestment Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 3,721.543900 | 3,721.543900 | 92.030000 | 342,493.69 |

43UDR XOM

**IMPORTANT TAX RETURN DOCUMENT ATTACHED**

Please see important PRIVACY NOTICE on reverse side of statement

00H5JA

**ExxonMobil**

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

☐ CORRECTED (if checked)

**Dividends and Distributions**

| | |
|---|---|
| 1a Total ordinary dividends $ 5049.43 | 1b Qualified dividends $ 5049.43 |
| 3 Nondividend distributions $ | 4 Federal income tax withheld $ |
| 6 Foreign tax paid $ | 7 Foreign country or U.S. possession |
| 8 Cash Liquidation Distribution $ | PAYER'S Federal identification number [redacted]9005 |
| RECIPIENT'S identification number [redacted]8905 | Account number (see instructions) [redacted]2102 |

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

| | |
|---|---|
| Amount Paid By Check/EFT $ 0 | Amount Reinvested $ 5047.90 |
| Company Paid Fees $ 1.53 | Company Paid Service Charges $ 0 |
| Discount on Reinvestment $ 0 | |

OMB No. 1545-0110

**2007**

Form 1099-DIV

**Copy B**
**For Recipient**

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4328

Form 1099-DIV (keep for your records)

Department of the Treasury - Internal Revenue Service

07 1320 15 0609 P0248

[redacted]2102 XOM +
SL1 FID 161UDR

**A** Partial Withdrawal (continue participation in the Plan); AND

ISSUE A CERTIFICATE FOR THIS NUMBER OF WHOLE SHARES | OR | *SELL THIS NUMBER OF SHARES

If you have Direct Registration Shares(DRS) and you have requested to sell a specific amount of shares, the Direct Registration Shares will be sold prior to your Plan shares. If you selected for all of your shares to be sold, we will sell both your DRS and Plan shares.

**B** Full Withdrawal (terminate participation in the Plan); AND

ISSUE A CERTIFICATE FOR ALL FULL SHARES AND A CHECK FOR FRACTIONAL SHARES | OR | *SELL ALL SHARES

**C** Deposit Certificate(s)

PLEASE INDICATE THE NUMBER OF SHARES TO BE DEPOSITED INTO YOUR PLAN ACCOUNT.

Signature 1 - Please keep signature within the box. | Signature 2 - Please keep signature within the box.

Please note: All registered holders must sign for your instructions to be completed.

Please detach this portion and mail to:
Computershare
PO Box 43078
Providence RI 02940-3078 +

*For sales requests for Partnerships or Corporations, please have your signature(s) medallion guaranteed or provide us with a copy of the corporate resolution/partnership agreement. Computershare Trust Company, N.A., as agent, upon written request, will provide the name of the executing broker dealer associated with the transaction(s), and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction(s), if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST. PLEASE REFER TO THE PLAN PROSPECTUS/BROCHURE REGARDING APPLICABLE FEES.

## I. Special Instructions

If you wish to have sale proceeds sent electronically to your financial institution please confirm the correct wire instructions with your financial institution. The wire instructions should include the bank name, address, bank account name, bank account number, and the bank's nine digit fed wire routing number. A written request to sell along with this information should be provided to Computershare. For foreign wires, please include the swift code and the bank code. The written instructions should be signed by all shareholders with a Medallion Guarantee Stamp. Please note you can also sell your shares and choose to have the funds wired by visiting the website on the front of this form and accessing your Investor Centre account. A $35.00 fee will be deducted from proceeds for a domestic wire and a $50.00 fee will be deducted from proceeds for a foreign wire.

If you wish to have the proceeds sent via courier service, a $20.00 fee will be deducted from your proceeds. Funds cannot be delivered to a P.O. Box or P.O. Zip codes.

If you want a certificate or check issued to someone other than the registered holder, you must include the name, address, date of birth and social security number of the person to whom the ownership is being transferred. Your signature(s) on the tear off section must be guaranteed by a member of a medallion signature program (bank or broker) approved by the Securities Transfer Association, Inc. A Notary public is not acceptable.

If you would like to write to us, please include your account number, daytime telephone number with area code, and the company name in your correspondance.

PLEASE KEEP THIS STATEMENT FOR COST BASIS AND TAX PURPOSES.

## II. Terms and Definitions

Note: Some definitions outlined below may not pertain to your investment Plan.

| | |
|---|---|
| SSN/TIN Certified | If your account is not certified, you must complete a W-9 or W-8BEN tax form or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Faxed W-8BEN forms are not acceptable. |
| Record Date | The date that establishes ownership on our records to receive the dividend. |
| Payment Date | The date the dividend is payable. |
| Dividend Rate | The dollar amount of the dividend paid per share or the rate of stock dividend or stock split. |
| Price Per Share | The price per share purchased or sold under the plan. |
| Total Transaction Shares | The number of shares acquired or sold through the plan. |
| Deduction Amount | An aggregate sum of all fees charged. |
| Value | The dollar amount as of the date referenced of all shares that are held for this security in the account. |

## III. Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

CONKBA

## Instructions for Recipient

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 5% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments at the applicable rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 8: Shows cash liquidation distributions.

Nominees. If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the 2007 General Instructions for Forms 1099, 1098, 5498, and W-2G.

P4329

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within the US, Canada & Puerto Rico 800 252 1800
Outside the US, Canada & Puerto Rico 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the state of NJ.

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

******AUTO**SCH 5-DIGIT 77079 000008/0001987 001987

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number

[redacted]2102

SSN/TIN Certified Yes

Symbol XOM

001C80006_RI'S.DLTX_PG1.XOM.23030_25784001987/0019874

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes, and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

### ▶ ACCOUNT SUMMARY

As of close of stock market on 10 Dec 2008

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 3,792.885209 | 3,792.885209 | 80.070000 | 303,696.32 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 12 Nov 2008 | 10 Dec 2008 | 0.400000 | Common | 3,773.427844 | 1,509.37 | | 1,509.37 |

### Transaction History

From: 01 Jan 2008 To: 10 Dec 2008

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| 01 Jan 2008 | Balance Forward | | | | | | | 3,721.543900 |
| 10 Mar 2008 | Dividend Reinvestment | 1,302.54 | Comp Paid Fees | 0.38 | 1,302.54 | 85.864547 | 15.169707 | 3,736.713607 |
| 10 Jun 2008 | Dividend Reinvestment | 1,494.69 | Comp Paid Fees | 0.43 | 1,494.69 | 87.595979 | 17.063454 | 3,753.777061 |
| 10 Sep 2008 | Dividend Reinvestment | 1,501.51 | Comp Paid Fees | 0.49 | 1,501.51 | 76.409677 | 19.650783 | 3,773.427844 |
| 10 Dec 2008 | Dividend Reinvestment | 1,509.37 | Comp Paid Fees | 0.49 | 1,509.37 | 77.573197 | 19.457365 | 3,792.885209 |

IMPORTANT TAX RETURN DOCUMENT ATTACHED

Please see important PRIVACY NOTICE on reverse side of statement

00TPPA-TAX

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

☐ CORRECTED (if checked)

**Dividends and Distributions**

| | |
|---|---|
| 1a Total ordinary dividends $ 5809.90 | 1b Qualified dividends $ 5809.90 |
| 3 Nondividend distributions $ | 4 Federal income tax withheld $ |
| 6 Foreign tax paid $ | 7 Foreign country or U.S. possession |
| 8 Cash Liquidation Distribution $ | PAYER'S Federal identification number [redacted]9005 |
| RECIPIENT'S identification number [redacted]8905 | Account number (see instructions) [redacted]2102 |

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

| | |
|---|---|
| Amount Paid By Check/EFT $ 0 | Amount Reinvested $ 5808.11 |
| Company Paid Fees $ 1.79 | Company Paid Service Charges $ 0 |
| Discount on Reinvestment $ 0 | |

OMB No. 1545-0110

2008

Form 1099-DIV

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4330

Form 1099-DIV (keep for your records)

Department of the Treasury - Internal Revenue Service

07132015:0809:P0249

07/13/2015:08:09:P02250



[redacted]2102 XOM 214UDR

RN1 FID

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

[ ] OR [ ] *Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.*

Sell this number of shares. If you have DRS shares, the DRS shares will be sold prior to your plan shares. Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

## How to Request a Transaction

*Refer to the prospectus/circular for additional details on the terms and conditions of transactions under the plan or DRS (as applicable).*

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us *at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request a wire payment by updating* your bank details online through Investor Centre at the website listed on the reverse side, or by including a written note with your bank's name, branch location and routing number, and your bank account name and number. For non-US wires, also include the SWIFT (bank routing ID) and bank codes. The signature(s) on the note must be stamped with a Medallion Signature Guarantee. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee. You can also call us to find out the cost to have the check delivered to a street address via courier service.

Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.*

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

CDNA2A-MOT

## Instructions for Recipient

**Account Number:** May show an account or other unique number the payer assigned to distinguish your account.

**What's New?** The 5% capital gains rate is reduced to zero after December 31, 2007. See box 1b.

**Box 1a:** Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

**Box 1b:** Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

**Box 3:** Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

**Box 4:** Shows backup withholding. For example, a payer must backup withhold on certain payments at the applicable rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for *Taxpayer Identification Number and Certification*, for information on backup withholding. Include this amount on your income tax return as tax withheld.

**Box 6:** Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

**Box 7:** This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

**Box 8:** Shows cash liquidation distributions.

**Nominees.** If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. *See the 2008 General Instructions for Forms 1099, 1096, 5498, and W-2G.*

P4331

07132015:0809:P0251



ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil
Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

*******AUTO**SCH 5-DIGIT 77079 000010/0002392 002392

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number
[redacted]2102

SSN/TIN Certified Yes
Symbol XOM

001CS0006_RPS.DLTX_PG1.XOM.194629_32948.002392/0013926

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes, and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

### ► ACCOUNT SUMMARY

As of close of stock market on 10 Dec 2009

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 3,883.713924 | 3,883.713924 | 72.400000 | 281,180.89 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 12 Nov 2009 | 10 Dec 2009 | 0.420000 | Common | 3,861.777317 | 1,621.95 | | 1,621.95 |

### Transaction History

From: 01 Jan 2009 To: 10 Dec 2009

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 3,792.885209 |
| 10 Mar 2009 | Dividend Reinvestment | 1,517.15 | Comp Paid Fees | 0.59 | 1,517.15 | 84.343602 | 23.578806 | 3,816.464015 |
| 10 Jun 2009 | Dividend Reinvestment | 1,602.91 | Comp Paid Fees | 0.55 | 1,602.91 | 72.646344 | 22.064565 | 3,838.528580 |
| 10 Sep 2009 | Dividend Reinvestment | 1,612.18 | Comp Paid Fees | 0.58 | 1,612.18 | 69.344841 | 23.248737 | 3,861.777317 |
| 10 Dec 2009 | Dividend Reinvestment | 1,621.95 | Comp Paid Fees | 0.55 | 1,621.95 | 73.938054 | 21.936607 | 3,883.713924 |

IMPORTANT TAX RETURN DOCUMENT ATTACHED
Please see important PRIVACY NOTICE on reverse side of statement

00TPPA-TAX

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

☐ CORRECTED (if checked)

**Dividends and Distributions**

OMB No. 1545-0110

2009

Form 1099-DIV

| | |
|---|---|
| 1a Total ordinary dividends $ 6356.46 | 1b Qualified dividends $ 6356.46 |
| 3 Nondividend distributions $ | 4 Federal income tax withheld $ |
| 6 Foreign tax paid $ | 7 Foreign country or U.S. possession |
| 8 Cash Liquidation Distribution $ | PAYER'S Federal identification number [redacted]005 |
| RECIPIENT'S identification number [redacted]905 | Account number (see instructions) [redacted]2102 |

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

| | |
|---|---|
| Amount Paid By Check/EFT $ 0 | Amount Reinvested $ 6354.19 |
| Company Paid Fees $ 2.27 | Company Paid Service Charges $ 0 |
| Discount on Reinvestment $ 0 | |

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4332

Form 1099-DIV (keep for your records)

Department of the Treasury - Internal Revenue Service

[redacted]2102 XOM 214UDR

SL1 FID

# 1 Transaction Request Form

Please check or complete all applicable sections.

## 1A Sell Shares

OR

Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. If you have DRS shares, the DRS shares will be sold prior to your plan shares. Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

## 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

## 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

## 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

## How to Request a Transaction (refer to the prospectus/brochure for policies based on the time and complexity of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

COMA2A-MOT

## Instructions for Recipient

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

**Box 1a:** Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

**Box 1b:** Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

**Box 3:** Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

**Box 4:** Shows backup withholding. For example, a payer must backup withhold on certain payments at the applicable rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

**Box 6:** Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

**Box 7:** This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

**Box 8:** Shows cash liquidation distributions.

**Nominees.** If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income. You must furnish a Form 1099-DIV to each. A husband and wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Forms 1099, 1096, 3921, 3922, 5498, and W-2G.

P4333

00RXHA-R

07132015:0809:P0252

07-0220-5-0809-P02278



ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of N.J.

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

*****AUTO**SCH 5-DIGIT 77079 000003/0001454 001454

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Holder Account Number
[redacted]2102

SSN/TIN Certified: Yes
Symbol: XOM

001CS6006_RPS.DLTX_PO1.XOM.150943_3083/001454001454

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

### ▶ ACCOUNT SUMMARY

As of close of stock market on 10 Dec 2010

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 3,989.539143 | 3,989.539143 | 72.180000 | 287,954.94 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 12 Nov 2010 | 10 Dec 2010 | 0.440000 | Common | 3,965.183788 | 1,744.67 | | 1,744.67 |

### Transaction History

From: 01 Jan 2010 To: 10 Dec 2010

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 3,883.713924 |
| 10 Mar 2010 | Dividend Reinvestment | 1,631.18 | Comp Paid Fees | 0.52 | 1,631.18 | 66.120441 | 24.669527 | 3,908.383451 |
| 10 Jun 2010 | Dividend Reinvestment | 1,719.69 | Comp Paid Fees | 0.71 | 1,719.68 | 60.621317 | 28.367744 | 3,936.751195 |
| 10 Sep 2010 | Dividend Reinvestment | 1,732.17 | Comp Paid Fees | 0.71 | 1,732.17 | 60.964858 | 28.412593 | 3,965.163788 |
| 10 Dec 2010 | Dividend Reinvestment | 1,744.67 | Comp Paid Fees | 0.81 | 1,744.67 | 71.575183 | 24.375355 | 3,989.539143 |

IMPORTANT TAX RETURN DOCUMENT ATTACHED

Please see important PRIVACY NOTICE on reverse side of statement

00TPPA-TAX (Rev. 10/11)

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

Form 1099-DIV (keep for your records)

☐ CORRECTED (if checked)

**Dividends and Distributions**

| 1a Total ordinary dividends | 1b Qualified dividends |
|---|---|
| $ 6830.34 | $ 6830.34 |
| 3 Nondividend distributions | 4 Federal income tax withheld |
| $ | $ |
| 5 Foreign tax paid | 7 Foreign country or U.S. possession |
| $ | |
| 6 Cash Liquidation Distribution | PAYER'S Federal identification number |
| $ | [redacted]9005 |
| RECIPIENT'S identification number | Account number (see instructions) |
| [redacted]3905 | [redacted]2102 |

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

| Amount Paid By Check/EFT | Amount Reinvested |
|---|---|
| $ 0 | $ 6827.69 |
| Company Paid Fees | Company Paid Service Charges |
| $ 2.65 | $ 0 |
| Discount on Reinvestment | |
| $ 0 | |

Department of the Treasury - Internal Revenue Service

OMB No. 1545-0110

2010

Form 1099-DIV

Copy B
For Recipient

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4334

07:13201S:0803:P0254



[redacted]2102 SL1 FID

XOM
214UDR

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

OR

Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. If you have DRS shares, the DRS shares will be sold prior to your plan shares. Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

## How to Request a Transaction (refer to the boxes on the front of this form)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

COWA2A-MOT

## Instructions for Recipient

**Recipient's Identification Number:** For your protection, this form may show only the last four digits of your taxpayer identification number. However, the issuer has reported your complete identification number to the IRS and, where applicable, to state and/or local governments.

**Account Number:** May show an account or other unique number the payer assigned to distinguish your account.

**Box 1a:** Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

**Box 1b:** Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

**Box 3:** Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

**Box 4:** Shows backup withholding. For example, a payer must backup withhold on certain payments at the applicable rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

**Box 6:** Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

**Box 7:** This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

**Box 8:** Shows cash liquidation distributions.

**Nominees:** If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Certain Information Returns.

P4335

06RXHA-R (Rev. 6/10)

07132015:0809:P0255



ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

001078

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number

[redacted]2102

SSN/TIN Certified Yes

Symbol XOM

001CS0003JJSS.L.MIX_3207/001078/0010786

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]2102

### ► ACCOUNT SUMMARY

As of close of stock market on 24 Mar 2011

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 0.000000 | 0.000000 | 82.730000 | 0.00 |

### Transaction History

From: 24 Mar 2011 To: 24 Mar 2011

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 4,010.200477 |
| 24 Mar 2011 | Transfer | | | | | | -1,908.232008 | 2,101.968469 |
| 24 Mar 2011 | Transfer | | | | | | -2,101.968469 | 0.000000 |

00TPPA (Rev. 10/11)

### How to Read Your Statement

Please see reverse side for important information

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and Investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and Investment plan shares, as of the date specified.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "DOWNLOADABLE FORMS" section of our website. Faxed forms are not acceptable.

P4336

[redacted]2102 SL1 FID XOM 214UDR

# 1 Transaction Request Form

Please check or complete all applicable sections.

## 1A Sell Shares

Sell this number of shares.

OR

Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

## 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

## 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

## 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

## How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account, or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

00NA2A-MOT (Rev. 1/11)

# 2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
Holder Account Number

[redacted]2102 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4337

00000000XOM SPP1 [redacted]2102

07132015:0805:P0257

ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

**IMPORTANT TAX RETURN DOCUMENT ENCLOSED**

********AUTO**ALL FOR AADC 783 000122/0038663 038663

Recipient
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number [redacted]2102 Co.ID XOM

Recipient's ID No. [redacted]8905
Payer's Federal ID No. [redacted]0005

*Uncertified accounts are subject to withholding taxes on dividend payments and sales proceeds.

001CS0006_RPS.D_D_PGI.XOM.171720_38852/038663/038663/6

## Instructions for Recipients

Recipient's Identification Number: For your protection, this form may show only the last four digits of your taxpayer identification number. However, the issuer has reported your complete identification number to the IRS and, where applicable, to state and/or local governments.

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040 or 1040A), if required. The amount shown may be dividends a corporation paid directly to you as a participant (or beneficiary of a participant) in an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 2a: Shows total capital gain distributions from a regulated investment company or real estate investment trust. Report the amounts shown in box 2a on Schedule D (Form 1040), line 13.
But, if no amount is shown in boxes 2c-2d and your only capital gains and losses are capital gain distributions, you may be able to report the amounts shown in box 2a on line 13 of Form 1040 (line 10 of Form 1040A) rather than Schedule D. See the Form 1040/1040A instructions.

Box 2b: Shows the portion of the amount in box 2a that is unrecaptured section 1250 gain from certain depreciable real property. Report this amount on the Unrecaptured Section 1250 Gain Worksheet - Line 19 in the Schedule D instructions (Form 1040).

Box 2c: Shows the portion of the amount in box 2a that is section 1202 gain from certain small business stock that may be subject to a 50% exclusion and certain empowerment zone business stock that may be subject to a 60% exclusion. See the Schedule D (Form 1040) instructions.

Box 2d: Shows 28% rate gain from sales or exchanges of collectibles. If required, use this amount when completing the 28% Rate Gain Worksheet - Line 18 in the instructions for Schedule D (Form 1040).

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5: Shows your share of expenses of a nonpublicly offered regulated investment company, generally a nonpublicly offered mutual fund. If you file Form 1040, you may deduct these expenses on the "Other expenses" line on Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1a.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 7: This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

Box 8: Shows cash liquidation distributions.

Nominees: If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Certain Information Returns.

[redacted] 188UDR

00RT0A (Rev. 10/11)

## EXXON MOBIL CORPORATION

PAYER'S Federal identification number: [redacted]0005
PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S identification number: [redacted]8905
Account number (see instructions): [redacted]2102
RECIPIENT'S name, street address, city, state, ZIP code
ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Form 1099-DIV (keep for your records)

☐ CORRECTED (if checked)

**Dividends and Distributions**

OMB No. 1545-0110

**2011**

Form 1099-DIV

| | |
|---|---|
| 1a Total ordinary dividends $ 1755.92 | 1b Qualified dividends $ 1755.92 |
| 2a Total capital gain distr. $ 0.00 | 2b Unrecap. Sec. 1250 gain $ 0.00 |
| 2c Section 1202 gain $ 0.00 | 2d Collectibles (28%) gain $ 0.00 |
| 3 Nondividend distributions $ 0.00 | 4 Federal income tax withheld $ 0.00 |
| 5 Investment expenses $ 0.00 | 6 Foreign tax paid $ |
| 7 Foreign country or U.S. possession | 8 Cash liquidation distributions $ 0.00 |

The reportable amounts above include the following additional income:

| | |
|---|---|
| Company Paid Fees $ 0.52 | Company Paid Service Charges $ 0.00 |
| Discount on Reinvestment $ 0.00 | |

**Copy B For Recipient**

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and you fail to report it. [redacted] has not been reported.

P4358

Department of the Treasury - Internal Revenue Service

**ANITA KAY BRUNSTING**
**203 Bloomingdale Circle**
**Victoria, Texas 77904**
**(361) 576-5732**

February 16, 2011

**ExxonMobil**
Computershare
P.O. Box 43078
Providence, RI 02940-3078

Re: Change of Title on Stock Plan Account
Account Name: Brunsting Family Living Trust
Account Number: [redacted]2102

To Whom It May Concern:

Nelva and Elmer Brunsting established a Revocable Living Trust and the above-referenced stock account is in the title of that Living Trust. Elmer Brunsting passed away on April 1, 2009 in Houston, Harris County, Texas. Mrs. Nelva Brunsting, the remaining Founder and Co-Trustee, continued to serve as the Trustee of the Trust. On December 21, 2010, Nelva Brunsting resigned as Trustee of the Living Trust. I, Anita Brunsting, am the current acting as Trustee of the Trust, as evidenced by the enclosed copies of the resignation and acceptance of same. Please transfer the stock shares in the above-referenced account into two new accounts titled as follows (***and close the original account***):

(1) Transfer exactly 1,908.232088 shares to a new account in the following name **(If you cannot transfer fractional shares, round down to the nearest share value)**:

ANITA KAY BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

**An acceptable abbreviation for account titling is as follows:**

ANITA KAY BRUNSTING, Tee of the ELMER H. BRUNSTING DECEDENT'S TR dtd 4/1/09, as est UTD 10/10/96.

(Tax I.D. No. of the Elmer H. Brunsting Decedent's Trust is [redacted]3100.)

(2) The **balance of the shares**, including any accrued but unpaid dividends, held in the above-referenced account, should be transferred to a new account in the trust name which appears below. The mailing address should remain as indicated above.

ANITA KAY BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as

**P4339**

established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

**An acceptable abbreviation for account titling is as follows:**

ANITA KAY BRUNSTING, Tee of the NELVA E. BRUNSTING SURVIVOR'S TR dtd 4/1/09, as est UTD 10/10/96.

(Tax I.D. No. of the Nelva E. Brunsting Survivor's Trust is [redacted]4685, the social security number of Nelva E. Brunsting.)

**Reinvest the future Survivor's Trust dividends. Mail the future Decedent's Trust dividends to me at the above address. Do not take any withholding on the Decedent's Trust dividend distribution.**

I have enclosed a copy of an executed and notarized Certificate of Trust verifying the essential terms of the trust document, a copy of the resignation and acceptance documents for the Trust, an original death certificate for Elmer Brunsting, and the necessary transfer forms including a W-9.

If you need additional information or have forms to be completed in order to make this change of title, please contact my attorneys, Susan S. Vacek or Candace L. Kunz-Freed, 14800 St. Mary's Lane, Suite 230, Houston, Texas 77079, (281) 531-5800.

Sincerely,

ANITA KAY BRUNSTING

Enclosures

P4340

Computershare +

Computershare
PO Box 43078
Providence Rhode Island 02940-3078
www.computershare.com/investor

ELMER H. BRUNSTING OR NELVA
E. BRUNSTING TR BRUNSTING FAM LIVING TR U/A 10/10/96
Name of Current Account Holder
13630 PINEROCK
Address
HOUSTON TX 77079
City, State, Zip

Current Holder Account Number
[redacted]2102

Company Name
EXXON MOBIL

**Transfer Request** — See enclosed instructions PLEASE PRINT CLEARLY

**CURRENT HOLDER INFORMATION**

**Shares to be Transferred**
PLEASE NOTE: Whole shares cannot be divided into fractional shares.

1 Daytime Telephone Number: 713-464-4391

2 ☐ **Transfer ALL Shares** (all book-entry shares and any certificated shares submitted)
if this box is checked, do not complete sections 3, 4 and 5.

**PARTIAL TRANSFER:**

3 **DRS Book-Entry Shares** (number of whole shares to transfer)

4 **Certificated Shares** (number of whole shares to transfer)

IMPORTANT: Original certificate(s) must be submitted for your transfer to be executed.

5 **Investment Plan Book-Entry Shares** (number of whole and/or fractional shares to transfer, if applicable)
1908.232008

All transferred shares will be placed in book-entry form unless otherwise requested in writing. VERIFIED

6 **Authorized Signatures** — This section must be signed and stamped for your transfer to be executed.

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature.

NOTE: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union, that is participating in an approved Medallion Signature Guarantee Program. (A NOTARY SEAL IS NOT ACCEPTABLE)

Required ► Medallion Guarantee Stamp
(Notary Seal is Not Acceptable)

GNATURE GUARANTEED
EDALLION GUARANTEED
FIRST VICTORIA
NATIONAL BANK
AUTHORIZED SIGNATURE
A0152439
(10) SECURITIES TRANSFER AGENTS MEDALLION PROGRAM™

Signature of All Current Holders or Legal Representatives

Date (mm / dd / yyyy): 03/10/2011

IMPORTANT ► You must complete both sides of this form for it to be valid.

P4341

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Computershare +

**Transfer Request — See enclosed instructions** PLEASE PRINT CLEARLY

**NEW HOLDER / RECIPIENT INFORMATION** • Please complete for each new holder • Use additional pages as necessary

**7** Account Type (mark only one box with an "X"):

- ☐ Individual (complete A, B, C, G & H)
- ☐ Custodial with Minor (complete A, B, C, D, G & H)
- ☐ Transfer on Death (complete A, B, C, D, G & H)
- ☐ Joint (complete A, B, C, D, G & H)
- ☐ Estate (complete A, B, C, E, G & H)
- ☑ Trustee/Trust (complete A-H)
- ☐ Other (indicate type and complete A, B, C, D, G & H) _____

A New Holder's Existing Account Number (if applicable)

B *Social Security Number (SSN) or Employer Identification Number (EIN) (do not use hyphens)
[redacted]3100 SSN ☐ EIN ☑ (check one box above)

C Name (First, MI, Last) - Individual / Custodian / Trustee / Executor / Other
ANITA BRUNSTING TRUSTEE OF THE

D Name (First, MI, Last) - Joint Holder / Minor / Co-Trustee / TOD Beneficiary / Other (if applicable)
ELMER H. BRUNSTING DECEDENT'S TRUST

E Trust / Estate Name (if applicable)
DATED 04/01/2009

Trust / Estate Name - continued

F Date of Trust (mm / dd / yyyy) (if applicable)
04/01/2009

G Address Number and Street Name / PO Box Apt. / Unit Number
203 BLOOMINGDALE CIRCLE

H City State Zip Code
VICTORIA TX 77904

**8** *Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered in section 7B above.

Certification: Under penalties of perjury, I certify that: (1) the number shown on this form is my correct Taxpayer Identification Number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of New Holder Date (mm / dd / yyyy)
Anita Kay Brunsting TRUSTEE 03/10/2011

P4342 +

E4UTR

07132015 0809 P0262

## AFFIDAVIT OF RESIDENCE

*To be completed for decedent transfers only.*

Account Name: ELMER BRUNSTING NEVA BRUNSTING TR. Account Number: [redacted]2102

Name of Stock: EXXON MOBIL

Deceased Holder's Taxpayer Identification or Social Security Number: [redacted]8905

The undersigned, ANITA K. BRUNSTING, TRUSTEE

residing at 203 BLOOMINGDALE CIRCLE VICTORIA TX 77904

being duly sworn, deposes and says that he/she is TRUSTEE

*Describe your status, i.e. Executor, Administrator, Survivor in Joint Tenancy, etc.*
*(If a corporate fiduciary show title of affiant and name of corporation)*

of (the estate of) THE BRUNSTING FAMILY LVING TR & THE ELMER BRUNSTING DECENTS TR DTD 4/1/2009

who died on 04/01/2009

that at the time of death the domicile (legal residence) of said decedent was at

13630 PINEROCK HOUSTON TX 77079

and that (s)he resided in the State of TEXAS

for 44 years prior to death and was not a resident of any (other) state within the United States of America at time of death.

Signature: Anita Kay Brunsting trustee

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2015

Sworn to before me, a notary public, this AFFIX SEAL

11th day of March, 20 11

Signature: Candace L Kunz-Freed
*(official administering oath)*

Title: Attorney & Notary

My commission expires 3-27-2015

P4343

EQSAFF 12-04-07

00TH4A

Computershare +

Computershare
PO Box 43078
Providence Rhode Island 02940-3078
www.computershare.com/investor

ELMER H. BRUNSTING OR NELVA BRUNSTING, TR BRUNSTING FAMILY LIVING TR U/A 10/10/96

Name of Current Account Holder
31630 PINEROCK

Address
HOUSTON TX 77079

City, State, Zip

Current Holder Account Number
[redacted]2102

Company Name
EXXON MOBIL

**Transfer Request** — See enclosed instructions — PLEASE PRINT CLEARLY

**CURRENT HOLDER INFORMATION**

**Shares to be Transferred**
PLEASE NOTE: Whole shares cannot be divided into fractional shares.

1 Daytime Telephone Number: 713-464-4391

2 ☑ **Transfer ALL Shares** (all book-entry shares and any certificated shares submitted)
If this box is checked, do not complete sections 3, 4 and 5.

PARTIAL TRANSFER: Balance of Shares

3 **DRS Book-Entry Shares** (number of whole shares to transfer)

4 **Certificated Shares** (number of whole shares to transfer)

**IMPORTANT:** Original certificate(s) must be submitted for your transfer to be executed.

5 **Investment Plan Book-Entry Shares** (number of whole and/or fractional shares to transfer, if applicable)

All transferred shares will be placed in book-entry form unless otherwise requested in writing. VERIFIED

6 **Authorized Signatures** — This section must be signed and stamped for your transfer to be executed.

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature.

NOTE: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union, that is participating in an approved Medallion Signature Guarantee Program. (A NOTARY SEAL IS NOT ACCEPTABLE)

Required ▶ Medallion Guarantee Stamp
(Notary Seal is Not Acceptable)

SIGNATURE GUARANTEED
MEDALLION GUARANTEED
FIRST VICTORIA NATIONAL BANK
AUTHORIZED SIGNATURE
( 10 ) A0152439
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM™

Signature of All Current Holders or Legal Representatives

Date (mm / dd / yyyy): 03/10/2011

IMPORTANT ▶ You must complete both sides of this form for it to be valid.

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Computershare +

**Transfer Request** — See enclosed instructions — PLEASE PRINT CLEARLY

**NEW HOLDER / RECIPIENT INFORMATION** • Please complete for each new holder • Use additional pages as necessary

**7** Account Type (mark only one box with an "X"):

- ☐ Individual (complete A, B, C, G & H)
- ☐ Custodial with Minor (complete A, B, C, D, G & H)
- ☐ Transfer on Death (complete A, B, C, D, G & H)
- ☐ Joint (complete A, B, C, D, G & H)
- ☐ Estate (complete A, B, C, E, G & H)
- ☑ Trustee/Trust (complete A-H)
- ☐ Other (indicate type and complate A, B, C, D, G & H) _____

A New Holder's Existing Account Number (if applicable):

B *Social Security Number (SSN) or Employer Identification Number (EIN) (do not use hyphens): [redacted]4685 SSN ☑ EIN ☐ (check one box above)

C Name (First, MI, Last) - Individual / Custodian / Trustee / Executor / Other: ANITA BRUNSTING TRUSTEE OF THE

D Name (First, MI, Last) - Joint Holder / Minor / Co-Trustee / TOD Beneficiary / Other (if applicable): NELVA BRUNSTING SURVIVOR'S

E Trust / Estate Name (if applicable): TRUST

Trust / Estate Name - *continued*:

F Date of Trust (mm / dd / yyyy) (if applicable): 04 / 01 / 2009

G Address Number and Street Name / PO Box: 203 BLOOMINGDALE CIRCLE — Apt. / Unit Number:

H City: VICTORIA — State: TX — Zip Code: 77904

**8** *Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered in section 7B above.

Certification: Under penalties of perjury, I certify that: (1) the number shown on this form is my correct Taxpayer Identification Number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of New Holder: Anita Kay Brunsting TRUSTEE — Date (mm / dd / yyyy): 03 / 10 / 2011

P4345 +

E4UTR

**AFFIDAVIT OF RESIDENCE**

*To be completed for decedent transfers only.*

Account Name: ELMER BRUNSTING OR NEWA BRUNSTING TR  Account Number: [redacted] 2102

Name of Stock: Exxon Mobil

Deceased Holder's Taxpayer Identification or Social Security Number: [redacted] 8905

The undersigned, ANITA BRUNSTING, TRUSTEE

residing at 203 BLOOMINGDALE CIRCLE VICTORIA TX 77904

being duly sworn, deposes and says that he/she is TRUSTEE

*Describe your status, i.e. Executor, Administrator, Survivor in Joint Tenancy, etc.*
*(If a corporate fiduciary show title of affiant and name of corporation)*

of (the estate of) THE BRUNSTING FAMILY LIVING TR DTD 10/10/96 & ELMER BRUNSTING

who died on 10/01/2009

that at the time of death the domicile (legal residence) of said decedent was at

13630 PINEROCK HOUSTON TX 77079

and that (s)he resided in the State of TEXAS

for 44 years prior to death and was not a resident of any (other) state within the United States of America at time of death.

Signature: Anita Kay Brunsting, trustee

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2015

Sworn to before me, a notary public, this

11th day of March 20 11

Signature: Candace L Kunz-Freed
*(official administering oath)*

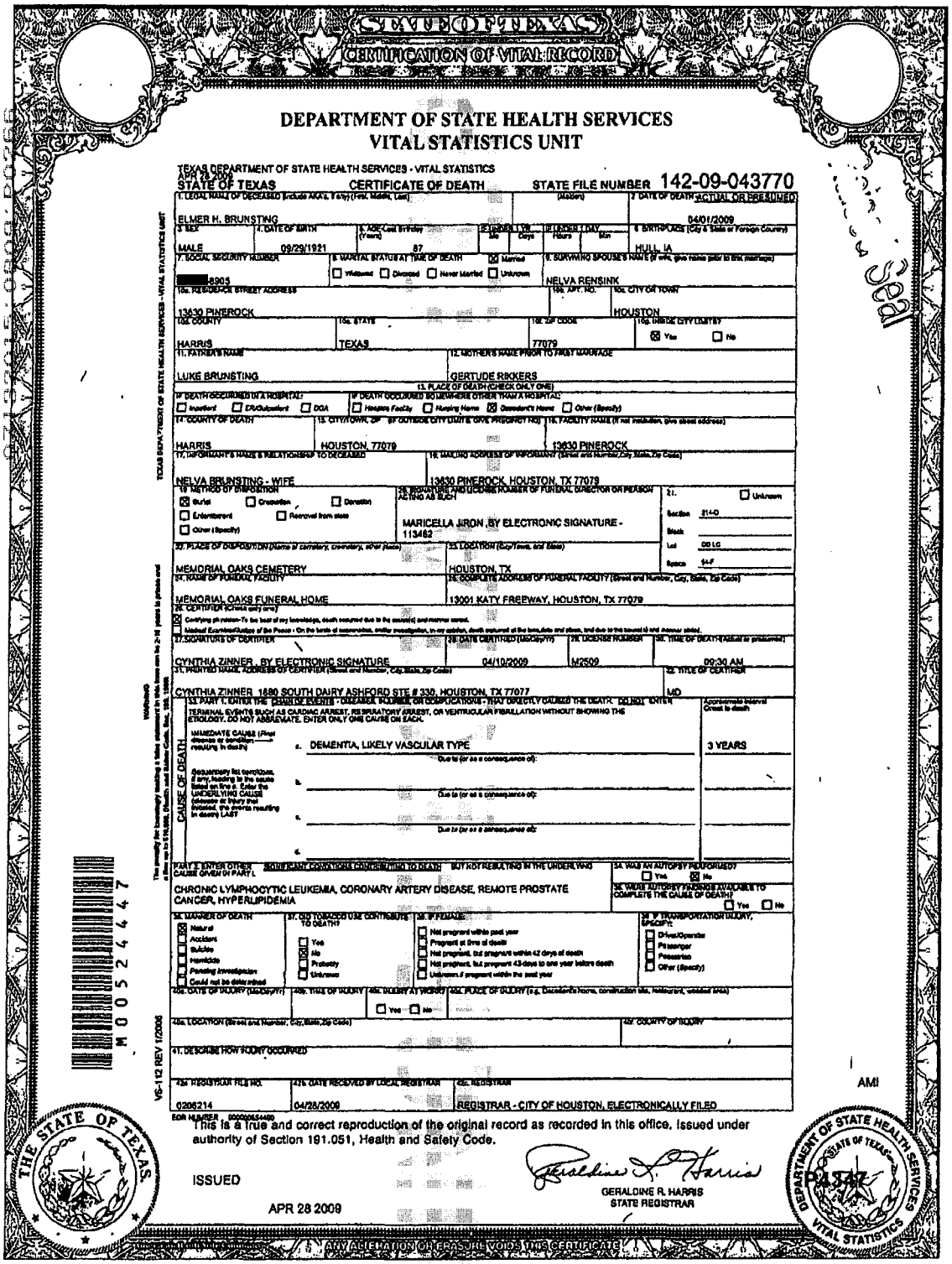
Title: Attorney & Notary

My commission expires 3-27-2015

P4346

EOSAFF 12-04-07

00TH4A



STATE OF TEXAS

CERTIFICATION OF VITAL RECORD

DEPARTMENT OF STATE HEALTH SERVICES
VITAL STATISTICS UNIT

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS
APR 28 2009
STATE OF TEXAS — CERTIFICATE OF DEATH — STATE FILE NUMBER 142-09-043770

1. LEGAL NAME OF DECEASED (Include AKA's, if any) (First, Middle, Last) (Maiden): ELMER H. BRUNSTING
2. DATE OF DEATH (ACTUAL OR PRESUMED): 04/01/2009
3. SEX: MALE
4. DATE OF BIRTH: 09/29/1921
5. AGE (Last Birthday) (Years): 87
If UNDER 1 YR. Mo / Days; If UNDER 1 DAY Hours / Min
6. BIRTHPLACE (City & State or Foreign Country): HULL, IA
7. SOCIAL SECURITY NUMBER: [redacted]8903
8. MARITAL STATUS AT TIME OF DEATH: ☒ Married ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown
9. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage): NELVA RENSINK
10a. RESIDENCE STREET ADDRESS: 13430 PINEROCK
10b. APT. NO.:
10c. CITY OR TOWN: HOUSTON
10d. COUNTY: HARRIS
10e. STATE: TEXAS
10f. ZIP CODE: 77079
10g. INSIDE CITY LIMITS? ☒ Yes ☐ No
11. FATHER'S NAME: LUKE BRUNSTING
12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE: GERTUDE RIKKERS
13. PLACE OF DEATH (CHECK ONLY ONE)
IF DEATH OCCURRED IN A HOSPITAL: ☐ Inpatient ☐ ER/Outpatient ☐ DOA
IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice Facility ☐ Nursing Home ☒ Decedent's Home ☐ Other (Specify)
14. COUNTY OF DEATH: HARRIS
15. CITY/TOWN, ZIP OF OUTSIDE CITY LIMITS & GIVE PRECINCT NO.: HOUSTON, 77079
16. FACILITY NAME (If not institution, give street address): 13630 PINEROCK
17. INFORMANT'S NAME & RELATIONSHIP TO DECEASED: NELVA BRUNSTING - WIFE
18. MAILING ADDRESS OF INFORMANT (Street and Number, City, State, Zip Code): 13630 PINEROCK, HOUSTON, TX 77079
19. METHOD OF DISPOSITION: ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify)
20. SIGNATURE AND LICENSE NUMBER OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH: MARICELLA JIRON ,BY ELECTRONIC SIGNATURE - 113462
21. ☐ Unknown — Section: 214-D; Block: ; Lot: 00 LG; Space: 64-F
22. PLACE OF DISPOSITION (Name of Cemetery, Crematory, other Place): MEMORIAL OAKS CEMETERY
23. LOCATION (City/Town, and State): HOUSTON, TX
24. NAME OF FUNERAL FACILITY: MEMORIAL OAKS FUNERAL HOME
25. COMPLETE ADDRESS OF FUNERAL FACILITY (Street and Number, City, State, Zip Code): 13001 KATY FREEWAY, HOUSTON, TX 77079
26. CERTIFIER (Check only one)
☒ Certifying physician - To the best of my knowledge, death occurred due to the cause(s) and manner stated.
☐ Medical Examiner/Justice of the Peace - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.
27. SIGNATURE OF CERTIFIER: CYNTHIA ZINNER, BY ELECTRONIC SIGNATURE
28. DATE CERTIFIED (MM/DD/YY): 04/10/2009
29. LICENSE NUMBER: M2509
30. TIME OF DEATH (Actual or presumed): 09:30 AM
31. PRINTED NAME, ADDRESS OF CERTIFIER (Street and Number, City, State, Zip Code): CYNTHIA ZINNER 1680 SOUTH DAIRY ASHFORD STE # 330, HOUSTON, TX 77077
32. TITLE OF CERTIFIER: MD

CAUSE OF DEATH
PART 1. ENTER THE CHAIN OF EVENTS - DISEASES, INJURIES, OR COMPLICATIONS - THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. DO NOT ABBREVIATE. ENTER ONLY ONE CAUSE ON EACH LINE.
Immediate Cause (Final disease or condition resulting in death): a. DEMENTIA, LIKELY VASCULAR TYPE — Approximate Interval: Onset to death: 3 YEARS
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST:
Due to (or as a consequence of): b.
Due to (or as a consequence of): c.
Due to (or as a consequence of): d.
PART 2. ENTER OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART 1: CHRONIC LYMPHOCYTIC LEUKEMIA, CORONARY ARTERY DISEASE, REMOTE PROSTATE CANCER, HYPERLIPIDEMIA
34. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No
34. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No
35. MANNER OF DEATH: ☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined
36. DID TOBACCO USE CONTRIBUTE TO DEATH? ☐ Yes ☐ No ☐ Probably ☐ Unknown
37. IF FEMALE: ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year
38. IF TRANSPORTATION INJURY, SPECIFY: ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify)
39. DATE OF INJURY (MM/DD/YY):
40. TIME OF INJURY:
41. INJURY AT WORK? ☐ Yes ☐ No
42. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area):
43. LOCATION (Street and Number, City, State, Zip Code):
44. COUNTY OF INJURY:
45. DESCRIBE HOW INJURY OCCURRED:
46. REGISTRAR FILE NO.: 0206214
47. DATE RECEIVED BY LOCAL REGISTRAR: 04/28/2009
48. REGISTRAR: REGISTRAR - CITY OF HOUSTON, ELECTRONICALLY FILED

EOR NUMBER 000009654469

VS-112 REV 1/2006

This is a true and correct reproduction of the original record as recorded in this office, issued under authority of Section 191.051, Health and Safety Code.

ISSUED
APR 28 2009

Geraldine R. Harris
GERALDINE R. HARRIS
STATE REGISTRAR

PASTE

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

THE STATE OF TEXAS — DEPARTMENT OF STATE HEALTH SERVICES — VITAL STATISTICS

M0052447

AMI

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

# Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2

Name (as shown on your income tax return)
ANITA KAY BRUNSTING, Trustee, of the ELMER H. BRUNSTING DECEDENT'S TRUST

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....
☐ Exempt payee
☑ Other (see instructions) ▶ Irrevocable Trust

Address (number, street, and apt. or suite no.)
203 Bloomingdale Circle

Requester's name and address (optional)

City, state, and ZIP code
Victoria, Texas 77904

List account number(s) here (optional)

**Part I Taxpayer Identification Number (TIN)**

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number

or

Employer identification number
[redacted]3100

**Part II Certification**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. See the instructions on page 4.

Sign Here — Signature of U.S. person Anita Kay Brunsting — Date ▶ 3/10/11

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

## Purpose of Form

A person who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

**Definition of a U.S. person.** For federal tax purposes, you are considered a U.S. person if you are:

- An individual who is a U.S. citizen or U.S. resident alien,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States,
- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

**Special rules for partnerships.** Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

Cat. No. 10231X — Form W-9 (Rev. 10-2007) P4548

Form **W-9**
(Rev. October 2007)
Department of the Treasury
Internal Revenue Service

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Give form to the requester. Do not send to the IRS.

Print or type
See Specific Instructions on page 2.

Name (as shown on your income tax return)
ANITA KAY BRUNSTING, Trustee, of the NELVA E. BRUNSTING SURVIVOR'S TRUST

Business name, if different from above

Check appropriate box: ☐ Individual/Sole proprietor ☐ Corporation ☐ Partnership
☐ Limited liability company. Enter the tax classification (D=disregarded entity, C=corporation, P=partnership) ▶ .....
☐ Exempt payee
☑ Other (see instructions) ▶ Revocable Trust

Address (number, street, and apt. or suite no.)
203 Bloomingdale Circle

Requester's name and address (optional)

City, state, and ZIP code
Victoria, Texas 77904

List account number(s) here (optional)

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Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number
[redacted] 4685

or

Employer identification number

**Part II** Certification

*Under penalties of perjury, I certify that:*

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. citizen or other U.S. person (defined below).

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Sign Here — Signature of U.S. person ▶ Anita Kay Brunsting — Date ▶ 3/11/11

## General Instructions

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1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee. If applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

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- An estate (other than a foreign estate), or
- A domestic trust (as defined in Regulations section 301.7701-7).

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The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

07132015:0809:P0269

**RESIGNATION OF ORIGINAL TRUSTEE**

Pursuant to Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended (the "Trust"), I, NELVA E. BRUNSTING, an original Trustee of the Trust may resign as Trustee.

On April 1, 2009, two subtrusts were created under the BRUNSTING FAMILY LIVING TRUST and are known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

I hereby resign as Trustee of these said Trusts in accordance with the provisions contained in Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

My resignation is effective immediately and I hereby appoint ANITA KAY BRUNSTING as the Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as well as the subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

Nelva E. Brunsting
NELVA E. BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:35 pm p.m., by NELVA E. BRUNSTING.

Candace L Kunz Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

P4350

07132015 : 0609 : P0270

**ACCEPTANCE BY SUCCESSOR TRUSTEE**

I, ANITA KAY BRUNSTING, hereby acknowledge my acceptance this day of the office and duties of Successor Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST, after the resignation of the original Trustee, NELVA E. BRUNSTING.

Anita Kay Brunsting
ANITA KAY BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:36pm p.m., by ANITA KAY BRUNSTING.

Candace Lynne Kunz Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

P4351

CERTIFICATE OF TRUST
FOR THE
ELMER H. BRUNSTING **DECEDENT'S TRUST**

The undersigned successor Trustee hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING died on April 1, 2009, without having changed his appointment of successor Trustee. Therefore, pursuant to Article IV, Section B, of the BRUNSTING FAMILY LIVING TRUST, the remaining original Trustee continues to serve alone.

3. The full legal name of the said trust was:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

4. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent irrevocable trust known as the ELMER H. BRUNSTING **DECEDENT'S TRUST**.

5. NELVA E. BRUNSTING resigned as Trustee on December 21, 2010, after having changed her successor Trustee by that certain Appointment of Successor Trustee dated December 21, 2010. Therefore, the first successor Trustee, ANITA KAY BRUNSTING, shall serve as Trustee.

For purposes of asset allocation, transfer of property into the decedent's trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the decedent's trust shall now be known as:

ANITA KAY BRUNSTING, Trustee, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as

**P4352**

established under the BRUNSTING FAMILY LIVING TRUST
dated October 10, 1996, as amended.

The tax identification number of the ELMER H. BRUNSTING **DECEDENT'S TRUST** is [redacted]3100.

6. If ANITA KAY BRUNSTING fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as Trustees in the following order:

First, AMY RUTH TSCHIRHART
Second, THE FROST NATIONAL BANK

7. Upon the death or disability of NELVA E. BRUNSTING, then the following individuals will serve as Successor Co-Trustees:

ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.

8. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

9. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

10. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustee and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on December 21, 2010.

**P4353**

ANITA KAY BRUNSTING,
Successor Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on December 21, 2010 at 1:45 p.m., by ANITA KAY BRUNSTING, as successor Trustee.

Witness my hand and official seal.

Candace L Kunz Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

P4354

CERTIFICATE OF TRUST
FOR THE
NELVA E. BRUNSTING **SURVIVOR'S TRUST**

The undersigned successor Trustee hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING died on April 1, 2009, without having changed his appointment of successor Trustee. Therefore, pursuant to Article IV, Section B, of the BRUNSTING FAMILY LIVING TRUST, the remaining original Trustee continues to serve alone.

3. The full legal name of the said trust was:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

4. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent revocable trust known as the NELVA E. BRUNSTING **SURVIVOR'S TRUST**.

5. NELVA E. BRUNSTING resigned as Trustee on December 21, 2010, after having changed her successor Trustee by that certain Appointment of Successor Trustee dated December 21, 2010. Therefore, the first successor Trustee, ANITA KAY BRUNSTING, shall serve as Trustee.

For purposes of asset allocation, transfer of property into the survivor's trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the survivor's trust shall now be known as:

ANITA KAY BRUNSTING, Trustee, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as

**P4355**

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established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The tax identification number of the NELVA E. BRUNSTING **SURVIVOR'S TRUST** is [redacted]4685.

6. If ANITA KAY BRUNSTING fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as Trustees in the following order:

First, AMY RUTH TSCHIRHART
Second, THE FROST NATIONAL BANK

7. Upon the death or disability of NELVA E. BRUNSTING, then the following individuals will serve as Successor Co-Trustees:

ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.

8. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

9. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

10. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustee and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on December 21, 2010.

**P4356**

071320115:0809:P0276

ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

O

005791

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

## CHANGE OF ADDRESS NOTICE

25 Mar 2011

Dear Holder:
Re: Company Name: Exxon Mobil Corporation
Account Number: C******2102
Registration: ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM LIVING TRUST UA 10/10/96

Thank you for your recent request to update the address on the above referenced account.
Our records now reflect the following **new address** for this account:

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
C/O ANITA K BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Our records indicate your **previous address** was:

ELMER H BRUNSTING OR NELVA E BRUNSTING TR BRUNSTING FAM
LIVING TRUST UA 10/10/96
13630 PINEROCK
HOUSTON TX 77079-5914

If this ***new address is correct***, no further action is required.
If this ***new address is incorrect***, please call us promptly at the number indicated above.

We are committed to providing you the best service our industry can offer, and appreciate the opportunity to be of service to you.

Sincerely,
Computershare

**P4357**

00ZUDA

001CS0003.DBS.MIX_3207/005791/005791/6

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

001182

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number

[redacted]7769

SSN/TIN Certified Yes

Symbol XOM

001CS0009JJSS.L.MIX_3207/001182/001182/i

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7769

### ▶ ACCOUNT SUMMARY

As of close of stock market on 24 Mar 2011

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 1,908.000000 | 0.232008 | 1,908.232008 | 82.730000 | 157,868.03 |

### Transaction History

From: 24 Mar 2011 To: 24 Mar 2011

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 0.000000 |
| 24 Mar 2011 | Transfer | | | | | | 1,908.232008 | 1,908.232008 |
| 24 Mar 2011 | Certificate Issuance | | | | | | -1,908.000000 | 0.232008 |

00TPPA (Rev. 10/11)

### How to Read Your Statement

Please see reverse side for important information

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-8 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "DOWNLOADABLE FORMS" section of our website. Faxed forms are not acceptable.

P4358

[redacted]7769 SL1 FID

XOM
214UDR

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

## How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, authorization forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

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## 2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING

Holder Account Number

[redacted]7769 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

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00000000XOM SPP1 [redacted]7769

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil
Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

007926

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7769

Company ID XOM
SSN/TIN Certified Yes

## Exxon Mobil Corporation - Direct Registration (DRS) Advice

### Transaction(s)

| Date | Transaction Description | Total Shares/Units | CUSIP | Class Description |
|---|---|---|---|---|
| 24 Mar 2011 | Plan Certification | 1,908.000000 | 30231G102 | Common Stock |

### Account Information: Date: 24 Mar 2011 (Excludes transactions pending settlement)

| Current Dividend Reinvestment Balance | Current Direct Registration Balance | Total Shares/ Units | Price Per Share | Value ($) | CUSIP | Class Description |
|---|---|---|---|---|---|---|
| 0.232008 | 1,908.000000 | 1,908.232008 | 82.730000 | 157,868.03 | 30231G102 | Common Stock |

**IMPORTANT INFORMATION — RETAIN FOR YOUR RECORDS.**

This advice is your record of the share transaction in your account on the books of the Company as part of the Direct Registration System. This advice is neither a negotiable instrument nor a security, and delivery of it does not of itself confer any rights to the recipient. It should be kept with your important documents as a record of your ownership of these shares. No action on your part is required.

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

*Upon request, the Company will furnish to any shareholder, without charge, a full statement of the designations, rights (including rights under any Company's Rights Agreement, if any), preferences and limitations of the shares of each class and series authorized to be issued, and the authority of the Board of Directors to divide the shares into series and to determine and change rights, preferences and limitations of any class or series.*

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

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*Please see important PRIVACY NOTICE on reverse side of statement*

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## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

P4361

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

000352

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7769

Company ID XOM
SSN/TIN Certified Yes

## Exxon Mobil Corporation - Direct Registration (DRS) Advice

### Transaction(s)

| Date | Transaction Description | Total Shares/Units | CUSIP | Class Description |
|---|---|---|---|---|
| 15 Jun 2011 | Transfer | -1,325.000000 | 30231G102 | Common Stock |

### Account Information: Date: 15 Jun 2011 (Excludes transactions pending settlement)

| Current Dividend Reinvestment Balance | Current Direct Registration Balance | Total Shares/Units | CUSIP | Class Description |
|---|---|---|---|---|
| 0.000000 | 583.000000 | 583.000000 | 30231G102 | Common Stock |

**IMPORTANT INFORMATION — RETAIN FOR YOUR RECORDS.**

This advice is your record of the share transaction in your account on the books of the Company as part of the Direct Registration System. This advice is neither a negotiable instrument nor a security, and delivery of it does not of itself confer any rights to the recipient. It should be kept with your important documents as a record of your ownership of these shares. No action on your part is required.

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

Upon request, the Company will furnish to any shareholder, without charge, a full statement of the designations, rights (including rights under any Company's Rights Agreement, if any), preferences and limitations of the shares of each class and series authorized to be issued, and the authority of the Board of Directors to divide the shares into series and to determine and change rights, preferences and limitations of any class or series.

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

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Please see Important PRIVACY NOTICE on reverse side of statement

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## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

**P4363**

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

031438

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number

[redacted]7769

SSN/TIN Certified Yes

Symbol XOM

001CS0006_rps.lim1_XOM.105024_40233/031438/0321166

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7769

### ▶ ACCOUNT SUMMARY

As of close of stock market on 11 Jun 2012

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 583.000000 | 4.204777 | 587.204777 | 80.270000 | 47,134.93 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 14 May 2012 | 11 Jun 2012 | 0.570000 | Common | 583.000000 | 332.31 | | 332.31 |

### Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 0.000000 |
| 11 Jun 2012 | Dividend Reinvestment | 332.31 | Comp Paid Fees | 0.11 | 332.31 | 79.031547 | 4.204777 | 4.204777 |

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### How to Read Your Statement

Please see reverse side for important information

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**Record Date** – The date on which you must have officially owned shares to receive the dividend.

**Payment Date** – The date the dividend was payable.

**Dividend Rate** – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

**Dividend Reinvestment Shares/Units** – Shares enrolled in dividend reinvestment.

**Gross Dividend** – The dividend paid on the Plan's dividend reinvestment shares.

**Net Dividend** – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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214UDR

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

OR ☐ Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
*Sale requests submitted on this Transaction Request Form will be processed as a batch order. Please see instructions below for more information.*

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR ☐ Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### 1C Deposit Certificate(s) into the Investment Plan

**IMPORTANT:** You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

### How to Request a Transaction

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement.* A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. *Please note the purchase limitations identified on the bottom left of the form.*

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*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

00WK2A-MOT (Rev. 6/11)

## 2 Purchase Additional Shares of Company Stock

*If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.*

Attached is a check in the amount of:

$ [redacted]

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING

Holder Account Number

[redacted]7769 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

**P4365**

00000000XOM SPP1 [redacted]7769

**Screen dump for user: vigorito**

*Date: Thursday, 5th July 2012 17:53:29*

07132015:0809:P0285

COMPUTERSHARE SHAREHOLDER SERVICES INC Run/Sess/Date:1527/0000/07-05-2012
EXXON MOBIL CORPORATION/XOM Serv Provider/Code: CIS/REGEQ
* SCRIP Enquiry - PAYMENTS----------Page 1
HID: [redacted]7769 Type: FID TIN: *******3100 Key....: BRUNSTING ANITA *PI*
N&A: ANITA BRUNSTING TR | UA 04/01/09 | ELMER H BRUNSTING DECEDENT'S TRUST, ... Post: 77904

| -#- | Date | Meth | Reference | Net Amt | Status | Bse-Pd | Acct | Pay Type |
|---|---|---|---|---|---|---|---|---|
| 01 | 06/11/12 | Riv | 20977305 | 332.31 | Pres | 06/11/12 | USD USD D1206 | Dividend |
| 02 | 03/09/12 | Dir | 00039188 | 274.01 | Pres | 03/09/12 | USD USD D1203 | Dividend |
| 03 | 12/09/11 | Dir | 00039770 | 274.01 | Pres | 12/09/11 | USD USD D1112 | Dividend |
| 04 | 09/09/11 | Dir | 00039892 | 274.01 | Pres | 09/09/11 | USD USD D1109 | Dividend |
| 05 | 06/10/11 | Dir | 00039733 | 896.76 | Pres | 06/10/11 | USD USD D1106 | Dividend |
| 06 | 03/29/11 | Che | 00121887 | 4.18 | Pres | 06/10/11 | USD USD SLE02 | Trading |

*----------
Action.....: 01___ Locate....: _____
<Esc> for valid actions; ">" , "<" , "+" ,"$" for extra, ,Dnn, Tnn, Pnn, Fnn
Form: ENSDIS01 Slot: 4835 PID: 584D4247 Node: CSAPR4 Date: 05Jul2012 17:53

P4366

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ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

000658

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

**Account Number:** [redacted]769

Dear Holder:

We have received and processed your request to add bank payment instructions to your account. We are in the process of verifying the bank payment instructions with your financial institution. The new payment instructions should become effective within 15 days. All disbursements made by the company will then be directly paid to your bank account. You will also be able to direct us to use this bank account to receive payments at your discretion if you choose to sell your shares.

**Company Name:** Exxon Mobil Corporation

**Bank Name:** BANK OF AMERICA N A

**Bank Account (Last four Digits):** 1143

Please note, if the bank payment instructions are determined to be incorrect in the verification process, you will receive a notice that your request has been cancelled.

If you are a participant in a reinvestment plan, your reinvestment plan participation option will be honored in lieu of the above payment instructions. For example, if you have enrolled in full reinvestment, all dividends will be reinvested rather than paid to the above bank account. If you have enrolled in the cash payment option, all dividends will be paid in cash using the new bank payment instructions.

P4367

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ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
*Within USA, US territories & Canada* 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

**IMPORTANT TAX RETURN DOCUMENT ENCLOSED**

005814

Recipient
ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

**Holder Account Number** [redacted]7769 **Co.ID** XOM

**Recipient's ID No.** 27-6453100
**Payer's Federal ID No.** 13-5409005

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*Uncertified accounts are subject to withholding taxes on dividend payments and sales proceeds.*

## Instructions for Recipients

*Recipient's Identification Number: For your protection, this form may show only the last four digits of your taxpayer identification number. However, the issuer has reported your complete identification number to the IRS and, where applicable, to state and/or local governments.*

Account Number: May show an account or other unique number the payer assigned to distinguish your account.

*Box 1a: Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A.* Also, report it on Schedule B (Form 1040 or 1040A), if required. The amount shown may be dividends a corporation paid directly to you as a participant (or beneficiary of a participant) in an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b: Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 2a: Shows total capital gain distributions from a regulated investment company or real estate investment trust. Report the amounts shown in box 2a on Schedule D (Form 1040), line 13.
But, if no amount is shown in boxes 2c-2d and your only capital gains and losses are capital gain distributions, you may be able to report the amounts shown in box 2a on line 13 of Form 1040 (line 10 of Form 1040A) rather than Schedule D. See the Form 1040/1040A instructions.

Box 2b: Shows the portion of the amount in box 2a that is unrecaptured section 1250 gain from certain depreciable real property. Report this amount on the Unrecaptured Section 1250 Gain Worksheet - Line 19 in the Schedule D instructions (Form 1040).

Box 2c: Shows the portion of the amount in box 2a that is section 1202 gain from certain small business stock that may be subject to a 50% exclusion and certain empowerment zone business stock that may be subject to a 60% exclusion. See the Schedule D (Form 1040) instructions.

Box 2d: Shows 28% rate gain from sales or exchanges of collectibles. If required, use this amount when completing the 28% Rate Gain Worksheet - Line 18 in the instructions for Schedule D (Form 1040).

Box 3: Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4: Shows backup withholding. For example, a payer must backup withhold on certain payments if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5: Shows your share of expenses of a nonpublicly offered regulated investment company, generally a nonpublicly offered mutual fund. If you file Form 1040, you may deduct these expenses on the "Other expenses" line on Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1a.

Box 6: Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Box 7: This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

Box 8: Shows cash liquidation distributions.

*Nominees: If this form includes amounts belonging to another person, you are considered a nominee recipient.* You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Certain Information Returns.

[redacted] 188UDR

*DORTQA (Rev. 10/11)*

## EXXON MOBIL CORPORATION

☐ CORRECTED (if checked)

**Dividends and Distributions**

OMB No. 1545-0110

**2011**

Form **1099-DIV**

| | |
|---|---|
| 1a Total ordinary dividends<br>$ 1444.78 | 1b Qualified dividends<br>$ 1444.78 |
| 2a Total capital gain distr.<br>$ 0.00 | 2b Unrecap. Sec. 1250 gain<br>$ 0.00 |
| 2c Section 1202 gain<br>$ 0.00 | 2d Collectibles (28%) gain<br>$ 0.00 |
| 3 Nondividend distributions<br>$ 0.00 | 4 Federal income tax withheld<br>$ 0.00 |
| 5 Investment expenses<br>$ 0.00 | 6 Foreign tax paid<br>$ |
| 7 Foreign country or U.S. possession | 8 Cash liquidation distributions<br>$ 0.00 |

The reportable amounts above include the following additional income:

| | |
|---|---|
| Company Paid Fees<br>$ 0.00 | Company Paid Service Charges<br>$ 0.00 |
| Discount on Reinvestment<br>$ 0.00 | |

**PAYER'S Federal identification number:** [redacted]9005
**PAYER'S name, street address, city, state, and ZIP code**
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

**RECIPIENT'S identification number:** [redacted]3100
**Account number (see instructions):** [redacted]7769
**RECIPIENT'S name, street address, city, state, ZIP code**
ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

**Copy B**
**For Recipient**

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a *negligence penalty or other* sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4366

**Form 1099-DIV (keep for your records)**

Department of the Treasury - Internal Revenue Service

Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

[redacted]7769 ETRD1 XOM

**Transfer Request**

**Current Account Information**

| | | | | | |
|---|---|---|---|---|---|
| Company Name | EXXON MOBIL CORPORATION | Holding | COMMON STOCK | | |
| Holder Name | ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING DECEDENT'S TRUST | Account Number | [redacted]7769 | | |
| Address | 203 BLOOMINGDALE CIRCLE VICTORIA TX 77904 | Reason For Transfer | GeneralTransfer | Type of Transfer | PartialTransfer |

**Shares to Transfer**

| | | | |
|---|---|---|---|
| Book | 1325 | | |
| Plan | | | |
| Certificate (s) | | Note: You must send in original certificate(s) with enough shares to satisfy the transfer amount. | |
| Total | 1325 | | |

**Current Account Holder Signature(s)**

| | | |
|---|---|---|
| Authorized Signatures | This section must be signed and stamped for your transfer to be executed. | Required > Medallion Guarantee Stamp (Notary Seal is Not Acceptable) |

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatsoever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature

Note: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union that is participating in an approved Medallion Signature Guarantee program.
(A NOTARY SEAL IS NOT ACCEPTABLE)

SIGNATURE GUARANTEED
MEDALLION GUARANTEE
FIRST VICTORIA NATIONAL BANK
AUTHORIZED SIGNATURE
(15) D0152439
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM

| Signature of All Current Holders or Legal Representatives | Date (mm/dd/yyyy) |
|---|---|
| Anita Brunsting | 06/07/2011 |
| | |
| | |

P4369

07-22015-0809-P0288

**Computershare**

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

New Holder/Recipient Information

Account 1

| | | | | | |
|---|---|---|---|---|---|
| Account Type | Individual | Shares to Transfer | | | 1325 |
| | Holder | SSN/EIN | [redacted]-6228 | | |
| First Name | Carole | Middle Initial | A | | |
| Last Name | Brunsting | | | | |
| Street Address | 5822 Jason | | | | |
| City | Houston | State | TX | Zip | 77074 |

*Form W-8: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certifications: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

| Signature of Holder | Date (mm/dd/yyyy) |
|---|---|
| | [redacted] 06/08/2011 |

P4870

ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

000876

ANITA BRUNSTING TR UA 04/01/09 ELMER H BRUNSTING
DECEDENT'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Account Number: [redacted]7769

Dear Holder:

We have received and processed your request to enroll your account in the dividend reinvestment plan for Exxon Mobil Corporation.

In response to your request, your account has been enrolled with the following option: Full Dividend Reinvestment.

This change was made on 03 Mar 2012.

Please note, if your enrollment was received after the record date of any upcoming dividend, it will not be in effect for that dividend.

If you did not request this enrollment, please contact us at the number above during regular business hours.

**Privacy Notice**

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*This notice is provided on behalf of Computershare Trust Company, N.A.*

[redacted] 6 U C N F X O M P4371

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07132015:0809:P0291



ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil
Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

001183

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7777

SSN/TIN Certified: Yes
Symbol: XOM

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

### ▶ ACCOUNT SUMMARY

As of close of stock market on 24 Mar 2011

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 2,101.968469 | 2,101.968469 | 82.730000 | 173,895.85 |

### Transaction History

From: 24 Mar 2011 To: 24 Mar 2011

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 0.000000 |
| 24 Mar 2011 | Transfer | | | | | | 2,101.968469 | 2,101.968469 |

EXHIBIT COPY

00TPPA (Rev. 10/11)

### How to Read Your Statement — Please see reverse side for important information

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "DOWNLOADABLE FORMS" section of our website. Faxed forms are not acceptable.

P4372

07 3201 5 0809 P0292



[redacted]7777 SL1 FID XOM 214UDR +

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

## How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

00WA2A-MDT (Rev. 1/11)

## 2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING

Holder Account Number

[redacted]7777 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4373

00000000XOM SPP1 [redacted]7777

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

000051

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number

[redacted]7777

SSN/TIN Certified Yes

Symbol XOM

001CS0003.1/MI.L.MIX_3259/0/0051/000051/I

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

### ➤ ACCOUNT SUMMARY

As of close of stock market on 11 May 2011

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 981.968469 | 981.968469 | 81.120000 | 79,657.28 |

### Transaction History

From: 11 May 2011 To: 11 May 2011

*This section pertains only to book-entry shares/units.*

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 2,101.968469 |
| 11 May 2011 | Transfer | | | | | | -1,120.000000 | 981.968469 |

00TPPA (Rev. 10/11)

### How to Read Your Statement

Please see reverse side for important information

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "DOWNLOADABLE FORMS" section of our website. Faxed forms are not acceptable.

P4374

[redacted]7777 SL1 FID XOM 214UDR

07 SX015 :0809 :P0294

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

Sell this number of shares.

OR

Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

## How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. Transfer instructions are available through the "Frequently Asked Questions" section of Investor Centre or by contacting us at the phone number listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

00WA2A-MOT (Rev. 3/11)

## 2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 HELVA BRUNSTING

Holder Account Number

[redacted]7777 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4375

00000000XOM SPP1 [redacted]7777

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

IMPORTANT TAX RETURN DOCUMENT ENCLOSED

024050

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7777

SSN/TIN Certified: Yes
Symbol: XOM

001CS0006_RPSJEMLTX.XOM.172021_7815U0240500219679

07 19201 5 080 0 : P0295

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

If you want to make an optional cash purchase at this time, please make your check payable to Computershare. Please write your Holder Account Number and the Company name on the check or on your cover letter. Please send your check to: Computershare, P.O. Box 6006, Carol Stream, IL 60197-6006.

### ▶ ACCOUNT SUMMARY

As of close of stock market on 09 Dec 2011

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 675.910671 | 675.910671 | 81.340000 | $4,978.57 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 10 Nov 2011 | 09 Dec 2011 | 0.470000 | Common | 671.967460 | 315.83 | | 315.83 |

### Transaction History

From: 01 Jan 2011 To: 09 Dec 2011

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 0.000000 |
| 24 Mar 2011 | Transfer | | | | | | 2,101.968469 | 2,101.968469 |
| 11 May 2011 | Transfer | | | | | | -1,120.000000 | 981.968469 |
| 10 Jun 2011 | Dividend Reinvestment | 461.53 | Comp Paid Fees | 0.14 | 461.53 | 81.010632 | 5.697153 | 987.665622 |
| 15 Jun 2011 | Transfer | | | | | | -160.000000 | 827.665622 |
| 15 Jun 2011 | Transfer | | | | | | -160.000000 | 667.665622 |

IMPORTANT TAX RETURN DOCUMENT ATTACHED

Please see important PRIVACY NOTICE on reverse side of statement

00TPPA-TAX (Rev. 10/11)

ExxonMobil

PAYER'S name, street address, city, state, and ZIP code
EXXON MOBIL CORPORATION
C/O COMPUTERSHARE
P.O. BOX 43010
PROVIDENCE RI 02940-3010

RECIPIENT'S name, street address, city, state, ZIP code
ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Form 1099-DIV (keep for your records)

☐ CORRECTED (if checked)

**Dividends and Distributions**

OMB No. 1545-0110

**2011**

Form 1099-DIV

| 1a Total ordinary dividends | 1b Qualified dividends |
|---|---|
| $ 1091.51 | $ 1091.51 |
| 3 Nondividend distributions | 4 Federal income tax withheld |
| $ | $ |
| 5 Foreign tax paid | 7 Foreign country or U.S. possession |
| $ | |
| 8 Cash liquidation distributions | PAYER'S Federal identification number |
| $ | [redacted]005 |
| RECIPIENT'S identification number | Account number (see instructions) |
| [redacted]4685 | [redacted]7777 |

Summary of reportable income (Amounts Paid and/or Reinvested do not reflect deductions for tax withheld, if any)

| Amount Paid By Check/EFT | Amount Reinvested |
|---|---|
| $ 0 | $ 1091.16 |
| Company Paid Fees | Company Paid Service Charges |
| $ 0.35 | $ 0 |
| Discount on Reinvestment | |
| $ 0 | |

Department of the Treasury - Internal Revenue Service

**Copy B For Recipient**

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

P4376

07:320:5:0809:P0296



[redacted]7777 SL1 FID

XOM
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## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT:
You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

## How to Request a Transaction

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!
The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

00WA2A-MOT (Rev. 8/11)

## Instructions for Recipient

**Recipient's Identification Number:** For your protection, this form may show only the last four digits of your taxpayer identification number. However, the issuer has reported your complete identification number to the IRS and, where applicable, to state and/or local governments.

**Account Number:** May show an account or other unique number the payer assigned to distinguish your account.

**Box 1a:** Shows total ordinary dividends that are taxable. Include this amount on line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040 or 1040A), if required.

The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A, but treat it as a plan distribution, not as investment income, for any other purpose.

**Box 1b:** Shows the portion of the amount in box 1a that may be eligible for the 15% or 0% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

**Box 3:** Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

**Box 4:** Shows backup withholding. For example, a payer must backup withhold on certain payments if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

**Box 6:** Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

**Box 7:** This box should be left blank if a regulated investment company reported the foreign tax shown in box 6.

**Box 8:** Shows cash liquidation distributions.

**Nominees:** If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the current tax year General Instructions for Certain Information Returns.

P4377

00RXHA-R (Rev. 10/11)

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING SURVIVOR'S TRUST

Holder Account Number

[redacted]7777

SSN/TIN Certified Yes

Symbol XOM

001CS0006_RPS.EMLTX.XOM.172021_38851/024050/0298804

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

## Transaction History (cont.)

From: 01 Jan 2011 To: 09 Dec 2011

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| 09 Sep 2011 | Dividend Reinvestment | 313.80 | Comp Paid Fees | 0.11 | 313.80 | 72.608004 | 4.321838 | 671.967460 |
| 09 Dec 2011 | Dividend Reinvestment | 315.83 | Comp Paid Fees | 0.10 | 315.83 | 80.502937 | 3.923211 | 675.910671 |

00TPPA (Rev. 12/11)

## How to Read Your Statement

Please see reverse side for important information

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**Record Date** – The date on which you must have officially owned shares to receive the dividend.

**Payment Date** – The date the dividend was payable.

**Dividend Rate** – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

**Dividend Reinvestment Shares/Units** – Shares enrolled in dividend reinvestment.

**Gross Dividend** – The dividend paid on the Plan's dividend reinvestment shares.

**Net Dividend** – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

P4378

[redacted]7777 SL1 FID

XOM 214UDR

# 1 Transaction Request Form

Please check or complete all applicable sections.

## 1A Sell Shares

OR

Sell all book-entry shares, *including plan and DRS* shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

## 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

## 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with *this form.*

Deposit this number of shares into my reinvestment account.

## 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

## How to Request a Transaction (refer to the prospectus/brochure for additional details on the terms and conditions of transactions under the plan or DRS sales facility)

**You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!**

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) *method. Please visit our website or consult your tax advisor if you need additional information about cost basis.*

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1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your *account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date,* Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in *book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not* endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that *indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.*

**If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.**

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of N.J.

031683

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number
[redacted]7777

SSN/TIN Certified: Yes
Symbol: XOM

001CS00006_rpt.RptL.XOM.080806_39590031683403169SA

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

### ▶ ACCOUNT SUMMARY

As of close of stock market on 09 Mar 2012

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 679.609732 | 679.609732 | 84.300000 | 57,291.10 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 10 Feb 2012 | 09 Mar 2012 | 0.470000 | Common | 675.910671 | 317.68 | | 317.68 |

### Transaction History

From: 01 Jan 2012 To: 09 Mar 2012

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 675.910671 |
| 09 Mar 2012 | Dividend Reinvestment | 317.68 | Comp Paid Fees | 0.09 | 317.68 | 85.881244 | 3.699061 | 679.609732 |

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### How to Read Your Statement

Please see reverse side for more information

*Stock Class Description* – *A description of the stock class in which you hold shares, e.g.* Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

*Price Per Share/Unit* – *The market price per share purchased or sold under the Plan for this transaction.*

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**Record Date** – The date on which you must have officially owned shares to receive the dividend.

**Payment Date** – The date the dividend was payable.

**Dividend Rate** – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

**Dividend Reinvestment Shares/Units** – Shares enrolled in dividend reinvestment.

**Gross Dividend** – The dividend paid on the Plan's dividend reinvestment shares.

**Net Dividend** – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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[redacted]7777 SL1 FID XOM 214UDR

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.

Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### How to Request a Transaction

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institution) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

**If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.**

### Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your accounts or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

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## 2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING

Holder Account Number

[redacted]7777 FID

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

**P4381**

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

031439

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

Holder Account Number

[redacted]7777

SSN/TIN Certified Yes

Symbol XOM

001CS0006_rpt.Eml..XOM.105024_40233/031439/0931176

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]7777

### ► ACCOUNT SUMMARY

*As of close of stock market on 11 Jun 2012*

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 684.511319 | 684.511319 | 80.270000 | 54,945.72 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 14 May 2012 | 11 Jun 2012 | 0.570000 | Common | 679.609732 | 387.38 | | 387.38 |

### Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 675.910671 |
| 09 Mar 2012 | Dividend Reinvestment | 317.68 | Comp Paid Fees | 0.09 | 317.68 | 85.881244 | 3.699061 | 679.609732 |
| 11 Jun 2012 | Dividend Reinvestment | 387.38 | Comp Paid Fees | 0.12 | 387.38 | 79.031547 | 4.901587 | 684.511319 |

00TPPA (Rev. 12/11)

### How to Read Your Statement

Please see reverse side for important information

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

***Direct Registration Book Shares/Units (DRS)*** – *Book-entry shares that are not part of the Plan.*

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**Record Date** – The date on which you must have officially owned shares to receive the dividend.

**Payment Date** – The date the dividend was payable.

**Dividend Rate** – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

**Dividend Reinvestment Shares/Units** – Shares enrolled in dividend reinvestment.

**Gross Dividend** – The dividend paid on the Plan's dividend reinvestment shares.

**Net Dividend** – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

**SSN/TIN Certified** – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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[redacted]7777 SL1 FID XOM 214UDR

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

OR ☐ Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR ☐ Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

## How to Request a Transaction

*You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!*

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. *A Market Order sale may be available for transactions* submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. *Note: market orders and batch orders are subject to different fees. Please visit the website or contact us* at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

*To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party.* For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). *If your request is received near a record date, Computershare* has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. *Computershare will deposit these shares into your plan account and hold them electronically in* book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. *You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate* in the event that it is lost in transit.

1D. *All registered holders must sign section 1D for the above instruction(s) to be completed.* *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.*

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. *Please note the purchase limitations identified on the bottom left of the form.*

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

COWA2A-MOT (Rev. 8/11)

## 2 Purchase Additional Shares of Company Stock

*If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.*

Attached is a check in the amount of:

$ [redacted]

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

*Holder Name: ANITA BRUNSTING TR UA 04/01/08 NELVA BRUNSTING*

Holder Account Number

[redacted]7777 FID

*Computershare*
P.O. Box 6006
Carol Stream, IL 60197-6006

**P4383**

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07 520 15 0808 1 0502 170 20502 P0502

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ExxonMobil

Computershare

Computershare
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

000659

ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING
SURVIVOR'S TRUST
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904

**Account Number:** [redacted]7777

Dear Holder:

We have received and processed your request to add bank payment instructions to your account. We are in the process of verifying the bank payment instructions with your financial institution. The new payment instructions should become effective within 15 days. All disbursements made by the company will then be directly paid to your bank account. You will also be able to direct us to use this bank account to receive payments at your discretion if you choose to sell your shares.

**Company Name:** Exxon Mobil Corporation

**Bank Name:** BANK OF AMERICA N A

**Bank Account (Last four Digits):** 1143

Please note, if the bank payment instructions are determined to be incorrect in the verification process, you will receive a notice that your request has been cancelled.

If you are a participant in a reinvestment plan, your reinvestment plan participation option will be honored in lieu of the above payment instructions. For example, if you have enrolled in full reinvestment, all dividends will be reinvested rather than paid to the above bank account. If you have enrolled in the cash payment option, all dividends will be paid in cash using the new bank payment instructions.

P4384

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001CS0003.EML.MIX_3229/000659/000659/i

Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

[redacted]7777 ETRD1 XOM

**Transfer Request**

**Current Account Information**

| | | | | | |
|---|---|---|---|---|---|
| Company Name | EXXON MOBIL CORPORATION | Holding | COMMON STOCK | | |
| Holder Name | ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING SURVIVOR'S TRUST | Account Number | [redacted]7777 | | |
| Address | 203 BLOOMINGDALE CIRCLE VICTORIA TX 77904 | Reason For Transfer | GeneralTransfer | Type of Transfer | PartialTransfer |

**Shares to Transfer**

| | | |
|---|---|---|
| Book | | |
| Plan | 1120 | |
| Certificate (s) | | Note: You must send in original certificate(s) with enough shares to satisfy the transfer amount. |
| Total | 1120 | |

**Current Account Holder Signature(s)**

| | | |
|---|---|---|
| Authorized Signatures | This section must be signed and stamped for your transfer to be executed. | Required > Medallion Guarantee Stamp (Notary Seal is Not Acceptable) |

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatsoever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature

Note: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union that is participating in an approved Medallion Signature Guarantee program.

(A NOTARY SEAL IS NOT ACCEPTABLE)

SIGNATURE GUARANTEED
MEDALLION GUARANTEED
FIRST VICTORIA NATIONAL BANK
AUTHORIZED SIGNATURE
(15) D0152439
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM

| Signature of All Current Holders or Legal Representatives | Date (mm/dd/yyyy) |
|---|---|
| Anita Brunsting | 04/25/2011 |
| | |
| | |

VERIFIED

P4385

**Computershare**

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

New Holder/Recipient Information

Account 1

| | | | | | |
|---|---|---|---|---|---|
| Account Type | Individual | Shares to Transfer | | 1120 | |
| | Holder | SSN/EIN | [redacted]5947 | | |
| First Name | Amy | Middle Initial | R | | |
| Last Name | Brunsting | | | | |
| Street Address | 2582 Country Ledge Dr. | | | | |
| City | New Braunfels | State | TX | Zip | 78132-4109 |

*Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification Number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

| Signature of Holder | Date (mm/dd/yyyy) |
|---|---|
| Amy R. Brunsting | 04/25/2011 |

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this form. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE: IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in DRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

| Signature of New Holder/Recipient | Date (mm/dd/yyyy) |
|---|---|
| Amy R. Brunsting | 05/02/2011 |

P4386

Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

[redacted]7777 ETRD1 XOM

**Transfer Request**

**Current Account Information**

| | | | | | |
|---|---|---|---|---|---|
| Company Name | EXXON MOBIL CORPORATION | Holding | COMMON STOCK | | |
| Holder Name | ANITA BRUNSTING TR UA 04/01/09 NELVA BRUNSTING SURVIVOR'S TRUST | Account Number | [redacted]7777 | | |
| Address | 203 BLOOMINGDALE CIRCLE VICTORIA TX 77904 | Reason For Transfer | GeneralTransfer | Type of Transfer | PartialTransfer |

**Shares to Transfer**

| | | | |
|---|---|---|---|
| Book | | | |
| Plan | 320 | | |
| Certificate (s) | | Note: You must send in original certificate(s) with enough shares to satisfy the transfer amount. | |
| Total | 320 | | |

**Current Account Holder Signature(s)**

| | | |
|---|---|---|
| Authorized Signatures | This section must be signed and stamped for your transfer to be executed. | Required > Medallion Guarantee Stamp (Notary Seal is Not Acceptable) |

The undersigned does (do) hereby irrevocably constitute and appoint Computershare as attorney to transfer the said stock, as the case may be, on the books of said Company, with full power of substitution in the premises.

The signature(s) below on this Transfer Request form must correspond exactly with the name(s) as shown upon the face of the stock certificate or a Computershare-issued statement for book-entry shares, without alteration or enlargement or any change whatsoever. The below must be signed by all current registered holders, or a legally authorized representative with indication of his or her capacity next to the signature

Note: Signature(s) must be stamped with a Medallion Signature Guarantee by a qualified financial institution, such as a commercial bank, savings bank, savings and loan, US stockbroker and security dealer, or credit union that is participating in an approved Medallion Signature Guarantee program.
(A NOTARY SEAL IS NOT ACCEPTABLE)

SIGNATURE GUARANTEED
MEDALLION GUARANTEE
FIRST VICTORIA NATIONAL BANK
AUTHORIZED SIGNATURE
D0152439
SECURITIES TRANSFER AGENTS MEDALLION PROGRAM

| Signature of All Current Holders or Legal Representatives | Date (mm/dd/yyyy) |
|---|---|
| Anita Brunsting | 06/07/2011 |
| | |
| | |

RECEIVED

P4387 of 5

Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

New Holder/Recipient Information

Account 1

| | | | | | |
|---|---|---|---|---|---|
| Account Type | Individual | Shares to Transfer | | | 160 |
| | Holder | SSN/EIN | [redacted]1860 | | |
| First Name | Anita | Middle Initial | | | |
| Last Name | Brunsting | | | | |
| Street Address | 203 Bloomingdale Circle | | | | |
| City | Victoria | State | TX | Zip | 77904 |

*Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

| Signature of Holder | Date (mm/dd/yyyy) |
|---|---|
| Anita Brunsting | 06/07/2011 |

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this form. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE, IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in DRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

| Signature of New Holder/Recipient | Date (mm/dd/yyyy) |
|---|---|
| Anita Brunsting | 06/07/2011 |

Account 2

| | | | | | |
|---|---|---|---|---|---|
| Account Type | Individual | Shares to Transfer | | | 160 |
| | Holder | SSN/EIN | [redacted]6240 | | |
| First Name | Candace | Middle Initial | | | |
| Last Name | Curtis | | | | |
| Street Address | 1215 Ulfinian Way | | | | |
| City | Martinez | State | CA | Zip | 94553 |

*Form W-9: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer Identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

| Signature of Holder | Date (mm/dd/yyyy) |
|---|---|
| Candace Curtis | 06/08/2011 |

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this form. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE, IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in DRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

| Signature of New Holder/Recipient | Date (mm/dd/yyyy) |
|---|---|
| Candace Curtis | 06/08/2011 |

P4388

**ExxonMobil**

**Computershare**
Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil
Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

********AUTO**SCH 3-DIGIT 945 000481/0189855 189855

CANDACE CURTIS
1215 ULFINIAN WAY
MARTINEZ CA 94553

Holder Account Number
[redacted]6387

SSN/TIN Certified Yes
Symbol XOM

001C50006_rps.DL_PO1.XOM.105024_40333/189855/189855/6

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]6387

### ▶ ACCOUNT SUMMARY

As of close of stock market on 11 Jun 2012

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 24.981004 | 24.981004 | 80.270000 | 2,005.23 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 14 May 2012 | 11 Jun 2012 | 0.570000 | Common | 24.802088 | 14.14 | | 14.14 |

### Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 86.667134 |
| 10 Jan 2012 | Sale | 3,862.35 | Transaction Fee | 65.40 | 3,796.95 | 85.830000 | -45.000000 | 41.667134 |
| 24 Jan 2012 | Sale | 1,478.15 | Transaction Fee | 62.04 | 1,416.11 | 86.950000 | -17.000000 | 24.667134 |
| 09 Mar 2012 | Dividend Reinvestment | 11.59 | | | 11.59 | 85.881244 | 0.134954 | 24.802088 |
| 11 Jun 2012 | Dividend Reinvestment | 14.14 | | | 14.14 | 79.031547 | 0.178916 | 24.981004 |

00TPPA (Rev. 12/11)

### How to Read Your Statement

Please see reverse side for important information.

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**Record Date** – The date on which you must have officially owned shares to receive the dividend.

**Payment Date** – The date the dividend was payable.

**Dividend Rate** – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

**Dividend Reinvestment Shares/Units** – Shares enrolled in dividend reinvestment.

**Gross Dividend** – The dividend paid on the Plan's dividend reinvestment shares.

**Net Dividend** – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under the SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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UNOFFICIAL COPY

[redacted]6387 SL1 IND

XOM
214UDR

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this Transaction Request Form will be processed as a batch order. Please see instructions below for more information.

OR

Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

OR

Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

### 1C Deposit Certificate(s) into the Investment Plan

Deposit this number of shares into my reinvestment account.

IMPORTANT:
You must submit the original unsigned certificate(s) with this form.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

## How to Request a Transaction

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!
The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

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## 2 Purchase Additional Shares of Company Stock

*If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.*

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: CANDACE CURTIS

Holder Account Number

[redacted]6387 IND

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4390

00000000XOM SPP1 [redacted]6387

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

**********AUTO**3-DIGIT 781 000272/0105978 105978

AMY R BRUNSTING
2582 COUNTRY LEDGE DR
NEW BRAUNFELS TX 78132-4109

Holder Account Number

[redacted]9041

SSN/TIN Certified Yes

Symbol XOM

001CS0006_rps.DL_PO1.XOM.105024_40233/105978/105978/1

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Forms

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]9041

### ▶ ACCOUNT SUMMARY

As of close of stock market on 11 Jun 2012

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 104.058674 | 104.058674 | 80.270000 | 8,352.79 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 14 May 2012 | 11 Jun 2012 | 0.570000 | Common | 103.313529 | 58.89 | | 58.89 |

### Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 102.751241 |
| 09 Mar 2012 | Dividend Reinvestment | 48.29 | Comp Paid Fees | 0.01 | 48.29 | 85.881244 | 0.562288 | 103.313529 |
| 11 Jun 2012 | Dividend Reinvestment | 58.89 | Comp Paid Fees | 0.02 | 58.89 | 79.031547 | 0.745145 | 104.058674 |

00TPPA (Rev. 12/11)

### How to Read Your Statement

Please see reverse side for important information

*Stock Class Description – A description of the stock class in which you hold shares, e.g. Common stock.*

Certificated Shares/Units Held By You – A physical certificate was issued for these shares/units.

Book/Book-Entry Shares – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

Direct Registration Book Shares/Units (DRS) – Book-entry shares that are not part of the Plan.

Investment Plan Book Shares/Units – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

Total Shares/Units – The sum of all certificated and book shares held in this account as of the date specified.

Closing Price – The closing market price as of the account summary date.

Market Value – The dollar value of the total shares held in this account as of the date specified.

Deduction Description – A description of any amounts withheld including transaction fees.

Deduction Amount – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

Net Amount – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

*Price Per Share/Unit – The market price per share purchased or sold under the Plan for this transaction.*

Transaction Shares/Units – The number of shares purchased or sold through the Plan for this transaction.

Total Book Shares/Units – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

Record Date – The date on which you must have officially owned shares to receive the dividend.

Payment Date – The date the dividend was payable.

Dividend Rate – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

Dividend Reinvestment Shares/Units – Shares enrolled in dividend reinvestment.

Gross Dividend – The dividend paid on the Plan's dividend reinvestment shares.

Net Dividend – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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20-20566.1296

[redacted]9041 SL1 IND

X O M
2 1 4 U D R

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

OR ☐ Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

OR ☐ Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT:
You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

## How to Request a Transaction

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!
The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

**ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.**

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

00WA2A-MOT (Rev. 6/11)

## 2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: AMY R BRUNSTING

Holder Account Number

[redacted]9041 IND

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

P4392

00000000XOM SPP1 [redacted]9041

ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil

*Exxon Mobil Corporation is incorporated under the laws of the State of NJ.*

031624

ANITA BRUNSTING
203 BLOOMINGDALE CIR
VICTORIA TX 77904

Holder Account Number

[redacted]6352

SSN/TIN Certified Yes

Symbol XOM

001CS0006_rps.Eml..XOM.105024_40235/031624/032313/I

## Exxon Mobil Corporation - Summary of Account Holdings and Transaction Form

It is important to retain this statement for tax reporting purposes and for use as a reference when you access your account online at our website or when contacting Computershare.

Holder Account Number: [redacted]6352

### ▶ ACCOUNT SUMMARY

As of close of stock market on 11 Jun 2012

| Stock Class Description | Certificated Shares/ Units Held by You | Direct Registration Book Shares/Units | Investment Plan Book Shares/Units | Total Shares/Units | Closing Price Per Share/Unit ($) | Market Value ($) |
|---|---|---|---|---|---|---|
| DSPP - Common Stock | 0.000000 | 0.000000 | 164.036963 | 164.036963 | 60.270000 | 13,167.25 |

### Dividend Reinvestment Activity

As of record date

This section includes information only for shares/units for which dividends are reinvested.

| Record Date | Payment Date | Dividend Rate ($) | Stock Class Description | Dividend Reinvestment Shares/Units | Gross Dividend ($) | Taxes Withheld ($) | Net Dividend ($) |
|---|---|---|---|---|---|---|---|
| 14 May 2012 | 11 Jun 2012 | 0.570000 | Common | 162.862369 | 92.83 | | 92.83 |

### Transaction History

From: 01 Jan 2012 To: 11 Jun 2012

This section pertains only to book-entry shares/units.

| Date | Transaction Description | Transaction Amount ($) | Deduction Description | Deduction Amount ($) | Net Amount ($) | Price Per Share/Unit ($) | Transaction Shares/Units | Total Book Shares/Units |
|---|---|---|---|---|---|---|---|---|
| Plan Transactions DSPP - Common Stock | | | | | | | | |
| | Balance Forward | | | | | | | 161.975912 |
| 09 Mar 2012 | Dividend Reinvestment | 76.13 | Comp Paid Fees | 0.02 | 76.13 | 85.881244 | 0.886457 | 162.862369 |
| 11 Jun 2012 | Dividend Reinvestment | 92.83 | Comp Paid Fees | 0.03 | 92.83 | 79.031547 | 1.174594 | 164.036963 |

007PPA (Rev. 12/11)

### How to Read Your Statement

Please see reverse side for important information

**Stock Class Description** – A description of the stock class in which you hold shares, e.g. Common stock.

**Certificated Shares/Units Held By You** – A physical certificate was issued for these shares/units.

**Book/Book-Entry Shares** – Shares Computershare maintains for you in an electronic account; a stock certificate was not issued for these shares. All Direct Registration shares and investment plan ("Plan") shares are held in book-entry form.

**Direct Registration Book Shares/Units (DRS)** – Book-entry shares that are not part of the Plan.

**Investment Plan Book Shares/Units** – Book-entry shares that are part of either a dividend reinvestment plan (DRP) or direct stock purchase plan (DSPP).

**Total Shares/Units** – The sum of all certificated and book shares held in this account as of the date specified.

**Closing Price** – The closing market price as of the account summary date.

**Market Value** – The dollar value of the total shares held in this account as of the date specified.

**Deduction Description** – A description of any amounts withheld including transaction fees.

**Deduction Amount** – Dollar amounts deducted may include taxes and transaction fees (which fees shall include any brokerage commissions Computershare is required to pay).

**Net Amount** – The total amount transacted for you, equal to the transaction amount less any applicable deductions.

**Price Per Share/Unit** – The market price per share purchased or sold under the Plan for this transaction.

**Transaction Shares/Units** – The number of shares purchased or sold through the Plan for this transaction.

**Total Book Shares/Units** – The sum of all book-entry shares, including both DRS and investment plan shares, as of the date specified.

**Record Date** – The date on which you must have officially owned shares to receive the dividend.

**Payment Date** – The date the dividend was payable.

**Dividend Rate** – The dollar amount of the dividend paid per share or the rate of stock dividend or stock split.

**Dividend Reinvestment Shares/Units** – Shares enrolled in dividend reinvestment.

**Gross Dividend** – The dividend paid on the Plan's dividend reinvestment shares.

**Net Dividend** – The total amount reinvested for you, equal to the gross dividend amount less any taxes withheld.

SSN/TIN Certified – If your account is not certified, as indicated by the word NO appearing under SSN/TIN title in the top right section of this form, you must complete a Form W-9 (US resident) or Form W-8BEN (non-US resident) or taxes will be withheld from any dividends or sales proceeds per Internal Revenue Service requirements. Either form is available through the "PRINTABLE FORMS" section of our website. Faxed forms are not acceptable. You may certify your tax status or obtain the necessary forms at the website listed above.

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[redacted]6352 SL1 IND

XOM
214UDR

## 1 Transaction Request Form

Please check or complete all applicable sections.

### 1A Sell Shares

[ ] OR [ ] Sell all book-entry shares, including plan and DRS shares (if applicable), and terminate plan participation.

Sell this number of shares. Shares may be a combination of DRS and Plan shares.
Sale requests submitted on this *Transaction Request Form* will be processed as a batch order. Please see instructions below for more information.

### 1B Withdraw from the Reinvestment Program

(DRS shares will receive future dividends in cash.)

[ ] OR [ ] Reassign all of my whole shares to DRS, terminate my participation in the plan and send a check for any fractional shares.

Reassign this number of whole shares to DRS, and terminate my participation in the plan for these shares.

### 1C Deposit Certificate(s) into the Investment Plan

IMPORTANT: You must submit the original unsigned certificate(s) with this form.

Deposit this number of shares into my reinvestment account.

### 1D Authorized Signature(s)*

Signature 1 - Please keep signature within the box.

Signature(s) 2 - Please keep signature within the box.

Please detach this portion and mail it to: Computershare, PO Box 43078, Providence, RI 02940-3078

### How to Request a Transaction [illegible]

You can manage your account online through Investor Centre at the website listed on the top right of the reverse side. Register today!

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

1A. Use section 1A above to sell a portion of your plan shares, or to sell all plan shares and terminate your plan participation. Sale requests submitted on this *Transaction Request Form* will be treated as a batch order and generally processed no later than five business days after the date on which the form is received. A Market Order sale may be available for transactions submitted by telephone or through Investor Centre at www.computershare.com. Please contact us at the phone number listed on the reverse side or refer to the brochure for the plan or DRS Sales Facility for more information concerning the types of orders available. Note: market orders and batch orders are subject to different fees. Please visit the website or contact us at the phone number listed on the reverse side for fee details. A proceeds check will be mailed to you, less any applicable taxes and fees. You can request electronic funds transfer for your sales proceeds by updating your bank details online through Investor Centre at the website listed on the reverse side. Upon written request, we will provide the name of the executing broker dealer associated with the transaction, and within a reasonable amount of time will disclose the source and amount of compensation received from third parties in connection with the transaction, if any.

ALL SALE INSTRUCTIONS ARE FINAL AND CANNOT BE MODIFIED, STOPPED OR CANCELLED AFTER COMPUTERSHARE HAS RECEIVED THE REQUEST.

To have the proceeds paid to someone other than the current registered holder, the shares must first be transferred to the other party. For assistance with a stock transfer please visit the "Help" section on our website or you may contact us by phone; both are listed on the reverse side.

1B. Use section 1B above to withdraw a portion or all of your shares from the plan. These shares will become Direct Registration System (DRS) shares and will be held electronically in your account in book-entry form by Computershare. We will mail you a check for the value of any fractional shares (if applicable). If your request is received near a record date, Computershare has the right to reinvest the dividend or pay you in cash. Future dividends for these shares will be paid in cash, unless you rejoin the plan.

1C. Use section 1C above to minimize risk of loss, theft or damage by depositing certificates. Computershare will deposit these shares into your plan account and hold them electronically in book-entry form. Send physical stock certificate(s) via registered mail or a courier service that provides a return receipt to: Computershare, 250 Royall Street, Canton, MA, 02021. Do not endorse the certificate(s) or complete the assignment section. You may want to insure the mailing for 3% of the stock's market value, which is the approximate cost to replace a certificate in the event that it is lost in transit.

1D. All registered holders must sign section 1D for the above instruction(s) to be completed. *Sales requests for partnerships or corporations must include a Medallion Signature Guarantee or a copy of the corporate resolution/partnership agreement. A Medallion Signature Guarantee is a special stamp provided by a bank, broker or credit union (guarantor institutions) that indicates the individual(s) signing a form is legally authorized to conduct the requested transaction. A notarized signature is not a substitute for a Medallion Signature Guarantee.

2. Use section 2 below to make an optional investment through the plan. Detach the completed form and mail it, along with a check payable to Computershare, in the enclosed envelope. Please note the purchase limitations identified on the bottom left of the form.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

### Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), Social Security number, bank account information, stock ownership information and other financial information. With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information. Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

*Note: Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.*

00WA2A-MOT (Rev. 8/11)

## 2 Purchase Additional Shares of Company Stock

If you wish to make an optional cash purchase at this time, please make your check payable to Computershare.

Attached is a check in the amount of:

$

- No third party checks, money orders or credit card payments will be accepted.
- Please write your holder account number and the company name on your check.
- This form should ONLY be used for Exxon Mobil Corporation.
- The enclosed contribution will ONLY be applied to the account referenced to the right.

The plan allows for a minimum amount of $50 with a maximum amount of $250,000 per year. Computershare will invest funds at least twice per week on Tuesdays and Thursdays. If either Tuesday or Thursday is not a stock market trading day ("trading day"), then funds will be invested on the next trading day.

Please detach this portion and mail it to the address provided on the right.

Holder Name: ANITA BRUNSTING

Holder Account Number

[redacted]6352 IND

Computershare
P.O. Box 6006
Carol Stream, IL 60197-6006

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00000000XOM SPP1 [redacted]6352

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ExxonMobil

Computershare

Computershare Trust Company, N.A.
PO Box 43078
Providence, RI 02940-3078
Within USA, US territories & Canada 800 252 1800
Outside USA, US territories & Canada 781 575 2058
www.computershare.com/exxonmobil
Exxon Mobil Corporation is incorporated under the laws of the State of NJ.

007564

CAROLE A BRUNSTING
5822 JASON
HOUSTON TX 77074

Holder Account Number
[redacted]6328

Company ID XOM
SSN/TIN Certified Yes

## Exxon Mobil Corporation - Direct Registration (DRS) Advice

### Transaction(s)

| Date | Transaction Description | Total Shares/Units | CUSIP | Class Description |
|---|---|---|---|---|
| 15 Jun 2011 | Transfer | 1,325.000000 | 30231G102 | Common Stock |

### Account Information: Date: 15 Jun 2011 (Excludes transactions pending settlement)

| Current Dividend Reinvestment Balance | Current Direct Registration Balance | Total Shares/Units | CUSIP | Class Description |
|---|---|---|---|---|
| 0.000000 | 1,325.000000 | 1,325.000000 | 30231G102 | Common Stock |

**IMPORTANT INFORMATION — RETAIN FOR YOUR RECORDS.**

This advice is your record of the share transaction in your account on the books of the Company as part of the Direct Registration System. This advice is neither a negotiable instrument nor a security, and delivery of it does not of itself confer any rights to the recipient. It should be kept with your important documents as a record of your ownership of these shares. No action on your part is required.

The IRS requires that we report the cost basis of certain shares acquired after January 1, 2011. If your shares were covered by the legislation and you have sold or transferred the shares and requested a specific cost basis calculation method, we have processed as requested. If you did not specify a cost basis calculation method, we have defaulted to the first in, first out (FIFO) method. Please visit our website or consult your tax advisor if you need additional information about cost basis.

Upon request, the Company will furnish to any shareholder, without charge, a full statement of the designations, rights (including rights under any Company's Rights Agreement, if any), preferences and limitations of the shares of each class and series authorized to be issued, and the authority of the Board of Directors to divide the shares into series and to determine and change rights, preferences and limitations of any class or series.

Assets are not deposits of Computershare and are not insured by the Federal Deposit Insurance Corporation, the Securities Investor Protection Corporation, or any other federal or state agency.

If you do not keep in contact with us or do not have any activity in your account for the time periods specified by state law, your property could become subject to state unclaimed property laws and transferred to the appropriate state.

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Please see important PRIVACY NOTICE on reverse side of statement

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## Privacy Notice

At Computershare, we take privacy seriously. In the course of providing services to you in connection with employee stock purchase plans, dividend reinvestment plans, direct stock purchase plans and/or direct registration services, we receive nonpublic, personal information about you. We receive this information through transactions we perform for you, from enrollment forms, automatic debit forms, and through other communications with you in writing, electronically, and by telephone. We may also receive information about you by virtue of your transaction with affiliates of Computershare or other parties. This information may include your name, address (residential and mailing), social security number, bank account information, stock ownership information and other financial information.

With respect both to current and former customers, Computershare does not share nonpublic personal information with any non-affiliated third-party except as necessary to process a transaction, service your account or as required or permitted by law. Our affiliates and outside service providers with whom we share information are legally bound not to disclose the information in any manner, unless required or permitted by law or other governmental process. We strive to restrict access to your personal information to those employees who need to know the information to provide our services to you. Computershare maintains physical, electronic and procedural safeguards to protect your personal information.

Computershare realizes that you entrust us with confidential personal and financial information and we take that trust very seriously.

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# Exhibit 5

| Date | Gift | Stock price | amount | Person | purpose |
|---|---|---|---|---|---|
| **Mom/Dad were trustees** | | | | | |
| 12/21/2010 | trxfr | | $ 7,000.00 | Amy Brunsting | mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights |
| 1/4/2011 | trxfr | | $ 6,000.00 | Amy Brunsting | mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights |
| 6/22/2009 | | | $ 1,000.00 | Amy Brunsting | college fund |
| 7/14/2009 | | | $ 1,000.00 | Amy Brunsting | college fund |
| 11/14/2007 | chk# 5715 | | $ 5,000.00 | Amy Brunsting | |
| 1/20/2006 | chk# 5143 | | $ 200.00 | Amy Brunsting | |
| 2/11/2002 | chk# 3526 | | $ 200.00 | Amy Brunsting | college fund |
| 12/31/2002 | chk# 3911 | | $ 200.00 | Amy Brunsting | college fund |
| [redacted] | | | | | |
| 10/2/2009 | [redacted] | | | | |
| [redacted] | | | | | |
| 2/8/2010 | chk# 6518 | | $ 5,000.00 | Anita Brunsting | |
| 6/24/2009 | chk# 6278 | | $ 1,000.00 | Anita Brunsting | graduation gift to me for finishing my doctorate |
| 7/14/2009 | chk# 6294 | | $ 1,000.00 | Anita Brunsting | college fund |
| 9/8/2009 | chk# 6338 | | $ 1,000.00 | Anita Brunsting | college fund |
| 10/19/2009 | chk# 6403 | | $ 1,250.00 | Anita Brunsting | |
| 1/20/2006 | chk# 5142 | | $ 200.00 | Anita Brunsting | college fund |
| 1/31/2006 | chk# 5155 | | $ 150.00 | Anita Brunsting | mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one |
| 2/21/2006 | chk# 5172 | | $ 150.00 | Anita Brunsting | mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one |
| 4/1/2006 | chk# 5233 | | $ 150.00 | Anita Brunsting | mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one |
| 1/10/2003 | chk# 3920 | | $ 200.00 | Anita Brunsting | college fund |
| 2/11/2002 | chk# 3527 | | $ 200.00 | Anita Brunsting | college fund |
| [redacted] | | | | | |
| 3/17/2010 | chk # 6386 | | $ 750.00 | Candy Curtis | |
| 1/27/2009 | chk # 6124 | | $ 2,000.00 | Candy Curtis | |
| 7/29/2009 | chk# 6309 | | $ 4,000.00 | Candy Curtis | |
| 7/8/2008 | chk # 5917 | | $ 2,000.00 | Candy Curtis | |
| 8/3/2009 | chk# 5944 | | $ 1,500.00 | Candy Curtis | |
| 7/6/2001 | trxfr | | $ 20,000.00 | Candy Curtis | |
| 1/19/2010 | | | $ 5,000.00 | Candy Curtis | |
| 3/29/2010 | | | $ 7,000.00 | Candy Curtis | |
| 6/22/2010 | | | $ 20,000.00 | Candy Curtis | Taken against inheritance (documentation on file w/ Vacek & Freed) expenses, divorce |
| [redacted] | | | | | |
| 11/10/2005 | chk# 5070 | | $ 10,000.00 | Carl Brunsting | |
| 3/12/2003 | chk# 3986 | | $ 9,000.00 | Carl Brunsting | |
| 4/9/2003 | chk# 4017 | | $ 11,000.00 | Carl Brunsting | |

UNOFFICIAL COPY

**Schedule F**



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20-20566.1303

UNOFFICIAL COPY



| Date | Gift | Stock price | amount | Person | purpose |
|---|---|---|---|---|---|
| 9/17/2001 | chk# 3347 | | $ 2,000.00 | Carl Brunsting | |
| 10/6/2010 | | | $ 25,000.00 | Carl Brunsting | medical bills |
| | | | | | paid one medical bill ($1565.70) and to caretakers directly for his care from 7/13/2010 through 1/9/2011, (additional days occurred from Jan-April 2011 than included payment to caretakers as well as groceries and his |
| 2010-2011 | | | $ 21,899.61 | Carl Brunsting | medical supplies, but specific dates in this time period were not recorded) |
| | [redacted] | | | | |
| 6/27/2009 | chk# 6285 | | $ 2,000.00 | Carole Brunsting | |
| 2/12/2009 | chk# 5794 | | $ 500.00 | Carole Brunsting | |
| 3/18/2008 | chk# 5821 | | $ 250.00 | Carole Brunsting | |
| 11/13/2007 | chk# 5713 | | $ 600.00 | Carole Brunsting | |
| 1/5/2006 | chk# 5129 | | $ 1,000.00 | Carole Brunsting | loan? |
| 7/1/2006 | chk# 5287 | | $ 1,200.00 | Carole Brunsting | |
| 3/23/2005 | chk# 4785 | | $ 450.00 | Carole Brunsting | |
| 12/8/2005 | chk# 5090 | | $ 1,500.00 | Carole Brunsting | |
| 7/2/2005 | chk# 4901 | | $ 350.00 | Carole Brunsting | |
| 10/2/2005 | chk# 5016 | | $ 2,500.00 | Carole Brunsting | |
| 10/21/2003 | chk# 4232 | | $ 1,000.00 | Carole Brunsting | |
| 12/12/2002 | chk# 9878 ? | | $ 1,500.00 | Carole Brunsting | |
| 12/17/2002 | chk# 3883 ? | | $ 5,000.00 | Carole Brunsting | |
| 3/23/2010 | | | $ 7,000.00 | Carole Brunsting | |
| 5/18/2010 | | | $ 1,000.00 | Carole Brunsting | |
| | | | | | original intent to take against inheritance, but no letter/documentation found to date; will be treated as a gift; to fix |
| 10/1/2010 | | | $ 20,000.00 | Carole Brunsting | house |
| | [redacted] | | | | |
| 10/2/2009 | [redacted] | | | | |
| **Anita became trustee Dec. 2011** | | | | | |
| 5/11/2011 | 1120 shares exxon Survivors trust | $ 81.12 | 90854.4 | Amy Brunsting | to pay off house |
| | Total Amy Brunsting | | $ 90,854.40 | | |
| 5/10/2011 | | | $ 5,443.22 | Anita Brunsting | pay off Luke's truck |
| 6/3/2011 | | | $ 5,750.51 | Anita Brunsting | pay off Honda for Katie |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Anita Brunsting | borrowed against inheritance - for college expenses |
| 6/15/2011 | 160 shares exxon Survivors trust | $ 78.66 | $ 12,585.60 | Anita Brunsting | borrowed against inheritance - for college expenses |
| | Total Anita Brunsting | | $ 37,360.33 | | |
| 4/7/2011 | | | $ 3,000.00 | Candy Curtis | property taxes |
| 6/8/2011 | | | $ 2,000.00 | Candy Curtis | new bed? |
| 6/15/2011 | 160 shares exxon Survivors trust | $ 78.66 | $ 12,585.60 | Candy Curtis | for reserve after mom passed away to keep helping her w/ expenses if trust money was not available |

P12169

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20-20566.1304

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UNOFFICIAL COPY

| Date | Gift | Stock price | amount | Person | purpose |
|---|---|---|---|---|---|
| 8/24/2011 | | | $ 2,000.00 | Candy Curtis | expenses |
| 10/26/2011 | | | $ 2,000.00 | Candy Curtis | medical bills |
| 11/10/2011 | | | $ 2,000.00 | Candy Curtis | travel to see mom |
| | Total Candy Curtis | | $ 23,585.60 | | |
| 6/15/2011 | 1325 shares exxon Decedents trust | $ 78.66 | $ 104,224.50 | Carole Brunsting | to pay off/fix house |
| | Total Carole Brunsting | | $ 104,224.50 | | |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Ann Brunsting UGMA (grandchild) | gift for future car/college exp |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Jack Brunsting UGMA (grandchild) | gift for future car/college exp |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Katie Riley UGMA (grandchild) | gift for college exp |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Luke Riley (grandchild) | gift for college exp |

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# Exhibit 6

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NO. 412,249-401

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| 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 | § |

**Anita Kay Brunsting 's Response to**
**Candace Louise Curtis'**
**First Written Interrogatories**

Anita Kay Brunsting serves her response to Candace Louise Curtis' first written interrogatories.

Respectfully submitted,

/s/ Brad Featherston

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Counsel for Anita Kay Brunsting
In Capacities at Issue

07/13/2015:08809:P0322

## Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Candace Louis Curtis
218 Landana Street
American Canyon, CA 94503
Tel: 925-759-9020

*Pro Se*

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224; F: 713-522-2218

Attorney for Drina Brunsting,
Alleged Attorney in Fact for
Carl Brunsting

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Attorney for Carole Ann Brunsting

Neal Spielman
Griffin & Matthews
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Houston, TX 77079
O: 281-870-1124; F: 281-870-1647

Attorney for Amy Brunsting

via email on June 4, 2015.

/s/ Brad Featherston

Bradley E. Featherston

07/13/2015:0809:P0223

## Response to Written Interrogatories[1]

Anita Brunsting objects to Candace's interrogatories and request for production made pursuant to "fiduciary obligations." Interrogatories and request for production are exclusive to the Texas Rules of Civil Procedure and are not contemplated by the trust instruments nor any other applicable law. To the extent Candace's interrogatories and request for production are made pursuant to fiduciary obligations under the trust instruments then, pursuant to the trust, the Trustee requires that Candace pay the additional costs incurred to respond to such requests before the Trustee is required to comply with such request.

1. In your exercise of discretion, which of the Founders' ten intended purposes and what aspects of the HEMS standard were factored into your determination to oppose a distribution to beneficiary Candace from her personal asset trust, and upon what set of facts did your determination rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, see Anita's response to Candace's request for distributions that was filed with the Court and which documents speak for themselves.

2. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Carole, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

3. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Candace, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

[1] Candace's Interrogatories were renumbered for the convenience of the parties and the Court.

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RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

4. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Amy, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

5. Which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in not transferring Exxon Stock to Carl, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, presumably the inquiry relates to the time period Nelva Brunsting was alive and Nelva Brunsting did not instruct an Exxon Stock transfer to Carl.

6. What are, and how did the trustees interpret, the particular distribution standards contained in "the trust"?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the distribution standards are as set forth in the trust instruments, which were interpreted as written.

7. What is/was the trustee's process for making discretionary distribution decisions?

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RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the process is as set forth in the trust instruments.

8. What does the trustee require when asked to consider other resources and establish the beneficiary's standard of living?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. The trustee requires what the trust instruments provide.

9. Does the trust require a beneficiary to waive their right of privacy as a condition of receiving a beneficial interest? If so, under which provision of what instrument(s)?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the trust instruments speak for themselves.

10. Does the trustee work with distribution advisors? If so, who and when? If not, why not?

RESPONSE: The trustee has not worked with distribution advisors. No distributions have been made since the Nelva's death due to the litigation filed by Candace and Carl.

11. When and how did the acting trustees inform the beneficiaries of their beneficial interests?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, prior to defendant's appointment as trustee, on or about October 23, 2010, Candace was informed of her beneficial interest via email. Shortly after Nelva's death in November 2011, the trustees and their counsel were in the process handling the trust affairs incident to Nelva's death. The trustees and

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their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries.

12. What types of distributions would the trustees like a beneficiary to receive?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, defendant would like a beneficiary to receive distributions in accordance with the trust instruments.

13. For what purposes can the beneficiary request a distribution from the trust?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the beneficiary can request a distribution for the purposes contained in the trust instruments.

14. When would the trustees like distributions to be made and in what priority?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, Subject to, and without waiving the foregoing objections, defendant would like a beneficiary to receive distributions in accordance with the trust instruments.

15. What circumstances should or should not exist prior to a distribution from "the trust"?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, with respect to Candace, the Court must resolve Candace's claims and allegations in the pending lawsuit and, in particular, Candace's allegation that the no contest provisions in the trust instruments are unenforceable, prior to a distribution.

16. Who should be involved in the decision making process?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, the Court and the parties to the litigation should be involved in the decision making process.

17. What factors does the decision-maker measure in determining the beneficiary's need for a distribution?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, the Court would consider the factors set forth in the trusts.

18. Describe the steps you have taken to honor the provisions of Article X, Section B (1)(a)(i) of the Brunsting Family Trust?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. The referenced section was superseded by Nelva and therefore, is inapplicable.

19. Describe the steps you have taken to honor the provisions at Page 6 Item C of the August 25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?

RESPONSE: After Nelva's death, defendant began the process of collecting assets, informing trust beneficiaries, and working the attorneys specifically referenced in such section to implement the terms of the trust instruments. The trustees and their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries. Candace then brought litigation.

20. A copy of the 8/25/2010 QBD was included in the October 23, 2010 email attachments. How did you come to be in possession of the 8/25/2010 QBD on October 23, 2010 when Nelva was the only then serving trustee?



EXHIBIT

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RESPONSE: Nelva provided defendant such instrument.

21. What was your forthright explanation to Nelva regarding the changes that you planned for her to make to the trust and what were the exact changes that you intended to be made?[2]

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and is a compound question. Defendant never planned to make any changes to the trust for Carl. It was defendant's understanding that Nelva planned to make changes to the trust. There was a concern by Nelva, defendant, and defendant's siblings that Carl's future well-being may not be met by Drina, and that Drina may take steps to reach Carl's share of trust assets. Nelva never signed the changes into effect.

22. Where are the documents you referred to that you intended for Nelva to sign?[3]

RESPONSE: To defendant's knowledge they were never signed. Defendant does not know what happened to such documents.

23. What was the date of your prior inquiry and why was the inquiry made more than one year after you were noticed of the existence of those EE Bonds?

RESPONSE: Candace and Carl consistently and repeatedly accused Carol of stealing bonds that were alleged to be in the name of Nelva or Elmer. Defendant did not see a record of the bonds being in the name of the trusts. In late 2014, Carol informed defendant that she could request a record of the outstanding bonds, which was done in mid to late 2014.

24. What claim(s), if any, were you asking to be processed?

RESPONSE: None.

25. Did you subsequently submit the properly completed forms? If no, why not? If yes, what were the results and where are the transaction records?

[2] This is a question about a March 8, 2011 email from Anita.

[3] This is a question about a March 8, 2011 email from Anita.



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RESPONSE: No, because Candace would not agree to the disposition of the bonds and the legal fees to seek court approval to cash the bonds in light of Candace's failure to agree made the transaction cost prohibitive.

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Defendant objects to the balance of the interrogatories as exceeding the limits of permissible discovery under the Texas Rules of Civil Procedure. Defendant further objects to the balance of the interrogatories because Candace has not paid Candace pay the additional costs incurred to respond to such requests before the Trustee is required to comply with such request.

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Intention 2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary,

(a) The decedent's trust has received farm income every year, which has not been distributed since 2012. Consequently the decedent's trust owed hefty income taxes each year. Why have those taxes not been reduced by distributions of farm income to personal asset trusts for the five beneficiaries? What advice have you been given regarding income taxes paid by the trusts, if any?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) When considering funding for Mother's day-to-day needs prior to the establishment of the Rights of Survivorship account in the name of Carole Brunsting and Nelva Brunsting, what criteria did you use when you liquidated assets in the Edward Jones account? Was avoidance of capital gains tax a factor? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

5. Trustee Manual: The Bates stamped documents included in Plaintiff's document production P6-P155, "MyTrustee Manual". Chapter 2, P19-P22 is titled "BEFORE GETTING STARTED: A FEW IMPORTANT "DO'S AND DON'TS".

(a) Please review pages 2-1 through 2-4 of My Trustee Handbook and answer the following questions with specificity:

i. Which of the eight "Do's" have you done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. Which of the eight "Do's" have you not done?



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RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

iii. Which of the nine "Do Not's" have you done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

iv. Which of the nine "Do Not's" have you not done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

6. Instruments are alleged to have been signed by Nelva Brunsting on August 25, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the instruments.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

7. Instruments are alleged to have been signed by Nelva Brunsting on December 21, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the instruments.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

8. Please refer to the RESPONSE OF DEFENDANTS TO REPORT OF MASTER, filed



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August 27, 2013, and answer the following:

Regarding trustee compensation,

(a) At the point in time when you paid your personal credit card debts from trust assets, were you aware that paying personal debt obligations directly out of trust accounts can be considered self-dealing or co-mingling, whether you were entitled to trustee compensation or not? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Appendix A, Section 1. states that Vacek & Freed determined the percentage amount of your fee to be 2% of the trust value of $2,291,300, or $45,826.00. What date was the fee calculation determined? What trust was the value based upon? What trust assets and their corresponding values were used in the calculation? Why was this calculated on an annual basis, rather than monthly or quarterly, since the value of the trust diminished every single month? What provision(s) in the trust set forth the standard for calculating this rate of compensation?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

9. Please refer to George Vie's July 15, 2013 letter to the Master and Attachment 1 to these interrogatories when considering the following questions. Note that Attachment 1 is a summary of your Schedule F, plus distributions to beneficiaries from the Edward Jones account during the 10-year period covered by the schedule, and the distribution you received in 2005 to pay off your house.

Your letter states that:

"Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their mid-30s); and Carl's daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses." Attachment 1 demonstrates that during the 10-year period of the schedule, approximately 46% of the distributions went to Candy, Carole, Carl, Kevan and Andy, with the balance of approximately 54% going to you, Amy and your respective children. Nothing was noted to have been received by Marta during the 10-year period.

(a) Please state with specificity the dates and amounts of all gifts given to the older beneficiaries and the source of the information in support of these alleged transactions, as claimed by you in your July 15, 2013 letter of influence addressed to the Special Master.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in



EXHIBIT

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the Texas Rules of Civil Procedure.

(b) Our Dad died April 1, 2009. The only noted transactions labeled as gifts to Kevan and Andy Curtis are dated October 2, 2009. Please state with specificity the dates and amounts of all other alleged gifts given to Kevan, Andy, or Marta between 2001 and April 1, 2009, the source of the information in support of these transactions, and the reason why these transactions were not listed on any schedules.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(d) In general the July 15, 2013 letter to the Master attempts to provide excuses for the sudden acceleration of dissipation of mass quantities of trust assets while our Mother was still alive. These take-my-word-for it assertions have not been supported by Generally Accepted Accounting Principles (GAAP) in any disclosures. The recap of distributions, or gifts if you want to call them that, reflected on Attachment 1, clearly shows an inequity. What was the distribution standard applied to those transactions? What effect did these transactions have on the value of the trust assets, trust tax liabilities, and the personal tax liabilities of the recipients? What were the facts upon which discretion was exercised in each of these transactions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(e) In your July 15, 2013 letter to the Master you claim "Defendants are individuals, not financial professionals." It is presumed you knew of this fiscal incompetence before accepting the appointment to a fiduciary office. Did you hire financial professionals to assist you in meeting the obligations commensurate with your fiduciary duties? If yes, who, when, and what did they do? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(f) In a letter dated May 22, 2012, Edward Jones states "We're contacting you because either your financial advisor recently updated your account information or it has been three years since we last verified your information." It goes on to ask you to "Please review the enclosed pages, which list your account information. If the information is correct, you do not need to return this letter." This information contains the following:

Net Worth (must exclude value of primary residence): $1,700,000

Annual Income: $64,000

Prior Investment Experience: (4) Extensive Experience

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Risk Profile: (3) Moderate

Current Occupation: Homemaker

Did you return the letter? If not, why not? When did you provide this information to Edward Jones originally?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

10. The following questions refer to information contained in the 2011 Form 1040 for Nelva E Brunsting, prepared by Kroese & Kroese P.C., signed by you as fiduciary "Under penalties of perjury".

(a) Line 15a IRA distributions = $58,792 / 15b Taxable amount = $58,792. On February 24, 2010, Mother executed a Change of Beneficiary Designations for IRA Account at Edward Jones, designating the five of us as " beneficiaries in equal shares". A previous List of Beneficiaries under Edward Jones letterhead, dated July 23, 2009, stated the same designation. On May 23, 2011, an electronic transfer was made from the IRA account number 609-91956-1-9, to the B of A account ending in 1143, in the amount of $54,000.

i. Were you aware of Mother's beneficiary designation for her IRA? If yes, why did you fail to follow it? If no, how could you not be?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. Did you know this transaction would cause a tax liability for Mother?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Schedule A Medical and Dental expenses are listed as $118,893.

i. Many of the caregiver payments contained reimbursements for meals and incidental expenses purchased on behalf of our Mother. Were these reimbursementsincluded in the caregiver costs? If so, what is the total for these reimbursements? Did the preparer know these reimbursements were included? If so, please provide support of the preparer's knowledge.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. IRS Publication 926 Household Employer's Tax Guide sets forth the rules for employment taxes. You were required to withhold and pay social security and Medicare taxes on the wages. As the employer you can choose to pay this yourself and not withhold it. Did you



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withhold social security and Medicare from the caregivers paychecks? If no, why not? Did you pay 13.3% of gross wages on behalf of the caregivers to the IRS? If no, why not? Did you issue a W-2 to each caregiver? If no, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(c) Did you seek the advice of a professional in connection with employing caregivers and related employment taxes? Did you seek the advice of a professional regarding what medical and dental expenses are deductible? If so, who did you consult with and what did they tell you?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

11. Numerous distributions have been made and some requests for distribution have been declined or opposed by you based upon your exercise of discretion.

(a) To what extent, if any, did Amy participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) To what extent, if any, did Carole participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(c) To what extent, if any, did Candace participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(d) To what extent, if any, did Carl participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(e) To what extent, if any, did Candace Freed participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

* * * * *

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# Exhibit 7

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**ACCEPTANCE BY SUCCESSOR TRUSTEE**

I, ANITA KAY BRUNSTING, hereby acknowledge my acceptance this day of the office and duties of Successor Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST, after the resignation of the original Trustee, NELVA E. BRUNSTING.

Anita Kay Brunsting
ANITA KAY BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:36pm p.m., by ANITA KAY BRUNSTING.

Candace Kunz-Freed
Notary Public, State of Texas

NOTARY PUBLIC STATE OF TEXAS
CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

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NO. 412.249-401

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

| | | |
|---|---|---|
| CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting | § | IN PROBATE COURT |
| 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 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; | § | NUMBER FOUR (4) OF |
| 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 |

**ORDER GRANTING CARL HENRY BRUNSTING'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

07132015:0809:P0338

Having considered Carl Henry Brunsting's Motion for Partial Summary Judgment, any response thereto, the summary judgment evidence, and the law, the Court is of the opinion that the Motion should be GRANTED.

It is therefore ORDERED that the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated August 25, 2010 is void as a matter of law.

It is further ORDERED that the following transfers made by Anita Brunsting as trustee were unauthorized as a matter of law and constitute breaches of her fiduciary obligations as trustee:

1. 1120 shares of Exxon Mobil stock transferred to Amy from the Survivor's Trust on May 9, 2011;
2. 160 shares of Exxon Mobil stock Anita transferred to herself from the Survivor's Trust on June 13, 2011;
3. 135 shares of Chevron stock Anita transferred to herself from the Survivor's Trust on June 14, 2011;
4. 135 shares of Chevron stock transferred to Amy's minor daughter, Ann Brunsting, from the Survivor's Trust on June 14, 2011;
5. 135 shares of Chevron stock transferred to Amy's minor son, Jack Brunsting, from the Survivor's Trust on June 14, 2011;
6. 135 shares of Chevron stock transferred to Anita's minor daughter, Katie Riley, from the Survivor's Trust on June 14, 2011;
7. 135 shares of Chevron stock transferred to Anita's son, Luke Riley, from the Survivor's Trust on June 14, 2011;

8. 160 shares of Exxon Mobil stock transferred to Candy from the Survivor's Trust on June 15, 2011; and

9. 1325 shares of Exxon Mobil stock transferred to Carole from the Decedent's Trust on June 15, 2011.

It is further ORDERED that, pursuant to Tex. Prop. Code §114.031, the parties receiving the transfers identified in the previous paragraph are also liable for the resulting loss to the trusts caused by such transfers, and such loss shall be offset against their remaining interest in the trusts.

It is further ORDERED that all other issues remaining to be determined in the case, including the amount of damages caused by the improper stock transfers, will be the subject of further proceedings and orders.

SIGNED this _____ day of _____, 2015.

_____
JUDGE PRESIDING

# EXHIBIT 7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | * | Civil No. H-12-592 |
| | * | |
| VERSUS | * | Houston, Texas |
| | * | April 9, 2013 |
| ANITA KAY BRUNSTING, et al | * | 9:50 a.m. |

TRO HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

For the Plaintiff:

Ms. Candace Louise Curtis
Pro Se
1215 Ulfinian Way
Martinez, California 94553

For the Defendants:

Mr. George William Vie, III
Mills Shirley LLP
1021 Main Street
Suite 1950
Houston, Texas 77002

Court Reporter:

Fred Warner
Official Court Reporter
515 Rusk Ave.
Houston, Texas 77002

Proceedings recorded by mechanical stenography, produced by computer aided transcription.

THE COURT: Good morning. Please be seated.

All right. This is Cause No. 2012-592, Candace Louise Curtis versus Anita K. Brunsting and others.

So let me have an announcement. Is Ms. Curtis in the courtroom?

MS. CURTIS: Yes, Your Honor.

THE COURT: All right. And who is representing the defendants in the case?

MR. VIE: George Vie, Your Honor, for the defendants.

THE COURT: And I gather we have several parties present, correct?

MR. VIE: Yes, Your Honor.

THE COURT: Are these your clients or --

MR. VIE: Yes, Your Honor. Both the defendants are present.

THE COURT: Both defendants.

And who are the defendants other than -- I just show Anita Kay and Amy Ruth. I am sorry. I apologize. You are representing both?

MR. VIE: Yes, Your Honor.

THE COURT: Okay. Very good.

This is Ms. Curtis' application for a temporary restraining order. As you might recall, this case was initially dismissed by the Court with the understanding that,

or under the understanding that it could not proceed in federal court but must proceed in state court.

The circuit court disagreed with me, and it's back; and now we are charged to proceed forward in this case.

So what I would like to do is, first of all, have Ms. Curtis stand and give me a kind of a factual setting background for what it is that she is seeking, then tell me what she is seeking and see what testimony, if any, we need in order to accomplish that.

So why don't you go ahead take the floor, Ms. Curtis, and tell us how this got started and where we are today.

MS. CURTIS: This got started by my parents, Elmer and Nelva Brunsting, putting together a Brunsting family living trust in 1996 dividing their estate among the five children beneficiaries.

THE COURT: And I see there are the only three children represented. Are there other children that are not included?

MS. CURTIS: Yes, sir. My sister Carole and my brother Carl.

THE COURT: Okay. C-a-r-o-l?

MS. CURTIS: C-a-r-o-l-e and Carl, C-a-r-l.

THE COURT: Well, that C went a long way.

MS. CURTIS: C, C, C and then A, A.

THE COURT: Went a long way in the family, didn't it?

MS. CURTIS: Yes.

THE COURT: Go ahead please.

MS. CURTIS: So, my father passed away in 2009 in April and --

THE COURT: And would you tell us his name for the record.

MS. CURTIS: Elmer H. Brunsting.

THE COURT: All right.

MS. CURTIS: And in July of 2010 my brother Carl became stricken with encephalitis. And it's a very serious disease. He was in the hospital for several months, part of that time in a coma. And my brother was originally appointed the executor of my parent's estate.

THE COURT: Your brother would be Carl?

MS. CURTIS: Carl. And also a successor/co-trustee of the Brunsting Family Living Trust and any resulting trusts.

In approximately 2007, my mother sent an e-mail to me and asked me if I would mind becoming co-trustee with my brother Carl because my sister Amy was unstable; and she was wondering if I would mind coming to Houston whenever necessary to take care of these things. And I agreed. And that was the last I heard of it.

Since that time I have received a document, which is the last, first and only amendment that my father and mother both signed to the family living trust appointing Carl and Candace as successor/co-trustees.

THE COURT: Okay. So as it stands now, it is Carl and Candace who would be the co-trustees of the trust?

MS. CURTIS: Yes, Your Honor, yes.

And after my brother became ill, my youngest sister Anita took the opportunity to begin seize control of the trust. She immediately, within three weeks after he became ill --

THE COURT: When did this happen?

MS. CURTIS: In July of 2010.

THE COURT: 2010. He became apparently incapacitated or unable to?

MS. CURTIS: Yes. He was in a coma for several weeks.

THE COURT: Is he still in a coma?

MS. CURTIS: No. He's back at home and doing very well.

THE COURT: Okay. Very good. Go ahead.

MS. CURTIS: And has been.

THE COURT: I will be asking questions of him.

MS. CURTIS: And so, because of things that are just simply judgmental and ugly, my sister began to try to wrest

control of the trust so that my brother could not have anything whatsoever to do with it. She took his name off the safe deposit box which, according to my father's handwritten letter from 1999, contained all of the information about the family trust, and then some papers were caused to be drawn up. One was a qualified beneficiary designation.

THE COURT: I'm sorry. Was a what?

MS. CURTIS: A qualified beneficiary designation.

THE COURT: All right.

MS. CURTIS: And several other papers were drawn up on August 25th, 2010.

There was no notice given to any of the beneficiaries about this qualified beneficiary designation that was to be prepared and signed. And the only way that I found out about it was to ask my sister Anita for copies of trust documents for me to review for a phone conference that had been called by the trust attorneys that was supposed to include my mother and all of her children. My brother Carl was never notified of this phone conference.

THE COURT: Was he at the time still in a coma or incapacitated?

MS. CURTIS: No, sir. He was not in a coma, but he was still in the hospital.

THE COURT: Okay.

MS. CURTIS: And my mother also was not in on the

phone call.

So we had the conference call, and they were definitely absent; and the conference call apparently was called to discuss proposed changes to the trust, when in fact the changes had already been made; and as it boiled down to the end and various parties hung up, they were going to try to have my mother declared incompetent because she said that she did not sign the qualified beneficiary designation and that in fact what the qualified beneficiary designation said was not true.

THE COURT: Let me ask you a question before we go forward. What was the purpose -- what did the beneficiaries receive and how were funds, as you understand it, disbursed from the trust prior to this August 25th 2010. How was the trust to be administered?

MS. CURTIS: The trust was to be divided into five personal asset trusts; and I believe that each personal asset trust would have a trustee, but I do not think it was the beneficiary.

THE COURT: Was that to recognize the five children?

MS. CURTIS: Yes.

THE COURT: How was your mother to benefit from this? Was she to get some proceeds out of the funds?

MS. CURTIS: My mother was to benefit from all of the trusts until she passed way.

THE COURT: Okay. And then these five trusts would --

MS. CURTIS: Whatever was remaining would be divided five equal ways.

THE COURT: Surely.

And then your mother died when?

MS. CURTIS: 11-11-11.

THE COURT: Oh, is that right?

And at that time your father was already deceased?

MS. CURTIS: Yes, Your Honor.

THE COURT: So this telephone conference occurred sometime in August of 2010, just about 14 months prior to her death?

MS. CURTIS: It was in October --

THE COURT: October.

MS. CURTIS: -- of 2010.

THE COURT: About 12 months then, 12 or 13 months prior to her death.

And so go ahead and pick up there.

MS. CURTIS: So, anyway, after the phone conference there was really nothing I could do about anything as far as I could tell; and so, things were relatively quiet until in approximately March of 2011 my sister Anita called and said, "oh, we found some Exxon stock that wasn't in the trust; and

so, some of it will be gifted, and then the rest of it, the trust attorneys are going to figure out how to get it into the trust."

And so I received 160 shares of that stock. And I was in conversation with sister Carole and was told that she had received some, but she didn't know how much it was because she hasn't opened the envelope.

THE COURT: Was it your understanding that the 160 shares that you received would have been your one-fifth share? Is that the way it was to be --

MS. CURTIS: That's kind of the way I thought about it. Not necessarily my one-fifth share, but that each of us should receive a like amount.

THE COURT: Sure.

All right. Go ahead.

MS. CURTIS: Unbeknownst to me, my sister Carole received 1,300 plus shares and my sister Amy received over 1,000 shares.

I received 160, Anita received 160; but Anita, as power of attorney beneficiary and trustee, having taken over from my mother in December of 2010, was conflicted and not allowed to accept gifts. So she excused it many months after the fact as being a loan, but she's also not allowed to take loans from --

THE COURT: So was she the person doing the

disbursing of these shares?

MS. CURTIS: Yes, Your Honor, she was.

THE COURT: And she disbursed them in the manner, as you understand it, the way you just described it, giving a couple thousand shares to two of your sisters together?

MS. CURTIS: Uh-huh.

THE COURT: I said "together" meaning added together, and then 160 to you. And what happened, if anything, to do with Carl's share?

MS. CURTIS: He got nothing.

THE COURT: All right. Okay. Go ahead.

MS. CURTIS: So my brother has filed a lawsuit in --

THE COURT: Probate court?

MS. CURTIS: -- state court and also in probate. It's not a lawsuit, but he has filed from probate as defendant executor. And he has gotten pages and pages and pages of information from my sisters in another lawsuit that it was a pre-suit request for depositions to get information in case they were going to file suit.

And they got pages and pages and boxes of information that was not shared with me until March 28th just recently, and this paper here was in some of the documents that they shared with me.

THE COURT: What is the title of it?

MS. CURTIS: This is a computer share. It's a.

Transfer form. And this is page two of three pages of the transfer form.

THE COURT: Transfer form relating to?

MS. CURTIS: The Exxon/Mobil stock.

THE COURT: Okay.

MS. CURTIS: And so, at the top of the page my sister Anita's 160 shares, and the bottom of the page is my 160 shares.

There is two signatures at the bottom of the page. One is on a W-9 portion, and the other is on, my understanding that the money would be reinvested in the account. These signatures are not my signatures; they're forgeries.

THE COURT: Uh-huh.

MS. CURTIS: I would not have seen these if I had not had this shared with me by my brother.

THE COURT: And you didn't authorize anyone to make those signatures for you?

MS. CURTIS: No, I did not. And I have filed a Securities & Exchange Commission complaint as of last week about this.

THE COURT: All right.

MS. CURTIS: And I have not heard anything from them since that time.

I also have two different --

THE COURT: Well, let me ask you before you go further. What did you understand to be the access in the trust or the total trust as opposed to the individual five trusts, let's say? What did you understand the gross assets to be? Is that what you set forth in your petition as being the assets.

In 2010, you show -- I don't know if you have your petition there with you, but you showed in 2010 there was Chevron/Texaco, Exxon/Mobil, Edward Jones and a total of $554,000 more or less in the -- I gather is this in the decedent's account.

MS. CURTIS: Actually, this is my Request For Injunction.

THE COURT: Yes, page 3.

MS. CURTIS: Those are just the net changes.

THE COURT: These are what you're calling losses then?

MS. CURTIS: Yes.

THE COURT: So what is the total of the estate? How many? Several million dollars?

MS. CURTIS: The farm itself is close to $3 million, and everything else when my father passed away was about a million-and-a-half.

THE COURT: So, it's increased in value to about --

MS. CURTIS: By virtue of the farm.

THE COURT: F-a-r-m, farm?
MS. CURTIS: Yes, family farm in Iowa.
THE COURT: That was sold?
MS. CURTIS: No, it was not.
THE COURT: What's on the farm that's increasing these prices? What are they harvesting?
MS. CURTIS: Corn and soybean.
THE COURT: Is that for profit or just simply --
MS. CURTIS: To my understanding we have a lease with the farmer.
THE COURT: Okay. And so lease itself pays a certain amount of money annually or however.
MS. CURTIS: Yes.
THE COURT: Those assets or that money goes into the estate?
MS. CURTIS: I believe so.
THE COURT: And that accounts for some of the increase, as you understand them?
MS. CURTIS: Yes.
THE COURT: All right. So at this point in time, "this point in time" being 2012, there has been a total of 338 or 339,000 in assets removed from the estate, and there is still approximately, as far as you know, three-plus million dollars in the estate?
MS. CURTIS: Yes, Your Honor.

THE COURT: Now, I want to try to close this out just a little bit by asking you: After you received these documents, I gather -- and when you weren't receiving them, obviously, because I recall you filed a suit, and one of the issues was getting your hands on these documents, and you were not able to get those documents until recently, as I understand it?

MS. CURTIS: The first time I received any information was in April of 2012, yes.

THE COURT: Okay.

And since you received those documents, has the fact that you received those documents confirmed what you believe to be improper practices on the part of your, I gather, on the part of your sister Anita?

MS. CURTIS: Yes, Your Honor.

THE COURT: Is she handling this alone?

MS. CURTIS: To my knowledge she is.

THE COURT: All right. So it's between her and however her lawyers are handling this that you are concerned about?

MS. CURTIS: I assume.

THE COURT: And your brother has a ongoing suit presently ongoing?

MS. CURTIS: Yes, Your Honor.

THE COURT: And what is the status as you understand

of that suit, as to how long has it been pending and what is status of that suit?

MS. CURTIS: I'm not exactly sure of the dates of how long it's been pending. I think since sometime in February of 2013.

THE COURT: Okay. So several months, but not very long.

MS. CURTIS: Right.

THE COURT: And is he able to get up and about?

MS. CURTIS: Yes.

THE COURT: Where is he now?

MS. CURTIS: At home, I would assume.

THE COURT: And have you communicated with him regarding what his approach is?

MS. CURTIS: Yes, Your Honor. I have.

THE COURT: And, of course, you have not joined his lawsuit?

MS. CURTIS: No, I have not.

THE COURT: And he has not joined in your lawsuit?

MS. CURTIS: No, he has not.

THE COURT: Does he have an attorney?

MS. CURTIS: Yes, Your Honor, he has.

THE COURT: Okay. I gather you now know that some state court, some county court or probate court, someone did something, I gather, to give Anita some authority that you

did not know she had. Is that what you have come to the knowledge of?

MS. CURTIS: I have come into the knowledge that the purported successor/co-trustees are in fact imposters because the documents that made them successor/co-trustees have digital alterations on them; they have anomalies on the signature pages. I have two different signature pages for the qualified beneficiary designation that were sent to me on two different occasions.

THE COURT: Now, whose signatures would be necessary from your perspective to permit her to go forward? This qualified beneficiary designee, this was supposed to be Anita now?

MS. CURTIS: It was supposed to divide the estate into five different personal asset trusts. Carole, Amy and Anita were going to be trustees.

THE COURT: This was a part of you-all's discussion on the telephone conference as to how this was supposed to work?

MS. CURTIS: Well, I wanted to know how it would put into place in the first place because I never received any notice that this was being contemplated.

THE COURT: Okay.

MS. CURTIS: And come to find out months after the papers were allegedly signed by my mother, my personal asset

trust and my brother Carl's were put under the control of Amy and Anita.

THE COURT: On what authority or what basis.

MS. CURTIS: I don't know. I don't know.

THE COURT: Okay.

And what happens then or what is happening to those assets?

MS. CURTIS: They're spending them.

THE COURT: Okay. She, Anita, has authority and can spend those proceeds --

MS. CURTIS: Yes, Your Honor.

THE COURT: -- based upon what? Is she considering herself the qualified beneficiary designee or something?

MS. CURTIS: She is considering herself a successor/co-trustee.

THE COURT: Successor/co-trustee.

MS. CURTIS: In place of my mother. She did most of the theft while my mother was still alive when she was acting with my mothers power of attorney. My mother supposedly resigned as trustee on December 21st, 2010, and my sister accepted successor/trustee. And my sister's also a beneficiary, so she's got a conflict of interest there.

THE COURT: So since 2010 you are not aware of, I gather you're saying you're not aware of the division of the estate at least designating your portion as being your full

one-fifth of the estate?

MS. CURTIS: I have never received a notice.

THE COURT: You are not aware that that has been done. In other words, you don't know that that has been done?

MS. CURTIS: No, I do not.

THE COURT: And you're not in charge of that, those assets?

MS. CURTIS: That's correct.

THE COURT: And so here's my question: What is it that you're seeking by this lawsuit?

MS. CURTIS: I am seeking that my sister and those who have received unfair distributions to return the money.

THE COURT: Okay.

MS. CURTIS: I would like them to pay back all of the interest that was lost on the securities that were cashed in during that 15 months and spent, diverted to other things.

THE COURT: All right.

MS. CURTIS: And I would like it to be divided five ways and for the five beneficiaries to go their separate ways.

THE COURT: And what have you been told, if anything, even today, if anything, that has prevented this from happening?

MS. CURTIS: I have been told nothing.

THE COURT: And you've talked with their counsel, have you not?

MS. CURTIS: Yes, I have.

THE COURT: And did you ask him about these questions or did you put these questions to him?

MS. CURTIS: No, I did not.

THE COURT: What were you asking? What was the nature of what you all were trying to accomplish as far as this injunction is concerned?

MS. CURTIS: We were trying to come up with a reason why we would not go forward with the injunction hearing. And I had five or six other alternative ways of resolving this. And he left the room to speak to his clients, and they would not agree to them.

THE COURT: What are you seeking now? What are those ways that you are seeking, and what is it that you want to happen here today?

MS. CURTIS: I wanted to have an independent trustee appointed.

THE COURT: All right. And that was refused.

Okay. What else?

MS. CURTIS: I wanted to know who, if any, special co-trustee was appointed as per this qualified beneficiary designation.

THE COURT: I'm sorry. Say that again.

MS. CURTIS: There was provision in the qualified beneficiary designation for a special co-trustee or a trust protector; and so, I suggested that maybe the trust protector take it over as the trustee.

THE COURT: All right. Okay.

MS. CURTIS: And the other reason was just similar to that. The Court could appoint an independent trustee who the defendants would have to obtain approval for any of their actions.

The Court could enjoin the trustees from acting without approval of the Court or express written approval from all five beneficiaries.

The Court could enjoin trustee from acting unless and until they can show they're in possession of authentic documents by submitting the documents purportedly signed on August 25, 2010 and December 21st, 2010 for a forensic analysis because the copies that we have have all been digitally altered and the signatures are fake.

THE COURT: Okay.

MS. CURTIS: I also asked originally if I could please know the identification and contact information for the trust protector, and I was told that the provisions for the trust protector were at section such and such in the qualified beneficiary designation, but I didn't get a straight answer.

THE COURT: So there is a document called "qualified beneficiary designation"?

MS. CURTIS: Yes, Your Honor.

THE COURT: And you do or do not have a copy of that?

MS. CURTIS: I do have a copy of it but not with me.

THE COURT: And you have been told that in -- when were you told this, today? When were you told where this provision about the special protector or co-trustee protector was located?

MS. CURTIS: In early 2012.

THE COURT: And you were told where to find it?

MS. CURTIS: I was told where to find the provisions, but I asked for the identity.

THE COURT: Okay. The identity of that person has not been given to you?

MS. CURTIS: That is correct, or if there even is.

THE COURT: If there is such a person.

All right. So that's what you're seeking in terms of your request for benefit -- for the injunction today; is that correct?

MS. CURTIS: Yes, Your Honor. I'm seeking that we stop the bleeding until we can get to the bottom of it.

THE COURT: Have you received any funds from the trust since 2010? I'm talking about since the death of your

mother.

MS. CURTIS: No, Your Honor. I have not.

THE COURT: You have made it known to -- have you communicated with your sister -- that's Anita, I believe -- about that?

MS. CURTIS: I am not allowed to speak to Anita --

THE COURT: Why not?

MS. CURTIS: Except through her attorneys.

THE COURT: Well, that's untrue. That's your sister.

MS. CURTIS: Well, that's the way I feel about it, but I'm told I'm not allowed to speak to them, and they won't talk to me.

THE COURT: Who told you this? Who told you this, that you can't contact her?

MS. CURTIS: I inferred that from --

THE COURT: Did she tell you that, is what I am asking?

MS. CURTIS: No. She didn't tell me that because she hasn't spoken to me.

THE COURT: Well, have you tried to speak to her?

MS. CURTIS: Yes, Your Honor, I have.

THE COURT: What happens when you try to speak to her?

MS. CURTIS: I call. She doesn't answer. I leave a

voice mail, she doesn't call me back.

The same thing happened with my other sister Amy. I called and left a voice mail. She did not return my call. This was more than a year ago.

THE COURT: So they refuse to speak to you about this is what you are saying?

MS. CURTIS: Yes, Your Honor.

THE COURT: Go ahead and have a seat. Thank you.

Counsel.

MR. VIE: Yes, Your Honor.

THE COURT: Why can't you come to some accommodation?

MR. VIE: Here's the situation. I just want to give you a little bit of background so that you understand in terms of the exhibits I put before you.

THE COURT: I don't have any exhibits yet. Well, some paper put up here.

Oh, the list. I see.

MR. VIEW: Yes, sir.

THE COURT: I haven't read these.

MR. VIE: Just to provide some assistance in answering your question, Your Honor. Exhibit 1 is a 60-or-so page document. That is the family trust document.

THE COURT: All right.

MR. VIE: And on page 1 of the document it says that

her father and mother had created a trust, it's an irrevocable trustee, and that the initial trustee shall be Anita Kay. So, Anita is the trustee under this document.

Because you heard a lot about this qualified beneficiary designation.

THE COURT: No. I heard about the co-trustees.

MR. VIE: So I wanted the Court to understand that this document --

THE COURT: Let me ask so we don't go down a rabbit trail. Was there a point in time when Carl was the co-trustee?

MR. VIE: I'm sorry?

THE COURT: Was there a time when Carl, the brother, was the co-trustee?

MR. VIE: I don't know if that -- I don't know with respect to this document if that's correct or not.

I understand that at one point there was a communication from the mother where she considered other family members serving in her role. But the documents that I have given you, the second exhibit that I have given you is where with respect to the mother's living trust while she was alive, she decided to have Anita appointed as her successor trustee instead, and then they created this certificate of trust.

THE COURT: That would have been relative to the

entirety of the irrevocable trust or was it simply her portion of the assets?

MR. VIE: It was with respect to the living trust that was created when she --

THE COURT: No, no, no. Here's what I am saying. The father is now deceased.

MR. VIE: Yes.

THE COURT: His wife entered into a irrevocable trust, and either he leaves all of you that in the trust to her benefit or his share goes into some other, goes into a trust for the children at that point.

So what happened?

MR. VIE: The father and mother created the irrevocable trust, which I have identified as Exhibit 1.

THE COURT: Okay.

MR. VIE: When the father died, his assets went into this living trust where their mother had assets to the living -- there was a sub trust created, a successor trust and a decedent's trust. The mother had that.

THE COURT: So she has all of the assets at that point?

MR. VIE: Yes. And the mother was able to make gifts and did make gifts to a number of the family members. So when the plaintiff was referencing the $13,000 gift that she received and the others, these were gifts that her mother

while alive had directed. And my client Anita, as the successor trustee under this appointment, Exhibit 2, would make those transactions occur. But these were gifts from the mother.

And then the mother dies, and this irrevocable trust --

THE COURT: And did the mother die, according to what Ms. Curtis is saying, in December more or less, I guess?

MR. VIE: November of 2010, Your Honor.

THE COURT: November of 2010, okay.

MS. CURTIS: 2011.

THE COURT: 2011.

MR. VIE: 11-11-2011.

THE COURT: Right.

MR. VIE: After that point, then Anita as trustee prepares a schedule of the estate, the context of the mother, and that money was going into the family trust; and that's one of the exhibits that she's attached.

THE COURT: Well, wait a minute. What money is going into the family trust? Because now this trust, the trust that exists that is handling all this is the mother's living trust, right?

MR. VIE: No, Your Honor. When she died, the living trust no longer exists.

THE COURT: Oh, obviously.

But before that, all of the assets were going into the living trust for the mother.

MR. VIE: Right.

THE COURT: And now the mother dies in November of 2011, and then what happens?

MR. VIE: Then we have the family trust, and there is created again a sub trust of a survivor's trust and the decedent's trust.

THE COURT: And the family trust now reverts back to the irrevocable trust?

MR. VIE: Yes, Your Honor.

THE COURT: And in the irrevocable trust or in that trust there is a provision that says how those, how that trust is to be divided into five distinct trusts for the children?

MR. VIE: My understanding is that there is a document under this complicated plan by which each of the individual beneficiaries, the five children, the four daughters and the son, they would have these asset trusts. Those trusts have not been created.

THE COURT: Well, I am asking whether or not as a part of the -- as to your understanding, you have read it, is that a part of what the family trust required as far as you know? You said there's a document like it's some separate thing.

MR. VIE: Well, there's a -- I understand, Your Honor.

It's a rather long document. I understand and agree we are that the conclusion of this trust now at this point is to divide the assets to the five beneficiaries, and then each of their assets go into these asset trusts.

THE COURT: Separate and distinct from each other and for the benefit of each of the designated beneficiaries.

MR. VIE: Yes.

And as the plaintiff suggested, I believe the situation is that her trust, for example, she is not a trustee. One of her siblings is the trustee.

THE COURT: Even after it's divided off and given to her?

MR. VIE: Yes. And in these asset trusts, other members --

THE COURT: So someone who has a trust, like Anita herself, would have her own separate and distinct assets?

MR. VIE: Yes, sir.

THE COURT: And she'd be in charge of her own assets?

MR. VIE: No, no. There would be -- somebody else would be the trustee.

THE COURT: Of all of these five trusts?

MR. VIE: Yes -- no, of each.

THE COURT: Who is "someone else?" I mean --

MR. VIE: Well, for example, Carl's could be Anita and Amy's could be Carole.

THE COURT: But the documents say how this happened, though.

MR. VIE: These trusts have not been created yet. There has been no distribution.

THE COURT: I understand that. You are telling me that, but I am trying to find out whether or not the creation of these trusts require these beneficiaries to have someone else in charge of their money.

MR. VIE: That is my understanding. And she can correct me if I am wrong, and my clients can correct me as the trustees if I'm wrong.

THE COURT: So Anita -- somebody would be in charge of Anita's?

MR. VIE: Yes. That's right.

THE COURT: And then somebody else would be -- and Anita would be in charge of somebody else's?

MR. VIE: That's my understanding.

THE COURT: And these kids -- and they're not kids anymore, but these five siblings would be at each other's throats for the rest of their lives because --

MR. VIE: No. They'd each have their own --

THE COURT: Well, no. They got them, but they're

not in charge of it, is what I understand.

MR. VIE: All right.

THE COURT: That's what I am trying to say. In other words, I'd have to call my sister to get my money.

MR. VIE: What I know about the asset revocable -- the asset trust is they have not been created yet.

As the Court heard, there are two lawsuits. There is this lawsuit and there is her brother's lawsuit. We are not parties to her brother's lawsuit. Her brother's lawsuit is brought in his capacity as the executor of his father's and mother's estates. It's in Harris County District Court. We're not parties to it.

THE COURT: Well that would be either the product of a will being probated --

MR. VIE: Yes, sir.

THE COURT: -- or it would be the product of an intestate proceeding. Which is it?

MR. VIE: The will has been probated.

THE COURT: So there is a will probate separate and apart from the trust?

MR. VIE: Yes, Your Honor.

THE COURT: And how does that overlay on the trust since all of the assets are in the trust?

MR. VIE: Well, I don't know that it overlays; but what I am trying to suggest to the Court is: One, since the

mother died, there has been no distributions to anyone, not --

THE COURT: I get that. I am trying to figure out --

MR. VIE: Since you haven't seen the distribution, I wanted the Court to understand that no one has.

THE COURT: But somebody got some money out of it or there has been a loss in value to the trust itself.

MR. VIE: She says that the stock that was invested with the brokerage houses may have lost money, is one of the things that she suggested in her motion.

THE COURT: Right.

MR. VIE: My point was to suggest that there has been no distributions since the mother died from the trust that Anita is the trustee for to anyone.

THE COURT: And you said the one that Anita is in charge of. What is Anita in charge of?

MR. VIE: Exhibit 1.

THE COURT: Okay. The entirety?

MR. VIE: Yes, sir.

THE COURT: That's what I am trying to get to.

MR. VIE: Yes.

THE COURT: Okay.

MR. VIE: And it's unlikely there will be any distributions until both this suit is resolved and her

brother's suit that he brought.

THE COURT: Well, this suit might resolve it. That's not their concern.

But what I am trying to find out is whether or not in the -- the question I was trying to get back was in the Carl's suit, I guess in probate court, whether or not that suit, which did not come up in the responses in the way that I understood it, whether or not that suit that impact whether or not this Court should be proceeding with this trust.

MR. VIE: No, Your Honor.

THE COURT: So it's separate and apart since the probate's completed.

MR. VIE: The probate has been filed. The suit is brought by him in his capacity as executor.

THE COURT: Is he without bond and independent?

MS. CURTIS: Yes.

MR. VIE: He's an independent executor. He is bringing the suit against the attorneys.

THE COURT: So he doesn't need to do anything else other than file it and do this accounting and all of that and then do whatever the will tells him to do.

MR. VIE: The litigation that he has brought is against the attorneys that created these trusts.

THE COURT: That's not even -- that's separate and

distinct from this lawsuit.

MR. VIE: Okay.

THE COURT: And it's separate and distinct from the estates because that's a malpractice lawsuit.

MR. VIE: Yes, sir.

THE COURT: Okay. So I am not concerned about that at all.

I was trying to make sure when he brought his suit, he was not simply arguing that somehow Anita had finagled her way into this position and she had squandered certain assets and then we've got these parallel lawsuits.

MR. VIE: I understand, Your Honor. And that was my point as well was to let you know that we are not parties to that litigation, it's not a claim in that litigation as the claims are --

THE COURT: And neither is the plaintiff here a party to that litigation.

MR. VIE: That is correct, Your Honor.

THE COURT: Okay.

So, the only suit that's pending dealing with the assets of these parent's estate is this lawsuit.

MR. VIE: Yes, Your Honor.

THE COURT: All right.

So what the plaintiff is saying on page 3 of her petition having to do with the December dates of 10, 12

and so on and what she considered to be "losses of the estate" are losses that I gather are decreases in assets that would be attributable to movement in the market.

MR. VIE: That is the specific. And, Your Honor, you are referring to the complaint or to the motion that has been filed for temporary relief?

THE COURT: I'm looking at the motion right now. That should be Instrument No. 35.

MR. VIE: Yes. With respect to that, there is an argument being made there that there has been a loss and it is the result of the investment of the securities.

THE COURT: You made a comment earlier that until the other lawsuit and this lawsuit is resolved. That lawsuit has nothing at all to do with the resolution of this estate.

MR. VIE: Well, I --

THE COURT: I'm telling you that.

MR. VIE: Okay.

THE COURT: There is nothing that should -- there is nothing going on in Carl's suit that prevents these parties from following what they have been instructed to follow in the trust document.

MR. VIE: Okay. I understand if that's the Court's direction.

THE COURT: Is there something that I am missing?

MR. VIE: Not that I am aware of, Your Honor.

THE COURT: That's a malpractice suit. And they get some money out of it, either he gets it or maybe he distributes it among his brothers and sisters, but it doesn't have anything to do with the distribution of this estate.

MR. VIE: My understanding -- the reason that I understood the case to be differently is that I understood that the purpose of the litigation that he had brought in state court was claiming that the attorneys who created these trusts had done so improperly so that we were in a situation in which we are here before this Court, and the Court is suggesting we should wind this thing up and distribute to all the beneficiaries.

THE COURT: It's going to be wound up. It's going to be wound up in this court.

Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where we are sitting around churning the time out and the parties are charging out of that lawsuit, defense of that lawsuit, which you are not doing, apparently, unless -- are you the lawyer that created the trust?

MR. VIE: No, Your Honor.

THE COURT: So that's a separate law firm.

MR. VIE: Yes, Your Honor.

THE COURT: Yeah. So there is no reason for you to

be or your firm to be involved in the expenditure of that, of monies out of that lawsuit.

MR. VIE: And we aren't, Your Honor.

THE COURT: And there is no reason for Ms. Curtis to be concerned about spending money out of her assets for that lawsuit.

MR. VIE: Understand.

THE COURT: So, you can distribute what you got whether you get some more or not. It doesn't require -- this is not a probate where you got to gather everything together because everything is together.

MR. VIE: Okay.

THE COURT: The entire estate is together.

MR. VIE: Yes, Your Honor.

THE COURT: And if there is a lawsuit, and it's questionable whether or not Curtis has a lawsuit or not because he wasn't the creator and the payor for that creation of that trust.

So, the point I am making is, obviously he had no contractual relationship with the firm, and it's going to be seriously flawed -- seriously difficult for him to sue for malpractice when he wasn't -- when there is no attorney/client relationship.

MR. VIE: Understood, Your Honor.

THE COURT: So, the point I'm getting to here is

under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.

MR. VIE: Yes, Your Honor.

THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.

MR. VIE: I understand that.

THE COURT: So, what is it then that prevents these parties from right now settling this suit?

MR. VIE: From settling it?

THE COURT: Yes. All they got to do is distribute the assets.

MR. VIE: Two things, Your Honor. And it's just my observation, because obviously the Court does not have to agree with me.

THE COURT: Sure.

MR. VIE: I provided the underlying documents that support the schedule that the plaintiff has attached to this motion for temporary relief. I have given her yesterday, in response to her request for production, some 5,000 pages.

She has told me that she wants to examine those, all of those underlying documents, stock transfers, checks and everything else.

You have heard from the plaintiff that she believes this very instrument is false.

THE COURT: "This very instrument" meaning the family trust?

MR. VIE: Family trust. That it's a forgery or that documents have been forged.

And I have offered, in response to the request for production, to make the originals, which I understand the trust attorney, those attorneys in the other lawsuit, to make those available for inspection and copying so that she can see them and satisfy herself that the underlying trust is in fact a legal and appropriate trust.

THE COURT: Okay.

MR. VIE: So that was one of the --

THE COURT: And that the signatures have not been forged or at least they're original signatures.

MR. VIE: Yes. In other words, one problem of trying to settle the disposition of the trust today is that the plaintiff disputes the accuracy of the accounting and the accuracy and legitimacy of the trust.

THE COURT: Right.

MR. VIE: And so, that was one issue.

The second issue, respectfully, is that I understood that given that the Harris County litigation contested the accuracy and validity of the trust, that again there was a risk of inconsistent positions if we were to treat the trust as valid and fund this while they litigated over in Harris County.

THE COURT: They don't have jurisdiction over there. I do. That's what the circuit court has told me. And that's the part that you said I might disagree; and you're right, I do.

I would not sit here and wait on somebody Harris County to figure out whether or not they have jurisdiction over an issue, which they do, but they don't have jurisdiction of the assets.

MR. VIE: I wasn't thinking as much of the jurisdiction, Your Honor, as I was thinking of the risk of inconsistent judgments. In other words --

THE COURT: Not if I get it resolved, there won't be any inconsistent to resolve.

If they get it resolved, then it probably won't be inconsistent because I'm obligated and then obliged to follow at least theoretically the findings of any court of competent jurisdiction.

MR. VIE: Yes, Your Honor.

And the third issue, which I don't think would

give the Court pause but is something I thought of, is the fact that all the beneficiaries are not parties to this litigation.

THE COURT: That won't bother me at all because I do have authority and jurisdiction over the person who you tell me has the duty and the responsibility to act.

MR. VIEW: So those are my --

THE COURT: That's it.

So, I want this resolved within 90 days. And if I have to appoint a trustee or somebody to handle this and get it done, I'll do it. It will cost the estate. And if I find that there has been mischief, it is going to cost individuals. And that will be a separate and distinct hearing.

So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke.

MR. VIE: Yes, Your Honor.

THE COURT: Who is doing the accounting in this process? Has anybody put their arms around the assets and made any accounting at all?

MR. VIE: There is a CPA in Iowa that prepares the

tax returns each and every year for the estate, and we are getting --

THE COURT: How they get in Iowa? Is that where the family was from originally?

MR. VIE: The parents, yes, Your Honor. And the farm, as you heard, is in Iowa.

THE COURT: Okay.

MR. VIEW: And so, there is a CPA who has been involved throughout this period and files the trust income tax returns, and he is available.

MS. CURTIS: I object to that.

THE COURT: Hold on.

Go ahead.

MR. VIE: I think I have answered the Court's question.

THE COURT: Yes.

MR. VIEW: And would have the most, would have the best familiarity beyond --

THE COURT: How much money does he generally charge for his annual -- I guess he does his annual filings of reports. Is this something that's pretty cursory or --

MR. VIEW: I'm sorry. And there is a distinction. The documents that are attached as the schedule in that accounting that are attached to the motion that has been filed for injunctive relief, temporary schedules.

THE COURT: Those were prepared?

MR. VIE: By the defendant, by Anita in her capacity as trustee.

THE COURT: Okay.

MR. VIEW: I was responding to the Court's question in terms of who's the best person that could get their hands around it and that type of thing.

The CPA in Iowa obviously has to know all of the information available to the trust so that he can file the tax returns. He also pays and makes sure that the profits --

THE COURT: Then that might not be a good thing for me because I don't have jurisdiction over him.

MR. VIE: Okay.

THE COURT: But what I wanted to know was whether or not there was a person here locally, since I believe the defendants are here locally. They don't have a local CPA who is in charge of the estate.

MR. VIE: That's correct, Your Honor.

THE COURT: That would be Anita herself.

And then as far as the tax returns and all that annually which goes on, whether you got money or not, that would be done by the accountant in --

MR. VIE: Sioux City, Iowa.

THE COURT: Yeah, in Iowa.

And excuse me. What were you about to say? You disagree with what, Ms. Curtis?

MS. CURTIS: I disagree with allowing Rick Rickers, who is --

THE COURT: Is that the attorney?

MS. CURTIS: -- our cousin. He's the accountant in Iowa.

THE COURT: He's your cousin?

MS. CURTIS: He's our cousin.

THE COURT: Okay.

MS. CURTIS: He is also apparently the manager of the farm, and he began to file the tax returns --

THE COURT: I've already said probably enough to give you some pause, to allay those concerns. But these are other reasons why he should not be doing accounting. He has a conflict of interest.

MS. CURTIS: One reason why he should not be doing the accounting is because I have reason to believe that the farm lease, taking it away from the buyers, who were my father's very close friends, was notarized with a signature that was not my father's. I have not been able to look at that yet. I only have emails that purport that, but I would like to get copies of those.

THE COURT: Let me address a couple of things.

First of all, when we don't have information,

we can imagine a lot of things that may or may not be true, Okay?

MS. CURTIS: Yes.

THE COURT: That could be. I mean, all kind of thoughts and ideas go through our head when they don't have the information.

Here's what this Court cannot do. This Court cannot chase after each of your concerns. You have got enough money, you can hire anybody you want to do any kind of investigation you want done.

What I intend to do based upon the mandate from the circuit court is to try to address the concerns that you have. And they just can't be accusations, and I don't have any interest -- when I say I don't have any interest, I have an interest in outcomes, but I don't have an interest in the case so that I'm supposed to be doing things that would accomplish something for you except upon your filed documents. It's in your best interest, and I think I talked to you on the phone conference --

MR. VIE: Yes.

THE COURT: -- with both of you on the phone as well, that really this is not a matter that you should be trying to handle yourself. You should hire an attorney to do it for you, or at least part of it for you.

Now, I believe that it's in the Court's best

interest to preserve the assets of the estate and to bring to a point a going-forward process that this Court appoint someone to do an accounting of the assets and then make that accounting to the Court.

Now, you don't have to agree with me, but it's going to be an accounting of what the assets are. Whether something has been taken or mismanaged or mishandled is not going to be a part -- that's not the kind of accounting that's going to go on here.

What is, and that is what's invested, where it's invested and how it's invested is going to be the Court's concern. Once that accounting is in place, the question is whether or not the Court is going to be required or whether or not Ms. Brunsting will go forward in her capacity or not.

If she fails, then the Court will direct or put someone else in that position to do that, to move into this area or division so that the assets can be distributed or whatever beneficiaries. That's where I am in this case, and that's where the circuit court I believe has me. So I think it's in all of our best interest to appreciate this process.

In light of that, the Court is of the opinion that there are no expenditures that should be made unless they're made upon the approval of the Court. So, in other words, if Mr., up in Utah --

MR. VIEW: Iowa.

MS. CURTIS: Rickers in Iowa.

THE COURT: Mr. Rickers needs to pay the farmer. We used to call those sharecroppers sort of. It's a kind of a sharecropper thing where someone comes in farms the land and you get a percentage of it. If Mr. Rickers and the sharecroppers and others need to pay out bills and things, they should be petitioning the Court for that. That's where we are now.

We're at a point where I'm going to have to take charge in order to make sure that what I am doing has sanctity and has, well, trust going forward. What I am going to do is simply to try to make sure that the parties are all going to have equal standing and footing in this process. So that's part of what I am going to do. I'm going to enter an injunction in that regard.

Now, anybody who claims they want to bill the estate for something, whether it's lawyers or not, I am concerned about whether or not your bill should be paid by the estate because of this circumstance.

MR. VIE: I understand.

THE COURT: If the parties are going to agree, if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who

will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate.

It would not include Curtis because I am not going to be involved in the litigation of whether or not this is a good trust or not. I'm going to presume that it's a good trust, and I am going to go forward from there. If Curtis proves otherwise, he can get that money from the lawyers, and that would be certainly to his advantage or benefit.

MS. CURTIS: Are you talking about my brother Carl?

THE COURT: Yes. I said Curtis. I meant Carl. I apologize. You can see I'm struggling here.

MS. CURTIS: Too many C's.

MR. VIE: For the record, is it 90 days, Your Honor?

THE COURT: Yeah. I said we should try to wrap this up in 90 days, but I believe that if I appoint -- and you can suggest someone. I don't know if you know someone. Just give me a couple names. If not, I will designate someone to do this and enter an order to that effect.

It may be that because of the lack of trust that it may not need to be, unless both of you are designating somebody that you can agree upon, it may be better for me to have some person independent of the sides unless you all can agree upon the person or firm that should take care of this business.

MR. VIE: So we will get together and try to arrive at an agreed CPA that could provide the accounting the Court requests.

THE COURT: Sure. And we have a lot of them here in Houston just like we got -- I don't know anybody in California, but I want somebody I have got some jurisdiction over.

MR. VIEW: So if we're unable to do so we'll notify the Court we were unable to reach an agreement?

THE COURT: Sure. And you need to do that by the end of the week.

MR. VIEW: Yes, Your Honor.

THE COURT: You are going to be here what, today?

MS. CURTIS: I leave at 4:00 o'clock.

THE COURT: 4:00 o'clock today. Well, then you need to talk fast and see if you all can agree. Maybe you should talk over lunch. That way you can kind of size each other up. Eating together sometimes brings out good things.

And so, if you will do that by the end of the week, I will then prepare an order entering a temporary retraining order against the expenditure of any funds. Notice will be not just to you but to you in terms of Anita because I think she holds the purse in this situation. If there is any money to be paid to anybody up in Utah or anyplace else, she would be person who would authorize it or

do it.

The accountant isn't do it, as I understand it, right?

MR. VIE: No. He is just preparing the necessary documents.

THE COURT: Right. So the purse strings here in Houston, she can certainly prepare through you whatever documents are necessary for parties to be paid.

MR. VIEW: Yes, Your Honor.

THE COURT: And then hopefully that report can get done in 30 or 40 days, and then we can have a hearing. If there is some dispute about summary areas of the report, we can have a hearing about that. If there is a memorandum or recommendation as relates to how to go forward with this "asset trust," that is the distribution, we can do that.

If the parties can reach an accommodation as to how those assets ought to be dealt with, how silent a trust and they all sign off on it, we can do that. It's just a matter of how you want to do it. The trust is not going to control unless you want it to control at this point.

MR. VIE: Yes, Your Honor.

THE COURT: Under the circumstances, it seems to me there's going to be a continuous bickering and mistrust.

Anything else?

MS. CURTIS: No, Your Honor.

MR. VIEW: No, Your Honor.

THE COURT: Let me have Ms. Anita Brunsting come forward.

Good morning. Did you drop something on your foot?

MS. BRUNSTING: I broke my foot.

THE COURT: Raise your right hand.

Do you solemnly swear or affirm that any testimony you will give in this case will be the truth, the whole truth, nothing but the truth so help you God?

MS. BRUNSTING: I swear.

THE COURT: You've heard the discussion here in the courtroom, have you not?

MS. BRUNSTING: (Indicating in the affirmative.)

THE COURT: And I know that you have got counsel, and you can speak with him about the implications and concerns that the Court has about making sure that the assets are accounted for. And you certainly can work through him on any matters that you need to address to the Court. And, of course, counsel understands that he is to communicate both with the Court and with Ms. Curtis on any matters that he is presenting to the Court.

Is there any question about anything I have said -- I don't mean disagreement because you can certainly disagree with me about anything -- but is there any question

that you might have about anything I've said that you need me to answer, or certainly you have your attorney present.

MS. BRUNSTING: I need the trust account to pay. I've got the forms from the CPA. Can I move forward on that?

THE COURT: I think you should probably file a short motion and simply serve a copy of it on opposing counsel, Ms. Curtis, and forward it with a short order to me, and that wouldn't be a problem. This should be based upon the tax forms.

MR. VIE: Yes, sir.

And in terms of notice to the Court -- I'm sorry, not notice to the Court, the Court directing notice, do I notify the other beneficiaries?

THE COURT: Absolutely.

MR. VIE: Okay.

THE COURT: Even though they're not a party, they are beneficiaries and we should keep them in the loop.

MR. VIEW: I just wanted to bring that up.

THE COURT: Yeah. Should be in the loop because it doesn't make sense for us to have to go back and pull them forward a month.

MR. VIE: I will prepare appropriate submissions for payments that I would like. If the Court will approve it, then the trustee will make the payments.

THE COURT: Are these to be paid on or before April

15th or is there another cycle?

MS. BRUNSTING: No, by April 15th.

THE COURT: All right. So either they will get to me on Thursday or whatever, and I'll sign off on them, on the motion and the order, and that shouldn't be a problem.

You are not going to have to liquidate any assets to deal with that, are you?

MS. BRUNSTING: No. We have a checking account with enough that I can pay it.

THE COURT: Right.

MS. BRUNSTING: What about any incoming? The farm is rented, so we get a check twice a year.

THE COURT: Your function and role is to make those deposits as they come in.

MS. BRUNSTING: So I can continue to deposit them?

THE COURT: Continue depositing. All I am trying to do is control the outgo. What comes in as an expense is what counsel needs to see, and they have a proper and appropriate motion.

And if these things come in -- if this is a once a month kind of sit down and write out the bills kind of thing, then that's the way he should probably handle it. At some point just sit down and you prepare a list of things that you need to have done and certainly provide the forms or whatever you need.

MR. VIE: Yes, Your Honor.

MS. BRUNSTING: Okay.

THE COURT: All right. Thank you very much.

All right, counsel. That's all I have. And I'll prepare an order and get it out perhaps by tomorrow afternoon. There should not and in my opinion will not need to be a bond posted. These are parties of equal status as it relates to the assets, so no bond is going to be required.

I think, Ms. Curtis, you need to follow my advice. At some point consider getting an attorney, someone you trust to work with you, all right.

Okay. Thank you very much.

MR. VIE: Thank you, Your Honor.

(Conclusion of Proceedings)

CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 53 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 9th day of April, 2013.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 5th day of August, A.D., 2013.

Fred Warner, CSR
Official Court Reporter

# EXHIBIT 8

RV

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

| | | |
|---|---|---|
| **CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting** | § | **IN PROBATE COURT** |
| **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 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** | § | **NUMBER FOUR (4) OF** |
| | § | **HARRIS COUNTY, TEXAS** |

**CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER**

TO THE HONORABLE JUDGE OF SAID COURT:

07222015:08:13:P6135

COMES NOW Drina Brunsting, as attorney-in-fact for Carl Henry Brunsting, individually, filing this Motion for Protective Order with regard to improper audio and video recordings produced by Anita Brunsting ("Anita"), as well as additional recordings obviously still in the possession of Anita, Amy Brunsting ("Amy"), Carole Brunsting ("Carole"), and third parties to whom the recordings have been disclosed. In support of this motion, Carl would show as follows:

1. When Anita became trustee, Carl was excluded from distributions from his parents' trusts. In fact, Carl's entire family was even excluded from discussions concerning the trusts. But both Carole[1] and Candy told Carl and Drina about what appeared to be improper actions that had been taken. So, on March 9, 2012, before Carl ever filed this action, he requested information pursuant to Tex. R. Civ. P. 202.

2. One thing which had been revealed to Carl was the placement of a GPS tracking device on his wife Drina's car without her knowledge by an investigator hired to follow her. Carl suspected that recordings had also been made of conversations between one or more of the Defendants and either Carl or Drina, so copies of recordings were also requested in 2012. In light of the GPS tracking device placed on Drina's car, perhaps it should not be–but it still is–a surprise to learn just how far the recordings went. The recordings, at least the ones which have only recently been produced, included recordings of telephone conversations made without the consent of ***either*** party to the conversation.

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[1] At various times, Carole has taken different positions on whether there was wrongdoing and by whom. It is pretty obvious what causes Carole's changes of heart. Despite complaining about Anita's efforts to gain control over the trusts, Carole made video recordings from Carl's hospital room in late May, 2011 and sent them to Anita and Amy. It can not be a coincidence that on June 15, 2011, Carole received a transfer from Anita of 1325 shares of Exxon Mobil stock. Likewise, it can not be a coincidence that Carole stopped complaining about Anita. This stock transfer, among others, is the subject of Carl's Motion for Partial Summary Judgment.

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3. In addition to emails between the Brunsting family members, included among the items Carl sought from Anita, Amy, and Carole in March, 2012 were:

- All audio or video recordings of meetings, conversations, telephone messages, or other communications with Elmer, Nelva, or any of the Brunsting Descendants[2] concerning Brunsting Issues,
- All audio or video recordings of Nelva's execution of any documents.
- All audio or video recordings of evaluations of Nelva's capacity,
- All other audio or video recordings of any Brunsting family member, and
- All investigations made of any Brunsting family member, including any surveillance logs or reports.

4. When Carl made his Rule 202 filing, Anita and Amy hired an attorney, Bernard Mathews, who obtained a continuance of the hearing on Carl's Rule 202 requests by providing Anita's unsupported summary of trust activity and agreeing to provide, on a voluntary basis, what was being sought. Mr. Mathew's email dated April 11, 2012 about obtaining the information sought is attached as Exhibit 1. Mr. Mathews indicated in discussions with Carl's counsel that everything in his clients' possession which had been requested would be turned over. Six days later Mr. Mathews was fired. Attached as Exhibit 2 is the email by which Carl's counsel was notified there would be a change of counsel.

5. Thereafter, when Anita and Amy retained Mills, Shirley LLP as their new counsel, the Rule 202 hearing was again continued as to Anita and Amy, at their new counsel's request, so

[2] "Brunsting Descendants" was defined in the document to include Candace, Carole, Carl, Amy, Anita, and the children and grandchildren, if any, of Candace, Carole, Carl, Amy, and Anita.

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that information could continue to be gathered. The issue of Carole providing information was not delayed further, however, and an order requiring Carole to provide her information was signed on May 18, 2012.

6. While some documents were ultimately provided by Anita, Amy, and Carole, including a number of boxes made available for review at Mills, Shirley's offices in Galveston, very few emails were produced and no one produced any recordings or investigator's reports. Amazingly, on September 9, 2014 even though actively trying to negotiate a settlement in the case, Mills, Shirley suddenly sought to withdraw from its representation of Anita and Amy claiming that "a conflict had arisen between the parties and the attorneys." The Mills, Shirley withdrawal was allowed on September 18, 2014. At that point, there had still been a lack of production of emails, recordings and investigator's reports.[3]

7. Anita's current counsel entered his appearance in this matter on November 14, 2014, and Amy's current counsel entered his appearance on December 8, 2014. Through no less than 9 supplemental productions made since Mr. Featherston took over as Anita's counsel, no recordings or investigator's reports had been provided, but emails addressing points Anita wanted to address began to show up as attachments to certain filings (See Anita's Objections to Candace Curtis' Application for Personal Representative filed on March 9, 2015, to which six emails previously unproduced by Anita were attached to obviously cast Candy in a very derogatory light).

8. Then on July 1, 2015, Carl's counsel received an envelope by certified mail from Anita's counsel which enclosed a CD containing supplemental production which had apparently

[3] The Defendants continue to just ignore the investigator issues even though there can be no question there was an investigator. Attached hereto as Exhibit 4 are emails exchanged among Anita, Amy, Carole, and Candy about the investigator, including one dated Tuesday, March 15, 2011 in which an investigator's report is said to be expected by the end of that week. (Exhibit 4, page P14675)

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been disclosed, at a minimum, to everyone else in the case. For various reasons, including the July 4 holiday, Carl's counsel was unable to adequately review all the information on the disk when it first arrived. Once the materials had been reviewed, however, it was obvious that the disk contained illegally obtained recordings.

9. The disk received by Carl's counsel on July 1, 2015 contained items which were numbered 5814 to 5840. Included among those items were the following four audio recordings, at least three, and most likely all, of which were made without the consent of either party to the conversations:

(1) a 43 second phone conversation between Carl and his mother which, according to the file properties, was both created and modified on February 27, 2015[4] (Brunsting 5836.wav);

(2) a phone conversation lasting 6 minutes and 44 seconds between Carl and Drina which, according to the file properties, was both created and modified on February 27, 2015 (Brunsting 5837.wav);

(3) a telephone conversation lasting 19 minutes and 18 seconds between Carl and Drina which, according to the file properties, was both created and modified on April 22, 2011 (Brunsting 5838.wav); and

[4] Nelva Brunsting died on November 11, 2011, so this could not have been just a copy of the original recording. The larger question raised by the dates on the audio files, however, is why they were not produced long ago. Who recorded them, where have they been, and to whom have they been given? Is this perhaps why Mills, Shirley suddenly had to withdraw? It seems unlikely that there can be a reasonable excuse for why these recordings, all made in 2011 and dealt with by someone again in February of this year, were not produced until July. That is particularly puzzling when on March 11, 2015 Anita filed a Motion to Compel complaining that Carl had not been specific enough about his damage disclosures and had not turned over all of his attorney's fee invoices.



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(4) a telephone conversation lasting 8 minutes and 53 seconds between Carl and Drina which, according to the file properties, was both created and modified on March 21, 2011 (Brunsting 5839.wav).

10. The audio recordings[5] provide a basis for liability to both Carl and Drina pursuant to the Texas Civil Wire Tap Act found at Tex. Civ. Prac. & Rem. Code, Title 123.[6] That Act prohibits, among other things, the interception of a conversation transmitted over telephone wires without the consent of at least one of the parties to the conversation, as well as the further disclosure and the use of such intercepted transmissions. Neither Carl nor Drina consented to the recordings or even knew about them. The same is undoubtedly true of the recording of the short conversation Carl had with his mother. These recordings were made improperly, disclosed improperly, presumably have been already used improperly, and are obviously intended to be used improperly in this litigation.

11. Although they have clearly been edited, nothing on these recordings suggests they were somehow found on an answering machine tape at Nelva's house as Anita's counsel claimed to be the case in discussions with Carl's counsel about these recordings. There is nothing on the recordings indicating the involvement of an answering machine. There is nothing on the recordings indicating an answering machine either picked up or ended the call. There is no answering machine message alerting anyone to a recording device. In fact, there is also nothing on the recordings themselves indicating the date on which they were recorded. The other flaw with the answering machine explanation is that when Drina called Carl at his mother's house, an answering machine never answered–a person always did. The timing of the earliest recording together with emails from

[5] It seems highly unlikely, of course, that these are the only recordings made or that those that have been produced are anything but edited versions of the original recordings.

[6] The recording, disclosure, and use of these recordings are also felony violations of Section 16.02 of the Texas Penal Code and 18 U.S.C. §2511.

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that time period make the real explanation for the recordings clear, but very problematic for Defendants.

12. These appear to have been made through a well-orchestrated plan between Anita, Amy, and Carole. Emails reflect discussions among the Brunsting sisters shortly after Carl became ill--both before and after Anita was even trustee--discussing ways to prevent Carl's access to trust disbursements. (See Exhibit 5). Originally, Candy was also involved in the plan until the explanations she was being given for what was happening stopped making sense.[7]

13. Carl spent some time at his mother's house in December, 2010 when Drina suffered a herniated disc in her back trying to lift him. Carl's recovery suffered so badly while he was staying at his mother's house that Drina was forced to end that arrangement. By that time, the experience of trying to deal with Carl's sisters had been bad enough that Drina stopped even trying to communicate with them, and Carl only called his mother. Then in early March, 2011, there are emails concerning APS complaints,[8] investigators, possible guardianship proceedings, and arrangements for a possible divorce between Carl and Drina so that Drina would not be Carl's natural guardian.[9] (See Exhibit 6).

14. In March, Carole also did her part to insure both that recordings could be made of Carl and Drina's conversations without their knowledge and that Drina could be followed by the

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[7] Thus, the only emails which have been shared with Carl are those exchanged before Candy was excluded from her sisters' scheme.

[8] The attempt to create problems for Drina with APS had already been frustrated when their APS complaint against Drina was dismissed because, unlike what had occurred when Carl was at his mother's house, Drina was following medical advice in her care of Carl. (Exhibit 6, p. P14664).

[9] There were also discussions about how to exclude Carl and Drina's daughter, Marta, as a potential guardian. Even though Marta had made her concern for her father clear (See Exhibit 7), she was characterized by Anita as having "expressed no interest in taking care of her father" (Exhibit 5, p. P14677).

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investigator. On the evening of March 10, 2011, Carole went to Carl and Drina's home and approached Drina about having Carl spend time at his mother's home again–allegedly to give Drina a break as Carl's sole caregiver and to give Carl somewhere to go when Drina had to work or had to deal with her elderly father who lived in Beaumont. Drina naively believed Carole's concern to be sincere and agreed to allow Carl to spend some time at his mother's house again.

15. So, in March, 2011 the investigator had already been engaged, and on March 17, 2011, Faustino Vaquera purchased one ICD-OX312 Sony digital voice recorder at Best Buy and a 4200223 3' 1/8" M-M Patch Cable from Radio Shack. Vaquera was reimbursed for the purchase when he included it on his time sheet dated March 18, 2011. The time sheet with the attached receipts is attached hereto as Exhibit 3. That digital voice recorder is capable of voice activation and has 2 GB built-in memory which can be expanded to 16 GB. The earliest recording, based on the properties for the files produced was made at least by March 21, 2011, right after Carole made sure recordings of calls between Drina and Carl could be intercepted by getting Carl back to his mother's house.

16. The CD recently produced by Anita's counsel also included various emails which have suddenly appeared out of some unknown location despite having been requested since March, 2012, including four emails from Carole to Amy and Anita between May 23, 2011 and May 25, 2011 which had attachments containing videos taken by Carole of Carl in his hospital bed after he had an adverse reaction to a medication which was itself life threatening and put him in intensive care at St. Luke's Hospital from May 22, 2011 through May 31, 2011.[10] (Brunsting 5822-5825).

[10] While Carl was at Mentis Rehabilitation, Drina observed a sudden and severe decline in Carl's condition and had him transferred to the St. Luke's emergency room where he was admitted to ICU because of an altered mental status due to medications.

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17. Even a sister's concern would not justify these recordings, but there is no way to confuse these incredible invasions of Carl's privacy as acts of a loving and concerned sister. These occurred while Carl was too ill to resist them and when no one was around to prevent them. After making the recordings on her Android, Carole sent them to herself and to Anita and Amy.[11] Candy was again excluded, as one of Carole's emails even confirms. Like the illegal phone recordings, Carl did not consent to these video recordings and even in his incredibly ill state, it was clear he was very uncomfortable with them. Also like the illegal phone recordings, these had never been provided to Carl despite his request for any video recordings in 2012. The properties on the files containing the emails indicate the files were all modified on March 18, 2015. It is inexcusable that these were ever made and that they have disclosed to others while being withheld from Carl since May, 2011, but where have they been since March 18, 2015?[12]

18. This Court must stop Carl's victimization at the hands of the Defendants, particularly those purportedly exercising fiduciary obligations to him. Carl requests that sworn affidavits be provided by Anita, Amy, and Carole specifying the date of every recording made within the categories requested, the party making the recording, the means of recording, the current location of all original recordings and all copies of all recordings, all parties to whom the contents of recordings have been disclosed, and all uses which have been made of the recordings. Carl also requests that all original recordings and all copies of those recordings be turned over to Carl's

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[11] The recordings appear to have been made by Carole and distributed to Anita and Amy between May 23, 2011 and May 25, 2011. Carole received her transfer of 1325 shares of Exxon Mobile stock from Anita, acting as trustee, on June 15, 2011.

[12] And there has still been no production of the investigator's reports. Yet, as already stated, while withholding this and more, Anita filed a motion to compel Carl to do a better job of responding to requests for disclosure and to provide all of his information on the attorney's fees he had incurred, something which no one else in this case has been required to do.



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counsel. Carl also requests that all copies which have been disclosed to any third parties, including the other counsel in this case, be retrieved and included in those materials turned over to Carl's counsel. Carl also requests that the identity of all investigators hired to follow Carl or Drina be provided, and that all investigator's reports be turned over. Carl also requests that Anita, Amy, and Carole be required to provide sworn testimony of their compliance and that they be prevented from using such recordings for any purpose, including in this proceeding.

WHEREFORE, PREMISES CONSIDERED, Carl Brunsting asks for the relief sought herein and for such other and further relief to which he may be entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless
*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 Drina Brunsting, attorney-in-fact for Carl Henry Brunsting*

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**CERTIFICATE OF CONFERENCE**

Attempts to resolve these issues have thus far been unsuccessful. Discussions are continuing and the motion will be withdrawn if they are resolved.

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 20th day of July, 2015, as follows:

Bradley Featherston
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
*via Telecopier*

Darlene Payne Smith
Lori A. Walsh
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, Texas 77010
*via Telecopier*

Stephen A. Mendel
Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
*via Telecopier*

Candace Curtis, *Pro Se*
218 Landana St.
American Canyon, California 94503
*via Email*

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

# Exhibit 1

07/22/2015:08:13:PO146



**BaylessStokes E-Mail**

**From:** "Bernard Mathews" <texlawyer@gmail.com>
**To:** "Bobbie Bayless" <bayless@baylessstokes.com>
**Sent:** Wednesday, April 11, 2012 2:27 PM
**Subject:** Producing available documents

Bobbie,

I am having my client go through your 30 page list to let me know what she has, what never existed, what may exist in someone else's control, etc.

To make my response to you easier, can you send me this list (documents to be produced by Anita Brunsting) in Wordperfect or Microsoft Word format?

I am also advised your client was sent a copy of the trust, and the qualified beneficiary designation. as well as an initial asset list in Excel format. Were these provided to you?

Chip Mathews

--
Bernard Lilse Mathews, III
Attorney at Law
Green & Mathews, LLP
14550 Torrey Chase Blvd., Suite 245
Houston, Texas 77014

(281) 580-8100
(281) 580-8104 (fax)

e-mail: texlawyer@gmail.com

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# Exhibit 2

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**BaylessStokes E-Mail**

**From:** "Bernard Mathews" <texlawyer@gmail.com>
**To:** "Bobbie Bayless" <bayless@baylessstokes.com>
**Cc:** "Anita Brunsting" <akbrunsting@suddenlink.net>; "Amy Brunsting" <at.home3@yahoo.com>
**Sent:** Tuesday, April 17, 2012 12:31 PM
**Subject:** Brunsting matter

Bobbie,

I have been advised that Anita Brunsting and Amy Brunsting are retaining new counsel. Thank you for your courtesies in this matter.

Chip Mathews

--
Bernard Lilse Mathews, III
Attorney at Law
Green & Mathews, LLP
14550 Torrey Chase Blvd., Suite 245
Houston, Texas 77014

(281) 580-8100
(281) 580-8104 (fax)

e-mail: texlawyer@gmail.com

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FISCHER

# Exhibit 3

07222015:0813:P0150

# TIME SHEET

**Employee Name:** Faustino Vaquera **Title:**

**Week:** March 15 — March 19

| Date | Start Time | End Time | Regular Hrs. | Total Hrs. |
|---|---|---|---|---|
| 3-15 Tues | 8:30 am | 12:00 am | 15.30 | |
| 3-16 Wed | 12:00 am | 2:00 pm | 14 | |
| ↓ | 4:00 pm | 12:00 am | 8 | |
| 3-17 Thur | 12:00 am | 9:30 am | 9:30 | |
| 3-[redacted] | 6:30 pm | 12:00 am | 5:30 | |
| 3-18 [redacted] Fri | 12:00 am | 6:00 pm | 18 | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | **WEEKLY TOTALS:** | 70 ½ | |

**Employee Signature:** [signature] **Date:** 3-18

**Supervisor Signature:** **Date:**

70.5
× 15.00
= 1057.50

Groceries & Food = 126.26

Best Buy Digital Voice Recorder 64.94

191.20

Total = 1,248.70

Brunsting004569

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WELCOME TO BEST BUY #216
HOUSTON, TX 77024
(713)647-6004

Keep your receipt!

Val #: 0422-1046-6045-3089

0216 003 2499 03/17/11 18:22 00005044

1792142 ICDPX312 59.99
ICDPX312 DIGITAL VOICE RECORD
ITEM TAX 4.95
6094193 RZ SILVER 0.00 N
REWARD.ZONE PREMIER SILVER
MEMBER ID 0329918420

SUBTOTAL 59.99
SALES TAX AMOUNT 4.95
TOTAL 64.94

xxxxxxxxxxxx0307 DEBIT 64.94
FAUSTINO VAQUERA JR
APPROVAL 132943
REFERENCE NUMBER: 0216003

ALEX,
THANKS FOR SHOPPING AT BEST BUY TODAY!
YOUR REWARD ZONE BALANCE AS OF 03/08/11
POSTED POINTS: 153
Go to MyRZ.com FOR MORE INFO

Congratulations! As an added benefit of being a Reward Zone program Premier Silver member, you may return eligible products up to 45 days from purchase date.

Dear Valued Customer,

To help keep [illegible]

directly or indirectly by the products listed on this receipt.

THE SHACK THANKS YOU.

RADIOSHACK 01-6020
Kroger Plaza So
14356 Memorial Dr
Houston, TX 77079-6704
(281) 496-9429

Order: 057553 03/17/2011 08:14P Term #002

Helped By: 001 (MAR)
Entered By: 001 (MAR)

4200223 3' 1/8' N-N PATCH CABLE 1 8.39

| | | |
|---|---|---|
| Subtotal | | 8.39 |
| Tax | 8.25% | 0.69 |
| Total | | 9.08 |
| Credit Card | | 9.08 |
| Change Due | | 0.00 |

Acct# xxxxxxxxxxxx0307 N
Card Type VI
Tran# 12887148
Auth# 161235 9.08
Host Captured Y

The card holder identified hereon may apply the total amount shown on this receipt to the appropriate account to be paid according to its current terms.

I agree to pay above total according to card issuer agreement.

Your name, address and the original sales receipt are required for all refunds. Sales and returns are subject to the terms and conditions identified on the back.

Shop online 24/7 at
www.radioshack.com

Brunsting004570

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# Exhibit 4

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07222015:0813:P0153

**From:** Amy Tschirhart
**To:** Candy Curtis
**Subject:** Phone number
**Date:** Saturday, January 08, 2011 7:34:13 PM

Hi Candy,
Could you send me Owen's phone number? I wanted to ask him a question about private investigators.
Thanks,
Amy

07222015:0813:P0154

Confidential

**From:** Carole Brunsting
**To:** Amy; Anita; Candace Curtis
**Subject:** Re: PI
**Date:** Thursday, February 03, 2011 3:57:21 PM

I drove by their house today on the way home and their plants were covered.

--- On **Thu, 2/3/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: PI
> To: "Amy" <at.home3@yahoo.com>, "Anita" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Thursday, February 3, 2011, 9:56 AM
>
> I think we should hire a PI to "find" Carl. If he's at home, he's got to come out sooner or later. If he's in a facility, Drina will have to come out to visit him sooner or later. The problem is, no one knows when these comings and goings will occur and it could cost a lot of money to find out. It's entirely possible that Drina has put him in a facility that is covered by insurance. This makes sense because there have been no requests for money and Carl hasn't called anyone but Mother since he left her house. In any event we have to find out what is going on. If he's in a rehabilitation facility we can celebrate, but she could have stuck him in a nursing home, where none of his needs will be addressed and they will keep him doped up all the time.
>
> The more legwork we do, the cheaper the PI will be. Any ideas on how to find out when his therapy appointments are? If the PI can film him leaving the house and entering the facility we would be able to assess his physical condition and possibly his mental state. If he's in a facility somewhere the PI would have to catch her leaving the house on her way to visit him and if she leaves she could also be going shopping, etc. I would be willing to call rehab facilities if necessary.
>
> I don't want to let too much more time lapse before we find out.

Confidential

07222015:0813:P0155

**From:** Anita Brunsting
**To:** "Candace Curtis"; "Amy"; "Carole Brunsting"
**Subject:** RE: Conference Call Info
**Date:** Tuesday, March 15, 2011 3:45:57 PM

I'm pretty open all week.

**From:** Candace Curtis [mailto:occurtis@sbcglobal.net]
**Sent:** Tuesday, March 15, 2011 3:10 PM
**To:** Amy; Anita; Carole Brunsting
**Subject:** Conference Call Info

I have a conference call account here at work that I am allowed to use for personal business. We can schedule a time to talk and catch up on what's happening. This saves numerous text messages, phone calls, and emails.

Call 1-866-212-0875 and when it asks you for the "participant" pass code enter 132003#

Maybe we can try it towards the end of the week or on the weekend, after someone gets an activity report from the PI.

Love you guys,

C

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P14675

07222015:0813:P0156

**From:** Carole Brunsting
**To:** Anita Brunsting; Amy Tschirhart; Candace Curtis
**Subject:** Re: guardianship assessment form
**Date:** Friday, March 18, 2011 8:40:41 AM

They are there right now according to the PI. And Michael took him on Wednesday.

--- On **Fri, 3/18/11, Candace Curtis <occurtis@sbcglobal.net>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: guardianship assessment form
To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
Date: Friday, March 18, 2011, 10:33 AM

Do you know if he went to therapy at all this week?

**From:** Anita Brunsting <akbrunsting@suddenlink.net>
**To:** Candace Curtis <occurtis@sbcglobal.net>; Carole Brunsting <cbrunsting@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
**Sent:** Fri, March 18, 2011 8:26:05 AM
**Subject:** RE: guardianship assessment form

we're continuing the pi over the weekend or unless it looks like she's headed toward Beaumont - will also use him through next week. $750 is for the lawyer's (Cole) initial consult not a dr. If she divorces him then someone needs to sue for guardianship - Marta would be considered next in line by the law, but if she doesn't sue for it then I don't think she'd be considered. If Drina gets him to sign divorce papers that give him any less than 50% of their assets then a guardian can countersue her to recover those.

**From:** Candace Curtis [mailto:occurtis@sbcglobal.net]
**Sent:** Friday, March 18, 2011 10:20 AM
**To:** Anita Brunsting; Carole Brunsting; Amy Tschirhart
**Subject:** Re: guardianship assessment form

$750 an hour FOR WHAT? The woman is abusing him and negligent in his care. Have they been out even one time this week? Last I heard, Monday and Tuesday there was no activity other than a visit from Marta. APS said that once they confirmed she was following doctor's orders, they closed the case. If the instructions were 3 times a week and he hasn't been, or only goes once or twice, SHE IS NEGLIGENT, and they better reopen it or start a new one. Let me know if you want me to call.

Any doctor who has seen Carl would most likely say NO to all of the questions. I would, just based on past phone conversations with Carl.

What if Drina files for divorce? Would that be abandonment? Would the trust even be an issue if SHE divorces him?

If I could have anything I wanted for Carl, I would have him assessed by the neuropsychologists at the place I found in Houston. I don't know if he could handle long periods of testing, but he has got to get some cognitive brain function back OR HE WILL NEVER EVEN BECOME CLOSE TO WHOLE AGAIN. It's a good sign that his

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behavior has improved, but is it because she beats him with a stick and mentally assaults him to get him to act right?

Maybe guardianship is the wrong approach. Maybe we should go after Drina and have her declared incompetent to care for him, or criminally negligent for not obtaining proper rehabilitation. There has to be a reason why she doesn't want her husband of almost 30 years to recover.

Let me know if he will be staying at Mother's again over the weekend. If so, we might want to extend the PI over the weekend so we can see what the hell she does. The more "evidence" we can amass, the better.

Love you guys,

C

---

**From:** Anita Brunsting <akbrunsting@suddenlink.net>
**To:** Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
**Sent:** Thu, March 17, 2011 2:18:05 PM
**Subject:** *guardianship assessment form*

Just thought you'd find this interesting, this is the form that we'd have to have a physician use to assess Carl and possible a MHMR psychologist as well. I just thought it would give you an idea as to what they're looking for - Carl definitely fits the bill -

Just fyi, you may have already known this.

Anita

P14680

07222015:0613:P0158

# Exhibit 5

07222015:0813:P0159

**From:** Carole Brunsting
**To:** Anita Brunsting; Amy Tschirhart; occurtis@sbcglobal.net
**Subject:** Re: Carl"s medical bills
**Date:** Tuesday, August 17, 2010 7:37:48 PM

http://www.nytimes.com/2009/03/14/health/14patient.html

Another good article about negotiating down the bill. Drina needs to treat this as if the trust money does not factor in. It should be months before she sits down to make even one payment.

--- On **Tue, 8/17/10, Carole Brunsting *<cbrunsting@sbcglobal.net>*** wrote:

> From: Carole Brunsting <cbrunsting@sbcglobal.net>
> Subject: Re: Carl's medical bills
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Amy Tschirhart" <at.home3@yahoo.com>, occurtis@sbcglobal.net
> Date: Tuesday, August 17, 2010, 9:24 PM
>
> http://www.creditcards.com/credit-card-news/medical-bill-payment-tips-1266.php
>
> Here is another good article. Why can't she follow this and set up a payment plan and then Mother can help with the monthly payments rather than yank thousands out of the account. I don't think Drina has done any of the steps this article talks about. She should tell the hospital that they cannot pay since Carl is not working and don't even mention the trust.
>
> --- On **Tue, 8/17/10, Carole Brunsting *<cbrunsting@sbcglobal.net>*** wrote:
>
>> From: Carole Brunsting <cbrunsting@sbcglobal.net>
>> Subject: Carl's medical bills
>> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Amy Tschirhart" <at.home3@yahoo.com>, occurtis@sbcglobal.net
>> Date: Tuesday, August 17, 2010, 9:08 PM
>>
>> http://www.hcvadvocate.org/hepatitis/hepC/GMYHI.html
>>
>> According to this Drina may have already reached her out of pocket and may be paying to much already.
>>
>> This is a good article.

07222015:0813:P0160

**From:** Amy Tschirhart
**To:** Anita Brunsting; Candy Curtis; Carole Brunsting
**Subject:** Re: CPA's advice
**Date:** Wednesday, August 18, 2010 1:48:01 PM

Hi,
I just talked to Drina. She is tired of hearing advice (even if it is helpful and right). Basically she's just overwhelmed right now. Her nerves are raw and anything any of us say to her right now is just going to set her off. I suggest just leaving her alone for a little while. The bills aren't going to go away and she will eventually have to deal with them. She may be more receptive to listening then or she might figure out the solution on her own.

Amy

--- On **Wed, 8/18/10, Carole Brunsting <*cbrunsting@sbcglobal.net*>** wrote:

> From: Carole Brunsting <cbrunsting@sbcglobal.net>
> Subject: Re: CPA's advice
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Candy Curtis" <occurtis@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
> Date: Wednesday, August 18, 2010, 1:36 PM
>
> That is exactly what the articles I sent last night said. Your credit score is only affected "IF" you stop making payments in the event you have a payment plan set up. Also, it said that she needs to negotiate discounted rates based on their financial statements and leave the trust out of it. Like Candy said, don't even mention the trust. From everything I have read, she can either get some of this written off OR get it discounted and set up a payment plan. If she and Carl cannot make ends meet in the future, then they consider a loan against his inheritance.
>
> I am finding that with GOOGLE, you don't really needs doctors or CPA's because all the diagnostic information is online along with accounting advice.
>
> Knowing I am being petty with this statement, why is her father's advice correct and mother is not a straight shooter. Mother was shocked because she did not think the time was right to pay bills, but could not convey that message to Drina.
>
> I grow tried of always being "wrong" in the eyes of Carl and Drina. Again, being petty but then I am just petty. So there.
>
> --- On **Wed, 8/18/10, Amy Tschirhart <*at.home3@yahoo.com*>** wrote:
>
> > From: Amy Tschirhart <at.home3@yahoo.com>
> > Subject: CPA's advice
> > To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <Cbrunsting@sbcglobal.net>, "Candy Curtis" <occurtis@sbcglobal.net>

07/22/2015 08:13:P0191

Date: Wednesday, August 18, 2010, 2:57 PM

Hi,

I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the internet and there are several in Houston.

She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as $10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.

I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.

Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing ***any*** of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,
Amy

UNOFFICIAL COPY

P14253

07222015:0815:P0162

**From:** Carole Brunsting
**To:** Candace Curtis
**Subject:** Re: CPA"s advice
**Date:** Wednesday, August 18, 2010 2:18:39 PM

Your so funny!

--- On **Wed, 8/18/10, Candace Curtis <occurtis@sbcglobal.net>** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: Re: CPA's advice
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <Cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
> Date: Wednesday, August 18, 2010, 3:49 PM
>
> Just as I said in my email. I also said DO NOT consult an attorney. It's throwing good money away because you have just received free advice and passed it along to her. So, that's what you told her, that's what I told her, and that's what her Dad told her. Is she going to ignore all of us? Drina needs to get her shit together now or she'll be sorry. Carl can come and live with us when she runs off.
>
> --- On **Wed, 8/18/10, Amy Tschirhart <at.home3@yahoo.com>** wrote:
>
> > From: Amy Tschirhart <at.home3@yahoo.com>
> > Subject: CPA's advice
> > To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <Cbrunsting@sbcglobal.net>, "Candy Curtis" <occurtis@sbcglobal.net>
> > Date: Wednesday, August 18, 2010, 12:57 PM
> >
> > Hi,
> >
> > I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the internet and there are several in Houston.
> >
> > She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as $10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.
> >
> > I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she

07222015:0813:P0163

really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.

Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing ***any*** of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,
Amy

UNOFFICIAL COPY

07222015:0813:P0164

**From:** Anita Brunsting
**To:** "Candace Curtis"
**Subject:** RE: CPA"s advice
**Date:** Wednesday, August 18, 2010 8:00:01 PM

You couldn't invent a better helpless, narcissistic, stupidly rude character than her. I guess this is why they say "truth is stranger than fiction" I've already been inventing scenrios inside my head that I think she'd be capable of. Maybe we can write an novel about this and make a million dollars when we sell the movie rights :-)

Love, anita

---

**From:** Candace Curtis [mailto:occurtis@sbcglobal.net]
**Sent:** Wednesday, August 18, 2010 5:39 PM
**To:** Anita Brunsting
**Subject:** RE: CPA's advice

My ears are burning already. LOL If she gets pissed off it will just confirm my opinion that she's a stupid twit who only cares about herself. I know I read too much fiction, but I can imagine her keeping Carl in diapers so she doesn't have to wipe his butt.

Love you lots,

Candy

--- On **Wed, 8/18/10, Anita Brunsting <akbrunsting@suddenlink.net>** wrote:

> From: Anita Brunsting <akbrunsting@suddenlink.net>
> Subject: RE: CPA's advice
> To: "'Candace Curtis'" <occurtis@sbcglobal.net>
> Date: Wednesday, August 18, 2010, 2:48 PM
>
> I agree w/ everything you said. I also like your e-mail to Drina - I hope it really pisses her off.
>
> ---
>
> **From:** Candace Curtis [mailto:occurtis@sbcglobal.net]
> **Sent:** Wednesday, August 18, 2010 4:20 PM
> **To:** Amy Tschirhart; Anita; Carole Brunsting
> **Subject:** Re: CPA's advice
>
> Drina needs to get a grip. She's overwhelmed with what??? Advice??? We're all saying the same thing. That hole in the sand is just getting deeper. She needs to face reality right now. She should be overjoyed at any little progress from Carl. That joy should mutate into action to secure their future. Her nerves are raw because she refuses to face reality. The four of us have worked our entire lives. We're all single and have had to rebuild our lives and change our values in numerous ways. I don't know about you guys but there have been times when I just wanted to crawl into bed, curl up into fetal position, and sleep forever. If it's not one thing it's another. These times have only made me stronger. I have not been



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07222015:0813:P0165

subjected to any calls from Drina trying to get money from Mother for medical bills. She needs to humble herself a little and tell the truth. I still would not have any sympathy for her, but it would make it easier for me to accept yours.

--- On **Wed, 8/18/10, Amy Tschirhart <at.home3@yahoo.com>** wrote:

> From: Amy Tschirhart <at.home3@yahoo.com>
> Subject: Re: CPA's advice
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Candy Curtis" <occurtis@sbcglobal.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Wednesday, August 18, 2010, 1:47 PM
>
> HI,
> I just talked to Drina. She is tired of hearing advice (even if it is helpful and right). Basically she's just overwhelmed right now. Her nerves are raw and anything any of us say to her right now is just going to set her off. I suggest just leaving her alone for a little while. The bills aren't going to go away and she will eventually have to deal with them. She may be more receptive to listening then or she might figure out the solution on her own.
>
> Amy
>
> --- On **Wed, 8/18/10, Carole Brunsting <cbrunsting@sbcglobal.net>** wrote:
>
> > From: Carole Brunsting <cbrunsting@sbcglobal.net>
> > Subject: Re: CPA's advice
> > To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Candy Curtis" <occurtis@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
> > Date: Wednesday, August 18, 2010, 1:36 PM
> >
> > That is exactly what the articles I sent last night said. Your credit score is only affected "IF" you stop making payments in the event you have a payment plan set up. Also, it said that she needs to negotiate discounted rates based on their financial statements and leave the trust out of it. Like Candy said, don't even mention the trust. From everything I have read, she can either get some of this written off OR get it discounted and set up a payment plan. If she and Carl cannot make ends meet in the future, then they consider a loan against his inheritance.
> >
> > I am finding that with GOOGLE, you don't really needs doctors or CPA's because all the diagnostic information is online along with accounting advice.

07222015:0813:P0166

Knowing I am being petty with this statement, why is her father's advice correct and mother is not a straight shooter. Mother was shocked because she did not think the time was right to pay bills, but could not convey that message to Drina.

I grow tried of always being "wrong" in the eyes of Carl and Drina. Again, being petty but then I am just petty. So there.

--- On **Wed, 8/18/10, Amy Tschirhart** ***<at.home3@yahoo.com>*** wrote:

> From: Amy Tschirhart <at.home3@yahoo.com>
> Subject: CPA's advice
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <Cbrunsting@sbcglobal.net>, "Candy Curtis" <occurtis@sbcglobal.net>
> Date: Wednesday, August 18, 2010, 2:57 PM
>
> Hi,
>
> I talked to the CPA who does my taxes today and asked her what she would recommend. She told me that Drina should talk to an attorney who specializes in debt created by medical bills. Medical bill debt is treated differently than other debt. I did a quick check on the Internet and there are several in Houston.
>
> She said that creditors cannot touch Drina's house or cars. She also recommended not paying any of the medical bills right now. She said to wait until the dust settles, then talk with each company about a payment plan, possibly as little as $10 a month. She told me that in all likelihood, they would eventually write off her debt as a loss. She said Drina should definitely not touch any retirement or inheritance, or borrow anything against them.
>
> I called Drina today and told her what Darlene said. She said her father had been telling her the same things. I tried to emphasize that she should not be paying any bills right now, but I don't know if she really understood why. She is overly concerned with her credit score rating. Darlene said that is not that important because they own their house and cars and are not as reliant on credit compared to younger people.
>
> Anyhow, I know that Drina is in a hard spot right now, but I honestly think that keeping her from accessing ***any*** of Carl's inheritance would be in her best interest. It would be a waste to spend it on medical bills and they will need the money in the future. I don't think

07222015:0813:P0167

that is going to sit well with Drina because she's going to see it as us being tight-fisted with the money. I strongly suggest that if any of us talk to her, we do it as nicely as we can. Acknowledge that the debt is so huge it is unpayable in her lifetime. Encourage her to seek a professional to find the best way to deal with it. Remind her that we want the best for her and Carl in their future and that we are thinking of their best interests.

Love,
Amy

UNOFFICIAL COPY

P14259

07222015:0813:P0168

**From:** Amy Tschirhart
**To:** Candy Curtis
**Subject:** Info
**Date:** Friday, March 04, 2011 7:47:04 PM

Hi Candy,
I spoke with Anita about talking to Drina. She is going to work on getting me some numbers so I know what amount is available for Carl. We want to ask Drina to provide us with some documentation of their finances before we decide on what amount she could have on an annual basis. Could you help us make a list of what we need to ask her for?

I was doing some rough calculations. Carl is 53 right now. If he lives to be 85, that is 32 years. If he inherits $300,000, he could receive $1386 per month assuming that the account earned an average of 4% per year. That is no where near what Drina is expecting to get.

Call me if you have any questions or comments. Thanks.
Love, Amy

P14668

07222015:0813:P0169

**From:** Amy Tschirhart
**To:** Candy Curtis; Carole Brunsting
**Subject:** Number crunching
**Date:** Friday, March 04, 2011 8:06:02 PM

Hi Candy and Carole,
We are trying to determine the amount of money that Carl can withdraw from the trust. It's hard to determine this since there are so many variables - we don't know how much Mom is going to need for her care, we can't predict the future value of assets, etc. I did some rough number crunching, just so we'd have some place to start. I sent these numbers to Anita and I thought you might have some input about them as well.

If we assume that Carl inherits $300,000, he lives to be 85 (32 more years), and the account earns an average of 4% interest over the lifetime of the fund, Carl could withdraw $1386 per month and have enough money to last.

If it were possible for him to inherit $500,000, he could withdraw $2310 per month for the rest of his life.

Just to put things in perspective, to receive the $4000 per month that Drina says they need, he would have to inherit $865,600, which is not possible. I know if I try to explain this to Drina it will be like talking to a brick wall. It will never be possible to give her the amounts that she wants.

Amy

07/22/2015:08:13:P0170

**From:** Amy Tschirhart
**To:** "Candace Curtis"; "Carole Brunsting"; Anita Brunsting
**Subject:** RE: New Development
**Date:** Tuesday, March 08, 2011 9:47:30 PM

I think we need to send two separate letters. One to Drina telling her she can't come in to Mom's house or contact her by phone or email, and the other to Carl regarding money from the trust. The letters deal with different issues and should be directed to the specific person.

I'm trying to think of some verbage for Carl's letter. This is all I have so far:
"If you would like to borrow money against your inheritance to pay for your living expenses and medical care, you may borrow up to $13,000 per year. To receive the funds, submit bills you would like paid from the trust funds to Anita. She will pay them up to the amount of $13,000 per year. Please sign the enclosed document indicating that you understand the amount you borrow will be deducted from any possible inheritance you may be awarded in the future."

--- On **Tue, 3/8/11, Anita Brunsting <*akbrunsting@suddenlink.net*>** wrote:

> From: Anita Brunsting <akbrunsting@suddenlink.net>
> Subject: RE: New Development
> To: "'Candace Curtis'" <occurtis@sbcglobal.net>, "'Amy'" <at.home3@yahoo.com>, "'Carole Brunsting'" <cbrunsting@sbcglobal.net>
> Date: Tuesday, March 8, 2011, 7:15 PM
>
> I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl $13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid $13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.
>
> I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.
>
> I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

P14670

07222015:0813:P0171

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

---

**From:** Candace Curtis [mailto:occurtis@sbcglobal.net]
**Sent:** Tuesday, March 08, 2011 5:31 PM
**To:** Amy; Anita; Carole Brunsting
**Subject:** New Development

Hi All --

I'm sure you've heard by now about today's incident. I received a TM from Tino who said Carl and Drina went over to Mother's today and that I should call Robert, so I did. As we were talking he kept remembering things that had been said. I told him to write that stuff down because it was all important and all of us need to know what was said.

The time has come to deliver the news to Carl and Drina. Please put your heads together and quickly calculate what CARL would receive monthly for the next 30 years. Since you cannot be sure they receive the information if you email it, and you cannot reason with the moron on the phone, certified mail return receipt requested is the best way to send the information. Put in your correspondence that the first check will be sent on such-and-such date. You can offer to automatically put the $$$ into their account each month.

It's that simple. Once that is done we can all wash our hands of it and just wait and see how it plays out.

I know we would all like to have some visitation and/or phone privileges, but, frankly, the only condition should be that they have to stay away from Mother. I suspect she might actually run off when she realizes that she will have to make some major changes. She probably tells Carl that she WILL

07/22/2015:08:13:PM 72

leave if he can't get his money, causing extreme duress and mental stress. The bitch told Mother that Carl worries about the money all of the time, day and night. I still don't think he has regained much cognitive reasoning, so whatever he worries about and says must come from her. We can continue to hope that one day Carl will recover some of his brain power. Maybe he'll wake up one morning and she'll say something hateful about his family and that will be it. Bye, Bye Drina.

I understand Mother has actually gone without her oxygen bottle attached for a couple of hours here and there. Robert said she was a little upset after the visit. This breaks my heart. She said something to Robert about never having children. It is unfair to Mother to even allow Drina in her home. If there's a next time Robert or Tino should make her wait in the car.

After you have written the letter to Carl (I wouldn't even put Drina's name on it), one, two, or all of you should meet at Mother's to show her the letter before Carl and Drina have a chance to start harassing her over the contents of the letter. It's really not an option for Carl to submit bills to be paid and Mother has spent enough of her own money on his care already. Just give him his monthly stipend and let them worry about how they are going to live within their means. It is what it is.

Call me with your thoughts.

Love you all,

C

07222015:0813:P0173

# Exhibit 6

07222015:0813:P0174

**From:** Carole Brunsting
**To:** Candace Curtis
**Subject:** Re: APS
**Date:** Thursday, January 20, 2011 7:10:10 PM

Carl called Mother tonight, but you probably already know that.

--- On **Thu, 1/20/11, Candace Curtis *<occurtis@sbcglobal.net>*** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: APS
> To: fvaquera@hotmail.com, r.cantu1970@gmail.com, "Amy" <at.home3@yahoo.com>, "Anita" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Thursday, January 20, 2011, 10:38 AM
>
> All --
>
> I called Tuy at APS just now. I asked him to go to Carl's house and see with his own eyes that Carl is okay and not cowering in a corner with a dirty diaper. He was unaware that Carl had gone home last Friday, although I called him last Friday and told him. He keeps reiterating that he has talked with everyone and does not see any sign of medical neglect. I explained that another concern is that he is being abused in other ways, since no one has heard from him in almost a week. He has agreed to go to their house, although he would not give me a date certain. I'm going to call him again towards the middle of next week. If he has not gone over, and we still have not had any type of contact from Carl or Drina, I will escalate this to the next level and speak to Tuy's supervisor.
>
> Later,
>
> C

NOT FICTION COPY

07222015:0813:P0175

**From:** Carole Brunsting
**To:** Amy; Anita; Candace Curtis
**Subject:** Re: Newest Developments
**Date:** Thursday, March 10, 2011 1:40:44 PM

After I get off work I am going to pick up Tino and go over to Carl's and see if I can get him out of there.

--- On **Thu, 3/10/11, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: Newest Developments
> To: "Amy" <at.home3@yahoo.com>, "Anita" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Thursday, March 10, 2011, 1:04 PM
>
> All --
>
> Please let me know if and when you want me to do something. I will call APS if you think it is appropriate. I guess we're all just waiting to see what happens. In some ways it might have been good to have the PI there when they leave the house to go to the doctor. If she's beating him and screeching at him all the way to the car, etc. we would have it on film to support our case. Maybe we can work this out to finally take over as Carl's guardian(s). Then, if she walks, we can get them divorced due to abandonment and she is out of the picture entirely. If he has enough brain function to call Mother a second time and ask for Marta's number, the light bulbs may be starting to come on in his head. My heart is breaking for him all over again.

07222015:0613:P0176

**From:** Anita Brunsting
**To:** "Amy Tschirhart"
**Cc:** "Carole Brunsting"; "Candace Curtis"
**Subject:** RE: Attorneys
**Date:** Thursday, March 17, 2011 8:58:52 AM

Talked to Warren Cole's firm ; am waiting on a call back from Burgower and Bosker (the one Vacek gave me).

Cole's rates: Initial consult: $750, hourly rate $500. He's been practicing for over 35 years. I talked to an associate and after I explained our situation, she said very confidently that he's seen everything and that this case would not be unusual to him. She even started rambling off some procedures that we'd probably have to start w/ - so I felt pretty good about this one - just don't know about the costs.

I've looked all of them up on the Internet, Bosker's only been practicing a little over 10 years, and he's not board cert in anything, so not sure about him - though his firm is family law.

Burgower looks good; she's been practicing since 1985 - family law; teaches at South Texas College of Law ; but I'm waiting on a call back.

**From:** Amy Tschirhart [mailto:at.home3@yahoo.com]
**Sent:** Wednesday, March 16, 2011 4:24 PM
**To:** Anita Brunsting
**Subject:** Attorneys

Hi Anita,
Here are the two names my attorney gave me. Both are certified Family Law Specialists.
Warren Cole 713-275-4444
Wendy Burgower 713-529-3982

Ken suggested calling Warren first. Is Carol going to contact the attorney or do you want me to? If I do it, I need to know when Carol is available to meet with him. I also would like a list of question from everyone so I can cover all the bases. If you or Carol contacts the attorney, please tell them that Ken Brazle (pronounced Brazz-ul) referred us to him.
Thanks,
Amy

07/22/2011 5:08:13 PM 7

From: Anita Brunsting
To: "Amy Tschirhart"; "Carole Brunsting"; "Candace Curtis"
Subject: more on attys and guardianship
Date: Thursday, March 17, 2011 2:13:29 PM

http://www.texasguardianship.org/guardianship.html

The link above is a good source of info if you haven't seen it yet.

I talked w/ Bret Bosker and he said we needed someone w/ experience in Probate Code, because Probate Court is where guardianship will be argued/decided. I gave him the 2 names of the attys Amy gave and he said they're both excellent (and expensive), but he said he was not sure as to their experience w/ guardianships/probate, but he said we could talked to them about that. He was also going to see if he could find me the name of an atty w/ direct probate experience. So it looks like we have to do 2 steps, 1st get guardianship and 2nd do the divorce if it comes to that. Unfortunately, if you read the website, the spouse is considered 1st in line for guardianship which is why it could be messy to sue for guardianship while they're still married. However, if she plans on divorcing him, then next of kin would be inline and that would be Marta - I think we could talk her out of it as she has expressed no interest in taking care of her father - so after Marta, it would be one of us.

I did tell him that everyone says getting guardianship is expensive, and I asked him "how much is considered expensive" $50,000 or a million? He said he couldn't answer that, but that the atty we went with should be able to give us an idea.

Still waiting to hear back from Cole and Burgower.

Anita

P14677

07222015:0813:P0178

**From:** Carole Brunsting
**To:** Anita Brunsting; Amy Tschirhart; Candace Curtis
**Subject:** Re: atty for guardianship
**Date:** Friday, March 18, 2011 11:58:47 AM

I think that Drina has always projected her own family issues onto ours. She was completely distanced from her own family until a year ago when her brother passed away and now she is talks about the relationship with her dad like they have been close forever which has not been the case.

She must have had some very bad things happen to her in her childhood and slowly but surely she twisted Carl's mind to go along with everything she did and said. I think you are right that this will have to play itself out to see what she does. She has been waiting for the day she and Carl get the "big" trust payout and then it will be see you later chumps!

--- On **Fri, 3/18/11, Candace Curtis <occurtis@sbcglobal.net>** wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: Re: atty for guardianship
> To: "Anita Brunsting" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>, "Amy Tschirhart" <at.home3@yahoo.com>
> Date: Friday, March 18, 2011, 1:49 PM
>
> The Brunsting family has never been very demonstrative of their love for one another, but I chalk that up to being Dutch. What I cannot seem to wrap my arms around is the extreme coldness of Drina and Marta. They have always been limp when hugged and hugging is one of the best things in the world. One power hug and all my cares fly out the window. I believe it must be a genetic brain chemical imbalance in Drina's family. She has spent her life with Carl trying to distance HIM from his family and turn him into a cold fish like her. How did she ever get pregnant in the first place? Maybe we should try to get some DNA from Marta and Carl and do a paternity test. Wouldn't it be something if he wasn't her father?????????? LOL
>
> Frankly, as long as the trust is safe, we should probably just let nature take its course and sooner or later we will get Carl out of their clutches and into ours. He might be pissed off for awhile, but I have some small faith that once he can reason better he will see that we only seek what is best for him in the long run BECAUSE WE LOVE HIM. Once he is able to reason and be reasoned with, and has regained some control of his life, if he chooses to go back to his moron wife and their moron spawn, I will mourn him as if he were dead. Until such time I will assume that, somehow, at some point in his recovery, he will realize how miserable the bitch has made his life. He might see that all she has ever cared about is money and how to avoid having to go out and earn some.
>
> If asked, Carl would probably say no to coming out here to live with us, even though it might be the very best thing for him. He should never feel like he has been "dumped" on anyone. I think he would have a lot more stimulation out here. He does love the Bay Area and after a short time he might gain some real incentive to

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get well.

---

**From:** Anita Brunsting <akbrunsting@suddenlink.net>
**To:** Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>; Amy Tschirhart <at.home3@yahoo.com>
**Sent:** Fri, March 18, 2011 8:59:24 AM
**Subject:** atty for guardianship

Ok, I think I may have found an atty who could handle the guardianship issue. She was recommended to me by the Burgower firm that Amy's lawyer had given her - the Burgower firm does not do guardianship cases. This atty's name is Ellen Yarrell; her offices are in the Galleria area; she charges an initial consult fee of $350 for 1 hr of her time, and probably requires an retainer of $2000. Her paralegal (Elizabeth) said that she's handled cases like this before (where an impaired person has been divorced by their spouse). I asked about the expense and she said that Yarrell could give us a better idea after the consult and it depends on whether the guardianship would be contested (so that depends on whether we fight Drina now, or wait to see if she'll divorce him and then we're facing Marta (if she pursues it)). I got the feeling that "expensive" meant more like $50,000 not $1 million.

I thought of another plus on our side if Drina divorces him - Drina will probably expect him to come live w/ mother - so if he's w/ us and not his daughter that lends more credence to our side for guardianship (possession is 9/10's of the law?).

I also talked to mom last night and told her what was going on. I asked her if she was ok w/ using her money to pay for Carl's legal fees and of course she said yes.

07222015:0613:P0160

**From:** Carole Brunsting
**To:** Amy; Anita; Candace Curtis
**Subject:** Re: Mentis
**Date:** Wednesday, April 27, 2011 7:24:00 PM

Drina confirmed that Carl is supposed to be going there on May 11th or 12th. Shamika took him to the driving range yesterday and he hit a bucket of balls and seemed to enjoy it. Tino and I may take him golfing on Friday. Carl is still not sleeping more that a few hours each night so maybe this place can fix that for him.

--- On **Wed, 4/27/11, Candace Curtis <occurtis@sbcglobal.net>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Mentis
To: "Amy" <at.home3@yahoo.com>, "Anita" <akbrunsting@suddenlink.net>, "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Wednesday, April 27, 2011, 1:14 PM

All --

I just finished reading the Mentis information on their website. WHAT A WONDERFUL PLACE. Reading about it brought tears to my eyes. This is the type of facility we have all been pushing for since Carl got out of TIRR. Carole, you even suggested that this is where TIRR recommended Carl go when he left there. If this is true, Drina did not and is NOT following orders. If that moron had hooked up with these people from the get go, she wouldn't be experiencing the meltdowns and Carl might be halfway to good as new. It would have saved the tremendous amount of money spent on caregivers. Once he is released from Mentis he most likely would be able to go home and live on his own, with or without the moron. He still has his family as support, despite all the water under the bridge today.

Please, please, please let me know if there is anything I can do to help get him in there. I will contact APS again if you can give me any new facts to report. If Carl could be evaluated by a real neuropsyche doctor and not the moron's own shrink, I believe the Mentis (or similar) recommendation would be reiterated and then, if she failed to follow doctor's orders AGAIN, we would have our evidence for APS.

Review of the previous APS fiasco leads me to believe that Drina was following doctor's orders of the doctors SHE chose for Carl - none of which were appropriate for his situation. He should have his own personal neurologist/psychiatrist who would have been seeing him regularly, in or out of a facility. With the moron sailing the ship Carl has been denied even basic medical care.

Amy and I talked about me kidnapping Carl and bringing him home with me. As silly as this sounds, it is still an option. I am sure there are equitable facilities here in California. The difficulty would be getting the insurance information out of the moron and keeping me out of prison. The moron is the one who should be in prison - seriously. If the homeless woman who used her friend's address to put her child in a good school gets 20 years in prison and a $1,000 fine, it will be a travesty of justice. I have no doubt this will happen, so how is it that the moron can get away with real

crimes against her husband, that may ultimately cause his demise, and not have to answer for it in court?

C

07/22/2015 09:13 PO182

# Exhibit 7

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**From:** Marta Brunsting <sweetpaige2083@yahoo.com>
**To:** Candace Curtis <ccurtis@erscorp.us>
**Sent:** Thu, January 13, 2011 3:01:30 PM
**Subject:** Re: Your Dad

Dad has seen several doctors the past couple months, including the Chief of Neurology and Chief of Rehab at St. Luke's hospital. The Chief of Rehab has written an order for him to attend outpatient therapy. Mom is following up on that now and he will go as soon as insurance approves it. He is gaining weight, sleeping better and his anti-depressant seems to be helping his outlook on things. He also has an appointment to see a psychiatrist that was recommended by both of the doctors at St. Luke's.

His condition is very complex and changes constantly. This has been the worst 6 months of our lives and we are mourning a living man who was our father and husband. He has improved, but this has been and continues to be a slow and very painful process.

There is no simple solution to this. He claims while at his stay at TIRR, (which is supposed to be one of the best rehab hospitals in the country), that he was abused by the night staff. Of course, they denied any mistreatment that and we had no actual proof. While at TIRR, he got hooked on prescription medications, didn't sleep at night and had hospital aquired infections one right after the other.

He will not be staying with your mother any longer. He is coming home and HIS FAMILY will figure out what next steps we need to take to get him better.

I find it hard to believe that any of you actually care about his welfare. All this family knows how to do is gossip, back-stab and conspire against one another. It is all completely sick and dysfuctional. Someone called Adult Protective Services on my mother and I don't doubt that it was one of your sisters. Anita called CPS on Amy years ago because she felt she was an unfit mother. If it were not for my dad telling Anita that she had made a terrible mistake, Amy might not have her kids. To my knowledge, Amy is not even aware of this.

You have not been down here for any of his recovery.

You have not spent endless hours with him in ICU and the hospital.

You have not witnessed the change in his mental & physical state as well as his personality.

COPY

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No one wants him back more than my mom and I.

I am not answering any more emails or phone calls. This is harassment.

--- On **Wed, 1/12/11, Candace Curtis** *<ccurtis@erscorp.us>* wrote:

From: Candace Curtis <ccurtis@erscorp.us>
Subject: Your Dad
*To: sweetpaige2083@yahoo.com*
Date: Wednesday, January 12, 2011, 5:25 PM

Dear Marta,Happy New Year! I hope you, Ryan and your beautiful daughter are doingwell. All of the California clan are looking forward to a great 2011.Being so far away from the situation with Carl has its advantages anddisadvantages. I only know what people tell me and what I can gather fromthe brief, infrequent, phone conversations I have with Carl. I am sick todeath by what I have been hearing since Carl was stricken with encephalitisMORE THAN 6 MONTHS AGO.My concern stems from the fact that Carl is not receiving the care andrehabilitation he needs to get his life back. He is floundering, literallyand figuratively, and NO ONE seems to have the time, energy, or wherewithalto make the next phase of rehabilitation happen. Carl cannot do it alone,even if he wants to, which apparently he doesn't. Consequently, he needs to be in a facility, RIGHT NOW. The longer he goes without aneuropsychological evaluation and proactive rehabilitation and therapy, theharder it will be for him to recover his brain function.I care very deeply about my only brother and find that I can no longer juststand by and wait for someone to move forward in getting him the help he sodesperately needs. Unfortunately, without a court order, my hands are tied.In my very narrow view, it appears that the rest of the family, *includingyour Mother, cares only about money and how others live their lives.*I WANT MY BROTHER BACK. I WANT YOU TO HAVE YOUR FATHER BACK. I WANT HALEYTO BE ABLE TO ENJOY HER GRANDPA. I WANT YOUR MOTHER TO HAVE HER HUSBANDBACK.I WANT YOU TO HELP ME MAKE IT HAPPEN. PLEASE.I know you are busy with work, home, and family. I've been there and donethat - twice. I'm only asking for your support in my efforts to get Carl ontrack to recovery. Carl's future and well-being is ALL that matters to meand I will do whatever it takes to get him backIXOXO,Aunt CandyCandace L. CurtisProject AdministratorERS Corp1600 Riviera Avenue, Suite 310Walnut Creek, CA 94596TEL: (925) 938-1600 x 100CELL: (925) 759-9020FAX: (925) 938-1610 ccurtis@erscorp.us

AGO EXHIBIT

# EXHIBIT 9

No. 412,249

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

## REPORT OF TEMPORARY ADMINISTRATOR PENDING CONTEST

On July 24, 2015 an Order of this Court, signed by Judge Christine Butts on July 23, 2015, was filed in the above styled and numbered case. In this Order the Court stated that Greg Lester was appointed Temporary Administrator Pending Contest of this estate. The Court directed that Greg Lester will report to the Court regarding the merits of the claims in this case on or before the expiration of this Order. The Order will expire on or about January 20, 2016, which is 180 days after the date that the Order was signed.

## BACKGROUND

### The Brunsting Family

Nelva and Elmer Brunsting were married and had five (5) children: Candace Louise Curtis (" Candace"), Carol Ann Brunsting (" Carol"), Carl Henry Brunsting ("Carl"), Amy Ruth Tschirhart ("Amy") and Anita Kay Riley ("Anita").

### The Brunsting Family Living Trust

Elmer Brunsting and Nelva Brunsting ( herein referred to as "Settlors") created the Brunsting Family Living Trust (the "Trust") on October 10, 1996. The Trust was subsequently restated in its entirety on January 12, 2005. A copy of the Restatement of the Brunsting Family Living Trust ("Restatement") is attached hereto as the first exhibit.

The Trust could be amended during the lifetime of the original Settlors. However, once a Settlor dies, the Trust could not be amended except by court order.

Each Settlor could provide for a different disposition of their share of the Trust by executing a qualified beneficiary designation for that person's share alone.

**Trustees of the Brunsting Family Living Trust**

The initial trustees of the Trust were Elmer Brunsting and Nelva Brunsting. The Restatement provided that if both original Co-Trustees failed or ceased to serve, then Carl Henry Brunsting and Amy Ruth Tschirhart would serve as Co-Trustees.

Each original Trustee has the right to appoint successor trustees to serve in the event the original Trustee ceases to serve by death, disability, or for any reason, and may specify any conditions on the succession and service as may be permitted by law. The Restatement also provided that the original Trustees may each remove any trustee they have individually named as their respective successor.

On September 6, 2007, a First Amendment to the Restatement to the Brunsting Family Living Trust was executed by Settlors which changed the succession of successor trustees, a copy of which is attached hereto as the second exhibit. This document appointed Carl Henry Brunsting and Candace Louise Curtis as successor co-trustees if both original Trustees fail or cease to serve. If either Carl Henry Brunsting or Candace Louise Curtis should fail or cease to serve, then the remaining successor trustee would serve alone. If neither successor co-trustee is able or willing to serve, then The Frost National Bank shall serve as the sole successor trustee. The First Amendment effectively removed Amy Ruth Tschirhart as the successor co-trustee and substituted Candace Louise Curtis in her place and stead.

Elmer Brunsting died on April 1, 2009, and after her husband's death, Nelva Brunsting served alone as the original trustee.

On December 21, 2010, Nelva Brunsting exercised her right to designate a successor trustee. Nelva Brunsting executed an Appointment of Successor Trustee, a copy of which is attached hereto as the third exhibit. The Appointment of Successor Trustee stated that if Nelva Brunsting resigned as Trustee, then Anita Kay Brunsting would serve as successor trustee, Amy Ruth Tschirhart would serve as the second successor, and The Frost National Bank as the third successor. If Nelva Brunsting fails or ceases to serve as trustee because of her death or disability, then Anita Kay Brunsting and Amy Ruth Tschirhart would serve as successor co-trustees.

On the same date, on December 21, 2010, Nelva Brunsting also exercised her right to resign as Trustee. Specifically, Nelva Brunsting resigned as Trustee of the Trust, the Nelva Brunsting Survivor's Trust and Elmer Brunsting's Decedent's Trust and appointed Anita Kay Brunsting as trustee of the aforementioned Trusts.

**Split of Brunsting Family Living Trust into the Survivor's Trust and the Decedent's Trust**

After Elmer Brunsting's death on April 1, 2009, the Trust split into two trusts—the Nelva Brunsting Survivor's Trust (the "Survivor's Trust") and the Elmer Brunsting Decedent's Trust

(the "Decedent's Trust"). Nelva Brunsting, as the original Trustee, served as Trustee over both the Survivor's and Decedent's Trusts.

There is no power of appointment related to the Trust which was exercised by Elmer Brunsting prior to his death on April 1, 2009.

Pursuant to the Restatement, the beneficiary of the Survivor's Trust, Nelva Brunsting, had an unlimited and unrestricted general power of appointment over the entire principal and any accrued but undistributed income of the Survivor's Trust. This general power of appointment was very broad, and granted the survivor the power to appoint the Survivor's Trust to anyone, outright or in trust, in equal or unequal proportions.

The Decedent's Trust would terminate at the surviving Settlor's death or on the death of Nelva Brunsting. Pursuant to the Restatement, the survivor had a limited testamentary power of appointment to appoint the undistributed principal and income to the descendants of the Settlors only. While Nelva Brunsting (as the surviving Settlor) was restricted to only appointing the assets to her descendants, the assets of the Decedent's Trust could be appointed by Nelva Brunsting (as the surviving Settlor) to her descendants in any proportion and on terms and conditions as the survivor elects.

**Nelva Brunsting's June 15, 2010 Qualified Beneficiary Designation and Exercise of Power of Appointment**

On June 15, 2010, Nelva Brunsting executed a Qualified Beneficiary Designation and Exercise of Power of Appointment under Living Trust Agreement, a copy of which is attached hereto as the fourth exhibit. This document exercised Nelva Brunsting's general power of appointment over the Survivor's Trust and her limited power of appointment over the Decedent's Trust.

Specifically, Nelva Brunsting's exercise appointed the Survivor's Trust and Decedent's Trust to be distributed equally among Nelva and Elmer Brunsting's five (5) children: Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley. This document also expressed Nelva Brunsting's intent that upon the death of Nelva Brunsting, any funds advanced to Nelva Brunsting's descendants would be deducted from that particular descendant's share of assets received from the Survivor's Trust and Decedent's Trust.

**Nelva Brunsting's August 25, 2010 Qualified Beneficiary Designation and Exercise of Power of Appointment**

On August 25, 2010, Nelva Brunsting executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement, a copy of which is attached hereto as the fifth exhibit. This document appears to have superseded the June 15,

2010 Qualified Beneficiary Designation and Exercise of Power of Appointment under Living Trust Agreement.

In this document, Nelva Brunsting exercised her general power of appointment over the Survivor's Trust and her limited power of appointment over the Decedent's Trust. The document stated that the Trustee would pay the balance of both the Survivor's and Decedent's Trust equally to each of her five (5) children: Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley, and such assets would be held in a separate Personal Asset Trust for the benefit of each of her children. With the exception of Carl and Candace, each descendant would be the trustee of their own Personal Asset Trust. Specifically, Amy Ruth Tschirhart, Anita Kay Brunsting and Carol Ann Brunsting would each be the trustee of their own Personal Asset Trust. Anita Kay Riley and Amy Ruth Tschirhart were appointed the co-trustees of the Personal Asset Trust for Carl Henry Brunsting and the Personal Asset Trust for Candace Louise Curtis. The document also detailed the administrative provisions relating to the Personal Asset Trusts for Nelva and Elmer Brunsting's descendants.

The major change that resulted from the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement was that Carl Henry Brunsting and Candace Louis Curtis could not elect to be the individual trustee of their own Personal Asset Trusts. The August 25, 2010 document also provided different administrative provisions for the trusts created for the descendants than those provided under Article X of the Restatement.

Notably, the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement contained a no contest clause which provided a lengthy list of prohibited actions that would fall under such no contest clause. The no contest clause provided that any beneficiary who took such prohibited actions would forfeit their share and be treated as if they predeceased Nelva and Elmer Brunsting.

**The Death of Nelva Brunsting**

Nelva Brunsting died on November 11, 2011, and the Survivor's Trust and Decedent's Trust terminated and were to pass to the Personal Asset Trusts for Candace Louise Curtis, Carol Ann Brunsting, Carl Henry Brunsting, Amy Ruth Tschirhart and Anita Kay Riley. As detailed above, these Personal Asset Trusts were created pursuant to Nelva Brunsting's August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement.

## CLAIMS

### The Probate Court Claims Filed by Carl Henry Brunsting and Candace Louise Curtis

Carl Henry Brunsting and Candace Louise Curtis have filed claims against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting in the Estate of Nelva E. Brunsting, Deceased, pending in Harris County Probate Court Number Four (4) under Cause Number 412,249 (hereinafter referred to as the "Probate Court Claims").

Carl Henry Brunsting and Candace Louise Curtis' Probate Court Claims are twofold. First, individual tort claims have been asserted against Anita Kay Brunsting, Amy Ruth Brunsting (previously Tschirhart) and Carole Ann Brunsting for actions taken either in their fiduciary capacity or purported actions taken which have harmed Carl and Candace. The second category of Carl and Candace's Probate Court Claims relate to requests for declaratory relief in construing the Brunsting Family Living Trust.

The Probate Court Claims that include individual tort claims against Anita Kay Brunsting, Amy Ruth Brunsting and Carole Ann Brunsting contain multiple questions of fact, which are within the province of the jury. Specifically, Carl Henry Brunsting asserted the following tort claims:

1. Breach of fiduciary duty
2. Conversion
3. Tortious interference with inheritance rights
4. Constructive Trust over Trust assets
5. Fraud, specifically, misrepresentation of facts to Decedent (it is questionable whether Carl and Candace have standing to pursue these claims)
6. Civil Conspiracy
7. Demand for accounting of the Trusts and non-probate accounts
8. Liability of Anita Kay Brunsting, Amy Ruth Brunsting and Carole Ann Brunsting under Texas Property Code § 114.031
9. Removal of Trustees
10. Request for Receivership

The Probate Court Claims asserted by Candace Louise Curtis are as follows:

1. Breach of fiduciary duty
2. Fraud resulting from misrepresentation of material facts to Candace
3. Constructive fraud
4. Money had and received
5. Conversion
6. Tortious interference with inheritance rights
7. Unjust enrichment

8. Civil Conspiracy
9. Demand for accounting of the Trusts and non-probate accounts

As a result of the above Probate Court Claims containing questions of fact within the province of the jury, the Temporary Administrator has refrained from evaluating such claims.

The questions of law presented in both Carl Henry Brunsting and Candace Louise Curtis' requests for declaratory relief contained in the Probate Court Claims are as follows:

1. Was Nelva Brunsting's December 21, 2010 Resignation of Original Trustee and Appointment of Successor Trustee valid?

2. Were the June 15, 2010 and August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement an inappropriate alteration of the terms of the Trust?

3. Did the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement appoint all of the Trust property?

4. Did the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement revoke the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement?

5. Is the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement effective?

6. Do the pleadings filed by Carl and Candace violate the No Contest Clause and is the No Contest Clause void as against public policy?

Based on the powers granted to Nelva Brunsting in the Restatement, Nelva Brunsting appears to have appropriately exercised her right to resign as the original Trustee of the Trust on December 21, 2010, and appointed the successor trustee, Anita Kay Brunsting.

While the Restatement provided that the Trust could not be amended after the death of Nelva or Elmer Brunsting, this did not preclude Nelva Brunsting from exercising her general and limited power of appointments over the Survivor's Trust and Decedent's Trust. Specifically, it appears that Nelva Brunsting appropriately exercised her general power of appointment over the Survivor's Trust and her limited power of appointment over Decedent's Trust by appointing the assets to her five (5) children in trust by and through the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. The August 25, 2010 document appears to have superseded and replaced the June 15, 2010 Qualified Beneficiary

Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. The Restatement granted Nelva Brunsting the power to appoint such assets in trust and place terms and conditions upon such assets as she desired, including her choice to designate trustees of the Personal Asset Trust of Carl Henry Brunsting and Candace Louise Curtis.

## NO CONTEST CLAUSE PROVISIONS

Any claim by Carl Henry Brunsting and Candace Louise Curtis that Nelva Brunsting lacked capacity and/or was subject to undue influence when she executed the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement are questions of fact that are within the province of the jury. However, the no contest clauses in the Qualified Beneficiary Designation and in the Restatement must be considered.

Section "A." of "MISCELLANEOUS PROVISIONS" of the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement is a no contest clause that would disinherit any person who, among other things, makes the claims stated above. The provisions of this no contest clause include language that the no contest clause applies even if a court finds that the judicial proceedings in question originated in good faith and with probable cause. This Court will have to rule on the validity of this provision.

Article XI, Section C., of the Restatement is also a no contest provision. The provisions of this no contest clause are similar in result to those stated above in the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement. Therefore, a successful claim that Nelva Brunsting lacked capacity would still be subject to the no contest provisions of the Restatement. In this event the Court would have to rule on the validity of this provision of the Restatement. In both documents the provision is well written.

A decision by the Court upholding either no contest provision might resolve all other issues.

### The Lawsuit of Carl Henry Brunsting in the District Court Proceeding

Carl Henry Brunsting, in his capacity as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting, filed claims against Defendants Candace L. Kunz-Freed, Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC (collectively the "Defendants"). These claims of Carl Henry Brunsting were filed in the 164th District Court of Harris County, Texas (hereinafter referred to as the "District Court Claims").

Carl Henry Brunsting asserted the following District Court Claims against Defendants in his live pleading, Plaintiff's Third Amended Petition:

1. Negligence
2. Negligent misrepresentation
3. Breach of fiduciary duty
4. Aiding and abetting

5. Fraud
6. Conspiracy
7. Deceptive Trade Practices Act ("DTPA") violations

Carl Henry Brunsting also pled tolling, fraudulent concealment and the discovery rule. Carl Henry Brunsting sought damages of actual damages, forfeiture of fees, treble damages and punitive damages, in addition to his attorney's fees.

Carl Henry Brunsting's District Court Claims center around the changes Nelva Brunsting made by and through the June 15, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement and the August 25, 2010 Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement.

In response to Plaintiff's District Court Claims, Defendants filed a Motion for Traditional and No–Evidence Summary Judgment on the following bases:

1. Carl Henry Brunsting improperly fractured his legal malpractice claims against Defendants;
2. Carl Henry Brunsting's DTPA claim is barred by the professional services exemption; and
3. Carl Henry Brunsting's negligent misrepresentation claim and DTPA claim fail because Carl Henry Brunsting admits he is not aware of any misrepresentations made by Defendants.

Defendants also moved for a No-Evidence Summary Judgment on the basis that Carl Henry Brunsting has no evidence supporting one or more of the elements on the claims he has asserted.

A Notice of Vacancy of Party and Motion to Abate Proceeding was filed by counsel for Carl Henry Brunsting. Carl Henry Brunsting has filed a resignation as executor of the aforementioned estates. Until a successor executor is appointed, there is no plaintiff to pursue the action against Defendants and no plaintiff to respond to Defendants' summary judgment motions. The issue of who will serve as the successor executor of the Estate of Nelva E. Brunsting and the Estate of Elmer Brunsting must be resolved prior to resolving the claims against Defendants.

A Motion to transfer the district court matter to the probate court where both estates are pending has also been filed, but not yet ruled upon.

## DAMAGES

Actual damages, of course, are disputed. However, the actual distributions from the Trust after Nelva resigned until shortly after she died seemed to be reasonably well documented. Previously an independent investigation resulted in a listing of the payments made from the trust.

This **REPORT OF MASTER** that was prepared in the case filed in the Southern District of Texas federal court case has the details of the Trust's income, expenses and distributions of stock. A copy of this report is attached hereto as the sixth exhibit.

From this and from changes in the assets of the trust during the period in question the damages can be determined and are basically in three categories.

Transfers of Stock

2,765 shares of Exxon Mobil stock were transferred as follows:

| | | |
|---|---|---|
| | 1, 120 | Amy |
| | 160 | Anita |
| | 160 | Candace |
| | 1, 325 | Carol |
| TOTAL | 2,765 | |

675 shares of Chevron stock were transferred as follows:

| | | |
|---|---|---|
| | 135 | Anita |
| | 135 | Amy's daughter |
| | 135 | Amy's son |
| | 135 | Anita's daughter |
| | 135 | Anita's son |
| TOTAL | 675 | |

It is easy to see that these distributions of stock were not evenly distributed to the five siblings. I have been told that the distributions were in fact early distributions of the recipients share from their future trusts. This could be resolved by giving those siblings that did not receive an equal amount at the time of the distributions an equivalent amount of money to settle the dispute. Of course the issue is further complicated by the fact that the value of the two stocks has changed since the time of the distributions. The proper way to determine the amount to be distributed might be to use the value of the stock on the date of the original distributions or the value on the date that money is paid to the damage sibling, whichever is greater.

Payments To/For Family

Approximately $108,000 were paid to or for the benefit of Amy, Anita and Carol or disputed expenses including approximately $41,000 of trustees' fees and approximately $36,000 of legal fees.

Payments To Carol for Nelva's Care

Approximately $160,000 was paid to Carol during the period in question. I was told that Carol was the primary sibling responsible for Nelva's care.

## SUMMARY OF DAMAGES

It seems unwise to have made the stock distributions. However, this can be resolved by equalizing the distributions to all the siblings. The issue of trustees' fees can be resolved by comparing the fees to those that are considered as reasonable fees in similar circumstances. The legal fees are obviously justified and will surely increase. The amounts paid to Carol can be examined but should be liberally considered as attributed to Nelva's care and maintenance.

## CONCLUSIONS

All of the legal actions taken by Nelva were within her authority under the broad provisions of the Restatement. Unless Nelva is found to have been incompetent at the time that her legal actions were taken all of the changes made in these documents apply in these proceedings.

If Nelva was incompetent at the time that she took these legal actions then a successor trustee would have been appointed under the terms of the Restatement. No claim of her being incompetent was made at that time.

Furthermore, if Nelva had been incompetent the plaintiff in the District Court case would likely have to show that the defendants knew that she was incompetent. For this and other reasons the case should be moved to the Probate Court.

There are damages for the unequal distribution of the shares of Exxon Mobil and Chevron stock. There may be damages for some of the expenditures for trustees' fees and for payments to Carol. These matters should be resolved by agreement. This may require mediation. The considerable legal fees involved in a trial far outweigh the expenses of a mediation and any compromises made by the parties at the mediation.

## RECOMMENDATIONS

1. Remove the District Court case to the Probate Court. It is important that there not be different results for the same or similar issues that are in the cases currently in the Probate Court.
2. Require mediation. Point out the huge savings that will result from a mediation versus a trial. Possibly, inform the parties that the Court will rule on the no contest clause first if the matter is not settled in the mediation. Since this ruling could go either way both sides would have considerable incentive to settle. A ruling in favor of the no contest clause would essentially make the matters moot and the plaintiffs would take nothing and lose their inheritance.

# EXHIBIT 10

DATA-ENTRY
PICK UP THIS DATE

FILED
7/23/2015 3:31:56 PM
Stan Stanart
County Clerk
Harris County

07242015 : 141 : P0056

NO. 412.249-401

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

| | | |
|---|---|---|
| CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting | § | IN PROBATE COURT |
| 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 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 | § | NUMBER FOUR (4) OF |
| | § | HARRIS COUNTY, TEXAS |

**NOTICE OF ORAL HEARING**

07/24/2015 14:11:P0057

PLEASE TAKE NOTICE that a hearing on Carl Henry Brunsting's Motion for Protective Order has been set in the above-referenced matter on August 3, 2015 at 11:00 a.m. in Harris County Probate Court Number Four (4).

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless
*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 Drina Brunsting, attorney-in-fact for Carl Henry Brunsting*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 23rd day of July, 2015, as follows:

Bradley Featherston
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
*via Telecopier*

Stephen A. Mendel
Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
*via Telecopier*

Darlene Payne Smith
Lori A. Walsh
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, Texas 77010
*via Telecopier*

Candace Curtis, *Pro Se*
218 Landana St.
American Canyon, California 94503
*via Email*

/s/ Bobbie G. Bayless
BOBBIE G. BAYLESS

DO NOT REMOVE

# EXHIBIT 11

NO. 412,249-401

| | | |
|---|---|---|
| **CANDACE LOUISE CURTIS** | § | **IN PROBATE COURT** |
| | § | |
| *Plaintiff,* | § | |
| | § | |
| **V.** | § | **NUMBER FOUR (4) OF** |
| | § | |
| **ANITA KAY BRUNSTING, ET AL** | § | |
| | § | |
| *Defendants.* | § | **HARRIS COUNTY, TEXAS** |

**PLAINTIFF CURTIS' RESPONSE TO DEFENDANTS' NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION AND DEMAND TO PRODUCE EVIDENCE PURSUANT TO EVIDENCE CODES §§1002, 1003**

TO THE HONORABLE PROBATE COURT:

Plaintiff Candace Louise Curtis (Curtis) brings her response to the No-Evidence Motion for Partial Summary Judgment filed jointly by Defendants Anita Brunsting and Amy Brunsting, and will respectfully show that more than a scintilla of evidence exists as to a genuine issue of material fact relating to the existence, authenticity, and validity of an instrument referred to as the 8/25/10 QBD, as hereinafter more fully appears.

## TRUST CHRONOLOGY

In 1996 Elmer Brunsting and his wife Nelva Brunsting created The Brunsting Family Living Trust for their benefit and for the benefit of their 5 children (The Trust).

In 2005 Elmer and Nelva restated their trust, completely replacing the original 1996 trust (Restatement).

In 2007 the first and only Amendment to "The Trust" was signed by both Elmer and Nelva, and replaced Amy with Candace as successor co-trustee with Carl (Amendment).

Allegedly, an Appointment of Successor Trustees was executed July 1, 2008 appointing Anita as successor co-trustee with Carl. (7/1/08 AST)

The Brunsting Family Living Trust became irrevocable at the death of Elmer Brunsting on April 1, 2009, pursuant to Article III (B) of the Restatement, and could only be amended by a court of competent jurisdiction.

Upon the death of Elmer on April 1, 2009, The Elmer H. Brunsting Decedent's Trust (DT) was created as an irrevocable trust pursuant to Article III (B) and Article VII (A) of the Restatement, and could only be amended by a court of competent jurisdiction.

Also upon the death of Elmer on April 1, 2009, the Nelva E. Brunsting Survivor's Trust (ST) was created. The ST was revocable and amendable, pursuant to Article III Section (B) and Article VII Section (B)(1) of the Restatement.

On June 15, 2010, a "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", was introduced (6/15/10 QBD).

On August 25, 2010, a "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", was introduced (8/25/10 QBD).

Upon the death of Nelva, all of the aforementioned Trusts were to terminate, resulting in the creation of five equal (5) Personal Asset Trusts (PAT), one for each beneficiary.

**OBJECTION NO. 1 ASSUMING FACTS - BEST EVIDENCE REQUIRED**
**MOTION PURSUANT TO EVIDENCE CODES §§1002, 1003**

There are legitimate questions regarding the existence and authenticity of the 8/25/2010 QBD instrument, as hereinafter more fully appears. Plaintiff Curtis objects to Defendants assuming facts not in evidence, and objects to Defendants' improper attempts at shifting the burden of bringing forth evidence onto Plaintiff(s).

Plaintiff Curtis further objects to the introduction of alleged copies and, therefore, pursuant to Evidence Code §§1002 & 1003, Plaintiff demands Defendants produce only the 8/25/2010 QBD actually signed by Nelva Brunsting, and herein moves the Court for an order that only the original instrument with the wet signed signature page be allowed in evidence on the following ground.

**The Allegation of No-Evidence**

Defendants' "Joint No-Evidence Motion for Partial Summary Judgment" alleges five (5) blanket no-evidence claims, without reference to a particular petition brought by a particular claimant. Defendants are clearly using the petition brought by Carl Brunsting as Executor of the Estate of Nelva Brunsting, and not the petition brought by Plaintiff Curtis, and do not distinguish although the petitions are plainly distinguishable. Defendants' no-evidence claims are:

1. Nelva's signature on the 8/25/10 QBD was forged.
2. Nelva lacked capacity when she executed the 8/25/10 QBD.
3. Nelva was unduly influenced into executing the 8/25/10 QBD.
4. Nelva was fraudulently induced into executing the 8/25/10 QBD.
5. Nelva executed the 8/25/10 QBD under duress.

Inherent in the first assertion is the notion that Nelva did not sign the 8/25/2010 instrument, while the subsequent assertions are based upon a presumption that Nelva Brunsting did sign the 8/25/2010 instrument, but that the signature was somehow obtained improperly.

Plaintiff Curtis has two pending petitions for declaratory judgement. Only one petition refers to the 8/25/2010 QBD, and it raises ground upon which the 8/25/2010 QBD fails that are not addressed in Defendants' joint motion and, thus, are beyond the scope of this response. However, based upon the five specific no evidence challenges presented, it necessarily follows that the rudimentary division in these 5 contentions is but twofold:

1. Nelva did not sign the 8/25/2010 instrument
2. Nelva signed the 8/25/2010 instrument

If one chooses to believe that Nelva did not sign the instrument, the questions begin with how did the likeness of Nelva's signature and Freed's signature and notary stamp find their way to these papers?[1] A plethora of further inquiries would necessarily follow.

If, on the other hand, one chooses to believe that Nelva did sign the instrument, the subdivisions of inquiry are again twofold:

1. Nelva signed the 8/25/2010 instrument knowledgeably and intentionally
2. Nelva signed the 8/25/2010 instrument, but did so under some form of duress, deception, mistake, or diminished capacity.

Defendants seek to shift the burden onto Plaintiff(s) to prematurely prove the secondary aspects related to the "assumed fact" that Nelva signed the instrument, while at the same time Defendants' motion is quick to say:

> *"There is no evidence that Anita and/or Amy were present when Nelva executed the 8/25/10 QBD."*

[1] The term "these" is plural and was purposely selected as will be shown.

There is also no evidence in the record that suggests Plaintiff Curtis or Plaintiff Brunsting were present when Nelva allegedly executed the 8/25/10 QBD. There is no evidence that Defendant Carole Brunsting was present when Nelva executed the 8/25/10 QBD.

**Did Nelva Sign the 8/25/2010 Instrument with Knowledge and Intent?**

Defendants insist the 8/25/2010 QBD is valid, but admit they have no personal knowledge of its creation or execution, so what exactly do we know?

Emails attached to Plaintiff's federal petition and affidavit show Plaintiff telling Defendant Carole Brunsting she spoke to their Mother on the phone the day after the October 25, 2010 phone conference[2], and asked about this August 25, 2010 QBD and what it purports, and that Nelva insisted she did no such thing. Nelva followed that conversation with a hand written note regarding Amy and Anita's claims of being co-trustees for the Plaintiffs' Personal Asset Trusts saying "not true". (Exhibit A)[3]

Nelva's hand written notecard states:

> *"So I heard you were concerned that any money you receive after I 'leave this mortal coil' will be put in a trust and Anita would have to deal it out.*
>
> *This not true. You'll will get whatever share is yours. If you don't know how to manage money by now it's too late."*

**Substantial Evidence is Already Before the Court**

The Record clearly shows 3 distinctly different "true and correct copies" of the 8/25/2010 QBD, all bearing the likeness of a Nelva signature, a Candace Freed signature and the image of Freed's notary seal, but the three "true and correct copies" do not share the same image of Nelva's signature.

1. In Anita's 156 page objection filed December 5, 2014 the QBD appears at pdf pages 96 through 132 with signature page 37 at p132 bearing bates stamp P229. (Exhibit B_1)
2. In Carole's 133 page objection filed Feb. 17, 2015 the QBD appears at pdf pages 97 through 133 with signature page 37 appearing at p133 bearing Bates stamp P192. (Exhibit B_2)

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[2] Affidavit attached to Curtis original federal complaint Exhibit P-8 filed with this court 02102015:1527:P0074

[3] This exhibit was attached to the petition filed in the federal court on February 27, 2012 as Plaintiff Exhibit 16 made a part of the record of this court Feb. 9, 2015 at pages 66 & 67 in Document #BT-2015-45555

3. Curtis original federal court complaint, affidavit and exhibits were made a part of the probate court record on February 9, 2015. In the 601 page pdf document the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" (QBD) appears at pdf pages 552 through 588 with signature page 37 at p588. (Exhibit B_3)

Plaintiff Curtis obtained Candace Freed's notary logs for August 25, 2010 (Exhibit C). These pages show a notary log book that does not conform to Tex. Gov't Code §406.014.

Based upon the obvious inability of the Defendants to agree as to what "version" of this mysterious 8/25/2010 QBD is the one "true and correct" version, and given that none of them claim personal knowledge of its creation or signing, and given that the notary logs are unusual and no certifiable copy of an "original" 8/25/2010 QBD has been introduced into evidence, certainly there are genuine questions raised as to a material fact regarding the instrument.

It would necessarily follow that questions surrounding the existence of the instrument would precede ancillary inquiries into the validity of the instrument's authenticity, precede questions addressing the improper purposes the instrument attempts to accomplish, precede inquiries into the opacities created from the instrument's attempted amalgamation of incompatible powers, and precede any discussion of the instrument's attempt to improperly merge incompatible trusts.

**Defendants' Background Statement**

Defendants' Motion seeks to mischaracterize the breach of fiduciary and conspiracy to steal the family inheritance suits as merely a "family dispute". These suits are more properly characterized under the civil law and the laws of equity as fiduciary relationship actions. The questions surrounding Defendants' actions would also seem to invoke Texas Penal Code considerations, and the fact that Plaintiffs and Defendants are siblings is a secondary premise, having no immediate evidentiary value.

Defendants' Motion relates the first background part as:

> *"Elmer and Nelva created the Brunsting Family Living Trust on or about October 10, 1996. The trust was restated on January 12, 2005 (the "Family Trust") Elmer and Nelva served as trustees of the Family Trust until 2008, when Elmer lost the ability to handle his financial affairs and Nelva served as trustee alone. In 2008, Nelva appointed Carl and Anita to serve as successor co-trustees"*

Defendants are asking the Court to assume facts that are not in evidence and consistently skip from the 2005 restatement to some other place in time. In this instance they skip to the alleged July 1, 2008 appointment (Exhibit D), never once having mentioned the 2007 Amendment. (Exhibit E)

**The July 1, 2008 Appointment of Successor Trustees**

Defendants' Motion claims:

> *"This litigation started more than thirty-eight (38) months ago. Plaintiffs had sufficient time for discovery in this suit and the three (3) other actions related to the 8/25/10 QBD".*

The disclosure CD received from the Defendants at the federal injunction hearing April 9, 2013 (more than a year after the federal suit was filed) contained Bates #'s BRUNSTING000001 - BRUNSTING 004922. Defendants claimed they had disclosed and accounted for everything, while Plaintiff continued to allege that known assets of the trust remained unaccounted for, and that true and correct copies of all trust documents in Defendants' possession had not yet been disclosed.

Normally 38 months would be more than ample time for litigants to exchange disclosures and discovery. Despite the fact that Anita's June 4, 2015 interrogatory replies claim it had already been disclosed, it was not until June 25, 2015, the day before Defendants' no-evidence motion was filed, that the Defendants finally responded to Plaintiff's continued requests for disclosure of the alleged 2008 appointment instrument. Defendants even rely on the instrument to assert at page 2 of their Motion:

> *"In 2008, Nelva appointed Carl and Anita to serve as successor co-trustees."*

The claim that Nelva appointed Anita to serve as successor co-trustee with Carl in 2008 is a fact question in dispute, as under the terms of the 2005 Restatement Nelva held no such power. Nelva's power to remove trustees was limited to those she had individually selected. (See Article IV Page 4-2 (Bates P240) Attached as Exhibit F).

**De jure, De facto, or Usurper?**

In the 2007 Amendment Amy was removed as a successor co-trustee with Carl and replaced by Candace. If Carl or Candace failed to serve the alternate was to be Frost Bank.

Prior to making that change Nelva emailed Candace asking if she would be willing to serve as co-trustee with Carl stating that she thought Candace had a better relationship with her siblings. (Exhibit G)

The 2007 Amendment was the first and only amendment to the trust signed by both Elmer and Nelva Brunsting. After the incapacitation or death of one of the founders, the trust could only be amended by a court of competent jurisdiction. The July 1, 2008 instrument was only signed by Nelva, clearly indicates that Elmer was incompetent, and therefore is invalid.

The trustees for the irrevocable decedent's trust at the death of Elmer Brunsting would be those named by both Elmer and Nelva in the 2007 Amendment to the family Trust, and prior to Elmer's death there were no individual trustee appointments to be changed by Nelva alone.

This sound legal reasoning also applies to the invalidity of the alleged appointments dated August 25, 2010 and December 21, 2010, and the certificates of trust based thereon.

Defendants are not now and have never been de jure trustees for the irrevocable family or Decedent's Trust and defendant's motion disingenuously seeks to avoid any such deliberations.

**Objection No. 2 Defendants' Motion is Disingenuous**

Defendants improperly use their motion to advance irrelevant allegories. In Defendants' motion at page 3 they claim Plaintiff(s)' Petition(s) for Declaratory Judgment are ground in petty emotions:

> *"The chief change that prompted plaintiffs' challenge to the 8/25/10 QBD is that the co-trustees for Carl's and Candace's interest under the trust changed from: (1) Anita and Carl; to (2) Anita and Amy. Apparently, the change in co-trustees from Anita and Carl to Anita and Amy offends Carl and Candace"*

Defendants continue by contending that the focus of their Motion is very narrow and specific:

> *III. Argument & Authorities*
>
> *"This motion relates solely to plaintiffs challenges to the 8/25/10 QBD"*

Defendants make this claim while simultaneously using their Motion to advance a false thesis, to suggest false conclusions, to assume facts, to falsely claim honorable intentions, and to make numerous assertions about other matters already settled in plaintiff's favor or remaining in dispute, as if those matters were settled and established in defendant's favor.

Defendants' go on to downplay the significance of their Trojan horse as negligible:

> *"For plaintiffs, the sole impact is the change in co-trustees from: (1) Anita and Carl; to (2) Anita and Amy"*

The evidence will, in fact, show the alleged change was from Carl and Candace to Anita and Amy, that the alleged change was improper and that the intended impact on Plaintiff(s) is the one stated in Anita's December 5, 2014 "Response to Candace's Motion for Distribution of Trust Funds".

On page 1 at item 4 Anita says:

> *"4. If the Court finds the in terrorem clause is enforceable, then Candace and Carl have no right to any distribution from the trust".*

In recent interrogatories and requests for fiduciary disclosures returned by Amy Brunsting June 25, 2015, Curtis asks a series of questions regarding the fiduciaries' distribution standards. The questions were taken directly from the Northern Trust Company web site informational area. Defendant's response to the inquiry they renumbered as 15 is telling:

> *"15. What circumstances should or should not exist prior to a distribution from "the trust"?*
>
> *RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (i.e., before Nelva's death or after Nelva's death) and is, therefore, vague.*
>
> *Subject to and without waiving the foregoing objections, currently, with respect to Candace, the Court must resolve Candace's claims and allegations in the pending lawsuit and, in particular, Candace's allegation that the no contest provisions in the trust instruments are unenforceable, prior to a distribution"*

Is it trustees burdened with the fiduciary duties of loyalty and utmost good faith owed to beneficiaries Carl and Candace who are making these claims, or is it conflicted co-beneficiaries who seek to stifle inquiry into illicit conduct? The answer should be obvious.

The manifest impact of this alleged successor trustee "change" is alterations to the trust that could not be done under terms of the trust; actions prohibited by law and by the trust that have been performed and acts required by the terms of the trust that have not been performed and the negative impact of this "change" on the trust has been absolute economic devastation.

**Objection No. 3 Defendants' Motion is Vague and Productive Only of Confusion**

Plaintiff Candace Louise Curtis objects to Defendants Amy and Anita Brunsting's Joint Motion for No-Evidence Partial Summary Judgment, on the ground that the Motion is vague and misleading.

Relevant to Defendants' Motion, two separate lawsuits were brought by two different plaintiffs, in two different courts, 14 months apart, with separate and distinct claims, notwithstanding the fact that both Plaintiffs' claims involve the same parties, acts and events, or that there are other related lawsuits involving additional defendants and claims.

Defendants' Motion makes numerous assertions while failing to distinguish between the plaintiffs, the lawsuits, or the pleadings, attempting to create some sort of egocentric mélange. This same amalgamation methodology of ambiguity is a fundamental defect of the 8/25/2010 QBD addressed in Curtis' Petition for Declaratory Judgment, but not mentioned in Defendants' Motion at all.

Plaintiffs are siblings not Siamese twins. The records and pleadings in one lawsuit cannot be juxtaposed as if they were the records and pleadings in the other. Using the term "plaintiffs" as a reference, without distinguishing the particular plaintiff, the particular case, or citing to the specific pleadings to which Defendants Amy and Anita Brunsting jointly refer, has created nothing but opacities.

**The Proper Party, Case and Declaratory Judgment Distinctions**

Plaintiff Carl Henry Brunsting filed suit against Amy, Anita and Carole Brunsting in the Harris County Probate Court, individually and as Executor for the estates of Nelva and Elmer Brunsting, seeking declaratory judgment and accounting, on the same day a hearing was held on Curtis' application for injunction in the federal court, April 9, 2013.

Plaintiff Candace Louise Curtis filed suit against Amy and Anita for breach of fiduciary, in the United States District Court for the Southern District of Texas on February 27, 2012, not raising any issues relating to the 8/25/10 QBD.

Plaintiff Curtis' pleadings in the federal court did not seek declaratory judgement until May 9, 2014, when she filed her first amended petition. Under the federal rules a plaintiff can only amend a complaint with leave of the Court, and only on an application showing the assent of opposing counsel, or a statement detailing efforts to obtain the assent of the parties and

expressing the reasons for plaintiff's inability to do so. This is all in the public record and Plaintiff Curtis would respectfully ask the Court to take Judicial Notice of the Federal Record.[4]

The amendment to Curtis' federal complaint was part of a stipulation approved by Defendants' counsel, as stated in the application for the Court's leave to amend. The stipulation involved a number of concessions and conditions exemplified by: 1) an application for leave to amend; 2) the Amended Complaint; and 3) Plaintiff's Motion for Remand to this Court.

The stipulation for remand involved amending the complaint to: 1) add necessary Party Carole Brunsting; 2) add involuntary Plaintiff Carl Brunsting, thus polluting the diversity required by 28 USC §1332; and 3) the addition of declaratory judgment claims. The remand also included keeping the federal injunction in full force and effect as a condition of the remand.

The petitions for declaratory judgment added by Curtis' first amended petition do not mirror the petitions for declaratory judgment brought by Carl Brunsting.

## SUMMARY OF PLAINTIFF'S RESPONSE TO DEFENDANTS' NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT

Defendants seek to trivialize several lawsuits involving conspiracy to steal the family inheritance, fraud, breach of fiduciary, co-mingling, self-dealing, and other secreted acts, as if such claims represent challenges to a single document and, more absurdly, a sibling rivalry motivated by petty emotions.

> *"Carl and Candace ("Plaintiffs") brought several proceedings alleging every conceivable means to challenge the 8/25/10 QBD"*

This statement of the record is a gross exaggeration. The 8/25/10 QBD is the object of two separate and distinct petitions for declaratory judgment, brought at dissimilar stages of separate proceedings by diverse plaintiffs.

The several lawsuits were by no means brought specifically to challenge the 8/25/10 QBD, as it is but a small piece in a much larger fraud mosaic.

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[4] 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting et al Case remanded to Harris County Probate Court No. 4. Kenneth M. Hoyt, presiding, Date filed: 02/27/2012, Date terminated: 05/15/2014, Date of last filing: 05/15/2014

## LEX NON COGIT AD IMPOSSIBILIA

The respondent is not required to marshal its proof and need only point out evidence that raises a genuine fact question on the challenged elements."[5]

The absence of a reliable instrument in evidence forecloses Defendants' no-evidence challenge as improperly seeking to shift the burden of bringing forth evidence onto Plaintiff(s), who cannot be called upon to prove the non-existence of the asserted fact of its existence.

Plaintiff has shown substantially more than the marginal amount of evidence required to defeat Defendants' Motion. The burden of bringing forth evidence to establish the existence and validity of an 8/25/2010 QBD rests squarely upon these Defendants, who are the only proponents of the existence, validity and applicability of the instrument.

## CONCLUSION

If one of the three exhibits of the 8/25/2010 QBD is a true and correct copy of an original wet signed document, what are the other two exhibits true and correct copies of?

If Nelva knowingly and willfully executed the 8/25/2010 QBD, why does she say in regard to what it purports "this not true"?

Why does the content of Candace Freed's Notary Log not conform to the requirements of Tex. Gov't Code §406.014, and why does it contain such unusual line/page anomalies?

If the 8/25/2010 QBD is benign, and merely changes trustee appointments as Defendants claim, why do they cling to it so dearly despite admitting no personal knowledge of its creation or execution?

Unless and until such an instrument can be physically produced and qualified as evidence with declaration as to the full chain of custody, the inquiries into whether Nelva signed the instrument and under what conditions are as moot as discussions of the applicability of the alleged instrument's content.

Plaintiff Candace Louise Curtis herein affirms, under penalty of perjury pursuant to the laws of Texas that the foregoing statements are true and correct and based upon personal knowledge.

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[5] TEX. R. CIV. P. 166a(i)

Furthermore, references to the record and the attached Exhibits are true and correct references and representations of the things to which they speak.

Plaintiff Candace Louise Curtis has herein presented sufficient evidence in response to Defendants' Motion for No-Evidence Partial Summary Judgment to raise a genuine issue of a material fact. The Court should properly deny Defendants' Motion for the numerous reasons shown, and Plaintiff so moves the Court.

Plaintiff seeks the above judicial remedy and prays for an order for Defendants to pay all costs associated with hearings on their Motion, including Plaintiff's transportation, lodging, meals and legal costs.

Respectfully submitted,

Candace Louise Curtis
Plaintiff *pro se*
218 Landana Street
American Canyon CA 94503
Tel: 925-759-9020
occurtis@sbcglobal.net

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 13th day of July 2015, to the following via e-service or email:

Bradley E. Featherston
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
brad@meddellawfirm.com

Attorney for Anita Kay Brunsting

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

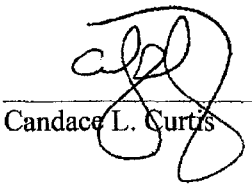
Attorney for Amy Ruth Brunsting

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
bayless@baylessstokes.com

Attorney for Drina Brunsting,
Attorney in Fact for Carl Henry Brunsting

Darlene Payne Smith
Crain, Caton & James
Five Houston Center
1401 McKinney, 17th Floor
Houston, Texas 77010
dsmith@craincaton.com

Attorney for Carole Ann Brunsting



Candace L. Curtis

**NO. 412,249-401**

| | | |
|---|---|---|
| **CANDACE LOUISE CURTIS** | § | **IN PROBATE COURT** |
| | § | |
| *Plaintiff,* | § | |
| | § | |
| **V.** | § | **NUMBER FOUR (4) OF** |
| | § | |
| **ANITA KAY BRUNSTING, ET AL** | § | |
| | § | |
| *Defendants.* | § | **HARRIS COUNTY, TEXAS** |

**ORDER DENYING DEFENDANTS' JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT**

Having considered Plaintiff Candace Louise Curtis' Response to Defendants' Joint No-Evidence Motion for Partial Summary Judgment the Court is of the opinion that plaintiff has met her burden and Defendants' No-Evidence Motion should properly be DENIED.

It is so ordered;

SIGNED this _____ day of _____, 2015.

_____
JUDGE PRESIDING

**NO. 412,249-401**

| | | |
|---|---|---|
| **CANDACE LOUISE CURTIS** | § | **IN PROBATE COURT** |
| | § | |
| *Plaintiff,* | § | |
| | § | |
| **V.** | § | **NUMBER FOUR (4) OF** |
| | § | |
| **ANITA KAY BRUNSTING, ET AL** | § | |
| | § | |
| *Defendants.* | § | **HARRIS COUNTY, TEXAS** |

**ORDER GRANTING PLAINTIFF'S MOTION TO PRODUCE EVIDENCE PURSUANT TO EVIDENCE CODE §§1002, 1003**

Having considered Plaintiff Candace Louise Curtis' Motion and Demand to Produce Evidence pursuant to Evidence Code §§1002, 1003, the Court finds just cause to question the efficacy of copies of trust instruments and that the Plaintiff's Evidence Code Motion should be GRANTED.

Defendants will not be allowed to introduce copies of trust instruments alleged to have been signed by Nelva Brunsting after the death of Elmer Brunsting on April 1, 2009 except by stipulation between the parties or the approval of the Court and must produce only the original instruments.

It is so ordered;

SIGNED this _____ day of _____, 2015.

_____
JUDGE PRESIDING

**NO. 412,249-401**

| | | |
|---|---|---|
| **CANDACE LOUISE CURTIS** | § | **IN PROBATE COURT** |
| | § | |
| *Plaintiff,* | § | |
| | § | |
| **V.** | § | **NUMBER FOUR (4) OF** |
| | § | |
| **ANITA KAY BRUNSTING, ET AL** | § | |
| | § | |
| *Defendants.* | § | **HARRIS COUNTY, TEXAS** |

**ORDER DENYING DEFENDANTS' JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND GRANTING PLAINTIFF'S MOTION AND DEMAND TO PRODUCE EVIDENCE PURSUANT TO EVIDENCE CODE §§1002, 1003**

Having considered Plaintiff Candace Louise Curtis' Response to Defendants' No-Evidence Motion for Partial Summary Judgment and her Motion and Demand to Produce Evidence Pursuant to Evidence Code §§1002, 1003, the Court is of the opinion that plaintiff has met her burden and the Defendants' No-Evidence Motion should be DENIED.

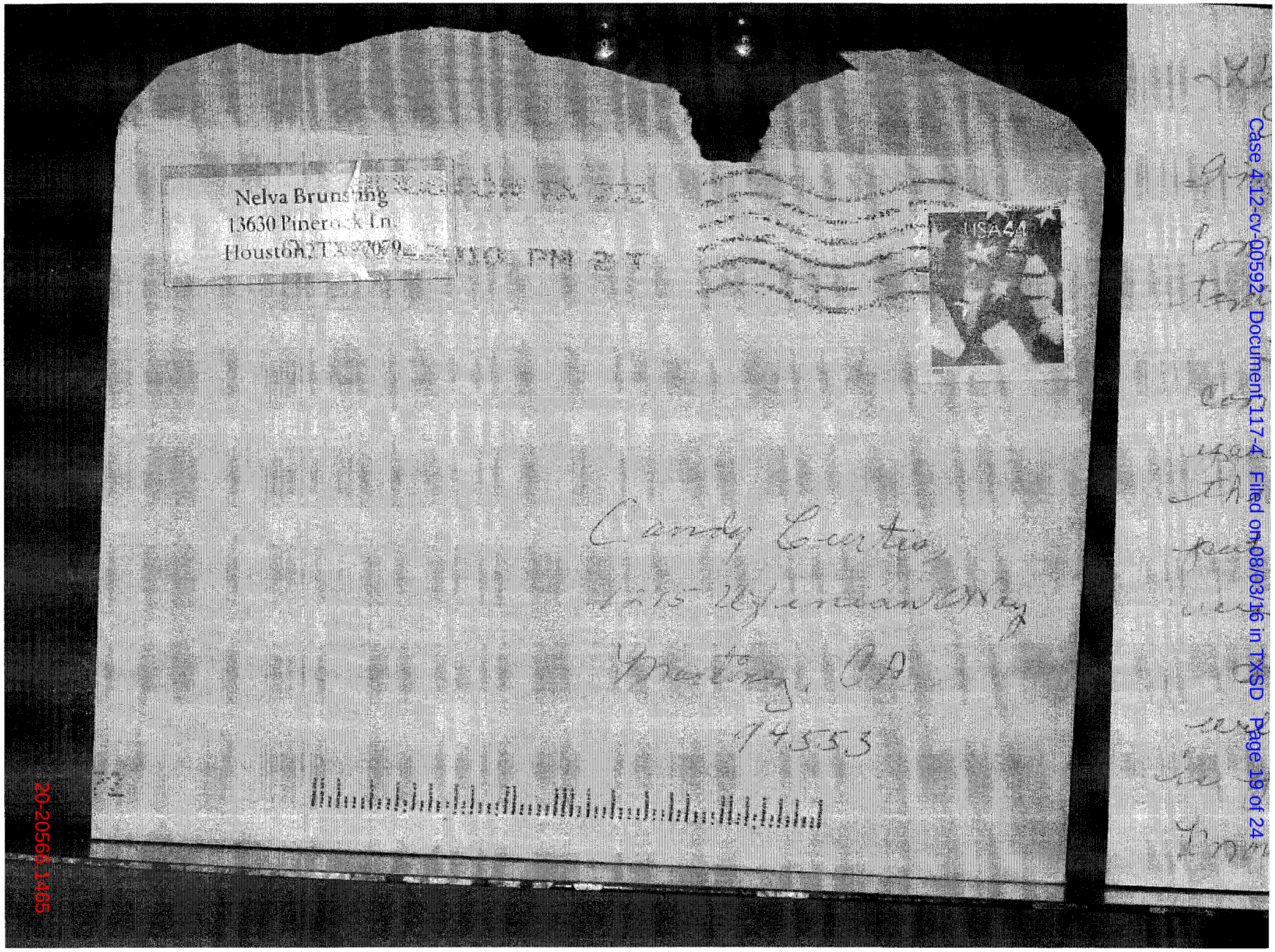
The Court further finds just cause to question the efficacy of copies of trust instruments and that the Plaintiff's Evidence code §§1002, 1003 Motion should be GRANTED. Defendants will not be allowed to introduce any alleged copies of trust instruments alleged to have been signed by Nelva Brunsting after the death of Elmer Brunsting on April 1, 2009 and must produce only the original wet signed instruments.

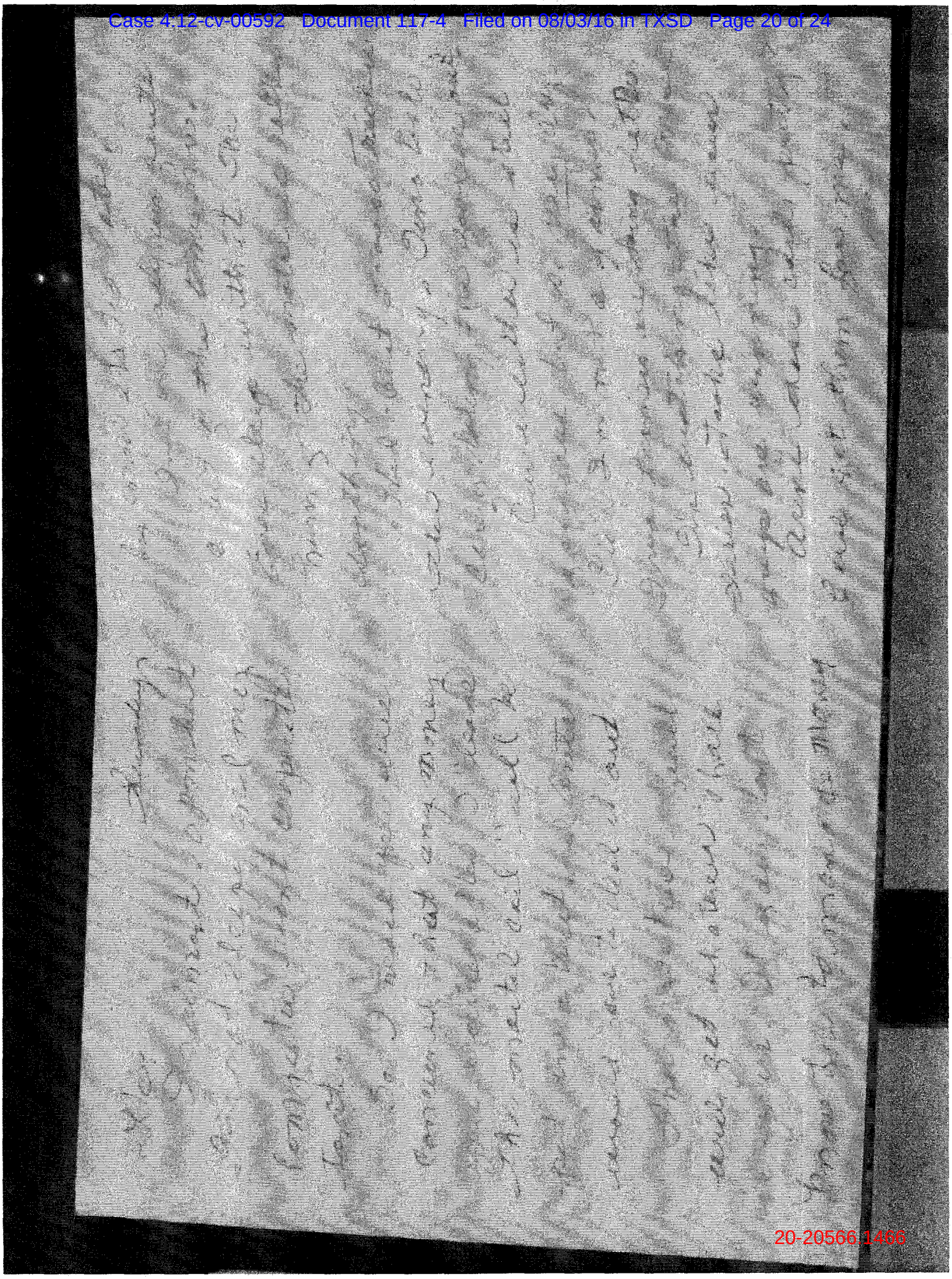
It is so ordered;

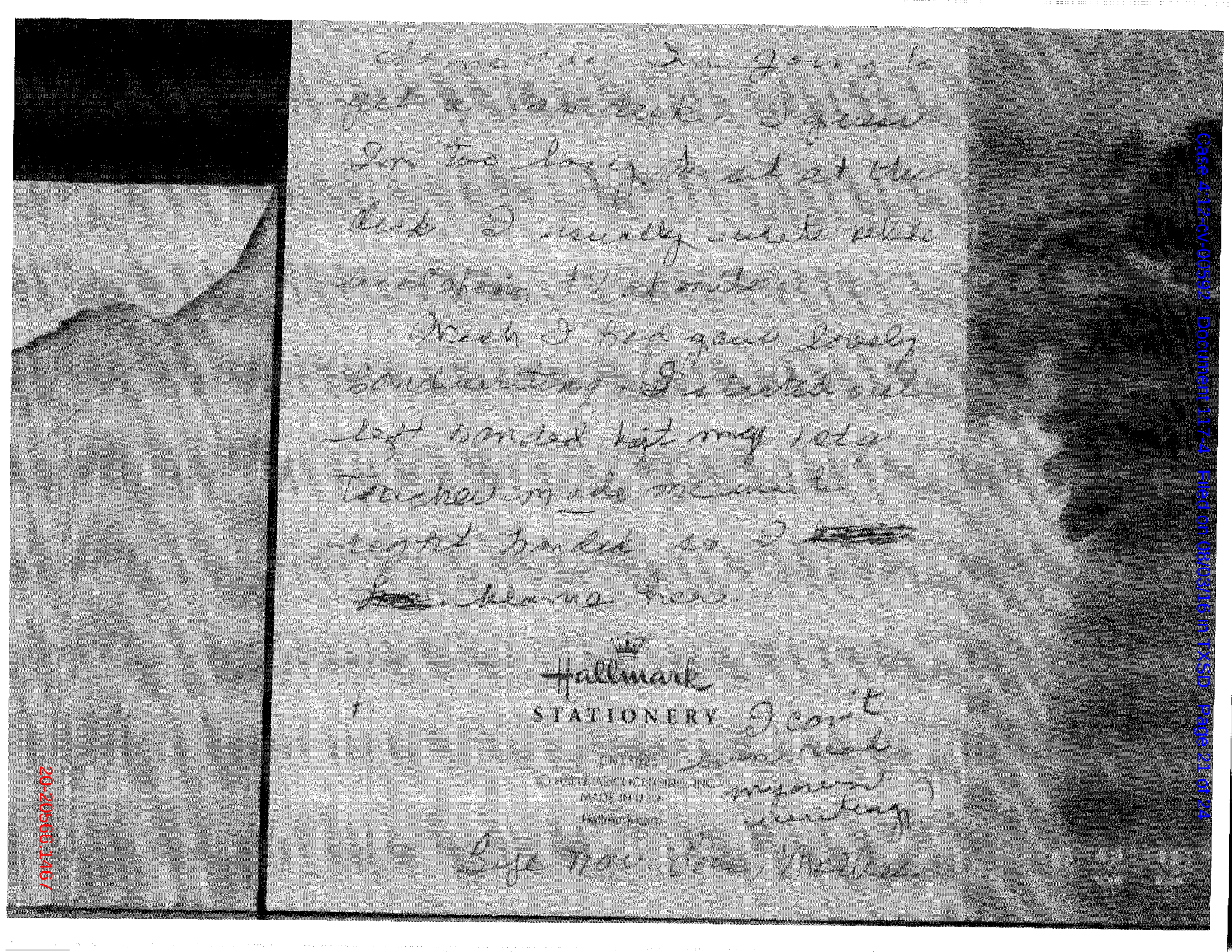
SIGNED this _____ day of _____, 2015.

_____
JUDGE PRESIDING

# EXHIBIT
# A


Nelva Brunsting
13630 Pinerock Ln.
Houston, TX 77079
USA44
Candy Curtis
1215 Wyneman Way
Martinez, CA
94553



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20-20566.1467

# EXHIBIT
# B

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace L Kunz Freed

Notary Public, State of Texas




20-20566.1470

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace L Kunz Freed
Notary Public, State of Texas



EXHIBIT
P-40_p37
USCA5 399

# EXHIBIT
# C

# VACEK & FREED, PLLC

ALBERT E. VACEK, JR.*
SUSAN S. VACEK
CANDACE L. KUNZ-FREED
PAUL J. BROWER
JULIE A. MATHIASON
BERNARD L. MATHEWS, III, *Of Counsel*
*Board Certified Estate Planning and Probate Law
Texas Board of Legal Specialization

11777 Katy Freeway, Suite 300 South
Houston, Texas 77079

(281) 531-5800
1-800-229-3002

Telefax (281) 531-5885
E-mail Address: consult@vacek.com

January 15, 2013

Mr. Rik Munson
218 Landana St.
American Canyon, CA 94503

Dear Mr. Munson:

Per your request, enclosed are copies of my notary pages for book entries dated August 25, 2010 and December 21, 2010. The additional pages you request for dates June 1, 2010 through April 15, 2012 total 24 pages. Please remit the exact fee of $12.00 for these additional pages, if you so request them. You will need to once again provide a self-addressed return envelope for these additional copies.

Finally, you will find a check for $8.00 payable to you for the return of the money order you previously submitted, less the cost of the four pages included herein. I am unable to hold these funds on account.

Sincerely,

Candace L. Kunz-Freed

Candace L. Kunz-Freed

CLF/sp
Enclosures

| | Notarization Date/Time | Document Date | Type of Notarization | Name of Signer | Signer's Signature | Signer's Address and Telephone Number |
|---|---|---|---|---|---|---|
| 161 | 11/22/10 | 11/22/10 | | Shelley Gates | X Shelley Gates | 14311 Islandwoods Dr, Houston, TX 77095 |
| 162 | 11/24/10 | 11/24/10 | | Floy Stockdick | X Floy Stockdick | 6011 Franz Katy, TX 77493 |
| 163 | 11/24/10 | 11/24/10 | | Roseanne Lopez | X Roseanne Lopez | 6005 Franz Katy, TX 77493 |
| 164 | 12/1/10 | 12/1/10 | | Dr. C.V. Beghtol | X CV Beghtol | 11434 Valley Spring Houston TX 77043 |
| 165 | 12/9/10 | 12/9/10 | | M. Chan | X M Chan | 01326 Rachelwood Houston/Katy TX 77458 |
| 166 | 12/14/10 | 12/14/10 | | Irene Kovar | X Irene Kovar | |
| 167 | 12/21/10 | 12/21/10 | | Nelva Brunsting | X Nelva E. Brunsting | 13630 Pinerock Houston TX 77079 |
| 168 | 12/2/10 | 2/21/10 | | Anita Brunsting | X Anita Brunsting | 203 Bloomingdale Cir Victoria, TX 77904 |
| 169 | 12/22/10 | 2/22/10 | | Herbert C McKay | X Herbert C. McKay | 8016 Rafferty Houston, Texas |
| 170 | 12/29/10 | 12/29/10 | | Kyung Jacobs | Kyung Jacobs | 8326 Ash Garden Ct. Houston TX 77083 |
| 171 | 12/30/10 | 12/30/10 | | J.W. Burns | X J.W. Burns | 10806 Inwood Hou. TX 77042 |
| 172 | 1/03/11 | 1/03/11 | | Kyung Jacobs | X Kyung Jacobs | 8326 Ash Garden Ct. Houston, TX 77083 |
| 173 | 1/26/11 | 1/26/11 | | John Sutherland | X [illegible] | 415 Conchman Lane Hou TX 77024 |
| 174 | 1/26/11 | 1/26/11 | | Ellen Sutherland Dodd | X Ellen Sutherland Dodd | Podere Binacco 58020 Scarlino (GR) Italy |
| 175 | 1/26/11 | 1/26/11 | | Karen Lee Cook | X Karen Lee Cook | 3210 Deer Trail Bryan TX 77807 |
| 176 | 2/9/11 | 2/9/11 | | M. Chan | X M Chan | 21326 Rose Hollow Ln Katy TX 77450 |



20120566.1474

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| Type of Identification (☐ D.L. ☐ I.D. Card ☐ Personally Known ☐ Credible Witness ☐ Passport ☐ Other) | Description of Document, Additional Information, or Comments | Fee | Signer's Right Thumbprint |
|---|---|---|---|
| sonal Knowledge | HIPAA → PAT TRUSTEES DESIGNATION OF SUCCESSOR TEE Cert. of Tr. | $ ~~0~~ | 161 Top of Thumbprint / 162 Top of Thumbprint |
| ersonal Knowledge | Qualified Benef. Design. | $ | |
| ersonal Knowledge | Appt. of Succ Trustees | $ | 163 Top of Thumbprint / 164 Top of Thumbprint |
| ersonal Knowledge | Qualified Benef. Designation | $ | |
| rsonal Knowledge | Funding Pkg. COTS (ST) DT, LT (3) Med POA, HIPAA, QBD, APPT SUCC TEE GUID's and AC KNOWL. | $ | |
| ersonal Knowledge | Amended Affidavit/Oath. | $ | 165 Top of Thumbprint / 166 Top of Thumbprint |
| ersonal Knowledge | Appt. of Succ Tee | $ | |
| ersonal Knowledge | Resignation documents. | $ | 167 Top of Thumbprint / 168 Top of Thumbprint |
| ersonal Knowledge | COT's (3) | $ | |
| ersonal Knowledge | Acceptance as Succ Trustee | $ | |
| ersonal Knowledge | Beneficiary form for Chase IRA | $ | 169 Top of Thumbprint / 170 Top of Thumbprint |
| ersonal Knowledge | Birth Certificate Correction | $ | |
| P.K. | | $ | 171 Top of Thumbprint / 172 Top of Thumbprint |
| ersonal Knowledge | Farmers Insurance Claim | $ | |
| ersonal Knowledge | Trustee Stmt for LT | $ | 173 Top of Thumbprint / 174 Top of Thumbprint |
| ersonal Knowledge | Resignation of Tee Med POA | $ | |
| ersonal Knowledge | Accept of Succ Co Tee COT; Delegation of Auth | $ | |
| ersonal Knowledge | Accept of Succ Co Tee COT | $ | 175 Top of Thumbprint / 176 Top of Thumbprint |
| ersonal Knowledge | Accept of Delegation | $ | |
| ersonal Knowledge | Funding (PMZ) Med POA; COT's (3) Deed HS, Deed other, Assign P/P. | $ | |



Case 4:12-cv-00592 Document 117-5 Filed on 08/03/16 in TXSD Page 5 of 24

20-20566 147

| | Notarization Date/Time | Document Date | Type of Notarization | Name of Signer | Signer's Signature | Signer's Address and Telephone Number |
|---|---|---|---|---|---|---|
| 129 | 7/20/10 | 7/20/10 | in office | Robert Holmes | X Robert W Holmes | 13218 Verbena Houston TX 77083 |
| 130 | 7/23/10 | 7/23/10 | in office | Nancy Kanistanaux | X Nancy S. Kanistanaux | 1873 Birchwood Dr. Okemos, MI 48864 |
| 131 | 7/27/10 | 7/27/10 | | Carol L. Noyes | X Carol L. Noyes | 5206 Summerfield Ln Spring, TX 77379 |
| 132 | 7/27/10 | 7/27/10 | | Karen Renee Noyes | X Karen Renee Noyes | 13819 CADY COURT HOUSTON, TX 77077 |
| 133 | 7/27/10 | 7/27/10 | | Lisa Hanney | X Lisa Hanney | 5706 Zoxe Cedar Kingwood, TX 77345 |
| 134 | 8/3/10 | 8/3/10 | in office | LaurieGoddold | X Laurie Goddold | 8148 Willow Forest Dr. Tomball TX 77375 |
| 135 | 8/10/10 | 8/10/10 | " " | " " | Laurie Goddold | " " |
| 136 | 8/17/10 | 8/17/10 | | Irene R. Goddard | X Irene R. Goddard | 1510 Breezy Bend Katy TX 77494 |
| 137 | | | | Fred Ben Himburg | Fred Ben Himburg | |
| 138 | | | | Patricia Rhea Mullins | Patricia Rhea Mullins | |
| 139 | | | | Suzan Faye Stringer | Suzan Faye Stringer | |
| 140 | | | | Phyllis Himburg Delaro | Phyllis Himburg Delaro | |
| 141 | 8/25/10 | | | Nelva Brunstring | X Nelva E. Brunstring | 13630 Piping Rock Houston TX 77079 |
| 142 | 8/26/10 | | | Betty Jean Barney | X Betty Jean Barney | 8915 Opelika Houston TX 77080 |
| 143 | 9/8/10 | | | Mark R. Yarbrough | X Mark R. Yarbrough | 4101 Monterey Oaks Blvd #1221 Austin TX 78749 |
| 144 | 9/8/10 | | | Jeffrey J. Yarbrough | X Jeffrey J. Yarbrough Jr | 2617 Piping Rock Tr. Austin TX 78748 |

20-20566.1476

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| Type of Identification ☐ D.L. ☐ I.D. Card ☐ Personally Known ☐ Credible Witness ☐ Passport ☐ Other | Description of Document, Additional Information, or Comments | Fee | Signer's Right Thumbprint | |
|---|---|---|---|---|
| Personal Knowledge | Merrill Lynch DT<br>Merrill Lynch ST | $ | Top of Thumbprint 129 | Top of Thumbprint 130 |
| | | $ | | |
| Personal Knowledge | COT for Hayes FLT | $ | Top of Thumbprint 131 | Top of Thumbprint 132 |
| Personal Knowledge | COT for Hayes FLT | $ | | |
| Personal Knowledge | COT for Hayes Family living trust | $ | Top of Thumbprint 133 | Top of Thumbprint 134 |
| ~~COTS(3)~~ Personal Knowledge | COTS(3) Funding Bks. | $ | | |
| " " | Funding forms | $ — | Top of Thumbprint 135 | Top of Thumbprint 136 |
| Personal Knowledge | Funding Bk. | $ | | |
| | | $ | Top of Thumbprint 137 | Top of Thumbprint 138 |
| | | $ | | |
| | | $ | Top of Thumbprint 139 | Top of Thumbprint 140 |
| | | $ | | |
| P.K. | | $ | Top of Thumbprint 141 | Top of Thumbprint 142 |
| Personal Knowledge | QBD, COTS(3) MEDPOA, DSPOA, APPT SUCC TEE DEED | $ | | |
| Personal Knowledge CC | SS4 COTS<br>Aff of Heir Mtr. Vehicle (2) | $ | Top of Thumbprint 143 | Top of Thumbprint 144 |
| Personal Knowledge CC | SS4<br>Aff. Heirship for Mtr. Veh (2) | $ | | |



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20-20566.1477

# EXHIBIT D

7/1/08 Appt of Suc Trustees

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended, (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and,

WHEREAS, ELMER H. BRUNSTING is no longer able to manage his financial affairs, as is evidenced by the physicians' letters attached. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone

WHEREAS, the said NELVA E. BRUNSTING is desirous of her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

IF I, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

BRUNSTING005805

1. **Successor Trustee Required to Provide an Authorization For Release of *Protected Health Information***

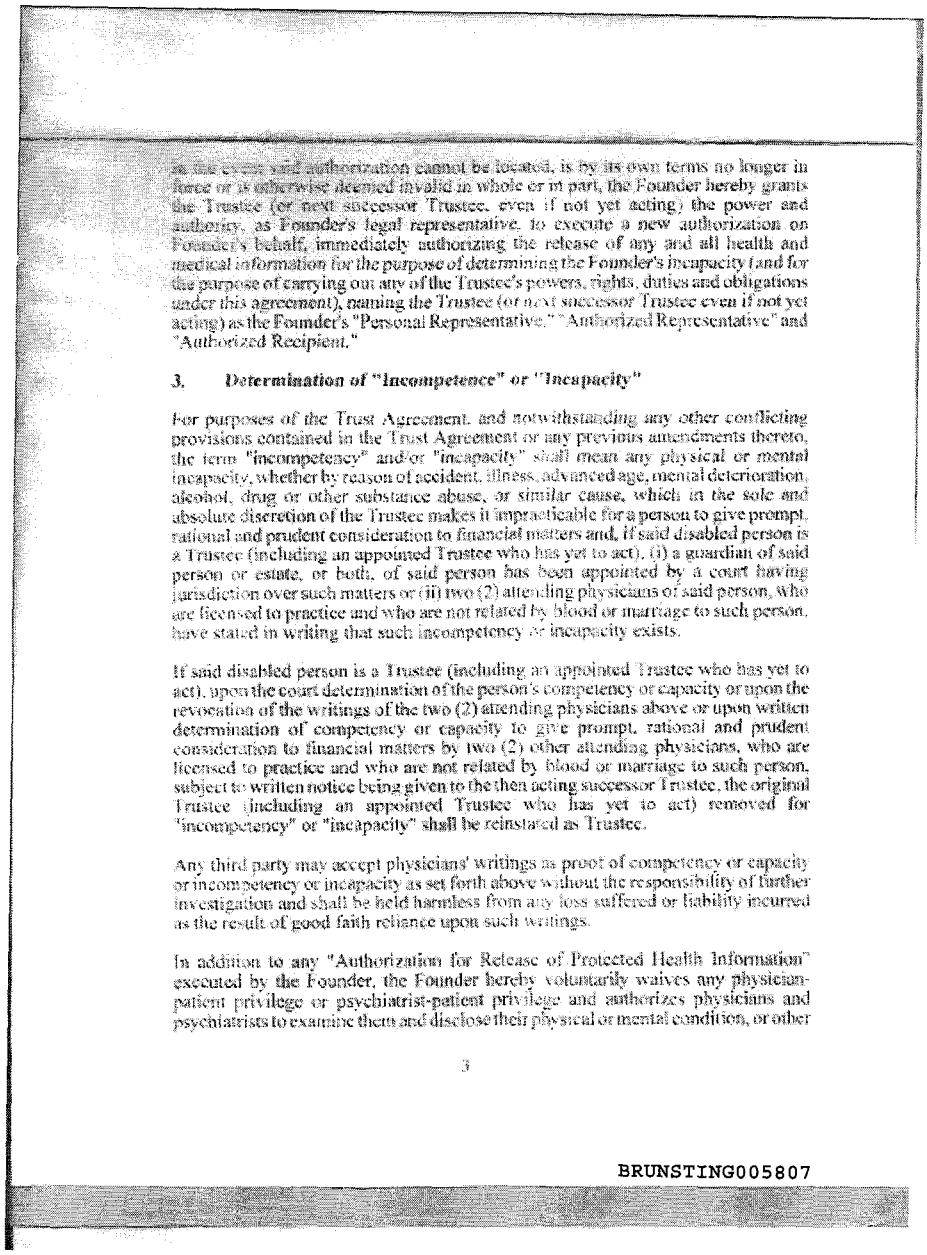
Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be *deemed incapacitated*.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee *or (ii)* hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he *or she* has witnessed such delivery.

2. **Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein)



the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

3. ***Determination of "Incompetence" or "Incapacity"***

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other

[redacted] health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person [redacted] this instrument or an acceptance of Trusteeship hereunder does, by so [redacted] waive all provisions of law relating to disclosure of confidential or protected health or medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next

[illegible] Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on July 1, 2008.

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on July 1, 2008 NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace L. Kunz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

2/24/10 Cert of Trust

**CERTIFICATE OF TRUST**

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING, died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. For purposes of asset allocation, transfer of property into the trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the said trust shall now be known as:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

   The tax identification number of the BRUNSTING FAMILY LIVING TRUST is 481-30-4685.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the remaining original Trustee fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

   If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

BRUNSTING005810

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

NELVA E. BRUNSTING,
Founder and Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING, as Founder and Trustee.

Witness my hand and official seal.

CANDACE LENNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas

BRUNSTING005811

2/24/10 EHB Doc Trust - Cert of Trust

CERTIFICATE OF TRUST
FOR THE
ELMER H. BRUNSTING **DECEDENT'S TRUST**

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the original trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent irrevocable trust known as the ELMER H. BRUNSTING **DECEDENT'S TRUST**. For purposes of asset allocation, transfer of property into the Decedent's Trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the Decedent's Trust shall now be known as:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

   The tax identification number of the ELMER H. BRUNSTING **DECEDENT'S TRUST** is 27-6453100. The Trust is irrevocable and no longer qualifies as a grantor trust.

   An acceptable abbreviation for account titling is as follows:

   NELVA E. BRUNSTING, Tee of the ELMER H. BRUNSTING DECEDENT'S TR dtd 4/1/09, as est UTD 10/10/96.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the said NELVA E. BRUNSTING, the surviving original Trustee, fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

BRUNSTING005812

C. BRUNET BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their power over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING as Founder and Trustee.

Witness my hand and official seal.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

# EXHIBIT
# E

# FIRST AMENDMENT TO THE RESTATEMENT TO THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

ELMER H. BRUNSTING,
Founder and Trustee

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Notary Public, State of Texas

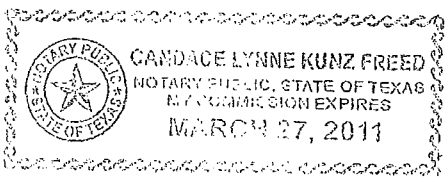


EXHIBIT "A"

# Article IV

# Our Trustees

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

# EXHIBIT
# F

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

# EXHIBIT
# G

**From:** Nelva Brunsting
**To:** Candy Curtis
**Date:** Saturday, July 28, 2007 7:16:21 AM

---

Hi: I have a question for you Candy. Would you be willing to serve as co-trustee with Carl? Amy is on there now but I'm going to take her off because I don't think she is stable enough. I'll think of a good excuse so she won't get her feelings hurt. It might entail a trip or two when the time comes(doesn't that sound ominous???!!) but you would b paid for your traveling expenses. I think you have a better relationship with your siblings than she. Let me know.

# EXHIBIT 12

# *TRIAL COURT NO. 412,249-401*

IN THE MATTER OF THE ESTATE OF : THE PROBATE COURT OF

: HARRIS COUNTY, T E X A S

NELVA E. BRUNSTING, DECEASED : PROBATE COURT NO. 4

- * - * - * - * - * - * - * - * - * - * - * - * - * -

## *COURT REPORTER'S RECORD*

## *MOTION FOR PROTECTIVE ORDER*

## *VOLUME 1 OF 1 VOLUMES*

- * - * - * - * - * - * - * - * - * - * - * - * - * -

MORNING SESSION

August 3, 2015

***TRIAL COURT NO. 412,249-401***

IN THE MATTER OF THE ESTATE OF : IN THE PROBATE COURT OF

: HARRIS COUNTY, T E X A S

NELVA E. BRUNSTING, DECEASED : PROBATE COURT NO. 4

- * - * - * - * - * - * - * - * - * - * - * - * - * -

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.:

# *APPEARANCES*

***COUNSEL FOR DRINA BRUNSTING, AS ATTORNEY IN FACT FOR CARL BRUNSTING:***

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TBA #01940600
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***COUNSEL FOR DEFENDANT, ANITA BRUNSTING-RILEY:***

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***COUNSEL FOR DEFENDANT, CAROLE BRUNSTING:***

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713-658-2323
713-658-1921 FAX



20-20566.1498

***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

August 3, 2015

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*THE COURT:* We are here in Cause No. 412,249-401, the Estate of Nelva E. Brunsting, Deceased.

We're here on Carl Henry Brunsting's motion for protective order. And present are -- my docket sheet says Neal Spielman for Amy Brunsting --

*MR. SPIELMAN:* Yes, Your Honor.

*THE COURT:* And Brad Featherston for Anita Brunsting-Riley.

*MR. FEATHERSTON:* Present, Your Honor.

*THE COURT:* And then Stephen Mendel --

*MR. FEATHERSTON:* He's with my firm, Your Honor.

*THE COURT:* Okay. I'm sorry. He is not present.

And Bobbie Bayless is here for Carl Brunsting and also for Drina Brunsting.

*MS. BAYLESS:* Yes, Your Honor.

*THE COURT:* Candace Curtis is pro se, and I don't see her in the courtroom.

And then --

*MS. BEDUZE:* Kathleen Beduze for Carole

Brunsting, Darlene Smith left.

*THE COURT:* Kathleen Beduze is here for beneficiary, Carole Brunsting who is here?

*MS. BEDUZE:* Correct. And we joined in the response.

*THE COURT:* Thank you.

*MS. BEDUZE:* We jointly filed that.

*THE COURT:* Okay.

*MR. SPIELMAN:* Response?

*THE COURT:* I haven't found -- we don't have a response.

*MR. SPIELMAN:* Well, that would probably be my problem, Judge.

My office filed it on Friday afternoon. At the very least, I have confirmation pages that it went to the attorneys.

*THE COURT:* Okay. Did Ms. Bayless -- did you receive a copy of the response?

*MS. BAYLESS:* I did. I didn't ever receive any notification it was filed, but I did receive a fax.

*MR. SPIELMAN:* I can step out while you guys get going and call my office and see if we have the confirmation.

*THE COURT:* Well, we can check if it

has been filed.

*(SHORT DELAY IN PROCEEDINGS.)*

*MR. SPIELMAN:* Judge, I don't know -- we have an envelope number, and I can tell you the envelope number was 6316359, and it was I guess put into the system, whatever the proper terminology is, at 4:08 p.m. on 7/31/15 which would be last Friday, and it says that it is submitted is the terminology there.

*THE COURT:* So --

*MR. SPIELMAN:* Yeah, but, I mean, I think hopefully the most important part for the purposes of our hearing, with all due respect to the Court, but the attorneys at least all have it. So nobody on this side of the Bench at least is surprised by it.

*THE COURT:* Okay. All right. Ms. Bayless?

*MS. BAYLESS:* Your Honor, we're here on a -- what my motion was termed a motion for protective order. It actually goes beyond the issues of pre-trial discovery.

And you will see from the defendant's response they kind of deal with it as just a typical motion for protective order involving pre-trial

discovery issues.

As to background, which is set forth in my motion, but basically is that back in 2012, the plaintiff didn't have very much information on what had occurred -- we did a pre-suit discovery action -- asked for recordings, both video and audio, got nothing.

The defendants in this case have gone through several counsel. They said they were going to produce everything, and that person was fired. I don't know what happened, I'm not sure. But since Mr. Spielman and Mr. Featherston have been in there, there have been several supplemental responses.

And then suddenly on July 1st, I get this envelope in the mail that had what is obviously recordings that my clients did not know about or consent to, and audio recordings obviously made while Carl was at his mother's home and had telephone conversations with his wife and video recordings from Carl's ICU hospital room.

I tried to communicate -- I don't think I had a conversation with anybody but Mr.Featherston in fairness -- but I tried to -- because he's the person who produced them. I called him up and tried to get an explanation from him for why these weren't

illegal recordings, and what we were going to do about that, and stressed that -- he I think sort of had the impression, well, Drina is mad about this. And I tried to explain to him this was a big deal to everyone concerned, including me.

We were going to continue to talk about it. He wanted to see the motion for protective order before he wanted to -- me to discuss any up front.

So I said, well -- we had -- at that time, we didn't yet have our third-party administrator and our temporary administrator, and so I just felt the need to get it on file.

Subsequently, what he did say to me in that conversation that is set forth in their response is that these came from an answering machine. I do not want to go into the substance of the conversations for the very reason that they are, in my view, illegal wiretap conversations, but they are not from an answering machine.

There is no answering machine answering these recordings. They are clearly edited in some instances because they stop in the middle of a sentence. There is no dating on -- other than looking at the property of the recordings that were sent to me, which in and of itself is interesting, because

these recordings occurred back in March of 2011. The video recordings occurred in May of 2011.

And so clearly were edited in February of this year. We were down here having hearings in February of this year about this temporary administration issue.

The other interesting thing is that I believe they were mailed to me on the same day that the defendants filed their no evidence motion for summary judgment suggesting that there had been plenty of time for discovery on that period since 2012, I think a total of 38 months, when these documents were sent to me the same day they filed that motion.

You know, under normal circumstances, that would be a long time for discovery. But it takes two to tango, as they say, and these documents had not been previously provided.

Now, when I talked to Mr. Featherston, I think Mr. Featherston called me, I guess Thursday, about an extension on discovery responses, requests for production, that are due today from the defendants.

And when I got these recordings -- just so you understand the background there -- when I got these recordings, I got them on July 1st in the mail,

then there's the July 4th holiday, I really didn't even look at what I got, frankly, until after that.

But I knew that there was a discovery deadline, and I knew there were recordings in there, so obviously, they -- I guess they would say they were responding to the pre-suit discovery which, frankly, I think is proper, but it should have been done back in the pre-suit discovery.

So I didn't want there to be a question about whether they were supposed to be providing things in this litigation. And we had a discovery cutoff at that time for, again, a docket control order, which required me to send out discovery responses that day before I really even knew what was going on.

And so here is what they were, but I knew I had to get those documents out or I would be hearing, well, you haven't even requested anything in this case, so that's why you didn't get them.

The obvious reason I got them is because they intended to use them in these proceedings, and they know they wouldn't be able to do that if they didn't provide them in some fashion.

So when Mr. Featherston talked -- we said we would talk again. He called me about an

extension on those requests because they didn't know what the Court would want to have happen, since I filed this motion for protective order indicating that I didn't want anybody else to receive these recordings.

And I gave Mr. Featherston, when we talked the first time, the cite from the civil wiretap statute and for the Penal Code provision. So they filed a response that says they don't know what the authority is for this, but we talked about that.

I told him that I was not inclined to agree to any kind of an extension on these things. And they've had them since March of 2011, and now we're getting dribbles.

And, by the way, during that same period of time, there would have been recordings, I understand, between Candace -- from Candace Curtis and her mother about all of these issues that are at issue in this. You know, those probably would not have had any more consent than the ones I'm here about. But the point is, they have been very selective about what they provided.

Clearly, the recording equipment was purchased by the caregiver. The receipt is in the production I believe attached to the motion, and he

got reimbursed. I mean, it is just so clear what was going on.

So Mr. Featherston and I talked, and he said that he wanted to put this -- the responses off two weeks so that the Court could make a determination on this.

I mean, recognizing that there could be some suggestion, there always seems to be a suggestion that I have not done something I'm supposed to do to make something happen, so -- or I have done something incorrectly procedurally, whatever.

So I sent an e-mail to all the counsel in the case, and said I don't want there to be any confusion that notwithstanding my request for production, that is a request that those items be produced to me and me only.

While normal practice may be that you send it to everybody in the case, these recordings are not to be sent to everybody in the case. And if you do it, I cite it again, the Penal Code Section, you do it at your own peril.

So I get a response on Friday afternoon from all the defendants, and their position now -- they still believe the answering machine-thing -- and their position is that Carl consented to these

conversations.

The Court will note that I attached to my motion for protective order e-mails of the same time period where these defendants are planning and plotting ways to obtain a guardianship over Carl, so there is no way that he consented.

And he was quite ill at the time and there is no question about that.

The recordings done in May of 2011, the video recordings, are in an ICU room at St. Luke's, and he was definitely in an altered mental state, because of medications he was receiving.

But you can't -- you can't say, okay, Carl -- they even say in their response that Carl hooked up this equipment.

Well, I mean, there is no way. I couldn't even hook up that equipment. It is digital equipment that requires menus and submenus to program. The model that the caregiver purchased -- as indicated on the receipt, I've got the manual for it here -- there is no way that a person that was needing a guardianship, as these people have admitted from their e-mails, would be able to do that.

And there is no -- the position in their response is this: We have to prove a negative,

that we have to prove there was not consent.

Well, if they say there is consent, that is an affirmative defense and the burden of proof is on them to show that. And in light of their own e-mails, I don't see how they are going to do that, but the burden is not on me to negate this stuff. The burden is on them to show that there was a consent.

So the other -- I mean, it always seems to go this way. I try to work these things out, and it's just the case where nothing gets worked out, and I think that's unfortunate for everyone.

But what I filed this morning, because they don't seem to understand that these statutes both say on their face that you're entitled to injunctive relief to prevent the further disclosure and use of these illegal recordings.

So they say in response they don't know what my authority is for this relief that I'm requesting. So I was not planning on filing it this morning, but I did file the third supplemental petition which alleges these causes of action and seeks the injunctive relief that those causes of action allow you.

And, you know, as usual, had we received all the information and disclosures in the

pre-suit discovery action, been able to deal with those issues and work those out, maybe we would have never been in this court. And maybe the lawyers in a district court would have never been sued if they had agreed to continue the tolling agreement until we worked this dispute out.

Nothing I suggest seems to work and -- maybe that's me. I'm not -- been called out at any direction other than I've been ineffective in resolving disputes in this case. And I have thought surely this was one in which, perhaps, Amy, Anita and Carole did not realize what they were doing. They are not lawyers. Maybe they didn't know you were not supposed to tape people's private conversations without their permission.

And that surely when the lawyers, even though they probably should not have even been given the information according to the stuff I read about it, that surely we would be able to resolve it.

Instead, I've now had to file a supplemental petition just in order to protect my client's rights on this incredibly offensive issue.

*THE COURT:* You also mention in the protective order the report from --

*MS. BAYLESS:* Yes, right. I mean,

there are e-mails. Again, I attached to the motion where they are talking about the -- what happened, both -- the reason we know much of anything is because Candy at one time thought everybody was trying to protect Carl.

When she figured out that was not what was happening, we suddenly got a boatload of e-mails which covered the gamut.

And her ex-husband -- I guess it's an ex-husband -- anyway, somebody she knows, had been asked for the name of an investigator. And she knew that a GPS tracking device without Drina's consent had been placed on her car.

There are e-mails in here talking about reports from the investigator. We have asked for that again since 2012. We have not received anything.

*THE COURT:* Do you claim that those reports still fall into the same category as the recording devices? In other words, were those reports obtained illegally with information at some stages of those reports?

*MS. BAYLESS:* It's really impossible to know without seeing the report, but I think they certainly contain information using the GPS tracking device.

*THE COURT:* Wouldn't you need for those reports to be produced in a motion to compel as opposed to a motion for protective order?

*MS. BAYLESS:* Yes. Again, this is part of why I did the new request for production in this case, because I felt if I filed a motion to compel, I would hear what she tried to compel. There has not been a request in this case. Even though since 2012, Anita has been acting to some extent under that initial request by supplementing these bank records, occasionally; and the tax returns, we've asked for them; stuff like that.

But, still, I didn't think I was in a position yet to seek a motion to compel, but the responses are due today.

*THE COURT:* Okay. Well, I think what we'll do is table the issue with regard to the investigator report. I just don't think that a decision on that with regard to a protective order is ripe yet. I don't think that -- we don't have what we don't so -- but on the recordings, I think that is a different story. So we'll address them, the recordings, today.

*MS. BAYLESS:* Okay.

*THE COURT:* Mr. Spielman or --

*MR. FEATHERSTON:* Briefly, Your Honor.

*THE COURT:* Okay.

*MR. FEATHERSTON:* When Bobbie called, I said what do you want? And really, at the end of the day, that's kind of how I am: What do you want?

And so the relief that she is seeking here I think are three things that we've outlined in our response.

The first one looks like it is some sworn testimony from all of our clients, from Anita, Amy and Carole. And to me, that is best accomplished by deposition.

Depositions haven't got off the ground yet in this particular case because it always seems like there is some procedural impairment, one or the other.

We have Greg Lester now, and it looks like now we're in a position where depositions can move forward. The impediment there might be whether or not Mr. Lester thinks the claims are even worthy of him sitting through depositions or participating in those depositions.

So that is kind of the first thing she is looking for, and that's why I have criticisms of what's -- you know, this is nothing like I have ever

seen in a motion for protective order.

A motion for protective order ordinarily is someone serves discovery, and the other party says, no, I find that discovery offensive, and so I need protection from the Court.

Here, someone may be served discovery, and the documents are being produced in the course of the litigation.

And so, that's kind of the point is under the Rules of Procedure when someone propounds discovery to me or if I think I have discovery that is responsive -- admittedly, Your Honor, I don't even pay attention to the people --I ask for it specifically or not. If I get stuff, I produce it. And, you know, I do that with good reason.

And so a long story short here, but when I produce it, I have to produce it under the Rules of Procedure. It has to go to all other counsel, and that's what I have done.

To the extent that there are -- so walking through what she wants, No. 1: These affidavits, I have never seen anywhere you can compel somebody to create an affidavit. That's something that should be done by deposition, and she will have a full and fair opportunity to depose these clients at

some point, and it should be sooner rather than later.

So that kind of takes care of the first issue of, you know, tell me what you want. Let's go from there.

The next issue I think that she's asking for is that all the recordings and everything be collected and given solely to her. And presumably, I can understand why she wants that.

These recordings, Your Honor -- and I don't think you have had the opportunity to hear them -- you can tell they come from an answering machine. "Hello, hello, hello." That's the type of recordings -- how these recordings start off.

And my understanding is that the decedent had her answering machine set to pick up at number -- on the second ring. And so these might have been recorded -- might have been caught by the answering machine to another recording device, and then on to someone's I-phone and then on to someone's computer and transferred like digital files often do, transferred from one component to the next, to the next, to the next, to the next, and on down the line.

But my understanding is that all of these come from an answering machine.

And so the relief that she's seeking

here is, I want you to record -- I want you to download all this evidence so you can give it solely to me, and I will be the sole arbiter of whether or not this is something that should be admissible or not. And that's just not the way it works.

I think the Court has to hear these recordings. And if the Court finds based on the recordings that, okay, these recordings appear like there is some huge conspiracy in some recording equipment where you illegally wiretap and all this other -- all these other allegations, then the Court is in a position to make that decision.

But without hearing the recordings or without developing the evidence, right now all we've got is allegations.

I don't have any affidavits from Drina saying I didn't consent to that recording. I didn't hear any answering machine when I called on that particular day. I don't have any affidavits from Carl whose capacity seems to come in and out, depending upon when it is convenient for them.

And I don't have any affidavits from Carl saying, no, you know, if we were going through a divorce at that time, but at that time, no, that's -- you know, I didn't consent to those recordings,

because it makes perfect sense.

I don't know if you've ever dealt with any divorce clients. They record the heck out of each other immediately when they are going through a divorce. That's typically what -- the first thing lawyers say is tape record your conversations with your soon-to-be ex.

And so I don't have any -- there is no evidence before the Court that Carl didn't consent. And this idea of, well, Carl didn't have capacity, she's berating him on several of these recordings claiming you've got capacity.

You're chewing on your shirt because that's what you've got; is that right?

*MS. BAYLESS:* Your Honor, I'm going to object to him going into the substance of these recordings. I mean, if the Court wants to do something to make a determination about their illegality, that's one thing; but he is disclosing, again, the contents of illegal recordings.

*THE COURT:* And I think that's defendants arguing at this point, so let's --

*MR. FEATHERSTON:* Fair enough, Your Honor.

Well, then, the issue ultimately turns

down to this: Who makes the decision regarding whether these are illegal recordings or not, Bobbie or the Court? And I think the Court is in a much better position than Bobbie is.

And so this idea of let's gather up all the recordings and give them to Bobbie, that doesn't work for me. Let's gather them up and submit them for in-camera inspections, that is fine. Doing an agreed protective order like -- and that's what I have proposed in the past is -- I could see if these are being posted on Facebook or posted on some blog or sent out there to the general public, but for purposes of this litigation and that's, to my knowledge, the only way these have been used, and that's the only way I have used them is disclosing them in this litigation.

If they want to do some agreed protective order -- I have done several of them in trade secret cases where you basically come in and it's like, look, you don't file this with the Court, you don't do a transcript and file it for public record. If it is these particular recordings that are going to be filed with the Court, that is okay. We can submit them for in-camera inspection. I'm okay with that.

Doing a joint agreed protective order where, look, guys, the stuff we're disclosing in this particular case, we all think it's privileged and confidential and we don't think it should be disclosed anywhere else, that's what I proposed.

We intended to attach it as to exhibits, but it wasn't. We have got several copies of that. But doing a joint agreed protective order in this particular case that says, look, what happens in the courtroom stays in the courtroom with respect to these things, and they're not going to be hearing our grievances or recordings or things anywhere else, I'm okay with that.

So -- but just giving them to Bobbie and, okay, saying how do clients react, I have never seen anyone even ask for that type of relief, and I don't think it is anything that is contemplated under any of these statutes. I certainly have not seen anything under any of these statutes that says that's the relief that she's entitled to.

I think there was one other thing that she was asking for other than that they all be -- oh, the last thing she is asking for is for you to make a ruling on the evidence. It's a rule that this evidence is inadmissible.

And so I don't think the Court is in any position as we sit here today with the lack of evidence actually before the Court to make an evidentiary ruling.

And so, you know, to me, I think we can get maybe two-thirds of the way here with just a -- with continuing discovery in this case and doing a joint agreed protective order that says we're not sending it out to the rest of the world.

But for purposes of this case, if you want to submit it to the Court, don't file it as a public record, submit it in-camera, things of that nature. Mark it "confidential". Have Bobbie -- if I produce something and she thinks it's confidential, mark it "confidential." Send that in the letter. We can create a running list. It makes much more sense than what's being asked for and the relief that's being asked for in this particular motion.

I've just never seen it before. I don't see any rules. I don't see any authority.

*THE COURT:* Well, I think that -- I think that that proposal makes a lot of sense to me. No. 1, requiring an affidavit, I think you would be better off proposing that because requiring the affidavit to me is awfully one-sided. I think that

the interaction would be beneficial for you and for, you know, the person being deposed or the affiant.

*MS. BAYLESS:* The key, Your Honor, is that there would be some type of sworn presentation to how this was done, when it was done, who did it, that kind of says all of it.

*THE COURT:* Well, I think the deposition would be better suited for that.

And then on the -- as far as the illegality of these recordings, I think that that has to be explored before you launch into collecting all of this and delivering it, because I'm not convinced that it is illegally obtained, and I'm not convinced either way.

I think that if you guys could hold the issue in abeyance until depositions can be taken and more evidences is gathered, and then perhaps we have a hearing or perhaps these recordings are submitted in-camera, I think that's a better way to go about this as opposed to, essentially, you know, ruling today that they are inadmissible, that they were illegally obtained, and then require the defendants to offer an affidavit. Because I think that the affidavit he receives, you know, may not satisfy, you know, what you're trying to do.

So I think that giving the deposition, we can dig a little deeper and you can get a little more clarification. So I like the idea of a joint agreed protective order.

*MS. BAYLESS:* Well, the problem is -- Judge, the problem is, I'm not comfortable consenting on my client's behalf or having my clients consent that these can be disclosed any further than they already have been.

I mean, I think if I'm right -- and I understand that the Court doesn't want to pre-determine that -- but if I'm right, there have already been problems in that they have been disclosed to other parties. And to say, oh, I agree that can keep going on while we sort through this --

*THE COURT:* No, I think -- I wouldn't envision that. I mean, I would envision that these recordings would be protected. I mean, that's why I imagine it would be called a joint agreed protective order, because it would protect that from further dissemination. Am I right?

*MR. FEATHERSTON:* I think the discrepancy -- and let me just connect the dots -- I think what she's saying is I can't produce it to Amy and Carole. And Carole can't produce items to Anita

and Amy. And so that's what I think Bobbie is really arguing for is she doesn't want us to be able to talk amongst ourselves -- or she doesn't want us to be able to exchange those among ourselves. She wants them to go solely to her and -- is that a fair statement?

*MS. BAYLESS:* Well, I think there are two kinds of recordings here. There are the recordings where that's already happened, and it is a little bit harder to put that horse back in the barn. And, frankly, they probably all have what they each have, but I don't know. And I don't want somebody to -- on down the road say, well, of course, we exchanged those things because you -- that was part of our agreed protective order.

So to the extent that's already been done and those recordings have been sent and these people have them, that is just something they are going to have to deal with.

To the extent there are other recordings -- and, see, this applies literally to the deposition. I don't know who has gotten what from whom at what time. And so to say, well, yeah, you know, spread those all around now. They will be saying, well, that was done during the protective order period and that kind of thing.

So that's why I'm saying if there are other recordings -- and I have asked for all of the recordings and the original media that they were recorded on so we can see what has been done without the editing -- then I'm saying those should not be disseminated even to the other parties in this case until this issue is addressed.

*THE COURT:* You know, I think I agree with that, and so I think that makes sense. So if the recordings have already been disseminated among the defendants, you know, before today, there is no way to, as you say, put that horse back in the barn. But in the future, until there is a determination as to the legality of those recordings, I don't think that they should be disseminated among the attorneys.

*MR. FEATHERSTON:* So, Your Honor, I guess the issue I have with that is how do I know?

*THE COURT:* Right.

*MR. FEATHERSTON:* I mean, basically, what your ruling is is now I'm in jeopardy for all recordings, because now like -- how do I say, you know, hey, Neal, do you have this recording or -- you know, that's where there is a disconnect.

There is no way for me to be able to -- because then when I disclose -- I mean, you're going

to find out whether or not someone has a recording. Have you heard this particular recording? I mean, that seems like a dangerous ground to me.

And so I think the ability to sit here and, you know, exchange within this group, I think that's okay. I mean, I don't know that any other lawyer is going to be out there disclosing anywhere else because the lawyers are subject to the joint protective order as well.

And so I don't see the harm while you're in litigation -- and there's a bunch of, you know, litigation privileges that are associated with it, I'd have to go back to my office and find some of them, but I'm sure I could -- I don't know how I could find out has this been disclosed on your side or not.

And it certainly puts us at a disadvantage. I mean, it just -- that doesn't seem like a workable solution.

Essentially, what your ruling would be is, any recordings you got, you need to, one, assume that they are illegal; and two, not produce them to anybody else. And I can't do that.

I mean, there is no showing that these are illegal. And if I feel like there is one that is illegal, then maybe at that point I will, you know,

tread more carefully.

But at this point, I think I need to be able to communicate effectively with the other defense counsel, as well as the plaintiff's counsel and the pro se plaintiff we have in this case, and produce those documents or risk, you know, not being able to use what the Court finds later that, oh, no, it's not illegal, these are okay.

Now, all the other defendants are at a disadvantage just because maybe my client keeps better records than theirs do.

*THE COURT:* Well, and that makes sense to me, you know, so --

*MS. BAYLESS:* Well, all he has to do, Your Honor, is not give them to anyone else. We know what he sent around to everybody else, and frankly, Ms. Curtis turned those copies over to me because she was not comfortable even having them.

*THE COURT:* But I guess what he is saying is going forward if he receives something, then he's not able to really supplement his discovery either.

*MS. BAYLESS:* Well, when are we really going to try this case? I mean, we don't even get -- the temporary administrator has six months to look at

it. I am not suggesting that he's going to miss a deadline or something if we deal with this issue.

And in the interim, he doesn't disseminate these recordings, whatever he may get, it would be fine with me. And if he doesn't, he can possibly not disseminate them to me, either. I mean, I have not had them for 38 months. I got them a month ago so, you know, that's not hard. I don't see that it is hard at all.

He's already sent around these. We know that he sent those around. If he is saying that he's been busily, since he got my motion, sending them to everybody that he could so that they would already be out there, then I guess we will have to sort that out.

But if it is a question of he is not supposed to give them to any other third parties until a determination is made about this, then I don't see what's hard about that, that isn't putting him at any kind of a disadvantage.

It is not suggesting what can or cannot be admitted in trial because we're not near a trial. We're not -- I mean, I know we have a docket control order, which no longer has much meaning or anything. We're supposed to be here today on a deadline on

summary judgment, so we are not.

So it seems like a simple matter to say, okay, I've got to put the brakes on anybody else receiving these recordings until we get to the bottom of the nature of the recordings.

*MS. BEDUZE:* Your Honor, I just want to make sure I'm understanding.

It is my understanding that these recordings have not been disseminated to any third party. They have been disseminated to counsel and -- but to these five individuals and their respective clients.

*THE COURT:* Right.

*MS. BEDUZE:* So any suggestion to otherwise, I would take issue with.

And we do not believe -- it would be very perfect for us to try to agree to a protective order that protects the dissemination of the recordings that have already been exchanged, produced, pursuant to part of discovery, and any additional recordings that may come to light that, you know, through the act of discovery.

And, I mean, in order to conduct the discovery, in order to take different depositions, which Ms. Bayless is wanting to take certain

depositions in lieu of the affidavit that she was originally requesting in front of you today, these recordings will need to be produced so that everyone can know and properly prepare for those depositions in which the recordings will be -- the information and the details of the recordings will be further delved into.

And so that end, my client, before retaining Crain, Caton & James, she did, in fact, give her deposition. And it is my understanding she responded as a pro se individual to over 300 production requests.

So the fact that discovery has not gone forward, and the fact that information has not been given freely, that's false with respect to my client, Carole, in that she has responded to that discovery, and we have supplemented when we have information.

But, again, Carole is only in this lawsuit as the beneficiary of the trust. She is not a trustee. And so, you know, it is the role of all the parties, no matter which side they're on, is to freely exchange information. And to hinder -- and I believe that stopping the recordings from being exchanged by all parties would hinder the ability to move forward -- to move this case forward.

I know they were down here two weeks ago, and I believe getting Mr. Lester appointed will further move this case forward. But in order to deal with things, we need to have a free exchange of information.

*THE COURT:* Okay. I have a meeting at 12:15, so I've got to get going. And I apologize, I should have said that earlier.

But let's work on an agreed protective order. I think it is difficult to restrain only the dissemination of these recordings among the attorneys.

And future recordings that have not already been disseminated, it might be a good idea for the attorneys just to have a hearing on it and get a determination whether or not it should be disseminated at that point. I don't know how many recordings there are, but --

*MS. BAYLESS:* I don't either.

*THE COURT:* What's that?

*MS. BAYLESS:* I don't know either.

Let me just say, Judge, I'm not going to enter into an agreed order that says those recordings can be disclosed to anyone. I just don't think I can do that.

*THE COURT:* Well, when you say third

parties, you're referring to anyone but the attorney who is in the suit as a legal attorney. I mean, third parties mean other than the defendants' attorneys and defendants?

*MS. BAYLESS:* Other defendants' attorneys in this case and other defendants, yes, that's what I mean. I don't mean other than those. I mean, those who are --

*THE COURT:* I'm just trying to clarify because Ms. Beduze said, you know, she took issue with the suggestion that these videos and recordings were being disseminated to third parties. I think that there was a missed communication about those third parties --

*MS. BEDUZE:* Correct. I will use the term "third parties" to be, you know, outside of the individuals involved in the lawsuit.

*MS. BAYLESS:* You know, I have absolutely no idea.

*THE COURT:* Well, let's work on a draft. Can we get the draft of a joint agreed protective order started, and see if you guys can come up with some sort of an agreement?

Otherwise, I mean, is there something I can rule on right now? I mean, is there something you

want guidance for other than this issue of how to deal with these recordings, because I don't have the answer to that. I don't know if there are even -- we could be displacing our findings cause all of the recordings have been produced, I don't know.

*MS. BAYLESS:* I think that's unlikely, Your Honor. But the problem -- here is the problem. While we explore these issues in depositions or however we explore them, if there is no constraint on their providing these documents -- of these recordings to other people, whether it is Carole sending her video recordings to Anita and Amy as she already did, and that's -- and so if Anita produced them, Carole didn't. She says Carole has provided all this discovery. Carole didn't provide those.

So unless there is some kind of constraint that there is to be no disclosure other than if -- other than Mr. Featherston talked about, he might be able to get a list of whom they have been provided to and when and that kind of thing. But without knowing, there may be -- the size of this recorder, there could be hundreds of hours of recordings.

And so without knowing what there is, without having the original means, without knowing any

of that, and until we know that, there is nothing preventing them from passing this around everywhere.

They obviously are not concerned about the statutes that prohibit it. And so unless this Court directs that those are not to go anywhere until we make a determination, and we establish a time period to make that determination, I just -- I cannot --

*THE COURT:* Okay. I think this is what -- this is my solution, I think, the best that we can come up with, sign a temporary order on it until an agreed protective order can be entered.

*MS. BAYLESS:* And the temporary order will --

*THE COURT:* It will expire at some point, and then we'll have a hearing when it expires, you know, the sooner the expiration date of the protective order or the date that a joint agreed protective order is entered. Does that make sense?

*MS. BAYLESS:* And the terms of this temporary order will be what?

*THE COURT:* I don't know that. I would have to go work on it. And then I'm assuming you guys can review and comment, and then I would enter it. And then, hopefully, you can come up with an agreed

order that would be better suited for the case. But until then, that's the only solution I can think of.

*MR. SPIELMAN:* Judge, if I may, I think whether it's in the temporary order or whether it's something that we can work on after that point, it can be maybe a stair step.

But I think what counsel has been saying about the need for the attorneys to be able to exchange so that, in theory, we can prepare our clients for, one, we can make sure that there are not any other recordings other than those that have already been exchanged. We need that part.

And then, two, I think what I heard a little bit of if -- if the concern is that, well, did Carl consent? Well, was Carl competent? That could be the second stage of people that need to hear these recordings.

I don't know how you determine his competency back then, but perhaps it is a professional who can hear the recordings and make some kind of determination.

I'm not saying that's the direction this goes, but it seems if the excuse -- if the defense is going to be that Carl was incompetent, and therefore, could not consent, we cannot have our hands

tied behind our back with regard to who can assist in either -- in evaluating that --

*THE COURT:* Okay. Well, that may be appropriate for the agreed protective order, so -- but as far as my temporary order is concerned, I'm not going to make it that complicated. So I don't -- I really don't know what I'm going to do at this point, but I'm going -- I will draft something up and you guys can comment on it. I don't want to mess things up for you, but I do think that it is appropriate to protect the dissemination of this information in the meantime so that we can get the issue resolved.

*MS. BEDUZE:* And, Your Honor, if you would -- I do believe we have a copy if you would like to see or hear the recordings that is --

*THE COURT:* Not yet.

I've got to go. I'm already late.

*(CONCLUSION OF PROCEEDINGS.)*

STATE OF TEXAS ::

COUNTY OF HARRIS ::

I, JUDITH J. KULHANEK, Deputy Official Court Reporter in and for Probate Court No. 4 of Harris County, Texas, do hereby certify that the foregoing contains a true and correct transcription of all portions of evidence and other proceedings requested by counsel for the parties to be included in this volume of the Court Reporter's Record in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

I further certify that this Court Reporter's Record does not include any exhibits as none were offered and/or admitted.

I further certify that the cost for the preparation of this Court Reporter's Record is $ 260.00 , paid by plaintiff, CARL BRUNSTING.

WITNESS MY OFFICIAL HAND on this, the 18th day of August, 2015.

/s/ JUDITH J. KULHANEK
JUDITH J. KULHANEK, CSR #598
Deputy Official Court Reporter

MY COMMISSION EXPIRES:
DECEMBER 31, 2016

# EXHIBIT 13

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PROBATE COURT 4

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| NELVA E. BRUNSTING, | § | NUMBER FOUR (4) OF |
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| DECEASED | § | HARRIS COUNTY, TEXAS |

09082015 1155 P0016

**NOTICE OF HEARING**

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE BE NOTIFIED that the hearing on Greg Lester's, Temporary Administrator Pending Contest of the Estate of Nelva E. Brunsting, Deceased, Application for Authority to Retain Counsel – MacIntyre, McCulloch, Stanfield & Young, LLP for the above entitled cause has been set for **Thursday, September 10, 2015**, at **2:00 p.m.** in the Probate Court Number Four (4) of Harris County, Texas:

Respectfully submitted,

MacINTYRE, McCULLOCH, STANFIELD & YOUNG, LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument was sent by e-mail, e-serve, facsimile, and/or United States certified mail, return receipt requested, on this the 4th day of September, 2015, to the following parties:

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100208 000599 0046907

| Bank of America Acct ending in :1143 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| 12/23/2010 through 3/9/2012 | | | | | | | | |
| | | | | | | | | |
| | Date | Num | Description | Memo | Category | Tag | Clr | Amount |
| | 11/7/2011 | EFT | Wire TYPE:WIRE Out DATE:111107 T | to amy for future trust exp | Legal Fees | redeposited into new Surv Trust acct | c | -10,000.00 |
| | 11/7/2011 | EFT | Amy Tschirhart | for supplies to fix house | Reimbursement | | c | -1,000.00 |
| | 11/7/2011 | EFT | Bank Of America Credit Card Bill | | Credit Card | | c | -323.88 |
| | 11/7/2011 | EFT | Wire Transfer Fee | | Bank Charge | | c | -25.00 |
| | 11/7/2011 | EFT | Wire Transfer Fee | | Bank Charge | | c | -25.00 |
| | 11/8/2011 | EFT | A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B | | Utilities:Telephone | | c | -84.44 |
| | 11/8/2011 | EFT | External Transfer Fee - 3 Day - | | Bank Charge | | c | -3.00 |
| | 11/8/2011 | EFT | Chase DES:EPAY ID:1218615408 Ind | | Credit Card | | c | -3,274.51 |
| | 11/9/2011 | DEP | Deposit | | Invest Inc | | c | 30.40 |
| | 11/9/2011 | DEP | Safe Deposit Box Rent Refund Fde | | Bank Charge | | c | 82.00 |
| | 11/9/2011 | | Tx Tlr Payment To Sdb 2575 Banki | | Bank Charge | | c | -25.00 |
| | 11/10/2011 | EFT | Candy Curtis | | Gifts Given | | c | -2,000.00 |
| | 11/10/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -201.70 |
| | 11/10/2011 | EFT | A&t DES:PAYMENT ID:787780565AUS | | Utilities:Telephone | | c | -168.24 |
| | 11/10/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -5,000.00 |
| | 11/12/2011 | 7033 | Memorial Oaks | | Funeral | | c | -1,595.00 |
| | 11/12/2011 | 7034 | Void | | | | | 0.00 |
| | 11/14/2011 | 7035 | Memorial Oaks | | Funeral | | c | -1,511.29 |
| | 11/14/2011 | EFT | Safebox Fee | | Bank Charge | | c | -135.00 |
| | 11/15/2011 | 7036 | Memorial Oaks | organist | Funeral | | c | -150.00 |
| | 11/15/2011 | 7037 | Bob Johnson | pastor | Funeral | | c | -300.00 |
| | 11/15/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -160.68 |
| | 11/21/2011 | DEP | Wire TYPE:WIRE In DATE: 111121 T | | Invest Inc | | c | 25,112.57 |
| | 11/21/2011 | EFT | Wire Transfer Fee | | Bank Charge | | c | -12.00 |
| | 11/22/2011 | 7040 | Nelva E Brunsting Survivors Trust | to open new trust acct | Cash | | c | -500.00 |
| | 11/23/2011 | EFT | Entex | PPD | Utilities:Gas & Electric | | c | -65.66 |
| | 11/23/2011 | EFT | Spring Brnch Isd DES:CHECKPAYMT | | Tax:Other | | c | -227.24 |
| | 11/25/2011 | EFT | Online Banking Transfer To Nelva E Brunsting Surv Trust | to start fund new trust acct | Cash | | c | -25,000.00 |
| | 11/29/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -63.71 |
| | 11/29/2011 | EFT | Bluebonnet Credit Union | includes medical | Household | | c | -1,165.23 |
| | 11/30/2011 | DEP | Benefits DES:PENSION ID:32923368 | | Income | | c | 600.71 |
| | 12/2/2011 | EFT | State Farm | PPD | Insurance | | c | -290.04 |
| | 12/5/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 179.00 |
| | 12/6/2011 | 7041 | Justin Alexander | for kt - reimburse | Medical | reimbursed to Surv trust acct Mar 2012 | c | -40.00 |

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| Bank of America Acct ending in :1143 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |
| 12/23/2010 through 3/9/2012 | | | | | | | | |
| | | | | | | | | |
| Date | Num | Description | Memo | Category | Tag | Clr | Amount | |
| 12/9/2011 | EFT | Exxon | | Div Income | | c | 274.01 | |
| 12/9/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -252.42 | |
| 1/5/2012 | EFT | State Farm | PPD | Insurance | | c | -290.04 | |
| 1/9/2012 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -115.49 | |
| 2/2/2012 | EFT | State Farm | PPD | Insurance | | c | -290.04 | |
| 2/13/2012 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -47.13 | |
| 3/2/2012 | EFT | State Farm | | Insurance | | c | -292.79 | |
| 3/7/2012 | DEP | AT&T | closed acct | Reimbursement | | c | 20.49 | |
| 3/9/2012 | DEP | Exxon | | Div Income | | c | 274.01 | |
| 12/23/2010 - 3/9/2012 | | | | | | | 1,471.75 | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| TOTAL INFLOWS | 293,516.61 | 293,516.61 | 293,516.61 | 293,516.61 | 293,516.61 | 293,516.61 | 293,516.61 | |
| | | | | | | | | |
| TOTAL OUTFLOWS | -292,044.86 | -292,044.86 | -292,044.86 | -292,044.86 | -292,044.86 | -292,044.86 | -292,044.86 | |

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| Date | Gift | Stock price | amount | Person | purpose |
|---|---|---|---|---|---|
| **Mom/Dad were trustees** | | | | | |
| 12/21/2010 | trxfr | | $ 7,000.00 | Amy Brunsting | mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights |
| 1/4/2011 | trxfr | | $ 6,000.00 | Amy Brunsting | mom wanted to help w/ the child support that Amy lost by the kids' dad waiving his parental rights |
| 6/22/2009 | | | $ 1,000.00 | Amy Brunsting | college fund |
| 7/14/2009 | | | $ 1,000.00 | Amy Brunsting | college fund |
| 11/14/2007 | chk# 5715 | | $ 5,000.00 | Amy Brunsting | |
| 1/20/2006 | chk# 5143 | | $ 200.00 | Amy Brunsting | |
| 2/11/2002 | chk# 3526 | | $ 200.00 | Amy Brunsting | college fund |
| 12/31/2002 | chk# 3911 | | $ 200.00 | Amy Brunsting | college fund |
| | Total Amy Brunsting | | $ 20,600.00 | | |
| 10/2/2009 | chk# 6359 | | $ 1,000.00 | Andy Curtis | |
| 2/8/2010 | chk# 6518 | | $ 5,000.00 | Anita Brunsting | |
| 6/24/2009 | chk# 6278 | | $ 1,000.00 | Anita Brunsting | graduation gift to me for finishing my doctorate |
| 7/14/2009 | chk# 6294 | | $ 1,000.00 | Anita Brunsting | college fund |
| 9/8/2009 | chk# 6338 | | $ 1,000.00 | Anita Brunsting | college fund |
| 10/19/2009 | chk# 6403 | | $ 1,250.00 | Anita Brunsting | |
| 1/20/2006 | chk# 5142 | | $ 200.00 | Anita Brunsting | college fund |
| 1/31/2006 | chk# 5155 | | $ 150.00 | Anita Brunsting | mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one |
| 2/21/2006 | chk# 5172 | | $ 150.00 | Anita Brunsting | mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one |
| 4/1/2006 | chk# 5233 | | $ 150.00 | Anita Brunsting | mom wanted to pay for housekeeper - I didn't have a housekeeper, mom wanted me to get one |
| 1/10/2003 | chk# 3920 | | $ 200.00 | Anita Brunsting | college fund |
| 2/11/2002 | chk# 3527 | | $ 200.00 | Anita Brunsting | college fund |
| | Total Anita Brunsting | | $ 10,300.00 | | |
| 3/17/2010 | chk # 6386 | | $ 750.00 | Candy Curtis | |
| 1/27/2009 | chk # 6124 | | $ 2,000.00 | Candy Curtis | |
| 7/29/2009 | chk# 6309 | | $ 4,000.00 | Candy Curtis | |
| 7/8/2008 | chk # 5917 | | $ 2,000.00 | Candy Curtis | |
| 8/3/2009 | chk# 5944 | | $ 1,500.00 | Candy Curtis | |
| 7/6/2001 | trxfr | | $ 20,000.00 | Candy Curtis | |
| 1/19/2010 | | | $ 5,000.00 | Candy Curtis | |
| 3/29/2010 | | | $ 7,000.00 | Candy Curtis | |
| 6/22/2010 | | | $ 20,000.00 | Candy Curtis | Taken against inheritance (documentation on file w/ Vacek & Freed) expenses, divorce |
| | Total Candy Curtis | | $ 62,250.00 | | |
| 11/10/2005 | chk# 5070 | | $ 10,000.00 | Carl Brunsting | |
| 3/12/2003 | chk# 3986 | | $ 9,000.00 | Carl Brunsting | |
| 4/9/2003 | chk# 4017 | | $ 11,000.00 | Carl Brunsting | |

# Schedule F

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| Date | Gift | Stock price | amount | Person | purpose |
|---|---|---|---|---|---|
| 9/17/2001 | chk# 3347 | | $ 2,000.00 | Carl Brunsting | |
| 10/6/2010 | | | $ 25,000.00 | Carl Brunsting | medical bills |
| | | | | | paid one medical bill ($1565.70) and to caretakers directly for his care from 7/13/2010 through 1/9/2011, |
| | | | | | (additional days occurred from Jan-April 2011 than included payment to caretakers as well as groceries and his |
| 2010-2011 | | | $ 21,899.61 | Carl Brunsting | medical supplies, but specific dates in this time period were not recorded) |
| | Total Carl Brunsting | | $ 78,899.61 | | |
| 6/27/2009 | chk# 6285 | | $ 2,000.00 | Carole Brunsting | |
| 2/12/2009 | chk# 5794 | | $ 500.00 | Carole Brunsting | |
| 3/18/2008 | chk# 5821 | | $ 250.00 | Carole Brunsting | |
| 11/13/2007 | chk# 5713 | | $ 600.00 | Carole Brunsting | |
| 1/5/2006 | chk# 5129 | | $ 1,000.00 | Carole Brunsting | loan? |
| 7/1/2006 | chk# 5287 | | $ 1,200.00 | Carole Brunsting | |
| 3/23/2005 | chk# 4785 | | $ 450.00 | Carole Brunsting | |
| 12/8/2005 | chk# 5090 | | $ 1,500.00 | Carole Brunsting | |
| 7/2/2005 | chk# 4901 | | $ 350.00 | Carole Brunsting | |
| 10/2/2005 | chk# 5016 | | $ 2,500.00 | Carole Brunsting | |
| 10/21/2003 | chk# 4232 | | $ 1,000.00 | Carole Brunsting | |
| 12/12/2002 | chk# 9878 ? | | $ 1,500.00 | Carole Brunsting | |
| 12/17/2002 | chk# 3883 ? | | $ 5,000.00 | Carole Brunsting | |
| 3/23/2010 | | | $ 7,000.00 | Carole Brunsting | |
| 5/18/2010 | | | $ 1,000.00 | Carole Brunsting | |
| | | | | | original intent to take against inheritance, but no letter/documentation found to date; will be treated as a gift; to fix |
| 10/1/2010 | | | $ 20,000.00 | Carole Brunsting | house |
| | Total Carole Brunsting | | $ 45,850.00 | | |
| 10/2/2009 | chk# 6358 | | $ 1,000.00 | Kevan Curtis | |
| **Anita became trustee Dec. 2011** | | | | | |
| 5/11/2011 | 1120 shares exxon Survivors trust | $ 81.12 | 90854.4 | Amy Brunsting | to pay off house |
| | Total Amy Brunsting | | $ 90,854.40 | | |
| 5/10/2011 | | | $ 5,443.22 | Anita Brunsting | pay off Luke's truck |
| 6/3/2011 | | | $ 5,750.51 | Anita Brunsting | pay off Honda for Katie |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Anita Brunsting | borrowed against inheritance - for college expenses |
| 6/15/2011 | 160 shares exxon Survivors trust | $ 78.66 | $ 12,585.60 | Anita Brunsting | borrowed against inheritance - for college expenses |
| | Total Anita Brunsting | | $ 37,360.33 | | |
| 4/7/2011 | | | $ 3,000.00 | Candy Curtis | property taxes |
| 6/8/2011 | | | $ 2,000.00 | Candy Curtis | new bed? |
| 6/15/2011 | 160 shares exxon Survivors trust | $ 78.66 | $ 12,585.60 | Candy Curtis | for reserve after mom passed away to keep helping her w/ expenses if trust money was not available |

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| Date | Gift | Stock price | amount | Person | purpose |
|---|---|---|---|---|---|
| 8/24/2011 | | | $ 2,000.00 | Candy Curtis | expenses |
| 10/26/2011 | | | $ 2,000.00 | Candy Curtis | medical bills |
| 11/10/2011 | | | $ 2,000.00 | Candy Curtis | travel to see mom |
| | Total Candy Curtis | | $ 23,585.60 | | |
| 6/15/2011 | 1325 shares exxon Decedents trust | $ 78.66 | $ 104,224.50 | Carole Brunsting | to pay off/fix house |
| | Total Carole Brunsting | | $ 104,224.50 | | |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Ann Brunsting UGMA (grandchild) | gift for future car/college exp |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Jack Brunsting UGMA (grandchild) | gift for future car/college exp |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Katie Riley UGMA (grandchild) | gift for college exp |
| 6/14/2011 | 135 shares chevron Survivors trust | $ 100.60 | $ 13,581.00 | Luke Riley (grandchild) | gift for college exp |

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**Carl's Medical Support Bills**

| Date | Check # | Payee | Amount | |
|---|---|---|---|---|
| 7/13/2010 | 6726 | Tino | $ 1,339.50 | |
| 7/14/2010 | 6727 | Robert | $ 60.00 | |
| 7/15/2010 | 6729 | Shimeka | $ 180.00 | |
| 7/21/2010 | 6588 | Tino | $ 1,581.00 | |
| 7/27/2010 | 6393 | Tino | $ 450.00 | |
| 7/27/2010 | 6394 | Robert | $ 327.00 | |
| 7/29/2010 | 6595 | Shimeka | $ 375.00 | |
| 8/3/2010 | 6597 | Tino | $ 654.00 | |
| 8/9/2010 | 6607 | Tino | $ 972.00 | |
| 8/15/2010 | 6611 | MHS Physicians (Carl) | $ 1,565.70 | |
| 8/15/2010 | 6614 | Tino | $ 45.00 | |
| 8/23/2010 | 6623 | Tino | $ 45.00 | |
| 10/4/2010 | 6690 | Carl | $ 25,000.00 | |
| 10/18/2010 | 6741 | Robert | $ 255.00 | |
| 10/22/2010 | 6747 | Robert | $ 170.00 | |
| 10/26/2010 | 6749 | Robert | $ 105.00 | |
| 11/1/2010 | 6764 | Robert | $ 510.00 | |
| 11/4/2010 | 6769 | Michael Brooks | $ 237.00 | |
| 11/5/2010 | 6771 | Robert | $ 309.00 | |
| 11/8/2010 | 6777 | Robert | $ 330.00 | |
| 11/10/2010 | 6781 | Michael Brooks | $ 300.00 | |
| 11/12/2010 | 6784 | Robert | $ 285.00 | |
| 11/15/2010 | 6793 | Robert | $ 270.00 | |
| 11/17/2010 | 6795 | Michael Brooks | $ 240.00 | |
| 11/16/2010 | 6799 | Robert | $ 295.00 | |
| 11/24/2010 | 6806 | Michael Brooks | $ 255.00 | |
| 11/24/2010 | 6809 | Robert | $ 345.00 | |
| 11/26/2010 | 6810 | Michael Brooks | $ 270.00 | |
| 12/1/2010 | 6817 | Michael Brooks | $ 420.00 | |
| 12/1/2010 | 6818 | Tino | $ 849.38 | |
| 12/3/2010 | 6819 | Robert | $ 135.00 | |
| 12/5/2010 | 6820 | Robert | $ 855.00 | |
| 12/5/2010 | 6821 | Antonio | $ 135.00 | |
| 12/7/2010 | 6826 | Michael Brooks | $ 300.00 | |

**Schedule G**

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**Carl's Medical Support Bills**

| Date | Check # | Payee | Amount | |
|---|---|---|---|---|
| 12/8/2010 | 6828 | Michael Brooks | $ 150.00 | |
| 12/8/2010 | 6831 | Shimeka | $ 416.00 | half |
| 12/13/2010 | 6832 | Robert | $ 382.31 | half |
| 12/14/2010 | 6836 | Michael Brooks | $ 525.00 | |
| 12/15/2010 | 6840 | Tino | $ 435.00 | half |
| 12/17/2010 | 6843 | Tino | $ 412.50 | half |
| 12/16/2010 | 6844 | Michael Brooks | $ 375.00 | |
| 12/19/2010 | 6846 | Robert | $ 469.92 | 2/3 |
| 12/24/2010 | pd carole | robert, tino, michael | $ 1,151.70 | 2/3 |
| 12/30/2010 | 6851 | Tino | $ 821.70 | 2/3 |
| 12/28/2010 | 6852 | Michael Brooks | $ 564.30 | 2/3 |
| 1/1/2011 | | Robert | $ 435.60 | 2/3 |
| 1/2-1/9/2011 | | robert, tino, michael | $ 1,296.00 | |
| | | | $ 46,899.61 | |
| | | any additional days | $216.00/day | |

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| Card/Expense | Closing Date | Amount Charged Against Trust | 2%annual value of trust/ month | Balance Remaining | Date |
|---|---|---|---|---|---|
| | | | $ 4,166.00 | $ 4,166.00 | Jan-11 |
| | | | $ 4,166.00 | $ 8,332.00 | Feb-11 |
| | | | $ 4,166.00 | $ 12,498.00 | Mar-11 |
| | | | $ 4,166.00 | $ 16,664.00 | Apr-11 |
| Visa | 5/5/2011 | $ 3,327.30 | $ 4,166.00 | $ 17,502.70 | May-11 |
| Luke college | 5/27/2011 | $ 461.00 | | $ 17,041.70 | |
| Katie College | 6/2/2011 | $ 500.00 | $ 4,166.00 | $ 20,707.70 | Jun-11 |
| Visa | 6/6/2011 | $ 2,634.34 | | $ 18,073.36 | |
| MC | 6/6/2011 | $ 2,358.75 | | $ 15,714.61 | |
| MC | 7/6/2011 | $ 2,976.35 | $ 4,166.00 | $ 16,904.26 | Jul-11 |
| Visa | 7/7/2011 | $ 7,242.83 | | $ 9,661.43 | |
| MC | 7/18/2011 | $ 1,998.19 | | $ 7,663.24 | |
| Visa | 8/5/2011 | $ 3,199.02 | $ 4,166.00 | $ 8,630.22 | Aug-11 |
| Luke college | 8/26/2011 | $ 575.00 | | $ 8,055.22 | |
| MC | 9/6/2011 | $ 999.04 | $ 4,166.00 | $ 11,222.18 | Sep-11 |
| Visa | 9/7/2011 | $ 4,767.36 | | $ 6,454.82 | |
| MC | 10/4/2011 | $ 2,390.35 | $ 4,166.00 | $ 8,230.47 | Oct-11 |
| Visa | 10/6/2011 | $ 102.52 | | $ 8,127.95 | |
| MC | 10/19/2011 | $ 2,033.30 | | $ 6,094.65 | |
| Luke college | 11/1/2011 | $ 2,000.00 | $ 4,166.00 | $ 8,260.65 | Nov-11 |
| Visa | 11/5/2011 | $ 230.22 | | $ 8,030.43 | |
| MC | 11/8/2011 | $ 3,274.51 | | $ 4,755.92 | |
| Total | | **$ 41,070.08** | **$ 45,826.00** | | |

# Schedule H

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Brunsting Family Survivor's and Decedent's Assets

| Asset | # shares | price/share * | Amount* | *values as of 3/26/2012 |
|---|---|---|---|---|
| Chevron/Texaco-decedent | 614.1303 | 107.84 | $66,227.81 | |
| Chevron/Texaco-survivor | 172.4055 | 107.84 | $18,592.21 | |
| Chevron - Decedent | 612 | 107.84 | $65,998.08 | |
| ExxonMobil-Decedent | 583 | 87.16 | $50,814.28 | |
| ExxonMobil-survivor | 835.910671 | 87.16 | $72,857.97 | |
| MetLife - Survivor | 95 | 38.31 | $3,639.45 | |
| Survivor's Trust Edward Jones | | | $1.05 | |
| Decedent's Trust Edward Jones | | | $250,506.13 | |
| Survivor's Trust Checking | | | $446,235.69 | Includes deposit of $433,129.32 from sale of house |
| Decedent's Trust Checking | | | $41,667.77 | Includes deposit of first 1/2 of farm rent for 2012: $26437.50 and Chevron Dividend: $495.72 |
| Surv Trust Checking (prior to mom's death) | | | $1,471.75 | Some automated payments for house utilities were set up on this acct - it is being left open until final water bill has been paid (April 2012) |
| Misc. Coins | | | $690.00 | |
| Gold Watches/misc jewelry | | | $853.00 | |
| **Total Liquid Assets** | | | $1,019,555.19 | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| Farm (acres) | 141 | 15300 | $2,157,300.00 | appraised value/acre |
| House | | | | final sale profit $433,129.32 - reflected in balance in survivors trust checking acct |
| Total Trust | | | $3,176,855.19 | |
| | | | | |
| | | | | |

# Schedule I

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Trust Expenses

| Date | Vendor | Purpose | Amount |
|---|---|---|---|
| 11/12/2011 | Kroger - Houston | Groceries when cleaning/packing house | $ 23.31 |
| 11/16/2011 | Phillips 66 - Houston | Transportation | $ 56.20 |
| 11/22/2011 | Phillips 66 - Houston | Transportation | $ 49.08 |
| 12/11/2011 | Vacek | Legal | $ 4,500.00 |
| 12/11/2011 | US Treasury | tax payment for Decedent Trust | $ 1,780.00 |
| 12/12/2011 | Wilchester West Fund | subdivision dues | $ 359.00 |
| 12/18/2011 | Mr. Pham Chen | Lawn care - 2 mos | $ 200.00 |
| 12/18/2011 | Centerpoint Energy | natl gas for house | $ 54.62 |
| 12/18/2011 | Kelsey-Seybold | mom's medical | $ 13.92 |
| 12/18/2011 | Memorial Hermann | mom's medical | $ 226.40 |
| 12/18/2011 | ACS Primary Care | mom's medical | $ 6.87 |
| 12/21/2011 | USPS | Trust Docs | $ 1.28 |
| 12/26/2011 | Home Depot | Home Repair/Security | $ 92.56 |
| 12/26/2011 | Exxon - Victoria | Transportation | $ 45.15 |
| 12/28/2011 | Kroger - Houston | Groceries when cleaning/packing house | $ 16.31 |
| 12/28/2011 | HEB - Houston | Groceries when cleaning/packing house | $ 3.50 |
| 12/28/2011 | Ace Hardware | Supplies to pack up house | $ 66.53 |
| 12/28/2011 | Herb Jamison | house appraisal | $ 450.00 |
| 12/29/2011 | Shell - Victoria | Transportation | $ 44.51 |
| 12/29/2011 | Amy Brunsting | tires for mom's car/house repairs/transportation | $ 425.94 |
| 1/9/2012 | Exxon - Victoria | Transportation | $ 49.57 |
| 1/10/2012 | Dr. Annie Uralil | mom's medical | $ 44.06 |
| 1/16/2012 | Northwoods Urology Associates | mom's medical | $ 740.77 |
| 1/17/2012 | Don Sumners Tax Asses/Collect | 2011 property tax for mom's house | $ 1,285.05 |
| 1/20/2012 | Stream Energy | electricity for mom's house | $ 59.96 |
| 1/31/2012 | ATT | phone/internet for mom's house | $ 86.00 |
| 2/2/2012 | Visa | Credit Card Payment for moving supplies, meals and gas (unhide rows to see | $ 269.84 |
| 2/11/2012 | Memorial Hermann | mom's medical | $ 41.72 |
| 2/14/2012 | ATT | phone/internet for mom's house | $ 72.16 |
| 2/17/2012 | Stream Energy | electricity for mom's house | $ 19.10 |
| 2/29/2012 | Durapier | deposit to level mom's house | $ 500.00 |
| 3/2/2012 | Amy Brunsting | moving expenses on mom's house | $ 844.35 |
| 3/6/2012 | Carole Brunsting | reimbursement for paying Durapier & paying Tino $780 to oversee project (6 | $25,655.00 |
| 3/11/2012 | Kroese & Kroese | appraisal of farm and consult w/ Iowa atty | $ 2,175.00 |
| 3/15/2012 | Centerpoint Energy | natl gas for house | $ 158.09 |
| 3/16/2012 | Return Check Fee | Met Life dividend check returned (checking into why) | $ 12.00 |
| 3/21/2012 | Postage | to mail tax info for Surv and Deced Trust to Rich Rikkers CPA | $ 14.80 |
| 3/26/2012 | Stream Energy | electricity for mom's house | $ 39.19 |
| | **Total** | | **$40,481.84** |

**Liabilities**
Farm Taxes
Remaining medical bills
Decendent & Survivor Trust tax prep
Trustee Expenses

# Schedule J

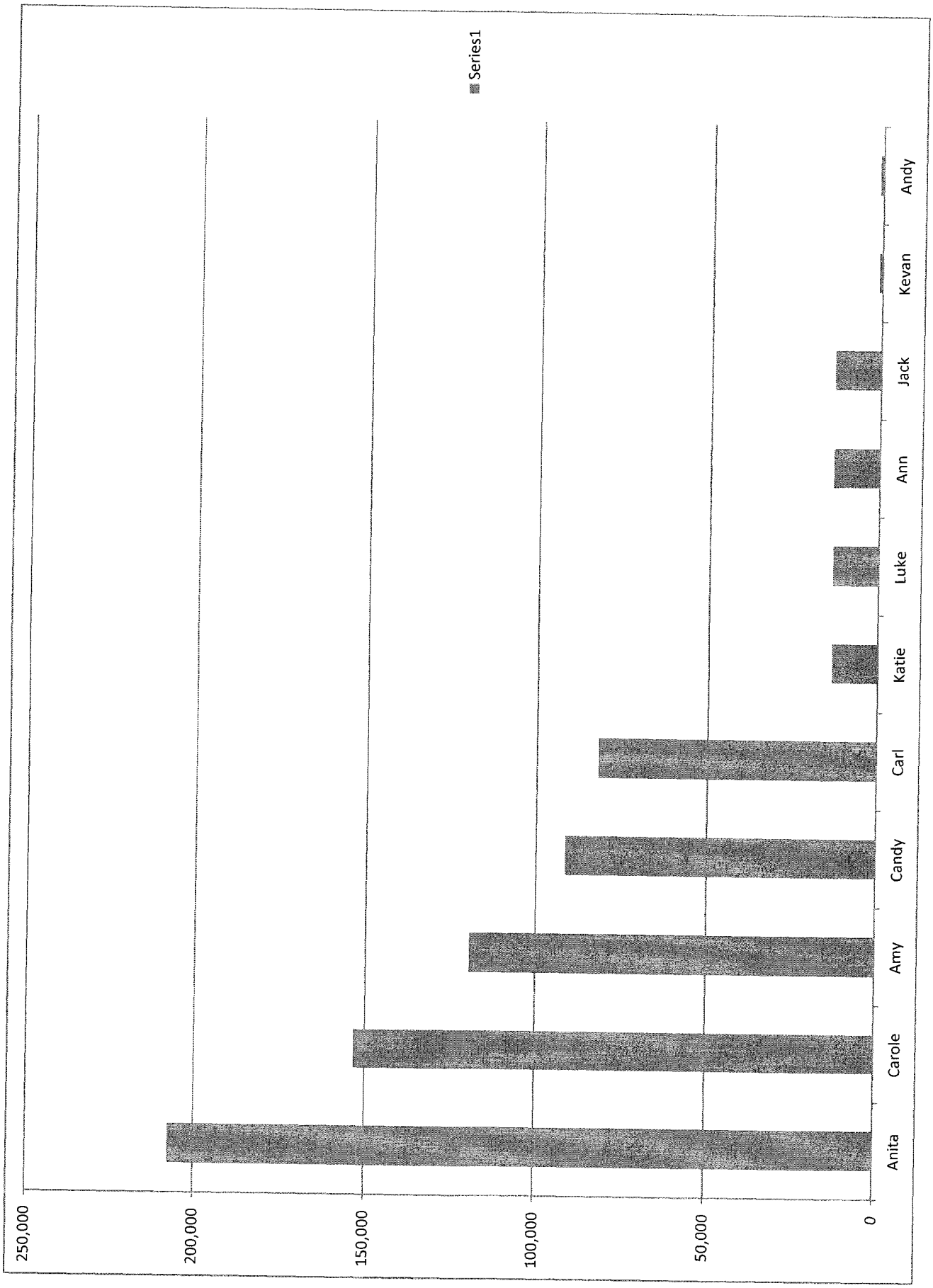
Case 4:12-cv-00592 Document 117-7 Filed on 08/03/16 in TXSD Page 10 of 27

20-20566.1550

# Exhibit 3

Financial graphs and charts compiled with the numbers provided by defendants

| | | % | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | | 2011 | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Anita | 207,480 | 29.23% | | 200 | 200 | | 100,000 | 3,900 | 13,500 | 2,000 | 4,250 | 5,000 | 4.18% | 78,430 | 21.94% |
| Carole | 153,225 | 21.59% | | 6,500 | 1,000 | | 4,800 | 5,350 | 600 | 250 | 2,500 | 28,000 | 23.40% | 104,225 | 29.16% |
| Amy | 119,454 | 16.83% | | 400 | | | | 200 | 12,000 | 1,000 | 2,000 | 7,000 | 5.85% | 96,854 | 27.10% |
| Candy | 91,436 | 12.88% | 20,000 | | | | | | 600 | 7,000 | 7,500 | 32,750 | 27.37% | 23,586 | 6.60% |
| Carl | 81,900 | 11.54% | 2,000 | | 20,000 | | 10,000 | 3,000 | | | | 46,900 | 39.20% | | |
| Katie | 13,581 | 1.91% | | | | | | | | | | | | 13,581 | 3.80% |
| Luke | 13,581 | 1.91% | | | | | | | | | | | | 13,581 | 3.80% |
| Ann | 13,581 | 1.91% | | | | | | | | | | | | 13,581 | 3.80% |
| Jack | 13,581 | 1.91% | | | | | | | | | | | | 13,581 | 3.80% |
| Kevan | 1,000 | 0.14% | | | | | | | | | 1,000 | | | | |
| Andy | 1,000 | 0.14% | | | | | | | | | 1,000 | | | | |
| | 709,819 | | 22,000 | 7,100 | 21,200 | | 114,800 | 12,450 | 26,700 | 10,250 | 18,250 | 119,650 | | 357,419 | |
| | | | 3.10% | 1.00% | 2.99% | | 16.17% | 1.75% | 3.76% | 1.44% | 2.57% | 16.86% | | 50.35% | |


Series1
250,000
200,000
150,000
100,000
50,000
0
Anita
Carole
Amy
Candy
Carl
Katie
Luke
Ann
Jack
Kevan
Andy

# Exhibit 4

Amy Verified Answer to Carl Brunsting complaint filed May 13, 2013

PROBATE COURT 4

CAUSE NO. 412,249-401

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

| | | |
|---|---|---|
| CARL HENRY BRUNSTING, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting | § | IN PROBATE COURT |
| v. | § | |
| 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; | § | NUMBER FOUR (4) OF |
| 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 |

FILED
2013 MAY 13 PM 1:01
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

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

TO THE HONORABLE JUDGE:

05142013:0809:P0042

05142013 08:09:05 6406

AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, 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, in the above-styled and numbered cause files her Original Answer to Plaintiff's Original Petition and shows as follows:

**GENERAL DENIAL**

1. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, 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, asserts a General Denial and respectfully requests that the Court require CARL HENRY BRUNSTING, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting, to prove his claims, charges, and allegations by clear and convincing evidence as required by the Constitution and Laws of the State of Texas.
2. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, 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, respectfully reserves the right to file an amended Answer in this proceeding in the manner authorized by the Texas Rules of Civil Procedure.

**VERIFIED DENIAL**

3. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART is not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Brunsting Personal Asset Trust because such trusts have not been created and therefore do not contain any trust property.

05142013:0809:P0044

**AFFIRMATIVE DEFENSES**

4. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART denies that all conditions precedent to a right of recovery have been satisfied.

5. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART would show that any claim for declaratory relief is without merit as the claim is subsumed within the other claims of Plaintiff. Alternatively, AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART asserts her right to recovery of reasonable attorney's fees under the provisions of Chapter 37, Texas Civil Practice and Remedies Code.

6. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART specifically denies and affirmatively asserts that Plaintiff's claim of conspiracy is not an independent tort or cause of action as a matter of law, and is not a basis for an award of actual or exemplary damages.

7. Plaintiff's claims are barred, or AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART's actions are excused, by the equitable or legal doctrines of affirmation, waiver, estoppel, laches, ratification (express or implied) and acceptance of benefits.

8. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART pleads all applicable provisions of the Trust and sub-trust instruments concerning the duties and liabilities of a person serving as Trustee, including any exculpatory provision applicable to alleged errors of judgment or mistake of fact or law or ordinary negligence.

9. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART pleads the doctrine of comparative responsibility as provided in Chapter 33 of the TEX. CIV. PRAC. & REM. CODE, and its application to any tort claim (intentional or otherwise) of the Plaintiff that may be alleged against her, including the present claims of conversion and negligence.

10. Any allegedly wrongful acts or omissions of AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, if and to the extent such acts and omissions occurred, were legally excused or justified.

05/14/2013:08809:P0045

Plaintiff is not entitled to punitive damages, and any and all excessive amounts of such damages sought violate Chapter 41 of the Texas Civil Practice and Remedies Code, the Texas Constitution and the United States Constitution, all of which set limits on the award of punitive damages. AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART's alleged actions and omissions were undertaken in good faith, with the absence of malicious intent to injure Plaintiff, and constitute lawful, proper and justified means to further the purposes of the Trust and sub-trusts.

THEREFORE, AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART, *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, asks that after final hearing of this matter, Plaintiff take nothing against her, that she recover her reasonable attorney's fees and costs, and for such other and further relief to which she may be entitled.

05142013:0809:P0046

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: _____

George W. Vie III
State Bar No. 20579310
Maureen Kuzik McCutchen
State Bar No. 00784427
2228 Mechanic, Ste 400
P.O. Box 1943
Galveston, Texas 77553-1943
(409) 763-2341
Facsimile: (409) 763-2879
mmccutchen@millsshirley.com

*Attorneys for Amy Ruth 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 10th day of May, 2013.

***Via Certified Mail/RRR***
***#7009 2250 0004 1808 2299***
Ms. Bobbie Bayless
Bayless & Stokes
2931 Ferndale
Houston, TX 77098

***Via Certified Mail/RRR***
***#7009 2250 0004 1808 2305***
Ms. Darlene Payne Smith
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, TX 77010

# Exhibit 5a

**Notice** of filing of Plaintiff Curtis original federal Petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

Emails Summer Peoples re 10/25/2010 phone conference (Candace Curtis Original Affidavit Exhibit 8 PDF pgs. 53-56)

02102015:1527:P0065

**From:** Carole Brunsting (cbrunsting@sbcglobal.net)
**To:** Summer@vacek.com;
**Date:** Wed, October 13, 2010 8:47:15 AM
**Cc:** occurtis@sbcglobal.net; at.home3@yahoo.com; akbrunsting@suddenlink.net; candace@vacek.com;
**Subject:** RE: Brunsting Trust

Summer,
Thank you for your response. Now I understand the nature of the meeting, could you please clarify what you mean by "have no say". I assumed the "say" belonged to our Mother. If I am not understanding that correctly please let me know.
Thanks again,
Carole

--- On **Wed, 10/13/10, Summer Peoples <*Summer@vacek.com*>** wrote:

From: Summer Peoples <Summer@vacek.com>
Subject: RE: Brunsting Trust
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Cc: occurtis@sbcglobal.net, at.home3@yahoo.com, "Anita Brunsting" <akbrunsting@suddenlink.net>, "Candace Freed" <candace@vacek.com>
Date: Wednesday, October 13, 2010, 10:09 AM

Ms. Brunsting:

To answer your questions –

This teleconference meeting is to discuss changes to your mother's trust. If you are unable to attend, it simply means that you will have no say in what changes will be made. It will not be a problem if you cannot attend. However, Mrs. Freed wants to extend the invitation to all Mrs. Brunsting's children.

Thanks,

***Summer Peoples, CP***

Certified Paralegal

**Vacek & Freed, PLLC**

14800 St. Mary's Lane, Suite 230

Houston, Texas 77079

Telephone: 281.531.5800

**P-6**

02102015:1527:P0066

Toll Free: 1.800.229.3002

Facsimile: 281.531.5885

E-mail: summer@vacek.com

**IRS CIRCULAR 230 DISCLOSURE:** Tax advice contained in this communication (including any attachments) is neither intended nor written to be used, and cannot be used, to avoid penalties under the Internal Revenue Code or to promote, market, or recommend to anyone a transaction or matter addressed in this communication.

This e-mail is covered by the Electronic Communications Privacy Act, 18 U.S.C. 2510-2521 and is legally privileged.

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**From:** Carole Brunsting [mailto:cbrunsting@sbcglobal.net]
**Sent:** 10/13/2010 9:06 AM
**To:** Summer Peoples
**Subject:** Re: Brunsting Trust

Summer,

What is this meeting in reference to? From looking at the time choices available, I may not be able to make the meeting and would like to know if that will be a problem.

Thanks

Carole Brunsting

--- On Wed, 10/13/10, Summer Peoples <*Summer@vacek.com*> wrote:

From: Summer Peoples <Summer@vacek.com>
Subject: Brunsting Trust
To: occurtis@sbcglobal.net, "Anita Brunsting" <akbrunsting@suddenlink.net>, cbrunsting@sbcglobal.net, at.home3@yahoo.com
Cc: "Candace Freed" <candace@vacek.com>
Date: Wednesday, October 13, 2010, 8:42 AM

Dear Brunsting Family:

Attorney Candace Freed would like to coordinate a teleconference call with you and your mother for sometime next week. Currently, she has the following time slots available (all times are Central Standard Time zone):



EXHIBIT FOR IDENTIFICATION ONLY

# Exhibit 5b

**Notice** of filing of Plaintiff Curtis original federal Petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

October 28 2010 Carole email about overhearing Nelva on Phone with Freed telling Freed to "Change it back" and that she was not going to follow the changes Freed had made.

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>
**Sent:** Thursday, October 28, 2010 9:00 AM
**To:** Candace Curtis
**Subject:** Re: One more

Candy,
The more I think about this the whole key is Carl. When I was listening to Mother's call with Candance, Mother told Candace that Carl was trustee, not Anita and was not following the changes Candane was telling her she had made to have Carl removed.. Legally, I wonder if what Candace did was right without consulting Carl or his power of attonery since Carl has always been present at all meetings.

--- On **Thu, 10/28/10, Candace Curtis <*occurtis@sbcglobal.net*>** wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re: One more
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Thursday, October 28, 2010, 10:34 AM

Candace DOES know she fucked up. That's why she had such a nasty attitude towards both you and I. Anita is smug and Amy plays dumb.

I hope Carl goes home today! If he does I hope the sun is shining. 10 minutes smiling into the sunshine + coffee + the Beatles = a sharper, happy Carl. I have a strong feeling that he will recover in leaps and bounds ALL ON HIS OWN, with support from his wife and family. The fact that Daddy is looking over us gives me strength. I can feel him stronger than ever before.

My suggestion is that when Dr. White finds Mother competent the following should happen:

1. You need to complete your time-line to demonstrate that due to various factors (badgering, low oxygen, Carl's illness, her illness, pneumonia, general stress and worry due to all of this), Mother was incompetent and under extreme duress when she signed everything she signed, particularly the Power of Attorney. We can compose a letter to Candace for Mother to sign, demanding that she wants to have papers drawn up to revoke anything she agreed to between the first of July and now.

2. As Mother gathers strength over the next few weeks she will go to her MD Anderson appointments, etc. and move towards treatment and recovery. I want to stress nutrition, adequate good sleep, and stress-free living.

3. In the meantime she can sell what she needs to, to pay for Robert or Tino or whoever Drina needs to assist her with Carl (if she even needs someone - Carl may recover a lot in a few weeks at home). The cost will be minimal compared to the $100k shithead got to buy her house.

Going forward, Mother will have to tell Candace IN WRITING what she wants done with the trust. You can help her compose the letters. There can be no question when it's in writing. You can assist Mother in reviewing the paperwork before she signs (at home - at her leisure), to make sure all her wishes have been incorporated. This should never be done under the pressure and duress she was subjected to. Mother can take as much time as she needs to read and understand that everything will be as she wants it to be.

The fair and equitable solution in my mind is:

Make all five of us successor co-trustees and require a majority to make any change whatsoever. Then, if Mother steps down there will be no shenanigans. Everything will be transparent and we'll all know everything everyone else knows. That way when Anita wants to sell the farm, or move away from Edward Jones, she can put it up for a vote among us. All five of us are intelligent people and none of us can honestly say we have NEVER made a wrong choice in our lives. This way Mother will be at peace to live out her life, and she will die knowing that she has not pitted one against the other, or given control of one over the other, or played favorites, or been bullied into doing something she didn't really want to do, or would not have done in the first place.

Now this may go AGAINST the norm, or what Candace and her ilk would recommend, but fuck them. They are attorneys who get paid to do what their clients want them to do and they love having to draw up documents. Fees, fees, fees, $$$$$$$$$$$$

If Anita succeeds in her agenda and becomes trustee, we should have her competency tested just to show her what it feels like. If everything stays the way it is right now, that's the first thing I'm going to do when the day comes that she's in charge of me. Na, Na, Na, Na, Na, Na.

Love you,

C

---

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>
**To:** occurtis@sbcglobal.net
**Sent:** Wed, October 27, 2010 9:32:06 PM
**Subject:** One more

And do not overlook an exploration of the family's motives in requesting a competency evaluation, she cautioned. Do family members have reason for wanting their oddly behaving relative to be declared incompetent?

This is from an article about not rushing to declare and elderly person incompetent.
Mother passes the smell test and I have to make sure Tino does not let her out of the house without her clothes being ironed and SEE!!! MOTHER MADE THE APPOINTMENT TO GET HER HAIR DONE!!! CANDY THAT IS IT!!! MOTHER DOES CARE ABOUT HER APPEARANCE!! She will not go out without her makeup one and I have to get her a nail file all the time. Mother also called Edward Jones on her own and sold $10K so she would have enough money to live on.

She was temporarily incompetent when she was to low on oxygen and if they made her walk to Candace's offic I know for a fact her levels were to low because Dr. White joked about it. Tino did not take her so she had to walk from the parking lot to the office. She did not understand what she was signing because she was to short o breath and I can prove that. Candane has to know she F***ed up.

--- On **Wed, 10/27/10, Carole Brunsting** ***<cbrunsting@sbcglobal.net>*** wrote:

From: Carole Brunsting <cbrunsting@sbcglobal.net>
Subject: Found this
To: occurtis@sbcglobal.net

Date: Wednesday, October 27, 2010, 10:38 PM

There are any number of situations that may cause you to question the competency of a family member to make sound life decisions, such as when:

- An elderly person suddenly changes a will or trust in a manner that is significantly different from all previous wills or trusts, which could result in will litigation if not appropriately handled during the elder's life.
- A family member has suspicion that the elderly person is being unduly influenced by others

Anita is unduly influencing Mother and now Amy has piled on. Mother never would have made these changes on her own. This was all done by the hand of Anita who put herself in charge of everything.

021003015 1527 P0074

**From:** Carole Brunsting (cbrunsting@sbcglobal.net)
**To:** occurtis@sbcglobal.net;
**Date:** Tue, October 26, 2010 10:12:27 AM
**Cc:**
**Subject:** Re:

Oh Candy thank you!!! I feel that I have been fighting this battle with Anita and now Amy alone. Anita is going to be the one responsible for keeping Mother sick because she is such a control freak and will not LET IT GO!! Let Mother decide what she wants to do. It is Mother's money, not ANITA's and not AMY's.

--- On Tue, 10/26/10, Candace Curtis <*occurtis@sbcglobal.net*> wrote:

> From: Candace Curtis <occurtis@sbcglobal.net>
> Subject: Re:
> To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
> Date: Tuesday, October 26, 2010, 12:05 PM
>
> I just called Mother. She DID NOT know the full implications of what she signed. I told her Anita had been manipulating her since Daddy passed away. She said she should have been included on the call. She said that she would not have given Anita the authority to manage MY MONEY. I told her that Amy and Anita are conspiring with Candace to have her declared incompetent so they can take CONTROL.
>
> I don't really know what will happen now. I think that the August document should be declared null and void.
>
> After talking to her for at least 30 minutes I realized that she is NOT incompetent. It's her memory that is failing, not her ability to manager her affairs. This happens when people get old. She might not remember to pay a bill, but she knows that bills must be paid. She doesn't remember that I know Carl had encephalitis, but she knows Carl had encephalitis. She has the ability to UNDERSTAND something when it's explained to her, although she might not remember what it is that she understood at the time.
>
> Please change the password on Mother's bank account. Please also tell Mother that Anita checks her bank account to see what she is doing and that she also reads her private emails.
>
> Mother did say that Anita drives her crazy.
>
> Love you,
>
> C
>
> ---
> **From:** Carole Brunsting <cbrunsting@sbcglobal.net>
> **To:** Candace Curtis <occurtis@sbcglobal.net>
> **Sent:** Tue, October 26, 2010 9:34:02 AM
> **Subject:** Re:

**P-8**

02/02/2015 15:27 #0075

I am glad you wrote because I could not sleep last night either and it is difficult to keep my mind on my work. I went over and over all the events of what has happened since Daddy passed away and Anita has been scheming and manipulating with Mother and even tried to get Carl involved. Candace has not been looking out for Mother's best interest. Candace has been allowing Anita to be the one to strong arm Mother into signing papers when I do not believe she understood what she was signing, she only wanted to shut Anita up.

All Anita was suppose to do or find out was placing Carl's money in medical trust for MOTHER to manage and now all of a sudden Amy is co-trustee and your money is in trust and I wonder about mine as well.

I am working on a time line of how and when all this happened and will show that they pressured Mother to make changes when she A) was accepting the fact that Carl was gravely ill B) she found out she had cancer C) she got pneumonia and was in the hospital D) had Drina breathing down her back because ANITA was to chicken to call Drina back E) had to decide on her own about giving Drina money because ANITA and AMY were to busy to be bothered to call me or Mother back and it is what Mother wanted to do but she knew Anita was going to chastise her for giving her money that was her own to give away as she saw fit. F) also during that time Mother had 2 PET scans, a CT scan and a bron scope for which she was sedated.

Now I understand why Mother kept putting off signing the changes to the Trust. I thought the papers were written only to put Carl's money in trust. I did not know that Amy was replacing Carl and your money was going into trust. I never saw the documents as Candace had them at her office, but Mother kept delaying going over there with various excuses. She was afraid to tell Anita she did not want to make all the changes, but Anita talked her into it.

The closer Anita comes to taking control the comments to me have been: A) it is a good thing I am trustee now and not Carl because you can make more changes to the trust than you realize and Carl would have been making all the decision and had final say over distribution B) she was going to find a way to fold Carl's money back into the trust if Carl died before Drina C) she was taking over all investment when ANITA is the one that moved the money over to this Edwards office that Mother works with and attended all the meetings D) Anita wanted to find out if she could sell the farm as one unit because she said she could get more per acre rather than us each sell our parcels when we wanted too. E) Now I find out that ANITA contacted Carl about a year ago about putting both our money in trust that she and Carl would control and Carl said no.

Candy I am so deeply hurt by all of this and disgusted at the same time. I am so angry with Candace because she allowed all this to happen and it impacts Mother. Amy will just go along with Anita now that her name is on the trust. But if she only knew that ANITA called CPS and they went out and spoke with Amy's neighbors about her kids and spied on her house for a report back to Anita and the report was they did not find any reason to take Jack and Ann. Anita wanted Carl and Drina to adopt them.

I think at this point I need to find an attorney to speak with. Now that Anita sent out the trust documents even though she should not have, Drina will hire a lawyer and this will never see the of day. And she will have Carl's full support.

02102015:1527:P0076

--- On **Tue, 10/26/10, Candace Curtis** *<occurtis@sbcglobal.net>* wrote:

From: Candace Curtis <occurtis@sbcglobal.net>
Subject: Re:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Tuesday, October 26, 2010, 11:07 AM

Carole,

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**To:** Candace Curtis <occurtis@sbcglobal.net>
**Sent:** Mon, October 25, 2010 9:17:05 PM
**Subject:** Re:

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02102015:1527:P0077

From: Candace Curtis <occurtis@sbcglobal.net>
Subject:
To: "Carole Brunsting" <cbrunsting@sbcglobal.net>
Date: Monday, October 25, 2010, 6:01 PM

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02102015 1527 P0074

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**P-8**

02102015:1527:P0075

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02/02/2012 15:27:P0077

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# Exhibit 5c

**Notice** of filing of Plaintiff Curtis original federal Petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

Carole's October emails about Mother kept avoiding signing papers (see original complaint exhibits)

02102015 1527 P0074

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Candy and Carole emails October 26, 2010 "Amy and Anita arc trying to take over and will probably do anything and everything they can to cut the rest of us out."

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Anita's March 9 2011 email see Candace Curtis Original Affidavit Exhibit 9 p.51Anita's March 9 2011 email see Candace Curtis Original Affidavit Exhibit 9 pg.57

02/20/2012 15:17 P0078

**From:** Candace Curtis (occurtis@sbcglobal.net)
**To:** occurtis@sbcglobal.net;
**Date:** Sat, February 18, 2012 11:29:12 AM
**Cc:**
**Subject:** Fw: New Development

---- Forwarded Message ----
**From:** Anita Brunsting <akbrunsting@suddenlink.net>
**To:** Candace Curtis <occurtis@sbcglobal.net>; Amy <at.home3@yahoo.com>; Carole Brunsting <cbrunsting@sbcglobal.net>
**Sent:** Tue, March 8, 2011 7:15:32 PM
**Subject:** RE: New Development

I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl $13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid $13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.

I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.

I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

**P-9**

# Exhibit 6

The Original 1996 Brunsting Family Living Trust

# THE

# BRUNSTING FAMILY

# LIVING TRUST

*Prepared By*

Albert E. Vacek, Jr.

Law Offices of Albert E. Vacek, Jr., P.C.

11757 Katy Freeway Suite 840
Houston, Texas 77079

Telephone: (713) 531-5800

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Article II Transfers of Assets to Our Trust

Article III Our Right to Amend or Revoke This Trust

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*Distributions From Our Trust*

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Article VI For So Long As We Both Shall Live

Article VII Upon the Death of One of Us

Article VIII Administration of the Survivor's Trust

Article IX Administration of the Decedent's Trust

Article X Upon the Death of the Survivor of Us

Article XI Protection of Beneficial Interests

Article XII Our Trustees' Powers and Authority

*General Matters*

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**Article XIV** **Miscellaneous Matters**



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# THE BRUNSTING FAMILY LIVING TRUST

## Article I

## The Founding of Our Family Living Trust

### Section A. Our Declaration of Trust

This trust declaration is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas. We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

### Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

### Section C. Our Beneficiaries and Family

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

| Name | Birth Date |
|---|---|
| CANDACE LOUISE CURTIS | March 12, 1953 |
| CAROL ANN BRUNSTING | October 16, 1954 |
| CARL HENRY BRUNSTING | July 31, 1957 |
| AMY RUTH TSCHIRHART | October 7, 1961 |
| ANITA KAY RILEY | August 7, 1963 |

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

# Article II

# Transfers of Assets to Our Trust

## Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

## Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

## Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

# Article III

# Our Right to Amend or Revoke This Trust

### Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

### Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

### Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

# Article IV

# Our Trustees

**Section A. Original Trustees**

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Trustee in the following order:

First, ANITA KAY RILEY

Second, CARL HENRY BRUNSTING

Third, AMY RUTH TSCHIRHART

A successor Trustee shall be replaced by the next named successor in the order listed above when he or she has resigned or is unable to continue to serve as Trustee due to death or disability. Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the ____ day of _____, 19_____.

_____
Notary Public - State of Texas

**Section F. Documentary Succession of Our Trustees**

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

**Section G. Our Trustees' Compensation**

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

**Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

**Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

**Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

**Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

**Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

# Article V

# Insurance Policies and Retirement Plans

## Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

### 1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

### 2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

## Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits




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which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

**1. Collection of Non-Retirement Death Proceeds**

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

**2. Retirement Plan Elections**

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

**3. Collection Proceedings**

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee, in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

**4. Payor's Liability**

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.




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# Article VI

# For So Long As We Both Shall Live

**Section A. Our Use of Income and Assets**

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

**Section B. If One or Both of Us Are Disabled**

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

**Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

# Article VII

# Upon the Death of One of Us

**Section A. Settlement of Affairs**

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

**1. Deceased Founder's Probate Estate**

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased




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Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

**2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

**3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

**Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

**1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

**a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

**b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

**2. Creation of the Decedent's Trust**

The Decedent's Trust shall consist of the balance of the trust property.

**Section C. Valuation of Property Distributed to the Survivor's Trust**

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

**Section D. Conversion of Nonproductive Property**

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

**Section E. Survivor's Right to Refuse Property or Powers Granted**

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

**Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

**Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

**a. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

**b. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

**c. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan", our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

# Article VIII

# Administration of the Survivor's Trust

**Section A. Creation of Two Survivor's Shares**

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

**1. Survivor's Share One**

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

**2. Survivor's Share Two**

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

**Section B. Administration of Survivor's Share One**

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

**1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

**2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

**Section C. Administration of Survivor's Share Two**

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

**1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

**2. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

### 3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

## Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

### 1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

**2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

**3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

**a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

**c. Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.





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# Article IX

# Administration of the Decedent's Trust

**Section A. Use of Income and Principal**

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

**Section B. Guidelines for All Distributions**

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

**Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

**Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only. Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

# 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:

| Beneficiary | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| ANITA KAY RILEY | 1/5 |

**Section B. Distribution to our Beneficiaries**

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share set aside for CANDACE LOUISE CURTIS shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CANDACE LOUISE CURTIS, free of the trust.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING




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The trust share set aside for CAROL ANN BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CAROL ANN BRUNSTING, free of the trust.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share set aside for CARL HENRY BRUNSTING shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to CARL HENRY BRUNSTING, free of the trust.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, the trust share set aside for CARL HENRY BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share set aside for AMY RUTH TSCHIRHART shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to AMY RUTH TSCHIRHART, free of the trust.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living

descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share set aside for ANITA KAY RILEY shall forthwith terminate and our Trustee shall distribute all undistributed net income and principal to ANITA KAY RILEY, free of the trust.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Descendant of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be held in trust if the descendant of the deceased beneficiary is under 21 years of age, or is disabled or incapacitated.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

| Beneficiary | Share% |
|---|---|
| CENTRAL COLLEGE OF IOWA<br>Pella, Iowa | 100% |

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

# Article XI

# Protection of Beneficial Interests

## Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

## Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

## Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any

amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

**Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provided otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

**1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

**2. Methods of Distribution**

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the

parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

**3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

# Article XII

# Our Trustees' Powers and Authority

## Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

## Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

## Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

**Originally Contributed Properties**

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

**Additional Properties**

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

**Securities Powers**

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

**Investment of Cash Assets**

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

**Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the

Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

**Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

**Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.




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The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

**Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

**Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

**Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

**Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

**Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

**Authority to Sell or Lease and Other Dispositive Powers**

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

**Warranties and Covenants**

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

**Trustee's Compensation**

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

**Employment and Delegation of Authority to Agents**

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

**Power to Release or Abandon Property or Rights, and to Pursue Claims**

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when

the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

**Nominal Title and Use of Nominees**

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

**Power to Lend Money and Guarantee Obligations**

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

**Power to Borrow**

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

**Payment of Indebtedness and Settlement Costs**

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

**Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

**Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

**Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

**Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

**Tax Elections**

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

**Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

**Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

**Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for the inspection or audit by the beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is or could be entitled to receive a present income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

**Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

**Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

**Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when

the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

**Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

**Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

**Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

**Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity

serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

**Section Q. Retirement Plan Elections**

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

**Section R. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

**1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

**2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

**3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

# Article XIII

# Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.

4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals,

other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.

10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

It must clearly evidence the interest of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

# Article XIV

# Miscellaneous Matters

**Section A. Distribution of Personal Belongings by Memorandum**

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

**Section B. Special Bequests**

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

**Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

**Section D. Jurisdiction**

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

**Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

**Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

**Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

**Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

**Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

**Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

**Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

**Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

**Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

**Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: October 10, 1996

_____
ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

THE STATE OF TEXAS

COUNTY OF HARRIS

On October 10, 1996, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Notary Public, State of Texas

# Exhibit 7

The 2005 Restatement of the Family Trust

# THE RESTATEMENT OF

# THE BRUNSTING FAMILY

# LIVING TRUST

*Prepared By*

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# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

## Article I

## Our Family Living Trust

### Section A. The Restatement of Our Trust

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

### Section B. The Title of Our Trust

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.





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Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

**Section C. Our Beneficiaries and Family**

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

| Name | Birth Date |
|---|---|
| CANDACE LOUISE CURTIS | March 12, 1953 |
| CAROL ANN BRUNSTING | October 16, 1954 |
| CARL HENRY BRUNSTING | July 31, 1957 |
| AMY RUTH TSCHIRHART | October 7, 1961 |
| ANITA KAY RILEY | August 7, 1963 |

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust




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during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.





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# Article II

# Transfers of Assets to Our Trust

## Section A. Our Initial Contribution

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

## Section B. Additions to Our Trust

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

## Section C. Our Separate and Community Accounts

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.





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# Article III

# Our Right to Amend or Revoke This Trust

### Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

### Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

### Section C. Income Tax Matters

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.




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# Article IV

# Our Trustees

**Section A. Original Trustees**

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.




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A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:




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On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

## Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

## Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.




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**Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

**Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

**Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

**Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.




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**Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

**Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance**

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and




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deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

**3. Determination of "Incompetence" or "Incapacity"**

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or




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estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."




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# Article V

# Insurance Policies and Retirement Plans

## Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

### 1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

### 2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.




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## Section B. Upon the Death of a Founder

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

### 1. Collection of Non-Retirement Death Proceeds

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

### 2. Retirement Plan Elections

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

### 3. Collection Proceedings

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,




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in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

**4. Payor's Liability**

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

## Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

**1. Minimum Distribution**

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

**2. Distribution Restrictions**

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent




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of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

**3. Exclusion of Older Adopted "Descendants"**

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

**4. Payment of Estate Taxes of Plan Participant**

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

**5. Delivery of Trust to Plan Administrator**

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

**6. Distribution to the Beneficiaries**

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

**7. Distribution of More Than the Minimum Distribution**

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.





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# Article VI

# For So Long As We Both Shall Live

## Section A. Our Use of Income and Assets

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

## Section B. If One or Both of Us Are Disabled

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.




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Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

**Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

**Section D. Residence Homestead**

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;




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3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.




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# Article VII

# Upon the Death of One of Us

**Section A. Settlement of Affairs**

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

**1. Deceased Founder's Probate Estate**

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative





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of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

**2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

**3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside




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of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

**Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

**1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

**a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

**b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.




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### 2. Creation of the Decedent's Trust

The Decedent's Trust shall consist of the balance of the trust property.

## Section C. Valuation of Property Distributed to the Survivor's Trust

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

## Section D. Conversion of Nonproductive Property

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

## Section E. Survivor's Right to Refuse Property or Powers Granted

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.




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**Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

**Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

**1. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.




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**2. Income Requirement**

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

**3. Retirement Plan Expenses**

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.




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# Article VIII

# Administration of the Survivor's Trust

**Section A. Creation of Two Survivor's Shares**

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

**1. Survivor's Share One**

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

**2. Survivor's Share Two**

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

**Section B. Administration of Survivor's Share One**

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

**1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.




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**2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

## Section C. Administration of Survivor's Share Two

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

### 1. The Surviving Founder's Right to Income

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

### 2. Principal Distributions in Our Trustee's Discretion

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.




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### 3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

## Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

### 1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.




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The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

**2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

**3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

**a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.




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**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.




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**c. Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.





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# Article IX

# Administration of the Decedent's Trust

**Section A. Use of Income and Principal**

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

**Section B. Guidelines for All Distributions**

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.




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If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

**Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

**Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.





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# 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:

| Beneficiary | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| ANITA KAY RILEY | 1/5 |

**Section B. Distribution to our Beneficiaries**

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.




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ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.




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iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:




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i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.




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However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.




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3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to




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CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY




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BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.




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In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH




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TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on




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such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Descendant of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount.

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.




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**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:




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| Beneficiary | Share% |
|---|---|
| CENTRAL COLLEGE OF IOWA<br>Pella, Iowa | 100% |

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.




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# Article XI

# Protection of Beneficial Interests

## Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

## Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

## Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.




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Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

**Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

**1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.



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**2. Methods of Distribution**

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.




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The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

**3. Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

**Section E. Application to Founders**

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.





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# Article XII

# Our Trustees' Powers and Authority

## Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

## Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

## Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.





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### Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

### Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

### Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

### Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In




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determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

**Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

**Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

**Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.




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Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

**Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

**Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

**Corporate Activities**

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and




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liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

**Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

**Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.




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### Authority to Sell or Lease and Other Dispositive Powers

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

### Warranties and Covenants

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

### Trustee's Compensation

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

### Employment and Delegation of Authority to Agents

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

### Power to Release or Abandon Property or Rights, and to Pursue Claims

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

### Nominal Title and Use of Nominees

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

**Power to Lend Money and Guarantee Obligations**

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

**Power to Borrow**

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

**Payment of Indebtedness and Settlement Costs**

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.





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The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

**Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

**Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

**Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.





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**Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

**Tax Elections**

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

**Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

**Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

**Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

**Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.




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**Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

**Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

**Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

**Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

**Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

**Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

**Section Q. Retirement Plan Elections**

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

**Section R. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

**1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

**2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

**3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the




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newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.





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# Article XIII

# Definitions

For purposes of this trust declaration, the following words and phrases shall be defined as follows:

1. Adopted and Afterborn Persons. Persons who are legally adopted while they are under 18 years of age shall be treated for all purposes under this agreement as though they were the naturally born children of their adopting parents.

   A child in gestation who is later born alive shall be considered a child in being throughout the period of gestation.

2. Descendants. The term "descendants" means the lawful lineal blood descendants of the person or persons to whom reference is made. A descendant in gestation who is later born alive shall be considered a descendant in being throughout the period of gestation. An adopted person, and all persons who are the descendants by blood or by legal adoption while under the age of 18 years of such adopted person, shall be considered descendants of the adopting parents as well as the adopting parents' ancestors.

3. Education. As used in this trust, "education" shall include:

   Any course of study or instruction at an accredited college or university granting undergraduate or graduate degrees.

   Any course of study or instruction at any institution for specialized, vocational or professional training.

   Any curriculum offered by any institution that is recognized for purposes of receiving financial assistance from any state or federal agency or program.

   Any course of study or instruction which may be useful in preparing a beneficiary for any vocation consistent with the beneficiary's abilities and interests.

   Distributions for education may include tuition, fees, books, supplies, living expenses, travel and spending money to the extent that they are reasonable.




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4. Founders. The term "Founders" means the "grantors", "trustors", "settlors" or any other name given to the makers of this trust either by law or by popular usage.

5. Heirs at Law. Whenever a Trustee, or a legal advisor to the Trustee, is called upon to determine the heirs at law of the Founders, or any other person beneficially interested in this trust, the determination will be made to identify those individuals, other than creditors, who would receive the personal property of a decedent upon his or her death as determined in accordance with the laws of intestate succession of the State of Texas, United States of America, and further determined as if the Founders of this trust had predeceased the person or persons so named or described.

6. Incompetence or Disability. A Founder, Trustee or beneficiary will be considered "incompetent", "disabled" or "legally incapacitated" if he or she is incapacitated to an extent which makes it impossible or impractical for him or her to give prompt and intelligent consideration to their property or financial matters.

The Trustee may rely on a judicial declaration of incompetency by a court of competent jurisdiction, or the Trustee may rely upon the written opinion of two licensed physicians as to the disability of any Founder, Trustee or beneficiary and may utilize such written opinion as conclusive evidence of such incompetence or disability in any dealings with third parties.

In addition, if a guardian, conservator or other personal representative of a Founder, Trustee or beneficiary has been appointed by a court of competent jurisdiction, then such Founder, Trustee or beneficiary will be considered incompetent or disabled.

7. Minor and Adult Beneficiary. The term "minor beneficiary" identifies a beneficiary who is less than 21 years of age. The term "adult beneficiary" identifies a beneficiary who is 21 years of age or older.

8. Per Stirpes Distributions. Whenever a distribution is to be made to a person's descendants, per stirpes, the distributable assets are to be divided into as many shares as there are then living children of such person and deceased children of such person who left then living descendants. Each then living child shall receive one share and the share of each deceased child shall be divided among such child's then living descendants in the same manner.

9. Personal Representative. For the purposes of this agreement, the term "personal representative" shall include an executor, administrator, guardian, custodian, conservator, Trustee or any other form of personal representative.




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10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.




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# Article XIV

# Miscellaneous Matters

## Section A. Distribution of Personal Belongings by Memorandum

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

## Section B. Special Bequests

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.




20-20566.1726

**Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

**Section D. Jurisdiction**

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

**Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

**Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.




20-20566.1727

**Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

**Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

**Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

**Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

**Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.




20-20566.1728

# EXHIBIT 14

| | | |
|---|---|---|
| **NO. 412,249-401** | | |
| **CANDACE LOUISE CURTIS** | § | **IN PROBATE COURT** |
| *Plaintiff,* | § | |
| **V.** | § | **NUMBER FOUR (4) OF** |
| **ANITA KAY BRUNSTING, ET AL** | § | |
| *Defendants.* | § | **HARRIS COUNTY, TEXAS** |

**CANDACE LOUISE CURTIS' VERIFIED MOTION FOR PARTIAL SUMMARY JUDGMENT WITH CONCURRENT PETITIONS FOR DECLARATORY JUDGMENT**

TO THE HONORABLE PROBATE COURT:

COMES NOW Candace Louise Curtis filing this Verified Motion for Partial Summary Judgment with Concurrent Petitions for Declaratory Judgment and in support thereof would respectfully show as follows:

**I.**

**Summary and Declaratory Judgment Issues**

This is a case involving numerous breaches of fiduciary duties by persons occupying the offices of trustee under questionable authority who, while exercising the powers of the office to perform improper transactions in a biased and self-serving manner, have affirmatively performed none of the duties required under the terms of the trust instruments, have affirmatively performed none of the duties required by Texas property statutes, and have affirmatively performed none of the duties required by the Texas common law.

Notwithstanding Defendants' selective disclosures over these past five years and their continuing obfuscation, there has been more than adequate time for both honest and complete fiduciary disclosures and for pretrial discovery. The requisite evidentiary support for these motions is contained within the Court's record. The evidence is clear, positive, uncontradicted, and of such nature it cannot rationally be disbelieved; there is no legitimate controversy as to any material fact; and Plaintiff is entitled to judgment as a matter of law on the issues expressly set out in this motion.

This motion for partial summary judgment seeks relief on four specific breaches of fiduciary duties at issue in the matters before the Court. Additionally, a de son tort claim and

petitions for declaratory judgments relate to the validity, efficacy and interpretation of instruments and the proper standing of parties.

The claims for breach of fiduciary relate only to the period of time between the death of our Mother Nelva Brunsting on November 11, 2011 and the filing of this motion. The several petitions for declaratory judgment relate to instruments authored after the incapacity and/or demise of Elmer Brunsting.

Plaintiff asks the Court to interpret the several claims for breach of fiduciary and the several petitions for declaratory judgment considering the totality of the circumstances in Toto with the records of the several proceedings.

## II.

## Summary Judgment

Pursuant to Texas Rule of Civil Procedure 166(a):

> *A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after the adverse party has appeared or answered, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to amount of damages.*
>
> *The judgment sought shall be rendered forthwith if (i) the deposition transcripts, interrogatory answers, and other discovery responses referenced or set forth in the motion or response, and (ii) the pleadings, admissions, affidavits, stipulations of the parties, and authenticated or certified public records, if any, on file at the time of the hearing, or filed thereafter and before judgment with permission of the court, show that, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law on the issues expressly set out in the motion or in an answer or any other response.*

In Branult v. Bigham, 493 S.W.2d 576 (Tex. App. -- Waco [10th Dist], 1973 the court held that:

> *A person interested as or through a . . . trustee . . . other fiduciary . . . or cestui que trust in the administration of a trust . . . may have a declaration of rights or legal relations in respect to the trust. . . i. to ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; ii. to direct the . . . trustees to do or abstain from doing any particular act in their fiduciary capacity; or iii. to determine any question arising in the administration of the trust . . . including the construction of . . . other writings.*

## III.

## Burden of Proof

The burden of proof is on the fiduciary to show that he has fully performed his duties, and the means for such proof is full disclosure and a sufficient and proper accounting.

> *Where facts lie peculiarly within the knowledge of a party and cannot, in the nature of the case, be known to his adversary, the party having knowledge has the burden of proving the facts. Spencer v. Petit, Tex. Civ. App., 17 S.W.2d 1102 @ 1106, (Affirmed, Tex. Com. App., 34 S.W.2d 798).*

In Frethey v. Durant, 48 N.Y.S. 839 (N.Y.A.D. 1 Dept. 1897), it was held that:

> *when a fiduciary relation is shown to exist, and property or property interests have been entrusted to an agent or trustee, the burden is thrown upon such agent entrusted to render an account, and to show that all his trust duties have been fully performed, and the manner in which they have been performed. It is assumed that the agent or trustee has means of knowing, and does know, what the principal or cestui que trust cannot know, and is bound to reveal the entire truth.*

## IV.

## Beneficiaries Have Express Statutory Standing to Seek Declaratory Judgments

Texas Civil Practice and Remedies Code §37.005:

> *Sec. 37.005. DECLARATIONS RELATING TO TRUST OR ESTATE*
>
> *A person interested as or through an executor or administrator, including an independent executor or administrator, a trustee, guardian, other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust in the administration of a trust or of the estate of a decedent, an infant, mentally incapacitated person, or insolvent may have a declaration of rights or legal relations in respect to the trust or estate:*
>
> *(1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;*
> *(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity;*
> *(3) to determine any question arising in the administration of the trust or estate, including questions of construction of wills and other writings; or*
> *(4) to determine rights or legal relations of an independent executor or independent administrator regarding fiduciary fees and the settling of accounts*

## V.

## Summary of the Motion

As the record will show, Defendants Anita and Amy Brunsting claim to be co-trustees for the entire Brunsting family of trusts. Anita claims to have become sole trustee for the entire Brunsting family of trusts via Nelva's resignation and trustee appointment on December 21, 2010. Plaintiffs Carl Brunsting and Candace Curtis are co-beneficiaries of the Brunsting family of trusts along with Defendants Amy, Anita, and Carole Brunsting. (see Exhibit 1 and Defendants' pleadings)

A fiduciary relationship exists as a matter of law. Amy and Anita owed and continue to owe fiduciary duties to Carl Brunsting and Candace Curtis. Anita and Amy have breached the fiduciary duties owed to all of the beneficiaries, and Plaintiffs have suffered and continue to suffer egregious injury and are entitled to remedy as a matter of law, as hereinafter more fully appears.

## VI.

## Breach of Fiduciary Claims

1. Abuse of Discretion: Failure to create individual trust shares or fund personal asset trusts
2. Duty of Competence: Failure to account for known trust assets - EE Bonds
3. Duty to Account: Failure to render full, true, complete, and timely accountings
4. Breach of affirmative fiduciary duty of full disclosure.

## VII.

## Summary of Petitions for Declaratory Judgments

Plaintiff seeks the following declaratory judgments as supported hereinafter.

That:

1. the July 1, 2008 appointment of successor co-trustees is invalid[1]
2. the August 25, 2010 appointment of successor co-trustees is invalid as to the Family and Decedent's irrevocable trusts[2]
3. the December 21, 2010 appointment of successor trustees is invalid as to the Family and Decedent's irrevocable trusts[3]
4. the December 21, 2010 resignation instrument is invalid as to the Family and Decedent's irrevocable trusts[4]

[1] Exhibit 11-a
[2] Exhibit 11-b
[3] Exhibit 11-d
[4] Exhibit 11-c

5. the 2005 restatement as amended in 2007 is the current law of the trust
6. Plaintiffs Carl Brunsting and Candace Curtis are the de jure trustees for the Family and Decedent's irrevocable trusts; and
7. Defendants Amy and Anita Brunsting are trustees de son tort, liable for any breaches of fiduciary committed by them while occupying the office of trustee for the Family and Decedent's irrevocable trusts; and
8. If Defendants cannot verify original appointment instruments before the Court Plaintiff asks for a declaratory judgment that Carl Brunsting and Candace Curtis are also the de jure trustees for the Nelva E. Brunsting Survivor's Trust.

## VIII.

## History of "The Trust" and the Significance of Trust Events

In 1996 Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust[5] for their benefit and for the benefit of their 5 children (Original trust Exhibit 6).

That trust instrument named Founders Elmer and Nelva as the initial co-trustees, but in the event that both of them should cease to serve the successor trustee designation was listed:

a. First Anita
b. Second Carl and
c. Third Amy

The original trust lay dormant until January 2, 2005 when it was restated in its entirety (2005 Restatement Exhibit 7). The successor co-trustees after the 2005 Restatement were:

a. Carl Henry Brunsting and Amy Ruth Tschirhart[6]
b. Alternate Candace Louise Curtis

The significant fact is that Elmer and Nelva jointly removed Anita entirely as a successor trustee in 2005. It must be presumed that Elmer and Nelva had a reason for removing Anita.

The Brunsting Family Living Trust was amended by both Elmer and Nelva for the first and only time in 2007 (Exhibit 8), and after that amendment the named successor co-trustees were:

a. Carl Henry Brunsting and Candace Louise Curtis

[5] Bates Brunsting001517

[6] Bates P326 obtained by Blackburn

b. Alternate Frost Bank

The significant facts here are that Elmer and Nelva jointly removed Amy as a successor co-trustee and they did not put Anita or Carole on as an alternate, but instead named Frost Bank.

It is also significant to note that this was the last A/B trust instrument signed by both Elmer and Nelva Brunsting and is inarguably the current law of "the trusts".

**TRUST VITIATIONS**

Elmer Brunsting became incapacitated and was apparently declared by two doctors to be incompetent in June of 2008. Surfacing after more than three years of litigation and demands for production is a document referred to in other instruments as an appointment of successor trustees dated July 1, 2008.

July 1, 2008 Appointment of Successor Trustees

The only copy of this instrument thus far known, recently surfaced at pages 135-139 of a 143 page pdf document labeled "supplemental production" received from Anita Brunsting on June 25, 2015, a copy of which is attached as Exhibit 11-a.

The quality of this copy is not only unacceptable but the instrument is invalid on its face, as under Article IV Section D of the restatement Nelva could only remove trustees she had individually appointed.

2005 Restatement Article IV Section D

> *Section D. Resignation or Removal of Our Trustees. We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.*

Elmer had already been declared incompetent in June and was unable to sign trust amendments. His incompetence is mentioned in the July 1, 2008 instrument which was signed by Nelva alone. Because Elmer was incompetent and not deceased, there was no survivor's trust to change trustee appointments for, and since the successor co-trustees for the family trust had been selected by Elmer and Nelva jointly, the successor co-trustees for the family trust could not be changed by Nelva alone under the terms of Article IV (D) of the restatement.

Thus, when Elmer passed on April 1, 2009 the successor co-trustees for the irrevocable Family and Decedent's trusts could only be those named in the 2007 Amendment -- Carl and Candace, with Frost Bank as the alternate.

As Carl Brunsting was the first successor co-trustee in every instrument, nothing really changed after Elmer's death with the exception of the names of trust assets as to ownership interests. Assets were either transferred to a Decedent's Trust or a Survivor's Trust using various certificates of trust, but no individualized indentures for either trust were ever formally expressed. This is the first place where ambiguity finds fertile ground.

August 25, 2010 Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement

On July 3, 2010 Carl Brunsting fell ill with encephalitis. Candace Freed's notes dated July 30, 2010 reveal that her instructions to change the trustee designations and dispositive provisions of the trusts came from previously removed successor trustee Anita Brunsting and not client Nelva Brunsting at all. (Exhibit 12)

The note says Anita's instructions were to make her and previously removed successor co-trustee Amy Brunsting successor co-trustees, with Frost Bank as the alternate. The notes also say to put Carl's inheritance under Amy and Anita's control. What Anita had requested and Freed drew up is exactly what Elmer and Nelva Brunsting intended to prevent with the 2005 Restatement and the 2007 Amendment, which are the last A/B trust agreement instruments signed by both.

The instructions from Anita to Freed find their way into an instrument expressed as a "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" allegedly signed by Nelva Brunsting on August 25, 2010. However, Plaintiff finds no exhibits in the disclosures that would indicate the source of the instructions to also place her inheritance expectancy under the trusteeship of Amy and Anita Brunsting. Nelva Brunsting herself said that's not true. (Exhibit 13)

Exhibit 10 is a collection of various Bates stamped exhibits of the alleged August 25, 2010 QBD. Of note is the fact that there are three versions of the signature page. Attached to Anita's 156 page objection to the Court's approval of a distribution, filed December 5, 2014, is the version bearing Bates Stamp P229. This is also the version Plaintiff Curtis received by mail. One can easily see the CAN preceding the alleged signature of Nelva Brunsting.

The next version bearing Bates stamps P192, P7168, V&F000389, P-76 and P12755 show both signatures floating way above the lines. This version appears in Carole's 133 page objection to Plaintiff's application for distribution filed Feb.17, 2015. This version also appears

in a business records affidavit from Frost Bank (Exhibit 9) as having been attached to an email received from Amy Brunsting in December 2011.

The third version (P443) was obtained for Carl Brunsting by attorney Blackburn from Anita. P443 and P1015 match the version attached to Curtis' original federal complaint (as Exhibit P-40), identified in her attached affidavit as having been received from Anita Brunsting via email October 23, 2010.

**REMOVAL OF NELVA BRUNSTING BY FORCE**

Nelva and Carl were excluded from a phone conference called by Candace Freed (Exhibit 5-a)[7] and held on 10/25/2010. After that conference Curtis had a phone conversation with Nelva regarding the alleged 8/25/2010 QBD. Carole later emailed Curtis about overhearing Nelva on the phone to Freed, telling Freed to change it back and that she wasn't going to follow the changes Freed had made to the trust (Exhibit 5-b). Subsequent to the phone conversation referred to in Carole's email, apparently Candace Freed requested that Nelva be evaluated for competency. Candace Freed later wrote a follow up email on November 17, 2010 explaining her reasons for subjecting Nelva to a competency evaluation. (Exhibit 14)

Defendant's, having failed in their attempt to have a very lucid Nelva Brunsting declared incompetent, and after disfiguring the Family, Decedent's, and Survivor's trusts with their 8/25/2010 QBD, still not being satisfied that the scheme to steal their siblings' inheritance expectancies was fool proof, Anita, Amy, Carole and Candace Freed converged on Nelva in her own home on December 21, 2010, leaving Nelva no place to retreat. (Exhibit 25)

Nelva is alleged to have voluntarily signed resignation papers prepared by Candace Freed that improperly gave Anita total control over the assets of the entire Brunsting family of trusts, but those changes could not be made under the law of the trust. Under Article III of the 2005 Restatement as lawfully amended in 2007, the family trust became irrevocable at the death of Elmer Brunsting April 1, 2009, but could also not be changed after Elmer's incompetency certification of June 2008, as it was an A/B trust requiring both Founders' agreement to effect any changes.

[7] Plaintiff Curtis original petition filed in the federal court on February 27, 2012 was made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

## IX.

## The Claims

Each of the following claims for breach of fiduciary relates to the period of time between the death of Nelva Brunsting and the filing of this motion. All of the Articles, exhibits and claims herein stated, and the attached Memorandum of Points and Authorities are hereby incorporated by reference as if restated in every other Article and Claim.

Claim 1. Abuse of Discretion: Failure to Create Individual Trust Shares or Fund Personal Asset Trusts

Article X of the 2005 Restatement of the family trust requires the trustees to distribute the trust res into five Trust Shares for the five beneficiaries, to be created upon the death of the second Founder. (Exhibit 7)

The 8/25/2010 Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement that Defendant's cling to, but have not produced, requires the trustees to establish five personal asset trusts upon the death of the second Founder.

Nelva Brunsting, the second Founder, died November 11, 2011. It does not matter which instrument was to be followed, the trustees are in breach for failure to act and failure to seek judicial guidance in either circumstance, which is a clear case of abuse of discretion.

The injunctive order issued by the federal court April 9, 2013 not only enjoins Defendants from spending trust funds without prior court approval but, in fact, also compels Defendants to deposit income into an appropriate account for the beneficiary.

> *In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account.*

On June 25, 2015 Amy responded to Curtis' 1st interrogatories (Exhibit 22) and in her answers she blames Carl and Candace for bringing litigation as the cause for her inability to meet her fiduciary obligations.

Answering interrogatory 1 Amy states: (emphasis added)

> *The Personal Asset Trusts have not been established. <u>This is a result of the various lawsuits that have been filed by Carl and Candace</u>, as well as the injunction previously requested by Candace and Carl. If, as and when formed,*

*they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees*

Amy further claims in interrogatory No.2:

*Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.*

According to Anita Brunsting's June 4, 2015 answer No. 18 to Curtis' interrogatories regarding the irrevocable trust provisions for establishing personal asset trusts, Anita says Nelva "superseded" the irrevocable A/B trust agreement. (Exhibit 23) (Emphasis added)

*18.Describe the steps you have taken to honor the provisions of Article X, Section B(1)(a)(i) of the Brunsting Family Trust?*

*RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (i.e., before Nelva's death or after Nelva's death) and is, therefore, vague. The referenced section was superseded by Nelva and therefore, is inapplicable.*

In Amy's Verified Answer to Plaintiff Carl Brunsting's Petition for Declaratory Judgment[8], for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, filed May 13, 2013, Amy seeks to take refuge in the fact the personal asset trusts have not been "created" where she states:

*AMY RUTH BRUNSTING F/K/A AMY RUTH TSCHIRHART is not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Brunsting Asset Trust because such trusts have not been created and therefore do not contain any trust property.*

In Anita Brunsting's June 4, 2015 answer to Curtis' 1st written interrogatories (Exhibit 23) in response to number 19, Anita blames "the litigation" for failure to fund the personal asset trusts: (Emphasis added)

*19. Describe the steps you have taken to honor the provisions at Page 6 Item C of the August25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?*

[8] Filed with this Court 5/13/2013 BT-2013-154977

*RESPONSE: After Nelva's death, defendant began the process of collecting assets, informing trust beneficiaries, and working the attorneys specifically referenced in such section to implement the terms of the trust instruments. The trustees and their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries.* ***Candace then brought litigation****.*

The 2005 Restatement and the 2007 Amendment were the last A/B trust agreements signed by both Elmer and Nelva Brunsting. Limitations on the Founder's ability to amend or revoke "the trust" were provided in Article III Section B (Exhibit 7) which reads as follows: (*emphasis added*)

*Section B. We May Amend Our Trust*

*This trust declaration* ***may be amended by us*** *in whole or in part in a writing signed* ***by both of us*** *for so long as we both shall live. Except as to a change of trust situs,* ***when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction****.*

*Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust* ***as to that Founder's share or interest alone****.*

Thus, any instruments claiming to have amended the irrevocable Family trust after the incapacity of Elmer Brunsting and any instruments claiming to amend the irrevocable Decedent's trust after Elmer's death are invalid on their face, and those would include the proclaimed changes in successor co-trustees as hereinafter more fully appears.

Pursuant to Article X of the 2005 Restatement, which Nelva had no power to supersede, the trustees were to establish five trust shares for the five beneficiaries at the death of the surviving founder.[9]

*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:*

| *Beneficiary* | *Share* |
|---|---|
| *CANDACE LOUISE CURTIS* | *1/5* |
| *CAROL ANN BRUNSTING* | *1/5* |
| *CARL HENRY BRUNSTING* | *1/5* |
| *AMY RUTH TSCHIRHART* | *1/5* |

[9] Exhibit 7 Article X page 10-1

There is no legal authority to support the notion that a suit brought by a beneficiary against a trustee for breach of fiduciary, or that animosity between the trustee and a beneficiary in any way relieves the trustee of performing the fiduciary duties the trustee owes to the beneficiary.

Nelva Brunsting died November 11, 2011. Article X of the 2005 restatement requires establishment of five trust shares at the death of the second Founder. The 8/25/2010 QBD requires distribution to 5 personal asset trusts at the death of the second Founder. Therefore, it matters not what instrument is relied upon, the trustees are in breach for failure to exercise discretion in either circumstance.

The federal Court found the trust required establishment of individual trust accounts and that the trustees had failed to fund the trust accounts. The injunction commands Defendants to deposit income into an appropriate account for the beneficiary and yet no income has been deposited appropriately into an account for any beneficiary. Defendants cannot blame the injunction for refusing to do what it commands!

There is no legal nexus between litigation and Defendants' proclaimed inability to act and no known legal authority exists to support such claims. Defendants have offered no valid defense as to why separate trust shares or personal asset trusts, have not been "set up", as Amy's March 6, 2012 affidavit claims. (Exhibit 1)

Defendants have offered no valid defense as to why separate trust shares have not been created, as required under the terms of the 2005 Restatement, or as to why personal asset trusts have not been "set up" as required under the terms of the 8/25/2010 QBD and as required under the terms of the federal injunction.

It should be judiciously noted here that the willful violation of a federal Court injunction is not merely a civil contempt but also a federal crime under Title 18.[10] If Defendants were uncertain what instruments to follow they had a constructive trustee duty to petition for judicial guidance, which they also failed to seek.

Claim 2. Duty of Competence: Failure to Account for, Protect and Maintain Trust Assets - EE Bonds

[10] 18 U.S.C. § 402 : US Code - Section 402: Contempt's constituting crimes

Defendants owe Plaintiff a duty to take possession of and protect trust assets. Defendants have known of the existence of U.S. Treasury EE Bonds held in the name of the family trust and have refused or otherwise failed to take possession, protect or account for the known EE Bonds.

Plaintiff Curtis sought an accounting for the EE Bonds in her initial complaint on February 27, 2012 (28 months after Anita claims to have become trustee). (Exhibit 5)

Fourteen months after Plaintiff Curtis' initial filing the federal Court issued an injunction to prevent wasting of the assets and a special Master was appointed to prepare an accounting of the income and disbursements of the trust from the date Anita Brunsting claims to have become sole trustee through May 31, 2013.

The Special Master appointed by the federal Court issued his report July 31, 2013 and the Defendants filed a response and an objection. On August 13, 2013 Curtis filed her response to Report of Master[11] and demanded at items 4 and 5 that Defendants account for U.S. Treasury EE Bonds held in the name of the trust.

A hearing was held September 3, 2013. While testifying the Special Master expressed questions as to the whereabouts of said bonds. (Exhibit 18)

Ten months later, still having no information about the EE Bonds, other than the Defendants' own production of April 2013, Plaintiff Curtis sent a letter of inquiry to the U.S. Treasury and subsequently received a response regarding the EE Bonds. (Exhibit 21)

December 14, 2014, Brad Featherston apparently emailed Plaintiff Curtis' prior counsel Jason Ostrom, and Carl Brunsting's counsel Bobbie Bayless asking for permission to "cash the bonds and deposit the money". (Exhibit 20)

Anita's June 4, 2015 answer to Curtis' interrogatories claims trustee failure to account for EE bonds is Plaintiffs' fault: (Exhibit 23) (Emphasis added)

> *23. What was the date of your prior inquiry and why was the inquiry made more than one year after you were noticed of the existence of those EE Bonds?*
>
> *RESPONSE: Candace and Carl consistently and repeatedly accused Carol of stealing bonds that were alleged to be in the name of Nelva or Elmer.* ***Defendant did not see a record of the bonds being in the name of the trusts****. In late 2014, Carol informed defendant that she could request a record of the outstanding bonds, which was done in mid to late 2014.*
>
> *24. What claim(s), if any, were you asking to be processed?*

[11] See Exhibit 17

*RESPONSE: None.*

*25. Did you subsequently submit the properly completed forms? If no, why not? If yes, what were the results and where are the transaction records?*

*RESPONSE: No, because Candace would not agree to the disposition of the bonds and the legal fees to seek court approval to cash the bonds in light of Candace's failure to agree made the transaction cost prohibitive.*

Defendants blame Carl and Candace for their refusal to account for the EE Bonds, but there is no legal nexus between alleged accusations that Carole stole the bonds and Defendants' fiduciary duty to account for the bonds. There is no legal authority to support the notion that a fiduciary's duty to account is somehow dependent upon a beneficiary's permission to cash bonds, and there is no rational connection between requesting the reissue of EE bonds and a beneficiary's permission to cash bonds. Defendants' posture is not a legal defense to failure to account.

Anita's response to Plaintiff Curtis' interrogatories claims that she did not know about EE bonds in the name of the trust[12] when 1) they are identified in Defendants' own disclosures[13] 2) Plaintiff Curtis specifically demanded Defendants account for the bonds in her August 13, 2013 Response to the Report of Master[14] 3) Plaintiff Curtis' original federal complaint mentions the EE bonds[15], and 4) the Special Master mentioned his curiosity as to the whereabouts of the unaccounted for EE bonds while testifying at the hearing on the Masters report September 3, 2013.[16]

The refusal to secure and preserve known trust assets by certifying authenticated copies of trust documents to the US Treasury in order to cause the reissue of the US Treasury EE series bonds is not a mistake, inadvertence or excusable neglect.

Claim 3. Breach of Fiduciary Duty to Account: Failure to Render Full, True, Complete, and Timely Accounting

Beginning with Anita's acceptance of the appointment of successor trustee, (Exhibit 11-e) when Nelva allegedly resigned on December 21, 2010, semi-annual accountings to Nelva were thus required on the summer and winter solstice, June 22nd and December 21st of each year.

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[12] Exhibit 23
[13] Exhibit 19
[14] Exhibit 17
[15] See This Courts record 02102015:1527:P0082
[16] Exhibit 18

Amy Brunsting claims to have become a successor co-trustee with Anita when Nelva died on November 11, 2011. (Exhibit 1) (Amy Affidavit) No accounting was rendered December 21, 2011. Amy's Affidavit claims they have done the best that they can in the short time since Mother's death, but if accountings had been timely and properly prepared for Nelva by Anita, then it would have been a simple exercise to update them with the December bank and brokerage information. Current bank and brokerage statements continue to be withheld as of this writing.

The first quasi-accounting in the form of spreadsheets[17] was received on April 5, 2012 in response to a December 2011 demand for a statutory accounting. The only other accounting was performed by the Special master and no formal statutory accounting has ever been performed or submitted to all of the beneficiaries.

Based upon Defendants' previous reference to the federal injunction as "questionable" and having received inadequate "accounting" information, Plaintiff Curtis has again become profoundly concerned about the economic health of "the trust" and did send demand for statutory accounting June 15, 2015. (Exhibit 24) The statutory time has long since run and no accounting has been rendered.

Claim 4. Breach of Affirmative Fiduciary Duty of Full Disclosure

Defendants have no legal defense for their refusal to honor the affirmative fiduciary duty of full disclosure and transparency. As can easily be seen from Plaintiff Curtis' original federal complaint and Affidavit, the lawsuits were brought to compel the performance of fiduciary obligations, primarily those of accounting and disclosure.

At this late juncture Defendants' only defense to their abject failure to perform any fiduciary duties, is to assert that Carl and Candace are no longer beneficiaries because they brought litigation to compel fiduciary accounting and disclosures. This is yet another defense effort to remove loyalty and accountability, the very essence of the fiduciary relationship itself.

## X.

## Conclusion – The Emperor Wears No Clothes

Historiographically, we have obfuscation and subterfuge and what appears to be elder abuse; de-facto trustees assuming the office; troublesome disposition of trust assets; an absence of competent book keeping; failures to disclose and account; questionable documents; improper

[17] Exhibit 2

changes to irrevocable trusts; stalking; illegal wiretapping; and an absolute and complete absence of any fiduciary duties fulfilled without judicial compulsion.

Defendants cannot blame their failures to act on litigation brought to compel honoring of fiduciary obligations. The injunctions applied for and issued to prevent further misapplication of assets and to compel the honoring of fiduciary obligations, are not an excuse for failure to act.

Defendants have stated no valid legal defense and their excuses are nothing but confessions. Taken together, mere 'incompetence' cannot explain the synchronicity of events.

Defendants' pleadings and answers to interrogatories confess what their intentions have been all along. The plot was to steal Carl and Candace's inheritance expectancies and then to declare their victims "disinherited" should they object, just as Candace suspected in her email to Carole in October of 2010, and just as Defendants stated in their answers to Plaintiff's interrogatories and objections as exhibited herewith.

Anita, Amy and Carole kept their consorted acts secreted, refused to answer, and waited for Carl and Candace to seek judicial remedy to spring their disinheritance trap. In other words, the 8/25/2010 QBD was intended to eliminate accountability and the duty of loyalty, which no Court has ever even attempted, as that would dissolve the fiduciary relationship itself, an improper act, which is exactly what Defendants appear to have intended from the onset.

Defendants' plot was also clearly depicted in the Affidavit attached to Plaintiff Curtis' original federal complaint, filed February 27, 2012, now a part of this Court's record.[18] (Emphasis added)

> *I saw Carl and Drina for the first time since our Father's death, at our Mother's funeral. I did not know what to expect. Carl was talking to someone when Drina and I saw each other. In the blink of an eye we were hugging each other and crying. The deep wounds created by what had transpired over the last 16 months immediately began to heal. The bond between Carl, Drina and I was rekindled over the next few days. The difficulty for all of us was coming to grips with the notion that, apparently, behind our backs, Anita had made a concentrated effort to take control of the entire trust, and our individual inheritances, in such a manner that if Carl and I complain about it, she gets to keep it, all the while asserting to others that our Mother made this decision ON HER OWN. I know she did not, because she said so to me on the phone. She took my concern to heart and subsequently sent me a handwritten note saying, again, that it was not true.*[19]

[18] Plaintiff Curtis original petition filed in the federal court on February 27, 2012 and made a part of this Court's record Feb. 9, 2015 Document No. PBT-2015-47608

[19] See Exhibit 13

Observe Amy's recent answers to interrogatories. (Exhibit 22 p.13 emphasis added)

*(k) What factors does the decision-maker measure in determining the beneficiary's need for a distribution?*[20]

*Answer:*

*"Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete subpart. It seeks to require the Respondent to interpret legal documents and render legal conclusions.* ***Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed****.*

Curtis' original federal complaint and affidavit contains email threads between Carole Brunsting and Candace Curtis in October of 2010, that make it clear Anita and Amy were both browbeating Nelva and not allowing her control over her own estate.

Note the reference to Amy and Anita's disinheritance plot at page 4 of 4 of the following email thread (Exhibit 5-d):

*From: Candace Curtis <occurtis@sbcglobal.net> Subject;*

*To: "Carole Brunsting" <cbrunsting@sbcglobal.net>*

*Date: Monday, October 25, 2010,6:01 PM*

*Now the truth comes out. None of us is entitled to copies of the trust documents, since Mother is the only beneficiary. Amy and Anita are trying to take over and will probably do anything and everything they can to cut the rest of us out. I was already depressed today. I'm over the edge now.*

The threat of using an in terrorem clause against Carl and Candace for bringing litigation to construe a trust instrument, direct the trustees to do or abstain from doing any particular act in their fiduciary capacity, determine any question arising in the administration of the trust, including the construction of writings, is apparently the only response Defendants can muster.

Such threats are inconsequential. A cestui que right to declaration as to the validity and interpretation of instruments and to compel the trustee to do or abstain from doing any particular act, is a statutory and common law right belonging to the cestui que that prevails over any terms of a trust to the contrary.[21]

---

[20] It should be noted here that this question was selected from the Northern Trust Company web site section advising the beneficiary on what questions to ask the trustee.

[21] Texas Property Code §115.001 vis-à-vis Property Code §111.0035; Branult v. Bigham, 493 S.W.2d 576; Texas Civil Practice and Remedies Code §37.005

The exercise of a cestui que right to hold the trustee accountable cannot be diminished, let alone perverted into violation of an in terrorem clause.

By claiming beneficiaries Carl and Candace are disinherited for violating an in terrorem clause, Defendants seek to remove Plaintiffs' standing to demand accountings, distributions, or disclosures, or to hold the impostor trustees to honor any of the fiduciary duties of the office.

It should be noted that disinheritance threats in Defendants' objections to distributions, and in their responses to interrogatories, were made in anticipation of the joint no-evidence motion for partial summary judgment subsequently filed by Defendants' Amy and Anita that they later removed from calendar. Defendants Anita and Amy Brunsting filed a joint motion in an effort to validate their 8/25/2010 QBD, collectively claiming personal knowledge of its validity. It should be noted that when confronted individually they have each disavowed any personal knowledge of its alleged signing.

Plaintiff would love to discuss the content of the 8/25/2010 QBD instrument and have tried every conceivable means to get the Defendants to qualify the thing as evidence so that we would have something to talk about, but has been continually frustrated in that effort.

Plaintiff Curtis' response to Defendants' no-evidence motion also included a counter motion under Texas Evidence Codes §§1002, 1003. That motion remains pending and is incorporated by reference, along with Carl Henry Brunsting's Motion for Partial Summary Judgment, as if fully restated herein.

The problem of the mysterious QBD would be resolved by the party claiming the existence of the QBD simply certifying the archetype of the instrument before the Court with a declaration as to the chain of custody. However, if Defendants could do that why would they not have certified trust instruments to the US Treasury to cause the reissue of the EE Bonds?

The eight Bates stamped copies (Exhibit 10) of the three 8/25/2010 QBD signature page versions connect all three Defendants with Candace Freed and that is no coincidence either. The fact that Nelva herself said in her own hand that it was not true (Exhibit 13) does not seem to affect Defendants' position of "we say Nelva instructed"[22]. Even if Defendants could produce the original and explain away the divergent copies of the original, it remains utterly worthless, collapsing under the weight of its own improprieties.

[22] Exhibits 22 & 23

Amy and Anita's answers to Curtis' interrogatories[23] claim the trust instruments speak plainly for themselves, but nowhere does one find Nelva's alleged power to "supersede" the irrevocable trusts, or the "Nelva instructed" provisions.

Anita Brunsting was removed as a successor trustee by both Elmer and Nelva Brunsting with the 2005 Restatement (Exhibit 7), and Amy Brunsting was removed as a successor co-trustee by both Elmer and Nelva Brunsting with the 2007 Amendment.

All three of Anita Brunsting's claims of returning to successor trustee status are colorable and none more colorable than the December 21, 2010 resignation and appointment documents, whereby Anita claims to have become trustee over all of the family trusts.

Nelva, individually, held no power to remove the trustees for the Decedent's or Family trusts and, thus, neither Anita nor Amy Brunsting ever returned to the status of a trustee after their removal by both Elmer and Nelva acting jointly.

In her own words Anita admits to browbeating Nelva and withholding trust information. Anita imposed her own will as if she were the new Founder, reminding Nelva Brunsting that she was no longer trustee and no longer had access to the trust. (Exhibit 5-e)

## XI.

## Prayers for Relief

For the reasons presented and supported by competent evidence within the record, Plaintiff prays that her several motions for partial summary judgment be granted, that Plaintiffs' petitions for declaratory judgment be answered, and that Plaintiff and the several trusts receive all other general, special, legal and equitable relief to which Plaintiff and the trusts may be entitled.

Plaintiff asks the Court for findings of fact and conclusions of law, order and ruling, that Defendants Amy and Anita Brunsting are de son tort Trustees liable for breaches of fiduciary obligations occurring after the demise of Nelva Brunsting including but not limited to those specifically enumerated herein:

1. Failure to Distribute Assets to Trust Shares or Fund Personal Asset Trusts or otherwise distribute the trust property interests amongst the beneficiaries (abuse of discretion)
2. Failure to account for known trust assets, to wit U.S. Treasury EE Bonds
3. Failure to render full, true, complete, and timely accounting

[23] (Exhibits 22, 23)

4. Breach of the ongoing duty of full disclosure

Plaintiff further asks the Court for findings of fact and conclusions of law along with declaratory judgment that:

1. The July 1, 2008 appointment of successor trustees is invalid;

2. The August 25, 2010 appointment of successor co-trustees is invalid as to the Family and Decedent's irrevocable trusts;

3. The December 21, 2010 resignation and appointment of successor trustees instruments are invalid as to the Family and Decedent's irrevocable trusts;

4. The 2005 restatement as amended in 2007 is the current law of the trust;

5. Plaintiffs Carl Brunsting and Candace Curtis are the de jure trustees for the Family and Decedent's irrevocable trusts; and

6. If Defendants cannot Verify original appointment instruments before the Court, Plaintiff asks for a declaration that Carl Brunsting and Candace Curtis be declared the de jure trustees for the Nelva E. Brunsting Survivor's Trust as well;

7. Defendants Amy and Anita Brunsting be compelled to specific performance in that they be ordered to verify the original trust instruments before the Court and submit certified copies to the United States Treasury for the reissue of U.S. Treasury EE Bonds;

8. Plaintiff asks that Defendants Amy and Anita Brunsting be removed from acting as trustees for the Family, Decedent's and Survivor's trusts, as appropriate;

9. Plaintiff asks that Carl Brunsting and Candace Curtis be declared de jure trustees as appropriate;

10. Plaintiff asks that Amy and Anita Brunsting be ordered to surrender all original trust documents, records of accounts, receipts and all other trust assets to de jure trustees Candace Curtis and Carl Brunsting forthwith; and

11. Plaintiff asks that Defendants are ordered to pay all costs for these motions and hearings and to award Plaintiff all other general, special, legal and equitable relief to which Plaintiff and/or the trusts may be entitled.

Plaintiff so moves this Honorable Court.

Respectfully submitted,

By: /s/ Candace L. Curtis

CANDACE L. CURTIS
218 Landana Street
American Canyon, CA 94503
(925) 759-9020
occurtis@sbcglobal.net

CALIFORNIA JURAT ATTACHED

**NO. 412,249-401**

| | | |
|---|---|---|
| **CANDACE LOUISE CURTIS** | § | **IN PROBATE COURT** |
| *Plaintiff,* | § | |
| **V.** | § | **NUMBER FOUR (4) OF** |
| **ANITA KAY BRUNSTING, ET AL** | § | |
| *Defendants.* | § | **HARRIS COUNTY, TEXAS** |

**CANDACE LOUISE CURTIS' VERIFICATION**

TO THE HONORABLE PROBATE COURT AND TO ALL PARTIES:

Candace Louise Curtis is a competent fact witness beyond the age of majority having personal knowledge of the matters before the Court and does bear witness under penalty of perjury by the attached California Jurat, and does solemnly swear that the facts presented in Plaintiff Curtis' Motion for Partial Summary Judgment and Concurrent Petitions for Declaratory Judgment are true and correct representations of the record before the Court and that the law presented to the Court in the Memorandum of Points and Authorities in Support of Plaintiff Curtis' Motion for Partial Summary Judgment with Concurrent Petitions for Declaratory Judgment represent the current condition of the relevant law.

Respectfully submitted,

By: /s/ Candace L. Curtis 1/25/2016

CANDACE L. CURTIS
218 Landana Street
American Canyon, CA 94503
(925) 759-9020
occurtis@sbcglobal.net

# JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of NAPA

Subscribed and sworn to (or affirmed) before me on this 25 day of JAN,

2016 by CANDACE LOUISE CURTIS,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Jyoti Nischal
Signature (Seal)

JYOTI NISCHAL
Commission # 2128966
Notary Public - California
Napa County
My Comm. Expires Oct 3, 2019

## OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Signature Verification
(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 1 Document Date 01/25/2016

Additional information

## INSTRUCTIONS

*The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.*

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
  - ❖ Additional information Is not required but could help to ensure this jurat is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

2015 Version www.NotaryClasses.com 800-873-9865

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 26th day of January 2016, to the following via email:

Attorneys for Anita Kay Brunsting

Bradley E. Featherston
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
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brad@meddellawfirm.com

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Attorneys for Drina Brunsting as attorney-in-fact for Carl Henry Brunsting:

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Bayless & Stokes
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Attorneys for Carole Ann Brunsting

Darlene Payne Smith
Crain, Caton & James
Five Houston Center
1401 McKinney, 17th Floor
Houston, Texas 77010
dsmith@craincaton.com

/s/ Candace L. Curtis
CANDACE L. CURTIS

# Exhibit 1

Affidavit filed in the federal court by Defendant Amy Brunsting March 6, 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| | § | CIVIL ACTION NO. H-12-CV-592 |
| | § | |
| vs. | § | |
| | § | |
| ANITA KAY BRUNSTING, and | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |

**AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS**

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at $410,000. We listed the property for $469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered $469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately $270,000.

8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

Amy Ruth Brunsty
AMY RUTH BRUNSTING

Sworn to and signed before me by Amy Ruth Brunsting, on this 6th day of March, 2012.

Notary Public in and for the State of Texas




Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

# Exhibit 2

April 5, 2012 spreadsheets A-J

| ELMER BRUNSTING DECEDENT'S TRUST ASSET LIST | | | | |
|---|---|---|---|---|
| OWNER | ASSET CATEGORY | DEC 2010 VALUES | MARCH 2012 VALUES | MARCH 2012 COMMENTS |
| | REAL PROPERTY | | | |
| | 141 Acres, Iowa, Sioux County, (valued at estimated $10,000/acre per Rich Rikkers) | $ 1,410,000.00 | $ 2,157,300.00 | appraised value as of 2/7/2012, $15,300/acre |
| | SUBTOTAL | $ 1,410,000.00 | $ 2,157,300.00 | |
| | | | | |
| | INVESTMENT ACCOUNTS | | | |
| | Edward Jones Acct: #653-13579; | $ 267,302.58 | $ 250,048.26 | as of 2/24/2012 |
| | SUBTOTAL | $ 267,302.58 | $ 250,048.26 | |
| | | | | |
| | DRIP ACCOUNTS | | | |
| | Chevron Acct# 125175509293; 595.4547 shares @ $106.78/share; tranferred to Anita Brunsting Trustee, 3/25/11 | $ 63,582.65 | $64,698.63 | 614.1303 Shares @ $ 105.35/share; value as of 3/22/2012 |
| | Chevron Acct#: ELMERH--BRDT--0100; 612 shares @ 106.78/share, 3/25/11; never transferred to Anita Brunsting as Trustee, remained as Nelva Brunsting Trustee | $ 65,349.36 | $ 64,474.20 | 612 Shares @ $105.35/share; value as of 3/22/2012 |
| | ExxonMobil Acct#C0009467769, Shares 1908 @ $82.73/share; value as of 3/24/11 when transferred to Anita Brunsting Trustee. | 157,848.84 | $ 50,394.52 | 583 Shares @ $86.44/share; value as of 3/16/2012 |
| | SUBTOTAL | $ 286,780.85 | $179,567.35 | |
| | | | | |
| | CASH ACCOUNTS | | | |
| | Bank of America Ckg acct#586027563536 | $ - | $ 41,667.77 | Established after mother's death. Includes deposit from farm rent profit bonus at end of 2011 of $13,902.51 and first half of 2012 rent of $26,437.50 |
| | | | | |
| | NOTES RECEIVABLE | | | |

**Schedule A**

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20-20566.1758

| | | | | |
|---|---|---|---|---|
| | $20,000 note from Candy Curtis dated 6/15/2010 | $ (20,000.00) | $ (20,000.00) | |
| | **SUBTOTAL** | $ - | $ (20,000.00) | |
| | | | | |
| | **MISCELLANEOUS** | | | |
| | Rental income from Iowa farm - mom deposited check in her personal checking acct as beneficiary of decedent's trust | $ (15,510.00) | $ 13,902.51 | Bonus from profit on 2011 crops - deposited into decedent's trust checking acct 1/11/12 |
| | | | $ 26,437.50 | First half of 2012 rent - deposited into decedent's trust checking acct 3/5/12 |
| | | | | |
| | **TOTAL** | $ 1,964,083.43 | $2,586,915.61 | |

Case 4:12-cv-00592 Document 118-1 Filed on 08/03/16 in TXSD Page 31 of 39

| NELVA BRUNSTING SURVIVOR'S TRUST ASSET LIST | | | | |
|---|---|---|---|---|
| OWNER | ASSET CATEGORY | DEC 2010 VALUES | MARCH 2012 VALUES | MARCH 2012 COMMENTS |
| | **REAL PROPERTY** | | | |
| | HS-Lt 31 Blk 4 Wilchester West Sec 1, 13630 Pinerock Ln., Houston, Harris County, Texas (value on tax role) | $ 270,000.00 | $ - | House Sold- CLOSING DATE 3/12/11 |
| | **SUBTOTAL** | $ 270,000.00 | $ - | |
| | | | | |
| | **INVESTMENT ACCOUNTS** | | | |
| | Edward Jones Acct: #653-13555-1-6 | $ 191,205.00 | $ 1.05 | |
| | **SUBTOTAL** | $ 191,205.00 | $ 1.05 | |
| | | | | |
| | **DRIP ACCOUNTS** | | | |
| | Chevron Acct# 124921356678; 706.0888 shares @ $106.78/share; tranferred to Anita Brunsting Trustee, 3/25/11 | $ 75,396.16 | $19,012.88 | 172.4055 Shares @ $ 110.28/share; value as of 3/16/2012 |
| | Deere & Co. Acct#806578316055 - as of 2/1/2011; 9.5807 shares @ $92.96/share; never transferred to my name as trustee | $ 890.62 | $ 719.40 | 9.7125 Shares @ $74.07/share; value as of 11/2/2011 |
| | ExxonMobil Acct#C0009467777, Shares 2101.968469 @ $82.73/share; value as of 3/24/11 when transferred to Anita Brunsting Trustee. | 173,895.85 | $ 72,256.12 | 835.910671 Shares @ $86.44/share; value as of 3/16/2012 |
| | MetLife Acct#124921356678, Share 95.00 @ $45.05/share | $ 4,279.75 | $ 3,685.05 | 95.00 Shares @ $38.79/share, value as of 3/19/2012 |
| | **SUBTOTAL** | $ 254,462.38 | $95,673.45 | |
| | | | | |
| | **CASH ACCOUNTS** | | | |
| | Bank of America Ckg acct#586027563523 | $ - | $ 446,235.69 | Established after mother's death. Includes deposit from proceeds of sale of house: $433,129.32 |
| | Bank of America Ckg acct#0085190001143 | $ 5,215.37 | $ 1,471.75 | |
| | Blue Bonnet Credit Union Sav? Acct#13332 | $ 10.91 | $ 10.91 | |
| | Bank of America Ckg acct#586021229546 (joint acct w/ Carole set up to pay bills for and by Nelva Brunsting, value at start date 12/31/10 | $ 25.00 | $ - | |

**Schedule B**

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20-20566.1760

## NELVA BRUNSTING SURVIVOR'S TRUST ASSET LIST

| OWNER | ASSET CATEGORY | DEC 2010 VALUES | MARCH 2012 VALUES | MARCH 2012 COMMENTS |
|---|---|---|---|---|
| | **SUBTOTAL** | $ 5,251.28 | $ 1,482.66 | |
| | | | | |
| | **NOTES RECEIVABLE** | | | |
| | Anita Brunsting, 160 Exxon Shares already removed from total shares above | $ - | $ 13,830.40 | 160 Shares @ $86.44/share, value as of 3/16/2012 |
| | Anita Brunsting, 135 Chevron Shares already removed from total shares above | $ - | $ 14,887.80 | 135 Shares @ $110.28/share, value as of 3/16/2012 |
| | **SUBTOTAL** | $ - | $ 28,718.20 | |
| | | | | |
| | **MISCELLANEOUS** | | | |
| | Household and Personal Goods | $ 5,000.00 | $ - | |
| | Jewelry | $ 853.00 | $ 853.00 | |
| | Coins | $ 690.00 | $ 690.00 | |
| | 2002 Buick LeSabre, VIN# 1G4HR54K3YU229418 | $ 5,500.00 | $ 5,500.00 | title never transferred to trust |
| | **SUBTOTAL** | $ 12,043.00 | $ 7,043.00 | |
| | | | | |
| | **IRA/401K** | | | |
| | Edward Jones, Acct# 609-91956-1-9, as of 1/1/2011 | $ 54,367.51 | $ 199.20 | |
| | | | | |
| | **TOTAL** | $ 787,329.17 | $ 133,117.56 | |

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| BRUNSTING FAMILY IRREV TRUST - LIFE INSURANCE | | | | |
|---|---|---|---|---|
| OWNER | ASSET CATEGORY | DEC 2011 VALUES | MARCH 2012 VALUES | MARCH 2012 COMMENTS |
| | CASH ACCOUNTS | | | |
| | Bank of America Acct#008519206643 - life insurance premium drawn from this acct.; as of 12/6/2011 | $ 970.96 | $ - | acct closed; remaining balance of $142.85 deposited into Survivor's Trust Checking on 3/8/3012 |
| | Lincoln Financial Group | $ - | $ - | -balance 1/17/12;$250440.00 payout to each beneficiary of $50,088; additional interest paid 1/31/12; $154.40; - remaining balance of $166.86 sent by check to Anita Brunsting Trustee in March 2012; deposited into Survivor's Trust Checking on 3/13/2012 |

**Schedule C**

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| FINAL | NELVA BRUNSTING SURVIVOR'S TRUST (ST) ASSET LIST | | 3/30/12 |
|---|---|---|---|
| **OWNER on 11/11/2011** | **ASSET CATEGORY** | | **11/11/11 VALUES unless indicated otherwise** |
| | **REAL PROPERTY** | | |
| ST (Survivor's Trust) | HS-Lt 31 Blk 4 Wilchester West Sec 1, 13630 Pinerock Ln., Houston, Harris County, Texas (Value at right is what it went on the market for) Appraised value was $410,000.00; actual sale price is fair market value; (Value net after sale: $433,129.32) | ✓ | $ 469,000.00 |
| | **SUBTOTAL** | $ 469,000.00 | |
| | | | |
| | **INVESTMENT ACCOUNTS** | | |
| ST | Edward Jones Acct #653-13555-1-6 | | $ 1.05 |
| | **SUBTOTAL** | $ 1.05 | |
| | | | |
| | **DRIP ACCOUNTS** | | |
| ST | Chevron Acct #124921356678 36.8438 Shares @$107.0650/share value on date of death (basis) | ✓ | $ 3,944.68 |
| LT (ST) | Deere & Co. Acct#806578316055 (Value at right reflects value on W's date of death) Basis: $75.35/share with 9.7125 shares owned as of 8/1/2011 Reinvested shares | ✓ | $ 731.84 |
| ST | ExxonMobil Acct #C0009467777; Shares 671.987460 @$79.79/share on date of death and new basis) | ✓ | $ 53,617.88 |
| ST | MetLife Acct #124921356678 95.00 shares @33.01/share basis | ✓ | $ 3,135.95 |

**Key:**
**H** - Husband
**W** - Wife
**LT** - Living Trust
**SP** - Separate Property
**CP** - Community Property
**PRO** - Probate
**JT** - Joint
**ROS** - Rights of Survivorship
**JTROS** - Joint with Rights of Survivorship

# Schedule D

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| | | | |
|---|---|---|---|
| | **SUBTOTAL** | $ 61,430.35 | |
| | | | |
| | **CASH ACCOUNTS** | | |
| ST | Bank of America Ckg Acct #008519001143, accrued int of $.00 | ✓ | $ 7,535.14 |
| W | Blue Bonnet Credit Union Sav? Acct #13332, accrued int of $.00 (as of 2/29/12 stmt); Note: Bluebonnet Acct #5805 was a credit card acct | ✓ | $ 10.91 |
| W or Carol ROS | Bank of America Acct# 586021229546 (account set up to pay bills for and by W); Value at right was closing value of the account | ✓ | $ 1,479.67 |
| | **SUBTOTAL** | $ 9,025.72 | |
| | | | |
| | **MISCELLANEOUS** | | |
| ST | Household and Personal Goods | ✓ | $ 5,000.00 |
| ST | Jewelry including Gold Watch and other Miscellaneous pieces (see attached itemized list); per Co-Tee based on similar assets | ✓ | $ 853.00 |
| H & W JT | 2000 Buick LeSabre, VIN #1G4HR54K3YU229418 (Value per Co-Trustee via email 11/27/2011) | ✓ | $ 5,500.00 |
| W (ST) | IRS - Overpayment of Taxes for Tax Year 2010 | ✓ | $ 6,215.87 |
| ST | Miscellaneous Coins | ✓ | $ 690.00 |
| | **SUBTOTAL** | $ 18,258.87 | |
| | | | |
| | **IRA/401K** | | |
| W | Edward Jones, Acct #609-91956-1-9, ? is bene (shows portfolio summary, value as of 12/31/2011) | ✓ | $ 245.52 |
| | **SUBTOTAL** | $ 245.52 | |

**Key:**
**H** - Husband
**W** - Wife
**LT** - Living Trust
**SP** - Separate Property
**CP** - Community Property
**PRO** - Probate
**JT** - Joint
**ROS** - Rights of Survivorship
**JTROS** - Joint with Rights of Survivorship

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| | | | |
|---|---|---|---|
| | | | |
| **GRAND TOTAL** | | | $ 557,961.51 |

ILIT IRREVOCABLE TRUST OWNING LIFE INSURANCE

| | | | |
|---|---|---|---|
| | **LIFE INSURANCE** | | |
| Brunsting IRREV Trust | $250,000.00, ILIT, Policy #JP4432833, 5 kids are trust benes (claim has been made; actual payout as follows: $250,440.00 ($440 was death claim interest on the policy which is considered income to the trust earned after date of death) | | $ 250,000.00 |
| | **Grand TOTAL IRREV TRUST** ASSETS | $ 250,000.00 | |

| **ELMER BRUNSTING DECEDENT'S TRUST (DT) ASSET LIST** | | | 3/30/12 |
|---|---|---|---|
| **OWNER** | **ASSET CATEGORY** | | **11/11/11 VALUES of** |
| | **REAL PROPERTY** | | |
| DT (Decedent's Trust) | 143+ Acres, Iowa, Sioux County, Iowa (valued at $1,294,617.50 on H's Date of death); Value based on Appraisal at @$15,300/acre | ✓ | $ 2,190,000.00 |
| | **SUBTOTAL** | $ 2,190,000.00 | |
| | | | |
| | **INVESTMENT ACCOUNTS** | | |
| DT | Edward Jones Acct #653-13579 (Value as of W's DOD at right. Basis was set as of H's DOD); confirmed acct number through Doug Williams' office | ✓ | $ 236,588.20 |
| | **SUBTOTAL** | $ 236,588.20 | |
| | | | |

**Key:** **H** - Husband; **W** - Wife; **LT** - Living Trust; **SP** - Separate Property; **CP** - Community Property; **PRO** - Probate; **JT** - Joint; **ROS** - Rights of Survivorship; **JTROS** - Joint with Rights of Survivorship

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| | | | |
|---|---|---|---|
| | **DRIP ACCOUNTS** | | |
| DT | Chevron Acct #125175509293 (Basis $67.27/share was on H's Date of death); Value at right estimated as of W's Date of death 612.00 shares at $107.0650/share. | ✓ | $ 65,523.78 |
| DT | Chevron Acct#125175509293 (Basis $6727/share was on H's Date of death); Value at right estimated as of W's Date of death 604.961 shares at $107.0650/share | ✓ | $ 64,770.15 |
| DT | ExxonMobil Acct #C0009467769 (basis $67.99/share basis on H's DOD) Value at right reflects estimated value on the date of W's date of death for 583 Shares (as of June 2011 and March 2012) | ✓ | $ 46,517.57 |
| | **SUBTOTAL** | $ 176,811.50 | |
| | | | |
| | ***MISCELLANEOUS*** | | |
| DT | Rental income from Iowa farm<br>-Normally rec'd payments 10/2011 ($15,510.00/6 = $2,585.00/mo) and next payment due 03/2012; Amount at right shown as liability (advance payment received but not yet earned as of date of W's passing) | | $ (10,340.00) |
| | **SUBTOTAL** | $ (10,340.00) | |
| **GRAND TOTAL** | **DECEDENT'S TRUST ASSETS** | | $ 2,593,059.70 |

| | | |
|---|---|---|
| ST(LT)W | TOTAL 11/11/2011 | $557,961.51 |
| DT(H) | TOTAL 11/11/2011 | $2,593,059.70 |
| ILIT | TOTAL VALUE LIFE INSURANCE TRUST (income $440.00) | $250,000.00 |
| | **TOTAL 11/11/2011 ASSETS** | **$3,401,021.21** |
| | | |

**Key:** **H** - Husband, **W** - Wife, **LT** - Living Trust; **SP** - Separate Property, **CP** - Community Property, **PRO** - Probate; **JT** - Joint, **ROS** - Rights of Survivorship, **JTROS** - Joint with Rights of Survivorship

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| Bank of America Acct ending in :1143 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 12/23/2010 through 3/9/2012 | | | | | | | | |
| Date | Num | Description | Memo | Category | Tag | Clr | Amount | |
| BALANCE 12/22/2010 | | | | | | | 8,459.61 | |
| 12/23/2010 | EFT | City Of Houston Bill Payment | | Utilities:Water | | c | -52.74 | |
| 12/23/2010 | EFT | External Transfer Fee - 3 Day - | | Bank Charge | | c | -3.00 | |
| 12/24/2010 | 6848 | Randall's | | Groceries | | c | -60.51 | |
| 12/24/2010 | 6849 | Amy Tschirhart | xmas | Gifts Given | | c | -200.00 | |
| 12/27/2010 | 6845 | Silvana | | Hair | | c | -25.00 | |
| 12/30/2010 | 6850 | Void | | | | | 0.00 | |
| 12/30/2010 | 6851 | Tino | carl | Medical:In Home | | | -1,245.00 | |
| 12/30/2010 | 6852 | Michael Brooks | | Medical:In Home | | c | -855.00 | |
| 12/30/2010 | | Check Order00099 DES:FEE ID:U016 | | Bank Charge | | c | -27.00 | |
| 12/31/2010 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 | |
| 12/31/2010 | DEP | Deposit | | Invest Inc | | c | 70.30 | |
| 12/31/2010 | DEP | Benefits DES:PENSION ID:36301198 | | Income | | c | 594.41 | |
| 12/31/2010 | | Tx Tlr Cash Withdrawal From Chk | | | | c | -25.00 | |
| 12/31/2010 | | Tx Tlr Transfer To Chk 9546 Bank | | | | c | -25.00 | |
| 1/3/2011 | 6847 | Medical Aids | | Medical:Supplies | | c | -32.48 | |
| 1/3/2011 | DEP | Us Treasury 310 DES:SOC Sec ID:2 | | Income | | c | 1,780.00 | |
| 1/3/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -2,466.20 | |
| 1/4/2011 | 6853 | Robert Cantu | | Medical:In Home | | c | -736.00 | |
| 1/5/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 10,000.00 | |
| 1/5/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 10,000.00 | |
| 1/5/2011 | EFT | State Farm | PPD | Insurance | | c | -299.93 | |
| 1/5/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -64.04 | |
| 1/6/2011 | | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -2,500.00 | |
| 1/13/2011 | EFT | Check Order00099 DES:FEE ID:U016 | | Misc:Check Order | | c | -15.00 | |
| 1/19/2011 | EFT | Amy Tschirhart | | Gifts Given | | c | -6,000.00 | |
| 1/20/2011 | EFT | External Transfer Fee - 3 Day - | | Bank Charge | | c | -3.00 | |
| 1/20/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -5,000.00 | |
| 1/21/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -80.94 | |
| 1/21/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -134.05 | |
| 1/25/2011 | 7001 | United States Treasury | | Tax:Fed | | c | -2,840.00 | |
| 1/25/2011 | 7003 | Vacek | | Legal Fees | | c | -880.15 | |
| 1/25/2011 | 7005 | Entex | | Utilities:Gas & Electric | | c | -130.42 | |
| 1/26/2011 | 7004 | Leo Vasquez Tax Assessor Collector | | Tax:Property | | c | -1,112.87 | |
| 1/27/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -3,500.00 | |

# Schedule E

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Bank of America Acct ending in :1143

12/23/2010 through 3/9/2012

| Date | Num | Description | Memo | Category | Tag | Clr | Amount |
|---|---|---|---|---|---|---|---|
| 1/27/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -59.77 |
| 1/27/2011 | EFT | A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B | | Utilities:Telephone | | c | -68.68 |
| 1/31/2011 | DEP | Benefits DES:PENSION ID:02700488 | | Income | | c | 600.71 |
| 2/1/2011 | 7002 | State Of Iowa Treasurer | | Tax:State | | c | -330.00 |
| 2/1/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |
| 2/2/2011 | EFT | State Farm | PPD | Insurance | | c | -299.93 |
| 2/7/2011 | | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -700.00 |
| 2/8/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 340.83 |
| 2/9/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 25,000.00 |
| 2/10/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -10,000.00 |
| 2/10/2011 | EFT | Online Banking Transfer To Life Ins Acct | | Insurance:Life | | c | -7,200.00 |
| 2/18/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -106.89 |
| 2/25/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -67.65 |
| 2/28/2011 | DEP | Benefits DES:PENSION ID:05500518 | | Income | | c | 600.71 |
| 2/28/2011 | EFT | A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B | | Utilities:Telephone | | c | -76.39 |
| 3/1/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |
| 3/1/2011 | EFT | Bank Of America Credit Card Bill | | Household | | c | -282.47 |
| 3/1/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -52.74 |
| 3/2/2011 | EFT | State Farm | PPD | Insurance | | c | -299.93 |
| 3/7/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 219.69 |
| 3/15/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -100.71 |
| 3/15/2011 | EFT | A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B | | Utilities:Telephone | | c | -70.42 |
| 3/17/2011 | 7006 | Vacek | | Legal Fees | | c | -340.00 |
| 3/20/2011 | 7007 | Amy Brunsting | | Reimbursement | | c | -40.00 |
| 3/23/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -63.71 |
| 3/31/2011 | DEP | Benefits DES:PENSION ID:08800208 | | Income | | c | 600.71 |
| 4/1/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |
| 4/1/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 787.00 |
| 4/1/2011 | EFT | Bank Of America Credit Card Bill | | Household | | c | -38.00 |
| 4/4/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -90.34 |
| 4/4/2011 | EFT | State Farm | PPD | Insurance | | c | -301.36 |
| 4/7/2011 | EFT | Candy Curtis | | Gifts Given | | c | -3,000.00 |
| 4/8/2011 | EFT | County Treasurer DES:TAX ID: 971 | farm | Tax:Property | | c | -1,387.40 |
| 4/11/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -3,000.00 |
| 4/11/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -3,000.00 |
| 4/12/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 5,343.22 |

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| Bank of America Acct ending in :1143 | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 12/23/2010 through 3/9/2012 | | | | | | | | |
| Date | Num | Description | Memo | Category | Tag | Clr | Amount |
| 4/15/2011 | 7008 | Void | | | | | 0.00 |
| 4/15/2011 | 7009 | Void | | | | | 0.00 |
| 4/15/2011 | 7010 | United States Treasury | Decedents trust 2010 tax | Tax:Fed | | c | -7,095.00 |
| 4/15/2011 | 7011 | United States Treasury | Decedents trust 2011 tax qtr est | Tax:Fed | | c | -1,780.00 |
| 4/15/2011 | 7012 | United States Treasury | Surv Trust 2011 tax qtr est | Tax:Fed | | c | -3,095.00 |
| 4/15/2011 | 7013 | United States Treasury | Surv Trust 2010 tax | Tax:Fed | | c | -3,620.00 |
| 4/15/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 13,791.21 |
| 4/18/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -93.99 |
| 4/20/2011 | EFT | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 1,253.84 |
| 4/21/2011 | EFT | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 15,206.69 |
| 4/25/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -7,500.00 |
| 4/26/2011 | EFT | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 3,538.51 |
| 4/26/2011 | EFT | A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B | | Utilities:Telephone | | c | -176.85 |
| 4/26/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -63.71 |
| 4/28/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -63.71 |
| 4/29/2011 | DEP | Benefits DES:PENSION ID:11700518 | | Income | | c | 600.71 |
| 4/29/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |
| 5/2/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 282.71 |
| 5/2/2011 | EFT | Bank Of America Credit Card Bill | | Credit Card | | c | -2,967.61 |
| 5/3/2011 | EFT | State Farm | PPD | Insurance | | c | -300.62 |
| 5/9/2011 | EFT | A&t DES:PAYMENT ID:787780565AUS | | Utilities:Telephone | | c | -177.21 |
| 5/10/2011 | 7014 | TDECU | Luke Truck | Gifts Given | | c | -5,443.22 |
| 5/11/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -99.74 |
| 5/16/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -4,000.00 |
| 5/19/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -174.61 |
| 5/24/2011 | | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -2,000.00 |
| 5/24/2011 | | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -5,000.00 |
| 5/24/2011 | | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 54,000.00 |
| 5/26/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -11.52 |
| 5/27/2011 | 7016 | The Victoria Col DES:TNET Ach Ck | Luke college | Education | | c | -461.00 |
| 5/27/2011 | EFT | A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B | | Utilities:Telephone | | c | -95.73 |
| 5/27/2011 | EFT | Bluebonnet Credit Union | w/ medical | Household | | c | -1,864.49 |
| 5/31/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 208.00 |
| 5/31/2011 | DEP | Benefits DES:PENSION ID:14600508 | | Income | | c | 600.71 |
| 5/31/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -11.52 |
| 6/1/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |

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Bank of America Acct ending in :1143

12/23/2010 through 3/9/2012

| Date | Num | Description | Memo | Category | Tag | Clr | Amount |
|---|---|---|---|---|---|---|---|
| 6/2/2011 | 7015 | Vacek | | Legal Fees | | c | -575.59 |
| 6/2/2011 | EFT | Bank Of America Credit Card Bill | | Credit Card | | c | -6,355.65 |
| 6/2/2011 | EFT | Iowa 529 Ach DES:CONTRIB ID:0000 | kt college | Gifts Given | | c | -500.00 |
| 6/2/2011 | EFT | State Farm | PPD | Insurance | | c | -300.62 |
| 6/2/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -8,500.00 |
| 6/3/2011 | EFT | Am-honda DES:PMT ID:000001032223 | for katie | Gifts Given | | c | -5,750.51 |
| 6/6/2011 | EFT | Chase DES:EPAY ID:1125968648 Ind | | Credit Card | | c | -2,358.75 |
| 6/8/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -2,000.00 |
| 6/8/2011 | TXFR | Candy Curtis | | Gifts Given | | c | -2,000.00 |
| 6/9/2011 | 7017 | Kroese & Kroese | mom | Tax Preparation | | c | -561.93 |
| 6/9/2011 | 7018 | Kroese & Kroese | decedents trust | Tax Preparation | | c | -1,123.87 |
| 6/9/2011 | 7019 | Wilchester West Fund | | Tax:Other | | c | -327.00 |
| 6/9/2011 | 7020 | United States Treasury | Surv Trust 2010 tax qtrly | Tax:Fed | | c | -3,620.00 |
| 6/9/2011 | 7021 | Treasurer State Of Iowa | | Tax:State | | c | -47.00 |
| 6/9/2011 | 7022 | United States Treasury | Dec Trust 2010 tax qtrly | Tax:Fed | | c | -1,780.00 |
| 6/9/2011 | DEP | Deposit | | Invest Inc | | c | 4.18 |
| 6/9/2011 | EFT | A&t DES:PAYMENT ID:787780565AUS | | Utilities:Telephone | | c | -154.09 |
| 6/9/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -130.35 |
| 6/10/2011 | DEP | Exxon | | Invest Inc | | c | 896.76 |
| 6/13/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 51,060.56 |
| 6/13/2011 | TXFR | Amy Tschirhart | supplies to fix house | Reimbursement | | c | -100.00 |
| 6/14/2011 | EFT | External Transfer Fee - 3 Day - | | Bank Charge | | c | -3.00 |
| 6/17/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -217.04 |
| 6/22/2011 | 7710 | Electchk 7710 Bcf - 14411 We 06/ | | Utilities:Water | | c | -314.57 |
| 6/27/2011 | EFT | Bank Of America Credit Card Bill | | Credit Card | | c | -2,364.34 |
| 6/28/2011 | EFT | A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B | | Utilities:Telephone | | c | -86.12 |
| 6/28/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -52.20 |
| 6/30/2011 | DEP | Benefits DES:PENSION ID:17900218 | | Income | | c | 600.71 |
| 7/1/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |
| 7/1/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 704.00 |
| 7/5/2011 | EFT | State Farm | PPD | Insurance | | c | -300.62 |
| 7/5/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -10,000.00 |
| 7/6/2011 | 7024 | Medical Chest Associates | | Medical:Doctor | | c | -4.12 |
| 7/6/2011 | EFT | Chase DES:EPAY ID:1142870017 Ind | | Credit Card | | c | -2,976.35 |
| 7/7/2011 | 7023 | Duke Medical Equipment | | Medical:Supplies | | c | -7.62 |
| 7/11/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -282.51 |

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20-20566.1770

Bank of America Acct ending in :1143

12/23/2010 through 3/9/2012

| | Date | Num | Description | Memo | Category | Tag | Clr | Amount |
|---|---|---|---|---|---|---|---|---|
| | 7/11/2011 | EFT | A&t DES:PAYMENT ID:787780565AUS | | Utilities:Telephone | | c | -224.42 |
| | 7/15/2011 | EFT | Bank Of America Credit Card Bill | | Credit Card | | c | -7,242.83 |
| | 7/18/2011 | EFT | Bluebonnet Credit Union | w medical | Household | | c | -175.47 |
| | 7/18/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -166.12 |
| | 7/18/2011 | EFT | Chase DES:EPAY ID:1154305808 Ind | | Credit Card | | c | -1,998.19 |
| | 7/20/2011 | EFT | Safebox Fee | | Bank Charge | | c | -8.00 |
| | 7/26/2011 | EFT | Amy Tschirhart | supplies to fix house | Reimbursement | | c | -100.00 |
| | 7/27/2011 | EFT | A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B | | Utilities:Telephone | | c | -82.16 |
| | 7/27/2011 | EFT | External Transfer Fee - 3 Day - | | Bank Charge | | c | -3.00 |
| | 7/28/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -63.72 |
| | 7/29/2011 | DEP | Benefits DES:PENSION ID:20800528 | | Income | | c | 600.71 |
| | 8/1/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |
| | 8/1/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 253.00 |
| | 8/1/2011 | | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -10,000.00 |
| | 8/2/2011 | EFT | State Farm | | Insurance | | c | -300.62 |
| | 8/5/2011 | 7025 | Vacek | retainer | Legal Fees | | c | -1,000.00 |
| | 8/8/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -277.78 |
| | 8/10/2011 | EFT | A&t DES:PAYMENT ID:787780565AUS | | Utilities:Telephone | | c | -170.89 |
| | 8/16/2011 | EFT | Bluebonnet Credit Union | with medical | Household | | c | -1,172.08 |
| | 8/17/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -308.10 |
| | 8/24/2011 | TXFR | Candy Curtis | | Gifts Given | | | -2,000.00 |
| | 8/26/2011 | EFT | Utsa Admissions | Luke college | Education | | c | -575.00 |
| | 8/26/2011 | EFT | AT&T | PAYMENT | Utilities:Telephone | | c | -84.47 |
| | 8/29/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -63.72 |
| | 8/29/2011 | EFT | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -10,000.00 |
| | 8/31/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 199.00 |
| | 8/31/2011 | DEP | Benefits DES:PENSION ID:23900168 | | Income | | c | 600.71 |
| | 9/1/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |
| | 9/1/2011 | EFT | Bank Of America Credit Card Bill | | Credit Card | | c | -3,256.32 |
| | 9/2/2011 | EFT | State Farm | PPD | Insurance | | c | -290.04 |
| | 9/5/2011 | 7026 | Treasurer State Of Iowa | mom | Tax:State | | c | -230.00 |
| | 9/5/2011 | 7027 | United States Treasury | Sept mom's trust pmt | Tax:Fed | | c | -2,100.00 |
| | 9/5/2011 | 7028 | United States Treasury | Sept dad's trust pmt | Tax:Fed | | c | -1,780.00 |
| | 9/5/2011 | 7029 | Kroese & Kroese | farm lease | Tax Preparation | | c | -203.06 |
| | 9/6/2011 | EFT | Chase DES:EPAY ID:1172082054 Ind | | Credit Card | | c | -999.04 |
| | 9/8/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -265.10 |

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20-20566.1771

Bank of America Acct ending in :1143

12/23/2010 through 3/9/2012

| Date | Num | Description | Memo | Category | Tag | Clr | Amount |
|---|---|---|---|---|---|---|---|
| 9/9/2011 | DEP | Exxon | | Invest Inc | | c | 274.01 |
| 9/12/2011 | EFT | A&t DES:PAYMENT ID:787780565AUS | | Utilities:Telephone | | c | -168.71 |
| 9/16/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -344.55 |
| 9/19/2011 | EFT | Bluebonnet Credit Union | w/ medical | Household | | c | -790.04 |
| 9/23/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 10,000.00 |
| 9/23/2011 | EFT | Bank Of America Credit Card Bill | | Credit Card | | c | -4,767.36 |
| 9/26/2011 | EFT | A&t Bill (SBC-AR,Ks,Mo,Ok,TX) B | | Utilities:Telephone | | c | -84.47 |
| 9/26/2011 | | Online Banking Transfer To Carole/mom | | Carole/mom | | c | -5,000.00 |
| 9/28/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -63.72 |
| 9/29/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 721.00 |
| 9/30/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |
| 9/30/2011 | DEP | Benefits DES:PENSION ID:27022468 | | Income | | c | 600.71 |
| 10/4/2011 | EFT | County Treasurer DES:TAX ID: 119 | farm | Tax:Property | | c | -1,598.40 |
| 10/4/2011 | EFT | State Farm | PPD | Insurance | | c | -290.04 |
| 10/4/2011 | EFT | Chase DES:EPAY ID:1193123150 Ind | | Credit Card | | c | -2,390.35 |
| 10/11/2011 | EFT | A&t DES:PAYMENT ID:787780565AUS | | Utilities:Telephone | | c | -184.35 |
| 10/12/2011 | 7030 | DeKoster & DeKoster | farm contract | Legal Fees | | c | -100.00 |
| 10/12/2011 | EFT | City Of Houston DES:WATER Bill I | | Utilities:Water | | c | -227.06 |
| 10/14/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 15,000.00 |
| 10/17/2011 | EFT | Stream Energy-tx Bill Payment | | Utilities:Gas & Electric | | c | -217.43 |
| 10/18/2011 | EFT | Bluebonnet Credit Union | w/ medical | Household | | c | -687.84 |
| 10/19/2011 | EFT | Chase DES:EPAY ID:1205559052 Ind | | Credit Card | | c | -2,033.30 |
| 10/20/2011 | 7031 | Kroese & Kroese | | Tax Preparation | | c | -700.00 |
| 10/21/2011 | 7032 | Vehs Band Boosters | Kt band | Gifts Given | | c | -280.00 |
| 10/26/2011 | EFT | Candy Curtis | | Gifts Given | | c | -2,000.00 |
| 10/27/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 30,000.00 |
| 10/28/2011 | EFT | Comcast | | Utilities:Cable TV | | c | -63.71 |
| 10/31/2011 | DEP | Edward Jones DES:INVESTMENT ID:0 | | Invest Inc | | c | 231.00 |
| 10/31/2011 | DEP | Benefits DES:PENSION ID:29923478 | | Income | | c | 600.71 |
| 11/1/2011 | DEP | Minnesota Life DES: Annuity ID:0 | | Income:Annuity | | c | 91.78 |
| 11/1/2011 | TXFR | Luke Riley | | Education | | c | -2,000.00 |
| 11/2/2011 | EFT | State Farm | PPD | Insurance | | c | -290.04 |
| 11/3/2011 | EFT | Bank Of America Credit Card Bill | | Credit Card | | c | -102.52 |
| 11/7/2011 | EFT | Wire TYPE:WIRE Out DATE:111107 T | to anita for future trust exp | Legal Fees | redeposited into new Surv Trust acct | c | -10,000.00 |

**Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

**Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

**Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.




20-20566.1774

**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee





20-20366.1775

THE STATE OF TEXAS

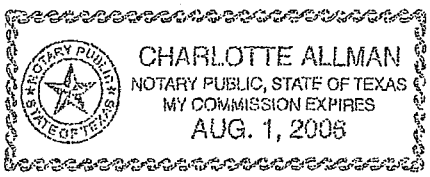
COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman

Notary Public, State of Texas








20-20566.1776

# Exhibit 8

The 2007 Amendment to the Brunsting Family Trust

# FIRST AMENDMENT TO THE RESTATEMENT TO THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brungsting Family Living Trust dated October 10, 1996 for all purposes.

2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.

3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.

4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

WITNESS OUR HANDS this the 6th day of September, 2007.

Elmer H Brunsting

ELMER H. BRUNSTING,
Founder and Trustee

Nelva E Brunsting

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Candace L Kunz-Freed

Notary Public, State of Texas

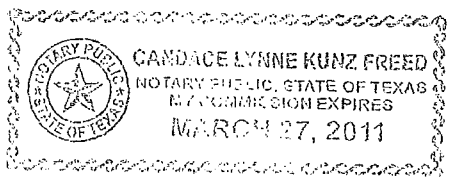


EXHIBIT "A"

# Article IV

# Our Trustees

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.




20-20366.1779

# Exhibit 9

Affidavit from Frost Bank re; Amy trying to pawn Carl & Candace inheritances off to frost to avoid accountability

Gene Witter/CFBI
03/29/2012 11:02 AM

To "Bobbie Bayless" <bayless@baylessstokes.com>
cc
bcc
Subject Discovery Affidavit-Brunsting pre-litigation discovery

Dear Bobbie,

I am having this delivered to you today.

Gene Witter
Senior Vice President & Trust Officer
The Frost National Bank
P. O. Box 2845
Houston, Texas 77252
Phone: 713/388-7852 FAX: 713/388-7808

From: Debbie Castillo on 01/24/2012 09:13 AM
To: Wayne Baker/CFBI@CFBI
cc:

## While You Were Out

Contact:
Amy Brunsting
of:

Phone: 830-625-8352
FAX:

- ☐ Telephoned
- ☒ Please Call
- ☐ Will Call Again
- ☐ Returned Call
- ☐ Was In
- ☐ Will Return
- ☐ Left Package
- ☐ Please See Me
- ☐ Urgent

Thursday @ 9 am.

**Message:**
Getting ready to set up two managed trusts and needs more information. The trusts will be for her deceased parents - Elmer and Nelva Brunsting.

Amy Ruth Schirkart 50?
Country Lodge Dr.
New Braunfels, TX.

$ 100 - 500



Amy Brunsting
<at.home3@yahoo.com>
01/24/2012 10:17 AM
Please respond to
Amy Brunsting
<at.home3@yahoo.com>

To "wbaker@frostbank.com" <wbaker@frostbank.com>
cc Anita Brunsting <akbrunsting@suddenlink.net>
bcc
Subject Conference call on Thursday am

Wayne,
Thank you for clearing your schedule to speak with my sister and me about the management of the trust accounts for my brother Carl and my sister Candy. I've attached a copy of the trust documents. Please let me know if you need any other information. The trust documents were prepared by Candace Freed at Vasak and Freed.

My sister who is co-trustee is Anita Brunsting. Her phone number is 361-550-7132. My cell phone number is 830-822-2388. As per our conversation, the conference call is scheduled for 9 am on Thursday, Jan. 26.

Regards,
Amy Brunsting


Beneficiary Designation.pdf

NO. 2012-14538

| | | |
|---|---|---|
| IN RE: CARL HENRY BRUNSTING | § | IN THE DISTRICT COURT OF |
| | § | |
| | § | HARRIS COUNTY, TEXAS |
| | § | |
| | § | 80th JUDICIAL DISTRICT |

**BUSINESS RECORDS AFFIDAVIT OF THE FROST NATIONAL BANK**

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

BEFORE ME, the undersigned authority, personally appeared GENE WITTER, who, being duly sworn, deposed as follows:

My name is Gene Witter. I am of sound mind, capable of making this affidavit, and personally acquainted with the facts herein stated.

I am a Senior Vice President & Trust Officer at The Frost National Bank (the "Bank") and in that position, I am a custodian of records for the Bank. Attached hereto are records from the Bank's files which have been marked with page numbers 1 through 39. These pages of records have been kept by the Bank in the regular course of business, and it was the regular course of business of the Bank for an employee or representative of the Bank with knowledge of the act or event recorded to make the record or to transmit information thereof to be included in such record; and the record was made at the time or reasonably soon thereafter. The records attached hereto are exact duplicates of the originals found in the Bank's files.

Gene Witter
AFFIANT

SUBSCRIBED AND SWORN TO before me, on this 29th day of March, 2012, to certify which witness my hand and seal of office.

LINDA MAPP
Notary Public
STATE OF TEXAS
My Comm Exp 10-07-2012

Notary Public, in and for the
State of TEXAS Linda Mapp
Printed Name: Linda Mapp

My Commission Expires: 10/7/2012

P12718

# QUALIFIED BENEFICIARY DESIGNATION AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT UNDER LIVING TRUST AGREEMENT

**Section 1. Exercise of General Power of Appointment and Qualified Beneficiary Designation**

I, NELVA E. BRUNSTING, the surviving Founder (herein also referred to as "Trustor" and "Founder") of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B.4 of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to administer and distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST as set forth in Section 3 of this document.

The BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, is incorporated herein by reference for all purposes (herein sometimes referred to as "the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996," and the "Trust Agreement").

**Section 2. Exercise of Limited Power of Appointment and Qualified Beneficiary Designation**

I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named

the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, I direct my Trustee to administer and distribute the balance of the principal and undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST, except for any portion which has been disclaimed by me, as set forth in Section 3 of this document.

**Section 3. Provisions for Distribution and Administration of the Survivor's Trust and the Decedent's Trust**

**DISTRIBUTION OF TRUST ASSETS**

**A. Beneficiaries**

The Trustee shall divide the remainder of the Trust Estate into separate shares hereinafter individually referred to as Personal Asset Trusts, as follows:

| Beneficiaries | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| ANITA KAY BRUNSTING | 1/5 |

**B. Division into Separate Shares**

My Trustee shall distribute the share for each of my beneficiaries in a separate Personal Asset Trust for the benefit of each beneficiary as provided in this Section 3. If a named beneficiary fails to survive me, then that share shall be distributed as set forth below as if it had been an original part thereof. The decisions of the Trustee as to the assets to constitute each such share shall be conclusive, subject to the requirement that said shares shall be of the respective values specified.

**1. Share for CANDACE LOUISE CURTIS**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CANDACE LOUISE CURTIS, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CANDACE LOUISE CURTIS fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CANDACE LOUISE CURTIS, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**2. Share for CAROL ANN BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CAROL ANN BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CAROL ANN BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CAROL ANN BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**3. Share for AMY RUTH TSCHIRHART**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of AMY RUTH TSCHIRHART, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If AMY

RUTH TSCHIRHART fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of AMY RUTH TSCHIRHART, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**4. Share for CARL HENRY BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CARL HENRY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CARL HENRY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CARL HENRY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**5. Share for ANITA KAY BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of ANITA KAY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If ANITA KAY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of ANITA KAY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

## PERSONAL ASSET TRUST PROVISIONS

A. Establishment of the Personal Asset Trust:

A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified

to be made to said beneficiary's Personal Asset Trust first occurs. The Personal Asset Trust shall be held, administered and distributed as set forth under this Agreement. After a beneficiary's Personal Asset Trust is established, any further distribution specified to be made to said beneficiary's Personal Asset Trust under any other provisions of this Agreement shall be added to and become a part of said existing Personal Asset Trust, to be held, administered and distributed as if it had been an original part thereof. The Personal Asset Trust may be referred to by either using the name of the beneficiary for whom such trust is created or such other name as is designated by the Trustee. Notwithstanding the foregoing, if the Trustee exercises his or her right to create a separate and distinct Personal Asset Trust for said beneficiary (pursuant to the paragraph of this Agreement entitled "Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners"), any further distributions specified to be made to said beneficiary's Personal Asset Trust may, in the Trustee's sole and absolute discretion, instead be partly or entirely made to such newly created Personal Asset Trust.

B. Trustor's Intent in Establishing Personal Asset Trusts: The Trustor's intended purposes in creating a Personal Asset Trust for a beneficiary are as follows:

1. To protect and conserve trust principal;

2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary;

3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

4. To protect trust assets and income from claims of and interference from third parties;

5. To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

7. To give the beneficiary the ability to direct the distribution of wealth (during life or at death) to other individuals or charitable organizations (subject to any limitation provided elsewhere herein);

8. To allow for the prudent management of property if the beneficiary is incapacitated or otherwise unable to handle his or her own financial affairs because of alcohol or drug abuse or other reasons;

9. To protect the beneficiary from the unreasonable or negative influence of others, divorce claims, paternity or maternity suits or claims, and other lawsuits; and

10. To protect the beneficiary against claims of third parties.

C. Duty to Inform Beneficiary of Trust Benefits and Protections: Immediately prior to a Personal Asset Trust being established for a beneficiary hereunder, the then acting Trustee of the Trust shall, if at all practicable, have a private meeting or telephone call with such beneficiary to explain the above stated long-term purposes and benefits of the Personal Asset Trust and to advise such beneficiary how he or she may maintain the benefits and protections that such trust provides. The Trustee is directed to have an attorney assist the Trustee in conducting this meeting or call and the Trustor hereby authorizes the Trustee to employ the services of VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, for such purpose and waive any potential conflict that may otherwise deter them from acting; however, the Trustee is free to hire any other attorney, provided such attorney is an experienced estate planning specialist.

D. Designation of Trustee: Except for the Personal Asset Trusts created for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS, each beneficiary for whom a Personal Asset Trust is created shall act as sole Trustee of said trust. ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall act as Co-Trustees for the Personal Asset Trusts for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS. If either ANITA KAY BRUNSTING or AMY RUTH TSCHIRHART cannot serve for any reason, the remaining Co-Trustee shall serve alone. Both ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall have the right to appoint their own successor Trustee in writing. Notwithstanding the foregoing, each beneficiary who is acting as his or her own Trustee of his or her said trust shall have the right, at such time as said beneficiary is acting as sole Trustee and in said beneficiary's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said beneficiary as Co-Trustee of said trust. Said beneficiary shall also have the right, at any time and in said beneficiary's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said beneficiary appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said beneficiary shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a

successor Trustee or Co-Trustee(s) in said beneficiary's place, as the case may be, in the event of said beneficiary's death, incompetency, inability or unwillingness to act; but, if said beneficiary is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c) and said beneficiary shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said beneficiary fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said beneficiary to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

E. Designation of Trustee for Primary Beneficiary's Issue: Notwithstanding the foregoing, upon attaining age thirty five (35) each of the descendants of a Primary Beneficiary (hereinafter sometimes referred to as "issue") shall act as sole Trustee of the Personal Asset Trust created for such issue. Said issue shall have the right, at such time as said issue is acting as sole Trustee and in said issue's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said issue as Co-Trustee of said trust. Said issue shall also have the right, at any time and in said issue's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said issue appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said issue shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a successor Trustee or Co-Trustee(s) in said issue's place, as the case may be, in the event of said issue's death, incompetency, inability or unwillingness to act; but, if said issue is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c)) and said issue shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said issue fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said issue to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

F. Administration of Personal Asset Trust: The Personal Asset Trust shall be held, administered and distributed by the Trustee appointed under this Section of the Trust Agreement as follows:

1. Discretionary Distributions of Income and/or Principal: The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for

the benefit of the beneficiary for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as such Trustee shall deem appropriate for such distributees' health, support, maintenance and education. Any income not distributed shall be accumulated and added to principal. In exercising the discretions conferred in this paragraph, the Trustee may pay more to or apply more for some beneficiaries to the exclusion of others, if such Trustee deems this necessary or appropriate in light of the circumstances, the size of the Trust Estate and the probable future needs of the beneficiaries. The Trustee shall, before making any such distributions, consider the Trustor's intent in creating the trust, as set forth above in paragraph B.

2. Additional Guidelines for Distributions: In addition to the provisions set forth above for making discretionary distributions of income and/or principal, the Trustee shall be further guided as follows in making such distributions. Any such distributions shall be made in the sole and absolute discretion of the Trustee and shall be binding on all persons howsoever interested now or in the future in this trust.

   a. Primary Beneficiary's Needs Considered First; Broad Interpretation of "Health, Education, Maintenance and Support": In exercising the discretionary powers to provide benefits under this trust, the Trustee shall take into consideration that the primary purpose in establishing this trust is to provide for the present and future welfare of the primary beneficiary, and secondly, the present and future welfare of the primary beneficiary's issue. Furthermore, the Trustee may take into account any beneficiary's character and habits and his or her willingness and action to support himself or herself in light of his or her particular abilities and disabilities, and the needs of other beneficiaries, if any, of the same trust. Finally, the Trustor requests that the Trustee be liberal in determining the needs of a beneficiary for health, support, maintenance and education and in conferring benefits hereunder. The term "health" need not take into account any private or governmental medical insurance or other medical payments to which a beneficiary may be entitled, and the Trustee may pay for the expense of providing health and medical insurance coverage for the beneficiary. The term "education" may include but is not limited to, all expenses incurred in connection with or by reason of a beneficiary's attendance at public or private elementary or high school, college, university or vocational, technical or other educational institution or specialized training programs (whether or not any such institution or program provider shall be a fully accredited educational institution), graduate or post-graduate education expenses, and all expenses incurred in providing such beneficiary with an education in a non-institutional setting; including,

but not limited to, the expense of travel and charges for tutoring, tuition, room and board (whether or not charged by an educational institution at which such beneficiary shall be a student), laboratory fees, classroom fees, clothing, books, supplies, laboratory or other equipment or tools (including computer hardware and software) or other material or activities that the Trustee shall determine to be of educational benefit or value to such beneficiary. In determining the need for funds for education, the Trustee shall consider all direct and indirect expenses, including living expenses of the beneficiary and those persons who may be dependent upon said beneficiary. The terms "support" and "maintenance" may include but are not limited to investment in a family business, purchase of a primary residence, entry into a business, vocation or profession commensurate with a beneficiary's abilities and interests; recreational or educational travel; expenses incident to marriage or childbirth; and for the reasonably comfortable (but not luxurious) support of the beneficiaries. When exercising the powers to make discretionary distributions from the trust, the Trustee shall maintain records detailing the amount of each distribution made to any beneficiary from trust income and/or principal and the reasons for such distribution. The distributions made to a beneficiary shall not be allocated to or charged against the ultimate distributable share of that beneficiary (unless so provided in the primary beneficiary's exercise of his or her limited power of appointment).

b. Consider the Situation of the Beneficiary: In determining whether or not it is in the best interest of a beneficiary for any payment to be made to that beneficiary, the Trustee shall consider the financial responsibility, judgment and maturity of such beneficiary, including whether or not, at the time of such determination, such beneficiary: (i) is suffering from any physical, mental, emotional or other condition that might adversely affect the beneficiary's ability to properly manage, invest and conserve property of the value that would be distributed to said beneficiary; (ii) is at such time, or previously has been, a substantial user of or addicted to a substance the use of which might adversely affect the beneficiary's ability to manage, invest and conserve property of such a value; (iii) has demonstrated financial instability and/or inability to manage, invest and conserve the beneficiary's property; or (iv) is going through a period of emotional, marital or other stress that might affect the beneficiary's ability to manage, invest and conserve such property.

c. Consider Any Written Letter of Instructions from the Trustor: The Trustor may from time to time by written letter or other instrument, not constituting a holographic will or codicil or amendment to any trust, set forth instructions to the Trustee as to how the Trustor wishes the

Trustee's discretion to be exercised. The Trustor recognizes and intends that such instructions shall only be directive in nature and not binding on the Trustee or any beneficiary hereunder; however, the Trustor requests, to the extent possible, that the Trustee be mindful of these instructions when administering the trust.

d. Loans, Use of Trust Property and Joint Purchases Preferred Over Distributions: The Trustee is directed, prior to making any distributions directly to or for the benefit of a beneficiary, to consider the alternatives of making a loan to the beneficiary, allowing the beneficiary the use of property of the Trust Estate (or such property to be acquired) and/or making a joint purchase of property with the beneficiary, pursuant to the paragraph below entitled "Special Trustee Powers."

e. Restrictions on Distributions That Discharge Legal Obligations of a Beneficiary: The primary beneficiary is expressly prohibited from making any distributions from the trust, either as Trustee or under any limited power of appointment, either directly or indirectly, in favor of anyone to whom the primary beneficiary owes a legal obligation, to satisfy, in whole or in part, such legal obligation. Any such distributions may only be made by the Trust Protector.

G. Primary Beneficiary's Limited Power of Appointment: The primary beneficiary shall have the following Limited Powers of Appointment. During the lifetime of the primary beneficiary, said beneficiary may appoint and distribute the accumulated income and/or principal to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions, and in such amounts or proportions as said beneficiary wishes. Upon the death of the primary beneficiary, the Trustee shall distribute any remaining balance, including accumulated income and principal, to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions and in such amounts or proportions as said beneficiary shall appoint by said beneficiary's last unrevoked Will, codicil or other written instrument executed prior to said beneficiary's death and specifically referring to this power of appointment. In the event there should be a failure of disposition of all or any portion of said income or principal, either in connection with the exercise or as a result of the nonexercise of the above testamentary limited power of appointment, all of said income and principal not disposed of shall be administered and distributed as set forth below in the paragraph entitled "Final Disposition of Trust." The terms of this paragraph may be limited by the Section of this Trust Agreement entitled "Trust Protector Provisions."

H. Final Disposition of Trust: If the primary beneficiary for whom the Personal Asset Trust has been created should die before complete distribution of said trust, and the beneficiary's above powers of appointment have not been fully exercised, said trust shall terminate and the remaining principal (including accumulated income added

thereto) in said trust shall be held, administered and distributed for the benefit of the succeeding or contingent beneficiaries named, if any, pursuant to the respective paragraph set forth in Section 3.B. of this Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment establishing said beneficiary's share as if such beneficiary had been an original part thereof. Any share or portion thereof of any trust administered hereunder which is not disposed of under any of the foregoing provisions (or the provisions of the Article entitled "Trust Protector Provisions") shall be distributed pursuant to the paragraph of the Trust Agreement entitled "Ultimate Distribution."

I. Special Trustee Powers: With respect to each Personal Asset Trust created under this Section, and in addition to or in lieu of the powers and authority granted to the Trustee under any other provisions of the Trust Agreement, during the existence of the Personal Asset Trust and until such time of its termination the Trustee, in his or her sole and absolute discretion, shall have the powers and authority to do the following.

1. Permit Beneficiaries to Use Trust Assets: The Trustor desires that the beneficiaries of the trust be given the liberal use and enjoyment of trust property. To the extent deemed practical or advisable in the sole and absolute discretion of the Trustee, the primary beneficiary (or other beneficiaries) of each trust hereunder may have the right to the use, possession and enjoyment of (a) all of the tangible personal property at any time held by such trust, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, and (b) all real property that may at any time constitute an asset of such trust. Such use, possession and enjoyment may be without rent or other financial obligation. To the extent of the trust assets and unless the Trustee is relieved of such obligation by such beneficiary (or beneficiaries), which the Trustee may agree to do, the Trustee shall see to the timely payment of all taxes, insurance, maintenance and repairs, safeguarding and other charges related to the preservation and maintenance of each and every such property. The Trustor requests, but do not require, that any such use, possession or enjoyment by a beneficiary other than the primary beneficiary be subject to veto at any time by the primary beneficiary.

a. Hold and Maintain a Residence for the Use of Beneficiaries: The Trustee is specifically authorized to hold and maintain any residence (whether held as real property, condominium or cooperative apartment) for the use and benefit of any beneficiary of any trust. If the Trustee, in the Trustee's sole and absolute discretion, determines that it would be in the best interests of any beneficiary of any trust to maintain a residence for their use, but that the residence owned by the Trustee should not be used for such purpose, the Trustee is authorized to sell said residence and to apply the net proceeds of the sale to the purchase of such other residence or to make such other arrangements as the Trustee, in such Trustee's sole and absolute discretion, deems suitable

for the purpose. Any proceeds of sale not needed for reinvestment in a residence as provided above shall be added to the principal of the trust and thereafter held, administered and disposed of as a part thereof. The Trustee is authorized to pay all carrying charges of such residence, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of any beneficiary of the trust; the Trustee may alternatively provide, by agreement with the beneficiary, that such charges and expenses, or a portion of them, are to be paid by the beneficiary. Having in mind the extent to which funds will be available for future expenditure for the benefit of the beneficiaries, the Trustee is authorized under this paragraph to expend such amounts as such Trustee shall, in his or her sole and absolute discretion, determine to maintain the current lifestyle of the beneficiaries and their personal care and comfort; the Trustor does not, however, desire that the Trustee assist the beneficiaries in maintaining a luxurious lifestyle.

2. Special Investment Authority: Notwithstanding any investment limitations placed on the Trustee under the Trust Agreement or the provisions of any state law governing this trust which may contain limitations such as the prudent investor rule, the Trustee is authorized to make the following types of investments of trust assets:

   a. Closely Held Businesses: To continue to hold and operate, to acquire, to make investments in, to form, to sell, or to liquidate, at the risk of the Trust Estate, any closely held partnership, corporation or other business that a beneficiary is involved in as an owner, partner, employee, officer or director, as long as the Trustee deems it advisable. The Trustee shall not be liable in any manner for any loss, should such loss occur, resulting from the retention or investment in such business. In the absence of actual notice to the contrary, the Trustee may accept as correct and rely on financial or other statements rendered by any accountant for any such business. Any such business shall be regarded as an entity separate from the trust and no accounting by the Trustee as to the operation of such business shall be required to be made. The Trustee shall have these powers with respect to the retention and purchase of such business, notwithstanding any rule or law requiring diversification of assets. Additionally, the foregoing shall not be limited by the fact that the Trustee or related parties, or any of them, shall be owners, partners, employees, officers or directors of the business. This paragraph, however, shall not be deemed to be a limitation upon the right of the Trustee to sell the investment in any

business if in the Trustee's sole and absolute discretion such sale is deemed advisable.

b. Tangible Personal Property: To acquire and/or continue to hold as an asset of the trust such items of tangible personal property as an investment or for the use of a beneficiary, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, home furniture and furnishings.

3. Permit Self-Dealing: Financial transactions, both direct and indirect, between any trust and any beneficiary and/or Trustee who is also a beneficiary of that trust (including, for example, the sole or joint purchase, sale or leasing of property, investments in mortgages, acquisitions of life insurance policies, employment in any capacity, lending, etc.), whether or not specifically described in the Trust Agreement as permitted between such parties, except to the extent expressly prohibited hereunder, are expressly authorized, notwithstanding any rule of law relating to self-dealing, provided only that the Trustee, in thus acting either on behalf of or with or for such trust, shall act in good faith to assure such trust receives in such transaction adequate and full consideration in money or money's worth. Furthermore, the Trustee shall have the power to employ professionals or other individuals to assist such Trustee in the administration of any trust as may be deemed advisable (and as more particularly described in the paragraph of the Trust Agreement entitled "Trustee Powers"), notwithstanding such person or entity may be, or is affiliated in business with, any Trustee or beneficiary hereunder. The compensation to which a Trustee who is also a beneficiary is entitled under the Trust Agreement shall not be reduced or offset by any employment compensation paid to such Trustee for services rendered outside the scope of such Trustee's ordinary fiduciary duties and responsibilities, or for reason of receiving sales or other fees or commissions on property sold to the trust by such Trustee (directly or indirectly), which sales are hereby authorized.

4. Make Loans: Loan money to any beneficiary, or to any estate, trust or company in which such person or any trust hereunder has an interest, or had an interest while living, for any purpose whatsoever (including but not limited to purchasing, improving, repairing and remodeling a principal residence or entering into, purchasing or engaging in a trade or business or professional career), with or without security and at such rate of interest as the Trustee shall determine in the exercise of reasonable fiduciary discretion, and, with respect to such loans and/or security interests, to renew, extend, modify and grant waivers. Notwithstanding the foregoing, and without limiting the ability of the Trustee to act in such Trustee's discretion under this paragraph, the Trustor hereby expresses his preference that, whenever economically feasible, any and all loans made pursuant to the provisions of this paragraph be adequately secured and bear interest at least at the higher of the "applicable federal rate"

as set forth by the Internal Revenue Service for loans with similar payment terms and length or a fair market rate for such loans.

5. Take Actions With Respect to Properties and Companies Owned in Common With a Beneficiary or Others: The Trustee is specifically authorized, with or without the joinder of other owners of the property or securities that may be held in trust (and notwithstanding that one or more such other owners may be, directly or indirectly, a beneficiary or a fiduciary hereunder), to enter upon and carry out any plan (a) for the foreclosure, lease or sale of any trust property, (b) for the consolidation or merger, dissolution or liquidation, incorporation or reincorporation, recapitalization, reorganization, or readjustment of the capital or financial structure of any corporation, company or association, the securities of which, whether closely held or publicly traded, may form a part of such trust, or (c) for the creation of one or more holding companies to hold any such securities and/or properties (even if it leaves, following the termination of such trust, a trust beneficiary as a minority shareholder in such holding company), all as such Trustee may deem expedient or advisable for the furtherance of the interests of such trust and the carrying out of the Trustor's original intent as to such trust, its beneficiaries and as to those properties and/or securities. In carrying out such plan, such Trustee may deposit any such securities or properties, pay any assessments, expenses and sums of money, give investment letters and other assurances, receive and retain as investments of such trust any new properties or securities transferred or issued as a result thereof, and generally do any act with reference to such holdings as might be done by any person owning similar securities or properties in his own right, including the exercise of conversion, subscription, purchase or other rights or options, the entrance into voting trusts, etc., all without obtaining authority therefor from any court.

6. Right to Distribute to Entities: Any distribution from the trust, including a distribution upon trust termination (whether made by the Trustee or Trust Protector) may be made directly to an entity, such as a trust, "S" corporation, limited liability company or limited partnership, whether existing or newly created, rather than directly to the beneficiary (and if it is a newly created entity or one in which the Trust Estate holds an interest, the interest in the entity may be distributed to such beneficiary).

7. Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners: Without in any manner limiting any other power or right conferred upon the Trustee hereunder, the Trustee may divide a trust into separate trusts, and if a trust is held as, or divided into, separate trusts, the Trustee may, at any time prior to combining such trusts, treat the trusts in substantially different manners, including, without limitation, the right to: (a) make different tax elections (including the disproportionate allocation of the generation skipping tax exemption) with respect to each separate trust; (b)

make disproportionate principal distributions; (c) exercise differently any other discretionary powers with respect to such separate trusts; (d) invest the property of such separate trusts in different investments, having different returns, growth potentials, or bases for income tax purposes; and (e) take any and all other actions consistent with such trusts being separate entities. Furthermore, the holder of any power of appointment with respect to any trust so divided may exercise such power differently with respect to the separate trusts created by the division of a trust.

## TRUST PROTECTOR PROVISIONS

A. Purpose of Trust Protector: The Trustor has established the position of Trust Protector for the reasons and purposes set forth below, which are intended as general guidelines only and in no way shall limit any other provisions relating to the Trust Protector.

1. Insulate the Trustee from Negative Influences: To protect the Trustee from the negative, or potentially negative, influences of third parties and to protect the Trust Estate and its beneficiaries from damaging, or potentially damaging, conduct by the Trustee.

2. Carry Out the Purposes of the Trust: To help ensure that the Trustor's purpose in establishing the Trust Agreement, as defined elsewhere herein, will be properly carried out.

3. Adapt to Changing Laws and Conditions: To adapt the provisions of the Trust Agreement to law changes, changes in interpretation of the law or other changing conditions that threaten to harm the Trust or its beneficiaries, keeping in mind the dispositive wishes of the Trustor and the Trustor's desires as expressed in the Trust Agreement.

B. Designation of Trust Protector: In addition to the Trustee and Special Co-Trustee provided in the Trust Agreement, there shall, from time to time, be a Trust Protector whose limited powers and duties are defined below. The order of succession of Trust Protector shall be as follows:

1. Initial Trust Protector: The Special Co-Trustee, at any time and in his sole and absolute discretion, may appoint a Trust Protector of the entire Trust or of any separate trust established hereunder (hereinafter the trust for whom a Trust Protector is appointed shall be referred to as "the affected trust") by a writing delivered to the Trustee of the affected trust. The Trustor requests that the Special Co-Trustee, prior to making the appointment, meet (in person or by telephone) with VACEK & FREED, PLLC, formerly the Vacek Law Firm,

PLLC of Houston, Texas, to help ensure the appropriate selection of the initial Trust Protector.

2. Successor Trust Protector: Upon the removal, death, incompetency, inability or unwillingness to act of the initial Trust Protector (including a written resignation delivered to the Trustee of the affected trust), the next succeeding Trust Protector shall be appointed either by the Special Co-Trustee or by the initial Trust Protector (except as limited by paragraph 4 below) in writing delivered to the Trustee of the affected trust (the first such writing delivered to the Trustee shall control). All further successor Trust Protectors shall be appointed in the same manner, except that where the word "initial" is used in the foregoing sentence there shall be substituted the words "last appointed."

3. Qualifications to Act as Trust Protector: A Trust Protector may act once he has accepted, in writing, his appointment and, other than the case of the initial Trust Protector, has delivered a copy of his appointment and acceptance to the last appointed Trust Protector. Notwithstanding the foregoing, at no time may a Trust Protector be appointed or otherwise act if such person or entity is a currently acting Trustee or Special Co-Trustee or is a current beneficiary of the affected trust or is related to any such beneficiary in any of the following ways: as spouse, ancestor or issue, brother, sister, employee of such beneficiary or of any corporation, firm or partnership in which such beneficiary is an executive or has stock or other holdings which are significant from the viewpoint of control, or is otherwise "related or subordinate to" such beneficiary under IRC Sections 674(a) and (c) and the Regulations thereunder or any similar succeeding Sections or Regulations.

4. Removal of Trust Protector: The primary beneficiaries of the affected trust may by majority vote, and at any time and for any reason, remove the current Trust Protector by delivering to said Trust Protector and to the Special Co-Trustee a signed instrument setting forth the intended effective time and date of such removal. The Special Co-Trustee shall then appoint a successor Trust Protector in accordance with paragraph 2 above (the Trust Protector removed shall no longer have the power under paragraph 2 to appoint his successor). The powers of removal under this paragraph may be limited by the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective."

5. Temporarily Filling a Trust Protector Vacancy: If at any time a vacancy in the office of Trust Protector has not yet been filled as otherwise provided above (including the time before the initial Trust Protector is appointed), such office may be filled promptly, on a temporary basis, by a bank or trust company experienced in trust administration or an attorney (or law firm) who is an experienced tax and/or estate planning specialist provided they meet the qualifications set forth in paragraph 3 above. The Trustor requests, but do not

require, that VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or its successors or assigns, act as such temporary Trust Protector and the Trustor hereby waives any conflict of interest that may arise if VACEK & FREED, PLLC, or its successors or assigns, is also representing the Trustee of the affected trust and/or the Trustor. Any Trust Protector acting under this paragraph shall first notify the Trustee of the affected trust and only serve as Trust Protector until such time as a successor Trust Protector is appointed by the Special Co-Trustee in accordance with paragraph 2 above and there is delivered to the Trust Protector acting under this paragraph a written acceptance of such appointment signed by the successor Trust Protector.

C. Limited Powers of the Trust Protector: The Trust Protector shall not have all the broad powers of a Trustee; rather, the powers of the Trust Protector shall be limited to the powers set forth below. The Trustor directs the Trust Protector, prior to exercising any power, to consult with VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or another law firm or attorney specializing in estate planning and/or asset protection planning in order to be fully informed of the consequences of exercising such power.

1. Give Advance Notice to Affected Beneficiaries: Within a reasonable time prior to the exercise of any power under this paragraph C, the Trust Protector shall provide to the Trustee and the primary beneficiary or beneficiaries of the affected trust a written notice, setting forth the power intended to be exercised, the intended date of exercise and the reasons for exercise. The Trust Protector shall, in his sole and absolute discretion, determine what is "a reasonable time," as the Trustor recognizes that emergency situations may arise which may permit little or no time for advance notice or, as a practical matter, it may be too difficult to notify the beneficiary; the Trustor specifically waives this advance notice requirement when the particular beneficiary is "incapacitated" as defined below. Once notice is given, the Trust Protector shall not exercise the power prior to the date specified in the notice, unless the Trust Protector in his sole and absolute discretion determines that an emergency so warrants.

A person shall be deemed "incapacitated" if in the Trustee's sole and absolute discretion, it is impracticable for said person to give prompt, rational and prudent consideration to financial matters, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause.

A person shall be conclusively deemed "incapacitated" if a guardian of the person or his or her estate, or both, has been appointed by a court having jurisdiction over such matters or two (2) licensed physicians who are not related by blood or marriage to such person have examined said person and stated in writing that such incapacity exists; the Trust Protector may, but shall not be under any duty to, institute any inquiry into a person's possible

incapacity (such as, but not limited to, by drug testing) or to obtain physician statements; and if he does, then the expense may be paid from the Trust Estate of said person's trust.

2. Postpone Distributions: Notwithstanding any other provisions of the Trust Agreement, except the paragraph herein entitled "Rule Against Perpetuities," the Trust Protector shall have the power to postpone any distribution of income and/or principal otherwise required to be made from the affected trust to any one or more of its beneficiaries (including as the result of exercise of a power of appointment or withdrawal right) and to postpone the termination of such trust which might otherwise be required if the Trust Protector, in his or her sole and absolute discretion, determines, after taking into consideration the Trustor's overall intent as expressed in the Trust Agreement, that there is a compelling reason to do so.

A "compelling reason" may include but is not limited to: the beneficiary requesting in writing that distributions be retained by the trust; the beneficiary being "incapacitated" as defined in paragraph 1 immediately above; the beneficiary contemplating, or in the process of filing for or has a pending bankruptcy; a pending or threatened divorce, paternity or maternity claim or other lawsuit; a creditor claim (including for unpaid taxes or reimbursement of government benefits); an existing judgment or lien; the fact the beneficiary is receiving (or may in the near future receive) government or other benefits that may be jeopardized; the beneficiary having demonstrated financial instability and/or inability to manage, invest or conserve the beneficiary's own property; the beneficiary being under the negative influence of third parties, such that the beneficiary's good judgement may be impaired; a serious tax disadvantage in making such distribution; or any other substantially similar reasons.

Any such postponement of distribution or termination may be continued by the Trust Protector, in whole or in part and from time to time, up to and including the entire lifetime of the beneficiary. While such postponement continues, all of the other provisions previously applicable to such trust shall continue in effect, except (a) any power of appointment or withdrawal shall be exercisable only with the approval of the Trust Protector and (b) distributions of income and/or principal shall only be made to or for the benefit of the beneficiary from time to time and in such amounts as the Trust Protector, in his or her sole and absolute discretion, deems appropriate for the best interests of the beneficiary; provided, however, the Trust Protector may, in his or her sole and absolute discretion, determine that the beneficiary's situation is extreme enough to warrant the establishment of a special needs trust pursuant to other provisions of this Section of the Trust Agreement.

The Trust Protector may also, from time to time, make certain distributions which cannot be made by the primary beneficiary because of limits imposed in this Section entitled "Restrictions on Distributions That Discharge Legal Obligations of the Beneficiary."

3. Terminate a Trust Due to Unforeseen Conditions: The Trustor recognizes that some or all of the following conditions may arise in the future, although they cannot be foreseen at the time of creation of this Trust: (a) a radical, substantial and negative change in the political, economic or social order in the United States of America; (b) legislation or IRS or court decisions highly detrimental to a trust or beneficiary hereunder (including, for example, if the federal estate tax or IRA required minimum distribution rules are modified, repealed or no longer applicable and the non-tax reasons for the trust no longer justify the trust's existence); (c) a beneficiary's capability to prudently manage his own financial affairs or a radical, positive change in his situation regarding possible third party claims; (d) a beneficiary no longer has a need for (or the availability of) government benefits; and (e) other events that may greatly impair the carrying out of the intent and purposes of the Trust Agreement.

If any of the foregoing conditions occur, the Trust Protector may, in addition to the other powers granted him or her, in his sole and absolute discretion, and keeping in mind the Trustor's wishes and dispositive provisions of the Trust Agreement, terminate the affected trust, or a portion thereof, and distribute same to or for the benefit of the primary beneficiary thereof (notwithstanding any other provisions of the Trust Agreement), or to a newly created or existing Personal Asset Trust for that beneficiary.

4. Revise or Terminate a Trust So It Can Qualify as a "Designated Beneficiary" of an IRA or Retirement Plan: In the event that the affected trust does not qualify as a "designated beneficiary" of an IRA or other retirement plan as that term is used in IRC Section 401(a)(9), the Regulations thereunder and any successor Section and Regulations, the Trust Protector may, keeping in mind the Trustor's wishes and the dispositive provisions of the Trust Agreement: (a) revise or reform the terms of the Trust Agreement in any manner so that the affected trust will qualify as a "designated beneficiary" (any such revision or reformation may by its terms apply retroactively to the inception of the Trust Agreement or creation of any separate trust established hereunder); or (b) deem it to have been dissolved in part or in whole as of September 30 of the year following the year of the Trustor's death, with fee simple interest vesting outright in the primary beneficiary and the rights of all other persons who might otherwise have an interest as succeeding life income beneficiaries or as remaindermen shall cease.

If the beneficiary is still a minor, the Trustee may designate a custodian and transfer the principal and accrued income of the beneficiary's trust to the

custodian for the benefit of the minor under the Texas Uniform Transfers to Minors Act until such beneficiary attains age 21. A receipt from the custodian shall be a complete discharge of the Trustee as to the amount so paid.

Notwithstanding any provisions of the Trust Agreement to the contrary, after the Trustor's death this Trust or any separate trust established hereunder shall not terminate and be distributed in full prior to September 30 of the year following the year of the Trustor's death pursuant to this paragraph if this will result in this Trust or any separate trust established hereunder not qualifying as a "designated beneficiary."

5. Modify Certain Other Trust Provisions: The Trust Protector shall have the power, in his or her sole and absolute discretion, at any time and from time to time, to delete, alter, modify, amend, change, add to or subtract from all or any part of the various paragraphs and provisions of the Trust Agreement and any trust created thereunder, effective (even retroactively) as of the date determined by the Trust Protector, for the following purposes.

   a. Change Income Tax Treatment of the Trust: The Trust Protector may, at any time, and from time to time, create, terminate and/or reinstate a power granted to a beneficiary, either prospectively or retroactively, enabling trust income to be income taxable to a beneficiary, even as income accumulates in the trust, if the Trust Protector deems this to be in the best interests of the affected trust and its beneficiaries.

   b. Protect a Disabled Beneficiary's Government Benefit by Establishing a Special Needs Trust: The Trust Protector may take any such actions he or she deems appropriate or necessary in connection with a beneficiary's qualification for, receipt of and/or possible future liability to reimburse government benefits (whether income, medical, disability or otherwise) from any agency (state, federal or otherwise), such as but not limited to Social Security, Medicaid, Medicare, SSI and state supplemental programs. In particular, but not by way of limitation, the Trust Protector may add new trust provisions to govern administration and distribution of assets for the benefit of the beneficiary (such as would create a "special needs trust").

   c. Protect a Beneficiary from Himself or from Creditors by Establishing a Spendthrift Trust or Eliminating Any General Power of Appointment: In the event there is a compelling reason to postpone distributions to a beneficiary pursuant to the paragraph of this Section entitled "Postpone Distributions," the Trust Protector may alternatively, in his or her sole discretion, add new trust provisions to govern administration and distribution of assets for the benefit of said beneficiary (such as would create a "spendthrift trust" in the form recognized by the laws of the

state(s) in which trust assets are located). Furthermore, the Trust Protector may, in his or her sole discretion, in order to protect the beneficiaries of a Trust beneficiary, terminate and/or reinstate said Trust beneficiary's testamentary general power of appointment, if any, under the Section of this Trust Agreement entitled "Generation Skipping Tax Provisions."

6. Change Legal Jurisdiction of the Trust: The Trust Protector may change the situs of the affected trust to another jurisdiction by any such means deemed appropriate by the Trust Protector. This paragraph shall in no way limit the Trustee's power and authority to change the situs of this Trust or any separate trust established hereunder.

7. Remove and Reinstate a Trustee: The Trust Protector shall have the power at any time to remove the acting Trustee of the affected trust (but not the Special Co-Trustee) for any reason which he believes to be in the best interests of the beneficiaries. Such removal shall be stated in writing and delivered to the Trustee. The successor Trustee shall then be determined and appointed in accordance with the Section of the Trust Agreement entitled "Successor Trustees." At any time after the Trust Protector removes a Trustee, the Trust Protector may reinstate the previously removed Trustee and the order of successor Trustees shall be thereafter determined as if such reinstated Trustee was never removed.

8. Eliminate Own Powers: The Trust Protector shall have the power, on his own behalf and/or on behalf of all successor Trust Protectors, to release, renounce, suspend, reduce, limit and/or eliminate any or all of his enumerated powers and to make the effective date any date he wishes, including ab initio to the date of establishment of a trust hereunder or retroactively to the date of death of the Trustor, by a writing delivered to the Trustee of the affected trust.

9. Limitations on Above Powers: The Trust Protector may not exercise any power if he is compelled by a court or other governmental authority or agency to do so or is otherwise acting under the duress or undue influence of an outside force; if the Trust Protector is so compelled, or under such duress or influence, his powers shall become void prior to exercise; these limitations are in addition to those contained in the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective." The Trust Protector is directed not to exercise any of the foregoing powers if such exercise will result in any substantial, direct or indirect financial benefit to anyone who at the time of exercise is not an ancestor, spouse or issue of a primary beneficiary or is not already a present or contingent beneficiary of this Trust. The Trust Protector shall not exercise any power that may be construed as a general power of appointment to himself, his creditors, his estate or the creditors of his estate under IRC Sections 2041 and 2514, or that would otherwise cause the

inclusion of any of the Trust Estate in the Trust Protector's taxable estate for estate, inheritance, succession or other death tax purposes.

D. Limited Liability of the Trust Protector: The Trust Protector shall not be held to the fiduciary duties of a Trustee. The Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, merely by reason of his appointment as Trust Protector and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Trust Protector to act. Furthermore, the Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Trust Protector a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care. In the event a lawsuit against the Trust Protector fails to result in a judgment against him, the Trust Protector shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

E. Compensation: The Trust Protector shall not be entitled to compensation merely as the result of his appointment. The Trust Protector shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Trust Protector shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

F. Waiver of Bond: No bond shall be required of any individual or entity acting as Trust Protector.

## MISCELLANEOUS PROVISIONS

A. Prohibition Against Contest: If any devisee, legatee or beneficiary under the Trust Agreement or any amendment to it, no matter how remote or contingent such beneficiary's interest appears, or any legal heir of the Trustor, or either of them, or any legal heir of any prior or future spouse of the Trustor (whether or not married to the Trustor at the time of the Trustor's death), or any person claiming under any of them, directly or indirectly does any of the following, then in that event the Trustor specifically disinherits each such person, and all such legacies, bequests, devises and interests given to that person under the Trust Agreement or any amendment to it shall be forfeited and shall be distributed as provided elsewhere herein as though he or she had predeceased the Trustor without issue:

1. unsuccessfully challenges the appointment of any person named as a Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, or unsuccessfully seeks the removal of any person acting as a Trustee, Special Co-Trustee or Trust Protector;

2. objects in any manner to any action taken or proposed to be taken in good faith by the Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, whether the Trustee, Special Co-Trustee or Trust Protector is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

3. objects to any construction or interpretation of the Trust Agreement or any amendment to it, or the provisions of either, that is adopted or proposed in good faith by the Trustee, Special Co-Trustee or Trust Protector, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

4. claims entitlement to (or an interest in) any asset alleged by the Trustee to belong to the Trustor's estates (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), whether such claim is based upon a community or separate property right, right to support or allowance, a contract or promise to leave something by will or trust (whether written or oral and even if in exchange for personal or other services to the Trustor), "quantum meruit," constructive trust, or any other property right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

5. files a creditor's claim against the assets of the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

6. anyone other than the Trustor attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on the Trustor's life or any designation of beneficiaries for any bank or brokerage account, pension plan, Keogh, SEP or IRA account, employee benefit plan, deferred compensation plan, retirement plan, annuity or other Will substitute of the Trustor;

7. in any other manner contests this Trust or any amendment to it executed by the Trustor (including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence, or otherwise), or in any other manner,

attacks or seeks to impair or invalidate this Trust, any such amendment or any of their provisions;

8. conspires with or voluntarily assists anyone attempting to do any of the above acts;

9. refuses a request of the Trustee to assist in the legal defense against any of the above actions.

Expenses to legally defend against or otherwise resist any above contest or attack of any nature shall be paid from the Trust Estate as expenses of administration. If, however, a person taking any of the above actions is or becomes entitled to receive any property or property interests included in the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), then all such expenses shall be charged dollar-for-dollar against and paid from the property or property interests that said person would be entitled to receive under the Trust Agreement or the Trustor's Will, whether or not the Trustee (or Executor under the Trustor's Will) was successful in the defense against such person's actions.

The Trustor cautions the Trustee against settling any contest or attack or any attempt to obtain an adjudication that would interfere with the Trustor's estate plan and direct that, prior to the settlement of any such action short of a trial court judgment or jury verdict, the Trustee seek approval of any such settlement from the appropriate court having jurisdiction over this Trust by way of declaratory judgment or any other appropriate proceeding under applicable Texas law. In ruling on any such petition for settlement, the Trustor requests the Court to take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the Trust Estate or from the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) under any theory and, therefore, no settlement should be approved by the Court unless it is proved by clear and convincing evidence that such settlement is in the best interest of the Trust Estate and the Trustor's estate plan.

In the event that any provision of this Section is held to be invalid, void or illegal, the same shall be deemed severable from the remainder of the provisions in this paragraph and shall in no way affect, impair or invalidate any other provision in this paragraph. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The provisions of this paragraph shall not apply to any disclaimer (or renunciation) by any person of any benefit (or right or power) under the Trust Agreement or any amendment to it.

B. Compelled Exercise of Powers Not Effective: It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, notwithstanding any other provisions of the Trust Agreement, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will. An individual's agent may not exercise a power given to such individual under the Trust Agreement if such purported exercise is in response to or by reason of any such order or direction unless the order or direction was obtained by the agent in a proceeding in which the agent was the moving party or voluntarily acquiesced. Notwithstanding the above, if a Trustee's failure to exercise a power or to acquiesce in a beneficiary's exercise of a power may result in exposing a Trustee to serious personal liability (such as contempt of court or other sanctions), a Trustee may: (a) withdraw and permit the Special Co-Trustee to act instead in relation to such purported exercise of a power; (b) if the Special Co-Trustee would also be exposed to such liability, then the Trustee may notify the Trust Protector who may, in his discretion, act if permitted under the Trust Agreement; or (c) if neither the Special Co-Trustee nor the Trust Protector acts, then the Trustee may exercise or acquiesce in a beneficiary's exercise of a power.

C. Creditor's Rights – Spendthrift Provisions: Subject to the express grant herein of certain rights to withdraw or substitute assets and/or powers of appointment, if any, no beneficiary under the trusts created herein shall assign, transfer, alienate or convey, anticipate, pledge, hypothecate or otherwise encumber his or her interest in principal or income hereunder prior to actual receipt. To the fullest extent permitted by law:

(1) neither the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary, any beneficiary's spouse, ex-spouse or others, or be subject to any bankruptcy proceedings or claims of creditors of said persons (including said persons' spouses or ex-spouses), or be subject to any attachment, garnishment, execution, lien, judgment or other process of law; (2) no interest of any beneficiary shall be subject to claims of alimony, maternity, paternity, maintenance or support; and (3) no power of appointment or withdrawal or substitution shall be subject to involuntary exercise. Should the Trustee so desire, the Trustee may as a condition precedent, withhold payments of principal or interest under this Trust until personal order for payment is given or personal receipt furnished by each such beneficiary as to his or her share. The Trustee may, alternatively in the Trustee's sole and absolute discretion, deposit in any bank designated in writing by a beneficiary to his or her credit, income or principal payable to such beneficiary. The

Trustee may, alternatively in the Trustee's sole and absolute discretion, hold and accumulate any income and/or principal so long as it may be subject to the claims, control or interference of third parties, up to and until the beneficiary's death, at which time it shall be distributed in accordance with the beneficiary's exercise of his or her power of appointment, if any, and/or pay to or for the benefit of the beneficiary only such sums as the Trustee deems necessary for said beneficiary's reasonable health, support, maintenance and education.

D. Trustee Power to Determine Principal and Income: The Trustee shall determine what is principal or income of the Trust Estate, and apportion and allocate any and all receipts and expenses between these accounts, in any manner the Trustee determines, regardless of any applicable state law to the contrary including any Principal and Income Act of Texas, or similar laws then in effect. In particular (but not by way of limitation), the Trustee shall have sole and absolute discretion to apportion and allocate all receipts and expenses between principal and income in whole or in part, including the right to: allocate capital gains; elect whether or not to set aside a reserve for depreciation, amortization or depletion, or for repairs, improvement or upkeep of any real or personal property, or for repayments of debts of the Trust Estate; and charge Trustee's fees, attorney's fees, accounting fees, custodian fees and other expenses incurred in the collection, care, management, administration, and protection of the Trust Estate against income or principal, or both. The exercise of such discretion shall be conclusive on all persons interested in the Trust Estate. The powers herein conferred upon the Trustee shall not in any event be so construed as allowing an individual to exercise the Trustee's sole and absolute discretion except in a fiduciary capacity.

E. Broad Trustee Power to Invest: It is the Trustor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Estate without being restricted to forms and investments that the Trustee may otherwise be permitted to make by law. The Trustee is empowered to invest and reinvest all or any part of the Trust Estate in such property as the Trustee in his discretion may select including but not limited to bank accounts, money market funds, certificates of deposit, government bonds, annuity contracts, common or preferred stocks, closely held businesses, shares of investment trusts and investment companies, corporate bonds, debentures, mortgages, deeds of trust, mortgage participations, notes, real estate, put and call options, commodities, commodities futures contracts and currency trading. When selecting investments, the Trustee may take into consideration the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the Trust Estate and its beneficiaries, the amount and nature of all assets available to beneficiaries from sources outside the Trust and the beneficiaries' economic circumstances as a whole, and shall exercise the judgment that a reasonable person would if serving in a like capacity under the same circumstances and having the same objectives. In addition to the investment powers conferred above, the Trustee is authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would

be forbidden by the "prudent person" (or "prudent investor") rule. In making investments, the Trustee may disregard any or all of the following factors: (i) whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal; (ii) whether the acquisition or retention of a particular investment, or the trust investments collectively, is consistent with any duty of impartiality as to the different beneficiaries (the Trustor intends no such duty shall exist); (iii) whether the trust is diversified (the Trustor intends that no duty to diversify shall exist); and (iv) whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts (the Trustor intends the Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy). The Trustor's purpose in granting the foregoing broad authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustee shall not be liable for any loss in value of an investment merely because of the nature, class or type of the investment or the degree of risk presented by the investment, but shall be liable if the Trustee fails to meet the "reasonable person" standard set forth above or if the Trustee's procedures in selecting and monitoring the particular investment are proven by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

F. Special Co-Trustee Provisions: Notwithstanding anything in the Trust Agreement to the contrary, the powers, duties or discretionary authority granted hereunder to any Trustee shall be limited as follows:

1. Prohibited and Void Trustee Powers: Except where a beneficiary shall act as sole Trustee of his or her share, or unless limited by an ascertainable standard as defined in Code Section 2041 , no Trustee shall participate in the exercise of any discretionary authority to allocate receipts and expenses to principal or income, any discretionary authority to distribute principal or income, or any discretionary authority to terminate any trust created hereunder, if distributions could then be made to the Trustee or the Trustee has any legal obligation for the support of any person to whom distributions could then be made. Any other power, duty or discretionary authority granted to a Trustee shall be absolutely void to the extent that either the right to exercise such power, duty or discretionary authority or the exercise thereof shall in any way result in a benefit to or for such Trustee which would cause such Trustee to be treated as the owner of all or any portion of any of the trusts created herein for purposes of federal or state income tax, gift, estate or inheritance tax laws, or cause any disclaimer of an interest or benefit hereunder to be disqualified under Code Section 2518. Notwithstanding the foregoing, a beneficiary serving as Trustee may have and exercise a power, duty or discretionary authority that causes any Personal Asset Trust created hereunder to be a grantor trust with said beneficiary being treated as the owner for income tax purposes.

Notwithstanding the foregoing, this paragraph shall not apply during the lifetime of the Trustor, nor shall it apply when the exercise of any power, duty, or discretionary authority relates to any provisions herein directed towards preserving the trust estate for beneficiaries named in the Trust Agreement in the event the Trustor should require long-term health care and/or nursing home care. Should a Trustee be prohibited from participating in the exercise of any power, duty, or discretionary authority, or should a power, duty or discretionary authority granted to a Trustee be absolutely void, as a result of the foregoing, then such power, duty or discretionary authority may be exercised in accordance with the following paragraphs.

2. Exercise of Power by an Existing Independent Co-Trustee: In the event that the right to exercise or the exercise of any power, duty or discretionary authority is prohibited or void as provided above, or is prohibited elsewhere in this Trust Agreement with respect to "incidents of ownership" of life insurance, or the Special Co-Trustee is given any other powers or authority under this paragraph "Special Co-Trustee Provisions," the remaining Co-Trustee, if any, shall have the right to exercise and may exercise said power, duty or discretionary authority, provided the Co-Trustee is independent within the meaning set forth in Section 674(c) of the Code, or any successor statute or regulations thereunder.

3. Exercise of Power if No Existing Independent Co-Trustee: In the event there is no independent Co-Trustee capable of exercising any power, duty or discretionary authority which is prohibited or void as provided above, or which is given to the Special Co-Trustee elsewhere herein, then the following procedure shall apply:

   a. Appointment of Special Co-Trustee: The next succeeding, Trustee or Co-Trustees, as the case may be, of the Trust (or, if only a particular, separate trust created under this Trust Agreement is affected by the exercise of such power, duty or authority, then the next succeeding Trustee or Co-Trustees of said separate trust) who is not disqualified under paragraph "2" above, shall serve as Special Co-Trustee of the Trust herein created.

4. Protect the Trust Estate by Appointment and Removal of an Independent Co-Trustee: In addition to any other powers granted to the Special Co-Trustee under the Trust Agreement, in the event that the Special Co-Trustee named above, in his sole and absolute discretion, determines that it is necessary in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries of any trust established under the Trust Agreement from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may appoint a Co-Trustee (to immediately act with the then existing Trustee) who is independent from the party to be protected within

the meaning set forth in IRC Section 674(c). The Special Co-Trustee may appoint himself to act as such Co-Trustee if he is independent within the meaning of IRC Section 674(c). In addition, if the Special Co-Trustee, in his sole and absolute discretion, determines that it is no longer necessary for an independent Co-Trustee to act in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may remove any independent Co-Trustee whom was either appointed by another acting Trustee of the Trust pursuant to other provisions of the Trust Agreement (if any) or appointed by the Special Co-Trustee, and shall not be required to replace such removed independent Co-Trustee with another.

5. Limited Responsibilities of Special Co-Trustee: The responsibilities of the Special Co-Trustee shall be limited to the exercise of the Trustee power, duty or discretionary authority prohibited or void as provided in the Trust Agreement, and the Special Co-Trustee powers regarding the appointment and removal of an independent Co-Trustee as permitted above, and appointment of a Trust Protector as permitted in the Section of the Trust Agreement entitled "Trust Protector Provisions," and said Special Co-Trustee shall not be concerned with, nor shall have, any power, duty or authority with respect to any other aspects of administration of the Trust Estate.

6. Limited Liability of the Special Co-Trustee: The Special Co-Trustee shall not be held to the fiduciary duties of a Trustee. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, merely by reason of his appointment as Special Co-Trustee and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Special Co-Trustee to act. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust either now or in the future, for failing to properly or timely appoint a Trust Protector or to properly or timely advise a Trust Protector of any circumstances or facts that might impact a Trust Protector's decisions. Furthermore, the Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Special Co-Trustee a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care and in good faith. In the event a lawsuit against the Special Co-Trustee fails to result in a judgment against him, the Special Co-Trustee shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

7. Compensation: The Special Co-Trustee shall not be entitled to compensation merely as the result of his appointment. The Special Co-Trustee shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Special Co-Trustee shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

8. Waiver of Bond: No bond shall be required of any individual or entity acting as Special Co-Trustee.

## GENERATION SKIPPING TAX PROVISIONS

Article XIV, Section R of the said Trust entitled "Generation Skipping Transfers" is hereby amended so that from henceforth Article XIV, Section R is replaced in its entirety with the provisions which follow.

A. Explanation of this Section: The purpose of this Section of the Trust Agreement and the desire of the Trustor is to eliminate or reduce the burden on the Trustor's family and issue resulting from the application of the federal generation skipping transfer tax under Chapter 13 of the Code, including any future amendments thereto (hereinafter referred to as the "GST Tax"). The Trustor directs the Trustee and any court of competent jurisdiction to interpret the provisions of this Section in accordance with the Trustor's desires stated above, since the Trustor, when creating this Trust, is aware that the provisions of said GST Tax are very complex and as yet there are few court rulings to aid in their interpretation. The Trustor requests that, before the Trustee or any beneficiary acts in accordance with the provisions of this Section, they seek professional advice from an attorney who specializes in estate planning, in order that they may avoid any unintentional triggering of negative GST Tax consequences.

B. Allocation of Trustor's GST Tax Exemptions: The Trustee (or such other person or persons whom Code provisions, Treasury Regulations or court rulings authorize to make elections or allocations with regard to the Trustor's GST Tax exemptions) is instructed to allocate such exemptions in good faith, without a requirement that such allocation be proportionate, equal or in any particular manner equitably impact any or all of the various transferees or beneficiaries of property subject to or affected by such allocations. When allocating such exemptions, the Trustee may include or exclude any property of which the Trustor is the transferor for GST Tax purposes, including property transferred before the Trustor's death, and may take into account prior transfers, gift tax returns and other relevant information known to the Trustee. It is recommended that, to the extent possible, any such trust allocated an inclusion ratio of zero shall contain any and all Roth IRAs. The Trustee is also directed, when allocating Trustor's GST Tax exemptions, to coordinate with the Executor of Trustor's estate and/or the Trustee of Trustor's revocable Living Trusts regarding the

most appropriate use of said exemption; however, the Trustee's final determination shall be made in his or her sole and absolute discretion and shall be binding upon all parties howsoever interested in this Trust.

1. Trustee's Power to Combine and Divide Trusts: If a trust hereunder would be partially exempt from GST Tax by reason of an allocation of GST Tax exemption to it, before the allocation the Trustee in his discretion may divide the trust into two separate trusts of equal or unequal value, to permit allocation of the exemption solely to one trust which will be entirely exempt from GST Tax. The Trustee of any trust shall have authority, in the Trustee's sole discretion, to combine that trust with any other trust or trusts having the same exempt or nonexempt character, including trusts established (during life or at death) by the Trustor or any of his issue; and the Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts being combined do not have identical terms or if separate shares are otherwise deemed desirable by the Trustee. These powers to combine and divide trusts may be exercised from time to time, and may be used to modify or reverse their prior exercise. In deciding whether and how to exercise this authority the Trustee may take account of efficiencies of administration, generation-skipping and other transfer tax considerations, income tax factors affecting the various trusts and beneficiaries (including determination of life expectancy to be used for Retirement Assets required minimum distribution purposes), the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the Trustee may deem appropriate to these decisions. Prior to exercising any power to combine trusts under this paragraph, the Trustee shall take into consideration that, where possible and appropriate (keeping in mind the dispositive provisions of the Trust Agreement and the situation of the beneficiary), separate trusts should be maintained so that the trust beneficiaries may enjoy the benefit of distributions from any Retirement Assets being stretched out over their separate life expectancies; in particular, the Trustee shall not merge trusts when one provides for the payout to or for the beneficiary of all withdrawals from IRAs and other Retirement Assets, net of trust expenses, and another provides for the accumulation of income (including IRA and Retirement Asset withdrawals).

2. Same Terms and Provisions for Divided Trusts: Except as expressly provided in the Trust Agreement, when a trust otherwise to be established is divided under the foregoing provisions into exempt and non-exempt trusts or otherwise into separate trusts, each trust shall have the same provisions as the original trust from which it is established, and references in the Trust Agreement to the original trust shall collectively refer to the separate trusts derived from it.

3. Exempt (and Non-Exempt) Character of Property to be Preserved: On termination, partial termination, subdivision or distribution of any of the

separate trusts created by the Trust Agreement, or when it is provided that separate trusts are to be combined, the exempt (zero inclusion ratio) or the non-exempt (inclusion ratio of one) generation-skipping character of the property of the trusts shall be preserved. Accordingly, when property is to be added to or combined with the property of another trust or trusts, or when additional trusts are to be established from one or more sources, non-exempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions, unless the Trustee believes that economic efficiency or other compelling considerations justify sacrificing their separate generation-skipping characteristics.

4. Trustee's Investment Power; Distributions: Without limiting the foregoing, the Trustor specifically authorizes (but do not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on whether they are funded by Roth IRAs or other assets and on their generation-skipping ratios, and to prefer making distributions from Retirement Assets other than Roth IRAs and from non-exempt trusts to beneficiaries who are non-skip persons for generation-skipping purposes and from exempt trusts to those who are skip persons. Upon division or distribution of an exempt trust and a nonexempt trust hereunder, the Trustee may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur. It is further recommended that to the extent that distributions would be made for the benefit of skip persons and such distributions would be exempt from GST Tax because such distributions are for the payment of medical expenses exempt under IRC Section 2503(e)(2)(B) or for the payment of tuition or educational expenses exempt under IRC Section 2503 (e)(2)(A), such payments to the extent possible be first made from a trust which has an inclusion ratio of one.

5. Trustee's Exoneration: The Trustor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

C. Beneficiary's General Power of Appointment: Should a beneficiary die prior to the creation of his or her separate share of the Trust Estate or die subsequent to the creation of such share but before complete distribution of such share, and as a result of said death a portion of the Trust Estate would be subject to GST Tax but for the provisions of this paragraph, the beneficiary may, pursuant to a general power of appointment exercised in his or her last Will (but not in a codicil) or other writing delivered to the Trustee prior to his or her death and specifically referring to the Trust Agreement, provide for such share to pass to the creditors of that beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to

the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's share. This general power of appointment may be subject to termination and reinstatement by the Trust Protector. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of the Trust Agreement.

## TRUSTEES ENVIRONMENTAL POWERS

A. Trustee Authorized to Inspect Property Prior to Acceptance:

1. Actions at Expense of Trust Estate: Prior to acceptance of this Trust by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of the Trust Estate:

   a. Enter Property: To enter and inspect any existing or proposed asset of the Trust (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

   b. Review Records: To review records of the currently acting Trustee or of the Trustor (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

2. Rights Equivalent to Partner, Member or Shareholder: The right of the proposed or designated Trustee to enter and inspect assets and records of a partnership, limited liability company or corporation under this provision is equivalent to the right under state law of a partner, member or shareholder to inspect assets and records under similar circumstances.

3. Right to Still Refuse Acceptance of Trusteeship: Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of the Trust.

4. Right to Accept Trusteeship Over Other Assets Only: If an asset of the Trust is discovered upon environmental audit by the acting Trustee or any proposed or designated Trustee to be contaminated with hazardous waste or otherwise

not in compliance with environmental law or regulation, the Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of the Trust. The Trustee, in his discretion, may petition a court to appoint a receiver or special Trustee to hold and manage the rejected asset, pending its final disposition.

5. Right to Reject Asset: Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to the Trustee.

B. Termination, Bifurcation or Modification of The Trust Due to Environmental Liability:

1. Trustee's Powers over Hazardous Waste Property: If the Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of any federal, state or local environmental law or regulation, the Trustee may take one or more of the following actions, if the Trustee, in the Trustee's sole and binding discretion, determines that such action is in the best interests of the Trust and its beneficiaries:

   a. Modify Trust: Modification of trust provisions, upon court approval, granting the Trustee such additional powers as are required to protect the Trust and its beneficiaries from liability or damage relating to actual or threatened violation of any federal, state or local environmental law or regulations, with it being the Trustors' desire that the Trustee keep in mind the Trustors' dispositive wishes expressed elsewhere in this Trust Agreement and that the Trustee consider and weigh any potentially negative federal and state income, gift, estate or inheritance tax consequences to the Trustee, Trust and its beneficiaries;

   b. Bifurcate Trust: Bifurcation of the Trust to separate said asset from other assets of the Trust Estate;

   c. Appoint a Special Trustee: Appointment of a special Trustee to administer said asset; and/or

   d. Abandon Property: Abandonment of such asset.

2. Terminate Trust or Distribute Other Assets: With court approval, the Trustee may terminate the Trust or partially or totally distribute the Trust Estate to beneficiaries.

3. Broad Discretion: It is the intent of the Trustors that the Trustee shall have the widest discretion in identification of and response to administration problems connected to potential environmental law liability to the Trust Estate and the

Trustee, in order to protect the interests of the Trust, the Trustee and the beneficiaries of the Trust.

C. Trustee's Powers Relating to Environmental Laws: The Trustee shall have the power to take, on behalf of the Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. §9601 (25), or any successor statute, relating to any asset, which is or has been held by the Trustee as part of the Trust Estate.

D. Indemnification of Trustee from Trust Assets for Environmental Expenses:

1. Indemnification and Reimbursement for Good Faith Actions: The Trustee shall be indemnified and reimbursed from the Trust Estate for any liabilities, loss, damages, penalties, costs or expenses arising out of or relating to federal, state or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from the Trustee's intentional wrongdoing, bad faith or reckless disregard of his fiduciary obligation.

a. Environmental Expenses Defined: Environmental expenses shall include, but not be limited to:

(i) Costs of investigation, removal, remediation, response, or other cleanup costs of contamination by hazardous substances, as defined under any environmental law or regulation;

(ii) Legal fees and costs arising from any judicial, investigative or administrative proceeding relating to any environmental law or regulation;

(iii) Civil or criminal fees, fines or penalties incurred under any environmental law or regulation; and

(iv) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

b. Properties and Businesses Covered: This right to indemnification or reimbursement shall extend to environmental expenses relating to:

(i) Any real property or business enterprise, which is or has been at any time owned or operated by the Trustee as part of the Trust Estate; and

(ii) Any real property or business enterprise, which is or has been at any time owned or operated by a corporation, limited liability company or partnership, in which the Trustee holds or has held at any time an ownership or management interest as part of the Trust Estate.

2. Right to Pay Expenses Directly from Trust: The Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of the Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

3. Right to Lien Trust Assets: The Trustee shall have a primary lien against assets of the Trust for reimbursement of environmental expenses, which are not paid directly from Trust assets.

E. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law: The Trustee shall not be liable to any beneficiary of the Trust or to any other party for any good faith action or inaction, relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however that the Trustee shall be liable for any such action, inaction or payment which is a breach of Trust and is committed in bad faith, or with reckless or intentional disregard of his fiduciary obligations.

F. Allocation of Environmental Expenses and Receipts Between Principal and Income: The Trustee may, in the Trustee's discretion, allocate between income and principal of the Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, the Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. The Trustee may, in the Trustee's discretion, create a reserve for payment of anticipated environmental expenses.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII and Article IX. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas

# Exhibit 10

Collection of bates stamped copies of the three signature versions of the alleged 8/25/2010 QBD

## Signature preceded by CAN

***This one only connects to Anita***

**P229**
Attached to Anita's 156 page objection filed December 5, 2014
**Can with no Bates stamp** (received from Anita on December 21, 2011)

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## Both signatures are Above the line

***This one connects to Carole, Freed & Amy***

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**P192**
In Carole's 133 page objection filed Feb. 17, 2015

**P7168 V&F000389 Curtis P-76**
Vacek & freed production

**P12755**
Frost Bank document Production given to them by Amy

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## Both signatures are On the Line

***This one connects to Freed and Anita***
**P443**
Obtained by Blackburn from Vacek & Freed

**P1015**
Copy of P-40_p37 USCA5 was received from Anita Brunsting via email October 23, 2010

**P-40_p37 USCA5 Case 4:12-cv-00592 Document 1-13 Filed in TXSD on 02127/12 Page 7 of 20**
Attached to Curtis original federal complaint. Exhibit was received from Anita Brunsting via email October 23, 2010

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace L Kunz Freed

Notary Public, State of Texas




20-20566.1824

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas




20-20566.1826

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas




20-20566.1827

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace L Kunz Freed

Notary Public, State of Texas

EXHIBIT
P-76



P7168

V&F 000389

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Notary Public, State of Texas

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace Lynne Kunz Freed

Notary Public, State of Texas



EXHIBIT
P-40_p37
USCA5 399

# Exhibit 11a

July 1, 2008 Appointment of successor trustees pdf pages 135-139

7/1/08 Appt of Suc. Trustee

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended, (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and,

WHEREAS, ELMER H. BRUNSTING is no longer able to manage his financial affairs, as is evidenced by the physicians' letters attached. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone

WHEREAS, the said NELVA E. BRUNSTING is desirous of her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

**3. Determination of "Incompetence" or "Incapacity"**

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other

personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protecter named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next

successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise address any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on July 1, 2008.

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on July 1, 2008 NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace Lynne Kuiz-Freed
Notary Public, State of Texas

CANDACE LYNNE KUIZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

2/24/10

Cert of Trust

# CERTIFICATE OF TRUST

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

   ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING, died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. For purposes of asset allocation, transfer of property into the trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the said trust shall now be known as:

   NELVA E. BRUNSTING, Trustee, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

   The tax identification number of the BRUNSTING FAMILY LIVING TRUST is 481-30-4685.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the remaining original Trustee fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

   CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

   If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING, as Founder and Trustee.

Witness my hand and official seal.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Candace Lynne Kunz Freed

Notary Public, State of Texas

2/24/10 Elm Dec Trust - Cert of Trust

# CERTIFICATE OF TRUST
# FOR THE
# ELMER H. BRUNSTING **DECEDENT'S TRUST**

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the original trust was:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. ELMER H. BRUNSTING died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent irrevocable trust known as the ELMER H. BRUNSTING **DECEDENT'S TRUST**. For purposes of asset allocation, transfer of property into the Decedent's Trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the Decedent's Trust shall now be known as:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The tax identification number of the ELMER H. BRUNSTING **DECEDENT'S TRUST** is 27-6453160. The Trust is irrevocable and no longer qualifies as a grantor trust.

An acceptable abbreviation for account titling is as follows:

> NELVA E. BRUNSTING, Tee of the ELMER H. BRUNSTING DECEDENT'S TR dtd 4/1/09, as est UTD 10/10/96.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the said NELVA E. BRUNSTING, the surviving original Trustee, fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

> CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.

6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.

7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their power over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Trustee

THE STATE OF TEXAS §
§
COUNTY OF HARRIS §

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING as Founder and Trustee.

Witness my hand and official seal.

Candace Kunz Freed

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

# Exhibit 11b

August 25, 2010 Appointment of successor trustees

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and

WHEREAS, ELMER H. BRUNSTING, died on April 1, 2009. The Brunsting Family Living Trust authorized the creation of subsequent subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST. The full legal names of the said subtrusts are:

NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

WHEREAS, the said NELVA E. BRUNSTING is desirous of exercising her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.


20-20566.1843

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical




20-20566.1844

information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

**3. Determination of "Incompetence" or "Incapacity"**

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the said Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on August 25, 2010.

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Original Trustee

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace K Kunz-Reed
Notary Public, State of Texas




20-20566.1847

# Exhibit 11c

Nelva's alleged 12/21/2010 Resignation

**RESIGNATION OF ORIGINAL TRUSTEE**

Pursuant to Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended (the "Trust"), I, NELVA E. BRUNSTING, an original Trustee of the Trust may resign as Trustee.

On April 1, 2009, two subtrusts were created under the BRUNSTING FAMILY LIVING TRUST and are known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

I hereby resign as Trustee of these said Trusts in accordance with the provisions contained in Article IV of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

My resignation is effective immediately and I hereby appoint ANITA KAY BRUNSTING as the Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as well as the subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST.

Nelva E. Brunsting
NELVA E. BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:35 pm p.m., by NELVA E. BRUNSTING.

Candace Kunz Freed
Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

# Exhibit 11d

12/21/2010 Appointment of Successor Trustees

Law Firm Copy

APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and

WHEREAS, ELMER H. BRUNSTING, died on April 1, 2009. The Brunsting Family Living Trust authorized the creation of subsequent subtrusts known as the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST. The full legal names of the said subtrusts are:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.
>
> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

WHEREAS, the said NELVA E. BRUNSTING is desirous of exercising her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, resign as Trustee, then the following individuals will serve as successor Trustee in the following order:

First, ANITA KAY BRUNSTING
Second, AMY RUTH TSCHIRHART
Third, THE FROST NATIONAL BANK

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death or disability, then the following individuals will serve as successor Co-Trustees:

ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART



20-20566.1851

If a successor Co-Trustee is unable or unwilling to serve for any reason, the remaining Co-Trustee shall serve alone. However, if neither Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

**1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to,




20-20586.1852

protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

**3. Determination of "Incompetence" or "Incapacity"**

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.




20-20586.1853

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries

participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the said Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

WITNESS MY HAND on December 21, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Original Trustee

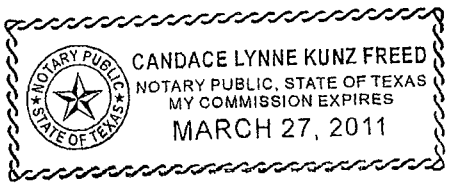



20-20366.1855

THE STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:34 pm p.m., by NELVA E. BRUNSTING, as Founder and Original Trustee.

Candace K Kunz Freed
Notary Public, State of Texas







20120566.1856

# Exhibit 11e

Anita December 21, 2010 acceptance of appointment

## ACCEPTANCE BY SUCCESSOR TRUSTEE

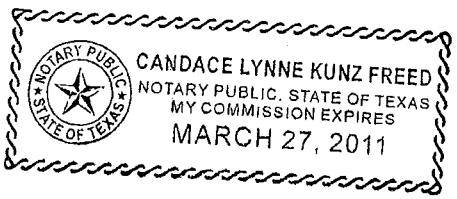
I, ANITA KAY BRUNSTING, hereby acknowledge my acceptance this day of the office and duties of Successor Trustee of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, the NELVA E. BRUNSTING SURVIVOR'S TRUST and the ELMER H. BRUNSTING DECEDENT'S TRUST, after the resignation of the original Trustee, NELVA E. BRUNSTING.

Anita Kay Brunsting
ANITA KAY BRUNSTING

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on December 21, 2010 at 1:36pm p.m., by ANITA KAY BRUNSTING.

Candace L Kunz-Freed
Notary Public, State of Texas





20-20566.1858

# Exhibit 12

Candace Freed memo: Anita instructing Candace to "change the trust" and make her trustee with Amy followed by Frost Bank 7-30-2010

# PM TRUST REVIEW MEETING

Signing Date & Time: Wed. Aug. 4th 2 pm.
Fee: ____
Paid: ____ Mail: ____

**Client Name:** Brunsting, Nelva

**Date:** 07/30/10 **Estate Size:** 2 mil±

**IRA: Husband -** N/A **Wife -** ____

**Current Address/Phone:** 13630 Pinerock Hou TX 77079

**Date of Trust/Restatement:** ____ **Previous Amendments?** Yes.

**Subtrust Funding Done previously?** Yes. DT & ST.

**AMENDMENT:** ✓ QBD(PAT)✓ ____ Other ____ Instr Ltr ✓ HCPOA✓
✓ ApptSUCCTee/HIPAA✓ ____ ExTPOA ✓ COT ✓ POA✓ ____ DIR

Anita Kay Riley & Amy Ruth... Co-tees or Survivor of them. Then Trust

✓ **Distribution Change (QBD):**

PAT QBD

**IF PAT QBD then:**

Each beneficiary Trustee of Own Trust: ✓ yes ____ no

except for Carl, Anita & Aimee as Co-tees for Carl (except they have nt to name Carl as own if need to own Succ Tee)

Distribution of PAT:

Same as LT except need language about the last amend (QBD) less early distrs.

V&F 000687

20-20566.1860

_____ **Specific Distribution:**

_____

_____

_____ **Ultimate Distribution:**

_____

_____

_____ **HEALTH CARE DOCUMENTS:**

1ST Agent: Carol

2nd Agent: Anita

3rd Army

**IRA TRUST:** _____ **yes** _____ **no** For whom? _____ husband _____ wife

Trustees upon disability of Trustor or spouse: _____

Each beneficiary Trustee of own trust? _____ yes _____ no

_____

_____

_____

_____

**SS# of Surviving Spouse/Beneficiaries:** _____

**FUNDING:**

Real Estate _____

Which property has NO MORTGAGE? _____

_____ Recording HS Deed

_____ Apply for HS Exemption

Tax-deferred Assets _____

_____ Bank & Brokerage Accounts

_____ Life Insurance

_____ Oil & Gas Interests

_____ Credit Union Accounts

_____ Partnership Interests

_____ CDs

_____ Safe Deposit Box

_____ Stocks and Bonds

_____ Motor Vehicles

_____ Sole Proprietorship Assets

_____ Promissory Notes & Mortgages

_____ Annuities

**Additional Documents:** _____

_____

**NOTES:**

Needs new DFPOA -order

Anita

Carol

Amy

**Any Name Changes for children?** _____ **Any children Predecease?** No.

**If Yes, who:** _____

**FEES:**

**QUOTED: $** _____ **(Plus Expenses)**

**AMOUNT REC'D:** None **DATE:** _____

**BALANCE DUE:** _____

**DOCUBANK?** _____

Cost Pat QBD 1200.
Hipaa Pkg 250 - med POA
D.F.P.O.A 150.-
Appl. of Succ TEE
New Card.

Courtesy discount $150.-

Cy

Anita - called

Carl has ensephlytes

amendments to trust

Anita + aimee as Co-Tees

change list under ME

Carol

Anita

aimee

financial P.O.a

Anita

Carol

aimee

Amend to trust /PAT's w/ Anita aimee to be Co-tees.

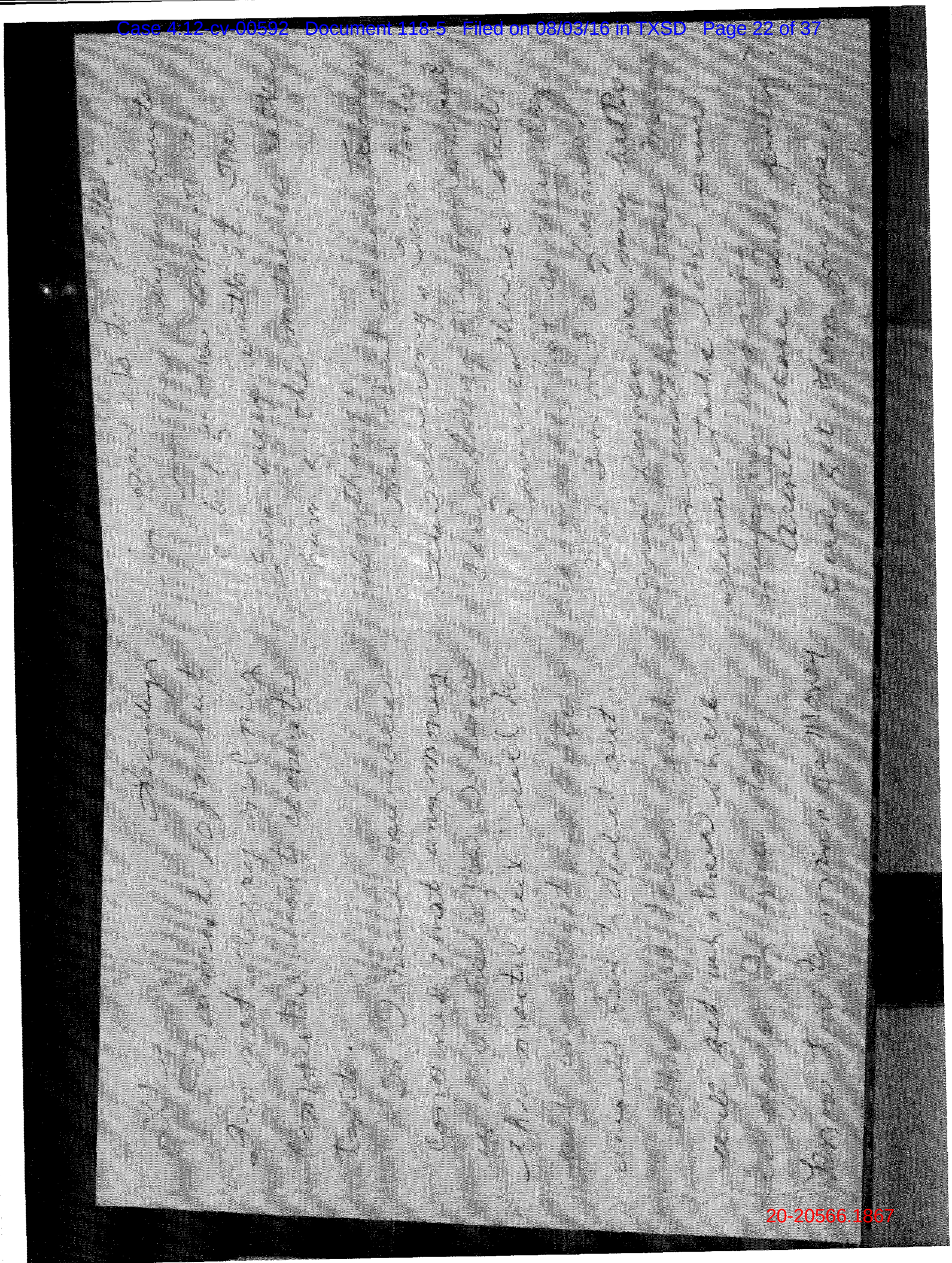
to connect Supp Needs to

Sp needs?

# Exhibit 13

1. Nelva hand written Note: see Candace Curtis (Original Affidavit Exhibit 16) See Exhibit 5 PDF p. 255 this filing

Nelva Brumsting
13630 Pinerock Ln.
Houston, TX 77079



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# Exhibit 14

Candace Freed Nov 17 2010 email regarding the reason Freed demanded Nelva be subjected to an incompetency evaluation

**Subject:** Fw: Nelva Brunsting
**From:** Candace Curtis <occurtis@sbcglobal.net>
**Date:** 3/11/2015 6:24 PM
**To:** Rik Munson <blowintough@att.net>

On Wednesday, November 17, 2010 2:38 PM, Candace Freed <candace@vacek.com> wrote:

Amy and Family, Thank you for the update on your mom, Nelva Brunsting. The purpose of the conference call and the suggestion that Ms. Brunsting be evaluated was based solely on conversations that I had with Ms. Brunsting and to let you all know that I had concerns based on those conversations. If she has been evaluated by her physician and you as a family are comfortable with his or her diagnosis, then you have addressed the concerns that I had. I appreciate your letting me know the opinion of the doctor. I hope your mom is doing well and she continues to improve.

Please let me know if I can be any further assistance.

Very truly Yours,

*Candace L. Kunz-Freed*
*Attorney at Law*

*Vacek & Freed, PLLC*
14800 St. Mary's Lane, Suite 230
Houston, Texas 77079
Phone: 281.531.5800
Toll-Free: 800.229.3002
Fax: 281.531.5885
E-mail: candace@vacek.com
www.vacek.com

---

*We have moved! Our new office address is as shown above.* We are one exit west of our old office building. Exit Dairy Ashford. Turn south on Dairy Ashford. St. Mary's Lane is a side street one block south of I-10 Katy Freeway. Turn west on St. Mary's Lane. Our building is in the northwest corner of the four-way stop.

---

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---

# Exhibit 15

Transcript: Injunction Hearing April 9, 2013 in the federal Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | * | Civil No. H-12-592 |
| | * | |
| VERSUS | * | Houston, Texas |
| | * | April 9, 2013 |
| ANITA KAY BRUNSTING, et al | * | 9:50 a.m. |

TRO HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

For the Plaintiff:

Ms. Candace Louise Curtis
Pro Se
1215 Ulfinian Way
Martinez, California 94553

For the Defendants:

Mr. George William Vie, III
Mills Shirley LLP
1021 Main Street
Suite 1950
Houston, Texas 77002

Court Reporter:

Fred Warner
Official Court Reporter
515 Rusk Ave.
Houston, Texas 77002

Proceedings recorded by mechanical stenography, produced by computer aided transcription.

THE COURT: Good morning. Please be seated.

All right. This is Cause No. 2012-592, Candace Louise Curtis versus Anita K. Brunsting and others.

So let me have an announcement. Is Ms. Curtis in the courtroom?

MS. CURTIS: Yes, Your Honor.

THE COURT: All right. And who is representing the defendants in the case?

MR. VIE: George Vie, Your Honor, for the defendants.

THE COURT: And I gather we have several parties present, correct?

MR. VIE: Yes, Your Honor.

THE COURT: Are these your clients or --

MR. VIE: Yes, Your Honor. Both the defendants are present.

THE COURT: Both defendants.

And who are the defendants other than -- I just show Anita Kay and Amy Ruth. I am sorry. I apologize. You are representing both?

MR. VIE: Yes, Your Honor.

THE COURT: Okay. Very good.

This is Ms. Curtis' application for a temporary restraining order. As you might recall, this case was initially dismissed by the Court with the understanding that,

or under the understanding that it could not proceed in federal court but must proceed in state court.

The circuit court disagreed with me, and it's back; and now we are charged to proceed forward in this case.

So what I would like to do is, first of all, have Ms. Curtis stand and give me a kind of a factual setting background for what it is that she is seeking, then tell me what she is seeking and see what testimony, if any, we need in order to accomplish that.

So why don't you go ahead take the floor, Ms. Curtis, and tell us how this got started and where we are today.

MS. CURTIS: This got started by my parents, Elmer and Nelva Brunsting, putting together a Brunsting family living trust in 1996 dividing their estate among the five children beneficiaries.

THE COURT: And I see there are the only three children represented. Are there other children that are not included?

MS. CURTIS: Yes, sir. My sister Carole and my brother Carl.

THE COURT: Okay. C-a-r-o-l?

MS. CURTIS: C-a-r-o-l-e and Carl, C-a-r-l.

THE COURT: Well, that C went a long way.

MS. CURTIS: C, C, C and then A, A.

THE COURT: Went a long way in the family, didn't it?

MS. CURTIS: Yes.

THE COURT: Go ahead please.

MS. CURTIS: So, my father passed away in 2009 in April and --

THE COURT: And would you tell us his name for the record.

MS. CURTIS: Elmer H. Brunsting.

THE COURT: All right.

MS. CURTIS: And in July of 2010 my brother Carl became stricken with encephalitis. And it's a very serious disease. He was in the hospital for several months, part of that time in a coma. And my brother was originally appointed the executor of my parent's estate.

THE COURT: Your brother would be Carl?

MS. CURTIS: Carl. And also a successor/co-trustee of the Brunsting Family Living Trust and any resulting trusts.

In approximately 2007, my mother sent an e-mail to me and asked me if I would mind becoming co-trustee with my brother Carl because my sister Amy was unstable; and she was wondering if I would mind coming to Houston whenever necessary to take care of these things. And I agreed. And that was the last I heard of it.

Since that time I have received a document, which is the last, first and only amendment that my father and mother both signed to the family living trust appointing Carl and Candace as successor/co-trustees.

THE COURT: Okay. So as it stands now, it is Carl and Candace who would be the co-trustees of the trust?

MS. CURTIS: Yes, Your Honor, yes.

And after my brother became ill, my youngest sister Anita took the opportunity to begin seize control of the trust. She immediately, within three weeks after he became ill --

THE COURT: When did this happen?

MS. CURTIS: In July of 2010.

THE COURT: 2010. He became apparently incapacitated or unable to?

MS. CURTIS: Yes. He was in a coma for several weeks.

THE COURT: Is he still in a coma?

MS. CURTIS: No. He's back at home and doing very well.

THE COURT: Okay. Very good. Go ahead.

MS. CURTIS: And has been.

THE COURT: I will be asking questions of him.

MS. CURTIS: And so, because of things that are just simply judgmental and ugly, my sister began to try to wrest

control of the trust so that my brother could not have anything whatsoever to do with it. She took his name off the safe deposit box which, according to my father's handwritten letter from 1999, contained all of the information about the family trust, and then some papers were caused to be drawn up. One was a qualified beneficiary designation.

THE COURT: I'm sorry. Was a what?

MS. CURTIS: A qualified beneficiary designation.

THE COURT: All right.

MS. CURTIS: And several other papers were drawn up on August 25th, 2010.

There was no notice given to any of the beneficiaries about this qualified beneficiary designation that was to be prepared and signed. And the only way that I found out about it was to ask my sister Anita for copies of trust documents for me to review for a phone conference that had been called by the trust attorneys that was supposed to include my mother and all of her children. My brother Carl was never notified of this phone conference.

THE COURT: Was he at the time still in a coma or incapacitated?

MS. CURTIS: No, sir. He was not in a coma, but he was still in the hospital.

THE COURT: Okay.

MS. CURTIS: And my mother also was not in on the

phone call.

So we had the conference call, and they were definitely absent; and the conference call apparently was called to discuss proposed changes to the trust, when in fact the changes had already been made; and as it boiled down to the end and various parties hung up, they were going to try to have my mother declared incompetent because she said that she did not sign the qualified beneficiary designation and that in fact what the qualified beneficiary designation said was not true.

THE COURT: Let me ask you a question before we go forward. What was the purpose -- what did the beneficiaries receive and how were funds, as you understand it, disbursed from the trust prior to this August 25th 2010. How was the trust to be administered?

MS. CURTIS: The trust was to be divided into five personal asset trusts; and I believe that each personal asset trust would have a trustee, but I do not think it was the beneficiary.

THE COURT: Was that to recognize the five children?

MS. CURTIS: Yes.

THE COURT: How was your mother to benefit from this? Was she to get some proceeds out of the funds?

MS. CURTIS: My mother was to benefit from all of the trusts until she passed way.

THE COURT: Okay. And then these five trusts would --

MS. CURTIS: Whatever was remaining would be divided five equal ways.

THE COURT: Surely.

And then your mother died when?

MS. CURTIS: 11-11-11.

THE COURT: Oh, is that right?

And at that time your father was already deceased?

MS. CURTIS: Yes, Your Honor.

THE COURT: So this telephone conference occurred sometime in August of 2010, just about 14 months prior to her death?

MS. CURTIS: It was in October --

THE COURT: October.

MS. CURTIS: -- of 2010.

THE COURT: About 12 months then, 12 or 13 months prior to her death.

And so go ahead and pick up there.

MS. CURTIS: So, anyway, after the phone conference there was really nothing I could do about anything as far as I could tell; and so, things were relatively quiet until in approximately March of 2011 my sister Anita called and said, "oh, we found some Exxon stock that wasn't in the trust; and

so, some of it will be gifted, and then the rest of it, the trust attorneys are going to figure out how to get it into the trust."

And so I received 160 shares of that stock. And I was in conversation with sister Carole and was told that she had received some, but she didn't know how much it was because she hasn't opened the envelope.

THE COURT: Was it your understanding that the 160 shares that you received would have been your one-fifth share? Is that the way it was to be --

MS. CURTIS: That's kind of the way I thought about it. Not necessarily my one-fifth share, but that each of us should receive a like amount.

THE COURT: Sure.

All right. Go ahead.

MS. CURTIS: Unbeknownst to me, my sister Carole received 1,300 plus shares and my sister Amy received over 1,000 shares.

I received 160, Anita received 160; but Anita, as power of attorney beneficiary and trustee, having taken over from my mother in December of 2010, was conflicted and not allowed to accept gifts. So she excused it many months after the fact as being a loan, but she's also not allowed to take loans from --

THE COURT: So was she the person doing the

disbursing of these shares?

MS. CURTIS: Yes, Your Honor, she was.

THE COURT: And she disbursed them in the manner, as you understand it, the way you just described it, giving a couple thousand shares to two of your sisters together?

MS. CURTIS: Uh-huh.

THE COURT: I said "together" meaning added together, and then 160 to you. And what happened, if anything, to do with Carl's share?

MS. CURTIS: He got nothing.

THE COURT: All right. Okay. Go ahead.

MS. CURTIS: So my brother has filed a lawsuit in --

THE COURT: Probate court?

MS. CURTIS: -- state court and also in probate. It's not a lawsuit, but he has filed from probate as defendant executor. And he has gotten pages and pages and pages of information from my sisters in another lawsuit that it was a pre-suit request for depositions to get information in case they were going to file suit.

And they got pages and pages and boxes of information that was not shared with me until March 28th just recently, and this paper here was in some of the documents that they shared with me.

THE COURT: What is the title of it?

MS. CURTIS: This is a computer share. It's a.

Transfer form. And this is page two of three pages of the transfer form.

THE COURT: Transfer form relating to?

MS. CURTIS: The Exxon/Mobil stock.

THE COURT: Okay.

MS. CURTIS: And so, at the top of the page my sister Anita's 160 shares, and the bottom of the page is my 160 shares.

There is two signatures at the bottom of the page. One is on a W-9 portion, and the other is on, my understanding that the money would be reinvested in the account. These signatures are not my signatures; they're forgeries.

THE COURT: Uh-huh.

MS. CURTIS: I would not have seen these if I had not had this shared with me by my brother.

THE COURT: And you didn't authorize anyone to make those signatures for you?

MS. CURTIS: No, I did not. And I have filed a Securities & Exchange Commission complaint as of last week about this.

THE COURT: All right.

MS. CURTIS: And I have not heard anything from them since that time.

I also have two different --

THE COURT: Well, let me ask you before you go further. What did you understand to be the access in the trust or the total trust as opposed to the individual five trusts, let's say? What did you understand the gross assets to be? Is that what you set forth in your petition as being the assets.

In 2010, you show -- I don't know if you have your petition there with you, but you showed in 2010 there was Chevron/Texaco, Exxon/Mobil, Edward Jones and a total of $554,000 more or less in the -- I gather is this in the decedent's account.

MS. CURTIS: Actually, this is my Request For Injunction.

THE COURT: Yes, page 3.

MS. CURTIS: Those are just the net changes.

THE COURT: These are what you're calling losses then?

MS. CURTIS: Yes.

THE COURT: So what is the total of the estate? How many? Several million dollars?

MS. CURTIS: The farm itself is close to $3 million, and everything else when my father passed away was about a million-and-a-half.

THE COURT: So, it's increased in value to about --

MS. CURTIS: By virtue of the farm.

THE COURT: F-a-r-m, farm?
MS. CURTIS: Yes, family farm in Iowa.
THE COURT: That was sold?
MS. CURTIS: No, it was not.
THE COURT: What's on the farm that's increasing these prices? What are they harvesting?
MS. CURTIS: Corn and soybean.
THE COURT: Is that for profit or just simply --
MS. CURTIS: To my understanding we have a lease with the farmer.
THE COURT: Okay. And so lease itself pays a certain amount of money annually or however.
MS. CURTIS: Yes.
THE COURT: Those assets or that money goes into the estate?
MS. CURTIS: I believe so.
THE COURT: And that accounts for some of the increase, as you understand them?
MS. CURTIS: Yes.
THE COURT: All right. So at this point in time, "this point in time" being 2012, there has been a total of 338 or 339,000 in assets removed from the estate, and there is still approximately, as far as you know, three-plus million dollars in the estate?
MS. CURTIS: Yes, Your Honor.

THE COURT: Now, I want to try to close this out just a little bit by asking you: After you received these documents, I gather -- and when you weren't receiving them, obviously, because I recall you filed a suit, and one of the issues was getting your hands on these documents, and you were not able to get those documents until recently, as I understand it?

MS. CURTIS: The first time I received any information was in April of 2012, yes.

THE COURT: Okay.

And since you received those documents, has the fact that you received those documents confirmed what you believe to be improper practices on the part of your, I gather, on the part of your sister Anita?

MS. CURTIS: Yes, Your Honor.

THE COURT: Is she handling this alone?

MS. CURTIS: To my knowledge she is.

THE COURT: All right. So it's between her and however her lawyers are handling this that you are concerned about?

MS. CURTIS: I assume.

THE COURT: And your brother has a ongoing suit presently ongoing?

MS. CURTIS: Yes, Your Honor.

THE COURT: And what is the status as you understand

of that suit, as to how long has it been pending and what is status of that suit?

MS. CURTIS: I'm not exactly sure of the dates of how long it's been pending. I think since sometime in February of 2013.

THE COURT: Okay. So several months, but not very long.

MS. CURTIS: Right.

THE COURT: And is he able to get up and about?

MS. CURTIS: Yes.

THE COURT: Where is he now?

MS. CURTIS: At home, I would assume.

THE COURT: And have you communicated with him regarding what his approach is?

MS. CURTIS: Yes, Your Honor. I have.

THE COURT: And, of course, you have not joined his lawsuit?

MS. CURTIS: No, I have not.

THE COURT: And he has not joined in your lawsuit?

MS. CURTIS: No, he has not.

THE COURT: Does he have an attorney?

MS. CURTIS: Yes, Your Honor, he has.

THE COURT: Okay. I gather you now know that some state court, some county court or probate court, someone did something, I gather, to give Anita some authority that you

did not know she had. Is that what you have come to the knowledge of?

MS. CURTIS: I have come into the knowledge that the purported successor/co-trustees are in fact imposters because the documents that made them successor/co-trustees have digital alterations on them; they have anomalies on the signature pages. I have two different signature pages for the qualified beneficiary designation that were sent to me on two different occasions.

THE COURT: Now, whose signatures would be necessary from your perspective to permit her to go forward? This qualified beneficiary designee, this was supposed to be Anita now?

MS. CURTIS: It was supposed to divide the estate into five different personal asset trusts. Carole, Amy and Anita were going to be trustees.

THE COURT: This was a part of you-all's discussion on the telephone conference as to how this was supposed to work?

MS. CURTIS: Well, I wanted to know how it would put into place in the first place because I never received any notice that this was being contemplated.

THE COURT: Okay.

MS. CURTIS: And come to find out months after the papers were allegedly signed by my mother, my personal asset

trust and my brother Carl's were put under the control of Amy and Anita.

THE COURT: On what authority or what basis.

MS. CURTIS: I don't know. I don't know.

THE COURT: Okay.

And what happens then or what is happening to those assets?

MS. CURTIS: They're spending them.

THE COURT: Okay. She, Anita, has authority and can spend those proceeds --

MS. CURTIS: Yes, Your Honor.

THE COURT: -- based upon what? Is she considering herself the qualified beneficiary designee or something?

MS. CURTIS: She is considering herself a successor/co-trustee.

THE COURT: Successor/co-trustee.

MS. CURTIS: In place of my mother. She did most of the theft while my mother was still alive when she was acting with my mothers power of attorney. My mother supposedly resigned as trustee on December 21st, 2010, and my sister accepted successor/trustee. And my sister's also a beneficiary, so she's got a conflict of interest there.

THE COURT: So since 2010 you are not aware of, I gather you're saying you're not aware of the division of the estate at least designating your portion as being your full

one-fifth of the estate?

MS. CURTIS: I have never received a notice.

THE COURT: You are not aware that that has been done. In other words, you don't know that that has been done?

MS. CURTIS: No, I do not.

THE COURT: And you're not in charge of that, those assets?

MS. CURTIS: That's correct.

THE COURT: And so here's my question: What is it that you're seeking by this lawsuit?

MS. CURTIS: I am seeking that my sister and those who have received unfair distributions to return the money.

THE COURT: Okay.

MS. CURTIS: I would like them to pay back all of the interest that was lost on the securities that were cashed in during that 15 months and spent, diverted to other things.

THE COURT: All right.

MS. CURTIS: And I would like it to be divided five ways and for the five beneficiaries to go their separate ways.

THE COURT: And what have you been told, if anything, even today, if anything, that has prevented this from happening?

MS. CURTIS: I have been told nothing.

THE COURT: And you've talked with their counsel, have you not?

MS. CURTIS: Yes, I have.

THE COURT: And did you ask him about these questions or did you put these questions to him?

MS. CURTIS: No, I did not.

THE COURT: What were you asking? What was the nature of what you all were trying to accomplish as far as this injunction is concerned?

MS. CURTIS: We were trying to come up with a reason why we would not go forward with the injunction hearing. And I had five or six other alternative ways of resolving this. And he left the room to speak to his clients, and they would not agree to them.

THE COURT: What are you seeking now? What are those ways that you are seeking, and what is it that you want to happen here today?

MS. CURTIS: I wanted to have an independent trustee appointed.

THE COURT: All right. And that was refused.

Okay. What else?

MS. CURTIS: I wanted to know who, if any, special co-trustee was appointed as per this qualified beneficiary designation.

THE COURT: I'm sorry. Say that again.

MS. CURTIS: There was provision in the qualified beneficiary designation for a special co-trustee or a trust protector; and so, I suggested that maybe the trust protector take it over as the trustee.

THE COURT: All right. Okay.

MS. CURTIS: And the other reason was just similar to that. The Court could appoint an independent trustee who the defendants would have to obtain approval for any of their actions.

The Court could enjoin the trustees from acting without approval of the Court or express written approval from all five beneficiaries.

The Court could enjoin trustee from acting unless and until they can show they're in possession of authentic documents by submitting the documents purportedly signed on August 25, 2010 and December 21st, 2010 for a forensic analysis because the copies that we have have all been digitally altered and the signatures are fake.

THE COURT: Okay.

MS. CURTIS: I also asked originally if I could please know the identification and contact information for the trust protector, and I was told that the provisions for the trust protector were at section such and such in the qualified beneficiary designation, but I didn't get a straight answer.

THE COURT: So there is a document called "qualified beneficiary designation"?

MS. CURTIS: Yes, Your Honor.

THE COURT: And you do or do not have a copy of that?

MS. CURTIS: I do have a copy of it but not with me.

THE COURT: And you have been told that in -- when were you told this, today? When were you told where this provision about the special protector or co-trustee protector was located?

MS. CURTIS: In early 2012.

THE COURT: And you were told where to find it?

MS. CURTIS: I was told where to find the provisions, but I asked for the identity.

THE COURT: Okay. The identity of that person has not been given to you?

MS. CURTIS: That is correct, or if there even is.

THE COURT: If there is such a person.

All right. So that's what you're seeking in terms of your request for benefit -- for the injunction today; is that correct?

MS. CURTIS: Yes, Your Honor. I'm seeking that we stop the bleeding until we can get to the bottom of it.

THE COURT: Have you received any funds from the trust since 2010? I'm talking about since the death of your

mother.

MS. CURTIS: No, Your Honor. I have not.

THE COURT: You have made it known to -- have you communicated with your sister -- that's Anita, I believe -- about that?

MS. CURTIS: I am not allowed to speak to Anita --

THE COURT: Why not?

MS. CURTIS: Except through her attorneys.

THE COURT: Well, that's untrue. That's your sister.

MS. CURTIS: Well, that's the way I feel about it, but I'm told I'm not allowed to speak to them, and they won't talk to me.

THE COURT: Who told you this? Who told you this, that you can't contact her?

MS. CURTIS: I inferred that from --

THE COURT: Did she tell you that, is what I am asking?

MS. CURTIS: No. She didn't tell me that because she hasn't spoken to me.

THE COURT: Well, have you tried to speak to her?

MS. CURTIS: Yes, Your Honor, I have.

THE COURT: What happens when you try to speak to her?

MS. CURTIS: I call. She doesn't answer. I leave a

voice mail, she doesn't call me back.

The same thing happened with my other sister Amy. I called and left a voice mail. She did not return my call. This was more than a year ago.

THE COURT: So they refuse to speak to you about this is what you are saying?

MS. CURTIS: Yes, Your Honor.

THE COURT: Go ahead and have a seat. Thank you.

Counsel.

MR. VIE: Yes, Your Honor.

THE COURT: Why can't you come to some accommodation?

MR. VIE: Here's the situation. I just want to give you a little bit of background so that you understand in terms of the exhibits I put before you.

THE COURT: I don't have any exhibits yet. Well, some paper put up here.

Oh, the list. I see.

MR. VIEW: Yes, sir.

THE COURT: I haven't read these.

MR. VIE: Just to provide some assistance in answering your question, Your Honor. Exhibit 1 is a 60-or-so page document. That is the family trust document.

THE COURT: All right.

MR. VIE: And on page 1 of the document it says that

her father and mother had created a trust, it's an irrevocable trustee, and that the initial trustee shall be Anita Kay. So, Anita is the trustee under this document.

Because you heard a lot about this qualified beneficiary designation.

THE COURT: No. I heard about the co-trustees.

MR. VIE: So I wanted the Court to understand that this document --

THE COURT: Let me ask so we don't go down a rabbit trail. Was there a point in time when Carl was the co-trustee?

MR. VIE: I'm sorry?

THE COURT: Was there a time when Carl, the brother, was the co-trustee?

MR. VIE: I don't know if that -- I don't know with respect to this document if that's correct or not.

I understand that at one point there was a communication from the mother where she considered other family members serving in her role. But the documents that I have given you, the second exhibit that I have given you is where with respect to the mother's living trust while she was alive, she decided to have Anita appointed as her successor trustee instead, and then they created this certificate of trust.

THE COURT: That would have been relative to the

entirety of the irrevocable trust or was it simply her portion of the assets?

MR. VIE: It was with respect to the living trust that was created when she --

THE COURT: No, no, no. Here's what I am saying. The father is now deceased.

MR. VIE: Yes.

THE COURT: His wife entered into a irrevocable trust, and either he leaves all of you that in the trust to her benefit or his share goes into some other, goes into a trust for the children at that point.

So what happened?

MR. VIE: The father and mother created the irrevocable trust, which I have identified as Exhibit 1.

THE COURT: Okay.

MR. VIE: When the father died, his assets went into this living trust where their mother had assets to the living -- there was a sub trust created, a successor trust and a decedent's trust. The mother had that.

THE COURT: So she has all of the assets at that point?

MR. VIE: Yes. And the mother was able to make gifts and did make gifts to a number of the family members. So when the plaintiff was referencing the $13,000 gift that she received and the others, these were gifts that her mother

while alive had directed. And my client Anita, as the successor trustee under this appointment, Exhibit 2, would make those transactions occur. But these were gifts from the mother.

And then the mother dies, and this irrevocable trust --

THE COURT: And did the mother die, according to what Ms. Curtis is saying, in December more or less, I guess?

MR. VIE: November of 2010, Your Honor.

THE COURT: November of 2010, okay.

MS. CURTIS: 2011.

THE COURT: 2011.

MR. VIE: 11-11-2011.

THE COURT: Right.

MR. VIE: After that point, then Anita as trustee prepares a schedule of the estate, the context of the mother, and that money was going into the family trust; and that's one of the exhibits that she's attached.

THE COURT: Well, wait a minute. What money is going into the family trust? Because now this trust, the trust that exists that is handling all this is the mother's living trust, right?

MR. VIE: No, Your Honor. When she died, the living trust no longer exists.

THE COURT: Oh, obviously.

But before that, all of the assets were going into the living trust for the mother.

MR. VIE: Right.

THE COURT: And now the mother dies in November of 2011, and then what happens?

MR. VIE: Then we have the family trust, and there is created again a sub trust of a survivor's trust and the decedent's trust.

THE COURT: And the family trust now reverts back to the irrevocable trust?

MR. VIE: Yes, Your Honor.

THE COURT: And in the irrevocable trust or in that trust there is a provision that says how those, how that trust is to be divided into five distinct trusts for the children?

MR. VIE: My understanding is that there is a document under this complicated plan by which each of the individual beneficiaries, the five children, the four daughters and the son, they would have these asset trusts. Those trusts have not been created.

THE COURT: Well, I am asking whether or not as a part of the -- as to your understanding, you have read it, is that a part of what the family trust required as far as you know? You said there's a document like it's some separate thing.

MR. VIE: Well, there's a -- I understand, Your Honor.

It's a rather long document. I understand and agree we are that the conclusion of this trust now at this point is to divide the assets to the five beneficiaries, and then each of their assets go into these asset trusts.

THE COURT: Separate and distinct from each other and for the benefit of each of the designated beneficiaries.

MR. VIE: Yes.

And as the plaintiff suggested, I believe the situation is that her trust, for example, she is not a trustee. One of her siblings is the trustee.

THE COURT: Even after it's divided off and given to her?

MR. VIE: Yes. And in these asset trusts, other members --

THE COURT: So someone who has a trust, like Anita herself, would have her own separate and distinct assets?

MR. VIE: Yes, sir.

THE COURT: And she'd be in charge of her own assets?

MR. VIE: No, no. There would be -- somebody else would be the trustee.

THE COURT: Of all of these five trusts?

MR. VIE: Yes -- no, of each.

THE COURT: Who is "someone else?" I mean --

MR. VIE: Well, for example, Carl's could be Anita and Amy's could be Carole.

THE COURT: But the documents say how this happened, though.

MR. VIE: These trusts have not been created yet. There has been no distribution.

THE COURT: I understand that. You are telling me that, but I am trying to find out whether or not the creation of these trusts require these beneficiaries to have someone else in charge of their money.

MR. VIE: That is my understanding. And she can correct me if I am wrong, and my clients can correct me as the trustees if I'm wrong.

THE COURT: So Anita -- somebody would be in charge of Anita's?

MR. VIE: Yes. That's right.

THE COURT: And then somebody else would be -- and Anita would be in charge of somebody else's?

MR. VIE: That's my understanding.

THE COURT: And these kids -- and they're not kids anymore, but these five siblings would be at each other's throats for the rest of their lives because --

MR. VIE: No. They'd each have their own --

THE COURT: Well, no. They got them, but they're

not in charge of it, is what I understand.

MR. VIE: All right.

THE COURT: That's what I am trying to say. In other words, I'd have to call my sister to get my money.

MR. VIE: What I know about the asset revocable -- the asset trust is they have not been created yet.

As the Court heard, there are two lawsuits. There is this lawsuit and there is her brother's lawsuit. We are not parties to her brother's lawsuit. Her brother's lawsuit is brought in his capacity as the executor of his father's and mother's estates. It's in Harris County District Court. We're not parties to it.

THE COURT: Well that would be either the product of a will being probated --

MR. VIE: Yes, sir.

THE COURT: -- or it would be the product of an intestate proceeding. Which is it?

MR. VIE: The will has been probated.

THE COURT: So there is a will probate separate and apart from the trust?

MR. VIE: Yes, Your Honor.

THE COURT: And how does that overlay on the trust since all of the assets are in the trust?

MR. VIE: Well, I don't know that it overlays; but what I am trying to suggest to the Court is: One, since the

mother died, there has been no distributions to anyone, not --

THE COURT: I get that. I am trying to figure out --

MR. VIE: Since you haven't seen the distribution, I wanted the Court to understand that no one has.

THE COURT: But somebody got some money out of it or there has been a loss in value to the trust itself.

MR. VIE: She says that the stock that was invested with the brokerage houses may have lost money, is one of the things that she suggested in her motion.

THE COURT: Right.

MR. VIE: My point was to suggest that there has been no distributions since the mother died from the trust that Anita is the trustee for to anyone.

THE COURT: And you said the one that Anita is in charge of. What is Anita in charge of?

MR. VIE: Exhibit 1.

THE COURT: Okay. The entirety?

MR. VIE: Yes, sir.

THE COURT: That's what I am trying to get to.

MR. VIE: Yes.

THE COURT: Okay.

MR. VIE: And it's unlikely there will be any distributions until both this suit is resolved and her

brother's suit that he brought.

THE COURT: Well, this suit might resolve it. That's not their concern.

But what I am trying to find out is whether or not in the -- the question I was trying to get back was in the Carl's suit, I guess in probate court, whether or not that suit, which did not come up in the responses in the way that I understood it, whether or not that suit that impact whether or not this Court should be proceeding with this trust.

MR. VIE: No, Your Honor.

THE COURT: So it's separate and apart since the probate's completed.

MR. VIE: The probate has been filed. The suit is brought by him in his capacity as executor.

THE COURT: Is he without bond and independent?

MS. CURTIS: Yes.

MR. VIE: He's an independent executor. He is bringing the suit against the attorneys.

THE COURT: So he doesn't need to do anything else other than file it and do this accounting and all of that and then do whatever the will tells him to do.

MR. VIE: The litigation that he has brought is against the attorneys that created these trusts.

THE COURT: That's not even -- that's separate and

distinct from this lawsuit.

MR. VIE: Okay.

THE COURT: And it's separate and distinct from the estates because that's a malpractice lawsuit.

MR. VIE: Yes, sir.

THE COURT: Okay. So I am not concerned about that at all.

I was trying to make sure when he brought his suit, he was not simply arguing that somehow Anita had finagled her way into this position and she had squandered certain assets and then we've got these parallel lawsuits.

MR. VIE: I understand, Your Honor. And that was my point as well was to let you know that we are not parties to that litigation, it's not a claim in that litigation as the claims are --

THE COURT: And neither is the plaintiff here a party to that litigation.

MR. VIE: That is correct, Your Honor.

THE COURT: Okay.

So, the only suit that's pending dealing with the assets of these parent's estate is this lawsuit.

MR. VIE: Yes, Your Honor.

THE COURT: All right.

So what the plaintiff is saying on page 3 of her petition having to do with the December dates of 10, 12

and so on and what she considered to be "losses of the estate" are losses that I gather are decreases in assets that would be attributable to movement in the market.

MR. VIE: That is the specific. And, Your Honor, you are referring to the complaint or to the motion that has been filed for temporary relief?

THE COURT: I'm looking at the motion right now. That should be Instrument No. 35.

MR. VIE: Yes. With respect to that, there is an argument being made there that there has been a loss and it is the result of the investment of the securities.

THE COURT: You made a comment earlier that until the other lawsuit and this lawsuit is resolved. That lawsuit has nothing at all to do with the resolution of this estate.

MR. VIE: Well, I --

THE COURT: I'm telling you that.

MR. VIE: Okay.

THE COURT: There is nothing that should -- there is nothing going on in Carl's suit that prevents these parties from following what they have been instructed to follow in the trust document.

MR. VIE: Okay. I understand if that's the Court's direction.

THE COURT: Is there something that I am missing?

MR. VIE: Not that I am aware of, Your Honor.

THE COURT: That's a malpractice suit. And they get some money out of it, either he gets it or maybe he distributes it among his brothers and sisters, but it doesn't have anything to do with the distribution of this estate.

MR. VIE: My understanding -- the reason that I understood the case to be differently is that I understood that the purpose of the litigation that he had brought in state court was claiming that the attorneys who created these trusts had done so improperly so that we were in a situation in which we are here before this Court, and the Court is suggesting we should wind this thing up and distribute to all the beneficiaries.

THE COURT: It's going to be wound up. It's going to be wound up in this court.

Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where we are sitting around churning the time out and the parties are charging out of that lawsuit, defense of that lawsuit, which you are not doing, apparently, unless -- are you the lawyer that created the trust?

MR. VIE: No, Your Honor.

THE COURT: So that's a separate law firm.

MR. VIE: Yes, Your Honor.

THE COURT: Yeah. So there is no reason for you to

be or your firm to be involved in the expenditure of that, of monies out of that lawsuit.

MR. VIE: And we aren't, Your Honor.

THE COURT: And there is no reason for Ms. Curtis to be concerned about spending money out of her assets for that lawsuit.

MR. VIE: Understand.

THE COURT: So, you can distribute what you got whether you get some more or not. It doesn't require -- this is not a probate where you got to gather everything together because everything is together.

MR. VIE: Okay.

THE COURT: The entire estate is together.

MR. VIE: Yes, Your Honor.

THE COURT: And if there is a lawsuit, and it's questionable whether or not Curtis has a lawsuit or not because he wasn't the creator and the payor for that creation of that trust.

So, the point I am making is, obviously he had no contractual relationship with the firm, and it's going to be seriously flawed -- seriously difficult for him to sue for malpractice when he wasn't -- when there is no attorney/client relationship.

MR. VIE: Understood, Your Honor.

THE COURT: So, the point I'm getting to here is

under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.

MR. VIE: Yes, Your Honor.

THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.

MR. VIE: I understand that.

THE COURT: So, what is it then that prevents these parties from right now settling this suit?

MR. VIE: From settling it?

THE COURT: Yes. All they got to do is distribute the assets.

MR. VIE: Two things, Your Honor. And it's just my observation, because obviously the Court does not have to agree with me.

THE COURT: Sure.

MR. VIE: I provided the underlying documents that support the schedule that the plaintiff has attached to this motion for temporary relief. I have given her yesterday, in response to her request for production, some 5,000 pages.

She has told me that she wants to examine those, all of those underlying documents, stock transfers, checks and everything else.

You have heard from the plaintiff that she believes this very instrument is false.

THE COURT: "This very instrument" meaning the family trust?

MR. VIE: Family trust. That it's a forgery or that documents have been forged.

And I have offered, in response to the request for production, to make the originals, which I understand the trust attorney, those attorneys in the other lawsuit, to make those available for inspection and copying so that she can see them and satisfy herself that the underlying trust is in fact a legal and appropriate trust.

THE COURT: Okay.

MR. VIE: So that was one of the --

THE COURT: And that the signatures have not been forged or at least they're original signatures.

MR. VIE: Yes. In other words, one problem of trying to settle the disposition of the trust today is that the plaintiff disputes the accuracy of the accounting and the accuracy and legitimacy of the trust.

THE COURT: Right.

MR. VIE: And so, that was one issue.

The second issue, respectfully, is that I understood that given that the Harris County litigation contested the accuracy and validity of the trust, that again there was a risk of inconsistent positions if we were to treat the trust as valid and fund this while they litigated over in Harris County.

THE COURT: They don't have jurisdiction over there. I do. That's what the circuit court has told me. And that's the part that you said I might disagree; and you're right, I do.

I would not sit here and wait on somebody Harris County to figure out whether or not they have jurisdiction over an issue, which they do, but they don't have jurisdiction of the assets.

MR. VIE: I wasn't thinking as much of the jurisdiction, Your Honor, as I was thinking of the risk of inconsistent judgments. In other words --

THE COURT: Not if I get it resolved, there won't be any inconsistent to resolve.

If they get it resolved, then it probably won't be inconsistent because I'm obligated and then obliged to follow at least theoretically the findings of any court of competent jurisdiction.

MR. VIE: Yes, Your Honor.

And the third issue, which I don't think would

give the Court pause but is something I thought of, is the fact that all the beneficiaries are not parties to this litigation.

THE COURT: That won't bother me at all because I do have authority and jurisdiction over the person who you tell me has the duty and the responsibility to act.

MR. VIEW: So those are my --

THE COURT: That's it.

So, I want this resolved within 90 days. And if I have to appoint a trustee or somebody to handle this and get it done, I'll do it. It will cost the estate. And if I find that there has been mischief, it is going to cost individuals. And that will be a separate and distinct hearing.

So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke.

MR. VIE: Yes, Your Honor.

THE COURT: Who is doing the accounting in this process? Has anybody put their arms around the assets and made any accounting at all?

MR. VIE: There is a CPA in Iowa that prepares the

tax returns each and every year for the estate, and we are getting --

THE COURT: How they get in Iowa? Is that where the family was from originally?

MR. VIE: The parents, yes, Your Honor. And the farm, as you heard, is in Iowa.

THE COURT: Okay.

MR. VIEW: And so, there is a CPA who has been involved throughout this period and files the trust income tax returns, and he is available.

MS. CURTIS: I object to that.

THE COURT: Hold on.

Go ahead.

MR. VIE: I think I have answered the Court's question.

THE COURT: Yes.

MR. VIEW: And would have the most, would have the best familiarity beyond --

THE COURT: How much money does he generally charge for his annual -- I guess he does his annual filings of reports. Is this something that's pretty cursory or --

MR. VIEW: I'm sorry. And there is a distinction. The documents that are attached as the schedule in that accounting that are attached to the motion that has been filed for injunctive relief, temporary schedules.

THE COURT: Those were prepared?

MR. VIE: By the defendant, by Anita in her capacity as trustee.

THE COURT: Okay.

MR. VIEW: I was responding to the Court's question in terms of who's the best person that could get their hands around it and that type of thing.

The CPA in Iowa obviously has to know all of the information available to the trust so that he can file the tax returns. He also pays and makes sure that the profits --

THE COURT: Then that might not be a good thing for me because I don't have jurisdiction over him.

MR. VIE: Okay.

THE COURT: But what I wanted to know was whether or not there was a person here locally, since I believe the defendants are here locally. They don't have a local CPA who is in charge of the estate.

MR. VIE: That's correct, Your Honor.

THE COURT: That would be Anita herself.

And then as far as the tax returns and all that annually which goes on, whether you got money or not, that would be done by the accountant in --

MR. VIE: Sioux City, Iowa.

THE COURT: Yeah, in Iowa.

And excuse me. What were you about to say? You disagree with what, Ms. Curtis?

MS. CURTIS: I disagree with allowing Rick Rickers, who is --

THE COURT: Is that the attorney?

MS. CURTIS: -- our cousin. He's the accountant in Iowa.

THE COURT: He's your cousin?

MS. CURTIS: He's our cousin.

THE COURT: Okay.

MS. CURTIS: He is also apparently the manager of the farm, and he began to file the tax returns --

THE COURT: I've already said probably enough to give you some pause, to allay those concerns. But these are other reasons why he should not be doing accounting. He has a conflict of interest.

MS. CURTIS: One reason why he should not be doing the accounting is because I have reason to believe that the farm lease, taking it away from the buyers, who were my father's very close friends, was notarized with a signature that was not my father's. I have not been able to look at that yet. I only have emails that purport that, but I would like to get copies of those.

THE COURT: Let me address a couple of things.

First of all, when we don't have information,

we can imagine a lot of things that may or may not be true, Okay?

MS. CURTIS: Yes.

THE COURT: That could be. I mean, all kind of thoughts and ideas go through our head when they don't have the information.

Here's what this Court cannot do. This Court cannot chase after each of your concerns. You have got enough money, you can hire anybody you want to do any kind of investigation you want done.

What I intend to do based upon the mandate from the circuit court is to try to address the concerns that you have. And they just can't be accusations, and I don't have any interest -- when I say I don't have any interest, I have an interest in outcomes, but I don't have an interest in the case so that I'm supposed to be doing things that would accomplish something for you except upon your filed documents. It's in your best interest, and I think I talked to you on the phone conference --

MR. VIE: Yes.

THE COURT: -- with both of you on the phone as well, that really this is not a matter that you should be trying to handle yourself. You should hire an attorney to do it for you, or at least part of it for you.

Now, I believe that it's in the Court's best

interest to preserve the assets of the estate and to bring to a point a going-forward process that this Court appoint someone to do an accounting of the assets and then make that accounting to the Court.

Now, you don't have to agree with me, but it's going to be an accounting of what the assets are. Whether something has been taken or mismanaged or mishandled is not going to be a part -- that's not the kind of accounting that's going to go on here.

What is, and that is what's invested, where it's invested and how it's invested is going to be the Court's concern. Once that accounting is in place, the question is whether or not the Court is going to be required or whether or not Ms. Brunsting will go forward in her capacity or not.

If she fails, then the Court will direct or put someone else in that position to do that, to move into this area or division so that the assets can be distributed or whatever beneficiaries. That's where I am in this case, and that's where the circuit court I believe has me. So I think it's in all of our best interest to appreciate this process.

In light of that, the Court is of the opinion that there are no expenditures that should be made unless they're made upon the approval of the Court. So, in other words, if Mr., up in Utah --

MR. VIEW: Iowa.

MS. CURTIS: Rickers in Iowa.

THE COURT: Mr. Rickers needs to pay the farmer. We used to call those sharecroppers sort of. It's a kind of a sharecropper thing where someone comes in farms the land and you get a percentage of it. If Mr. Rickers and the sharecroppers and others need to pay out bills and things, they should be petitioning the Court for that. That's where we are now.

We're at a point where I'm going to have to take charge in order to make sure that what I am doing has sanctity and has, well, trust going forward. What I am going to do is simply to try to make sure that the parties are all going to have equal standing and footing in this process. So that's part of what I am going to do. I'm going to enter an injunction in that regard.

Now, anybody who claims they want to bill the estate for something, whether it's lawyers or not, I am concerned about whether or not your bill should be paid by the estate because of this circumstance.

MR. VIE: I understand.

THE COURT: If the parties are going to agree, if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who

will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate.

It would not include Curtis because I am not going to be involved in the litigation of whether or not this is a good trust or not. I'm going to presume that it's a good trust, and I am going to go forward from there. If Curtis proves otherwise, he can get that money from the lawyers, and that would be certainly to his advantage or benefit.

MS. CURTIS: Are you talking about my brother Carl?

THE COURT: Yes. I said Curtis. I meant Carl. I apologize. You can see I'm struggling here.

MS. CURTIS: Too many C's.

MR. VIE: For the record, is it 90 days, Your Honor?

THE COURT: Yeah. I said we should try to wrap this up in 90 days, but I believe that if I appoint -- and you can suggest someone. I don't know if you know someone. Just give me a couple names. If not, I will designate someone to do this and enter an order to that effect.

It may be that because of the lack of trust that it may not need to be, unless both of you are designating somebody that you can agree upon, it may be better for me to have some person independent of the sides unless you all can agree upon the person or firm that should take care of this business.

MR. VIE: So we will get together and try to arrive at an agreed CPA that could provide the accounting the Court requests.

THE COURT: Sure. And we have a lot of them here in Houston just like we got -- I don't know anybody in California, but I want somebody I have got some jurisdiction over.

MR. VIEW: So if we're unable to do so we'll notify the Court we were unable to reach an agreement?

THE COURT: Sure. And you need to do that by the end of the week.

MR. VIEW: Yes, Your Honor.

THE COURT: You are going to be here what, today?

MS. CURTIS: I leave at 4:00 o'clock.

THE COURT: 4:00 o'clock today. Well, then you need to talk fast and see if you all can agree. Maybe you should talk over lunch. That way you can kind of size each other up. Eating together sometimes brings out good things.

And so, if you will do that by the end of the week, I will then prepare an order entering a temporary retraining order against the expenditure of any funds. Notice will be not just to you but to you in terms of Anita because I think she holds the purse in this situation. If there is any money to be paid to anybody up in Utah or anyplace else, she would be person who would authorize it or

do it.

The accountant isn't do it, as I understand it, right?

MR. VIE: No. He is just preparing the necessary documents.

THE COURT: Right. So the purse strings here in Houston, she can certainly prepare through you whatever documents are necessary for parties to be paid.

MR. VIEW: Yes, Your Honor.

THE COURT: And then hopefully that report can get done in 30 or 40 days, and then we can have a hearing. If there is some dispute about summary areas of the report, we can have a hearing about that. If there is a memorandum or recommendation as relates to how to go forward with this "asset trust," that is the distribution, we can do that.

If the parties can reach an accommodation as to how those assets ought to be dealt with, how silent a trust and they all sign off on it, we can do that. It's just a matter of how you want to do it. The trust is not going to control unless you want it to control at this point.

MR. VIE: Yes, Your Honor.

THE COURT: Under the circumstances, it seems to me there's going to be a continuous bickering and mistrust.

Anything else?

MS. CURTIS: No, Your Honor.

MR. VIEW: No, Your Honor.

THE COURT: Let me have Ms. Anita Brunsting come forward.

Good morning. Did you drop something on your foot?

MS. BRUNSTING: I broke my foot.

THE COURT: Raise your right hand.

Do you solemnly swear or affirm that any testimony you will give in this case will be the truth, the whole truth, nothing but the truth so help you God?

MS. BRUNSTING: I swear.

THE COURT: You've heard the discussion here in the courtroom, have you not?

MS. BRUNSTING: (Indicating in the affirmative.)

THE COURT: And I know that you have got counsel, and you can speak with him about the implications and concerns that the Court has about making sure that the assets are accounted for. And you certainly can work through him on any matters that you need to address to the Court. And, of course, counsel understands that he is to communicate both with the Court and with Ms. Curtis on any matters that he is presenting to the Court.

Is there any question about anything I have said -- I don't mean disagreement because you can certainly disagree with me about anything -- but is there any question

that you might have about anything I've said that you need me to answer, or certainly you have your attorney present.

MS. BRUNSTING: I need the trust account to pay. I've got the forms from the CPA. Can I move forward on that?

THE COURT: I think you should probably file a short motion and simply serve a copy of it on opposing counsel, Ms. Curtis, and forward it with a short order to me, and that wouldn't be a problem. This should be based upon the tax forms.

MR. VIE: Yes, sir.

And in terms of notice to the Court -- I'm sorry, not notice to the Court, the Court directing notice, do I notify the other beneficiaries?

THE COURT: Absolutely.

MR. VIE: Okay.

THE COURT: Even though they're not a party, they are beneficiaries and we should keep them in the loop.

MR. VIEW: I just wanted to bring that up.

THE COURT: Yeah. Should be in the loop because it doesn't make sense for us to have to go back and pull them forward a month.

MR. VIE: I will prepare appropriate submissions for payments that I would like. If the Court will approve it, then the trustee will make the payments.

THE COURT: Are these to be paid on or before April

15th or is there another cycle?

MS. BRUNSTING: No, by April 15th.

THE COURT: All right. So either they will get to me on Thursday or whatever, and I'll sign off on them, on the motion and the order, and that shouldn't be a problem.

You are not going to have to liquidate any assets to deal with that, are you?

MS. BRUNSTING: No. We have a checking account with enough that I can pay it.

THE COURT: Right.

MS. BRUNSTING: What about any incoming? The farm is rented, so we get a check twice a year.

THE COURT: Your function and role is to make those deposits as they come in.

MS. BRUNSTING: So I can continue to deposit them?

THE COURT: Continue depositing. All I am trying to do is control the outgo. What comes in as an expense is what counsel needs to see, and they have a proper and appropriate motion.

And if these things come in -- if this is a once a month kind of sit down and write out the bills kind of thing, then that's the way he should probably handle it. At some point just sit down and you prepare a list of things that you need to have done and certainly provide the forms or whatever you need.

MR. VIE: Yes, Your Honor.

MS. BRUNSTING: Okay.

THE COURT: All right. Thank you very much.

All right, counsel. That's all I have. And I'll prepare an order and get it out perhaps by tomorrow afternoon. There should not and in my opinion will not need to be a bond posted. These are parties of equal status as it relates to the assets, so no bond is going to be required.

I think, Ms. Curtis, you need to follow my advice. At some point consider getting an attorney, someone you trust to work with you, all right.

Okay. Thank you very much.

MR. VIE: Thank you, Your Honor.

(Conclusion of Proceedings)

CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 53 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 9th day of April, 2013.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 5th day of August, A.D., 2013.

_____
Fred Warner, CSR
Official Court Reporter

# Exhibit 16

Notice of Filing of Injunction and Report of Master

DATA-ENTRY
PICK UP THIS DATE

FILED
2/6/2015 10:56:10 AM
Stan Stanart
County Clerk
Harris County

02102015 0838 P0134
02102015 1338 P0002

PROBATE COURT 4

CAUSE NO. 412,249-402

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

## NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files certified copies of an Injunction and Report of Master and would show the Court as follows:

1.

Plaintiff originally filed her Original Petition in the United States District Court for the Souther District of Texas, Houston Division, under Civil Action No. 4:12-CV-592. On April 19, 2013, the United States District Court entered a Memorandum and Order Preliminary Injunction in which it found that Anita Kay Brunsting and Amy Ruth Brunsting as Trustees had failed to act in accordance with the duties required by the Trust and enjoined them from disbursing any funds from any Trust accounts without prior permission of the court. *See* Ex. A, Memorandum and Order Preliminary Injunction. In that same order, the court determined to appoint an independent firm or account to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. *See* Ex A, Memorandum and Order Preliminary Injunction. Ultimately court appointed CPA William G. West filed his Report of Master dated July 31, 2013. *See* Ex. B, Report of Master.

2.

On May 15, 2014, the United States District Court entered an order transferring Civil Action 4:12-CV-00592 into Harris County Probate Court Number Four, Cause Number 412,249. *See* Ex.

Not Official Document

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C, Remand Order. That Order Granting Remand specifically provided that all ordered rendered by the United States District Court would carry the same force and effect the remand that they would have had if a remand had not been ordered. *See* Ex. C, Remand Order. This Court accepted the United States District Court Order of Remand June 3, 2014. *See* Order of Transfer, Court's file. As such, this Court has accepted the Injunction entered by the United States District Court.

3.

Plaintiff now files Exhibits A and B to make them part of the Court's record, having already been accepted via the May 15, 2014 and June 3, 2014 Remand and Transfer Orders.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Candace Curtis respectfully prays for such further relief to which she may show herself justly entitled.

Respectfully submitted,

ostrommorris, PLLC

BY: _____

JASON B. OSTROM
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Attorneys for Plaintiff

02112015:1339:P0003

NOT A TRUE COPY

02102015:0838:P0136

02112015:1339:P0004

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 6th day of February, 2015:

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

Mr. Bradley Featherston
1155 Dairy Ashford Street, Suite 104
Houston, Texas 77079
281.759.3213
281.759.3214 (Facsimile)

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

Mr. Neal Spielman
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124
281.870.1647 (Facsimile)

Jason B. Ostrom/
Nicole Sain Thornton

02102015:0859:P0137
02102015:1539:P0005

# Exhibit A

02102015:0838:P0138

02112015:1339:P0006

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TRUE COPY I CERTIFY
ATTEST:
DAVID J. BRADLEY, Clerk of Court
By M. Flores
Clerk

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**MEMORANDUM AND ORDER**
**PRELIMINARY INJUNCTION**

## I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

## II. BACKGROUND

### *A. Procedural Background*

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a



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recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

***B. Contentions of the Parties***

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,

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the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

## III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway,* 489 F.2d at 572-73.

## IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

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presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

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.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

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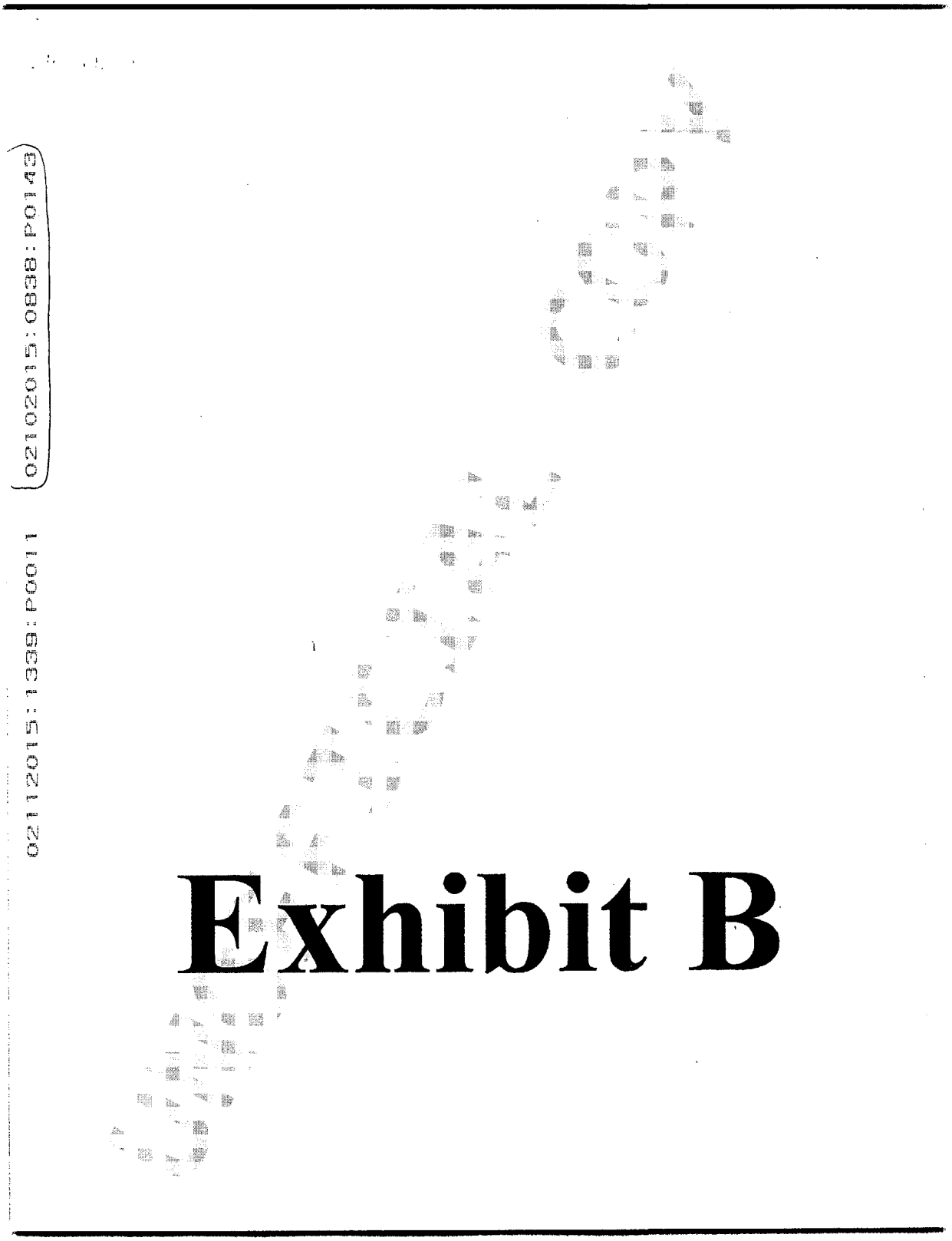
In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge




# Exhibit B

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TRUE COPY I CERTIFY
ATTEST:
DAVID J. BRADLEY, Clerk of Court
By M. Flores
Deputy Clerk

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| **IN RE:** | § | |
| | § | |
| **CANDACE LOUISE CURTIS** | § | **CIVIL ACTION NO. 4:12-CV-592** |
| **Plaintiff** | § | |
| | § | |
| **VS.** | § | |
| | § | |
| **ANITA KAY BRUNSTING, et al,** | § | |
| **Defendants** | § | |

02102015:1359:P0012

# REPORT OF MASTER

## ACCOUNTING OF INCOME/RECEIPTS AND EXPENSES/DISTRIBUTIONS OF THE BRUNSTING FAMILY LIVING TRUST FOR THE PERIOD DECEMBER 21, 2010 THROUGH May 31, 2013

**Report of William G. West, CPA**
**William G. West, P.C.**

**Dated July 31, 2013**

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**REPORT OF ACCOUNTING OF INCOME/RECEIPTS AND EXPENSES/DISTRIBUTIONS OF THE BRUNSTING FAMILY LIVING TRUST**

**Index**


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**Exhibits**

1. Statement of Income/Receipts and Expenses/Distributions for the period December 21, 2010 through May 31, 2013
2. Detail of Accounts for the period December 21, 2010 through May 31, 2013
3. Stock Distribution Analysis

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## I. Introduction

On February 27, 2012, Candace Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress, alleging that the Brunsting Defendants acting as trustees for their parents' trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments and refused to account for trust assets, or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. The Plaintiff filed a notice of appeal. On January 30, 2013, the Fifth Circuit Court of Appeals reversed the dismissal. On April 19, 2013, the District Court issued a memorandum and order for preliminary injunction. In the order, the Court ordered the appointment of an independent firm or accountant to gather the financial records of the trust and provide an accounting of the income and expenses of the trust since December 21, 2010. The defendants were ordered to cooperate with the accountant in the process. On May 9, 2013, the Court ordered the appointment of William G. West as master to perform an accounting. Though the injunction order was signed in April, the master received substantial records through May 31, 2013, and has used that date as the ending date for the report. Therefore, the report covers the time period of December 21, 2010, through May 31, 2013, except for any periods for which information was not received as noted later in this report.

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**II. Time Line of Records Received**

On or about April 18, 2013, the accounting firm of William G. West, P.C., C.P.A. ("West") was contacted by the court concerning the preparation of the report contained herein since the parties to the suit had not mutually agreed upon the selection of an accountant. After discussing the case with the Judge and a conflict check, West agreed to accept the appointment. West then instructed his attorney to draft and prepare an order appointing him as master to perform an accounting of the income and expenses of the trust since December 21, 2010. This order was signed on May 9, 2013. Shortly thereafter, West reviewed the court docket and read certain pleadings filed in the case. On May 22, 2013, West contacted the attorney for the defendants, Mr. George Vie ("Vie"), to schedule a meeting to discuss the records and the collection of them. On May 29, 2013, West went to Vie's office for the meeting. At the meeting West was given a box of paper records containing bank statements, brokerage statements, statements for dividend reinvestment accounts and tax returns. He was also given a CD which were said to contain pdf copies of most of these records. West was also given a listing of records being turned over and those statements missing or not yet obtained. West was told the missing records were in the process of being obtained. West also requested copies of any electronic accounting or bookkeeping files the defendants may have for the trust. Subsequently, on or about June 4, 2013, West was emailed some Quicken accounting program files which he was able to successfully download and open in order to review. On or about June 6, 2013, West received additional records from Vie. During this time West contacted the plaintiff to discuss the case with her and request copies of any records of the trust she may have in her possession. Towards the end of June, West

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contacted Vie for an update on the status of the receipt of missing records which had yet to be produced. Additional records were promised in the near future. On or about July 1st West received emails from the plaintiff containing pdf copies of various records. West found, that for the most part, he had these records already from Vie (the plaintiff had told West beforehand that most of the records she had, in fact, came from the defendants' attorney, except some her brother had given her). On July 5th Vie sent additional records to West (and pdf copies of same on CD). After review of these records received on July 5th, West sent an email to Vie inquiring as to when additional records would be received. West specifically addressed his concern that there were many bank disbursements for which he had no copies of cancelled checks or paid bill invoices to document said disbursements. On July 15, 2013, West sent another email addressing this same issue and received a letter from Vie in explanation of certain distributions. On July 24, 2013, Vie forwarded several more missing bank statements. Up until the submittal date of this report, West communicated with Vie for clarification on certain deposits or disbursements.

**III. Work Performed by Accountants**

Upon receipt of the first batch of records from Vie, West had his staff reconcile the paper records received with those in pdf on the CD and with the scheduled listing of records turned over and those not yet turned over. When the Quicken files were received and opened, they were download, reviewed and converted into excel spreadsheets for use by West's staff. It is West's opinion that the Quicken files kept by the defendant(s) were more for use as an electronic checkbook to keep bank balances as opposed to a more fully integrated bookkeeping system. To some extent the Quicken files did serve as

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an outline for the subsequent work done by West. West set up a client account in QuickBooks to serve as an accounting database to compile the income and expense report for the trust. Once the chart of accounts was set up, all of the cash receipt and cash disbursement activity reflected on the Quicken files and bank statements were entered into QuickBooks. Some of the disbursements from the bank accounts did not have cancelled checks associated with the bank statements. A great many disbursements did not have support to document them reflecting the recipient, what was being paid for and the like. West had to rely on descriptions he found in the Quicken records, bank statements or elsewhere in the documents given to him. West has also relied on information/explanations supplied to him in a letter by the defendants' attorney dated July 15, 2013. In summary, West was not given unrelated third party documentation for many of the disbursements run through the bank accounts. The entry of these receipts and disbursements was extremely time consuming; Approximately a thousand entries were made into the QuickBooks database in order to record them. These entries were made only after reviewing related documents provided and ascertaining how best to record the entries. Additionally, paid bills or invoices, if present for reviewing, were compared to the bank disbursements.

West was also given brokerage account statements for three Edward Jones accounts and twelve dividend reinvestment accounts for either Chevron or ExxonMobil. West's staff had to do a reconciliation of monthly or quarterly reports for each account and/or transfers between them. This activity was entered via journal entries. The entry of these stock type accounts was also extremely time consuming, approximately five hundred entries were made into the QuickBooks database in order to record them after a careful

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review and analysis of the respective account statements covering a two and a half year time frame. Numerous work papers were prepared to analyze: 1. transfers between accounts; 2. stock dividends reinvested; and, 3. stocks which were either sold or distributed.

West has used his best judgment in classifying the receipts and disbursements into account categories on the income and expense report. West requested that the defendants provide him with all the accounting information of the trust(s) and he is relying upon the belief they have complied and there are no other available records to be turned over. West has relied on the information given to him and interpreted as best he could. West reserves the right to amend the report as needed as new and additional information becomes available.

**IV. Summary of Accounts Reviewed**

For the purposes of this Report, the following bank and stock accounts activity for the applicable periods have been recorded for the preparation of the income and expense report contained herein:

Bank of America account # [redacted]-1143

Bank of America account # [redacted]-3523

Bank of America account # [redacted]-8577

Bank of America account # [redacted]-9546

Bank of America account # [redacted]-6643

Bank of America account # [redacted]-3536

Edward Jones account # [redacted]5-1-6

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Edward Jones account # [redacted]6-1-9

Edward Jones account # [redacted]9-1-8

Chevron dividend reinvestment account (Bank of New York)

Chevron dividend reinvestment account # C[redacted]9415

Chevron dividend reinvestment account # C[redacted]9407

Chevron dividend reinvestment account # C[redacted]9423

John Deere dividend reinvestment account

ExxonMobil dividend reinvestment account # C[redacted]0102

ExxonMobil dividend reinvestment account # C[redacted]6261

ExxonMobil dividend reinvestment account # C[redacted]6287

ExxonMobil dividend reinvestment account # C[redacted]7769

ExxonMobil dividend reinvestment account # C[redacted]7777

ExxonMobil dividend reinvestment account # C[redacted]3319

ExxonMobil dividend reinvestment account # C[redacted]3301

**V. *Report Exceptions and Missing Documents***

In our review, we noted that we did not receive copies of approximately thirteen checks. We relied upon other information provided by the defendants to reflect the payee and categorize the type of expense incurred. We were supplied with a limited number of paid bills and invoices supporting many of the disbursements and payments made. Again we relied on the various types of information provided to us to categorize the type of expense paid. We did not receive monthly statements for payments made on a Bank of America credit card. These payments are reflected in summary on the report (Exhibit 1) and also in

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the detail of accounts (Exhibit 2). The categorization of these payments can be amended should the statements and supporting documents be received.

The following account statements were not received and the activity for the periods has not been recorded in the report:

Bank of America checking accounting #[redacted]-9546, 12/14/2011 to 5/31/13.

Edward Jones account #[redacted]5-1-6, 4/26/2013 to 5/31/2013.

Chevron dividend reinvestment account #[redacted]9423 12/31/2011 to 5/31/2013

ExxonMobil dividend reinvestment account #[redacted]6287 9/30/2012 to 5/31/2013

John Deere dividend reinvestment account (summary provided, but no monthly reports)

Met Life dividend reinvestment account (summary provided, but no monthly reports)

**VI. Stock Distributed/Dividend Reinvestment Account Information**

During the period, a number of Dividend Reinvestment Accounts ("DRP") were maintained. The information we received included accounts with Chevron Corporation ("CVX") shares, Exxon/Mobil Corporation ("XOM") shares, Deere and Company ("DE") shares and MetLife Inc ("MET") shares. When shares were distributed to the beneficiaries or parties in interest, the transaction was accounted for on the QuickBooks database at the fair market value at the time of the distribution or transfer. The fair market value was determined from historical records of stock prices at the close of the date of the transaction. These amounts may or may not be the actual amounts realized by the individuals receiving the stock. Please refer to Exhibit 3 in relation to this section.

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At the beginning of the review period, there were 1,292.2088 shares of CVX and 4,010.20048 shares of XOM according to the records we received. According to account information provided to us 95 shares of MET were attributable to the estate and 9.5807 shares of DE were never transferred to the Nelva Brunsting Survivor's Trust.

During the review period, 675 shares of CVX were transferred as follows:

Anita Brunsting received 135 shares
Ann Brunsting UGMA received 135 shares
Jack Brunsting UGMA received 135 shares
Katie Riley UGMA received 135 shares
Luke Riley received 135 shares.

During the review period, 2,675 shares of XOM were transferred as follows:

Amy Brunsting received 1,120 shares
Carole Brunsting received 1,325 shares
Anita Brunsting received 160 shares
Candy Curtis received 160 shares.

Dividends were reinvested in stocks purchased at the fair market values at the time of the transactions as follows:

CVX shares purchased were 84.83095
XOM shares purchased were 60.51429
DE shares purchased were 0.04946

Partial shares were sold as follows:

XOM shares sold were 0.79847
DE shares sold were 0.9117

612 CVX shares were maintained in an account not under control of Anita Brunsting at the beginning of the review period, but were eventually transferred into the main CVX DRP account. A final accounting of 37.131 shares of CVX stock could not be determined since reports after 12/31/2011 were unavailable for one of the DRP accounts.

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4.42786 shares of XOM were unaccounted for because reports after 9/30/2012 were unavailable from one of the DRP accounts.

95 shares of MET were attributed to the trust information, however the only reports reflecting information on these shares were dated late in the review period and did not show whether the shares were available to the estate at the beginning of the period.

Only 0.04946 shares of DE were attributed to the estate at the end of the period. No reports reflected the balance as of the beginning of the period and 8.669 shares were not accounted for during the period.

At the end of the review period, 1,276.88344 shares of CVX, 1,300.25643 shares of XOM, 0.04946 shares of DE and 95 shares of MET were available to the trust.

**VII. Comments on Certain Accounts**

In the Income/Receipts section of the report there are accounts titled *Long Term Capital Gains– Funds and Short Term Capital Gains– Funds.* These amounts do not represent sales made by the Trust, per se, but rather sales of securities made by stock or bond funds held in the Trust accounts and then passed on to the Trust.

In the Expense/Distributions section of the report there is an account titled *Cash/Check to Family Members*. This account represents cash, checks, electronic fund transfers paid or sent to family members or payments made for the benefit of family members, as best as West could ascertain. In Exhibit 2, the detail of accounts, there is a

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listing of the payments found that fit this account category. In the information provided to West, *many* of the payments are noted as *reimbursement* to family members for expenses (trustee fees, legal fees, repairs, work performed, etc.) incurred on behalf of the trust and are noted as such in the memo section of the detail of accounts. Also the July 15, 2013, letter from Vie in explanation of certain distributions is referenced here in regard to certain distributions. It is important to note this section lists distributions out of bank accounts to or for the benefit of family members. It does not list distributions of stock which are listed separately in the last section of the Statement of Income/Receipts and Expenses/Distributions and the related Section VI above and in Exhibit 3.

An account titled *Payments to Credit Cards* is included in the Expense/Distributions section of the report. This account reflects payments made on credit cards for which we could not find supporting documentation *or* ascertain how the amounts should be allocated to other Expense/Disbursement accounts. Section V above addresses Bank of America credit card payments and lack of statements and supporting documents. There were also payments to a Bluebonnet credit card account (also referenced as "Cardmember Services" in information given to us), for which we were given monthly statements and some supporting documentation. Due to the general lack of supporting documents for these payments they have been placed into this account.

**VIII. Summation**

In this case I have been asked to prepare an accounting to help the Court consider the issues in dispute. I have undertaken an analysis of the books and records provided to me. It

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is my belief that all my requests for information from the various parties were reasonable and that I made it clear I wanted all available records. This report has been based on all records received to date. The report can be amended should additional records be received if so directed by the Court. This report has been made in good faith.

Respectfully submitted on this 31st day of July, 2013.

**William G. West**

William G West

12345 Jones Rd., Suite 120
Houston, TX 77070

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# EXHIBIT 1

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**Brunsting Family Living Trust**

## Statement of Income/Receipts & Expenses/Disbursements

**December 21, 2010 through May 31, 2013**

| | |
|---|---|
| **Income/Receipts** | |
| Farm/Rental Income | $127,790.41 |
| Investment Income | |
| Dividend Income | 28,321.46 |
| Interest Income | 3,085.05 |
| Long Term Capital Gains - Funds | 1,047.31 |
| Short Term Capital Gains- Funds | 489.10 |
| Stock Sales less Broker Fees | 183,662.79 |
| Total Investment Income | 216,605.71 |
| Miscellaneous Income | 6,460.73 |
| Pension Income | 8,303.58 |
| Proceeds from Sale of Home | 433,392.05 |
| Social Security Income | 17,800.00 |
| Tax Refunds | 19,816.87 |
| Total Income/Receipts | 830,169.35 |
| **Expenses/Disbursements** | |
| Automobile Expense | 2,965.76 |
| Bank & Brokerage Charges | 8,540.62 |
| Checks/Cash to Family Members | 108,924.91 |
| Dues and Subscriptions | 278.47 |
| Food/Dining/Groceries | 5,958.67 |
| Funeral | 3,556.29 |
| Household | 1,237.20 |
| Insurance Expense | 4,737.88 |
| Lawn Care | 1,262.00 |
| Legal Fees | 36,312.44 |
| Medical Expenses | |
| In Home Care | 119,232.61 |
| Medical Supplies | 65.47 |
| Medical Expenses - Other | 2,568.98 |
| Total Medical Expenses | 121,867.06 |
| Miscellaneous Expenses | 6,753.72 |
| Office Supplies | 63.70 |
| Payments to Credit Cards | |
| Bank of America Credit Cards | 14,042.99 |
| Bluebonnet Credit Union Cred Cd | 11,986.96 |
| Total Payments to Credit Cards | 26,029.95 |



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**Brunsting Family Living Trust**

## Statement of Income/Receipts & Expenses/Disbursements

**December 21, 2010 through May 31, 2013**

| | |
|---|---|
| **Personal Care** | 798.14 |
| **Pet Care** | |
| **Pet Food and Supplies** | 69.68 |
| **Veterinary Expenses** | 1,976.24 |
| **Total Pet Care** | 2,045.92 |
| **Postage** | 78.15 |
| **Professional Fees** | 7,563.86 |
| **Repairs and Maintenance** | 783.31 |
| **Supplies** | 29.83 |
| **Taxes** | |
| **Taxes - Federal** | 53,416.00 |
| **Taxes - Property** | 9,811.99 |
| **Taxes - State** | 4,793.00 |
| **Total Taxes** | 68,020.99 |
| **Telephone Expense** | 4,519.17 |
| **Utilities** | |
| **Cable TV** | 776.41 |
| **Electricity** | 2,259.90 |
| **Gas** | 942.66 |
| **Water** | 2,537.22 |
| **Total Utilities** | 6,516.19 |
| **Total Expenses/Disbursements** | 418,844.23 |
| **Net of Income/Receipts & Expenses/Disbursements** | 411,325.12 |
| **Less Stock Distributed to Family Members** | |
| **Value of Stock Transferred Out** | 298,976.80 |
| **Net of Income/Receipts & Expenses/Disbursements Less Value of Stock Distributed** | **$112,348.32** |

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# EXHIBIT 2

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## Brunsting Family Living Trust
## Detail of Accounts
12/21/2010-05/31/2013

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Ordinary Income/Expense | | | | | | | |
| Income | | | | | | | |
| Farm/Rental Income | | | | | | | |
| General Journal | 3/1/2011 | EJ20120458 | | Invest Inc - Farm | Nelva | 15,540.40 | 15,540.40 |
| General Journal | 9/29/2011 | EJ20120476 | | Farm Inc - Invest Inc | Nelva | 15,510.00 | 31,050.40 |
| General Journal | 10/5/2012 | EJ20120442 | | Farm Rent | Elmer | 26,437.50 | 57,487.90 |
| General Journal | 1/1/2013 | EJ20120437 | | Farm Rent | Elmer | 13,902.51 | 71,390.41 |
| General Journal | 3/2/2013 | EJ20120450 | | Farm Rent | Elmer | 29,962.50 | 101,352.91 |
| General Journal | 3/5/2013 | EJ20120438 | | Farm Rent | Elmer | 26,437.50 | 127,790.41 |
| Total Farm/Rental Income | | | | | | 127,790.41 | 127,790.41 |
| Investment Income | | | | | | | |
| Dividend Income | | | | | | | |
| General Journal | 12/21/2010 | EJ20101223 | | Dividends on Capital Income Builder Fund A | Survivor | 60.19 | 60.19 |
| General Journal | 12/22/2010 | EJ20101212 | | Dividends on Dodge & Cox Intl Stock Fund | Elmer | 368.36 | 428.55 |
| General Journal | 12/22/2010 | EJ20101212 | | Dividends on Dodge & Cox Income Fund | Elmer | 325.77 | 754.32 |
| General Journal | 12/27/2010 | EJ20101213 | | Dividend on Investment Co of America Cl F1 | Elmer | 112.43 | 866.75 |
| General Journal | 12/27/2010 | EJ20101213 | | Dividend on Pioneer Fund Cl Y | Elmer | 62.73 | 929.48 |
| General Journal | 12/28/2010 | EJ20101214 | | Dividend on New World Fund Cl F1 | Elmer | 77.32 | 1,006.80 |
| General Journal | 12/30/2010 | EJ20101215 | | Dividend on Oppnhmr Cmd Strat Tl Rtn Cl Y | Elmer | 200.58 | 1,207.38 |
| General Journal | 12/31/2010 | EJ20101216 | | Dividend from Oppenheimer Intl Bond Fund Y | Elmer | 33.39 | 1,240.77 |
| General Journal | 12/31/2010 | EJ20101218 | | Dividend on Money Market | Elmer | 0.01 | 1,240.78 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in Fed Money Market Inst Cl | Elmer | 0.05 | 1,240.83 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in DWS Small Cap Value Fund Instl | Elmer | 4.39 | 1,245.22 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in ING Global Real Estate Fund I | Elmer | 146.39 | 1,391.61 |
| General Journal | 1/3/2011 | EJ20110106 | | Dividends Reinvested in JPMorgan Core Bond Fund | Elmer | 78.79 | 1,470.40 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in JP Morgan High Yield Fd | Elmer | 35.40 | 1,505.80 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in T Rowe Price New Inc Fd | Elmer | 73.83 | 1,579.63 |
| General Journal | 1/28/2011 | EJ20110128 | | Dividends on Dow Chemical Co | Survivor | 24.60 | 1,604.23 |
| General Journal | 1/31/2011 | EJ20110130 | | Dividends on Stryker Corp | Survivor | 33.51 | 1,637.74 |
| General Journal | 2/1/2011 | EJ 20110201 | | Dividends on Deere & Co Stk | Survivor | 573.65 | 2,211.39 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from JPMorgan Core Bond Fund | Elmer | 75.01 | 2,286.40 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from JPMorgan High Yield Fund | Elmer | 31.82 | 2,318.22 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from Oppenheimer Intl Bond Fund | Elmer | 26.65 | 2,344.87 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from T Rowe Price New Income Fund | Elmer | 63.83 | 2,408.70 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on JPMorgan Core Bond Fund | Elmer | 73.22 | 2,481.92 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on JPMorgan High YieldFd | Elmer | 28.77 | 2,510.69 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 25.14 | 2,535.83 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on T Rowe Price New Income Fund | Elmer | 66.69 | 2,602.52 |
| General Journal | 3/7/2011 | EJ20110304 | | Dividend on Investment Co of America Cl F1 | Elmer | 81.32 | 2,683.84 |
| General Journal | 3/10/2011 | EJ20110321 | | Dividends on Chevron Corp | Survivor | 66.96 | 2,750.80 |
| General Journal | 3/11/2011 | DR12110301 | | Dividends on Chevron Stock | Family | 930.39 | 3,681.19 |
| General Journal | 3/21/2011 | EJ20110322 | | Dividends on Capital Income Builder Fund A | Survivor | 40.69 | 3,721.88 |
| General Journal | 3/25/2011 | EJ20110307 | | Dividends on Columbia Mid Cap Value Fd Cl Z | Elmer | 5.86 | 3,727.74 |
| General Journal | 3/25/2011 | EJ20110307 | | Dividends on DWS Small Cap Value Fund Instl | Elmer | 29.55 | 3,757.29 |
| General Journal | 3/25/2011 | EJ20110307 | | Dividends on Pioneer Fund Cl Y | Elmer | 55.34 | 3,812.63 |
| General Journal | 3/28/2011 | EJ20110309 | | Dividends From Thornburg Invt Value Fd | Elmer | 4.67 | 3,817.30 |
| General Journal | 3/29/2011 | EJ20110310 | | Dividends from Dodge & Cox Income Fund | Elmer | 273.60 | 4,090.90 |
| General Journal | 3/30/2011 | EJ20110311 | | Dividends on T Rowe Price Equity Fd | Elmer | 68.64 | 4,159.54 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on JPMorgan Core Bond Fund | Elmer | 75.49 | 4,235.03 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on JPMorgan High Yield Fd | Elmer | 33.22 | 4,268.25 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on Oppenheimer Intl Bond Fund | Elmer | 26.87 | 4,295.12 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on T Rowe Price New Income Fund | Elmer | 66.69 | 4,361.81 |
| General Journal | 4/4/2011 | EJ20110402 | | Dividends on ING Global Real Estate Fund I | Elmer | 54.86 | 4,416.67 |
| General Journal | 4/29/2011 | EJ20110425 | | Dividends on Stryker Corp | Survivor | 33.62 | 4,450.29 |
| General Journal | 4/29/2011 | EJ20110425 | | Dividends on Dow Chemical Corp | Survivor | 24.60 | 4,474.89 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on Deere & Co | Survivor | 435.05 | 4,909.94 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on JPMorgan Core Bond Fund | Elmer | 73.68 | 4,983.62 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 34.05 | 5,017.67 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 27.64 | 5,045.31 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on T Rowe Price New Income Fund | Elmer | 72.37 | 5,117.68 |
| General Journal | 5/1/2011 | EJ20110601 | | Dividends on JPMorgan Core Bond Fund | Elmer | 75.94 | 5,193.62 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on JPMorgan High Yield Fund | Elmer | 33.56 | 5,227.18 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on Oppenheimer Intl Bond Fund | Elmer | 26.54 | 5,253.72 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on T Rowe Price New Income Fund | Elmer | 66.95 | 5,320.67 |
| General Journal | 6/10/2011 | EJ20110622 | | Dividend Reinvestment on XOM Stk 7777 | Survivor | 461.53 | 5,782.20 |
| General Journal | 6/10/2011 | EJ20110622 | | Dividend Reinvestment on CVX Stk | Nelva | 547.75 | 6,329.95 |
| General Journal | 6/10/2011 | EJ20110622 | | Dividend Reinvestment on CVX Stk 8415 | Elmer | 461.45 | 6,791.40 |
| General Journal | 6/13/2011 | EJ20110602 | | Dividends on Investment Co of America Cl F1 | Elmer | 81.34 | 6,872.74 |
| General Journal | 6/23/2011 | EJ20110603 | | Dividends on Columbia Mid Cap Value Fd Cl Z | Elmer | 13.58 | 6,886.32 |
| General Journal | 8/24/2011 | EJ20110605 | | Dividends on Pioneer Fund | Elmer | 70.20 | 6,956.52 |
| General Journal | 6/28/2011 | EJ20110608 | | Dividends on Dodge & Cox Income Fund | Elmer | 264.88 | 7,221.40 |
| General Journal | 6/29/2011 | EJ20110609 | | Dividends on T Rowe Price Equity Income Fd | Elmer | 83.36 | 7,304.76 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 71.68 | 7,376.44 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 30.38 | 7,406.82 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on Oppenheimer Intl Bond Fund | Elmer | 27.12 | 7,433.94 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on T Rowe Price New Income Fund | Elmer | 70.47 | 7,504.41 |
| General Journal | 7/5/2011 | EJ20110702 | | Dividends on ING Global Real Estate Fund I | Elmer | 52.94 | 7,557.35 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on Deere & Co | Survivor | 254.20 | 7,811.55 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 69.82 | 7,881.37 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 31.82 | 7,913.19 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 27.92 | 7,941.11 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on T Rowe Price New Income Fund | Elmer | 68.49 | 8,010.60 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 73.97 | 8,084.57 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 32.63 | 8,117.20 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 25.71 | 8,142.91 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on T Rowe Price New Income Fund | Elmer | 70.82 | 8,213.73 |
| General Journal | 9/9/2011 | EJ20110136 | | Exxon Invest Inc | Survivor | 274.01 | 8,487.74 |

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02112015:1339:P0030

# Brunsting Family Living Trust
## Detail of Accounts
### 12/21/2010-05/31/2013

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 9/9/2011 | EJ20110921 | | Dividend Reinvestment of XOM Stk 7777 | Survivor | 313.80 | 8,801.54 |
| General Journal | 9/9/2011 | EJ20110921 | | Dividend Reinvestment of Chevron Stk | Nelva | 28.50 | 8,830.04 |
| General Journal | 9/9/2011 | EJ20110921 | | Dividend Reinvestment of Chevron Stk 9415 | Elmer | 465.04 | 9,295.08 |
| General Journal | 9/19/2011 | EJ20110904 | | Dividends on Investment Co of America Cl F1 | Elmer | 83.95 | 9,379.03 |
| General Journal | 9/23/2011 | EJ20110908 | | Dividend on Pioneer Fund Cl Y | Elmer | 78.19 | 9,457.22 |
| General Journal | 9/27/2011 | EJ20110907 | | Dividends on Columbia Mid Cap Value Fd Cl Z | Elmer | 14.76 | 9,471.98 |
| General Journal | 9/28/2011 | EJ20110909 | | Dividends on Dodge & Cox Income Fund | Elmer | 186.06 | 9,658.04 |
| General Journal | 9/29/2011 | EJ20110910 | | Dividends on T Rowe Price Equity Income Fd | Elmer | 88.37 | 9,746.41 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 42.25 | 9,788.66 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 28.14 | 9,816.80 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 26.18 | 9,842.98 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on Pimco Tot Ret Fd IV Inst Cl | Elmer | 2.25 | 9,845.21 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on T Rowe Price New Income Fund | Elmer | 65.22 | 9,910.43 |
| General Journal | 10/4/2011 | EJ20111002 | | Dividends on ING Global Real Estate Fund I | Elmer | 49.75 | 9,960.18 |
| General Journal | 10/4/2011 | EJ20111002 | | Dividends on Loomis Sayles Invt Grade Bd Y | Elmer | 27.14 | 9,987.32 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on Deere & Co | Survivor | 254.20 | 10,241.52 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 42.38 | 10,283.90 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 27.09 | 10,310.99 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 22.68 | 10,333.67 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on Pimco Tot Ret Fd IV Inst Cl | Elmer | 10.42 | 10,344.09 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on T Rowe Price New Income Fund | Elmer | 50.00 | 10,394.09 |
| General Journal | 11/2/2011 | EJ20111102 | | Dividends on Loomis Sayles Invt Grade Bd Y | Elmer | 28.43 | 10,422.52 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on JP Morgan Core Bond | Elmer | 40.15 | 10,462.67 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on JP Morgan High Yield | Elmer | 29.67 | 10,492.34 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on Oppenheimer Intl Bd | Elmer | 23.27 | 10,515.61 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on Pimco Total Return IV | Elmer | 13.84 | 10,529.45 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on T Rowe Price New Income | Elmer | 50.92 | 10,580.37 |
| General Journal | 12/2/2011 | EJ20111213 | | Dividend on Loomis Sayles Inv Grade Bd | Elmer | 28.43 | 10,608.80 |
| General Journal | 12/8/2011 | EJ20110152 | | Exxon Div Income | Survivor | 274.01 | 10,882.81 |
| General Journal | 12/8/2011 | EJ20111215 | | Dividend on MFS Research International | Elmer | 335.71 | 11,218.52 |
| General Journal | 12/8/2011 | EJ20111221 | | Dividend Reinvestment of XOM Stk 7777 | Survivor | 315.83 | 11,534.35 |
| General Journal | 12/8/2011 | EJ20111221 | | Dividend Reinvestment of Chevron Stk | Nelva | 29.84 | 11,564.19 |
| General Journal | 12/8/2011 | EJ20111221 | | Dividend Reinvestment of Chevron Stk 9415 | Elmer | 487.02 | 12,051.21 |
| General Journal | 12/13/2011 | EJ20111216 | | Dividend on Columbia Mid Cap Value | Elmer | 26.01 | 12,077.22 |
| General Journal | 12/14/2011 | EJ20111217 | | Dividend on T Rowe Price Equity Income | Elmer | 95.96 | 12,173.18 |
| General Journal | 12/20/2011 | EJ20111220 | | Dividend on DWS Small Cap Value | Elmer | 66.58 | 12,239.76 |
| General Journal | 12/21/2011 | EJ20111221 | | Dividend on Dodge & Cox Intl Stock | Elmer | 580.68 | 12,820.44 |
| General Journal | 12/21/2011 | EJ20111221 | | Dividend on Dodge & Cox Income | Elmer | 196.04 | 13,016.48 |
| General Journal | 12/22/2011 | EJ20111222 | | Dividend on Oppenheimer Common Strat Total Ret | Elmer | 285.22 | 13,301.70 |
| General Journal | 12/23/2011 | EJ20111223 | | Dividend on Investment Co of America | Elmer | 116.36 | 13,418.06 |
| General Journal | 12/23/2011 | EJ20111223 | | Dividend on Pioneer Fund | Elmer | 95.42 | 13,513.50 |
| General Journal | 12/27/2011 | EJ20111224 | | Dividend on Thornburg Value | Elmer | 7.84 | 13,521.34 |
| General Journal | 12/26/2011 | EJ20111225 | | Dividend on Loomis Sayles Inv Grade Bd | Elmer | 67.05 | 13,588.39 |
| General Journal | 12/28/2011 | EJ20111225 | | Dividend on New World | Elmer | 73.75 | 13,662.14 |
| General Journal | 12/30/2011 | EJ20111226 | | Dividend on Oppenheimer Intl Bd | Elmer | 118.46 | 13,780.60 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Morgan Fed Money Mkt | Elmer | 0.03 | 13,780.63 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on ING Global Real Estate | Elmer | 39.90 | 13,820.53 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Morgan Core Bond | Elmer | 41.21 | 13,861.74 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Morgan High Yield | Elmer | 30.00 | 13,891.74 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Pimco Total Return IV | Elmer | 13.97 | 13,905.71 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on T Rowe Price New Income | Elmer | 57.12 | 13,962.83 |
| General Journal | 1/10/2012 | EJ20120104 | | Dividends on Pimco Total Return IV | Elmer | 2.85 | 13,965.68 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on JPMorgan Core Bond Select Cl | Elmer | 37.79 | 14,003.47 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on JPMorgan High Yield Select Cl | Elmer | 25.27 | 14,028.74 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on Oppenheimer Intle Bd | Elmer | 25.02 | 14,053.76 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on Pimco Total Return IV Inst Cl | Elmer | 15.86 | 14,069.62 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on T Rowe Price New Income | Elmer | 47.63 | 14,117.25 |
| General Journal | 2/2/2012 | EJ20120202 | | Dividends on Loomis Sayles Inv Grade Bd Y | Elmer | 27.89 | 14,145.14 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on JP Morgan Core Bond Select Cl | Elmer | 36.71 | 14,181.85 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on JP Morgan High Yield Select Cl | Elmer | 27.26 | 14,209.11 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on Oppenheimer Intl Bd | Elmer | 23.99 | 14,233.10 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on Pimco Total Return IV Inst Cl | Elmer | 17.35 | 14,250.45 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on T Rowe Price New Income | Elmer | 49.53 | 14,299.98 |
| General Journal | 3/2/2012 | EJ20120302 | | Dividends on Loomis Sayles Inv Grade Bd Y | Elmer | 27.36 | 14,327.34 |
| General Journal | 3/7/2012 | EJ20110154 | | Exxon div income | Survivor | 274.01 | 14,601.35 |
| General Journal | 3/9/2012 | EJ20120321 | | Dividend Reinvestment of XOM Stk 7777 | Survivor | 317.88 | 14,919.03 |
| General Journal | 3/9/2012 | EJ20120321 | | Dividend Reinvestment of CVX Stk 9415 | Survivor | 490.82 | 15,409.85 |
| General Journal | 3/15/2012 | EJ20120304 | | Dividends on Investment Co of America | Elmer | 78.17 | 15,488.02 |
| General Journal | 3/23/2012 | EJ20120305 | | Dividends on Pioneer Fund | Elmer | 77.25 | 15,565.27 |
| General Journal | 3/26/2012 | EJ20120308 | | Dividends on Columbia Mid Cap Value | Elmer | 10.25 | 15,575.52 |
| General Journal | 3/28/2012 | EJ20120307 | | Dividends on Dodge & Cox Income | Elmer | 189.13 | 15,764.65 |
| General Journal | 3/28/2012 | EJ20120307 | | Dividends on T Rowe Price Equity | Elmer | 93.48 | 15,858.13 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on JP Morgan Core Bond | Elmer | 37.99 | 15,896.12 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on JP Morgan High Yield | Elmer | 28.66 | 15,924.78 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on Oppenheimer Intl Bd | Elmer | 27.30 | 15,952.08 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on Pimco Total Return IV | Elmer | 17.89 | 15,969.97 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on T Rowe Price New Income | Elmer | 51.76 | 16,021.73 |
| General Journal | 4/3/2012 | EJ20120402 | | Dividends on ING Global Real Estate | Elmer | 42.05 | 16,063.78 |
| General Journal | 4/3/2012 | EJ20120402 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.75 | 16,091.53 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on JP Morgan Core Bond | Elmer | 34.52 | 16,126.05 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on JP Morgan High Yield | Elmer | 23.81 | 16,149.86 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on Oppenheimer Intl Bd | Elmer | 22.93 | 16,172.79 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on Pimco Total Return IV | Elmer | 14.59 | 16,187.38 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on T Rowe Price New Income | Elmer | 47.45 | 16,234.83 |
| General Journal | 5/2/2012 | EJ20120502 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.39 | 16,262.22 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on JP Morgan Core Bond | Elmer | 33.99 | 16,296.21 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 57.74 | 16,353.95 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on Oppenheimer Intl Bd | Elmer | 24.63 | 16,378.58 |

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02/12/2015:1389:P0031

**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on Pimco Total Return IV | Elmer | 15.12 | 16,393.70 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on T Rowe Price New Income | Elmer | 50.82 | 16,444.52 |
| General Journal | 6/4/2012 | EJ20120602 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.34 | 16,471.86 |
| General Journal | 6/11/2012 | EJ20120604 | | Dividends on Investment Co of America | Elmer | 52.65 | 16,524.51 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in XOM Stk 7769 | Elmer | 332.31 | 16,856.82 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in XOM Stk 7777 | Survivor | 387.38 | 17,244.20 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in CVX Stk 9415 | Elmer | 549.72 | 17,793.92 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in CVX Stk 9407 | Elmer | 101.37 | 17,895.29 |
| General Journal | 6/18/2012 | EJ20120605 | | Dividends on Capital World Growth & Income | Elmer | 147.46 | 18,042.75 |
| General Journal | 6/22/2012 | EJ20120606 | | Dividends on Pioneer Fund | Elmer | 53.57 | 18,096.32 |
| General Journal | 6/25/2012 | EJ20120607 | | Dividends on Columbia Mid Cap Value | Elmer | 31.55 | 18,127.87 |
| General Journal | 6/27/2012 | EJ20120609 | | Dividends on Capital World Bond | Elmer | 30.40 | 18,158.27 |
| General Journal | 6/27/2012 | EJ20120609 | | Dividends on Dodg & Cox Income | Elmer | 128.94 | 18,287.21 |
| General Journal | 6/28/2012 | EJ20120610 | | Dividends on T Rowe Price Equity Income | Elmer | 96.35 | 18,383.56 |
| General Journal | 6/29/2012 | EJ20120611 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 58.09 | 18,441.65 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on JP Morgan Core Bond | Elmer | 32.90 | 18,474.55 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.05 | 18,491.60 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on Pimco Total Return IV | Elmer | 14.25 | 18,505.85 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on T Rowe Price New Income | Elmer | 46.81 | 18,552.66 |
| General Journal | 7/3/2012 | EJ20120702 | | Dividends on ING Global Real Estate | Elmer | 51.95 | 18,604.61 |
| General Journal | 7/3/2012 | EJ20120702 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.87 | 18,631.48 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on JPMorgan Fed Mon Mkt | Elmer | 0.04 | 18,631.52 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on JPMorgan Core Bond | Elmer | 35.33 | 18,666.85 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 58.45 | 18,725.30 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on Oppenheimer Intl Bd | Elmer | 16.06 | 18,741.36 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on Pimco Total Return IV | Elmer | 11.10 | 18,752.46 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on T Rowe Price New Income | Elmer | 42.96 | 18,795.42 |
| General Journal | 8/2/2012 | EJ20120802 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.14 | 18,822.56 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on JP Morgan Core Bond | Elmer | 33.06 | 18,855.62 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 58.81 | 18,914.43 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on Oppenheimer Intl Bd | Elmer | 18.18 | 18,932.61 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on Pimco Total Return IV | Elmer | 11.75 | 18,944.36 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on T Rowe Price New Income | Elmer | 46.82 | 18,991.18 |
| General Journal | 9/5/2012 | EJ20120902 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.89 | 19,019.07 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in XOM Stk 7769 | Elmer | 334.71 | 19,353.78 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in XOM Stk 7777 | Survivor | 390.17 | 19,743.95 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in CVX Stk 9415 | Elmer | 554.60 | 20,298.55 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in CVX Stk 9407 | Elmer | 114.44 | 20,412.99 |
| General Journal | 9/17/2012 | EJ20120904 | | Dividends on Investment Co of America | Elmer | 52.67 | 20,465.66 |
| General Journal | 9/21/2012 | EJ20120905 | | Dividends on Pioneer Fund | Elmer | 50.19 | 20,515.85 |
| General Journal | 9/24/2012 | EJ20120906 | | Dividends on Capital World Growth & Income | Elmer | 57.95 | 20,573.80 |
| General Journal | 9/26/2012 | EJ20120908 | | Dividends on Columbia Mid Cap Value | Elmer | 40.07 | 20,613.87 |
| General Journal | 9/26/2012 | EJ20120908 | | Dividends on Dodge & Cox Income | Elmer | 124.92 | 20,738.79 |
| General Journal | 9/27/2012 | EJ20120909 | | Dividends on T Rowe Price Equity Income | Elmer | 89.99 | 20,828.78 |
| General Journal | 9/28/2012 | EJ20120910 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 59.16 | 20,887.94 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on JP Morgan Core Bond | Elmer | 31.95 | 20,919.89 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on Oppenheimer Intl Bd | Elmer | 13.87 | 20,933.76 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on Pimco Total Return IV | Elmer | 9.14 | 20,942.90 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on T Rowe Price New Income | Elmer | 36.25 | 20,979.15 |
| General Journal | 10/2/2012 | EJ20121002 | | Dividends on ING Global Real Estate | Elmer | 46.97 | 21,026.12 |
| General Journal | 10/2/2012 | EJ20121002 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.30 | 21,052.42 |
| General Journal | 10/9/2012 | EJ20121004 | | Dividends on Capital World Bond | Elmer | 23.09 | 21,075.51 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on JP Morgan Core Bond | Elmer | 30.84 | 21,106.35 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 59.51 | 21,165.86 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.63 | 21,183.49 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on Pimco Total Return IV | Elmer | 12.79 | 21,196.28 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on T Rowe Price New Income | Elmer | 40.84 | 21,237.12 |
| General Journal | 11/2/2012 | EJ20121102 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.21 | 21,263.33 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on JP Morgan Core Bond | Elmer | 30.90 | 21,294.23 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 59.87 | 21,354.10 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.62 | 21,371.72 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on Pimco Total Return IV | Elmer | 13.77 | 21,385.49 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on T Rowe Price New Income | Elmer | 42.81 | 21,428.30 |
| General Journal | 12/4/2012 | EJ20121202 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.84 | 21,455.14 |
| General Journal | 12/4/2012 | EJ20121202 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 60.23 | 21,515.37 |
| General Journal | 12/7/2012 | EJ20121204 | | Dividends on Blackrock Cap App | Elmer | 45.22 | 21,560.59 |
| General Journal | 12/7/2012 | EJ20121204 | | Dividends on Oppenheimer Rising Divid Fd Y | Elmer | 57.90 | 21,618.49 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment XOM Stk 6261 | Elmer | 334.71 | 21,953.20 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment XOM Stk 3301 | Neiva | 390.17 | 22,343.37 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment CVX Stk 9415 | Elmer | 4.36 | 22,347.73 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment CVX Stk 9407 | Elmer | 4.35 | 22,352.08 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment CVX Stk 9423 | Elmer | 1,110.22 | 23,462.30 |
| General Journal | 12/12/2012 | EJ20121206 | | Dividends on MFS Research International | Elmer | 316.70 | 23,779.00 |
| General Journal | 12/14/2012 | EJ20121206 | | Dividends on Columbia Mid Cap Value | Elmer | 33.89 | 23,812.89 |
| General Journal | 12/14/2012 | EJ20121206 | | Dividends on T Rowe Price Equity Income | Elmer | 111.31 | 23,924.20 |
| General Journal | 12/17/2012 | EJ20121209 | | Dividends on Capital World Growth & Income | Elmer | 97.20 | 24,021.40 |
| General Journal | 12/17/2012 | EJ20121209 | | Dividends on Fidelity New Insights | Elmer | 13.61 | 24,035.01 |
| General Journal | 12/20/2012 | EJ20121210 | | Dividends on Dodge & Cox Intl Stock | Elmer | 303.81 | 24,338.82 |
| General Journal | 12/20/2012 | EJ20121210 | | Dividends on DWS Small Cap Value | Elmer | 75.04 | 24,413.86 |
| General Journal | 12/20/2012 | EJ20121210 | | Dividends on Dodge & Cox Income | Elmer | 109.20 | 24,523.06 |
| General Journal | 12/21/2012 | EJ20121211 | | Dividends on Capital World Bond | Elmer | 31.58 | 24,554.62 |
| General Journal | 12/24/2012 | EJ20121212 | | Dividends on Investment Co of America | Elmer | 137.47 | 24,692.09 |
| General Journal | 12/24/2012 | EJ20121212 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 75.83 | 24,767.92 |
| General Journal | 12/27/2012 | EJ20121213 | | Dividends on New World | Elmer | 110.57 | 24,878.49 |
| General Journal | 12/28/2012 | EJ20121214 | | Dividends on Oppenheimer Rising Divid Fd Y | Elmer | 43.70 | 24,922.19 |
| General Journal | 12/28/2012 | EJ20121214 | | Dividends on Pimco Total Return IV | Elmer | 65.59 | 24,987.78 |
| General Journal | 12/31/2012 | EJ20121215 | | Dividends on Oppenheimer Intl Bd | Elmer | 15.74 | 25,003.52 |
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on ING Global Real Estate | Elmer | 201.20 | 25,204.72 |

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02112015:1339:P0032

**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on JP Morgan Core Bond | Elmer | 38.97 | 25,241.68 |
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on Pimco Total Return IV | Elmer | 10.56 | 25,252.25 |
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on T Rowe Price New Income | Elmer | 38.09 | 25,290.34 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on JP Morgan Core Bond | Elmer | 28.70 | 25,319.04 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 60.59 | 25,379.63 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.37 | 25,397.00 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on Pimco Total Return IV | Elmer | 8.54 | 25,405.54 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on T Rowe Price New Income | Elmer | 35.87 | 25,441.41 |
| General Journal | 2/4/2013 | EJ20130202 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.43 | 25,467.84 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on JP Morgan Core Bond | Elmer | 29.95 | 25,497.79 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 60.95 | 25,558.74 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on Oppenheimer Intl Bd | Elmer | 16.53 | 25,575.27 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on Pimco Total Return IV | Elmer | 9.68 | 25,584.95 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on T Rowe Price New Income | Elmer | 37.06 | 25,622.01 |
| General Journal | 3/4/2013 | EJ20130302 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.81 | 25,649.82 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on XOM Stk 3319 | Elmer | 1.72 | 25,651.34 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on XOM Stk 6261 | Elmer | 336.88 | 25,988.22 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on XOM Stk 3301 | Nelva | 392.70 | 26,380.92 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on CVX Stk 9415 | Elmer | 4.41 | 26,385.33 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on CVX Stk 9407 | Elmer | 4.39 | 26,389.72 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on CVX Stk 9423 | Elmer | 1,122.04 | 27,511.76 |
| General Journal | 3/14/2013 | EJ20130304 | | Dividends on Investment Co of America | Elmer | 53.50 | 27,565.26 |
| General Journal | 3/16/2013 | EJ20130305 | | Dividends on Capital World Growth & Income | Elmer | 61.70 | 27,626.96 |
| General Journal | 3/22/2013 | EJ20130307 | | Dividends on DWS Small Cap Value | Elmer | 42.72 | 27,669.68 |
| General Journal | 3/25/2013 | EJ20130308 | | Dividends on Columbia Mid Cap Value | Elmer | 25.46 | 27,695.14 |
| General Journal | 3/27/2013 | EJ20130309 | | Dividends on Capital World Bond | Elmer | 23.47 | 27,718.61 |
| General Journal | 3/27/2013 | EJ20130309 | | Dividends on Dodge & Cox Income | Elmer | 111.08 | 27,829.69 |
| General Journal | 3/27/2013 | EJ20130309 | | Dividends on T Rowe Price Equity Income | Elmer | 77.55 | 27,907.24 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on JP Morgan Core Bond | Elmer | 30.02 | 27,937.26 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 61.31 | 27,998.57 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.82 | 28,016.19 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on Pimco Total Return IV | Elmer | 12.00 | 28,028.19 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on T Rowe Price New Income | Elmer | 37.30 | 28,065.49 |
| General Journal | 4/2/2013 | EJ20130402 | | Dividends on ING Global Real Estate | Elmer | 40.72 | 28,106.21 |
| General Journal | 4/2/2013 | EJ20130402 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.34 | 28,133.55 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on JP Morgan Core Bond | Elmer | 30.08 | 28,163.63 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 61.67 | 28,225.30 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.94 | 28,243.24 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on Pimco Total Return IV | Elmer | 13.27 | 28,256.51 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on T Rowe Price New Income | Elmer | 38.30 | 28,294.81 |
| General Journal | 5/2/2013 | EJ20130502 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.65 | 28,321.46 |
| Total Dividend Income | | | | | | 28,321.46 | 28,321.46 |
| **Interest Income** | | | | | | | |
| General Journal | 12/27/2010 | EJ 20101202 | | Interest on VK Bld Amer Bonds | Survivor | 67.90 | 67.90 |
| General Journal | 12/27/2010 | EJ 20101202 | | Interest on Invsco Bld Amer Bds | Survivor | 23.70 | 91.60 |
| General Journal | 12/31/2010 | EJ 20101203 | | Interest for December | Survivor | 0.03 | 91.63 |
| General Journal | 1/20/2011 | EJ 20110102 | | Interest on Toyota Motor Cr Corp | Survivor | 25.00 | 116.63 |
| General Journal | 1/25/2011 | EJ 20110103 | | Interest on VK Bld Amer Bonds | Survivor | 67.90 | 184.53 |
| General Journal | 1/25/2011 | EJ 20110103 | | Interest on VK Bld Amer Bonds | Survivor | 51.00 | 235.53 |
| General Journal | 2/22/2011 | EJ 20110204 | | Interest on Toyota Motor Cr Corp | Survivor | 25.00 | 260.53 |
| General Journal | 2/22/2011 | EJ 20110204 | | Interest on Money Market Fund | Survivor | 0.01 | 260.54 |
| General Journal | 2/25/2011 | EJ 20110205 | | Interest on VK Bld Amer Bonds Incm | Survivor | 68.04 | 328.58 |
| General Journal | 2/25/2011 | EJ 20110205 | | Interest on Invsco Bld Amer Bonds Incm | Survivor | 50.90 | 379.48 |
| General Journal | 3/15/2011 | EJ 20110301 | | Interest on GMAC Smartnotes | Survivor | 317.25 | 696.73 |
| General Journal | 3/21/2011 | EJ 20110302 | | Interest on Toyota Motor Cr Corp | Survivor | 25.00 | 721.73 |
| General Journal | 3/25/2011 | EJ 20110303 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.90 | 789.63 |
| General Journal | 3/25/2011 | EJ 20110303 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 51.00 | 840.63 |
| General Journal | 4/14/2011 | EJ 20110402 | | Accrued Int - Sale of Toyota Motor Cr Corp | Survivor | 20.00 | 860.63 |
| General Journal | 4/14/2011 | EJ 20110402 | | Accrued Interest Sale of GMAC SmartNotes | Survivor | 51.11 | 911.74 |
| General Journal | 4/15/2011 | EJ20110421 | | Interest on GE Capital Corp Internotes | Survivor | 333.13 | 1,244.87 |
| General Journal | 4/20/2011 | EJ 20110403 | | Proceeds from Sale of In Fin Auth Rev Parkview Hth | Survivor | 387.29 | 1,632.16 |
| General Journal | 4/25/2011 | EJ 20110404 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.76 | 1,699.92 |
| General Journal | 4/25/2011 | EJ 20110404 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 50.90 | 1,750.82 |
| General Journal | 5/13/2011 | EJ20110521 | | Sell GE Capital Corp Internotes | Survivor | 51.82 | 1,802.64 |
| General Journal | 5/13/2011 | EJ20110521 | | Sell GMAC Smartnotes | Survivor | 277.50 | 2,080.14 |
| General Journal | 5/23/2011 | EJ20110523 | | Interest on Money Market Funds | Survivor | 0.93 | 2,081.07 |
| General Journal | 5/25/2011 | EJ20110502 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.76 | 2,148.83 |
| General Journal | 5/25/2011 | EJ20110502 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 51.00 | 2,199.83 |
| General Journal | 6/21/2011 | EJ20110621 | | Interest on Money Market Funds | Survivor | 0.30 | 2,200.13 |
| General Journal | 6/27/2011 | EJ20110604 | | Interest on VK Bld Amer Bonds | Survivor | 67.90 | 2,268.03 |
| General Journal | 6/27/2011 | EJ20110604 | | Interest on Invsco Bld Amer Bds | Survivor | 50.90 | 2,318.93 |
| General Journal | 7/25/2011 | EJ20110701 | | Interest on VK Bld Amer Bonds | Survivor | 67.76 | 2,386.69 |
| General Journal | 7/25/2011 | EJ20110701 | | Interest on VK Bld Amer Bonds | Survivor | 51.00 | 2,437.69 |
| General Journal | 8/1/2011 | EJ20110801 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.76 | 2,505.45 |
| General Journal | 8/1/2011 | EJ20110801 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 50.90 | 2,556.35 |
| General Journal | 9/26/2011 | EJ20110901 | | Interest on VK Bld Amer Bonds Incm | Survivor | 68.04 | 2,624.39 |
| General Journal | 9/26/2011 | EJ20110901 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 50.90 | 2,675.29 |
| General Journal | 10/13/2011 | EJ20111001 | | Accrued Interest in Sale of VK Bld Amer Bonds | Survivor | 6.72 | 2,682.01 |
| General Journal | 10/25/2011 | EJ20111002 | | Interest in VK Bld Amer Bonds Incm | Survivor | 67.90 | 2,749.91 |
| General Journal | 10/25/2011 | EJ20111002 | | Interest in Invsco Bld Amer Bds Incm | Survivor | 51.10 | 2,801.01 |
| General Journal | 11/16/2011 | EJ20111103 | | Proceeds from Sale of Invsco Bld Amer Bds | Survivor | 10.20 | 2,811.21 |
| General Journal | 11/21/2011 | EJ20111105 | | Interest on Money Market Funds | Survivor | 0.05 | 2,811.26 |
| General Journal | 11/25/2011 | EJ20111106 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 51.00 | 2,862.26 |
| General Journal | 10/10/2012 | EJ20120422 | | Interest Income | Survivor | 0.27 | 2,862.53 |
| General Journal | 10/12/2012 | EJ20120443 | | Interest Earned | Elmer | 1.17 | 2,863.70 |
| Deposit | 10/23/2012 | | | October Interest | Survivor | 17.34 | 2,881.04 |
| General Journal | 11/7/2012 | EJ20120424 | | Interest Inc | Survivor | 5.72 | 2,886.76 |

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## Brunsting Family Living Trust
## Detail of Accounts
12/21/2010-05/31/2013

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 11/9/2012 | EJ20120445 | | Interest inc | Elmer | 1.08 | 2,887.84 |
| Deposit | 11/21/2012 | | | November Interest | Survivor | 26.47 | 2,914.31 |
| General Journal | 12/7/2012 | EJ20120425 | | Interest inc | Survivor | 6.13 | 2,920.44 |
| General Journal | 12/11/2012 | EJ20120446 | | Interest Earned | Elmer | 1.23 | 2,921.67 |
| Deposit | 12/20/2012 | | | December Interest | Survivor | 20.08 | 2,941.75 |
| General Journal | 1/9/2013 | EJ20120427 | | Interest inc | Survivor | 6.75 | 2,948.50 |
| General Journal | 1/11/2013 | EJ20120447 | | Interest Earned | Elmer | 1.19 | 2,949.69 |
| Deposit | 1/23/2013 | | | January Interest | Survivor | 23.32 | 2,973.01 |
| General Journal | 2/5/2013 | EJ20120428 | | Interest inc | Survivor | 5.74 | 2,978.75 |
| General Journal | 2/8/2013 | EJ20120448 | | Interest Earned | Elmer | 1.08 | 2,979.83 |
| Deposit | 2/20/2013 | | | February Interest | Survivor | 19.23 | 2,999.06 |
| General Journal | 3/8/2013 | EJ20120430 | | Interest Earned | Survivor | 6.15 | 3,005.21 |
| General Journal | 3/12/2013 | EJ20120449 | | Interest Earned | Elmer | 1.66 | 3,006.87 |
| Deposit | 3/21/2013 | | | March Interest | Survivor | 19.91 | 3,026.78 |
| General Journal | 4/8/2013 | EJ20120432 | | Interest Earned | Survivor | 6.55 | 3,033.33 |
| General Journal | 4/11/2013 | EJ20120452 | | Interest Earned | Elmer | 1.77 | 3,035.10 |
| Deposit | 4/22/2013 | | | April Interest | Survivor | 21.98 | 3,057.08 |
| General Journal | 5/8/2013 | EJ20120433 | | Interest Earned | Survivor | 5.90 | 3,062.98 |
| General Journal | 5/13/2013 | EJ20120453 | | Interest Earned | Elmer | 1.48 | 3,064.44 |
| Deposit | 5/22/2013 | | | May Interest | Survivor | 20.61 | 3,085.05 |
| Total Interest Income | | | | | | 3,085.05 | 3,085.05 |
| **Long Term Capital Gains - Funds** | | | | | | | |
| General Journal | 12/31/2010 | EJ20101218 | | LTCG from Oppenheimer Intl Bond Fund Y | Elmer | 75.11 | 75.11 |
| General Journal | 12/8/2011 | EJ20111214 | | LTCG on T Rowe Price New Income | Elmer | 77.13 | 152.24 |
| General Journal | 12/16/2011 | EJ20111218 | | LTCG on JP Morgan Core Bond | Elmer | 26.07 | 178.31 |
| General Journal | 12/16/2011 | EJ20111218 | | LTCG on JP Morgan High Yield | Elmer | 58.93 | 237.24 |
| General Journal | 12/19/2011 | EJ20111219 | | LTCG on Credit Suisse Comm Ret Strat | Elmer | 6.24 | 243.48 |
| General Journal | 12/20/2011 | EJ20111220 | | LTCG on DWS Small Cap Value | Elmer | 42.21 | 285.69 |
| General Journal | 12/28/2011 | EJ20111225 | | LTCG on Loomis Sayles Inv Grade Bd | Elmer | 47.77 | 333.46 |
| General Journal | 6/26/2012 | EJ20120608 | | LTCG on Baron Small Cap | Elmer | 2.48 | 335.94 |
| General Journal | 11/30/2012 | EJ20121104 | | LTCG on Baron Small Cap | Survivor | 152.76 | 488.70 |
| General Journal | 12/10/2012 | EJ20121205 | | LTCG on T Rowe Price New Income | Elmer | 85.71 | 574.41 |
| General Journal | 12/13/2012 | EJ20121207 | | LTCG on Pimco Total Return IV | Elmer | 26.80 | 601.21 |
| General Journal | 12/14/2012 | EJ20121208 | | LTCG on JP Morgan Core Bond | Elmer | 16.83 | 618.04 |
| General Journal | 12/20/2012 | EJ20121210 | | LTCG on DWS Small Cap Value | Elmer | 76.86 | 694.90 |
| General Journal | 12/21/2012 | EJ20121211 | | LTCG on Capital World Bond | Elmer | 41.81 | 736.71 |
| General Journal | 12/24/2012 | EJ20121212 | | LTCG on Investment Co of America | Elmer | 176.84 | 913.55 |
| General Journal | 12/24/2012 | EJ20121212 | | LTCG on Loomis Sayles Inv Grade Bd | Elmer | 62.90 | 976.45 |
| General Journal | 12/31/2012 | EJ20121215 | | LTCG on Oppenheimer Intl Bd | Elmer | 31.01 | 1,007.46 |
| General Journal | 3/22/2013 | EJ20130307 | | LTCG on DWS Small Cap Value | Elmer | 39.85 | 1,047.31 |
| Total Long Term Capital Gains - Funds | | | | | | 1,047.31 | 1,047.31 |
| **Short Term Capital Gains- Funds** | | | | | | | |
| General Journal | 1/24/2011 | EJ20110107 | | STCG on Fidelity New Insights Fd Inst | Elmer | 1.98 | 1.98 |
| General Journal | 2/14/2011 | EJ20110204 | | STCG on Fidelity New Insights Fd Inst | Elmer | 22.38 | 24.36 |
| General Journal | 12/8/2011 | EJ20111214 | | STCG on T Rowe Price New Income | Elmer | 38.56 | 62.92 |
| General Journal | 12/16/2011 | EJ20111218 | | STCG on JP Morgan High Yield | Elmer | 36.12 | 99.04 |
| General Journal | 12/28/2011 | EJ20111225 | | STCG on Loomis Sayles Inv Grade Bd | Elmer | 16.95 | 115.99 |
| General Journal | 12/10/2012 | EJ20121205 | | STCG on T Rowe Price New Income | Elmer | 68.57 | 184.56 |
| General Journal | 12/13/2012 | EJ20121207 | | STCG on Pimco Total Return IV | Elmer | 173.87 | 358.43 |
| General Journal | 12/14/2012 | EJ20121208 | | STCG on JP Morgan Core Bond | Elmer | 1.54 | 359.97 |
| General Journal | 12/17/2012 | EJ20121209 | | STCG on Fidelity New Insights | Elmer | 85.18 | 445.15 |
| General Journal | 12/20/2012 | EJ20121210 | | STCG on DWS Small Cap Value | Elmer | 14.89 | 461.04 |
| General Journal | 12/21/2012 | EJ20121211 | | STCG on Capital World Bond | Elmer | 22.74 | 483.78 |
| General Journal | 12/24/2012 | EJ20121212 | | STCG on Loomis Sayles Inv Grade Bd | Elmer | 5.32 | 489.10 |
| Total Short Term Capital Gains- Funds | | | | | | 488.10 | 489.10 |
| **Stock Sales less Broker Fees** | | | | | | | |
| General Journal | 1/4/2011 | EJ 20110101 | | Sale of Deere & Co Stock | Survivor | 10,082.45 | 10,082.45 |
| General Journal | 1/4/2011 | EJ 20110101 | | Commission on Sale of Deere & Co Stock | Survivor | -206.11 | 9,874.34 |
| General Journal | 1/4/2011 | EJ 20110101 | | Transaction Fee on Sale of Deere & Co Stock | Survivor | -4.95 | 9,869.39 |
| General Journal | 2/8/2011 | EJ 20110202 | | Sell 275 Shares Deere & Co | Survivor | 25,593.45 | 35,432.84 |
| General Journal | 2/8/2011 | EJ 20110202 | | Commission on Sale of 275 Shares Deere & Co | Survivor | -460.83 | 34,972.21 |
| General Journal | 2/8/2011 | EJ 20110202 | | Transaction Fee on Sale of 275 Shares Deere & Co | Survivor | -4.95 | 34,967.26 |
| General Journal | 4/14/2011 | EJ 20110402 | | Principal Amt Sale of Toyota Motor Cr Corp | Survivor | 5,000.00 | 39,967.26 |
| General Journal | 4/14/2011 | EJ 20110402 | | Transaction Fee - Sale of Toyota Motor Cr Corp | Survivor | -4.95 | 39,962.31 |
| General Journal | 4/14/2011 | EJ 20110402 | | Principal Amt Sale of GMAC SmartNotes | Survivor | 8,730.00 | 48,692.31 |
| General Journal | 4/14/2011 | EJ 20110402 | | Transaction Fee - Sale of GMAC SmartNotes | Survivor | -4.95 | 48,687.36 |
| General Journal | 4/20/2011 | EJ 20110403 | | Proceeds from Sale of In Fin Auth Rev Parkview Hlth | Survivor | 14,824.35 | 63,511.71 |
| General Journal | 4/20/2011 | EJ 20110403 | | Transaction Fee from Sale of In Fin Auth Rev Parkview Hlth | Survivor | -4.95 | 63,506.76 |
| General Journal | 5/13/2011 | EJ20110521 | | Transaction Fee on Sale of GE Capital Corp Internotes | Survivor | -4.95 | 63,501.81 |
| General Journal | 5/13/2011 | EJ20110521 | | Transaction Fee on Sale of GMAC Smartnotes | Survivor | -4.95 | 63,496.86 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale Chevron Corp | Survivor | -199.66 | 63,297.20 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale Chevron Corp | Survivor | -4.95 | 63,292.25 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Stryker Corp | Survivor | -228.32 | 63,063.93 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Stryker Corp | Survivor | -4.95 | 63,058.98 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Dow Chemical | Survivor | -146.44 | 62,912.54 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Dow Chemical | Survivor | -4.95 | 62,907.59 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Gen Motors Warrants (WSA) | Survivor | -50.00 | 62,857.59 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Gen Motors Warrants (WSA) | Survivor | -4.95 | 62,852.64 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Gen Motors Warrants (WSB) | Survivor | -50.00 | 62,802.64 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Gen Motors Warrants (WSB) | Survivor | -4.95 | 62,797.69 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Gen Motors Common | Survivor | -4.95 | 62,792.74 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Gen Motors Common | Survivor | -50.00 | 62,742.74 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on GE Capital Corp Internotes | Survivor | -46.87 | 62,695.87 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on GMAC SmartNotes | Survivor | -272.55 | 62,423.32 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Chevron Corp (CVX) | Survivor | 204.61 | 62,627.93 |

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**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Dow Chemical (DOW) | Survivor | 151.38 | 62,779.32 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Gen Motors Warrants (WSA) | Survivor | 54.95 | 62,834.27 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Gen Motors Warrants (WSB) | Survivor | 54.95 | 62,889.22 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Gen Motors Co (GM) | Survivor | 54.95 | 62,944.17 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Stryker Corp (SYK) | Survivor | 233.27 | 63,177.44 |
| General Journal | 6/10/2011 | EJ20110601 | | Sales Price on Sale of 623 Sh Deere & Company | Survivor | 51,039.90 | 114,217.34 |
| General Journal | 6/10/2011 | EJ20110601 | | Commission on Sale of 623 Sh Deere & Company | Survivor | -643.56 | 113,573.48 |
| General Journal | 6/10/2011 | EJ20110601 | | Transaction Fee on Sale of 623 Sh Deere & Company | Survivor | -4.95 | 113,568.53 |
| General Journal | 6/10/2011 | EJ20110123 | | Exxon IDC000946776 Invest Inc | Survivor | 896.76 | 114,465.29 |
| General Journal | 7/28/2011 | EJ20110721 | | Redeem Gen Motors Co Warrant (WSB) | Survivor | 12.93 | 114,478.22 |
| General Journal | 7/28/2011 | EJ20110721 | | Redeem Gen Motors Co Warrant (WSA) | Survivor | 17.87 | 114,496.09 |
| General Journal | 7/28/2011 | EJ20110721 | | Redeem Gen Motors Co Common | Survivor | 0.37 | 114,496.46 |
| General Journal | 10/13/2011 | EJ20111001 | | Proceeds from Sale of VK Bld Amer Bonds | Survivor | 14,492.80 | 128,989.26 |
| General Journal | 10/26/2011 | EJ20111003 | | Sale Price in Sale of Deere & Co Stock | Survivor | 30,470.12 | 159,459.38 |
| General Journal | 10/26/2011 | EJ20111003 | | Commission in Sale of Deere & Co Stock | Survivor | -458.73 | 159,000.65 |
| General Journal | 10/26/2011 | EJ20111003 | | Transaction Fee in Sale of Deere & Co Stock | Survivor | -4.95 | 158,995.70 |
| General Journal | 10/28/2011 | EJ20111022 | | Redeem Gen Motors Warrant (WSB) | Survivor | 8.33 | 159,004.03 |
| General Journal | 10/28/2011 | EJ20111022 | | Redeem Gen Motors Warrant (WSA) | Survivor | 11.92 | 159,015.95 |
| General Journal | 10/28/2011 | EJ20111022 | | Redeem Gen Motors Common | Survivor | 19.85 | 159,035.80 |
| General Journal | 11/15/2011 | EJ20111102 | | Sale of Deere & Co Stock | Survivor | 14,381.25 | 173,417.05 |
| General Journal | 11/15/2011 | EJ20111102 | | Commission on Sale of Deere & Co Stock | Survivor | -266.15 | 173,150.90 |
| General Journal | 11/15/2011 | EJ20111102 | | Transaction Fee on Sale of Deere & Co Stock | Survivor | -4.95 | 173,145.95 |
| General Journal | 11/18/2011 | EJ20111103 | | Proceeds from Sale of Invsco Bld Amer Bds | Survivor | 10,508.70 | 183,654.65 |
| General Journal | 1/9/2012 | EJ20120121 | | Commission on Sale of Gen Motors Common | Survivor | -2.10 | 183,652.55 |
| General Journal | 1/9/2012 | EJ20120121 | | Transaction Fee on Sale of Gen Motors Common | Survivor | -4.95 | 183,647.60 |
| General Journal | 1/27/2012 | EJ20120122 | | Adjust Value on Gen Motors Common | Survivor | 7.02 | 183,654.62 |
| General Journal | 6/15/2012 | EJ20120621 | | Redeem Motors Liq Co Guc Tr Ben Int | Survivor | 8.17 | 183,662.79 |
| Total Stock Sales less Broker Fees | | | | | | 183,662.79 | 183,662.79 |
| Total Investment Income | | | | | | 216,805.71 | 216,805.71 |
| **Miscellaneous Income** | | | | | | | |
| Deposit | 12/31/2010 | | | Deposit | Neiva | 70.30 | 70.30 |
| General Journal | 3/11/2011 | EJ20120460 | | Invest Inc | Neiva | 390.64 | 460.94 |
| General Journal | 4/11/2011 | EJ20120463 | | Online Banking Transfer from chking Acct 2839 | Neiva | 1,500.00 | 1,960.94 |
| General Journal | 5/9/2011 | EJ20110122 | | Invest Inc | Survivor | 4.18 | 1,965.12 |
| General Journal | 8/28/2011 | EJ20120471 | | Invest Inc. | Neiva | 725.64 | 2,690.76 |
| General Journal | 8/18/2011 | EJ20120473 | | Invest Inc | Neiva | 702.72 | 3,393.48 |
| General Journal | 9/19/2011 | EJ20120475 | | Invest Inc | Neiva | 507.76 | 3,901.24 |
| General Journal | 11/9/2011 | EJ20110147 | | Invest Inc | Survivor | 30.40 | 3,931.64 |
| General Journal | 1/3/2012 | EJ20120436 | | Courtesy credit - Invest Inc | Elmer | 495.72 | 4,427.36 |
| General Journal | 3/7/2012 | EJ20110153 | | Other Income | Survivor | 20.49 | 4,447.85 |
| General Journal | 3/13/2012 | EJ20120411 | | --Split-- | Survivor | 237.16 | 4,685.01 |
| General Journal | 4/16/2012 | EJ20120440 | | fed - Invest Inc | Elmer | 383.45 | 5,068.46 |
| General Journal | 5/17/2012 | EJ20120418 | | Invest Income | Survivor | 30.40 | 5,098.86 |
| General Journal | 6/5/2012 | EJ20120419 | | Invest Inc | Survivor | 71.04 | 5,169.90 |
| General Journal | 10/15/2012 | EJ20120444 | | Invest Inc | Elmer | 57.96 | 5,227.76 |
| General Journal | 10/26/2012 | EJ20120423 | | Invest Inc | Survivor | 24.04 | 5,251.80 |
| General Journal | 11/22/2012 | EJ20120435 | | Invest Inc | Elmer | 381.32 | 5,633.12 |
| General Journal | 12/24/2012 | EJ20120426 | | Inv Inc - Chevron and Metlife | Survivor | 104.26 | 5,737.38 |
| General Journal | 3/1/2013 | EJ20120429 | | Inv Inc - John Deere | Survivor | 71.61 | 5,808.99 |
| General Journal | 3/13/2013 | EJ20120439 | | Other Inc | Elmer | 495.72 | 6,304.71 |
| General Journal | 4/5/2013 | EJ20120431 | | Deposit --Split-- | Survivor | 54.22 | 6,358.93 |
| General Journal | 4/5/2013 | EJ20120451 | | Hull Co-op Invest Inc | Elmer | 101.80 | 6,460.73 |
| Total Miscellaneous Income | | | | | | 6,460.73 | 6,460.73 |
| **Pension Income** | | | | | | | |
| Deposit | 12/31/2010 | | | Pension ID [redacted]8126 | Neiva | 594.41 | 594.41 |
| Deposit | 12/31/2010 | | | Minnesota Life Annuity | Neiva | 91.78 | 686.19 |
| General Journal | 1/31/2011 | BOA20110105 | | Net Pension Receipt | Survivor | 600.71 | 1,286.90 |
| General Journal | 2/2/2011 | BOA20110106 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 1,378.68 |
| General Journal | 2/28/2011 | BOA20110111 | | Benefits DES: Pension ID: [redacted]0518 | Survivor | 600.71 | 1,979.39 |
| General Journal | 3/1/2011 | BOA20110112 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 2,071.17 |
| General Journal | 3/31/2011 | BOA20110114 | | Benefits DES:Pension ID:[redacted]0208 | Survivor | 600.71 | 2,671.88 |
| General Journal | 4/1/2011 | BOA20110115 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 2,763.66 |
| General Journal | 4/29/2011 | EJ20110110 | | Benefits DES:Pension ID:[redacted]0518 | Survivor | 600.71 | 3,364.37 |
| General Journal | 4/29/2011 | EJ20110111 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 3,456.15 |
| General Journal | 5/31/2011 | EJ20110118 | | Benefits DES:Pension ID:[redacted]0508 | Survivor | 600.71 | 4,056.86 |
| General Journal | 6/1/2011 | EJ20110119 | | Minnesota Life DES: Annuity ID:0 | Survivor | 91.78 | 4,148.64 |
| General Journal | 6/30/2011 | EJ20110124 | | Benefits DES:Pension ID:[redacted]0218 | Survivor | 600.71 | 4,749.35 |
| General Journal | 7/1/2011 | EJ20110125 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 4,841.13 |
| General Journal | 7/29/2011 | EJ20110128 | | Benefits DES:Pension ID:[redacted]0528 | Survivor | 600.71 | 5,441.84 |
| General Journal | 8/1/2011 | EJ20110129 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 5,533.62 |
| General Journal | 8/31/2011 | EJ20110134 | | Benefits DES:Pension ID:[redacted]0168 | Survivor | 600.71 | 6,134.33 |
| General Journal | 9/1/2011 | EJ20110135 | | Minnesota Life DES: Annuity ID:0 | Survivor | 91.78 | 6,226.11 |
| General Journal | 9/30/2011 | EJ20110141 | | Minnesota Life DES: Annuity ID:0 | Survivor | 91.78 | 6,317.89 |
| General Journal | 9/30/2011 | EJ20110142 | | Benefits DES:Pension ID:[redacted]2468 | Survivor | 600.71 | 6,918.60 |
| General Journal | 10/31/2011 | EJ20110144 | | Benefits DES:Pension ID:[redacted]3478 | Survivor | 600.71 | 7,519.31 |
| General Journal | 11/1/2011 | EJ20110145 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 7,611.09 |
| General Journal | 11/1/2011 | EJ20110157 | | Minnesota Life Des:Annuity ID:0 | Survivor | 91.78 | 7,702.87 |
| General Journal | 11/30/2011 | EJ20110149 | | Benefits DES:Pension ID:[redacted]3368 | Survivor | 600.71 | 8,303.58 |
| Total Pension Income | | | | | | 8,303.58 | 8,303.58 |
| **Proceeds from Sale of Home** | | | | | | | |
| General Journal | 3/12/2012 | EJ20120408 | | Option fee for house - Other Inc | Survivor | 100.00 | 100.00 |
| General Journal | 3/14/2012 | EJ20120413 | | Sale of house - Other Income | Survivor | 433,129.32 | 433,229.32 |
| General Journal | 3/23/2012 | EJ20120414 | | Sale of house --Split-- | Survivor | 162.73 | 433,392.05 |

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02102015:1339:P0035

**Brunsting Family Living Trust**
***Detail of Accounts***
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Total Proceeds from Sale of Home | | | | | | 433,392.05 | 433,392.05 |
| Social Security Income | | | | | | | |
| General Journal | 2/3/2011 | EJ20120457 | | Soc Security ID:2 | Naiva | 1,780.00 | 1,780.00 |
| General Journal | 3/3/2011 | EJ20120459 | | Social Security | Naiva | 1,780.00 | 3,560.00 |
| General Journal | 4/1/2011 | EJ20120462 | | Social Security | Naiva | 1,780.00 | 5,340.00 |
| General Journal | 5/2/2011 | EJ20120464 | | Social Security | Naiva | 1,780.00 | 7,120.00 |
| General Journal | 6/3/2011 | EJ20120465 | | Social Security | Naiva | 1,780.00 | 8,900.00 |
| General Journal | 7/1/2011 | EJ20120469 | | Social Security | Naiva | 1,780.00 | 10,680.00 |
| General Journal | 8/3/2011 | EJ20120472 | | Social Security | Naiva | 1,780.00 | 12,460.00 |
| General Journal | 9/2/2011 | EJ20120474 | | Social Security | Naiva | 1,780.00 | 14,240.00 |
| General Journal | 10/3/2011 | EJ20120477 | | Social Security | Naiva | 1,780.00 | 16,020.00 |
| General Journal | 11/3/2011 | EJ20120478 | | Social Security | Naiva | 1,780.00 | 17,800.00 |
| Total Social Security Income | | | | | | 17,800.00 | 17,800.00 |
| Tax Refunds | | | | | | | |
| General Journal | 1/3/2011 | BOA20110101 | | US Treasury 310 DES | Survivor | 1,780.00 | 1,780.00 |
| General Journal | 1/11/2012 | EJ20110159 | | Tax Refund | Survivor | 6,215.87 | 7,995.87 |
| General Journal | 4/16/2012 | EJ20120441 | | Federal tax refund | Elmer | 6,913.00 | 14,908.87 |
| General Journal | 4/25/2012 | EJ20120416 | | Federal Tax Refund | Survivor | 4,908.00 | 19,816.87 |
| Total Tax Refunds | | | | | | 19,816.87 | 19,816.87 |
| Total Income | | | | | | 830,169.35 | 830,169.35 |
| Expense | | | | | | | |
| Automobile Expense | | | | | | | |
| Check | 1/18/2011 | EFT | Exxon Mobil | Auto:Fuel | Naiva | 20.93 | 20.93 |
| Check | 1/27/2011 | EFT | Chevron | Fuel | Naiva | 20.86 | 41.79 |
| Check | 1/31/2011 | EFT | Chevron | Fuel | Naiva | 21.07 | 62.86 |
| Check | 2/8/2011 | EFT | Exxon Mobil | Fuel | Naiva | 20.06 | 82.92 |
| Check | 2/9/2011 | EFT | Nnt Hare Repai | Auto Service | Naiva | 574.85 | 657.57 |
| Check | 2/10/2011 | EFT | Exxon Mobil | Fuel | Naiva | 10.67 | 668.24 |
| Check | 2/14/2011 | EFT | Chevron | Fuel | Naiva | 20.10 | 688.34 |
| Check | 2/23/2011 | EFT | Exxon Mobil | Fuel | Naiva | 20.36 | 708.70 |
| Check | 3/2/2011 | EFT | Exxon Mobil | Fuel | Naiva | 21.69 | 730.39 |
| Check | 3/7/2011 | EFT | Chevron | Fuel | Naiva | 22.98 | 753.37 |
| Check | 3/14/2011 | EFT | Chevron | Fuel | Naiva | 22.20 | 775.57 |
| Check | 3/14/2011 | EFT | Exxon Mobil | Fuel | Naiva | 22.20 | 797.77 |
| Check | 3/21/2011 | EFT | Chevron | Fuel | Naiva | 21.50 | 819.27 |
| Check | 3/21/2011 | EFT | Chevron | Fuel | Naiva | 24.55 | 843.82 |
| Check | 3/23/2011 | EFT | Chevron | Fuel | Naiva | 24.66 | 868.48 |
| Check | 3/28/2011 | EFT | Chevron | Fuel | Naiva | 21.76 | 890.24 |
| Check | 3/29/2011 | EFT | Chevron | Fuel | Naiva | 22.76 | 913.00 |
| Check | 4/1/2011 | EFT | Chevron | Fuel | Naiva | 24.85 | 937.85 |
| Check | 4/8/2011 | EFT | Exxon Mobil | Fuel | Naiva | 54.80 | 992.25 |
| Check | 4/14/2011 | EFT | Chevron | Fuel | Naiva | 21.02 | 1,013.27 |
| Check | 4/18/2011 | EFT | Chevron | Fuel | Naiva | 23.88 | 1,037.15 |
| Check | 4/18/2011 | EFT | Exxon Mobil | Fuel | Naiva | 22.51 | 1,059.66 |
| Check | 4/25/2011 | EFT | Fastop | Fuel | Naiva | 2.90 | 1,062.56 |
| Check | 4/25/2011 | EFT | Fastop | Fuel | Naiva | 50.84 | 1,113.40 |
| Check | 4/25/2011 | EFT | Exxon Mobil | Fuel | Naiva | 59.02 | 1,172.42 |
| Check | 4/25/2011 | EFT | Chevron | Fuel | Naiva | 14.05 | 1,186.47 |
| Check | 5/3/2011 | EFT | Exxon Mobil | Fuel | Naiva | 28.78 | 1,215.25 |
| Check | 5/6/2011 | EFT | Exxon Mobil | Fuel | Naiva | 23.63 | 1,238.88 |
| Check | 5/9/2011 | EFT | Exxon Mobil | Fuel | Naiva | 27.80 | 1,266.68 |
| Check | 5/9/2011 | EFT | Chevron | Fuel | Naiva | 28.76 | 1,295.44 |
| Check | 5/16/2011 | EFT | Chevron | Fuel | Naiva | 29.32 | 1,324.76 |
| Check | 5/16/2011 | EFT | Exxon Mobil | Fuel | Naiva | 24.64 | 1,349.40 |
| Check | 5/20/2011 | EFT | Chevron | | Naiva | 23.73 | 1,373.13 |
| Check | 5/23/2011 | EFT | Chevron | Fuel | Naiva | 24.40 | 1,397.53 |
| Check | 5/23/2011 | EFT | Chevron | Fuel | Naiva | 2.90 | 1,400.43 |
| Check | 5/24/2011 | EFT | Chevron | Fuel | Naiva | 23.33 | 1,423.76 |
| Check | 5/25/2011 | EFT | TX Med Ctr Garage | Parking | Naiva | 6.00 | 1,429.76 |
| Check | 5/26/2011 | EFT | TX Med Ctr Garage | parking | Naiva | 6.00 | 1,435.76 |
| Check | 5/27/2011 | EFT | TX Med Ctr Garage | parking | Naiva | 5.00 | 1,440.76 |
| Check | 5/31/2011 | EFT | TX Med Ctr Garage | parking | Naiva | 6.00 | 1,446.76 |
| Check | 5/31/2011 | EFT | Chevron | Fuel | Naiva | 24.48 | 1,471.24 |
| Check | 5/31/2011 | EFT | TX Med Ctr Garage | parking | Naiva | 2.00 | 1,473.24 |
| Check | 6/3/2011 | EFT | Chevron | Fuel | Naiva | 24.00 | 1,497.24 |
| Check | 6/6/2011 | EFT | Exxon Mobil | Fuel | Naiva | 43.12 | 1,540.36 |
| Check | 6/7/2011 | EFT | Chevron | Fuel | Naiva | 22.92 | 1,563.28 |
| Check | 6/8/2011 | EFT | Exxon Mobil | Fuel | Naiva | 22.08 | 1,585.36 |
| Check | 6/13/2011 | EFT | Exxon Mobil | Fuel | Naiva | 23.84 | 1,609.20 |
| Check | 6/14/2011 | EFT | Exxon Mobil | Fuel | Naiva | 29.37 | 1,638.57 |
| Check | 6/15/2011 | EFT | Chevron | Fuel | Naiva | 26.47 | 1,665.04 |
| Check | 6/20/2011 | EFT | Exxon Mobil | Fuel | Naiva | 25.80 | 1,690.84 |
| Check | 6/21/2011 | EFT | Chevron | Fuel | Naiva | 26.58 | 1,717.22 |
| Check | 6/27/2011 | EFT | Chevron | Fuel | Naiva | 25.13 | 1,742.35 |
| Check | 6/28/2011 | EFT | Chevron | Fuel | Naiva | 22.70 | 1,765.05 |
| Check | 7/1/2011 | EFT | Chevron | Fuel | Naiva | 26.25 | 1,791.30 |
| Check | 7/5/2011 | EFT | Shell | Fuel | Naiva | 23.05 | 1,814.35 |
| Check | 7/5/2011 | EFT | Chevron | Fuel | Naiva | 26.86 | 1,841.21 |
| Check | 7/8/2011 | EFT | Chevron | Fuel | Naiva | 25.68 | 1,866.89 |
| Check | 7/11/2011 | EFT | Chevron | Fuel | Naiva | 21.07 | 1,887.96 |
| Check | 7/13/2011 | EFT | Chevron | Fuel | Naiva | 23.37 | 1,911.33 |
| Check | 7/16/2011 | EFT | Exxon Mobil | Fuel | Naiva | 25.35 | 1,936.68 |
| Check | 7/19/2011 | EFT | Chevron | Fuel | Naiva | 30.18 | 1,966.86 |
| Check | 7/20/2011 | EFT | Chevron | Fuel | Naiva | 24.10 | 1,990.96 |

02/02/2015:0838:P0168
02/12/2015:1339:P0036

**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 7/25/2011 | EFT | Chevron | Fuel | Nelva | 26.07 | 2,017.03 |
| Check | 7/27/2011 | EFT | Chevron | Fuel | Nelva | 24.45 | 2,041.48 |
| Check | 8/1/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.88 | 2,067.16 |
| Check | 8/1/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 2,088.23 |
| Check | 8/2/2011 | EFT | Chevron | Fuel | Nelva | 20.82 | 2,109.85 |
| Check | 8/8/2011 | EFT | Chevron | Fuel | Nelva | 25.37 | 2,134.22 |
| Check | 8/9/2011 | EFT | Chevron | Fuel | Nelva | 26.27 | 2,160.49 |
| Check | 8/10/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.53 | 2,186.02 |
| Check | 8/15/2011 | EFT | Chevron | Fuel | Nelva | 25.41 | 2,211.43 |
| Check | 8/17/2011 | EFT | Chevron | Fuel | Nelva | 26.21 | 2,237.64 |
| Check | 8/22/2011 | EFT | Chevron | Fuel | Nelva | 25.52 | 2,263.16 |
| Check | 8/23/2011 | EFT | Chevron | Fuel | Nelva | 22.25 | 2,285.41 |
| Check | 8/25/2011 | EFT | Chevron | Fuel | Nelva | 15.14 | 2,300.55 |
| Check | 8/29/2011 | EFT | Chevron | Fuel | Nelva | 20.14 | 2,320.69 |
| Check | 8/31/2011 | EFT | Chevron | Fuel | Nelva | 20.16 | 2,340.85 |
| Check | 9/6/2011 | EFT | Chevron | Fuel | Nelva | 21.50 | 2,362.35 |
| Check | 9/6/2011 | EFT | Chevron | Fuel | Nelva | 16.07 | 2,378.42 |
| Check | 9/7/2011 | EFT | Chevron | Fuel | Nelva | 14.34 | 2,392.76 |
| Check | 9/13/2011 | EFT | Exxon Mobil | Fuel | Nelva | 21.15 | 2,413.91 |
| Check | 9/15/2011 | EFT | Chevron | Fuel | Nelva | 23.96 | 2,437.87 |
| Check | 9/19/2011 | EFT | Chevron | Fuel | Nelva | 20.57 | 2,458.44 |
| Check | 9/22/2011 | EFT | Chevron | Fuel | Nelva | 20.23 | 2,478.67 |
| Check | 9/27/2011 | EFT | Chevron | Fuel | Nelva | 23.31 | 2,501.98 |
| Check | 9/30/2011 | EFT | Chevron | Fuel | Nelva | 25.07 | 2,527.05 |
| Check | 10/3/2011 | EFT | Chevron | Fuel | Nelva | 23.30 | 2,550.35 |
| Check | 10/5/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.22 | 2,575.57 |
| Check | 10/6/2011 | EFT | Chevron | Fuel | Nelva | 20.11 | 2,595.68 |
| Check | 10/11/2011 | EFT | Chevron | Fuel | Nelva | 20.52 | 2,616.20 |
| Check | 10/12/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 2,637.27 |
| Check | 10/12/2011 | EFT | Exxon Mobil | Fuel | Nelva | 22.02 | 2,659.29 |
| Check | 10/14/2011 | EFT | Chevron | Fuel | Nelva | 2.14 | 2,661.43 |
| Check | 10/17/2011 | EFT | Chevron | fuel | Nelva | 24.70 | 2,686.13 |
| Check | 10/17/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 2,707.20 |
| Check | 10/19/2011 | ETVFT | Chevron | Fuel | Nelva | 20.92 | 2,728.12 |
| Check | 10/26/2011 | eft | Exxon Mobil | fUEL | Nelva | 21.76 | 2,749.80 |
| Check | 10/27/2011 | EFT | Chevron | Fuel | Nelva | 20.25 | 2,770.15 |
| Check | 10/31/2011 | EFT | Chevron | Fuel | Nelva | 20.99 | 2,791.14 |
| Check | 10/31/2011 | EFT | Chevron | Fuel | Nelva | 22.72 | 2,813.86 |
| Check | 11/2/2011 | EFT | Chevron | Fuel | Nelva | 21.06 | 2,834.92 |
| Check | 11/4/2011 | EFT | Chevron | Fuel | Nelva | 20.90 | 2,855.82 |
| Check | 11/7/2011 | EFT | Chevron | Fuel | Nelva | 19.91 | 2,875.73 |
| Check | 11/9/2011 | EFT | Chevron | Fuel | Nelva | 22.79 | 2,898.52 |
| Check | 11/14/2011 | eft | Chevron | fUEL | Nelva | 20.41 | 2,918.93 |
| Check | 11/14/2011 | eft | Chevron | Fuel | Nelva | 25.76 | 2,944.69 |
| | | | | | Nelva | 21.07 | 2,965.76 |
| Total Automobile Expense | | | | | | 2,965.76 | 2,965.76 |
| Bank & Brokerage Charges | | | | | | | |
| Check | 12/23/2010 | EFT | Bank of America | External Transfer Fee | Nelva | 3.00 | 3.00 |
| General Journal | 12/28/2010 | EJ20101214 | | Offset Admin Fee | Elmer | -13.88 | -10.88 |
| Check | 12/30/2010 | EFT | Bank of America | Check Order | Nelva | 27.00 | 16.12 |
| General Journal | 1/6/2011 | EJ20110106 | | Advisory Solutions Program Fee | Elmer | 305.91 | 322.03 |
| Check | 1/13/2011 | EFT | Bank of America | Check Order | Nelva | 26.00 | 348.03 |
| Check | 1/18/2011 | EFT | Bank of America | NSF Returned Item Fee for Activity | Nelva | 35.00 | 383.03 |
| Check | 1/18/2011 | EFT | Bank of America | NSF Overdraft Item Fee For Activity | Nelva | 35.00 | 418.03 |
| Check | 1/19/2011 | EFT | Bank of America | NSF: Returned Item Fee for Activity | Nelva | 35.00 | 453.03 |
| Check | 1/20/2011 | EFT | Bank of America | External Transfer Fee | Survivor | 3.00 | 456.03 |
| General Journal | 1/27/2011 | EJ20110108 | | Offset of Admin Fee | Elmer | -12.41 | 443.62 |
| General Journal | 1/27/2011 | EJ20120456 | | Fee Refund Nbkhuz8 - Reimbursement | Nelva | -105.00 | 338.62 |
| General Journal | 2/4/2011 | EJ20110203 | | Redeem JPM Fed Money Market Inst Cl | Elmer | 297.60 | 636.22 |
| General Journal | 2/23/2011 | EJ20110205 | | Fee Offset Less Admin Fee | Elmer | -11.67 | 624.55 |
| General Journal | 3/4/2011 | EJ20110303 | | Redeem JPM Fed Money Market Inst | Elmer | 273.03 | 897.58 |
| General Journal | 3/11/2011 | DR12110301 | | Svc Fee on Reinvestment of Dividends on Chevron Stock | Family | 3.00 | 900.58 |
| General Journal | 3/23/2011 | EJ20110306 | | Fee Offset Less Admin Fee | Elmer | -13.01 | 887.57 |
| General Journal | 4/5/2011 | EJ20110403 | | Redeem JPM Fed Money Market Inst Cl | Elmer | 300.68 | 1,188.25 |
| General Journal | 4/21/2011 | EJ20110404 | | Fee Offset Less Admin Fee | Elmer | -11.70 | 1,176.55 |
| General Journal | 5/5/2011 | EJ20110502 | | Redeem JPM Fed Money Market Inst | Elmer | 295.92 | 1,472.47 |
| General Journal | 5/17/2011 | EJ20110503 | | Fee Offset Less Admin Fee | Elmer | -12.12 | 1,460.35 |
| General Journal | 6/1/2011 | EJ20110602 | | Minimum Balance Fee | Survivor | 3.00 | 1,463.35 |
| General Journal | 6/1/2011 | EJ20110601 | | Redeem JPM Fed Money Market Inst Cl | Elmer | 305.34 | 1,768.69 |
| Check | 6/14/2011 | EFT | Bank of America | External Transfer Fee - 3 Day bank charge | Survivor | 3.00 | 1,771.69 |
| General Journal | 6/22/2011 | EJ20110604 | | Fee Offset Less Admin Fee | Elmer | -11.59 | 1,760.10 |
| Check | 6/23/2011 | EFT | Bank of America | Check order fee | Nelva | 23.00 | 1,783.10 |
| General Journal | 7/8/2011 | EJ20110703 | | Redeemed JPM Fed Money Market Inst Cl | Elmer | 288.60 | 2,071.70 |
| Check | 7/20/2011 | EFT | Bank of America | Safebox Fee | Survivor | 8.00 | 2,079.70 |
| General Journal | 7/28/2011 | EJ20110704 | | Fee Offset Less Admin Fee | Elmer | -12.20 | 2,067.50 |
| Check | 7/27/2011 | EFT | Bank of America | External transfer fee - 3 Day | Survivor | 3.00 | 2,070.50 |
| General Journal | 8/4/2011 | EJ20110802 | | Redeemed JPM Fed Money Market Inst Cl | Elmer | 302.09 | 2,372.59 |
| General Journal | 8/25/2011 | EJ20110803 | | Fee Offset Less Admin Fee | Elmer | -11.67 | 2,360.92 |
| General Journal | 9/7/2011 | EJ20110902 | | Redeemed JPM Fed Money Market Inst C | Elmer | 279.62 | 2,640.54 |
| General Journal | 9/22/2011 | EJ20110906 | | Fee Offset Less Admin Fee | Elmer | -13.30 | 2,627.24 |
| General Journal | 10/6/2011 | EJ20111003 | | Redeemed JPM Fed Money Market Inst Cl | Elmer | 260.78 | 2,888.02 |
| General Journal | 10/25/2011 | EJ20111005 | | Fee Offset Less Admin Fee | Elmer | -14.31 | 2,873.71 |
| General Journal | 11/1/2011 | EJ20110145 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 2,965.49 |
| Check | 11/3/2011 | EFT | Bank of America | check order | Nelva | 23.00 | 2,988.49 |
| General Journal | 11/4/2011 | EJ20111103 | | Redeemed JPM Fed Money Market Inst Cl | Elmer | 264.30 | 3,252.79 |
| Check | 11/7/2011 | EFT | Bank of America | Wire transfer fee | Survivor | 25.00 | 3,277.79 |
| Check | 11/7/2011 | EFT | Bank of America | Wire transfer fee | Survivor | 25.00 | 3,302.79 |

021 2015 1339 P0037 021 02015 0838 P0169

## Brunsting Family Living Trust
## Detail of Accounts
12/21/2010-05/31/2013

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 11/8/2011 | eft | Bank of America | External transfer fee - 3 Day | Survivor | 3.00 | 3,305.79 |
| Check | 11/9/2011 | EFT | Bank of America | TX Tr payment to Scb 2575 banking | Survivor | 25.00 | 3,330.79 |
| General Journal | 11/10/2011 | EJ20110148 | | Safe Deposit Box Rent Refund Fde | Survivor | -82.00 | 3,248.79 |
| Check | 11/14/2011 | EFT | Bank of America | Safe box fee | Survivor | 135.00 | 3,383.79 |
| General Journal | 11/18/2011 | EJ20111104 | | Estate Service Fee | Survivor | 100.00 | 3,483.79 |
| General Journal | 11/21/2011 | EJ20111105 | | Wire Transfer Fee | Survivor | 25.00 | 3,508.79 |
| Check | 11/21/2011 | EFT | Bank of America | wire transfer fee | Survivor | 12.00 | 3,520.79 |
| General Journal | 11/22/2011 | EJ20111104 | | Fee Offset Less Admin Fee | Elmer | -13.47 | 3,507.32 |
| Check | 12/1/2011 | Debit | Bank of America-Brun... | Check order | Survivor | 26.00 | 3,533.32 |
| General Journal | 12/8/2011 | EJ20111211 | | Estate Valuation Fee | Survivor | 50.00 | 3,583.32 |
| General Journal | 12/23/2011 | EJ20111223 | | Fee Offset Less Admin Fee | Elmer | -13.85 | 3,569.47 |
| General Journal | 12/31/2011 | EJ20111204 | | Redeem JPMorgan Fed Money Market Ist Cl | Elmer | 256.62 | 3,826.09 |
| General Journal | 1/6/2012 | EJ20120103 | | Redeemed JP Morgan Fed Mon Mkt | Elmer | 264.78 | 4,090.87 |
| Check | 1/11/2012 | EFT | Bank of America | | Elmer | 14.00 | 4,104.87 |
| General Journal | 1/19/2012 | EJ20120105 | | Fee Offset Less Admin Fee | Elmer | -13.09 | 4,091.78 |
| General Journal | 2/3/2012 | EJ20120203 | | Redeemed JP Morgan Fed Mon Mkt Inst Cl | Elmer | 269.92 | 4,361.70 |
| General Journal | 2/24/2012 | EJ20120204 | | Fee Offset Less Admin Fee | Elmer | -12.21 | 4,349.49 |
| General Journal | 2/28/2012 | EJ20120221 | | Annual Service Fee | Survivor | 40.00 | 4,389.49 |
| Check | 3/5/2012 | TXFR | Bank of America | External transfer fee - 3 day | Survivor | 3.00 | 4,392.49 |
| General Journal | 3/6/2012 | EJ20120303 | | Redeem JP Morgan Fed Mon Mkt Inst Cl | Elmer | 260.41 | 4,652.90 |
| Check | 3/15/2012 | EFT | Bank of America | | Elmer | 31.00 | 4,683.90 |
| Check | 3/16/2012 | EFT | Bank of America | Returned Item Chargeback Fee | Survivor | 12.00 | 4,695.90 |
| Check | 3/16/2012 | EFT | Bank of America | Returned Item Chargeback - Met Life dupl check | Survivor | 70.30 | 4,766.20 |
| General Journal | 3/28/2012 | EJ20120307 | | Fee Offset Less Admin Fee | Elmer | -12.62 | 4,753.58 |
| General Journal | 4/5/2012 | EJ20120403 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 283.77 | 5,037.35 |
| General Journal | 4/20/2012 | EJ20120404 | | Fee Offset Less Admin Fee | Elmer | -11.53 | 5,025.82 |
| General Journal | 5/4/2012 | EJ20120503 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 272.29 | 5,298.11 |
| General Journal | 5/30/2012 | EJ20120508 | | Fee Offset Less Admin Fee | Elmer | -11.98 | 5,286.13 |
| General Journal | 6/5/2012 | EJ20120603 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 272.55 | 5,558.68 |
| General Journal | 6/25/2012 | EJ20120607 | | Fee Offset Les Admin Fee | Elmer | -12.29 | 5,546.39 |
| General Journal | 7/6/2012 | EJ20120703 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 259.71 | 5,806.10 |
| Check | 7/17/2012 | EFT | Bank of America | External transfer fee - 3 Day | Survivor | 3.00 | 5,809.10 |
| General Journal | 7/27/2012 | EJ20120704 | | Fee Offset Less Admin Fee | Elmer | -16.56 | 5,792.54 |
| General Journal | 8/3/2012 | EJ20120803 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 275.06 | 6,067.60 |
| General Journal | 8/23/2012 | EJ20120804 | | Fee Offset Less Admin Fee | Elmer | -16.69 | 6,050.91 |
| General Journal | 9/7/2012 | EJ20120903 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 281.37 | 6,332.28 |
| General Journal | 9/25/2012 | EJ20120907 | | Fee Offset Less Admin Fee | Elmer | -16.75 | 6,315.53 |
| General Journal | 10/4/2012 | EJ20121003 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 278.62 | 6,594.15 |
| General Journal | 10/24/2012 | EJ20121006 | | Fee Offset Less Admin Fee | Elmer | -17.20 | 6,576.95 |
| General Journal | 11/5/2012 | EJ20121103 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 288.03 | 6,864.98 |
| General Journal | 11/30/2012 | EJ20121104 | | Fee Offset Less Admin Fee | Elmer | -17.01 | 6,847.97 |
| General Journal | 12/6/2012 | EJ20121203 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 275.75 | 7,123.72 |
| General Journal | 12/21/2012 | EJ20121211 | | Fee Offset Less Admin Fee | Elmer | -17.22 | 7,106.50 |
| General Journal | 1/7/2013 | EJ20130102 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 290.80 | 7,397.30 |
| General Journal | 1/25/2013 | EJ20130104 | | Fee Offset Less Admin Fee | Elmer | -16.98 | 7,380.32 |
| General Journal | 2/5/2013 | EJ20130203 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 299.80 | 7,680.12 |
| General Journal | 2/22/2013 | EJ20130204 | | Fee Offset Less Admin Fee | Elmer | -17.22 | 7,662.90 |
| General Journal | 2/28/2013 | EJ20130222 | | Annual Fee | Survivor | 40.00 | 7,702.90 |
| General Journal | 3/7/2013 | EJ20130303 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 273.58 | 7,976.48 |
| General Journal | 3/19/2013 | EJ20130306 | | Fee Offset Less Admin Fee | Elmer | -18.33 | 7,958.15 |
| General Journal | 4/8/2013 | EJ20130403 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 306.53 | 8,264.68 |
| General Journal | 4/18/2013 | EJ20130404 | | Fee Offset Less Admin Fee | Elmer | -17.32 | 8,247.36 |
| Check | 4/30/2013 | EFT | Bank of America | Monthly Fee | Nelva | 12.00 | 8,259.36 |
| General Journal | 5/7/2013 | EJ20130503 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 298.51 | 8,557.87 |
| General Journal | 5/28/2013 | EJ20130504 | | Fee Offset Less Admin Fee | Elmer | -17.25 | 8,540.62 |
| Total Bank & Brokerage Charges | | | | | | 8,540.62 | 8,540.62 |
| **Checks/Cash to Family Members** | | | | | | | |
| Check | 12/21/2010 | 6849 | Amy Brunsting Tschir... | Christmas Gifts | Nelva | 200.00 | 200.00 |
| Check | 12/21/2010 | EFT | Amy Brunsting Tschir... | Transfer Confirmation #6403973884 | Nelva | 7,000.00 | 7,200.00 |
| Check | 12/31/2010 | ATM | Cash | TX Tr Cash Withdrawal at Banking Center Town and Country | Nelva | 25.00 | 7,225.00 |
| Check | 1/12/2011 | ATM | Cash | ATM 01/11 #000007185 | Nelva | 40.00 | 7,265.00 |
| Check | 1/19/2011 | EFT | Amy Tschirhart | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 6,000.00 | 13,265.00 |
| Check | 1/25/2011 | ATM | Cash | ATM - Cash 01/25 #000008811 | Nelva | 10.00 | 13,275.00 |
| Check | 1/25/2011 | 115 | Cash | CAsh | Nelva | 100.00 | 13,375.00 |
| Check | 2/22/2011 | 140 | Cash | Cash | Nelva | 100.00 | 13,475.00 |
| Check | 3/14/2011 | 149 | Candace Curtis | | Nelva | 25.00 | 13,500.00 |
| Check | 3/20/2011 | 7007 | Amy Brunsing | Reimbursement for supplies | Survivor | 40.00 | 13,540.00 |
| Check | 4/7/2011 | EFT | Candace Curtis | Gifts Given/ref acct 2272/ties to G Vie letter/sch's dated 7/15/13 | Survivor | 3,000.00 | 16,540.00 |
| Check | 4/21/2011 | EFT | Best uy | Tino phone | Nelva | 375.38 | 16,916.38 |
| Check | 5/10/2011 | 7014 | TDECU | Luke Truck, ties to G Vie letter/sch's dated 7/15/13 | Survivor | 5,443.22 | 22,359.60 |
| Check | 5/27/2011 | 7016 | The Victoria Col | Luke college - in lieu of Anita Trustee fee per G Vie letter | Survivor | 461.00 | 22,820.60 |
| Check | 6/2/2011 | EFT | Iowa 529 | Kt college - Ach DES:Contribution ID:0000 | Survivor | 500.00 | 23,320.60 |
| Check | 6/3/2011 | EFT | Am-Honda | For Katie DES:PMT ID:000001032223 ties to G Vie letter/sch's ... | Survivor | 5,750.51 | 29,071.11 |
| Check | 6/6/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPAY ID:11... | Survivor | 2,358.75 | 31,429.86 |
| Check | 6/8/2011 | TXFR | Candace Curtis | Candy Curtis to ckg ...2272 ties to G Vie letter/sch's dated 7/15... | Survivor | 2,000.00 | 33,429.86 |
| Check | 6/13/2011 | TXFR | Amy Tschirhart | Reimbursement - Supplies to fix house | Survivor | 100.00 | 33,529.86 |
| Check | 6/23/2011 | 240 | Luke Riley | Household yard work | Nelva | 25.00 | 33,554.86 |
| Check | 6/27/2011 | EFT | Bank of America Cre... | in lieu of Anita Trustee fee as per G Vie letter $ amt. transposed... | Survivor | 2,364.24 | 35,919.20 |
| Check | 7/8/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPAY ID:114... | Survivor | 2,976.35 | 38,895.55 |
| Check | 7/15/2011 | EFT | Bank of America Cre... | Cr Card pymt in lieu of Trustee fee Anita, G Vie letter and Trust ... | Survivor | 7,242.83 | 46,138.38 |
| Check | 7/18/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letterDES:EPAY ID:115... | Survivor | 1,998.19 | 48,136.57 |
| Check | 7/26/2011 | EFT | Amy Tschirhart | Reimbursement supplies to fix house | Survivor | 100.00 | 48,236.57 |
| Check | 8/24/2011 | EFT | Candace Curtis | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 50,236.57 |
| Check | 8/24/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 75.00 | 50,311.57 |
| Check | 8/25/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 15.00 | 50,326.57 |
| Check | 8/25/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 15.00 | 50,341.57 |
| Check | 8/26/2011 | EFT | UTSA Admissions | Luke college - Education | Survivor | 575.00 | 50,916.57 |

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**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 9/6/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:117... | Survivor | 998.04 | 51,915.61 |
| Check | 9/7/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 125.00 | 52,040.61 |
| Check | 9/8/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 550.00 | 52,590.61 |
| Check | 9/23/2011 | EFT | Bank of America Cre... | in lieu of Anita Trustee fee as per G Vie letter date on his sch 9/7 | Survivor | 4,767.36 | 57,357.97 |
| Check | 10/4/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:119... | Survivor | 2,390.35 | 59,748.32 |
| Check | 10/5/2011 | EFT | Candace Curtis | to chk 2839** | Nelva | 500.00 | 60,248.32 |
| Check | 10/18/2011 | 356 | Nelva Brunsting | Cash | Nelva | 50.00 | 60,298.32 |
| Check | 10/19/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:120... | Survivor | 2,033.30 | 62,331.62 |
| Check | 10/21/2011 | 7032 | Vehs Bankd Boosters | Katy band | Survivor | 280.00 | 62,611.62 |
| Check | 10/26/2011 | EFT | Candace Curtis | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 64,611.62 |
| Check | 11/1/2011 | TXFR | Luke Riley | Luke College ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 66,611.62 |
| Check | 11/3/2011 | EFT | Bank of America Cre... | in lieu of Anita Trustee fee as per G Vie letter his sch had 10/6 d... | Survivor | 102.52 | 66,714.14 |
| Check | 11/7/2011 | EFT | Anita Brunsing | Legal fees Wire Type:Wire Out Date:111107 T to anita for futu... | Survivor | 10,000.00 | 76,714.14 |
| Check | 11/7/2011 | EFT | Amy Brunsing | Legal fees Wire TypeL Wire Out Date:111107 T to amy for f... | Survivor | 10,000.00 | 86,714.14 |
| Check | 11/7/2011 | EFT | Amy Tschirhart | Reimbursement - for supplies to fix house | Survivor | 1,000.00 | 87,714.14 |
| Check | 11/8/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID: 121... | Survivor | 3,274.51 | 90,988.65 |
| Check | 11/10/2011 | EFT | Candace Curtis | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 92,988.65 |
| Check | 1/25/2012 | 111 | Amy Brunsing | Reimbursement - moving/repair expenses | Survivor | 425.94 | 93,414.59 |
| Check | 2/27/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 10,000.00 | 103,414.59 |
| Check | 3/2/2012 | TXFR | Amy Brunsing | Reimbursement trust expenses | Survivor | 841.45 | 104,256.04 |
| Check | 3/2/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 2,537.50 | 106,793.54 |
| Check | 3/5/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 10,000.00 | 116,793.54 |
| Check | 3/6/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 3,117.50 | 119,911.04 |
| General Journal | 3/13/2012 | EJ20120410 | Amy Brunsting | Reimbursement | Survivor | -10,000.00 | 109,911.04 |
| General Journal | 3/13/2012 | EJ20120412 | Anita Brunsting | Reimbursement | Survivor | -10,040.00 | 99,871.04 |
| Check | 4/16/2012 | 122 | Candace Curtis | Remainder of Life Ins Trust - Other Income | Survivor | 60.00 | 99,931.04 |
| Check | 4/16/2012 | 123 | Carl Brunsting | Remainder of Life Ins Trust | Survivor | 60.00 | 99,991.04 |
| Check | 4/16/2012 | 124 | Amy Brunsing | Remainder of Life Ins Trust - Other Inc | Survivor | 60.00 | 100,051.04 |
| Check | 4/16/2012 | 125 | Carole Brunsting | Remainder of Life Ins Trust - Other Inc | Survivor | 60.00 | 100,111.04 |
| Check | 4/16/2012 | 127 | Anita Brunsting | Remainder of Life Ins Trust - Other Inc | Survivor | 44.85 | 100,155.89 |
| Check | 4/20/2012 | EFT | Carole Brunsting | Moving Expenses Reimbursement | Survivor | 1,563.50 | 101,719.19 |
| Check | 4/25/2012 | 131 | Anita Brunsting | Legal fees Reimbursement for Retainer to Chip Mathews | Survivor | 5,000.00 | 106,719.19 |
| Check | 4/25/2012 | 130 | Anita Brunsting | Reimbursement for UPS to mail boxes to S Mills | Survivor | 102.11 | 106,821.30 |
| Check | 5/18/2012 | 101 | Anita Brunsting | Reimbursement for 1/2 farm tax | Elmer | 1,679.43 | 108,500.73 |
| Check | 7/16/2012 | TXFR | Amy Brunsing | Trust expenses - Reimbursement | Survivor | 353.43 | 108,854.16 |
| Check | 9/10/2012 | 139 | Anita Brunsting | Reimburse postage | Survivor | 61.75 | 108,915.91 |
| Check | 9/10/2012 | 140 | Anita Brunsting | Stamps reimbursement | Survivor | 9.00 | 108,924.91 |
| Total Checks/Cash to Family Members | | | | | | 108,924.91 | 108,924.91 |
| Dues and Subscriptions | | | | | | | |
| Check | 3/15/2011 | 154 | Birds and Blooms | | Nelva | 10.00 | 10.00 |
| Check | 4/25/2011 | 187 | Doon Prieur | | Nelva | 26.50 | 36.50 |
| Check | 8/17/2011 | 294 | Houston Chronicle | | Nelva | 138.00 | 174.50 |
| Check | 8/18/2011 | 292 | Time Magazine | | Nelva | 20.00 | 194.50 |
| Check | 9/21/2011 | 322 | Iowa Outdoors | | Nelva | 15.00 | 209.50 |
| Check | 9/10/2012 | 137 | Houston Chronicle | final payment - subscription | Survivor | 68.97 | 278.47 |
| Total Dues and Subscriptions | | | | | | 278.47 | 278.47 |
| Food/Dining/Groceries | | | | | | | |
| Check | 12/21/2010 | 6848 | Randalls | | Nelva | 60.51 | 60.51 |
| Check | 1/10/2011 | EFT | Randalls | 01/09 #000555055 | Nelva | 234.97 | 295.48 |
| Check | 1/18/2011 | EFT | Kroger | | Nelva | 32.33 | 327.81 |
| Check | 1/24/2011 | EFT | Randalls | 01/23 #000635058 | Nelva | 35.89 | 363.70 |
| Check | 1/24/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 366.99 |
| Check | 1/31/2011 | EFT | Randalls | | Nelva | 51.87 | 418.86 |
| Check | 1/31/2011 | EFT | Randalls | | Nelva | 47.24 | 466.10 |
| Check | 1/31/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 469.39 |
| Check | 2/7/2011 | EFT | Randalls | | Nelva | 71.64 | 541.03 |
| Check | 2/14/2011 | EFT | Randalls | | Nelva | 23.68 | 564.71 |
| Check | 2/14/2011 | EFT | Randalls | | Nelva | 76.92 | 641.63 |
| Check | 2/18/2011 | EFT | Kroger | | Nelva | 27.33 | 668.96 |
| Check | 2/22/2011 | EFT | Subway | Dining | Nelva | 3.25 | 672.21 |
| Check | 2/22/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 5.83 | 678.04 |
| Check | 2/22/2011 | EFT | Randalls | | Nelva | 47.02 | 725.06 |
| Check | 2/22/2011 | EFT | Wal-Mart | | Nelva | 46.27 | 771.33 |
| Check | 2/22/2011 | EFT | Randalls | | Nelva | 8.68 | 780.01 |
| Check | 2/22/2011 | EFT | Walgreens | | Nelva | 28.12 | 808.13 |
| Check | 2/24/2011 | EFT | Randalls | | Nelva | 24.39 | 832.52 |
| Check | 3/7/2011 | EFT | Randalls | | Nelva | 24.30 | 856.82 |
| Check | 3/7/2011 | EFT | Chick-fil-a #0103 | | Nelva | 3.29 | 860.11 |
| Check | 3/7/2011 | EFT | Randalls | | Nelva | 9.77 | 869.88 |
| Check | 3/7/2011 | eft | Wal-Mart | | Nelva | 11.89 | 881.77 |
| General Journal | 3/7/2011 | EJ20120461 | | DEBIT 1943 | Nelva | -6.48 | 875.29 |
| Check | 3/8/2011 | eft | Subway | | Nelva | 3.25 | 878.54 |
| Check | 3/14/2011 | EFT | Randalls | | Nelva | 29.21 | 907.75 |
| Check | 3/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 14.16 | 921.91 |
| Check | 3/14/2011 | EFT | Randalls | | Nelva | 13.23 | 935.14 |
| Check | 3/14/2011 | EFT | Taco Cabana | Dining | Nelva | 6.48 | 941.62 |
| Check | 3/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 944.91 |
| Check | 3/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 1.83 | 946.74 |
| Check | 3/14/2011 | EEFT | Taco Cabana | Dining | Nelva | 8.63 | 955.37 |
| Check | 3/16/2011 | EFT | Randalls | | Nelva | 60.94 | 1,016.31 |
| Check | 3/16/2011 | EFT | Randalls | | Nelva | 12.44 | 1,028.75 |
| Check | 3/18/2011 | EFT | Randalls | | Nelva | 69.77 | 1,098.52 |
| Check | 3/21/2011 | EFT | Taco Cabana | Dining | Nelva | 22.68 | 1,121.20 |
| Check | 3/21/2011 | EFT | Taco Cabana | Dining | Nelva | 23.77 | 1,144.97 |
| Check | 3/21/2011 | EFT | Wal-Mart | | Nelva | 114.67 | 1,259.64 |
| Check | 3/21/2011 | EFT | Randalls | | Nelva | 16.37 | 1,276.01 |

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02102015:1339:P0099

**Brunsting Family Living Trust**
***Detail of Accounts***
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 3/21/2011 | EFT | Randalls | | Naiva | 13.11 | 1,291.12 |
| Check | 3/28/2011 | EFT | Randalls | | Naiva | 36.05 | 1,327.17 |
| Check | 3/29/2011 | EFT | Subway | Dining | Naiva | 4.33 | 1,331.50 |
| Check | 3/30/2011 | EFT | Randalls | | Naiva | 8.85 | 1,340.35 |
| Check | 4/4/2011 | EFT | Wal-Mart | | Naiva | 37.28 | 1,377.63 |
| Check | 4/4/2011 | EFT | Randalls | | Naiva | 34.54 | 1,412.17 |
| Check | 4/4/2011 | EFT | Randalls | | Naiva | 52.52 | 1,464.69 |
| Check | 4/5/2011 | EFT | Subway | Dining | Naiva | 3.25 | 1,467.94 |
| Check | 4/6/2011 | EFT | Randalls | | Naiva | 34.97 | 1,502.91 |
| Check | 4/8/2011 | EFT | Randalls | | Naiva | 15.87 | 1,518.78 |
| Check | 4/11/2011 | EFT | Subway | Dining | Naiva | 3.79 | 1,522.57 |
| Check | 4/11/2011 | EFT | Chick-fil-a #0103 | Dining | Naiva | 1.83 | 1,524.40 |
| Check | 4/11/2011 | EFT | Chick-fil-a #0103 | Dining | Naiva | 1.83 | 1,526.23 |
| Check | 4/11/2011 | EFT | Randalls | | Naiva | 16.56 | 1,542.79 |
| Check | 4/11/2011 | EFT | Randalls | | Naiva | 51.94 | 1,594.73 |
| Check | 4/12/2011 | EFT | Subway | Dining | Naiva | 3.25 | 1,597.98 |
| Check | 4/12/2011 | EFT | Randalls | | Naiva | 34.69 | 1,632.67 |
| Check | 4/13/2011 | EFT | Randalls | | Naiva | 67.04 | 1,699.71 |
| Check | 4/14/2011 | EFT | Randalls | | Naiva | 24.03 | 1,723.74 |
| Check | 4/15/2011 | EFT | Chick-fil-a #0103 | Dining | Naiva | 10.25 | 1,733.99 |
| Check | 4/18/2011 | EFT | Randalls | | Naiva | 26.45 | 1,760.44 |
| Check | 4/18/2011 | EFT | Randalls | | Naiva | 23.16 | 1,783.60 |
| Check | 4/18/2011 | EFT | Randalls | | Naiva | 17.30 | 1,800.90 |
| Check | 4/22/2011 | EFT | Randalls | | Naiva | 57.60 | 1,858.50 |
| Check | 4/25/2011 | EFT | Subway | Dining | Naiva | 3.79 | 1,862.29 |
| Check | 4/25/2011 | EFT | Subway | Dining | Naiva | 3.79 | 1,866.08 |
| Check | 4/25/2011 | EFT | Taco Cabana | Dining | Naiva | 22.68 | 1,888.76 |
| Check | 4/26/2011 | EFT | Randalls | | Naiva | 86.07 | 1,974.83 |
| Check | 5/2/2011 | EFT | Randalls | | Naiva | 140.07 | 2,114.90 |
| Check | 5/3/2011 | EFT | Randalls | | Naiva | 36.75 | 2,151.65 |
| Check | 5/6/2011 | EFT | Randalls | | Naiva | 17.30 | 2,168.95 |
| Check | 5/9/2011 | EFT | Randalls | | Naiva | 33.74 | 2,202.69 |
| Check | 5/9/2011 | EFT | Randalls | | Naiva | 55.52 | 2,258.21 |
| Check | 5/11/2011 | EFT | Randalls | | Naiva | 10.39 | 2,268.60 |
| Check | 5/16/2011 | EFT | Chick-fil-a #0103 | Dining | Naiva | 3.29 | 2,271.89 |
| Check | 5/18/2011 | EFT | Chick-fil-a #0103 | Dining | Naiva | 3.29 | 2,275.18 |
| Check | 5/18/2011 | EFT | Randalls | | Naiva | 42.56 | 2,317.74 |
| Check | 5/20/2011 | EFT | Randalls | | Naiva | 21.87 | 2,339.61 |
| Check | 5/23/2011 | EFT | Randalls | | Naiva | 57.35 | 2,396.96 |
| Check | 5/25/2011 | EFT | Randalls | Dining | Naiva | 43.52 | 2,440.48 |
| Check | 5/31/2011 | EFT | Randalls | | Naiva | 31.71 | 2,472.19 |
| Check | 6/3/2011 | EFT | Randalls | | Naiva | 23.46 | 2,495.65 |
| Check | 6/6/2011 | EFT | Kroger | | Naiva | 32.17 | 2,527.82 |
| Check | 6/6/2011 | EFT | Randalls | | Naiva | 23.97 | 2,551.79 |
| Check | 6/8/2011 | EFT | Randalls | | Naiva | 20.00 | 2,571.79 |
| Check | 6/8/2011 | EFT | Fastop | Dining | Naiva | 4.25 | 2,576.04 |
| Check | 6/13/2011 | EFT | McDonald's | Dining | Naiva | 13.46 | 2,589.50 |
| Check | 6/13/2011 | EFT | Kroger | | Naiva | 3.05 | 2,592.55 |
| Check | 6/13/2011 | EFT | Randalls | | Naiva | 43.77 | 2,636.32 |
| Check | 6/13/2011 | EFT | Randalls | | Naiva | 54.05 | 2,690.37 |
| Check | 6/14/2011 | EFT | McDonald's | Dining | Naiva | 2.17 | 2,692.54 |
| Check | 6/20/2011 | EFT | Randalls | | Naiva | 24.19 | 2,716.73 |
| Check | 6/24/2011 | EFT | Randalls | | Naiva | 41.68 | 2,758.41 |
| Check | 6/28/2011 | EFT | Randalls | | Naiva | 50.83 | 2,809.24 |
| Check | 7/1/2011 | EFT | Randalls | | Naiva | 18.92 | 2,828.16 |
| Check | 7/5/2011 | EFT | Randalls | | Naiva | 25.61 | 2,853.77 |
| Check | 7/5/2011 | EFT | Randalls | | Naiva | 34.05 | 2,887.82 |
| Check | 7/6/2011 | EFT | Chick-fil-a #0103 | Dining | Naiva | 5.13 | 2,892.95 |
| Check | 7/8/2011 | EFT | Randalls | | Naiva | 46.61 | 2,939.56 |
| Check | 7/11/2011 | EFT | Randalls | | Naiva | 52.99 | 2,992.55 |
| Check | 7/11/2011 | EFT | McDonald's | Dining | Naiva | 2.48 | 2,995.03 |
| Check | 7/11/2011 | EFT | Randalls | | Naiva | 29.80 | 3,024.83 |
| Check | 7/18/2011 | EFT | Randalls | | Naiva | 35.41 | 3,060.24 |
| Check | 7/18/2011 | EFT | Randalls | | Naiva | 25.14 | 3,085.38 |
| Check | 7/18/2011 | EFT | Wal-Mart | | Naiva | 260.73 | 3,346.11 |
| Check | 7/21/2011 | EFT | Randalls | | Naiva | 45.34 | 3,391.45 |
| Check | 7/25/2011 | EFT | Randalls | | Naiva | 43.38 | 3,434.83 |
| Check | 7/25/2011 | EFT | Randalls | | Naiva | 60.57 | 3,495.40 |
| Check | 7/25/2011 | EFT | Kolache Factory | Dining | Naiva | 3.76 | 3,499.16 |
| Check | 7/28/2011 | EFT | Randalls | | Naiva | 31.23 | 3,530.39 |
| Check | 7/28/2011 | EFT | Randalls | | Naiva | 26.20 | 3,556.59 |
| Check | 7/29/2011 | EFT | Chick-fil-a #0103 | Dining | Naiva | 1.83 | 3,558.42 |
| Check | 8/1/2011 | EFT | Randalls | | Naiva | 47.94 | 3,606.36 |
| Check | 8/1/2011 | EFT | Walgreens | | Naiva | 20.99 | 3,627.35 |
| Check | 8/1/2011 | EFT | Chick-fil-a #0103 | Dining | Naiva | 3.29 | 3,630.64 |
| Check | 8/2/2011 | EFT | Randalls | | Naiva | 29.74 | 3,660.38 |
| Check | 8/4/2011 | EFT | McDonald's | Dining | Naiva | 2.17 | 3,662.55 |
| Check | 8/5/2011 | EFT | Randalls | | Naiva | 24.92 | 3,687.47 |
| Check | 8/8/2011 | EFT | Randalls | | Naiva | 30.29 | 3,717.76 |
| Check | 8/8/2011 | EFT | Randalls | 08/06 | Naiva | 57.90 | 3,775.66 |
| Check | 8/10/2011 | EFT | Randalls | | Naiva | 21.76 | 3,797.42 |
| Check | 8/15/2011 | EFT | Randalls | | Naiva | 58.34 | 3,855.76 |
| Check | 8/15/2011 | EFT | Randalls | | Naiva | 46.75 | 3,902.51 |
| Check | 8/17/2011 | EFT | HEB | | Naiva | 34.39 | 3,936.90 |
| Check | 8/17/2011 | EFT | HEB | | Naiva | 19.77 | 3,956.67 |
| Check | 8/22/2011 | EFT | Randalls | | Naiva | 39.52 | 3,996.19 |
| Check | 8/22/2011 | EFT | Randalls | | Naiva | 44.99 | 4,041.18 |
| Check | 8/24/2011 | EFT | Randalls | | Naiva | 44.36 | 4,085.54 |

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**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 8/24/2011 | EFT | Randalls | | Nelva | 28.74 | 4,114.28 |
| Check | 8/25/2011 | EFT | Randalls | | Nelva | 18.33 | 4,132.61 |
| Check | 8/29/2011 | EFT | Randalls | | Nelva | 36.15 | 4,168.76 |
| Check | 9/2/2011 | EFT | Randalls | | Nelva | 21.71 | 4,190.47 |
| Check | 9/6/2011 | EFT | Randalls | | Nelva | 33.12 | 4,223.59 |
| Check | 9/6/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 4,226.88 |
| Check | 9/6/2011 | EFT | Randalls | | Nelva | 68.27 | 4,295.15 |
| Check | 9/7/2011 | EFT | Randalls | | Nelva | 50.29 | 4,345.44 |
| Check | 9/8/2011 | EFT | Randalls | | Nelva | 14.60 | 4,360.04 |
| Check | 9/9/2011 | EFT | Chick-fil-a #0103 | | Nelva | 3.29 | 4,363.33 |
| Check | 9/12/2011 | EFT | Randalls | | Nelva | 92.24 | 4,455.57 |
| Check | 9/12/2011 | EFT | Randalls | | Nelva | 20.00 | 4,475.57 |
| Check | 9/19/2011 | EFT | Randalls | | Nelva | 42.84 | 4,518.41 |
| Check | 9/23/2011 | EFT | Walgreens | | Nelva | 11.99 | 4,530.40 |
| Check | 9/26/2011 | EFT | Wal-Mart | | Nelva | 133.75 | 4,664.15 |
| Check | 9/26/2011 | EFT | Randalls | | Nelva | 23.57 | 4,687.72 |
| Check | 9/28/2011 | EFT | Randalls | | Nelva | 14.06 | 4,701.78 |
| Check | 9/28/2011 | EFT | Randalls | | Nelva | 18.90 | 4,720.68 |
| Check | 9/30/2011 | EFT | Randalls | | Nelva | 28.77 | 4,749.45 |
| Check | 9/30/2011 | EFT | Randalls | | Nelva | 19.06 | 4,768.51 |
| Check | 10/3/2011 | EFT | Wal-Mart | | Nelva | 55.92 | 4,824.43 |
| Check | 10/3/2011 | EFT | Randalls | | Nelva | 32.15 | 4,856.58 |
| Check | 10/3/2011 | EFT | HEB | | Nelva | 20.75 | 4,877.34 |
| Check | 10/3/2011 | EFT | Randalls | | Nelva | 8.95 | 4,886.29 |
| Check | 10/4/2011 | EFT | Randalls | | Nelva | 38.92 | 4,925.21 |
| Check | 10/7/2011 | EFT | Randalls | | Nelva | 38.04 | 4,963.25 |
| Check | 10/11/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 4,967.54 |
| Check | 10/11/2011 | EFT | Randalls | | Nelva | 26.50 | 4,994.04 |
| Check | 10/11/2011 | EFT | Randalls | | Nelva | 14.06 | 5,008.10 |
| Check | 10/12/2011 | ET | Randalls | | Nelva | 25.47 | 5,033.57 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 65.96 | 5,099.53 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 45.32 | 5,144.85 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 28.98 | 5,173.83 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 28.05 | 5,201.88 |
| Check | 10/17/2011 | EFT | McDonald's | Dining | Nelva | 17.30 | 5,219.18 |
| Check | 10/19/2011 | EFT | Randalls | | Nelva | 6.26 | 5,225.44 |
| Check | 10/20/2011 | EFT | Chick-fil-a #0103 | dINING | Nelva | 27.71 | 5,253.15 |
| Check | 10/21/2011 | eft | Randalls | | Nelva | 3.29 | 5,256.44 |
| Check | 10/21/2011 | eft | Chick-fil-a #0103 | dINING | Nelva | 7.61 | 5,264.05 |
| Check | 10/24/2011 | EFT | Randalls | | Nelva | 3.29 | 5,267.34 |
| Check | 10/24/2011 | eft | Chick-fil-a #0103 | dINING | Nelva | 41.88 | 5,309.22 |
| Check | 10/25/2011 | eft | Randalls | | Nelva | 3.29 | 5,312.51 |
| Check | 10/26/2011 | eft | Randalls | | Nelva | 52.17 | 5,364.68 |
| Check | 10/26/2011 | EFT | Subway | Dining | Nelva | 42.23 | 5,406.91 |
| Check | 10/31/2011 | EFT | Randalls | | Nelva | 14.70 | 5,421.61 |
| Check | 10/31/2011 | EFT | Randalls | | Nelva | 94.10 | 5,515.71 |
| Check | 10/31/2011 | EFT | Randalls | | Nelva | 20.33 | 5,536.04 |
| Check | 11/1/2011 | EFT | Randalls | | Nelva | 6.90 | 5,542.94 |
| Check | 11/2/2011 | EFT | Randalls | Fuel | Nelva | 33.16 | 5,576.10 |
| Check | 11/4/2011 | EFT | Randalls | | Nelva | 25.78 | 5,601.88 |
| Check | 11/4/2011 | EFT | Randalls | | Nelva | 10.00 | 5,611.88 |
| Check | 11/7/2011 | EFT | Au Bon Pain-memo | Dining | Nelva | 53.01 | 5,664.89 |
| Check | 11/7/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.94 | 5,668.83 |
| Check | 11/7/2011 | EFT | McDonald's | Dining | Nelva | 3.29 | 5,672.12 |
| Check | 11/7/2011 | EFT | Randalls | | Nelva | 1.08 | 5,673.20 |
| Check | 11/7/2011 | EFT | Randalls | | Nelva | 33.51 | 5,706.71 |
| Check | 11/8/2011 | EFT | Randalls | | Nelva | 34.35 | 5,741.06 |
| Check | 11/8/2011 | EFT | McDonald's | Dining | Nelva | 17.84 | 5,758.90 |
| Check | 11/8/2011 | EFT | Randalls | | Nelva | 6.70 | 5,765.60 |
| Check | 11/9/2011 | EFT | HEB | | Nelva | 48.45 | 5,814.05 |
| Check | 11/14/2011 | eft | Randalls | | Nelva | 43.40 | 5,857.45 |
| Check | 11/14/2011 | eft | Randalls | | Nelva | 32.71 | 5,890.16 |
| Check | 11/14/2011 | eft | Randalls | | Nelva | 30.92 | 5,921.08 |
| Check | 11/14/2011 | EFT | McDonald's | Dining | Nelva | 22.41 | 5,943.49 |
| Check | 11/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 8.60 | 5,952.09 |
| Check | 11/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 5,955.38 |
| | | | | | Nelva | 3.29 | 5,958.67 |
| Total Food/Dining/Groceries | | | | | | 5,958.67 | 5,958.67 |
| Funeral | | | | | | | |
| Check | 11/12/2011 | 7033 | Memorial Oaks | | Survivor | 1,595.00 | 1,595.00 |
| Check | 11/14/2011 | 7035 | Memorial Oaks | | Survivor | 1,511.29 | 3,106.29 |
| Check | 11/15/2011 | 7036 | Memorial Oaks | Organist | Survivor | 150.00 | 3,256.29 |
| Check | 11/15/2011 | 7037 | Bob Johnson | pastor | Survivor | 300.00 | 3,556.29 |
| Total Funeral | | | | | | 3,556.29 | 3,556.29 |
| Household | | | | | | | |
| Check | 1/20/2011 | 111 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 70.00 |
| Check | 2/11/2011 | 125 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 140.00 |
| Check | 2/18/2011 | 161 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 210.00 |
| Check | 2/22/2011 | EFT | Southwest Fertilizer | | Nelva | 8.73 | 218.73 |
| Check | 2/28/2011 | EFT | Southwest Fertilizer | | Nelva | 59.73 | 278.46 |
| Check | 2/28/2011 | EFT | Radio Shack | | Nelva | 94.13 | 372.59 |
| Check | 3/1/2011 | EFT | Home Depot | | Nelva | 20.55 | 393.14 |
| Check | 3/25/2011 | 169 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 463.14 |
| Check | 3/28/2011 | EFT | Southwest Fertilizer | | Nelva | 13.39 | 476.53 |
| Check | 4/6/2011 | EFT | Southwest Fertilizer | | Nelva | 9.73 | 486.26 |
| Check | 4/8/2011 | 179 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 556.26 |

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**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 4/18/2011 | EFT | Sou The Home | 04/18 #000457501 | Nelva | 22.83 | 579.09 |
| Check | 4/25/2011 | 196 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 649.09 |
| Check | 5/3/2011 | EFT | Southwest Fertilizer | | Nelva | 21.98 | 671.07 |
| Check | 5/9/2011 | 210 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 741.07 |
| Check | 5/23/2011 | 221 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 811.07 |
| Check | 6/3/2011 | 237 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 881.07 |
| Check | 6/27/2011 | EFT | Sou The Home | | Nelva | 161.36 | 1,042.43 |
| Check | 7/26/2011 | EFT | Southwest Fertilizer | Garden | Nelva | 25.88 | 1,068.31 |
| Check | 8/11/2011 | 300 | Maria Vaquera | Cleaning | Nelva | 50.00 | 1,118.31 |
| Check | 8/13/2011 | EFT | Southwest Fertilizer | Garden | Nelva | 18.89 | 1,137.20 |
| Check | 9/26/2011 | 336 | Maria Vaquera | Cleaning | Nelva | 50.00 | 1,187.20 |
| Check | 10/6/2011 | 345 | Maria Vaquera | Cleaning | Nelva | 50.00 | 1,237.20 |
| Total Household | | | | | | 1,237.20 | 1,237.20 |
| Insurance Expense | | | | | | | |
| Check | 1/5/2011 | EFT | State Farm Insurance | | Survivor | 299.93 | 299.93 |
| Check | 2/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 299.93 | 599.86 |
| Check | 3/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 299.93 | 899.79 |
| Check | 4/4/2011 | EFT | State Farm Insurance | PPD | Survivor | 301.36 | 1,201.15 |
| Check | 5/3/2011 | EFT | State Farm Insurance | | Survivor | 300.62 | 1,501.77 |
| Check | 6/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 300.62 | 1,802.39 |
| Check | 7/5/2011 | EFT | State Farm Insurance | PPD | Survivor | 300.62 | 2,103.01 |
| Check | 8/2/2011 | EFT | State Farm Insurance | | Survivor | 300.62 | 2,403.63 |
| Check | 9/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 2,693.67 |
| Check | 10/4/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 2,983.71 |
| Check | 11/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 3,273.75 |
| Check | 12/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 3,563.79 |
| Check | 1/5/2012 | EFT | State Farm Insurance | PPF | Survivor | 290.04 | 3,853.83 |
| Check | 2/2/2012 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 4,143.87 |
| Check | 3/2/2012 | EFT | State Farm Insurance | PPD | Survivor | 292.79 | 4,436.66 |
| Check | 4/3/2012 | EFT | State Farm Insurance | PPD | Survivor | 301.22 | 4,737.88 |
| Total Insurance Expense | | | | | | 4,737.88 | 4,737.88 |
| Lawn Care | | | | | | | |
| Check | 2/14/2011 | 133 | Mr. Phan Chan | Household | Nelva | 100.00 | 100.00 |
| Check | 3/11/2011 | 157 | Mr. Phan Chan | Household | Nelva | 100.00 | 200.00 |
| Check | 3/21/2011 | 160 | Nicolas | Yard work | Nelva | 52.00 | 252.00 |
| Check | 4/15/2011 | 190 | Mr. Phan Chan | mowing | Nelva | 100.00 | 352.00 |
| Check | 5/20/2011 | 222 | Mr. Phan Chan | mowing | Nelva | 100.00 | 452.00 |
| Check | 5/24/2011 | 226 | Fernando | yard work Home repair | Nelva | 35.00 | 487.00 |
| Check | 6/27/2011 | 255 | Mr. Phan Chan | mowing | Nelva | 125.00 | 612.00 |
| Check | 7/25/2011 | 280 | Mr. Phan Chan | mowing | Nelva | 125.00 | 737.00 |
| Check | 9/23/2011 | 337 | Mr. Phan Chan | Household | Nelva | 225.00 | 962.00 |
| Check | 10/21/2011 | 361 | Mr. Phan Chan | Household | Nelva | 100.00 | 1,062.00 |
| Check | 12/23/2011 | 105 | Mr. Phan Chan | 13630 Pinerock | Survivor | 200.00 | 1,262.00 |
| Total Lawn Care | | | | | | 1,262.00 | 1,262.00 |
| Legal Fees | | | | | | | |
| Check | 1/19/2011 | 7003 | Vacek & Freed PLLC | | Survivor | 880.15 | 880.15 |
| Check | 3/17/2011 | 7006 | Vacek & Freed PLLC | Legal Fees | Survivor | 340.00 | 1,220.15 |
| Check | 6/2/2011 | 7015 | Vacek & Freed PLLC | | Survivor | 575.59 | 1,795.74 |
| Check | 8/5/2011 | 7025 | Vacek & Freed PLLC | Retainer | Survivor | 1,000.00 | 2,795.74 |
| Check | 10/12/2011 | 7030 | DeKoster & DeKoster | farm contract | Survivor | 100.00 | 2,895.74 |
| Check | 12/20/2011 | 101 | Vacek & Freed PLLC | Retainer | Survivor | 4,500.00 | 7,395.74 |
| Check | 1/3/2012 | 110 | Herb Jamison | House appraisal | Survivor | 450.00 | 7,845.74 |
| Check | 4/20/2012 | 126 | Mills Shirley LLP | Suit | Survivor | 10,000.00 | 17,845.74 |
| Check | 4/20/2012 | 128 | Bernard Mathews | | Survivor | 1,029.60 | 18,875.34 |
| Check | 7/16/2012 | 135 | Mills Shirley LLP | | Survivor | 17,000.00 | 35,875.34 |
| Check | 3/21/2013 | 142 | Mills Shirley LLP | | Survivor | 437.10 | 36,312.44 |
| Check | 4/2/2013 | 143 | Mills Shirley LLP | George via Candy's suit | Survivor | 10,000.00 | 46,312.44 |
| General Journal | 5/31/2013 | EJ20120434 | | From Mills Shirley - Reimbursement | Survivor | -10,000.00 | 36,312.44 |
| Total Legal Fees | | | | | | 36,312.44 | 36,312.44 |
| Medical Expenses In Home Care | | | | | | | |
| Check | 12/29/2010 | 6851 | Tino | Faustino Vaquera, Jr | Nelva | 1,245.00 | 1,245.00 |
| Check | 12/29/2010 | 6852 | Michael Brooks | | Nelva | 855.00 | 2,100.00 |
| Check | 1/4/2011 | 6853 | Robert Cantu | | Survivor | 736.00 | 2,836.00 |
| Check | 1/7/2011 | 91 | Michael Brooks | | Nelva | 585.00 | 3,421.00 |
| Check | 1/10/2011 | 92 | Tino | | Nelva | 1,413.14 | 4,834.14 |
| Check | 1/11/2011 | 93 | Robert Cantu | | Nelva | 605.00 | 5,439.14 |
| Check | 1/13/2011 | 102 | Michael Brooks | | Nelva | 585.00 | 6,024.14 |
| Check | 1/18/2011 | 101 | Tino | | Nelva | 1,065.00 | 7,089.14 |
| Check | 1/18/2011 | 110 | Robert Cantu | | Nelva | 810.00 | 7,899.14 |
| General Journal | 1/19/2011 | EJ20120455 | | Return of Posted Check / Item (Robert Cantu | Nelva | -810.00 | 7,089.14 |
| Check | 1/21/2011 | 112 | Tino | | Nelva | 1,619.00 | 8,708.14 |
| Check | 1/21/2011 | 113 | Robert Cantu | | Nelva | 888.00 | 9,596.14 |
| Check | 1/24/2011 | 114 | Robert Cantu | | Nelva | 1,063.91 | 10,660.05 |
| Check | 1/27/2011 | 118 | Tino | | Nelva | 906.55 | 11,586.60 |
| Check | 1/28/2011 | 120 | Robert Cantu | | Nelva | 856.53 | 12,443.53 |
| Check | 2/1/2011 | 121 | Tino | | Nelva | 1,249.00 | 13,692.53 |
| Check | 2/1/2011 | 144 | Robert Cantu | | Nelva | 801.80 | 14,494.33 |
| Check | 2/2/2011 | 122 | Robert Cantu | | Nelva | 460.00 | 14,954.33 |
| Check | 2/4/2011 | 124 | Tino | | Nelva | 842.00 | 15,796.33 |
| Check | 2/7/2011 | 126 | Robert Cantu | | Nelva | 807.00 | 16,603.33 |
| Check | 2/11/2011 | 130 | Tino | | Nelva | 1,166.00 | 17,769.33 |
| Check | 2/11/2011 | 131 | Robert Cantu | | Nelva | 637.41 | 18,406.74 |
| Check | 2/14/2011 | 135 | Robert Cantu | | Nelva | 430.00 | 18,836.74 |

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02112015:1339:P0042

**Brunsting Family Living Trust**
***Detail of Accounts***
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 2/17/2011 | 138 | Tino | | Neiva | 1,454.42 | 20,291.18 |
| Check | 2/18/2011 | 136 | Robert Cantu | | Neiva | 771.23 | 21,062.39 |
| Check | 2/22/2011 | 162 | Tino | | Neiva | 1,067.57 | 22,129.96 |
| Check | 2/25/2011 | 141 | Tino | | Neiva | 826.72 | 22,956.68 |
| Check | 2/25/2011 | 143 | Robert Cantu | | Neiva | 510.00 | 23,466.68 |
| Check | 3/4/2011 | 146 | Robert Cantu | | Neiva | 538.68 | 24,005.36 |
| Check | 3/7/2011 | 148 | Tino | | Neiva | 1,704.19 | 25,709.55 |
| Check | 3/10/2011 | 155 | Michael Brooks | | Neiva | 285.00 | 25,994.55 |
| Check | 3/10/2011 | 156 | Robert Cantu | | Neiva | 1,045.67 | 27,040.22 |
| Check | 3/14/2011 | 158 | Tino | | Neiva | 1,253.02 | 28,293.24 |
| Check | 3/16/2011 | 159 | Michael Brooks | | Neiva | 55.00 | 28,348.24 |
| Check | 3/16/2011 | 163 | Robert Cantu | | Neiva | 289.78 | 28,638.02 |
| Check | 3/21/2011 | 164 | Tino | | Neiva | 1,248.70 | 29,886.72 |
| Check | 3/21/2011 | 165 | Michael Brooks | | Neiva | 367.50 | 30,254.22 |
| Check | 3/21/2011 | 166 | Robert Cantu | | Neiva | 360.00 | 30,614.22 |
| Check | 3/23/2011 | 167 | Michael Brooks | | Neiva | 67.50 | 30,681.72 |
| Check | 3/24/2011 | 168 | Robert Cantu | | Neiva | 490.86 | 31,172.58 |
| Check | 3/24/2011 | 170 | Tino | | Neiva | 50.00 | 31,222.58 |
| Check | 3/25/2011 | 172 | Tino | | Neiva | 1,636.77 | 32,859.35 |
| Check | 3/28/2011 | 173 | Michael Brooks | | Neiva | 65.00 | 32,924.35 |
| Check | 3/28/2011 | 174 | Robert Cantu | | Neiva | 701.91 | 33,626.26 |
| Check | 4/1/2011 | 175 | Tino | | Neiva | 1,689.00 | 35,315.26 |
| Check | 4/4/2011 | 177 | Robert Cantu | | Neiva | 1,303.48 | 36,618.74 |
| Check | 4/7/2011 | 178 | Michael Brooks | | Neiva | 184.00 | 36,802.74 |
| Check | 4/8/2011 | 180 | Tino | | Neiva | 1,475.00 | 38,277.74 |
| Check | 4/11/2011 | 181 | Robert Cantu | | Neiva | 1,042.10 | 39,319.84 |
| Check | 4/13/2011 | 185 | Michael Brooks | | Neiva | 75.00 | 39,394.84 |
| Check | 4/15/2011 | 189 | Michael Brooks | | Neiva | 91.00 | 39,485.84 |
| Check | 4/15/2011 | 191 | Tino | | Neiva | 1,704.81 | 41,190.65 |
| Check | 4/18/2011 | 192 | Michael Brooks | | Neiva | 195.00 | 41,385.65 |
| Check | 4/19/2011 | 194 | Michael Brooks | | Neiva | 216.50 | 41,602.15 |
| Check | 4/20/2011 | 195 | Michael Brooks | | Neiva | 75.00 | 41,677.15 |
| Check | 4/22/2011 | 197 | Michael Brooks | | Neiva | 202.00 | 41,879.15 |
| Check | 4/22/2011 | 198 | Tino | | Neiva | 2,156.83 | 44,035.98 |
| Check | 4/25/2011 | 199 | Robert Cantu | | Neiva | 215.00 | 44,250.98 |
| Check | 4/25/2011 | 200 | Michael Brooks | | Neiva | 300.00 | 44,550.98 |
| Check | 4/26/2011 | 202 | Shimeka Hughes | | Neiva | 1,080.00 | 45,630.98 |
| Check | 4/27/2011 | 203 | Michael Brooks | | Neiva | 60.00 | 45,690.98 |
| Check | 4/29/2011 | 204 | Robert Cantu | | Neiva | 645.00 | 46,335.98 |
| Check | 4/29/2011 | 205 | Michael Brooks | | Neiva | 90.00 | 46,425.98 |
| Check | 5/3/2011 | 208 | Robert Cantu | | Neiva | 202.50 | 46,628.48 |
| Check | 5/4/2011 | 207 | Tino | | Neiva | 1,721.11 | 48,349.59 |
| Check | 5/4/2011 | 209 | Michael Brooks | | Neiva | 270.00 | 48,619.59 |
| Check | 5/6/2011 | 211 | Tino | | Neiva | 743.00 | 49,362.59 |
| Check | 5/6/2011 | 212 | Michael Brooks | | Neiva | 67.50 | 49,430.09 |
| Check | 5/8/2011 | 213 | Robert Cantu | | Neiva | 225.00 | 49,655.09 |
| Check | 5/9/2011 | 214 | Robert Cantu | | Neiva | 902.30 | 50,557.39 |
| Check | 5/9/2011 | 215 | Michael Brooks | | Neiva | 202.00 | 50,759.39 |
| Check | 5/12/2011 | 216 | Michael Brooks | | Neiva | 45.00 | 50,804.39 |
| Check | 5/13/2011 | 217 | Tino | | Neiva | 1,320.53 | 52,124.92 |
| Check | 5/13/2011 | 218 | Robert Cantu | | Neiva | 255.00 | 52,379.92 |
| Check | 5/16/2011 | 219 | Robert Cantu | | Neiva | 868.81 | 53,248.73 |
| Check | 5/16/2011 | 220 | Michael Brooks | | Neiva | 217.50 | 53,466.23 |
| Check | 5/20/2011 | 223 | Tino | | Neiva | 1,483.63 | 54,949.76 |
| Check | 5/23/2011 | 227 | Robert Cantu | | Neiva | 1,026.00 | 55,975.76 |
| Check | 5/23/2011 | 228 | Michael Brooks | | Neiva | 207.00 | 56,182.76 |
| Check | 5/25/2011 | 229 | Michael Brooks | | Neiva | 219.50 | 56,402.26 |
| Check | 5/25/2011 | 231 | Michael Brooks | | Neiva | 227.50 | 56,629.76 |
| Check | 5/27/2011 | 232 | Tino | | Neiva | 1,621.50 | 58,251.26 |
| Check | 5/31/2011 | 235 | Robert Cantu | | Neiva | 796.86 | 59,048.12 |
| Check | 5/31/2011 | 236 | Katrina Harper | | Neiva | 360.00 | 59,408.12 |
| Check | 6/3/2011 | 239 | Tino | | Neiva | 1,215.36 | 60,623.48 |
| Check | 6/7/2011 | 241 | Robert Cantu | | Neiva | 1,115.00 | 61,738.48 |
| Check | 6/7/2011 | 242 | Katrina Harper | | Neiva | 360.00 | 62,098.48 |
| Check | 6/10/2011 | 243 | Tino | | Neiva | 1,110.00 | 63,208.48 |
| Check | 6/13/2011 | 244 | Robert Cantu | | Neiva | 720.00 | 63,928.48 |
| Check | 6/13/2011 | 246 | Katrina Harper | | Neiva | 600.00 | 64,528.48 |
| Check | 6/16/2011 | 247 | Daisy Harper | | Neiva | 720.00 | 65,248.48 |
| Check | 6/17/2011 | 248 | Robert Cantu | | Neiva | 930.00 | 66,178.48 |
| Check | 6/20/2011 | 250 | Katrina Harper | | Neiva | 870.00 | 67,048.48 |
| Check | 6/21/2011 | 249 | Daisy Harper | | Neiva | 40.00 | 67,088.48 |
| Check | 6/22/2011 | 252 | Cameo Caregivers | | Neiva | 68.00 | 67,156.48 |
| Check | 6/23/2011 | 256 | Tino | | Neiva | 1,170.00 | 68,326.48 |
| Check | 6/27/2011 | 257 | Robert Cantu | | Neiva | 926.19 | 69,252.67 |
| Check | 6/27/2011 | 258 | Katrina Harper | | Neiva | 360.00 | 69,612.67 |
| Check | 6/29/2011 | 259 | Tino | | Neiva | 1,121.65 | 70,734.32 |
| Check | 7/1/2011 | 263 | Robert Cantu | | Neiva | 930.00 | 71,664.32 |
| Check | 7/5/2011 | 265 | Katrina Harper | | Neiva | 450.00 | 72,114.32 |
| Check | 7/5/2011 | 266 | Robert Cantu | | Neiva | 60.00 | 72,174.32 |
| Check | 7/7/2011 | 269 | Tino | | Neiva | 1,166.70 | 73,341.02 |
| Check | 7/8/2011 | 270 | Robert Cantu | | Neiva | 915.00 | 74,256.02 |
| Check | 7/11/2011 | 271 | Katrina Harper | | Neiva | 465.00 | 74,721.02 |
| Check | 7/15/2011 | 273 | Robert Cantu | | Neiva | 720.00 | 75,441.02 |
| Check | 7/18/2011 | 274 | Katrina Harper | | Neiva | 673.50 | 76,114.52 |
| Check | 7/21/2011 | 275 | Tino | | Neiva | 1,172.66 | 77,287.18 |
| Check | 7/21/2011 | 276 | Tino | | Neiva | 100.00 | 77,387.18 |
| Check | 7/22/2011 | 272 | Tino | | Neiva | 1,300.06 | 78,687.24 |
| Check | 7/22/2011 | 278 | Robert Cantu | | Neiva | 165.00 | 78,852.24 |

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**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 7/22/2011 | 279 | Katrina Harper | | Nelva | 465.00 | 78,317.24 |
| Check | 7/25/2011 | 277 | Daisy Harper | | Nelva | 60.00 | 78,377.24 |
| Check | 7/25/2011 | 281 | Robert Cantu | | Nelva | 765.00 | 80,142.24 |
| Check | 7/28/2011 | 282 | Tino | | Nelva | 705.00 | 80,847.24 |
| Check | 8/1/2011 | 283 | Robert Cantu | | Nelva | 1,018.00 | 81,865.24 |
| Check | 8/1/2011 | 284 | Katrina Harper | | Nelva | 1,062.47 | 82,927.71 |
| Check | 8/4/2011 | 288 | Tino | | Nelva | 907.50 | 83,835.21 |
| Check | 8/8/2011 | 289 | Robert Cantu | | Nelva | 930.00 | 84,765.21 |
| Check | 8/9/2011 | 290 | Katrina Harper | | Nelva | 465.00 | 85,230.21 |
| Check | 8/11/2011 | 291 | Tino | | Nelva | 1,125.00 | 86,355.21 |
| Check | 8/15/2011 | 301 | Robert Cantu | | Nelva | 946.00 | 87,301.21 |
| Check | 8/15/2011 | 302 | Katrina Harper | | Nelva | 450.00 | 87,751.21 |
| Check | 8/18/2011 | 303 | Tino | | Nelva | 1,146.83 | 88,898.04 |
| Check | 8/19/2011 | 304 | Robert Cantu | | Nelva | 172.50 | 89,070.54 |
| Check | 8/19/2011 | 306 | Katrina Harper | | Nelva | 459.50 | 89,530.04 |
| Check | 8/22/2011 | 306 | Robert Cantu | | Nelva | 735.00 | 90,265.04 |
| Check | 8/24/2011 | 309 | Tino | | Nelva | 1,110.00 | 91,375.04 |
| Check | 8/29/2011 | 311 | Robert Cantu | | Nelva | 1,004.00 | 92,379.04 |
| Check | 8/30/2011 | 312 | Katrina Harper | | Nelva | 517.50 | 92,896.54 |
| Check | 9/1/2011 | 313 | Tino | | Nelva | 1,162.50 | 94,059.04 |
| Check | 9/6/2011 | 314 | Katrina Harper | | Nelva | 173.00 | 94,232.04 |
| Check | 9/8/2011 | 315 | Robert Cantu | | Nelva | 750.00 | 94,982.04 |
| Check | 9/6/2011 | 316 | Daisy Harper | | Nelva | 80.00 | 95,062.04 |
| Check | 9/6/2011 | 317 | Katrina Harper | | Nelva | 440.00 | 95,502.04 |
| Check | 9/8/2011 | 318 | Tino | | Nelva | 1,193.59 | 96,695.63 |
| Check | 9/12/2011 | 319 | Robert Cantu | | Nelva | 750.00 | 97,445.63 |
| Check | 9/13/2011 | 328 | Katrina Harper | | Nelva | 628.15 | 98,073.78 |
| Check | 9/15/2011 | 330 | Tino | | Nelva | 1,034.67 | 99,108.45 |
| Check | 9/19/2011 | 332 | Robert Cantu | | Nelva | 715.00 | 99,823.45 |
| Check | 9/20/2011 | 334 | Katrina Harper | | Nelva | 576.00 | 100,399.45 |
| Check | 9/22/2011 | 335 | Tino | | Nelva | 1,054.46 | 101,453.91 |
| Check | 9/26/2011 | 338 | Robert Cantu | | Nelva | 784.86 | 102,238.77 |
| Check | 9/27/2011 | 339 | Katrina Harper | | Nelva | 630.00 | 102,868.77 |
| Check | 9/29/2011 | 340 | Tino | | Nelva | 810.29 | 103,679.06 |
| Check | 10/3/2011 | 341 | Robert Cantu | | Nelva | 976.34 | 104,655.40 |
| Check | 10/4/2011 | 342 | Katrina Harper | | Nelva | 576.57 | 105,231.97 |
| Check | 10/6/2011 | 344 | Tino | | Nelva | 1,030.00 | 106,261.97 |
| Check | 10/7/2011 | 345 | Robert Cantu | | Nelva | 165.00 | 106,426.97 |
| Check | 10/11/2011 | 348 | Robert Cantu | | Nelva | 570.00 | 106,996.97 |
| Check | 10/11/2011 | 349 | Katrina Harper | | Nelva | 581.66 | 107,578.63 |
| Check | 10/11/2011 | 350 | Robert Cantu | | Nelva | 240.00 | 107,818.63 |
| Check | 10/14/2011 | 351 | Robert Cantu | | Nelva | 515.00 | 108,333.63 |
| Check | 10/17/2011 | 352 | Robert Cantu | | Nelva | 570.00 | 108,903.63 |
| Check | 10/18/2011 | 353 | Katrina Harper | | Nelva | 985.00 | 109,888.63 |
| Check | 10/19/2011 | 357 | Tino | | Nelva | 1,342.50 | 111,231.13 |
| Check | 10/21/2011 | 358 | Katrina Harper | | Nelva | 165.00 | 111,396.13 |
| Check | 10/24/2011 | 363 | Robert Cantu | | Nelva | 860.00 | 112,256.13 |
| Check | 10/25/2011 | 364 | Katrina Harper | | Nelva | 370.00 | 112,626.13 |
| Check | 10/28/2011 | 365 | Tino | | Nelva | 1,187.19 | 113,813.32 |
| Check | 10/31/2011 | CHK | Unknown payee | | Nelva | 793.00 | 114,606.32 |
| Check | 10/31/2011 | 366 | Katrina Harper | | Nelva | 165.00 | 114,771.32 |
| Check | 11/1/2011 | 375 | Katrina Harper | | Nelva | 540.00 | 115,311.32 |
| Check | 11/4/2011 | 376 | Tino | | Nelva | 1,235.29 | 116,548.61 |
| Check | 11/7/2011 | 377 | Robert Cantu | | Nelva | 885.00 | 117,431.61 |
| Check | 11/8/2011 | 401 | Katrina Harper | | Nelva | 360.00 | 117,791.61 |
| Check | 11/14/2011 | 431 | Latoya Harper | | Nelva | 90.00 | 117,881.61 |
| Check | 11/14/2011 | 432 | Katrina Harper | | Nelva | 810.00 | 118,691.61 |
| Check | 11/14/2011 | 433 | Robert Cantu | | Nelva | 541.00 | 119,232.61 |
| Total In Home Care | | | | | | 119,232.61 | 119,232.61 |
| **Medical Supplies** | | | | | | | |
| Check | 1/3/2011 | 6847 | Medical Aids | | Survivor | 32.48 | 32.48 |
| Check | 1/19/2011 | 104 | Duke Medical Equipm... | | Nelva | 2.54 | 35.02 |
| Check | 4/22/2011 | 184 | Duke Medical Equipm... | | Nelva | 17.75 | 52.77 |
| Check | 7/7/2011 | 7023 | Duke Medical Equipm... | | Survivor | 7.62 | 60.39 |
| Check | 7/7/2011 | 251 | Duke Medical Equipm... | Supplies | Nelva | 5.08 | 65.47 |
| Total Medical Supplies | | | | | | 65.47 | 65.47 |
| **Medical Expenses - Other** | | | | | | | |
| Check | 1/10/2011 | EFT | Walgreens | Food & Dining Groceries POS DEB 1943 01/09/11 00027165 | Nelva | 21.82 | 21.82 |
| Check | 1/18/2011 | 103 | Memorial City Hermann | | Nelva | 220.00 | 241.82 |
| Check | 1/19/2011 | 105 | Memorial Clinical Ass... | Doctor | Nelva | 8.02 | 249.84 |
| Check | 1/19/2011 | 106 | Radiology West | Doctor | Nelva | 1.23 | 250.87 |
| Check | 1/20/2011 | 106 | Memorial City Surgical... | Doctor | Nelva | 39.74 | 290.61 |
| Check | 2/2/2011 | 118 | Memorial Pathology C... | Doctor | Nelva | 7.10 | 297.71 |
| Check | 2/7/2011 | 117 | Rosewood Family Ph... | Doctor | Nelva | 65.00 | 362.71 |
| Check | 2/9/2011 | 127 | Schleicher Dental | Dentist | Nelva | 105.00 | 467.71 |
| Check | 2/17/2011 | 134 | Medical Chest Associ... | Doctor | Nelva | 15.01 | 482.72 |
| Check | 3/8/2011 | 151 | Memorial City Hermann | | Nelva | 181.58 | 664.30 |
| Check | 3/10/2011 | 150 | Radiology West | | Nelva | 5.37 | 669.67 |
| Check | 3/14/2011 | 153 | ACS Primary Care | | Nelva | 7.56 | 677.23 |
| Check | 4/18/2011 | 188 | ACS Primary Care | | Nelva | 7.23 | 684.46 |
| Check | 4/19/2011 | 183 | Medical Chest Associ... | Doctor | Nelva | 19.52 | 703.98 |
| Check | 4/22/2011 | 193 | Cardiologist Assoc of ... | | Nelva | 28.60 | 732.58 |
| Check | 6/23/2011 | 254 | Memorial Clinical Ass... | Doctor | Nelva | 5.76 | 738.34 |
| Check | 7/1/2011 | 250 | Schleicher Dental | Dental | Nelva | 143.00 | 881.34 |
| Check | 7/6/2011 | 7024 | Medical Chest Associ... | Medical: Doctor | Survivor | 4.12 | 885.46 |
| Check | 8/5/2011 | 285 | Dr. Achari | Doctor | Nelva | 24.98 | 910.44 |

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**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 8/15/2011 | 298 | memorial Hermann M... | | Nelva | 13.47 | 923.91 |
| Check | 8/16/2011 | 299 | ACS Primary Care | | Nelva | 7.23 | 931.14 |
| Check | 8/18/2011 | 297 | Azmat Khan MDPA | Doctor | Nelva | 10.13 | 941.27 |
| Check | 8/29/2011 | 310 | Legends Pharmacy | | Nelva | 42.00 | 983.27 |
| Check | 9/13/2011 | 323 | Dentex | Doctor | Nelva | 155.40 | 1,138.67 |
| Check | 9/13/2011 | 324 | Memorial City Hermann | | Nelva | 25.00 | 1,163.67 |
| Check | 9/16/2011 | 321 | ACS Primary Care | Doctor | Nelva | 6.87 | 1,170.54 |
| Check | 9/22/2011 | 327 | Memorial City Hermann | | Nelva | 59.77 | 1,230.31 |
| Check | 9/28/2011 | 320 | Dr. Khawaja | Doctor | Nelva | 28.04 | 1,258.35 |
| Check | 10/18/2011 | 355 | OC Pharmacy | Medicine | Nelva | 10.00 | 1,268.35 |
| Check | 10/19/2011 | 354 | Oncology Consultants | Doctor | Nelva | 22.48 | 1,290.83 |
| Check | 11/7/2011 | EFT | Mht Nutrit Svcs H | | Nelva | 8.12 | 1,298.95 |
| Check | 11/10/2011 | 371 | Dr. Achari | Doctor | Nelva | 29.30 | 1,328.25 |
| Check | 11/10/2011 | 372 | Northwoods Urology | Doctor | Nelva | 84.97 | 1,413.22 |
| Check | 11/14/2011 | 374 | Medical Chest Associ... | Doctor | Nelva | 34.42 | 1,447.64 |
| Check | 12/8/2011 | 7041 | Justin Alexander | for kt - reimburse Medical | Survivor | 40.00 | 1,487.64 |
| Check | 12/15/2011 | 103 | Memorial City Hermann | Doctor | Survivor | 41.72 | 1,529.36 |
| Check | 12/22/2011 | 107 | Kelsey-Seybold Clinic | Doctor | Survivor | 13.92 | 1,543.28 |
| Check | 12/22/2011 | 108 | Memorial City Hermann | Doctor | Survivor | 226.40 | 1,769.68 |
| Check | 12/22/2011 | 109 | ACS Primary Care | Doctor | Survivor | 6.87 | 1,776.55 |
| Check | 1/23/2012 | 113 | Northwoods Urology | Doctor | Survivor | 740.77 | 2,517.32 |
| Check | 2/24/2012 | 112 | Dr. Annie Uralil | Doctor | Survivor | 44.06 | 2,561.38 |
| Check | 4/16/2012 | 120 | Houston Progressive ... | Doctor | Survivor | 2.20 | 2,563.58 |
| Check | 4/16/2012 | 121 | Medical Chest Associ... | Doctor | Survivor | 5.40 | 2,568.98 |
| Total Medical Expenses - Other | | | | | | 2,568.98 | 2,568.98 |
| Total Medical Expenses | | | | | | 121,867.08 | 121,867.08 |
| **Miscellaneous Expenses** | | | | | | | |
| Check | 1/18/2011 | 107 | Hull Co-op | Misc ; | Nelva | 238.50 | 238.50 |
| Check | 11/14/2011 | WDRL | Withdrawal | NO INFORMATION GIVEN FOR THIS TRANSACTION AND BA... | Nelva | 6,500.00 | 6,738.50 |
| Check | 11/14/2011 | EFT | Houston Metro Ca | Misc | Nelva | 15.22 | 6,753.72 |
| Total Miscellaneous Expenses | | | | | | 6,753.72 | 6,753.72 |
| **Office Supplies** | | | | | | | |
| Check | 1/13/2011 | EFT | Bank of America | Check Order | Survivor | 15.00 | 15.00 |
| Check | 12/31/2012 | 141 | Office Depot | Printer Ink | Survivor | 48.70 | 63.70 |
| Total Office Supplies | | | | | | 63.70 | 63.70 |
| **Payments to Credit Cards** | | | | | | | |
| **Bank of America Credit Cards** | | | | | | | |
| Check | 2/1/2011 | EFT | Bank of America Cre... | | Nelva | 43.29 | 43.29 |
| Check | 3/1/2011 | EFT | Bank of America Cre... | Household | Survivor | 282.47 | 325.76 |
| Check | 3/18/2011 | EFT | Bank of America Cre... | | Nelva | 84.82 | 410.58 |
| Check | 4/1/2011 | EFT | Bank of America Cre... | Payment | Survivor | 38.00 | 448.58 |
| Check | 5/2/2011 | EFT | Bank of America Cre... | | Survivor | 2,967.61 | 3,416.19 |
| Check | 6/1/2011 | EFT | Bank of America Cre... | Credit card | Survivor | 5,355.65 | 9,771.84 |
| Check | 9/1/2011 | EFT | Bank of America Cre... | | Survivor | 3,256.32 | 13,028.16 |
| Check | 11/7/2011 | EFT | Bank of America Cre... | | Survivor | 323.88 | 13,352.04 |
| Check | 12/2/2011 | EFT | Bank of America Cre... | | Survivor | 359.79 | 13,711.83 |
| Check | 2/2/2012 | EFT | Bank of America Cre... | | Survivor | 269.84 | 13,981.67 |
| Check | 3/2/2012 | EFT | Bank of America Cre... | | Survivor | 61.32 | 14,042.99 |
| Total Bank of America Credit Cards | | | | | | 14,042.99 | 14,042.99 |
| **Bluebonnet Credit Union Cred Cd** | | | | | | | |
| Check | 1/18/2011 | EFT | Bank of America Cre... | Payment | Nelva | 725.00 | 725.00 |
| General Journal | 1/19/2011 | EJ20120455 | | Return of Posted Check / Item (R - BOA Cr Cd payment | Nelva | -725.00 | 0.00 |
| Check | 1/21/2011 | EFT | Bank of America Cre... | Payment | Nelva | 725.00 | 725.00 |
| Check | 3/14/2011 | 152 | Bluebonnet Credit Uni... | Credit card | Nelva | 3,248.57 | 3,973.57 |
| Check | 3/15/2011 | 312 | Cardmember Serv | Credit Card | Nelva | 111.00 | 4,084.57 |
| Check | 5/26/2011 | 225 | Bluebonnet Credit Uni... | Credit card | Nelva | 1,852.24 | 5,936.81 |
| Check | 5/27/2011 | EFT | Bluebonnet Credit Uni... | w/medical | Survivor | 1,864.49 | 7,801.30 |
| Check | 8/21/2011 | 9000 | Cardmember Serv | payment | Nelva | 195.00 | 7,996.30 |
| Check | 7/19/2011 | EFT | Bluebonnet Credit Uni... | w medical | Survivor | 175.47 | 8,171.77 |
| Check | 8/16/2011 | EFT | Bluebonnet Credit Uni... | with medical | Survivor | 1,172.08 | 9,343.85 |
| Check | 9/19/2011 | EFT | Bluebonnet Credit Uni... | w/medical | Survivor | 790.04 | 10,133.89 |
| Check | 10/18/2011 | EFT | Bluebonnet Credit Uni... | w/medical | Survivor | 687.84 | 10,821.73 |
| Check | 11/29/2011 | EFT | Bluebonnet Credit Uni... | includes medical | Survivor | 1,165.23 | 11,986.96 |
| Total Bluebonnet Credit Union Cred Cd | | | | | | 11,986.96 | 11,986.96 |
| Total Payments to Credit Cards | | | | | | 26,029.95 | 26,029.95 |
| **Personal Care** | | | | | | | |
| Check | 2/25/2011 | 139 | Silvana | Hair | Nelva | 52.00 | 52.00 |
| Check | 5/27/2011 | 230 | Silvana | hair | Nelva | 25.00 | 77.00 |
| Check | 6/13/2011 | EFT | Target | Shopping-Clothing | Nelva | 53.12 | 130.12 |
| Check | 6/13/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 125.93 | 256.05 |
| Check | 6/20/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 61.70 | 317.75 |
| Check | 6/20/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 251.94 | 569.69 |
| General Journal | 6/21/2011 | EJ20120468 | | ATM - Target - Shopping - Clothing | Nelva | -53.12 | 516.57 |
| Check | 6/21/2011 | EFT | Target | Shopping - Clothing | Nelva | 30.84 | 547.41 |
| General Journal | 7/11/2011 | EJ20120470 | | ATM JCPenney Shopping - Clothing | Nelva | -140.42 | 406.99 |
| Check | 7/11/2011 | EFT | Stein Mart | Shopping - Clothing | Nelva | 102.77 | 509.76 |
| Check | 7/11/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 80.05 | 589.81 |
| Check | 7/18/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 208.33 | 798.14 |
| Total Personal Care | | | | | | 798.14 | 798.14 |
| **Pet Care** | | | | | | | |

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**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| **Pet Food and Supplies** | | | | | | | |
| Check | 2/26/2011 | EFT | Petsmart | Food & Dining:Groceries | Nelva | 36.79 | 36.79 |
| Check | 7/29/2011 | EFT | Petsmart | | Nelva | 32.89 | 69.68 |
| Total Pet Food and Supplies | | | | | | 69.68 | 69.68 |
| **Veterinary Expenses** | | | | | | | |
| Check | 5/23/2011 | EFT | Houston Veterinary | Carole covered healthcare worked pay when this accl was low - ... | Nelva | 1,019.72 | 1,019.72 |
| Check | 8/14/2011 | EFT | Houston Veterinary | Carole had to cover worker pay - Reimbursement | Nelva | 216.80 | 1,236.52 |
| General Journal | 6/15/2011 | EJ20120467 | | ATM - Checkcard 0612 Houston Veterinary | Nelva | -433.60 | 802.92 |
| Check | 9/19/2011 | EFT | Equine Sports Med | Carole covered worker pay - Reimbursement | Nelva | 812.50 | 1,615.42 |
| Check | 10/3/2011 | EFT | Greenway Animal C | Carole covered worker pay - Reimbursement | Nelva | 360.82 | 1,976.24 |
| Total Veterinary Expenses | | | | | | 1,976.24 | 1,976.24 |
| Total Pet Care | | | | | | 2,045.92 | 2,045.92 |
| **Postage** | | | | | | | |
| Check | 3/21/2012 | 118 | Postmaster | Estate tax info to Rich | Survivor | 14.80 | 14.80 |
| Check | 4/16/2012 | 126 | Postmaster | Mailing Cert Life Ins Checks | Survivor | 12.60 | 27.40 |
| Check | 6/27/2012 | 134 | Postmaster | Trust docs | Survivor | 28.19 | 56.59 |
| Check | 7/18/2012 | 136 | Postmaster | Papers to lawyer | Survivor | 15.45 | 72.04 |
| Check | 4/4/2013 | 144 | Postmaster | contract to g. vie | Survivor | 6.11 | 78.15 |
| Total Postage | | | | | | 78.15 | 78.15 |
| **Professional Fees** | | | | | | | |
| Check | 6/9/2011 | 7017 | Kroese & Kroese | Mom - Tax preparations | Survivor | 561.93 | 561.93 |
| Check | 6/9/2011 | 7018 | Kroese & Kroese | Decedents trust Tax preparation | Survivor | 1,123.87 | 1,685.80 |
| Check | 9/5/2011 | 7029 | Kroese & Kroese | farm lease Tax preparation | Survivor | 203.06 | 1,888.86 |
| Check | 10/20/2011 | 7031 | Kroese & Kroese | Tax preparation | Survivor | 700.00 | 2,588.86 |
| Check | 3/11/2012 | 118 | Kroese & Kroese | Farm appraisal/mgmt | Survivor | 2,175.00 | 4,763.86 |
| Check | 4/13/2012 | 119 | Kroese & Kroese | Tax preparation | Survivor | 1,050.00 | 5,813.86 |
| Check | 5/16/2012 | 102 | Kroese & Kroese | Accounting services | Elmer | 750.00 | 6,563.86 |
| Check | 5/16/2012 | 103 | Kroese & Kroese | Accounting services - farm contract and trust advice | Elmer | 1,000.00 | 7,563.86 |
| Total Professional Fees | | | | | | 7,563.86 | 7,563.86 |
| **Repairs and Maintenance** | | | | | | | |
| Check | 8/13/2011 | EFT | Sears | Home appliance repair | Nelva | 134.93 | 134.93 |
| Check | 8/16/2011 | 295 | P&M Air Conditioning | Home repair | Nelva | 148.38 | 283.31 |
| Check | 2/29/2012 | 115 | Dunapier | Leveling house - home repair | Survivor | 500.00 | 783.31 |
| Total Repairs and Maintenance | | | | | | 783.31 | 783.31 |
| **Supplies** | | | | | | | |
| Check | 1/31/2011 | EFT | Lowe's | Garden | Nelva | 0.95 | 0.95 |
| Check | 2/22/2011 | EFT | Lowe's | Garden | Nelva | 22.99 | 23.94 |
| Check | 6/27/2011 | EFT | Lowe's | Garden | Nelva | 5.89 | 29.83 |
| Total Supplies | | | | | | 29.83 | 29.83 |
| **Taxes** | | | | | | | |
| **Taxes - Federal** | | | | | | | |
| Check | 1/25/2011 | 7001 | United States Treasury | 2010 Estimated Taxes | Survivor | 2,840.00 | 2,840.00 |
| Check | 4/15/2011 | 7010 | United States Treasury | Decedents trust 2010 tax | Survivor | 7,095.00 | 9,935.00 |
| Check | 4/18/2011 | 7011 | United States Treasury | Decedents trust 2011 tax qtr est | Survivor | 1,780.00 | 11,715.00 |
| Check | 4/15/2011 | 7012 | United States Treasury | Surv Trust 2011 tax qtr est | Survivor | 3,095.00 | 14,810.00 |
| Check | 4/15/2011 | 7013 | United States Treasury | Surv Trust 2010 tax | Survivor | 3,620.00 | 18,430.00 |
| Check | 6/9/2011 | 7020 | United States Treasury | Surv Trust 2010 tax qtrly Tax:Fed | Survivor | 3,620.00 | 22,050.00 |
| Check | 6/9/2011 | 7022 | United States Treasury | Dec Trust 2010 tax qtrly Tax:Fed | Survivor | 1,780.00 | 23,830.00 |
| Check | 9/5/2011 | 7027 | United States Treasury | Sept mom's trust pmt | Survivor | 2,100.00 | 25,930.00 |
| Check | 9/5/2011 | 7028 | United States Treasury | Sept dad's trust pmt | Survivor | 1,780.00 | 27,710.00 |
| Check | 12/15/2011 | 104 | United States Treasury | Tax:Fed | Survivor | 1,780.00 | 29,490.00 |
| Check | 4/4/2013 | 146 | United States Treasury | Tax:Fed | Survivor | 20.00 | 29,510.00 |
| Check | 4/14/2013 | 104 | United States Treasury | | Elmer | 23,906.00 | 53,416.00 |
| Total Taxes - Federal | | | | | | 53,416.00 | 53,416.00 |
| **Taxes - Property** | | | | | | | |
| Check | 1/19/2011 | 7004 | Tax Assessor-Collector | 068-560-000-0031 | Survivor | 1,112.87 | 1,112.87 |
| Check | 3/2/2011 | 145 | Wichester West Fund | Tax:zzzzzz | Nelva | 365.23 | 1,478.10 |
| Check | 4/8/2011 | EFT | County Treasurer | DES: TAX ID: 871 farm | Survivor | 1,367.40 | 2,845.50 |
| Check | 6/9/2011 | 7019 | Wichester West Fund | Tax:ZZZZZ 13630 Pinerock | Survivor | 327.00 | 3,192.50 |
| Check | 10/4/2011 | EFT | County Treasurer | DES:Tax ID:119 farm | Survivor | 1,598.40 | 4,790.90 |
| Check | 11/23/2011 | EFT | Spring Branch ISD | DES: checkpaymt Tax:ZZZZZZZZ | Survivor | 227.24 | 5,018.14 |
| Check | 12/15/2011 | 102 | Wichester West Fund | Tax:zzzzzzzz 13630 Pinerock | Survivor | 359.00 | 5,377.14 |
| Check | 1/19/2012 | 114 | HC Property Tax | | Survivor | 1,285.05 | 6,662.19 |
| Check | 10/15/2012 | EFT | County Treasurer | DES: Tax ID: 166 | Elmer | 1,585.40 | 8,248.59 |
| Check | 3/18/2013 | EFT | County Treasurer | DES: Tax ID: 178 - Farm Tax | Elmer | 1,563.40 | 9,811.99 |
| Total Taxes - Property | | | | | | 9,811.99 | 9,811.99 |
| **Taxes -State** | | | | | | | |
| Check | 2/1/2011 | 7002 | State of Iowa Treasurer | | Survivor | 330.00 | 330.00 |
| Check | 6/9/2011 | 7021 | Treasurer State of Iowa | | Survivor | 47.00 | 377.00 |
| Check | 9/5/2011 | 7026 | Treasurer State of Iowa | mom | Survivor | 230.00 | 607.00 |
| General Journal | 4/23/2012 | EJ20120415 | | Deposit Iowa Tax Refund | Survivor | -690.00 | -83.00 |
| Check | 9/10/2012 | 138 | Treasurer State of Iowa | Amended taxes | Survivor | 79.00 | -4.00 |
| Check | 4/14/2013 | 105 | Treasurer State of Iowa | | Elmer | 4,797.00 | 4,793.00 |
| Total Taxes -State | | | | | | 4,793.00 | 4,793.00 |
| Total Taxes | | | | | | 68,020.99 | 68,020.99 |
| **Telephone Expense** | | | | | | | |
| Check | 1/24/2011 | EFT | Verizon | | Nelva | 106.42 | 106.42 |

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## Brunsting Family Living Trust
## Detail of Accounts
12/21/2010-05/31/2013

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 1/27/2011 | EFT | AT&T | | Survivor | 68.68 | 175.10 |
| Check | 2/24/2011 | EFT | Verizon | | Nelva | 172.35 | 347.45 |
| Check | 2/28/2011 | 7008 | AT&T | (SBC-AR, KS,MO,OK,TX) B | Survivor | 76.39 | 423.84 |
| Check | 3/15/2011 | EFT | AT&T | (SBC-AR,KS,MO,OK,TX) B | Survivor | 70.42 | 494.26 |
| Check | 3/28/2011 | EFT | Verizon | | Nelva | 138.92 | 633.18 |
| Check | 4/21/2011 | EFT | Verizon | | Nelva | 72.88 | 706.06 |
| Check | 4/26/2011 | EFT | AT&T | (SBC-AR,KS,MO,OK,TS) B | Survivor | 176.85 | 882.91 |
| Check | 5/9/2011 | EFT | AT&T | | Survivor | 177.21 | 1,060.12 |
| Check | 5/27/2011 | EFT | AT&T | | Survivor | 95.73 | 1,155.85 |
| Check | 6/6/2011 | EFT | Verizon | | Nelva | 225.00 | 1,380.85 |
| Check | 6/9/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 154.09 | 1,534.94 |
| Check | 6/28/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) B | Survivor | 86.12 | 1,621.06 |
| Check | 7/5/2011 | EFT | Verizon | | Nelva | 282.03 | 1,903.09 |
| Check | 7/11/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 224.42 | 2,127.51 |
| Check | 7/27/2011 | EFT | AT&T | Bill(SBC-AR, KS, MO, OK, TX) B | Survivor | 82.16 | 2,209.67 |
| Check | 8/2/2011 | EFT | Verizon | | Nelva | 245.03 | 2,454.70 |
| Check | 8/10/2011 | EFT | AT&T | DES:Payment ID: 787780565AUS | Survivor | 170.89 | 2,625.59 |
| Check | 8/23/2011 | EFT | Verizon | | Nelva | 242.00 | 2,867.59 |
| Check | 8/26/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) bill payment | Survivor | 84.47 | 2,952.06 |
| Check | 9/12/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 168.71 | 3,120.77 |
| Check | 9/23/2011 | EFT | Verizon | | Nelva | 137.66 | 3,258.43 |
| Check | 9/26/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) B | Survivor | 84.47 | 3,342.90 |
| Check | 10/11/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 184.35 | 3,527.25 |
| Check | 11/1/2011 | EFT | Verizon | | Nelva | 189.54 | 3,716.79 |
| Check | 11/8/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) B | Survivor | 84.44 | 3,801.23 |
| Check | 11/10/2011 | EFT | AT&T | DES:Payment ID: 787780565AUS | Survivor | 168.24 | 3,969.47 |
| Check | 11/23/2011 | EFT | Verizon | | Nelva | 192.13 | 4,161.60 |
| Check | 12/5/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK,TX) B | Survivor | 90.82 | 4,252.42 |
| Check | 12/28/2011 | EFT | AT&T | Bill(SBC-AR,KS,MO,OK,TX) B | Survivor | 108.59 | 4,361.01 |
| Check | 1/31/2012 | EFT | AT&T | Bill (SBC-AR,KS,MO,OK,TX) B | Survivor | 85.00 | 4,447.01 |
| Check | 2/14/2012 | EFT | AT&T | Bill (SBC-AR,KS,MO,OK,TX) | Survivor | 72.16 | 4,519.17 |
| Total Telephone Expense | | | | | | 4,519.17 | 4,519.17 |
| Utilities | | | | | | | |
| Cable TV | | | | | | | |
| Check | 1/5/2011 | EFT | Comcast | | Survivor | 64.04 | 64.04 |
| Check | 1/27/2011 | EFT | Comcast | | Survivor | 59.77 | 123.81 |
| Check | 2/25/2011 | EFT | Comcast | | Survivor | 67.65 | 191.46 |
| Check | 3/23/2011 | EFT | Comcast | | Survivor | 63.71 | 255.17 |
| Check | 4/26/2011 | EFT | Comcast | | Survivor | 63.71 | 318.88 |
| Check | 4/26/2011 | EFT | Comcast | | Survivor | 63.71 | 382.59 |
| Check | 5/26/2011 | EFT | Comcast | | Survivor | 11.52 | 394.11 |
| Check | 5/31/2011 | EFT | Comcast | | Survivor | 11.52 | 405.63 |
| Check | 6/28/2011 | EFT | Comcast | Elmer H Brunsting | Survivor | 52.20 | 457.83 |
| Check | 7/28/2011 | EFT | Comcast | Elmer | Survivor | 63.72 | 521.55 |
| Check | 8/29/2011 | EFT | Comcast | | Survivor | 63.72 | 585.27 |
| Check | 9/28/2011 | EFT | Comcast | | Survivor | 63.72 | 648.99 |
| Check | 10/28/2011 | EFT | Comcast | | Survivor | 63.71 | 712.70 |
| Check | 11/29/2011 | EFT | Comcast | | Survivor | 63.71 | 776.41 |
| Total Cable TV | | | | | | 776.41 | 776.41 |
| Electricity | | | | | | | |
| Check | 1/21/2011 | EFT | Stream Energy of TX | | Survivor | 134.05 | 134.05 |
| Check | 2/18/2011 | EFT | Stream Energy of TX | Utilities: Gas & Electric | Survivor | 106.89 | 240.94 |
| Check | 3/15/2011 | EFT | Stream Energy of TX | | Survivor | 100.71 | 341.65 |
| Check | 4/18/2011 | EFT | Stream Energy of TX | | Survivor | 93.99 | 435.64 |
| Check | 5/19/2011 | EFT | Stream Energy of TX | | Survivor | 174.61 | 610.25 |
| Check | 6/17/2011 | EFT | Stream Energy of TX | Bill payment | Survivor | 217.04 | 827.29 |
| Check | 7/18/2011 | EFT | Stream Energy of TX | Bill payment | Survivor | 166.12 | 993.41 |
| Check | 8/17/2011 | EFT | Stream Energy of TX | bill payment | Survivor | 308.10 | 1,301.51 |
| Check | 9/16/2011 | EFT | Stream Energy of TX | bill payment | Survivor | 344.55 | 1,646.06 |
| Check | 10/17/2011 | EFT | Stream Energy of TX | | Survivor | 217.43 | 1,863.49 |
| Check | 11/15/2011 | EFT | Stream Energy of TX | payment | Survivor | 160.68 | 2,024.17 |
| Check | 12/28/2011 | efi | Stream Energy of TX | PAYMENT | Survivor | 81.95 | 2,106.12 |
| Check | 1/20/2012 | EFT | Stream Energy of TX | | Survivor | 59.96 | 2,166.08 |
| Check | 2/17/2012 | EFT | Stream Energy of TX | | Survivor | 19.10 | 2,185.18 |
| Check | 3/26/2012 | EFT | Stream Energy of TX | | Survivor | 39.19 | 2,224.37 |
| Check | 4/25/2012 | EFT | Stream Energy of TX | Payment | Survivor | 25.00 | 2,249.37 |
| Check | 5/7/2012 | 133 | Stream Energy of TX | | Survivor | 10.53 | 2,259.90 |
| Total Electricity | | | | | | 2,259.90 | 2,259.90 |
| Gas | | | | | | | |
| Check | 1/18/2011 | 7005 | Entex | | Survivor | 130.42 | 130.42 |
| Check | 4/18/2011 | EFT | Entex | PPD | Nelva | 323.62 | 454.04 |
| Check | 6/22/2011 | EFT | Entex | PPD | Nelva | 73.47 | 527.51 |
| Check | 8/15/2011 | 296 | Entex | | Nelva | 52.48 | 579.99 |
| Check | 9/14/2011 | 325 | Entex | | Nelva | 42.59 | 622.58 |
| Check | 11/23/2011 | EFT | Entex | PPD | Survivor | 65.66 | 688.24 |
| Check | 12/22/2011 | 106 | Centerpoint Energy | PPD | Survivor | 54.62 | 742.86 |
| Check | 3/11/2012 | 117 | Centerpoint Energy | PPD | Survivor | 158.09 | 900.95 |
| Check | 5/7/2012 | 132 | Entex | PPD | Survivor | 41.71 | 942.66 |
| Total Gas | | | | | | 942.66 | 942.66 |
| Water | | | | | | | |
| Check | 12/23/2010 | EFT | City of Houston Water | | Nelva | 52.74 | 52.74 |
| Check | 1/21/2011 | EFT | City of Houston Water | | Survivor | 80.94 | 133.68 |
| Check | 3/1/2011 | EFT | City of Houston Water | Water Bill | Survivor | 52.74 | 186.42 |
| Check | 4/4/2011 | EFT | City of Houston Water | | Survivor | 90.34 | 276.76 |

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**Brunsting Family Living Trust**
**Detail of Accounts**
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 5/11/2011 | eft | City of Houston Water | WATER BILL | Survivor | 99.74 | 376.50 |
| Check | 6/9/2011 | EFT | City of Houston Water | DES: Water bill I | Survivor | 130.35 | 506.85 |
| Check | 6/22/2011 | 7710 | Electchk | Bcf - 14411 We 06/ Westh, Houston, TX #000032384 | Survivor | 314.57 | 821.42 |
| Check | 7/11/2011 | EFT | City of Houston Water | DES:Water bill I | Survivor | 282.51 | 1,103.93 |
| Check | 8/8/2011 | EFT | City of Houston Water | DES: water bill I | Survivor | 277.78 | 1,381.71 |
| Check | 9/8/2011 | EFT | City of Houston Water | DES:water bill I | Survivor | 265.10 | 1,646.81 |
| Check | 10/12/2011 | EFT | City of Houston Water | DES:water bill I | Survivor | 227.06 | 1,873.87 |
| Check | 11/10/2011 | EFT | City of Houston Water | DES: water bill I | Survivor | 201.70 | 2,075.57 |
| Check | 12/9/2011 | EFT | City of Houston Water | DES:Water bill I | Survivor | 252.42 | 2,327.99 |
| Check | 1/9/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 115.49 | 2,443.48 |
| Check | 2/13/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 47.13 | 2,490.61 |
| Check | 3/19/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 20.42 | 2,511.03 |
| Check | 4/12/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 26.19 | 2,537.22 |
| Total Water | | | | | | 2,537.22 | 2,537.22 |
| Total Utilities | | | | | | 6,516.19 | 6,516.19 |
| Total Expense | | | | | | 418,844.23 | 418,844.23 |
| Net Ordinary Income | | | | | | 411,325.12 | 411,325.12 |
| **Other Income/Expense** | | | | | | | |
| **Other Expense** | | | | | | | |
| **FMV of Stocks Transferred Out** | | | | | | | |
| General Journal | 5/11/2011 | EJ20110522 | | Distribute 1,120 Sh Exxon Stock to Amy Brunsting | Survivor | 90,854.40 | 90,854.40 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 1,325 Sh Exxon to Carole Brunsting | Elmer | 110,597.75 | 201,452.15 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 160 Sh Exxon to Candy Curtis | Survivor | 13,355.20 | 214,807.35 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 160 Sh Exxon to Anka Brunsting | Survivor | 13,355.20 | 228,162.55 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Ann Brunsting | Nelva | 14,162.85 | 242,325.40 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Anita Brunsting | Nelva | 14,162.85 | 256,488.25 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Jack Brunsting | Nelva | 14,162.85 | 270,651.10 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Katie Riley | Nelva | 14,162.85 | 284,813.95 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Luke Riley | Nelva | 14,162.85 | 298,976.80 |
| Total FMV of Stocks Transferred Out | | | | | | 298,976.80 | 298,976.80 |
| Total Other Expense | | | | | | 298,976.80 | 298,976.80 |
| Net Other Income | | | | | | -298,976.80 | -298,976.80 |
| **Net Income** | | | | | | 112,348.32 | 112,348.32 |

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02112015:1339:P0048

# EXHIBIT 3

02102015:0838:P0181

02112015:1339:P0049

Curtis V Brunsting
Stock Distribution Analysis
Exhibit 3

| Approximate Date | Exxon/Mobil Shares | Exxon/Mobil Value | Chevron Corporation Shares | Chevron Corporation Value | Totals Shares | Totals Value |
|---|---|---|---|---|---|---|
| Amy Brunsting | | | | | | |
| 5/11/2011 | 1,120.00000 | 90,854.40 | | | 1,120.00000 | 90,854.40 |
| Carole Brunsting | | | | | | |
| 6/15/2011 | 1,325.00000 | 110,597.75 | | | 1,325.00000 | 110,597.75 |
| Candy Curtis | | | | | | |
| 6/15/2011 | 160.00000 | 13,355.20 | | | 160.00000 | 13,355.20 |
| Ann Brunsting | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| Jack Brunsting | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| Katie Riley | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| Luke Riley | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| Anita Brunsting | | | | | | |
| 6/15/2011 | 160.00000 | 13,355.20 | 135.00000 | 14,162.85 | 295.00000 | 27,518.05 |
| Totals | 2,765.00000 | 228,162.55 | 675.00000 | 70,814.25 | 3,440.00000 | 298,976.80 |
| Recap by Date | | | | | | |
| 5/11/2011 | 1,120.00000 | 90,854.40 | | | 1,120.00000 | 90,854.40 |
| 6/15/2011 | 1,325.00000 | 110,597.75 | | | 1,325.00000 | 110,597.75 |
| 6/15/2011 | 320.00000 | 26,710.40 | 675.00000 | 70,814.25 | 995.00000 | 97,524.65 |
| | 2,765.00000 | 228,162.55 | 675.00000 | 70,814.25 | 3,440.00000 | 298,976.80 |

02102015:0838:P0182
02112015:1339:P0050

# Exhibit C

02102015:0838:P0183

02102015:1338:P0051

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**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.



Adv

02102015:0838:P0184

02112015:1339:P0052

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 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

# Exhibit 17

PLAINTIFFS RESPONSE TO THE REPORT OF MASTER AND APPLICATIONS FOR ORDERS August 13, 2013 demanding defendants account for EE bonds

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | CIVIL ACTION NO. 4:12-cv-00592<br>Jury |
| ANITA KAY BRUNSTING, et al.<br>Defendants. | §<br>§ | |

**PLAINTIFF'S RESPONSE TO THE REPORT OF MASTER AND APPLICATIONS FOR ORDERS**

## 1. Statement of the Case

1.1 Plaintiff and Defendants are siblings. Their parents, Elmer and Nelva Brunsting, created a living trust for their benefit and for the benefit of their five children. The stated co-successor beneficiary distribution was to be equal, 1/5 for each of the five Brunsting children: Candace, Carole, Carl, Amy, and Anita. The trust was also structured to preserve the Brunsting legacy for Elmer and Nelva's grandchildren.

1.2 Plaintiff Curtis' father died April 1, 2009 and her mother died November 11, 2011.

1.3 On February 27, 2012, Plaintiff filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of

emotional distress, alleging that the Defendants, acting as trustees for their parents' trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments, and refused to account for trust assets or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. The Plaintiff filed a notice of appeal. On January 30, 2013, the Fifth Circuit Court of Appeals reversed the dismissal. On April 19, 2013, the District Court issued a memorandum and order for preliminary injunction. In the order, the Court ordered the appointment of an independent firm or accountant to gather the financial records of the trust and provide an accounting of the income and expenses of the trust since December 21, 2010. The defendants were ordered to cooperate with the accountant in this process.

1.4 On May 9, 2013, the Court ordered the appointment of William G. West as Master to perform an accounting. The Report of Master[1], dated July 31, 2013, was submitted to the Court and the Court set this matter for hearing on September 3, 2013, with a deadline for filing objections to the report and the accountant's invoice on or before August 27, 2013.

[1] Case 4:12-cv-00592 Document 62 Filed in TXSD on 08/08/13

## 2. The Report of Master

2.1 The Report of Master ("Report") corroborates Plaintiff's claims that Defendants have refused to account for trust assets, to report on any other acts of administration, concealed information that they have a fiduciary duty to disclose, and that Defendants failed to keep accurate books and records, and therefore are unwilling or unable to account.

2.2 The Report indicates to Plaintiff that Defendants have failed to keep any books whatsoever, and cannot or will not produce all of the records necessary for a full, true and complete accounting of trust assets, income, and expenditures. Many of these records they have simply claimed as "missing", after numerous requests from the Master to provide the information.

2.3 Therefore, on the basis of the absence of records, as shown by the Report, Plaintiff objects to the accounting provided by Defendants as incomplete, and hereby challenges all transactions.

## 3. General Challenge to Validity of Transactions

3.1 Defendants' inability or unwillingness to disclose supporting evidence that would give the accounting veracity, continues to inform this Plaintiff's belief that Defendants have something to hide.

3.2 Plaintiff hereby generally challenges all transactions, including but not limited to those claimed to be gifts, reimbursements, trustee compensation, and legal expenses. Plaintiff specifically challenges all transactions from which Defendants personally benefited.

## 4. Known Assets of the Trust Unaccounted For

4.1 Plaintiff has personal knowledge that U.S. Treasury Series EE/E Savings Bonds existed after the death of Nelva Brunsting and have not appeared on any schedule of assets to date.

## 5. Application for Order to Obtain Records Regarding U.S. Treasury Bonds

5.1 Plaintiff moves this court for an order for procurement of the records on file with the U.S. Treasury, pursuant to the attached proposed order.

## 6. Application for Order to Obtain Additional Records and Records Noted in the Master's Report to be "Missing"

6.1 The extent to which the trust assets have been mismanaged cannot be determined without complete transparency and documentation. Plaintiff therefore moves this court for an order for procurement of additional and "missing" records pursuant to the attached proposed order.

## 7. Challenge to Validity of Securities Transactions

7.1 The Report reflects stock distributions to the Defendants and their children. Plaintiff specifically challenges all stock transactions from which Defendants personally benefited. Defendants did not notice Plaintiff, nor obtain her consent, for distributions that benefited the Defendants substantially more than, and to the exclusion of, other co-beneficiaries.

## 8. Other Relief Requested

8.1 Plaintiff requests that Defendants be ordered to bear the costs associated with the execution of these orders.

8.2 Plaintiff further requests that the Preliminary Injunction remain in full force and effect.

8.3 Plaintiff further respectfully requests that this Court grant any other available relief that it finds reasonable or necessary under the totality of the circumstances.

Respectfully submitted, Monday, August 26, 2013

/s/

Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

# Exhibit 18

Transcript: Hearing on Report of Special Master September 3, 2013

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | . | Civil Action |
| | . | No. H-12-592 |
| | . | |
| | . | |
| | . | |
| VS. | . | |
| | . | |
| | . | |
| ANITA KAY BRUNSTING, ET | . | SEPTEMBER 3, 2013 |
| AL. | . | HOUSTON, TEXAS |
| | . | 1:38 P.M. |
| | . | |

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR PLAINTIFF: MS. CANDACE LOUISE
Pro Se
1215 Ulfinian Way
Martinez, California 94553

FOR DEFENDANTS: MR. GEORGE WILLIAM VIE, III
MS. MAUREEN McCUTCHEN
Mills Shirley LLP
1021 Main Street
Suite 1950
Houston, Texas 77002

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

APPEARANCES (Continued):

| | |
|---|---|
| FOR SPECIAL MASTER: | MR. TIMOTHY AARON MILLION<br>Munsch Hardt, et al.<br>700 Louisiana Street<br>Suite 4600<br>Houston, Texas 77002 |
| OFFICIAL COURT REPORTER: | MS. STEPHANIE KAY CARLISLE<br>U.S. District Court<br>515 Rusk, Suite 8016<br>Houston, Texas 77002<br>713.250.5157 |
| ALSO PRESENT: | Mr. William Arthur Potter |

* * *

**PROCEEDINGS**

(September 3, 2013)

THE COURT: This is Cause No. 2012-592, Candace Louise Curtis versus Anita Kay Brunsting and others. And Amy Ruth Brunsting. And I believe the law firm has been sued as well. I'm not sure if they have been served or not. In any event, let's see. Let's get an announcement here.

For the plaintiff, pro se, is that you, Ms. Curtis?

01:38:32PM MS. CURTIS: Yes, Your Honor.

THE COURT: And for the defendants?

MR. VIE: George Vie and Maureen Kuzik McCutchen for the defendants, Your Honor.

THE COURT: I'm sorry, say that again.

MR. VIE: George Vie and Ms. McCutchen for the defendants, Your Honor.

THE COURT: All right. And I have the special master here as well.

MR. WEST: Good afternoon, Your Honor. William

01:38:54PM West, special master.

THE COURT: And you have counsel with you?

MR. MILLION: Good afternoon, Your Honor. Timothy Million.

THE COURT: All right. And another gentleman?

01:39:06PM MR. WEST: Your Honor, this is my associate, William

A. Potter, P-O-T-T-E-R.

THE COURT: Okay. Very good. Let's see. We have the special master here as well, I gather, as the defendants, two of the defendants, the two sisters.

01:39:24PM I'm not sure. Are both of them serving as administrators or trustees of the estate?

MR. VIE: They are both co-trustees. Only Anita Brunsting is here today.

THE COURT: Any reason why Amy Ruth is not present?

01:39:44PM MR. VIE: Just because of employment obligations, sir.

THE COURT: Okay. I believe that's everyone that's participating.

We have this suit that was filed by Ms. Curtis 01:40:04PM back in 2012, in fact. I believe, Ms. Curtis, somewhere around February of 2012. That was pending for a period of time, and it was initially brought as a kind of truth in limine accounting. She mixed a lot of stuff together there.

And, of course, the one aspect of the case that 01:40:26PM this Court -- I said one aspect. One of the aspects of this case that the Court saw was first that there was diversity of citizenship, that she was a California resident, and the sisters were Texas residents.

And, secondly, that she was making allegations 01:40:44PM about an estate that appeared to be substantial sums of money,

or property, or both, were located, and that she was an heir, or at least felt that she was one of the heirs to the estate, and that she felt, I believe, at that time, that her sisters, who were co-trustees, were not properly managing the estate. 01:41:09PM I think that's, generally speaking, how this lawsuit developed.

So, in the process of conducting a couple of hearings, or at least -- I say hearings, opportunities for communication and dialogue, the Court set this matter for a 01:41:26PM hearing, and we had a hearing several months ago. Let's see if I can track that down. A telephone conference in July. I think it may have been the -- perhaps were the last communication we had. Proceeding here in the courtroom, for sure.

01:42:08PM And the Court determined that a report, an accounting of income, receipts, and expenses, and disbursements would be appropriate, setting a time frame of December 21, 2010, through May 31st of 2013, and that that report should be filed. I would then conduct a hearing to 01:42:31PM determine not so much whether or not the accounting -- the report should be received, but to permit the master -- special master to answer questions from either side regarding the procedure and his findings, and then, also, for approval of his request for -- for pay.

01:42:56PM And there, I believe, have been, since that

time, motions filed by the defense for, I believe, a renewal of a lease on the Iowa property. Objections to that and then other motions have been filed. So we will see how much, if not all of this, we can cover.

01:43:25PM So, Ms. Curtis, will you be -- besides the special master, is there anyone else in the courtroom you are going to need to call and have testify or ask questions of?

MS. CURTIS: No, Your Honor.

THE COURT: Okay. Sir, if you come forward, I will

01:43:41PM swear you in, and then you can take a seat over on my left.

Raise your right hand, please, sir.

(William West, witness, sworn.)

THE COURT: Please have a seat. And we can start with -- Ms. Curtis, we can start with you, if you have

01:44:07PM questions of the special master regarding -- you have a copy of his report, do you not?

MS. CURTIS: Yes, I do, Your Honor.

THE COURT: Okay. Why don't you move up closer to us there -- no, no, no. I mean, you can have a seat there, but I just wanted you to move up closer and bring the paperwork up closer.

All right. This is a formal proceeding, Ms. Curtis, so that when you are addressing the Court, you will need to stand and address the Court, and -- and I will be

01:44:44PM requiring that all of the questioning that is done as to any

witness should be done from the podium so it is easy for me to pay attention, for the lawyer and then the witness, and, of course, that same -- obviously, that same rule applies to counsel for the defense.

01:45:01PM If you would also bend that microphone down so that, when you are standing in that area and speaking to me, we will be able to hear you, and the court reporter can take your remarks.

All right. Are you ready -- you have a copy of

01:45:15PM the report, I believe you said.

MS. CURTIS: Yes, Your Honor.

THE COURT: Do you have some questions you want to ask of the witness? If so, you may do so at this time.

MS. CURTIS: No, Your Honor. I have no questions.

01:45:24PM THE COURT: You completely are, say, satisfied that you understand --

MS. CURTIS: I have no questions.

THE COURT: You just have no questions. All right.

Mr. Vie, do you have any questions you want to

01:45:33PM ask of this witness?

MR. VIE: Yes, Your Honor.

THE COURT: All right. Would you come to podium, sir.

Do you have a copy of your report with you? If

01:45:39PM not, let's get a copy of it to you. I think I have got some

copies here.

DIRECT EXAMINATION

BY MR. VIE:

*Q.* Good afternoon. I just have one or two questions just to clarify, as the Court said, the procedures under which the report was prepared.

On Exhibit 1 to the report --

*A.* Yes.

*Q.* -- you provided a statement of income, receipts, expenses, and disbursements for the period the Court directed; is that correct?

*A.* Yes, sir.

*Q.* In conclusion, on page 2 of that report, where you indicate, at the bottom, a net of income receipts and less value of stock distributed, if you could explain, what is that trying to capture?

*A.* This is trying to capture either -- during the time frame in question, either the receipts received or dividends in kind from the dividend distribution -- excuse me, dividend reinvestment accounts, less any amounts paid or any stock distributed.

*Q.* So this number at the bottom of page 2, the net of income number, this doesn't reflect actually the value of this estate?

It doesn't include the actual stock value that

remains in the estate?
A. Absolutely not. To do something like that you would need to get into something with a balance sheet -- and things of that nature.
01:47:40PM Q. What we are being provided here is more of a statement of money going out and money coming in?
A. Correct.
Q. The other exhibit, Exhibit -- the exhibit that relates to your recapturing the stock distributions that were made, is
01:48:04PM there an Exhibit 3?
Is that where that is located?
A. Yes.
Q. Stock distribution analysis?
A. Correct.
01:48:10PM Q. These are all -- these are all distributions that took place during the time that Ms. Brunsting was alive, correct?
A. From December 21st, 2010, to her demise.
Q. I understand.
Specifically, you did not find any evidence of
01:48:28PM any stock distributions that were made to anyone after the date that she died, the date of her death?
A. Correct.
THE COURT: Mr. Vie, what is the date of her death? Establish that.
BY MR. VIE:

Q. November 11, 2011?
A. Correct.
Q. So during the period of time that she was the beneficiary of the trust and had the right to direct gifts and payments --
01:48:52PM THE COURT: "She" being?
MR. VIE: Mrs. Brunsting, Nella Brunsting.
BY MR. VIE:
Q. The only transactions that you found for stock distribution, as you have noted in Exhibit 3, was at the time
01:49:03PM she was alive and could direct those distributions?
A. To the first part of your question, I don't think I have enough information to respond. But from all of the documents that we had and everything appeared to tie, these are the distributions out of those accounts in that time frame.
01:49:24PM Q. Thank you.
Could you -- in addition to the documents that we provided, you asked for and we provided a Quicken file, an electronic file?
A. Correct.
01:49:34PM Q. If you could explain to the Court what that file was, what you found in it, and how you used it.
A. That was an electronic accounting file that I asked for and that you had given me, and it was what I would generally term an electronic checkbook, which would show -- gave
01:50:00PM information about a date, an amount, and the payee.

Q. And what account the payment came from?
A. To a limited extent, yes.
Q. How were you able to use that, then, into what became the master's report?
01:50:16PM A. We used that in conjunction with the review of bank statements and other paper documents, brokerage firm account, information to create our database.
MR. VIE: No further questions.
THE COURT: I have a few, and this is to primarily
01:50:38PM supplement the record.
I want you to go back, Mr. West, and give us a general overview of what you did and -- and what these exhibits mean in terms of the income and expenses associated with this report.
01:51:00PM THE WITNESS: Yes, sir.
My report is comprised of an introduction where I gave some of the background of the complaint to a limited extent which has been addressed today. Then I gave a timeline of records received. I started that process with calling the
01:51:27PM defendants' attorney. I set up the meeting with him. We had a meeting within a week or ten days of my initial call.
I received, at his office, a number of paper files and a number of records on -- in electronic format in CD -- on CD's. I was also given a schedule of those documents
01:51:56PM that they were giving me and a list of documents that they

were not giving me, but which they were working towards obtaining.

THE COURT: Did you have the impression that this was a combination of records, some of which had been -- which were the, let's call it, original handwritten-type records, along with records that maybe had been prepared or were being prepared by the attorney for the defendant?

THE WITNESS: My broad answer to that is yes. Some were original documents that you could tell had come directly from the brokerage firm or a bank. Some were bank statements that appeared to have been downloaded over the Internet, which looked completely normal to me.

I have looked at literally thousands of documents of this nature over the years. Balances, account numbers, everything tied. I didn't think that anything had been created to be given to me.

THE COURT: By saying you were given a CD, what are you referring to?

THE WITNESS: A plastic disk.

THE COURT: I understand. What was contained on that?

THE WITNESS: Those were bank statements.

THE COURT: Downloaded from?

THE WITNESS: Yes, sir. For the most part, the paper documents -- they gave them to me, for the most part, in

paper format and electronic format.

THE COURT: But you didn't have the impression that this was a way that the records had been kept; this is just the way they had presented them?

01:53:40PM THE WITNESS: I can't tell if they were kept that way, but they had been compiled, and I think they have probably been compiled by counsel's staff.

THE COURT: All right.

THE WITNESS: As -- I received those approximately 01:54:00PM the first of June -- actually, there's some dates reflected in the report. About a month later I received a -- some more paper files and some more CD's with information on them that answered a number of -- submitted a number of the documents that had been missing on the first turnover of documents.

01:54:36PM As that was -- as that information was being processed from time to time, I had e-mails with defendants' counsel asking for particular questions or asking for more information to which, for the most part, he was able to respond, or if they weren't available, he -- he just told me 01:55:02PM so. So, I felt like he was trying to do the best he could.

THE COURT: At the end of the day, let's say sometime the latter part of July, when you had your hands full of the documents, did you have the impression that you had all of the documents that you needed to complete a proper and 01:55:29PM complete report?

THE WITNESS: For the most part, Your Honor. I listed in my report some accounts or statements that were not received. Defendants' counsel had explained why they were not received, or I believe there were a few things they were still trying to get. I conferred with my associate, who did a great deal of the work, you know, with my work and supervision. There were certain documents that we didn't have, but we did have some summary statements or some quarterly-type statements.

01:56:19PM I can't say for certain. I felt like we did have what we needed to present a good report. Not anything is a hundred percent right, but I felt like we didn't have any really big unexplained gaps in the things that we were given.

THE COURT: That pushes you over into the work
01:56:52PM performed area where you are now talking about.

So is there something else in that area that you need to bring to the Court's attention?

Basically that you received the documents -- I'm just following.

01:57:05PM THE WITNESS: Yes, sir. We felt like we had substantially all of the documents or a very high percentage, and I'm saying that from years of experience as an accountant. If I had really felt uncomfortable about anything, it would have been highlighted and really brought to the forefront.

01:57:40PM THE COURT: Whatever is necessary, you saw.

THE WITNESS: Yes.

THE COURT: In the summary of the accounts received, you show several bank accounts and several, let's call them, stock accounts or stock brokerage accounts, various investment accounts. I don't know if these are stocks or just simply accounts where you would invest money and they would purchase stock. The point is that these are -- appear to be a substantial number of accounts.

Are you of the opinion that these are all the accounts -- first of all, these are the accounts provided?

THE WITNESS: They were the ones provided. I think they were all that was provided. The plaintiff, in response, had raised the issue about some Treasury bills or Treasury bonds. I don't believe we saw any information in regards to them.

Now, technically, I would like to see the bonds. And technically, if it was something where they just sat there and interest was paid in a lump sum at a future date, and there was no income or cash income receipt activity during the period, then they be wouldn't reflected on here. But if it was an accrual-type income, then it should have been reflected.

THE COURT: So these accounts, as I understand it -- and you are distinguishing between the accounts that may be in existence but just have not reported income on an accrual

basis, but these accounts are reporting on a quarterly or annual basis income, and/or fees, or whatever else that might be reflected against the account.

THE WITNESS: Yes, Your Honor, all these accounts.

01:59:41PM THE COURT: For example, if there were Treasury -- are Treasury bonds, and they are paying whatever interest they are paying, that certainly could be -- that might be -- you don't have those, but that interest theoretically, I guess, could be applied back into the principal and, therefore, would 01:59:59PM not be reflected on a statement.

THE WITNESS: Correct.

THE COURT: Okay. Tell us a little bit about the report exceptions and the missing documents area there on page 6.

02:00:11PM THE WITNESS: These were -- as it is discussed here, there were some accounts that we did not have, or statements. In some cases, they were quarterly reports that were not -- the second quarterly reports were not available yet, or I was told they were not available yet in the latter part of July, 02:00:41PM which was quite often the case, but that they could be supplied, if needed.

There were a couple of other accounts where we may have been missing a monthly account or maybe an earlier quarterly account, but we had a latter period account where, 02:01:02PM for the most part, everything -- we could kind of trace our

way through the missing period. Again, I didn't see any great cause for alarm.

And then there were a number of things, disbursements, that we did not have documentation for, and 02:01:27PM those were explained to me that, for the most part, that they just didn't exist.

THE COURT: Okay. And these disbursements did not have -- did not have a paper backing. These would just be, let's say, for example, a check that might have been written 02:01:48PM for an amount of money, but there was no -- for your records there was no receipt or document indicating why that disbursement was being made. It might be reflected on the check itself.

THE WITNESS: Correct. We were able to go back to 02:02:05PM the pictures of check facsimiles and, you know, confirm that.

THE COURT: Okay. All right. Now, you've also listed on page 8 a number of outstanding shares. These reflect the transfers that you say were made before November 11th of 2011, I gather. And then other stocks, perhaps, that 02:02:34PM might have -- that might have been reinvested, or income that might have been reinvested.

Am I seeing that right?

THE WITNESS: Yes, sir.

THE COURT: Okay. All right. You make a statement 02:02:58PM on page 9, at the end of that section, that indicates that

there are certain stocks available.

Is that the total of all stocks outstanding shares that are part of the trust?

THE WITNESS: Yes, sir, to the best of my recollection.

THE COURT: Those are three different, I believe -- three different shares -- three different companies -- that might not be the proper term. How would you say it?

THE WITNESS: I think it was four -- Chevron, Exxon, John Deere, Deere Enterprises, and Metropolitan Life.

THE COURT: Okay. Those are the four. Okay. All right. And then you go on to make comments on certain accounts, and this is some of which you maybe already have stated having to do with the sale of certain securities and the disbursement. I'm not sure.

Is that what that is about?

THE WITNESS: Yes, sir.

THE COURT: One of the areas that you touched on earlier had to do with, for example, a check that may have been written to a family member that may or may not have had some document behind it. We are looking at the top of page 10, where is says, "Many of the payments were noted as reimbursements." These would be checks that would reflect reimbursement but not necessarily another check that showed the payment was made.

THE WITNESS: Correct. The check was written to the individual from the Quicken files. It would say reimbursement for -- automobile repairs type of thing. And on the Quicken files, it may have been in that automobile repair expense account. But for purposes of this report and the issues raised in the complaint, I felt that it was important -- it was important to make this some special category.

THE COURT: All right. Now, going to Exhibit 1, this is the summary statement, is it not?

I say summary statement. It's a statement of income, receipt and expenses. Behind that would be the exhibits. I say exhibits, would be other exhibits that would reflect the individual checks written and/or to whom they may have been written in Exhibit No. 2. And in Exhibit 3 would be the distribution analysis of the stock payments.

Is that what I'm having there?

THE WITNESS: Yes, sir.

THE COURT: All right. So, just let me take a look at this. It shows, I gather, that they had an opening -- a beginning opening of 127,000 -- almost $128,000 in farm income as a beginning item there.

THE WITNESS: Yes, sir. Farm rent during the time frame in question.

THE COURT: And, so, what you've done is you've accumulated all of the income from the farm for this period,

"this period" being the period that I requested that you do, the December 21, 2010 through May 31, 2013.

THE WITNESS: The deposits we identified for farm rental income.

02:06:38PM THE COURT: And that would be just a little over a two-year period, two years and a few months.

THE WITNESS: Yes, sir.

THE COURT: All right. In addition to that, you show dividend income, interest income.

02:06:52PM And by long-term capital gains and short term, are you reflecting there some income from Exxon or one of these companies?

THE WITNESS: No, sir. Actually the dividends from Exxon or Chevron would be in the dividend income amount.

02:07:13PM THE COURT: On Exhibit 3?

THE WITNESS: Excuse me.

THE COURT: Oh, I'm sorry, no, it would not be.

THE WITNESS: I'm sorry, Your Honor. Could you repeat your question.

02:07:22PM THE COURT: I was asking where did this long-term capital gains come from.

THE WITNESS: Oh, I'm sorry. The long-term capital gains and short-term capital gains, those were reported on the stock brokerage accounts. Those are called flow-through

02:07:38PM amounts from mutual funds and things of that nature.

THE COURT: And then the income of 183,000 is stock sale. That's the liquidation of the stock -- did that include the liquidation of stock before 11/11/11?

THE WITNESS: That was the liquidation of stocks during that time frame, other than the stocks that were disbursed in kind.

THE COURT: Okay. So this is a separate liquidation.

THE WITNESS: Yes, sir.

02:08:11PM THE COURT: Or a separate income, should I say. This is income.

THE WITNESS: It's stock liquidated.

THE COURT: This is income from the sale of certain other stocks that has now has been liquidated and it brings

02:08:22PM total income to about $216,600,000.

THE WITNESS: Yes, sir.

THE COURT: The miscellaneous income is just other income that -- what would that be, sort of like what?

THE WITNESS: To be honest, Your Honor, without

02:09:01PM looking at the underlying documents, I can't remember right now. But it was a number of small items that didn't fit one of these other accounts that are listed in Exhibit 1.

THE COURT: But it is reflected in the deposits of the account?

02:09:17PM THE WITNESS: Yes, sir.

THE COURT: The pension income, and I'm looking at Social Security income. Who is getting Social Security income to go into that account at this time?

I believe both the husband and the wife are deceased, right?

THE WITNESS: Mrs. Brunsting, she was alive for about 12 months.

THE COURT: You are right. Tax refunds, that would also be reflected. This is the sale proceeds from the house. That's all -- so we are talking about a total of 830-plus thousand dollars during this two years or two- to three-month period?

THE WITNESS: Yes, sir.

THE COURT: And then we're talking in the next section about expenses, medical care, in-house care, and medical care, and all of that coming to the 122,000, more or less.

THE WITNESS: Yes, sir.

THE COURT: The pet care and pet food and all of that, that doesn't have anything to do with the farm. This must be at the house, right?

THE WITNESS: Yes, sir.

THE COURT: Okay. And veterinarian expenses.

So we are talking about total expenditures of about half of what the income was, right?

THE WITNESS: Yes, sir.

THE COURT: And then you said net income, receipts, and expenses, disbursements.

How are you distinguishing that from total expenses and disbursements?

02:10:55PM

THE WITNESS: That's just the net of the total incoming receipts of 830,000 less the total expenses of 418.

THE COURT: Okay. And then you show the 298,000 in stock -- in stock transfer to family or whatever. This is a value of stock. This is the value beyond what was sold and became income.

02:11:20PM

THE WITNESS: Yes, sir.

THE COURT: So we are looking at -- right at almost 500 -- well, 300,000, basically, that was transferred directly, apparently, by the estate before -- before Ms. Brunsting died in November 11, 2011.

02:11:39PM

THE WITNESS: Yes, sir.

THE COURT: More or less.

THE WITNESS: In May and June of 2011.

THE COURT: What two or three numbers are you putting together to come to the 120,000 at the bottom?

02:11:56PM

THE WITNESS: 411,328 less 298,976 gets me to the 112,346.

THE COURT: All right. What you don't have or what didn't do and were not asked to do was to do an asset

02:12:19PM

liability --

THE WITNESS: Correct.

THE COURT: -- sheet.

Are there any other concerns or statement that you need to make regarding this report before -- before I ask you a question regarding your billing?

THE WITNESS: The one item is, after the filing of my report, there was a disbursement for $6500, which had been put into miscellaneous expenses because I had no backup for it.

THE COURT: It was a one-time payment of 6500?

THE WITNESS: Yes, sir.

THE COURT: Where is that reflected on page --

THE WITNESS: I'm sorry. Exhibit 1, page 1.

THE COURT: Page 1, Exhibit 1? All right.

THE WITNESS: Towards the bottom, Miscellaneous Expenses. That shows miscellaneous expenses $6753. $6500 of that amount should be reclassified to checks or cash to family members.

THE COURT: What you are calling miscellaneous expenses would be -- say that again. I'm sorry.

THE WITNESS: That miscellaneous expense, there was -- $6500 of that amount we found -- defendants' counsel confirmed for me, subsequent to the filing of the report, that that was a distribution to a family member.

THE COURT: Okay. So this is not a part of the pre -- part of the distribution made by Ms. Brunsting before her death. This was expenses or monies that were paid to a particular family member -- a single family member or maybe two family numbers, whatever the number might be, that were made after that date?

02:14:40PM

THE WITNESS: Let me -- let me confirm that. That was subsequent to her demise.

THE COURT: What page are you looking at?

02:15:10PM

THE WITNESS: On Exhibit 2, page 16.

THE COURT: Where it says --

THE WITNESS: About two-thirds or three-quarters of the way down the page, it says "Miscellaneous Expenses."

THE COURT: Page 16 did you say?

02:15:30PM

THE WITNESS: Yes, sir. Exhibit 2.

THE COURT: Okay. Miscellaneous, and then it shows a total of something like... co-op and then withdrawal, and then Houston Metro, those together totaling 6753.72.

THE WITNESS: That middle entry on November 14th of

02:15:53PM

$6500 should now be reclassified --

THE COURT: As disbursement?

THE WITNESS: -- as disbursement to family members.

THE COURT: As disbursement. You've got a code there of W-D-R-L. What does that mean to you?

02:16:12PM

THE WITNESS: Withdrawal. This withdrawal on the

bank statement.

THE COURT: It is my lack of accounting acumen. It's not your fault. I'm trying to make sure I understand, so that if I have a question, I can ask you.

02:16:29PM Now, as it relates to your billing, it does not include an appearance here today, as I understand it, or the time that you have spent. You have already submitted a billing to the -- bill to the Court for payment, have you not?

THE WITNESS: That is correct.

02:16:43PM THE COURT: And except for whatever time has been spent since this submission, have you received any objections from either the plaintiff, Ms. Curtis, or from the defense concerning the payment of your expenses?

THE WITNESS: No, sir.

02:16:59PM THE COURT: Does your billing include the legal advice necessary that you received as well, or was it just separately an accounting function?

THE WITNESS: Mine was separately an accounting function, and I also submitted a separate invoice from my

02:17:18PM counsel.

THE COURT: Have you received any objections from either plaintiff or defendant in that regard?

THE DEFENDANT: No, sir.

THE COURT: Ms. Curtis. Anything else?

02:17:29PM MS. CURTIS: No.

THE COURT: Mr. Vie?

MR. VIE: Just one thing, Your Honor.

BY MR. VIE:

Q. Just to be clear, because the Court has asked about the timing of this last expense that you mentioned being reclassified.

A. Yes, sir.

Q. Okay. If I understand the miscellaneous expense, the check that is noted for the $6500, that is prior -- that's three days after Mrs. Nella's Brunsting's death?

A. Correct.

Q. Do you recall what the transaction was, the $6500 transaction?

A. I believe it was to Carol Brunsting. I feel confident about that. And I believe the -- the explanation that your firm gave me was that -- it was to be, I guess, used to help deal with some of her funeral expenses.

Q. Was the money redeposited at some point after that?

In other words, the money that had been taken out should there be some funeral expenses or other things necessary, would that money have been put back at some point?

THE COURT: Why don't you show him where you are talking about.

MR. VIE: Well, I understand where his reference was on page 16, where he highlights the miscellaneous expense of

6500.

THE COURT: I know, but how would he know whether or not it is put back unless you know where it is?

MR. VIE: If he has a corresponding entry for a deposit for 6500.

THE COURT: I see.

THE WITNESS: I don't recall one.

BY MR. VIE:

*Q.* If there was one, where are the costs like that reflected in the report?

*A.* It would probably be under a miscellaneous --

THE COURT: Keep your voice up, Mr. West.

THE WITNESS: I would think it should be under miscellaneous income, and I don't find it there. There's a possibility it could have always been misposted, but I would need to look through the ledger in total.

BY MR. VIE:

*Q.* Would you -- it was -- your understanding, it was represented to you it was not a gift; it was some expenses that were funds made available for funeral expenses?

*A.* That's what I was told.

MR. VIE: No further questions, Your Honor.

THE COURT: All right. Well, your understanding is based upon what counsel told you. It had nothing to do with and independent audit, right?

THE WITNESS: Yes.

THE COURT: You may step down, sir. Thank you very much.

All right. If there is no objection, I will ask -- no objection to the report and the invoice request of counsel for himself, as an accounting function, as well as advice of counsel, if there's no objection, I'm going to order that those be paid.

Any objection, Ms. Curtis?

02:20:51PM MS. CURTIS: No, Your Honor.

THE COURT: Mr. Vie, speaking on behalf of your clients?

MR. VIE: No, Your Honor, no objection.

THE COURT: All right. Okay. All right. That's

02:21:00PM all we have. Thank you very much, and that will take care of it.

No, no, no. I'm sorry. All we have with accountants. If they want to leave, they can. There are some other motions we need to address.

02:21:14PM MR. MILLION: Your Honor, would you like us to submit a proposed order?

THE COURT: Would you do that? It would make it a lot -- well, how about that, just happen to have it right there, right?

02:21:40PM You shared this with -- the expense paperwork,



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you shared the expense report and/or request for payment with both Ms. Curtis and with Mr. Vie?

MR. WEST: Yes, Your Honor.

THE COURT: All right. Ms. Curtis, you have some other -- well, I will start with you, Mr. Vie. I believe you have filed a motion that has drawn some -- you all want to be excused?

MR. MILLION: Yes, Your Honor. I do want to bring one other thing to the Court's attention.

THE COURT: Okay. Go ahead, sir.

MR. MILLION: In the pleadings that were filed by the plaintiff and defendant, there has been some indication that they are wanting additional work to be performed by the special master. And I know one of the proposed forms of order said you've got to do something within 10 days.

Just given the tax season issues with respect to corporate filings and such, any additional work that the special master might request to do, he is happy to do whatever the Court needs. However, he would need more than 10 days to be able to comply with that.

THE COURT: Yeah, I think I might have said this to both sides. If I did not, you will hear it now.

My purpose in asking Mr. West to come in was not to make him a person for them to utilize to do any of their work. He was working for the Court to bring some



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matters to the Court's attention that would be too much contention between the parties for me to ask either side to present anything to me that I could, at least in good faith, at the time, rely upon as a way of making some determinations.

02:23:42PM So I wanted to find out where the income was and what had happened to it. Those were some of the allegations made by Ms. Curtis.

The function of doing other financial reports I think the parties should be able to handle and do themselves.

02:24:02PM And if they choose to employ someone to do it, they certainly will be able to do it. We have got fundamentals of stuff ready and in place for them to go ahead and get that done.

If there is some need, certainly, Mr. West may be asked do it. If so, it would be by the Court, not by the

02:24:20PM parties.

MR. MILLION: Thank you, Your Honor.

THE COURT: Thank you very much, gentlemen. Have a good day.

Ms. Curtis -- I'm sorry. Mr. Vie, you filed a

02:24:32PM motion to -- let me just get it out here -- a motion to -- request for the renewal of the farm lease, I believe. Let me see if I can find that document number.

I believe that's Instrument No. 65, filed about 10 days ago.

02:25:03PM MR. VIE: Yes, Your Honor.

THE COURT: And as I understand, Ms. Curtis, that you have reviewed that, and your objection is, essentially -- correct me if I am wrong -- that it is automatically renewed at this point because no objection was filed and no disapproval of that renewal occurred within the time frame that needed to be made.

Am I correct?

MS. CURTIS: Yes, Your Honor.

THE COURT: So in that regard, the objection is simply a matter of record as to how things are and the -- the renewal of the farm lease, while the Court might have the authority to cancel it, it is automatically renewed. It would take some affirmative action.

So why should I cancel it? Tell me why I should cancel it.

Is there any basis for me to cancel it at this point?

MS. CURTIS: The farm lease?

THE COURT: Yes, ma'am.

MS. CURTIS: No, Your Honor.

THE COURT: The motion will be granted unless there is something additional I need to know, Mr. Vie, about this before that occurs.

MR. VIE: No, Your Honor.

THE COURT: All right. I believe there was an order

entered, and I know there was one entered, but I believe the second order was entered for the payment of certain property taxes.

That has been taken care of, right?

02:26:28PM MR. VIE: Yes, Your Honor. You have already entered that.

THE COURT: All right. I have reviewed your responses to the report. It seems to me the next item, then, has to do with objection that you have made -- I'm trying to

02:26:40PM figure out what you meant, Ms. Curtis, by "recommit matter to master for consideration."

Tell me what you are talking about there. You filed this on September 3rd. This was filed, what, today?

MS. CURTIS: This was filed this morning.

02:27:04PM THE COURT: Wow. You are faster than the lawyers are. Where were you when you filed this?

MS. CURTIS: In the clerk's office.

THE COURT: All right. I didn't know if you were filing electronically or not.

02:27:16PM MS. CURTIS: I do not file electronically.

THE COURT: Well, you filed this motion -- or objections to defendants' motion for order to recommit matters to master for consideration.

Tell me what you are talking about there.

02:27:31PM MS. CURTIS: Well, there is a letter that Mr. Vie

provided to Mr. West in support of missing documents and other questions that the master had. It is dated July 15th, 2013. It was Appendix Tab 1 in Document No. 67 filed by the defendants, which is their response to the report of master.

02:28:02PM THE COURT: All right.

MS. CURTIS: And I am objecting to even spending another penny with the master when there is nothing substantive in here. This was all just excuses and explanations.

02:28:23PM THE COURT: You mean on the part of the defendants?

MS. CURTIS: The defendants, for missing records or how they categorized the expenses, which was not what the master was instructed to do. He was just instructed to list the income and the expenses that occurred for this period of

02:28:45PM time.

He did the best he could to categorize these things. He had questions, like about the 6500 in miscellaneous income. And he did not receive third-party receipts or original statements or any documentation. All the

02:29:04PM master received were excuses for these transactions, which is not the basis of the master's report. He was just asked to report on the income and expenses.

So I think this entire thing is just irrelevant and a waste of time.

02:29:25PM THE COURT: So your objection and -- your objection



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there is to -- has to do with the statements being made in the defendants' report or request or statements to the master, and that no further work should be done by the master -- special master regarding these documents and these statements?

02:29:50PM MS. CURTIS: That is correct.

THE COURT: I think I've already cured that. I've just let him go.

What else did you have there? You filed, as well, I think a motion to show cause why a judgement of civil

02:30:09PM contempt should not be -- and I know they have not had a chance to respond to this. But that's also been filed before the Court. But is there anything else, other than that motion pending?

MS. CURTIS: I have not filed anything else, no,

02:30:26PM Your Honor.

THE COURT: All right. So, you are coming out of California, and I'm trying to find out how we -- how soon would you be ready and what evidence would you be presenting on this? Because I don't want to have you just coming back

02:30:41PM and forth, expense to you.

MS. CURTIS: I have a statement to make. I don't know if that will help.

THE COURT: I don't know if Mr. Vie is prepared to respond, but I will permit you to make your statement.

02:30:51PM MS. CURTIS: I don't expect a response. I just came



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prepared with this statement.

THE COURT: Okay. Go right ahead, then.

MS. CURTIS: "The absent of immunity results in responsibilities for which there is no exemption. Since no one may be in legal relation with their self, trustees, de facto or de jure, encumbered with duties, and empowered to perform such duties are bound in a jural relation to the beneficiaries, which confers upon said beneficiaries specific rights which are well-known to the law.

"Among such rights is a distinct and calculable property interest in a complete and accurate accounting. Withholding such information, whether by failure or refusal, constitutes a palpable injury to a beneficiary evidenced by the resulting inability to cure and perfect their claim.

"Said failure to perform the duties of trustee endows the beneficiary with the legal powers to act against said trustees in order to lay claim to that which is [property] -- properly theirs and to which they are entitled.

"I object to the July 15th letter from defendants to the master insofar as it contains excuses and explanations that are prejudicial, non-probative, and thus immaterial. The time for these explanations and excuses has long since passed. I would, however, offer the letter into evidence as an offer of proof that the omissions contained therein establish evidence of facts that are clear, positive,



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uncontradicted and of such nature they cannot rationally be disbelieved, and the Court is, therefore, compelled to conclude that those facts have been established as a matter of law.

02:32:36PM "Defendants admit that they failed to keep books and records, and, therefore, are incapable of providing a full, true and complete accounting. Further, defendants admit to self-dealing, commingling, and [applications] of -- misapplications of fiduciary attached to expressions of bias.

02:32:58PM "I would also like to offer defendants' response to plaintiff's request for disclosure and defendants' answer into evidence as an offer of proof that defendants refused to provide non-proprietary trust instruments and admit that they can provide no evidence of notices to the other

02:33:17PM co-beneficiaries of any of their acts from alleged changes to the trust, changes of trustees, changes in trustee compensation or any of their other proclaimed acts of trust administration.

"Plaintiff's claim for breach of fiduciary is

02:33:33PM ripe for summary judgment on the merits of these admissions and the accounting that supports the admissions. Plaintiff asks this Court for summary judgment on the claim for breach of fiduciary and asks that defendants be removed from conducting any further trust business.

02:33:48PM This is Texas Trust Code 113.082, Sections 4, 5

and 6(b). Plaintiff further moves that this Court bifurcate all the remaining issues, including questions of damages, until more necessary information can be obtained."

THE COURT: I saw attached to your motion what I believe to be a request for certain discovery.

That is certain information that you have wanted provided to you; is that right?

MS. CURTIS: It is information I wanted provided to me.

02:34:25PM THE COURT: All right. But once that information -- let's assume that that's what it is and that they are going to respond and give you certain information pursuant to your request, and now you have got the information, let's say.

02:34:34PM What is your next -- you are asking the Court, I gather, to have a hearing to determine whether or not the parties should be removed as trustees. You understand that would require the Court then appointing someone to serve as a trustee.

02:34:52PM MS. CURTIS: Yes, Your Honor.

THE COURT: And then the parties would then have to, then, present to the Court, I gather, the name -- the name or names of individuals who they believe -- whom they believe would be qualified to handle those -- those functions, and

02:35:08PM could not -- it would seem to me, because of the controversy,

it doesn't seem it could include you or another family member.

Do you see the problem there?

MS. CURTIS: I do understand.

THE COURT: So is that what you are asking the Court to do in your -- that's what I think I heard you say.

02:35:22PM

Is that right?

MS. CURTIS: Yes, that's correct.

THE COURT: Why haven't you gone on and hired a lawyer?

02:35:32PM

MS. CURTIS: Because these are things that -- these are things that I don't need an attorney for. I'm going --

THE COURT: I don't disagree that as a matter of course, you are entitled to what you are requesting. The problem is that you are not -- you are so far away from the

02:35:53PM

courthouse, and it creates some problems with the communication that -- when I say "communication," meaning if I want to have a hearing on something, you either have got to fly in here, or I have got to have you on the telephone. And I'm not really sure the telephone is a proper way to have

02:36:10PM

these types of proceedings.

If you had counsel, particularly local counsel, that's someone who could make motions and proceed to do discovery and all of that on your behalf. It seems to me that would be a much easier way to proceed. I'm just throwing that

02:36:28PM

out there for you.

However, under the rules of discovery, I'm not quite sure that the way that you have presented this is a way in which the defendants are required to respond. In other words, you have attached to your motion, your ex parte motion -- and I think you filed it under seal. I'm not sure why.

Why did you file it under seal?

MS. CURTIS: I just gave it to the clerk this morning.

THE COURT: Okay. So it doesn't really need to be under seal. There are no -- I don't think there are any -- we generally have things filed under seal that would -- where there may be some indication of information, family private information, confidential information, that should not be disclosed to the public. But this is a public proceeding, so there is nothing, I gather, as far as you know that --

MS. CURTIS: No, Your Honor.

THE COURT: -- would require that. I'm going to, then, have it removed from being under seal. I don't know if counsel has gotten a copy of it yet, but he would be able to access it. You should provide him a copy of it.

MS. CURTIS: I did.

THE COURT: Okay. Very good. But if you look at what you have got as p-68. Does that mean there's a p-67 someplace and a p-66?



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MS. CURTIS: The p-67.

THE COURT: It's attached to the motion. That's what I am referring to. It's attached to your ex parte motion. It is a five-page document, demanding --

02:38:11PM MS. CURTIS: I have it. It was the only exhibit that I attached.

THE COURT: But this suggests there are 67 other exhibits out there somewhere, right?

MS. CURTIS: Yes. I have just continued adding

02:38:28PM exhibit numbers from the very beginning.

THE COURT: Okay. So some of these exhibits are attached to your original proceeding?

MS. CURTIS: Yes, Your Honor.

THE COURT: And all along there may have been some

02:38:38PM that were added to or attached to your motions, and you are now at number 68. That's what that is. Okay.

MS. CURTIS: Yes, Your Honor. And --

THE COURT: Have you read the rules, Federal Rules of Procedure related to discovery requests?

02:38:55PM MS. CURTIS: Yes, Your Honor. I have something to say about that, also.

THE COURT: Well, let me say my say first. And that is, this is not going to get.

MS. CURTIS: I understand.

02:39:04PM THE COURT: Go ahead and say your say.

MS. CURTIS: "The public policy considerations involved in a common law information demand pursuant to a fiduciary obligation are very different from those involved in a discovery request under Rules of Civil Procedure for the following reasons: If trustee is administering property, the trust estate that belongs to the beneficiaries of the trust. In other words, the beneficiaries hold equitable title to the trust estate.

"The trustee acting in his individual capacity usually has no personal interest whatsoever in the estate of the trust that he is administering. Consequently, the information requested does not belong to the trustee. In legal discovery requests, a party to a lawsuit is requesting proprietary information and documents that belong to another party. This is not the case with respect to equitable demands for information.

"The trustee of a trust holds the trust estate for the benefit of the trust beneficiaries who have an equitable interest in all information and documents. There is usually a financial disparity between the beneficiary who is using his personal financial resources to obtain information and the trustee who is using the estate of the trust to pay for the cost of his compliance with the information demand. In essence, the beneficiary is paying everyone's fees.

"This situation does not occur in legal



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discovery requests where independent parties are involved in litigation. The beneficiary of a trust is the only person authorized to enforce the trust. It is not possible for him or her to perform this function without disclosure from the trustee regarding how the trust is being administered. Where, as here, the trustee is conflicted, the duty to disclose is even higher than that of ordinary corporate trustees.

"In discovery, under the rules the scope of discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. In common law disclosure, the scope of discovery is material facts known to the trustee that might affect the beneficiaries' rights.

"There is no law in place allowing formal objections to reasonable common law disclosure demand for information directed from a beneficiary to a trustee. Unlike interrogatories, there is no limitation on the number of demands for information that can be made on the trustee if the trustee breaches his duty to disclose his subject to all equitable remedies. Moreover, his breach is a factor in the award of legal fees in the overall case pursuant to Texas Trust Code 114.064."

I have been asking, first, nicely, then I made a common law demand in writing in late 2011, after my mother passed away. I made a statutory demand for the exact same

information I was entitled to in January of 2011. And to this day, I have gotten nothing but excuses and explanations for records and documents that I am entitled to as a beneficiary.

THE COURT: All right. Let me ask you, when you say you have gotten nothing, are you saying that you have received absolutely nothing from defendants or their attorneys?

MS. CURTIS: I have received nothing responsive.

THE COURT: So now there is an argument as to what responsive is, isn't it?

So here's what I am getting to. These kinds of disputes as to whether or not -- whatever you might have received -- and I don't even suggest that it's what you requested, but whatever the dispute is, these matters are matters that now are in this Court. And you are asking me to address them, and I'm in no position to address them because I don't have the documents before me that you do have.

And the way this request has to be made now is not in a common law fashion as you would do if you were writing a letter to a person and requesting. That simply sets you up to go to court and get a judge to enter an order that you be provided with the documentation that you believe you are entitled to. My job would then be to decide whether or not the information that you have requested is relevant or important to any issue in the case.

Because the point is, the bottom line here, in

my opinion, and it seems where you are headed, is that you are asking this Court to do one of several things, or maybe several things.

One, it sounds like you are asking the Court to 02:44:07PM remove the trustees and appoint a trustee. I think I heard you say that.

Second, it seemed to me you want the estate dispersed so that you have your share of the estate and it is not under the supervision and/or hands of your sisters.

02:44:24PM And, third, you want your sisters or the trustees, whoever was acting as -- I think it was both of them, co-trustees, since November 11th of 2011, or whatever period of time. You want them to account to you, that, by accounting, I think I hear you saying you want them to 02:44:42PM reimburse you for what they have taken that doesn't belong to them, as a disbursement to them, assuming that that has occurred.

And it sounds to me like you are asking for attorney's fees that have not -- following through. And this 02:44:55PM would not come from the estate per se. It would come from them individually. That's what I understand I am hearing.

So, there are some documents that may be important or relevant to those kinds of requests, but everything wouldn't necessarily be. Whether or not -- for 02:45:14PM example, if you are looking for do you have certified copies

of letters, or whatever, that might have gone from this person to that person, that might not be relevant.

What is relevant, it seems to me, is that there is a money issue here, and it can be solved by accounting and disbursement. One of the things that the Court is going to have to get around to, it seems to me, because I'm not sure that you are going to do it voluntarily, or the parties or the defendants, is at some point an asset/liability statement has to be prepared and presented in this case. Otherwise, there's no way for the Court to know what the value of the estate is and/or what the -- what any disbursements might look like. I'm not sure that disbursement is the proper venue, but I am certain that that's part of what you are requesting.

Am I correct in some of that?

02:46:07PM MS. CURTIS: You are correct in almost 99 percent of that, but I would like to know where the EE bonds are.

THE COURT: The who?

MS. CURTIS: The EE Treasury bonds.

THE COURT: Here's my point. You can ask that, but you need to do it. You can ask for a revelation of these documents, these Treasury bonds, whatever else you think that's missing and have not been accounted for. And the reason, theoretically, at least in part, that they have not been accounted for is that they are not paying an interest as an income to the estate, necessarily. The interest,

apparently, is being accumulated in the bond itself. So you would have to cash the bond to get the principal and the interest. That may be an explanation for it.

You are entitled to know what those assets are, but you've got to ask for them. What I said to you was the way that you attached it to this motion is not the way that it should be done under the rules of discovery. So simply file your motion for requesting whatever it is that you are requesting discovery wise with counsel, Mr. Vie, who has the duty to either object to what you are requesting or to respond. Okay?

But I don't want it attached to your motion for an order to show cause because that's a different -- that's a different vehicle. This is discovery attached to something that it should not be attached to. So you need to file a separate discovery motion. All right? Or at least provide that -- file that request with Mr. Vie.

MS. CURTIS: Excuse me, Your Honor. But the reason I attached the demand for production of documents, this is a -- this has already been given to defendants. They have already responded to it.

THE COURT: Okay. Okay.

MS. CURTIS: And the reason that I attached it is because I still don't have the information that I need to be able to make a decision about anything having to do with my

beneficial interests.

THE COURT: So that's the basis for this application, for civil contempt.

MS. CURTIS: Yes, Your Honor.

02:48:30PM THE COURT: I see. Okay. Now, see, I don't know what's going on outside of the Court. So I apologize for being too far ahead of you in that respect, or behind you, whatever.

The point is that this application, then, would

02:48:44PM require the Court to conduct a hearing. They have a duty to respond and an opportunity to respond within a certain number of days. It would require a hearing, and, in my opinion, it would require a hearing here in open court so the record is made of whatever that proceeding is. So, there you have it.

02:49:05PM It is going to be -- I cannot let you participate by telephone.

MS. CURTIS: I understand.

THE COURT: Because you might need to be questioned, as well, under the proceeding. All right?

02:49:17PM So I will set a date for that, and Mr. Vie can respond within that time frame, and then we will see whether or not there's a hearing probably within the next 30, 40 days.

MS. CURTIS: Okay.

THE COURT: Anything else?

02:49:36PM MS. CURTIS: No, Your honor.

THE COURT: And you are still not going to get a lawyer, right?

MS. CURTIS: Not quite yet.

THE COURT: Okay.

02:49:44PM Mr. Vie, did you have anything that you needed to bring to the Court's attention?

MR. VIE: No, Your Honor.

THE COURT: So I will go ahead and set this matter for a hearing perhaps the 1st of October.

02:49:55PM Do we have a date that we can give them now?

Is October 1st too soon?

You haven't had a chance to respond yet. So, theoretically, you have got 21 days.

MR. VIE: I think it is on the docket for the -- I

02:50:19PM think the submission date is the 19th.

THE COURT: That's an automatic submission. I'm talking about a date for the hearing on the motion. You are going to be responding or -- or not, one way or the other. I would have to have a hearing before I could decide the motion.

02:50:35PM MR. VIE: Tuesday, the 1st?

THE COURT: Would that be fine?

MS. CURTIS: Your Honor, the nature of my work requires me to be in my office on Monday or Tuesday of any given week.

02:50:49PM THE COURT: What's a good day for you?

MS. CURTIS: Wednesday, Thursday or Friday. Any Wednesday, Thursday or Friday I will be here.

THE COURT: So if you have to travel, how are you going to get here on Wednesday if you have got to be in there on Tuesday?

02:51:01PM

MS. CURTIS: I can travel at night.

THE COURT: You can work that out.

MS. CURTIS: I will work that out.

THE COURT: So let's pick a Wednesday. October 2nd, how is that for you?

MR. VIE: No objection, Your Honor.

THE COURT: October 2nd. Is 11:30 a good time or is it better in the afternoon, Ms. Curtis?

MS. CURTIS: 11:30 is fine.

02:51:24PM

THE COURT: Is that fine with you, then, Mr. Vie?

MR. VIE: Yes, Your Honor.

THE COURT: 10/11, at 11:30 a.m. -- 10/2. 10/11 must be a holiday. 10/2. I apologize. October 2nd.

We are not going to send out an additional -- well, we might send a notice out, but don't wait on us to send you a notice. You might get a notice indicating that -- a reminder that this is occurring, and that would be the nature and extent of the -- so let me ask a couple of questions, Mr. Vie. And, I'm not sure, you might confer with your client there.

02:51:48PM

02:52:11PM

I just signed an order, and you know that is a fairly expensive -- I will deal with your order. I need to sign it.

Can we pull up his order on the motion for the lease?

02:52:21PM

I want to make sure that the funds are available to pay the attorney and the accountant before -- I don't want hear him call me and say, Judge, I haven't seen or heard anything.

02:52:37PM MR. VIE: They are available, Your Honor.

THE COURT: All right. Very good. I believe everything else that was requested for payment, the taxes, that's been taken care of.

MR. VIE: Yes, Your Honor.

02:52:47PM THE COURT: The only thing I need is your order here.

The Court has entered an order on that. I believe that's all that I have. Thank you very much, ladies and gentlemen.

02:53:35PM (Concluded.)

* * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause, to the best of my ability.

//s_____ 09/27/2013
Stephanie Kay Carlisle CSR, RPR Date

Official Court Reporter

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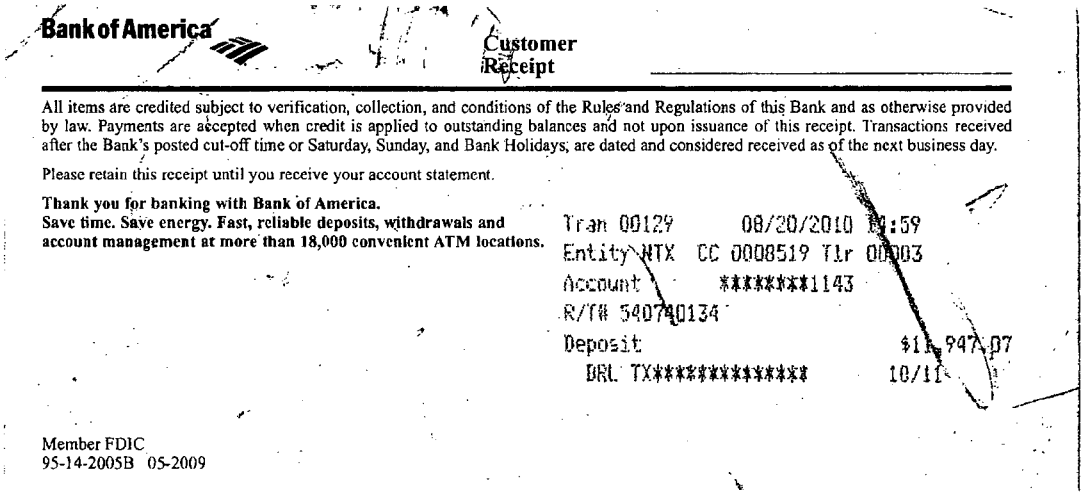
# Exhibit 19

Bates stamped exhibits of EE bonds from Defendants April 9, 2013 disclosure CD delivered to Plaintiff in open court



Bank of America

Customer Receipt

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

**Thank you for banking with Bank of America.**
**Save time. Save energy. Fast, reliable deposits, withdrawals and account management at more than 18,000 convenient ATM locations.**

Tran 00129 08/20/2010 11:59
Entity NTX CC 0008519 Tlr 00003
Account ********1143
R/T# 540740134
Deposit $14,947.07
DRL TX********** 10/11

Member FDIC
95-14-2005B 05-2009

P4913

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MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office TouchPoint Exit

E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 25 | EE | 200.00 | 1982 / 02 | 553.68 | 453.68 |
| 26 | EE | 200.00 | 1982 / 12 | 507.84 | 407.84 |
| 27 | EE | 200.00 | 1982 / 11 | 507.84 | 407.84 |
| 28 | EE | 200.00 | 1982 / 10 | 532.16 | 432.16 |
| 29 | EE | 200.00 | 1982 / 09 | 532.16 | 432.16 |
| 30 | EE | 200.00 | 1982 / 08 | 542.80 | 442.80 |
| 31 | EE | 200.00 | 1982 / 07 | 542.80 | 442.80 |
| 32 | EE | 200.00 | 1982 / 06 | 542.80 | 442.80 |
| 33 | EE | 200.00 | 1982 / 05 | 542.80 | 442.80 |
| 34 | EE | 200.00 | 1982 / 04 | 542.80 | 442.80 |
| 35 | EE | 200.00 | 1982 / 03 | 542.80 | 442.80 |
| 36 | EE | 50.00 | 1982 / 02 | 138.42 | 113.42 |

Sub/Totals

| | | |
|---|---|---|
| Pre-January 1990 Issue Dates | 11947.07 | 9722.07 |
| January 1990 and Later Issue Dates | | |
| Total | 11947.07 | 9722.07 |

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

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P4914

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MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office TouchPoint Exit

E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 1 | EE | 50.00 | 1982 / 09 | 133.04 | 108.04 |
| 2 | EE | 75.00 | 1982 / 12 | 190.44 | 152.94 |
| 3 | EE | 75.00 | 1982 / 11 | 190.44 | 152.94 |
| 4 | EE | 75.00 | 1982 / 10 | 199.56 | 162.06 |
| 5 | EE | 75.00 | 1982 / 08 | 203.55 | 166.05 |
| 6 | EE | 75.00 | 1982 / 07 | 203.55 | 166.05 |
| 7 | EE | 75.00 | 1982 / 06 | 203.55 | 166.05 |
| 8 | EE | 75.00 | 1982 / 05 | 203.55 | 166.05 |
| 9 | EE | 75.00 | 1982 / 04 | 203.55 | 166.05 |
| 10 | EE | 75.00 | 1982 / 03 | 203.55 | 166.05 |
| 11 | EE | 75.00 | 1982 / 01 | 207.63 | 170.13 |
| 12 | EE | 100.00 | 1982 / 03 | 271.40 | 221.40 |

Sub/Totals

| | | |
|---|---|---|
| Pre-January 1990 Issue Dates | 11947.07 | 9722.07 |
| January 1990 and Later Issue Dates | | |
| Total | 11947.07 | 9722.07 |

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR-2 Release Version: 1080719A-Y 14:56 08/20/2010

P4915

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MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office TouchPoint Edit

E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 13 | EE | 100.00 | 1982 / 04 | 271.40 | 221.40 |
| 14 | EE | 100.00 | 1982 / 05 | 271.40 | 221.40 |
| 15 | EE | 100.00 | 1982 / 06 | 271.40 | 221.40 |
| 16 | EE | 100.00 | 1982 / 07 | 271.40 | 221.40 |
| 17 | EE | 100.00 | 1982 / 08 | 271.40 | 221.40 |
| 18 | EE | 100.00 | 1982 / 09 | 266.08 | 216.08 |
| 19 | EE | 100.00 | 1982 / 10 | 266.08 | 216.08 |
| 20 | EE | 100.00 | 1982 / 11 | 253.92 | 203.92 |
| 21 | EE | 100.00 | 1982 / 12 | 253.92 | 203.92 |
| 22 | EE | 100.00 | 1982 / 01 | 276.84 | 226.84 |
| 23 | EE | 100.00 | 1982 / 02 | 276.84 | 226.84 |
| 24 | EE | 200.00 | 1982 / 01 | 553.68 | 453.68 |

Sub/Totals

| | | |
|---|---|---|
| Pre-January 1990 Issue Dates | 11947.07 | 9722.07 |
| January 1990 and Later Issue Dates | | |
| Total | 11947.07 | 9722.07 |

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

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P4916

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P4917

| TERM | LOC. | EMPL. NO. | NAME | BONDS | UNITS |
|---|---|---|---|---|---|
| 1968 | 800 | 114162 | E. H. BRUNSTING | 22 | 58 |

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS.

P4918

67 TERM

Closed 6/14/76

| LOC. | EMPLOYEE NO. | NAME | BONDS | UNITS |
|---|---|---|---|---|
| 800 | 114,162 | E. H. BRUNSTING | 20 | 56 |

| TERM | LOC. | EMPL. NO. | NAME | BONDS | UNITS |
|---|---|---|---|---|---|
| 1969 | 300 | 114162 | E. H. BRUNSTING | 24 | 67 |

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS

| TERM | LOC. | EMPL. NO. | NAME | BONDS | UNITS |
|---|---|---|---|---|---|
| 1970 | 800 | 114162 | E. H. BRUNSTING | 24 | 70 |

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS.

P4921

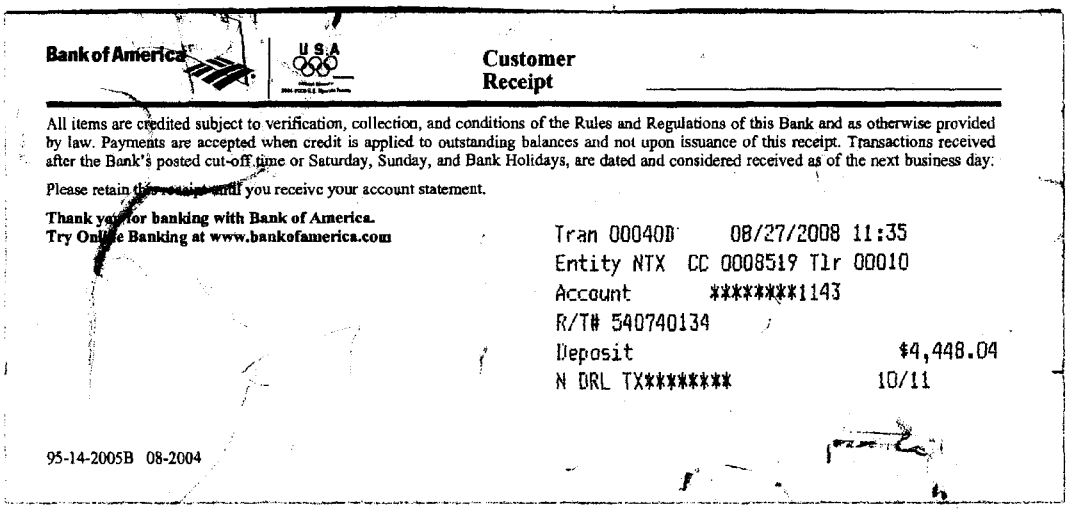
| TERM | LOC. | EMPL. NO. | NAME | BONDS | UNITS |
|---|---|---|---|---|---|
| 1971 | 800 | 114162 | E. H. BRUNSTING | 24 | 78 |

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS.

P4922



Bank of America

**Customer Receipt**

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

**Thank you for banking with Bank of America.**
**Try Online Banking at www.bankofamerica.com**

Tran 00040D 08/27/2008 11:35
Entity NTX CC 0008519 Tlr 00010
Account ********1143
R/T# 540740134
Deposit $4,448.04
N DRL TX******** 10/11

95-14-2005B 08-2004

P4923

**Toll free number for Federal Reserve Bank in K.C. - 1-800-333-2919.**

**United States Savings Bonds on hand:-**

**Series E - 1977 - all months - Expire 2007** Cashed in 2/27/07
**$25-100-200 denomination**

**Series EE - 1978 - January - one $100** Cashed in May 4, 2005
**one $200 - Expire 2008**

**Series HH - 1988 - Nov. only $1000 - 2 bonds - Expire 2008**

8/27/08- **Series EE - 1981-From February to Dec. Expire 2011** - 15 bonds '81 cashed
**All denominations** date 4/18-04

**Series EE - 1982 - all months - up to $200 - Expire 2012**

**Series EE - 1983 -January through July - Expire - 2013**

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MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office Touchpoint Exit

E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 1 | EE | 200.00 | 1981 / 07 | 521.76 | 421.76 |
| 2 | EE | 100.00 | 1981 / 07 | 260.88 | 210.88 |
| 3 | EE | 200.00 | 1981 / 06 | 521.76 | 421.76 |
| 4 | EE | 50.00 | 1981 / 07 | 130.44 | 105.44 |
| 5 | EE | 75.00 | 1981 / 03 | 204.36 | 166.86 |
| 6 | EE | 75.00 | 1981 / 06 | 195.66 | 158.16 |
| 7 | EE | 50.00 | 1981 / 03 | 136.24 | 111.24 |
| 8 | EE | 200.00 | 1981 / 03 | 544.96 | 444.96 |
| 9 | EE | 50.00 | 1981 / 04 | 136.24 | 111.24 |
| 10 | EE | 100.00 | 1981 / 04 | 272.48 | 222.48 |
| 11 | EE | 200.00 | 1981 / 04 | 544.96 | 444.96 |
| 12 | EE | 50.00 | 1981 / 05 | 130.44 | 105.44 |

Sub/Totals

| | | |
|---|---|---|
| Pre-January 1990 Issue Dates | 4448.04 | 3610.54 |
| January 1990 and Later Issue Dates | | |
| Total | 4448.04 | 3610.54 |

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

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P4925

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MerlinTeller

Withdrawal Deposit Consignment Payments Misc Teller Office ToughPoint Exit

E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 4 | EE | 50.00 | 1981 / 07 | 130.44 | 105.44 |
| 5 | EE | 75.00 | 1981 / 03 | 204.36 | 166.86 |
| 6 | EE | 75.00 | 1981 / 06 | 195.66 | 158.16 |
| 7 | EE | 50.00 | 1981 / 03 | 136.24 | 111.24 |
| 8 | EE | 200.00 | 1981 / 03 | 544.96 | 444.96 |
| 9 | EE | 50.00 | 1981 / 04 | 136.24 | 111.24 |
| 10 | EE | 100.00 | 1981 / 04 | 272.48 | 222.48 |
| 11 | EE | 200.00 | 1981 / 04 | 544.96 | 444.96 |
| 12 | EE | 50.00 | 1981 / 05 | 130.44 | 105.44 |
| 13 | EE | 75.00 | 1981 / 05 | 195.66 | 158.16 |
| 14 | EE | 200.00 | 1981 / 05 | 521.76 | 421.76 |
| 15 | EE | 50.00 | 1981 / 06 | 130.44 | 105.44 |

Sub/Totals

| | | |
|---|---|---|
| Pre-January 1990 Issue Dates | 4448.04 | 3610.54 |
| January 1990 and Later Issue Dates | | |
| Total | 4448.04 | 3610.54 |

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

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P4926

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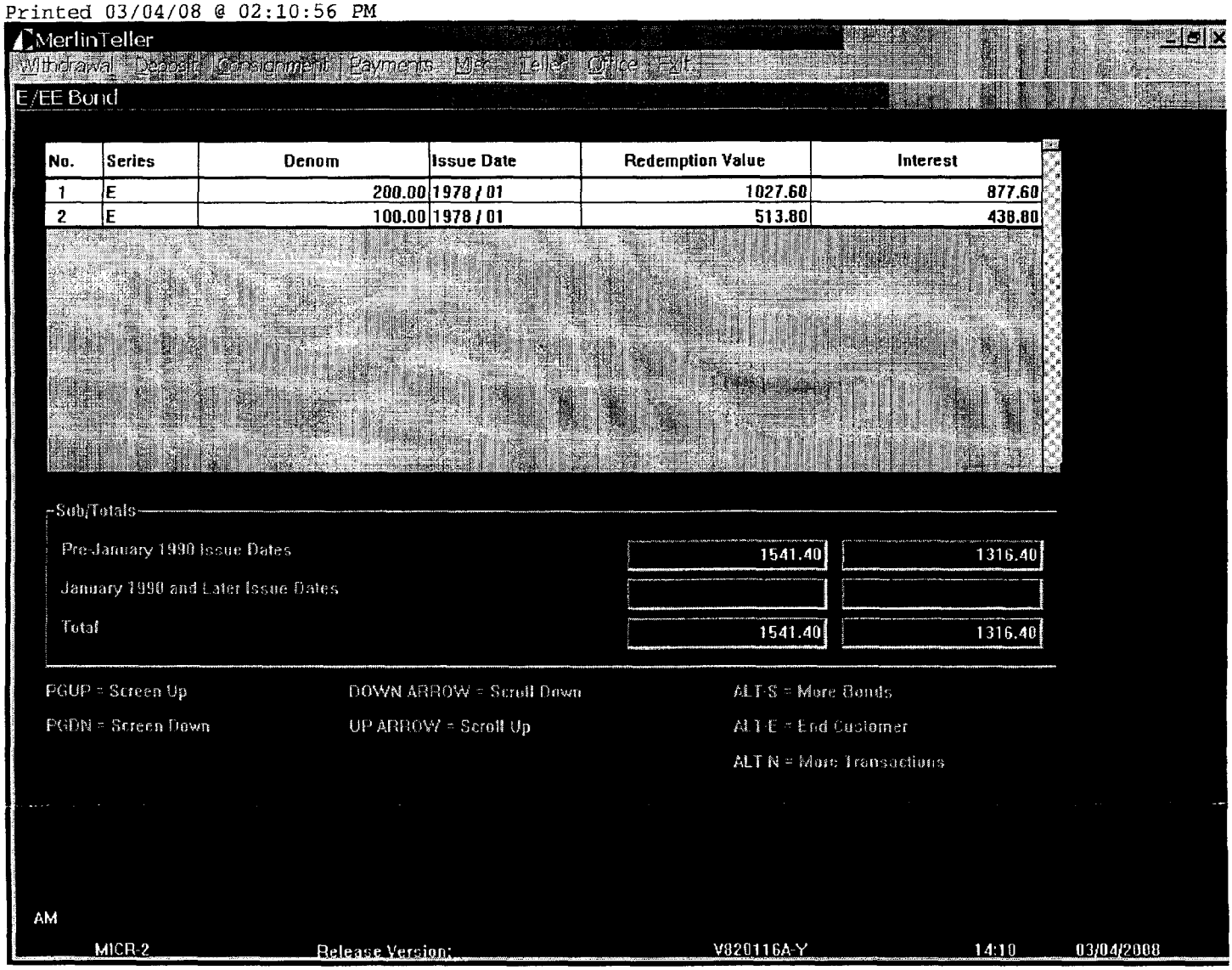
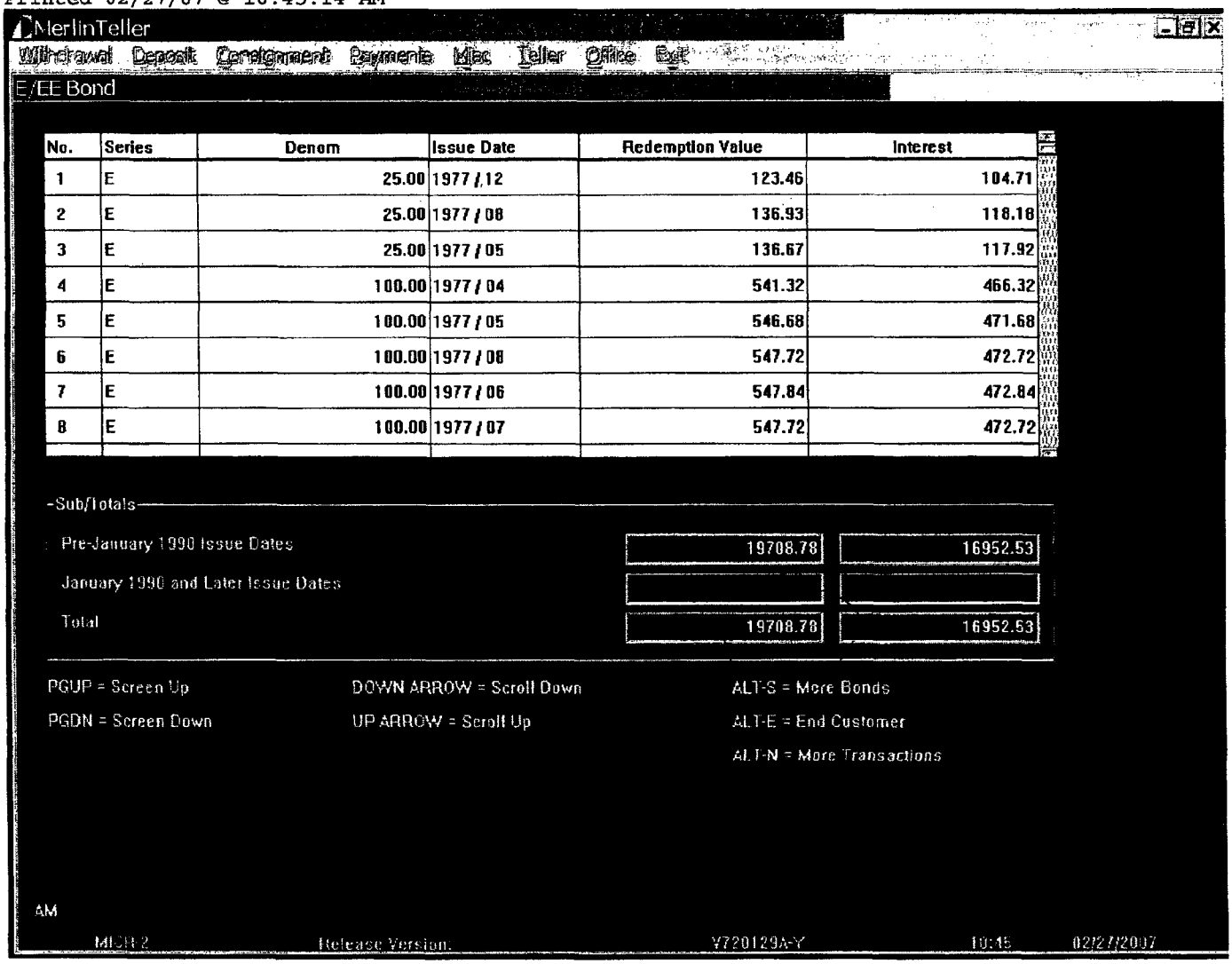


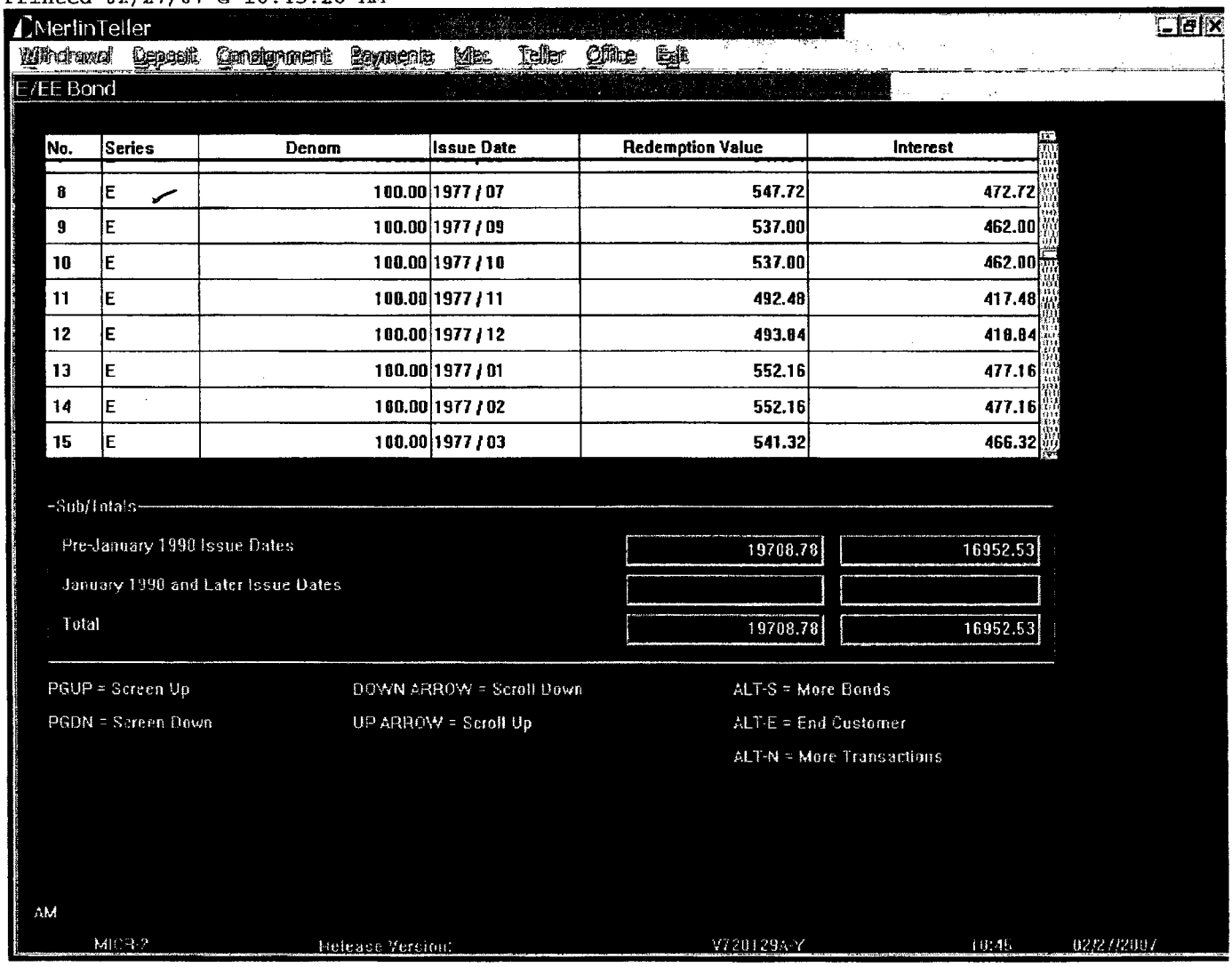

P4927

Printed 02/27/07 @ 10:45:14 AM



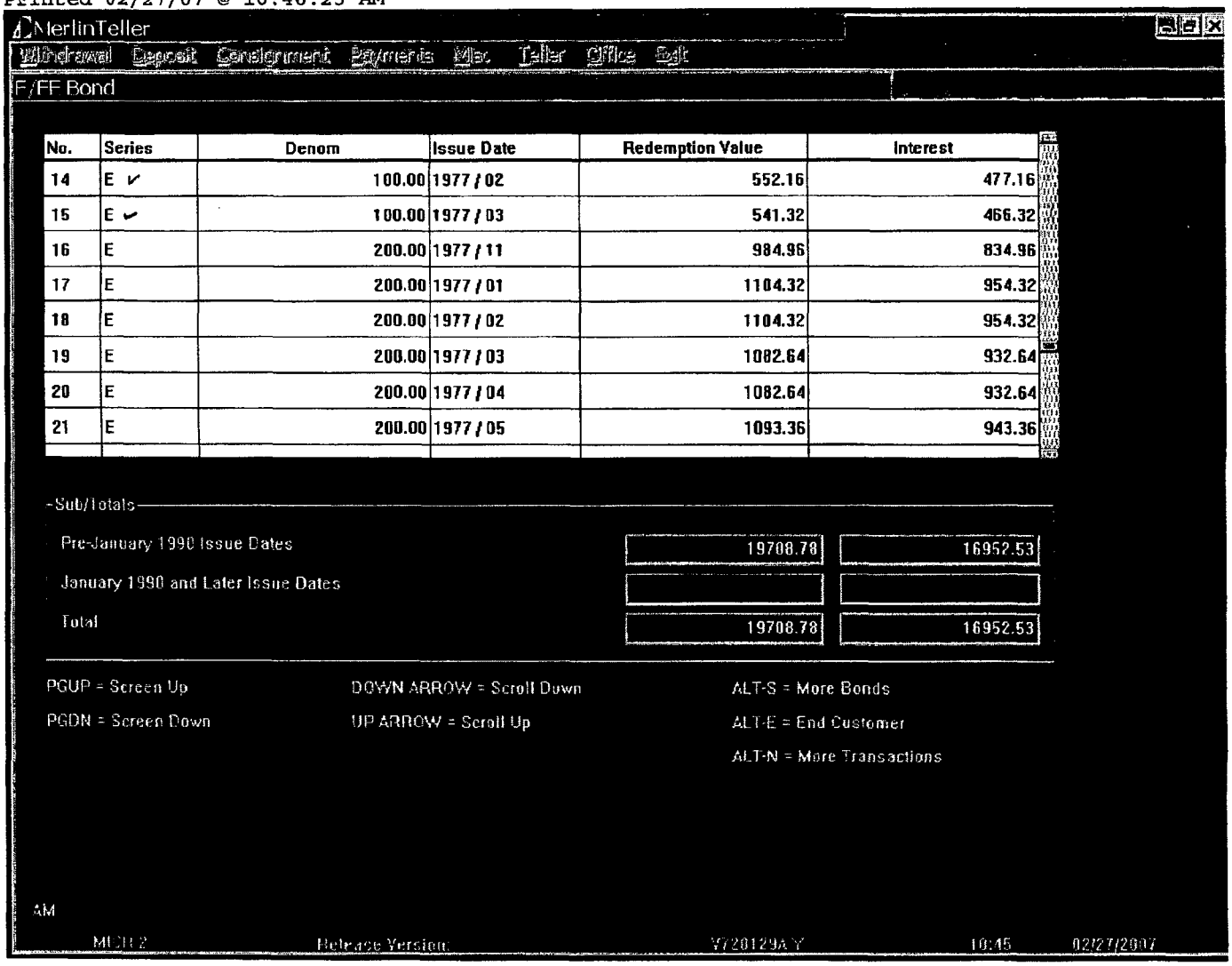

P4928

Printed 02/27/07 @ 10:45:26 AM




P4929

Printed 02/27/07 @ 10:46:25 AM




P4930

Printed 02/27/07 @ 10:46:35 AM

MerlinTeller

Withdrawal Deposit Consignment Payments Misc. Teller Office Exit

E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 20 | E | 200.00 | 1977 / 04 | 1082.64 | 932.64 |
| 21 | E | 200.00 | 1977 / 05 | 1093.36 | 943.36 |
| 22 | E | 200.00 | 1977 / 06 | 1095.68 | 945.68 |
| 23 | E | 200.00 | 1977 / 07 | 1095.44 | 945.44 |
| 24 | E | 200.00 | 1977 / 09 | 1074.00 | 924.00 |
| 25 | E | 200.00 | 1977 / 12 | 987.68 | 837.68 |
| 26 | E | 200.00 | 1977 / 08 | 1095.44 | 945.44 |
| 27 | E | 200.00 | 1977 / 10 | 1074.00 | 924.00 |

Sub/Totals

| | | |
|---|---|---|
| Pre-January 1990 Issue Dates | 19708.78 | 16952.53 |
| January 1990 and Later Issue Dates | | |
| Total | 19708.78 | 16952.53 |

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM

MICR-2 Release Version: V720129A-Y 10:45 02/27/2007

P4931

**NOTICE TO RECIPIENTS OF SERIES HH AND H BOND INTEREST**
**IMPORTANT TAX RETURN DOCUMENT ENCLOSED**

On and after March 1, 1987, if a Series HH or H savings bond submitted for redemption is received by a Federal Reserve Office or the Bureau of the Public Debt in the month preceding an interest due date, the bond will be paid and the owner will not receive the upcoming interest payment, unless the paying office receives from the owner a specific written statement that the bond should be held until the month in which the interest is due. For example, if interest is due on a Series HH or H bond every January 1 and July 1 and the paying office receives the bond in June without a written request to hold the bond until July 1, the bond will be paid and the owner will receive no interest for the period from the preceding January 1 to the date of payment.

Paying offices will not honor instructions to hold bonds for later redemption if the bonds and written statement are received more than one month before an interest due date. For example, if interest is due on a Series HH or H bond every January 1 and July 1 and the bond is received by the paying office in September, the bond will be paid, and the owner will receive no interest for the period from the preceding July to the date of payment.

PLEASE RETAIN THIS NOTICE WITH YOUR BONDS AS A REMINDER OF THIS RULE CHANGE.

P4932

**Bank of America**

**U.S. Savings Bond E/EE**
**Interest Income**

Interest Income to be Reported to the Internal Revenue Service (Form must be typed or printed legibly)

**Customer Information** (Customer Mailing Address for 1099 Statement)

| Customer Name (Name of party receiving funds) | Tax ID (TIN) |
|---|---|
| Elmer Brunsting | 282-32-8905 |
| Street Address/Apt. Number | City/State/Zip Code |
| | |

I certify that the TIN shown on this form is my correct Taxpayer Identification Number for reporting to the IRS.

Customer Signature X Elmer H Brunsting Date 6/7/00

**Associate Information**

| Prepared By | Teller Number | Telephone Number |
|---|---|---|
| Sally Richardson | 159-006 | (713) 365-3220 |
| **Bank Number/Cost Center** | **Banking Center Name/ Number** | |
| Town & Country 159 000854 | Town & Country | |

**Transaction Information** (Complete all applicable fields)

| Type of Bonds (Check applicable type) | Redemption Date | Number of Bonds |
|---|---|---|
| ☒ Series E ☐ Series EE | 6/7/00 | 24 |
| **Purchase Price (A)** | **Interest Amount paid (B) (Amount reported to the IRS as Interest Income)** | **Total Amount Paid (C) (A + B = C)** |
| $ 1706.25 | $ 8740.49 | $ 10,446.74 |
| **Deposit to Account Number** | **Total Deposit Amount** | |
| 8519021143 | $ 10,446.74 | |
| **Cash Ticket Number** | **Cashier's Check Number** | |
| | | |

**TEFRA Use Only**

| Entered By | Date | Delete | Date |
|---|---|---|---|
| Verified By | Date | Re-entered | Date |

00-14-2944 NSB (01-1999) White - TEFRA Canary - Customer Pink - File

P4933

BOND INFORMATION
PRESS PRINT KEY FOR CPY OF SCREEN

REDEMPTION YYYY/MO 2000/06 SERIES: 1 - E BONDS 3 - SAVINGS NOTES
2 - EE BONDS 4 = I BONDS

| # OF BONDS | SERIES 1,2,3,4 | FACE VALUE | ISSUE YYYY/MO | PER BOND REDEMP. VAL | PER BOND INT EARNED | TOTALS REDEMP. VAL | TOTALS INT EARNED |
|---|---|---|---|---|---|---|---|
| 1 | 1 | 100 | 1973/12 | 447.40 | 372.40 | 447.40 | 372.40 |
| 1 | 1 | 100 | 1973/05 | 458.32 | 383.32 | 458.32 | 383.32 |
| 1 | 1 | 100 | 1973/06 | 459.40 | 384.40 | 459.40 | 384.40 |
| 1 | 1 | 100 | 1973/07 | 463.84 | 388.84 | 463.84 | 388.84 |
| 1 | 1 | 100 | 1973/07 | 463.84 | 388.84 | 463.84 | 388.84 |
| 1 | 1 | 100 | 1973/08 | 464.84 | 389.84 | 464.84 | 389.84 |
| 1 | 1 | 100 | 1973/09 | 455.80 | 380.80 | 455.80 | 380.80 |
| 1 | 1 | 100 | 1973/09 | 455.80 | 380.80 | 455.80 | 380.80 |
| 1 | 1 | 100 | 1973/10 | 455.80 | 380.80 | 455.80 | 380.80 |
| 1 | 1 | 100 | 1973/11 | 455.80 | 380.80 | 455.80 | 380.80 |
| 1 | 1 | 100 | 1973/11 | 455.80 | 380.80 | 455.80 | 380.80 |
| 1 | 1 | 100 | 1973/12 | 447.40 | 372.40 | 447.40 | 372.40 |
| 1 | 1 | 75 | 1973/02 | 350.61 | 294.36 | 350.61 | 294.36 |
| | | | | PAGE TOTAL | | 5834.65 | 4878.40 |

DO YOU WANT TO ENTER MORE BONDS? (Y/N)

BOND INFORMATION
PRESS PRINT KEY FOR CPY OF SCREEN

REDEMPTION YYYY/MO 2000/06 SERIES: 1 - E BONDS 3 - SAVINGS NOTES
2 - EE BONDS 4 = I BONDS

| # OF BONDS | SERIES 1,2,3,4 | FACE VALUE | ISSUE YYYY/MO | PER BOND REDEMP. VAL | PER BOND INT EARNED | TOTALS REDEMP. VAL | TOTALS INT EARNED |
|---|---|---|---|---|---|---|---|
| 1 | 1 | 75 | 1973/04 | 343.74 | 287.49 | 343.74 | 287.49 |
| 1 | 1 | 75 | 1973/06 | 344.55 | 288.30 | 344.55 | 288.30 |
| 1 | 1 | 75 | 1973/08 | 348.63 | 292.38 | 348.63 | 292.38 |
| 1 | 1 | 75 | 1973/10 | 341.85 | 285.60 | 341.85 | 285.60 |
| 1 | 1 | 100 | 1973/01 | 466.28 | 391.28 | 466.28 | 391.28 |
| 1 | 1 | 100 | 1973/01 | 466.28 | 391.28 | 466.28 | 391.28 |
| 1 | 1 | 100 | 1973/02 | 467.48 | 392.48 | 467.48 | 392.48 |
| 1 | 1 | 100 | 1973/03 | 458.32 | 383.32 | 458.32 | 383.32 |
| 1 | 1 | 100 | 1973/03 | 458.32 | 383.32 | 458.32 | 383.32 |
| 1 | 1 | 100 | 1973/04 | 458.32 | 383.32 | 458.32 | 383.32 |
| 1 | 1 | 100 | 1973/05 | 458.32 | 383.32 | 458.32 | 383.32 |
| | | | | PAGE TOTAL | | 4612.09 | 3862.09 |

22.00

DO YOU WANT TO ENTER MORE BONDS? (Y/N)

Bank of Am
Town & Country
Branch figure
for sale of all our
1973 Series E Bonds
6/7/00

Total $8,740.49 int.

Total $10,446.74 redemption value

P4934

20-20566.2068
BRUNSTING000967

GA 268 Rev. 1-74

# GENERAL ATOMIC COMPANY

CALCULATIONS FOR 1973 SERIES E BONDS

| EQUIP. NO. | PROJ. NO. | CALC. NO. | PAGE OF |
|---|---|---|---|
| PREPARED BY | DATE | REF. DOCUMENTS: FIGURED FOR JUNE REDEMPTION | |
| REVIEWED BY | DATE | | |
| APPROVED BY | DATE | | |

| | ISSUE DATE | DENOM. | SERIAL # | TOTAL VALUE | COST | INT. EARNED | |
|---|---|---|---|---|---|---|---|
| | JAN 1973 | 100 | C-2116581264E | 466.28 | 75 | 391.28 | |
| | JAN 1973 | 100 | C-2116581265E | 466.28 | 75 | 391.28 | |
| 467.48 | FEB 1973 | 100 | C-2116581266E | 466.28 | 75 | 391.28 | 392.48 |
| 1 | FEB 1973 | 75 | K223036220E | 350.61 | 56.25 | 294.36 | |
| | MAR 1973 | 100 | C2116581267E | 458.32 | 75 | 383.32 | |
| | MAR 1973 | 100 | C2116581268E | 458.32 | 75 | 383.32 | |
| | APR 1973 | 100 | C2116581271E | 458.32 | 75 | 383.32 | |
| 2 | APR 1973 | 75 | K223036219E | 343.74 | 56.25 | 287.49 | |
| | MAY 1973 | 100 | C2116581269E | 458.32 | 75 | 383.32 | |
| | MAY 1973 | 100 | C2116581270E | 458.32 | 75 | 383.32 | |
| | JUNE 1973 | 100 | C1116581272E | 459.40 | 75 | 384.40 | |
| 3 | JUNE 1973 | 75 | K223036218E | 344.55 | 56.25 | 288.30 | |
| | JULY 1973 | 100 | C2116581273E | 463.84 | 75 | 388.84 | |
| | JULY 1973 | 100 | C2116581274E | 463.84 | 75 | 388.84 | |
| | AUG 1973 | 100 | C2116581275E | 464.84 | 75 | 389.84 | |
| 4 | AUG 1973 | 75 | K223036216E | 348.63 | 56.25 | 292.38 | |
| | SEPT 1973 | 100 | C2116581276E | 455.80 | 75 | 380.80 | |
| | SEPT 1973 | 100 | C2116581277E | 455.80 | 75 | 380.80 | |
| | Oct 1973 | 100 | C2116581278E | 455.80 | 75 | 380.80 | |
| 5 | Oct 1973 | 75 | K223036217E | 341.85 | 56.25 | 285.60 | |
| | NOV 1973 | 100 | C2116581279E | 455.80 | 75 | 380.80 | |
| | NOV 1973 | 100 | C2116581280E | 455.80 | 75 | 380.80 | |
| | DEC 1973 | 100 | C2116581281E | 447.40 | 75 | 372.40 | |
| | DEC 1973 | 100 | C2116581282E | 447.40 | 75 | 372.40 | |
| | | | | ~~10,391.55~~ | 1706.25 | 8,685.29 | |

BANK TOTAL 10,446.74
Δ $ 55.20

Bank Total 10,446.74
Investment 1706.25
Interest 8740.49
X.28 2447.34 say 2250 = 91.83%
2250.00 3250
197.34 5500

P4935

20-20566.2069
BRUNSTING000968

GA 268 Rev. 1-74

# GENERAL ATOMIC COMPANY

| CALCULATIONS FOR | | | |
|---|---|---|---|
| EQUIP. NO. | PROJ. NO. | CALC. NO. | PAGE OF |
| PREPARED BY | DATE | REF. DOCUMENTS: | |
| REVIEWED BY | DATE | | |
| APPROVED BY | DATE | | |

P4936

4913 - Buff
8913 - Green
4213 - White



December Redemption

| | | 1 Denomination | 2 Redemption Value | 3 Paid | 4 Total | 5 | 6 | 7 Denom | 8 Redemption Value | 9 Paid | 10 Total | 11 | 12 Principle | 13 Int. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1 | | 25 | 128.93 | 18.75 | 110.18 | | Sept | 50 | 2,418.44 | 37.50 | 203.72 | 1968 | 375 | 2825.60 |
| 2 | | 100 | 515.72 | 75 | 440.72 | | | 100 | 492.88 | 75 | 407.44 | 1969 | 80625 | 4588.69 |
| 3 | | 25 | 128.93 | 18.75 | 110.18 | | Oct | 50 | 246.44 | 37.50 | 203.72 | 1970 | 1180125 | 5079.24 |
| 4 | | 100 | 515.72 | 75 | 440.72 | | Nov | 100 | 492.88 | 75 | 407.44 | | 236250 | 12183.52 |
| 5 | | 25 | 128.93 | 18.75 | 110.18 | | Dec | 50 | 246.44 | 37.50 | 203.72 | 1971 | 1416075 | 6693.4 |
| 6 | | 100 | 515.72 | 75 | 440.72 | | | 100 | 492.88 | 75 | 407.44 | | 850625 | 19876.63 |
| 7 | | 100 | 572.72 | 75 | 496.72 | | | | | 781.25 | 5,099.26 | 1980 | 702500 | 18469.81 |
| 8 | | 125 | 1286.93 | 18.75 | 111.18 | | | | | | | | 4508675 | 21726.44 |
| 9 | | | | 375 | 2,475.60 | | Jan 71 | 50 | 211.50 | 37.50 | 174.00 | 1972 | 1481125 | 6774.74 |
| 10 | | | | | | | | 100 | 423.00 | 75 | 348.00 | | 599000 | 28324.18 |
| 11 | | 25 | 129.35 | 18.75 | 110.06 | | Feb | 50 | 211.96 | 37.50 | 174.46 | | | |
| 12 | | 100 | 517.4 | 75 | 442.40 | | | 100 | 423.92 | 75 | 348.92 | | | |
| 13 | | 50 | 255.08 | 37.50 | 217.58 | | March | 50 | 211.96 | 37.50 | 174.46 | | | |
| 14 | | 100 | 510.16 | 75 | 435.16 | | | 100 | 423.92 | 75 | 348.92 | | | |
| 15 | | 50 | 274.78 | 37.50 | 237.28 | | April | 50 | 211.96 | 37.50 | 174.46 | | | |
| 16 | | 100 | 498.56 | 75 | 423.56 | | | 100 | 423.92 | 75 | 348.92 | | | |
| 17 | | 100 | 495.68 | 75 | 420.68 | | May | 75 | 317.94 | 56.25 | 261.69 | | | |
| 18 | | 50 | 247.84 | 37.50 | 210.34 | | | 100 | 423.92 | 75 | 348.92 | | | |
| 19 | | 100 | 495.68 | 75 | 420.68 | | June | 75 | 317.94 | 56.25 | 261.69 | | | |
| 20 | | 25 | 123.92 | 18.75 | 105.17 | | | 100 | 423.92 | 75 | 348.92 | | | |
| 21 | | 100 | 498.68 | 75 | 423.68 | | July | 50 | 211.96 | 37.50 | 174.46 | | | |
| 22 | | 50 | 247.84 | 37.50 | 210.34 | | | 100 | 423.92 | 75 | 348.92 | | | |
| 23 | | 100 | 495.68 | 75 | 420.68 | | Aug | 75 | 317.94 | 56.25 | 261.69 | | | |
| 24 | | 25 | 124.92 | 18.75 | 106.17 | | | 100 | 423.92 | 75 | 348.92 | | | |
| 25 | | 100 | 498.68 | 75 | 423.68 | | Sept | 50 | 211.96 | 37.50 | 174.46 | | | |
| 26 | | | | 806.25 | 4588.61 | | | 100 | 423.92 | 75 | 348.92 | | | |
| 27 | | | | | | | Oct | 75 | 317.94 | 56.25 | 261.69 | | Sold THRU | 1977 |
| 28 | | 50 | 247.18 | 37.50 | 209.68 | | | 100 | 423.92 | 75 | 348.92 | | Capital | 3804 |
| 29 | | 100 | 494.36 | 75 | 419.36 | | Nov | 50 | 211.96 | 37.50 | 174.46 | | Gain | 19877 |
| 30 | | 50 | 247.18 | 37.50 | 209.68 | | | 100 | 423.92 | 75 | 348.92 | | | 23681 |
| 31 | 11 | 100 | 494.36 | 75 | 419.36 | | Dec | 75 | 317.94 | 56.25 | 261.69 | | | |
| 32 | | 50 | 247.18 | 37.50 | 209.68 | | | 100 | 423.84 | 75 | 348.84 | | Tax 1977 | 5565 |
| 33 | | 100 | 494.36 | 75 | 419.36 | | | | | 748.75 | 4693.11 | | | 18,118 |
| 34 | | 50 | 248.34 | 37.50 | 210.84 | | | | | | | | | 6610 |
| 35 | | 100 | 496.68 | 75 | 421.68 | | | | | | | | | 2,7728 |
| 36 | | 50 | 246.44 | 37.50 | 208.94 | | | | | | | | | |
| 37 | | 100 | 492.88 | 75 | 417.88 | | | | | | | | | 23,720 |
| 38 | | 25 | 123.22 | 18.75 | 104.72 | | | | | | | | | |
| 39 | | 100 | 492.88 | 75 | 417.88 | | | | | | | | | |
| 40 | | | | 813.75 | 3,248.35 | | | | | | | | | |
| 41 | | | | | | | | | | | | | | |
| 42 | | | | | | | | | | | | | | |

Sept 1968
Oct
Nov
Dec

April 1969
May
June
July
Sept
Oct
Nov
Dec

March 70
April
May
June
July
Sept

Case 4:12-cv-00592 Document 118-11 Filed on 08/03/16 in TXSD Page 36 of 37
20-20566.2071
P4937
BRUNSTING000970

Page 2

Wanda Mc Adams Estate

| | Dynamic | Average Value | Static | Payable |
|---|---|---|---|---|
| Feb 1960 | 75 | 292.29 | 56.25 | 146.04 |
| Feb | 100 | 389.72 | 75 | 194.72 |
| Feb | 200 | 779.43 | 150 | 389.72 |
| March | 200 | 779.43 | 150 | 389.72 |
| March | 200 | 779.43 | 150 | 389.72 |
| April | 200 | 779.43 | 150 | 389.72 |
| April | 200 | 779.43 | 150 | 389.72 |
| April | 200 | 779.43 | 150 | 389.72 |
| May | 200 | 779.43 | 150 | 389.72 |
| May | 200 | 779.43 | 150 | 389.72 |
| May | 200 | 779.43 | 150 | 389.72 |
| June | 200 | 779.43 | 150 | 389.72 |
| June | 200 | 779.43 | 150 | 389.72 |
| June | 200 | 779.43 | 150 | 389.72 |
| July | 200 | 779.43 | 150 | 389.72 |
| July | 200 | 779.43 | 150 | 389.72 |
| July | 200 | 779.43 | 150 | 389.72 |
| August | 200 | 779.43 | 150 | 389.72 |
| August | 200 | 779.43 | 150 | 389.72 |
| August | 200 | 779.43 | 150 | 389.72 |
| Sept | 200 | 779.43 | 150 | 389.72 |
| Sept | 200 | 779.43 | 150 | 389.72 |
| Sept | 200 | 779.43 | 150 | 389.72 |
| Oct | 200 | 779.43 | 150 | 389.72 |
| Oct | 200 | 779.43 | 150 | 389.72 |
| Oct | 200 | 779.43 | 150 | 389.72 |
| Nov | 200 | 779.43 | 150 | 389.72 |
| Nov | 200 | 779.43 | 150 | 389.72 |
| Nov | 200 | 779.43 | 150 | 389.72 |
| Dec | 200 | 779.43 | 150 | 389.72 |
| Dec | 200 | 779.43 | 150 | 389.72 |
| Dec | 200 | 779.43 | 150 | 389.72 |
| | 6175 | 24,072.09 | 4631.25 | 12,036.04 |

25,884.87
25,884.87
-3
25,881.87
12,941.21
12,940.66

P4938

20-20566.2072

BRUNSTING000971

SAVINGS - STOCK BONUS PLAN OF
GULF OIL CORPORATION

EMPLOYEE NO: 114162
LOCATION NO: 150
SOC SEC NO: 282-32-8905

AUTHORIZATION FOR SETTLEMENT

IN ACCORDANCE WITH THE PROVISIONS OF THE SAVINGS-STOCK BONUS PLAN, THE SETTLEMENT SHOWN BELOW IS AUTHORIZED TO BE MADE FOR THE ACCOUNT OF E.H. BRUNSTING BY REASON OF REQUEST 12/31/82 PART OF THIS SETTLEMENT MAY BE TAXABLE.

| | | | COST OF SECURITIES | CASH PAYMENT | TOTAL FUND SETTLEMENT |
|---|---|---|---|---|---|
| SAVINGS FUNDS: | | | | | |
| 1982 TERM- | 36 BONDS | 178 UNITS | 2,225.00 | 4.84 | 2,229.84 |
| STOCK BONUS FUNDS: | | | | | |
| LONG TERM- | SHARES @ | $.000 | | | |
| LONG TERM SAVINGS FUNDS: | | | | | |
| OPTION 1- | SHARES @ | $.000 | | | |
| OPTION 2 | | | | | |
| SAVERS A- | SHARES @ | $.000 | | | |
| SAVERS B | | | | | |
| TOTAL SETTLEMENT UNDER ALL FUNDS: | | | | | |
| 36 BONDS | SHARES | | 2,225.00 | 4.84 | 2,229.84 |

CHECK DATE 03/25/83 , NUMBER 214850, PAYEE E. H. BRUNSTING

BENEFITS COMMITTEE

DATE MARCH 25, 1983 BY PHILIP E. LINTNER
SECRETARY

FLASH 5911

P4939

1-800 333 2919

DESCRIPTIONS OF UNITED STATES SAVINGS BONDS PRESENTED AND SURRENDERED

| ISSUE DATE | DENOMINATION | SERIAL NUMBER | INSCRIPTION |
|---|---|---|---|
| ~~JAN 1968~~ | 123.71 25 | Q2323610188E | ELMER H. BRUNSTING OR Q641817019E NELVA E. BRUNSTING |
| ~~JAN 1968~~ | 494.84 100 | C488366018E | DITTO C-211658131 8E |
| ~~FEB 1968~~ | 494.84 100 | C488381553E | DITTO C-211658131 9E |
| ~~MARCH 1968~~ | 494.84 100 | C487597606E | DITTO C 211658132 0E |
| ~~JULY 1968~~ | 495.84 100 | C492930507E | DITTO Sold — more? |
| ~~AUG 1968~~ | 123.92 25 | Q2369597957E | DITTO Q641811701 8E |
| ~~AUG 1968~~ | 495.68 100 | C495526689E | DITTO C-211658131 7E |
| ~~SEPT 1968~~ | 123.92 25 | Q2376239798E | DITTO Q641817016E |
| ~~SEPT 1968~~ | 495.68 100 | C495554472E | DITTO C211658131 6E |
| ~~OCT 1968~~ | 123.92 25 | Q2376412853E | DITTO Q641811701 6E |
| ~~OCT 1968~~ | 495.68 100 | C495571546E | DITTO C-211658131 5E |
| ~~NOV 1968~~ | 123.92 25 | Q2382934338E | DITTO Q641811701 5E |
| ~~NOV 1968~~ | 495.72 100 | C496529219E | DITTO C-211658131 4E |
| ~~DEC 1968~~ | 495.36 100 | C496545465E | DITTO C-211658131 3E |
| ~~DEC 1968~~ | 124.34 25 | Q2389590020E | DITTO Q641817202 0E |
| | 5197.72 | | |
| ~~JAN 1969~~ | 1241.33 25 | Q2402769422E | ELMER H BRUNSTING Q641817202 1E NELVA E BRUNSTING |
| ~~JAN 1969~~ | 497.92 100 | C497448486E | DITTO Sold |
| ~~FEB 1969~~ | 124.48 25 | Q2409958642E | DITTO Q641817202 2E |
| ~~FEB 1969~~ | 497.92 100 | C499254901E | DITTO C-211658132 3E |
| ~~MARCH 1969~~ | 2485.50 50 | L757031560E | DITTO L-222513 1 884E |
| ~~MARCH 1969~~ | 1242.96 100 | C499266790E | DITTO C 211658132 4E |
| ~~APRIL 1969~~ | 124.33 25 | Q2422715395E | DITTO Q641817202 3E |
| APRIL 1969 | 497.32 100 | C499274128E | DITTO C-211658132 5E |
| ~~MAY 1969~~ | 248.66 50 | L763056023E | DITTO L-2225 13188 5E |
| ~~MAY 1969~~ | 497.32 100 | C5022244708E | DITTO C-211658132 6E |
| JUNE 1969 | 248.66 50 | L766519117E | DITTO L-222 513188 6E |
| JUNE 1969 | 497.32 100 | C502238466E | DITTO C 211658132 7E |
| ~~JULY 1969~~ | 124.33 25 | Q2440232983E | DITTO Q-641817202 4E |
| ~~JULY 1969~~ | 497.32 100 | C502260677E | DITTO Sold |
| ~~AUG 1969~~ | 248.66 50 | L772779399E | DITTO L 222 513188 8E |
| AUG 1969 | 497.32 100 | C504859197E | DITTO C-211658122 1E |
| ~~SEPT 1969~~ | 248.66 50 | L775389203E | DITTO L- 222513188 1E |
| ~~SEPT 1969~~ | 497.32 100 | C504883348E | DITTO C-211658132 2E |
| ~~OCT 1969~~ | 124.33 25 | Q2468249697E | DITTO Q641817202 2E |
| ~~OCT 1969~~ | 497.32 100 | C506399101E | DITTO C-211658133 0E |
| ~~NOV 1969~~ | 248.66 50 | L777324452E | DITTO L 222 513188 2E |
| ~~NOV 1969~~ | 497.32 100 | C506442126E | DITTO C211658133 1E |
| ~~DEC 1969~~ | 124.33 25 | Q2476363422E | DITTO Q641817202 5E |
| ~~DEC 1969~~ | 497.32 100 | C506449027E | DITTO C-211658130 8E |
| | 7601.58 | | |
| ~~JAN 1970~~ | 2369.50 50 | L779356396E | ELMER H BRUNSTING OR 222513188 3E NELVA E BRUNSTING |
| ~~JAN 1970~~ | 498.92 100 | C507351868E | DITTO C-211658130 9E |
| ~~FEB 1970~~ | 118.73 25 | Q2489045403E | DITTO Q641817202 6E |
| FEB 1970 | 497.12 100 | C507371517E | DITTO C-211658122 4E |
| ~~MARCH 1970~~ | 237.56 50 | L781533895E | DITTO L-222513186 5E |

~~C 211658130 2E~~

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|---|---|---|---|---|---|
| MARCH 1970 | 237.58 | 100 | C509742914E | DITTO | C-211658131OE |
| APRIL 1970 | 118.78 | 50 | L781622843E | DITTO | L-222513186GE |
| APRIL 1970 | 475.12 | 100 | C513299043E | DITTO | C-211658131IE |
| MAY 1970 | 237.56 | 50 | LL781689413E | DITTO | L-222513186JE |
| MAY 1970 | 475.12 | 100 | C513338157E | DITTO | C-211658131KE |
| JUNE 1970 | 237.58 | 50 | L781840738E | DITTO | L-222513186LE |
| JUNE 1970 | 475.16 | 100 | C513377785E | DITTO | C-211658128JE |
| 9/23/97 JULY 1970 | 258.70 | 50 | L794088310E | DITTO | L-222513186PE |
| 9/23/97 JULY 1970 | 477.40 | 100 | C513404100E | DITTO | C-211658128KE |
| AUG 1970 | 236.92 | 50 | L796803115E | DITTO | L-222513187OE |
| AUG 1970 | 472.64 | 100 | C515732747E | DITTO | C-211658128JE |
| SEPT 1970 | 118.44 | 25 | Q2528750393E | DITTO | Q641817202JE |
| SEPT 1970 | 473.76 | 100 | C515801272E | DITTO | C-211658128CE |
| OCT 1970 | 236.88 | 50 | L801969302E | DITTO | L-222513187IE |
| OCT 1970 | 473.24 | 100 | C515833390E | DITTO | C-211658189JE |
| NOV 1970 | 236.88 | 50 | L802022535E | DITTO | L-222513187HE |
| NOV 1970 | 472.76 | 100 | C515886588E | DITTO | C-211658128BE |
| DEC 1970 | 237.44 | 50 | L807326463E | DITTO | L-222513187JE |
| DEC 1970 | 474.84 | 100 | C515436590E | DITTO | C-211658128PE |
| | 7750.60 | | | | |
| JAN 1971 | 201.32 | 50 | L807366168E | ELMER H BRUNSTING OR | L222513187HE |
| JAN 1971 | 402.64 | 100 | C518450821E | NELVA BRUNSTING | C-211658129OE |
| FEB 1971 | 201.74 | 50 | L812941238E | DITTO | L-222513187GE |
| FEB 1971 | 403.44 | 100 | C518516321E | DITTO | C-211658129IE |
| MARCH 1971 | 201.74 | 50 | L815611153E | DITTO | L-222513187LE |
| MARCH 1971 | 403.48 | 100 | C522495921E | DITTO | C-211658129JE |
| APRIL 1971 | 201.74 | 50 | L817774095E | DITTO | L222513187JE |
| APRIL 1971 | 403.48 | 100 | C523365879E | DITTO | C-211658129JE |
| MAY 1971 | 302.61 | 75 | K14200621E | DITTO | K223036235JE |
| MAY 1971 | 403.48 | 100 | C523483834E | DITTO | C-211658129HE |
| JUNE 1971 | 297.65 | 75 | K14670394E | DITTO | K223036234JE |
| JUNE 1971 | 396.84 | 100 | C526107354E | DITTO | C-211658129GE |
| JULY 1971 | 198.74 | 50 | L819574435E | DITTO | L-222513187GE |
| JULY 1971 | 397.52 | 100 | C528427319E | DITTO | C-211658129GE |
| AUG 1971 | 298.17 | 75 | K15016278E | DITTO | K223036238E |
| AUG 1971 | 397.56 | 100 | C529794380E | DITTO | C-211658129JE |
| SEPT 1971 | 198.78 | 50 | L825480119E | DITTO | L-222513187GE |
| SEPT 1971 | 397.52 | 100 | C529877212E | DITTO | C-211658129BE |
| OCT 1971 | 298.17 | 75 | K15187296E | DITTO | L-223036232E |
| OCT 1971 | 397.52 | 100 | C529895593E | DITTO | C-211658129GE |
| NOV 1091 | 198.78 | 50 | L835532053E | DITTO | L-222513186OE |
| NOV 1971 | 397.52 | 100 | C531353752E | DITTO | C211658130OE |
| DEC 1971 | 298.53 | 75 | K16443059E | DITTO | K223036231E |
| DEC 1971 | 396.56 | 100 | C534218555E | DITTO | C-211658130I |
| | 7698.52 | | | | |
| JAN 1972 | 293.04 | 75 | K16841325E | ELMER H BRUNSTING OR | K223036198E |
| 1/3/97 JAN 1972 | 390.72 | 100 | C535345407E | NELVA E BRUNSTING | SAME |
| FEB 1972 | 195.60 | 50 | L1002342624E | DITTO | L-222513185JE |
| FEB 1972 | 391.60 | 100 | C536246756E | DITTO | C-211658130JE |

C-211658130JE

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|---|---|---|---|---|
| ~~MARCH 1972~~ | 2 [illegible] | 75 | K100205529E | DITTO K223036230E |
| ~~MARCH 1972~~ | 391.64 | 100 | C1001140610E | DITTO C-211658130 4E |
| ~~APRIL 1972~~ | 293.7 | 75 | K100235027E | DITTO K-223036229E |
| ~~APRIL 1972~~ | 391.64 | 100 | C1001188897E | DITTO C-211658130 5E |
| MAY 1972 | 293.73 | 75 | K100574825E | DITTO K223036228E |
| ~~MAY 1972~~ | 391.64 | 100 | C1004287178E | DITTO C-211658130 6E |
| ~~JUNE 1972~~ | 294.54 | 75 | K100897353E | DITTO K223036227E |
| ~~JUNE 1972~~ | 392.72 | 100 | C1004370151E | DITTO C-211658130 7E |
| ~~JULY 1972~~ | 288.75 | 75 | K100923508E | DITTO K223036226E |
| ~~JULY 1972~~ | 385 | 100 | C1005971762E | DITTO C-211658125 8E |
| ~~AUG 1972~~ | 289.41 | 75 | K101226740E | DITTO K223036225E |
| ~~AUG 1972~~ | 385.88 | 100 | C1007854435E | DITTO C-211658125 9E |
| ~~SEPT 1972~~ | 289.41 | 75 | K101234776E | DITTO K223036224E |
| ~~SEPT 1972~~ | 385.88 | 100 | C1009583723E | DITTO C-211658126 0E |
| ~~OCT 1972~~ | 289.41 | 75 | K101497925E | DITTO K223036223E |
| ~~OCT 1972~~ | 385.88 | 100 | C1013424162E | DITTO C-211658126 4E |
| NOV 1972 | 289.41 | 75 | K101674271E | DITTO K223036222E |
| NOV 1972 | 385.88 | 100 | C1014677804E | DITTO C-211658126 2E |
| ~~DEC 1972~~ | 350.01 | 75 | K101717239E | DITTO K223036221E |
| DEC 1972 | 386.68 | 100 | C1014769185E | DITTO C-211658126 3E |
| | 8071.13 | | | |

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|---|---|---|---|---|
| JAN 1973 | 379.04 | 100 | C1017412539E | ELMER H BRUNSTING OR C-211658126 4E |
| JAN 1973 | 379.04 | 100 | C1017412540E | NELVA E BRUNSTING C-211658126 5E |
| FEB 1973 | 285 | 75 | K103456625E | DITTO K-223036220E |
| FEB 9173 | 380 | 100 | C1019165387E | DITTO C-211658126 6E |
| MARCH 1973 | 380 | 100 | C1020967659E | DITTO C-211658126 7E |
| MARCH 1973 | 380 | 100 | C1020967660E | DITTO C-211658126 8E |
| APRIL 1973 | 285 | 75 | K103502429E | DITTO K-223036219E |
| APRIL 1973 | 380 | 100 | C1022725346E | DITTO C-211658127 1E |
| MAY 1973 | 380 | 100 | C1022743153E | DITTO C-211658126 9E |
| MAY 1973 | 380 | 100 | C1022743154E | DITTO C-211658127 0E |
| JUNE 9173 | 285.64 | 75 | K104260431E | DITTO K-223036218E |
| JUNE 1973 | 380.85 | 100 | C1024190568E | DITTO C-211658127 2E |
| JULY 1973 | 373.40 | 100 | C1025207524E | DITTO C-211658127 3E |
| JULY 1973 | 373.40 | 100 | C1025207525E | DITTO C-211658127 4E |
| AUG 1973 | 280.65 | 75 | K104501960E | DITTO K223036216E |
| AUG 1973 | 374.20 | 100 | C1026856168E | DITTO C-211658127 5E |
| SEPT 1973 | 374.27 | 100 | C1028489865E | DITTO C-211658127 1E |
| SEPT 1973 | 374.27 | 100 | C1028489866E | DITTO C-211658127 7E |
| OCT 1973 | 280.65 | 75 | K105207666E | DITTO K-223036217 |
| OCT 1973 | 374.27 | 100 | C1030186694E | DITTO C-211658127 8E |
| NOV 1973 | 374.27 | 100 | C1031889677E | DITTO C-211658127 5E |
| NOV 1973 | 374.27 | 100 | C1031889678E | DITTO C-211658128 0E |
| DEC 1973 | 363.66 | 100 | C1031993682E | DITTO C-211658128 1E |
| DEC 1973 | 363.66 | 100 | C1031993683E | DITTO C-211658128 2E |
| | ~~8555.54~~ 10,416.71 | | | |

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|---|---|---|---|---|
| ~~JAN 1974~~ | 272.75 | 75 | K105609333E | ELMER H BRUNSTING OR K-223036215E |
| ~~JAN 1974~~ | 363.66 | 100 | C1034862765E | NELVA E BRUNSTING C-211658123 4E |
| ~~FEB 1974~~ | 272.75 | 75 | K106301025E | DITTO K223036214E |

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- 351.36 Ded.

Mail Flow August 200. 434/300 250 x 4.34 = 10,850 Jan 1974

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|---|---|---|---|---|
| ~~FEB 1974~~ | 363.68 | 100 | C1037551320E | DITTO C-211658123SE |
| ~~MARCH 1974~~ | 363.68 | 100 | C1039590046E | DITTO C-211658123GE |
| ~~MARCH 1974~~ | 363.68 | 100 | C1039590047E | DITTO C-211658123TE |
| ~~APRIL 1974~~ | 363.68 | 100 | C1039616578E | DITTO C-211658123BE |
| ~~APRIL 1974~~ | 367.48 | 100 | C1039616579E | DITTO C-211658123YE |
| ~~MAY 1974~~ | 356.48 | 100 | C1040575108E | DITTO C-211658124OE |
| ~~MAY 1974~~ | 356.48 | 100 | C1040575109E | DITTO C-211658124IE |
| ~~JUNE 1974~~ | 357.32 | 100 | C1040666253E | DITTO C-211658124ZE |
| ~~JUNE 1974~~ | | 100 | C1040666254E | DITTO C-211658124BE |
| ~~JULY 1974~~ | 89.32 | 25 | Q5206129943E | DITTO Q64181720 11E |
| ~~JULY 1974~~ | 357.32 | 100 | C1040699695E | DITTO C-211658124YE |
| ~~JULY 1974~~ | 357.32 | 100 | C1040699696E | DITTO C-211658124SE |
| ~~AUG 1974~~ | 89.32 | 25 | Q5207177764E | DITTO Q64181720 14E |
| ~~AUG 1974~~ | 357.32 | 100 | C1042675840E | DITTO C-211658124GE |
| ~~AUG 1974~~ | 357.32 | 100 | C1042675841E | DITTO C-211658124TE |
| ~~SEPT 1974~~ | 89.32 | 25 | Q5212656678E | DITTO Q64181720 29E |
| ~~SEPT 1974~~ | 357.32 | 100 | C1044277355E | DITTO C-211658124YE |
| ~~SEPT 1974~~ | 357.32 | 100 | C1044277356E | DITTO C-211658124SE |
| ~~OCT 1974~~ | 89.32 | 25 | Q5219890347E | DITTO Q64181720 29E |
| ~~OCT 1974~~ | 714.64 | 200 | R104236199E | DITTO R-214370762E |
| ~~NOV 1974~~ | 89.32 | 25 | Q5227328461E | DITTO Q64181720 28E |
| ~~NOV 1974~~ | 700.48 | 200 | R104238066E | DITTO R-214370763E |
| ~~DEC 1974~~ | 702.16 | 200 | R105532207E | DITTO R-214370764E |
| | 8.861,23 | | | |

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|---|---|---|---|---|
| JAN 1975 | 702.08 | 200 | R105534602E | ELMER H BRUNSTING OR R-214370761E |
| FEB 1975 | 87.76 | 25 | Q5250876813E | NELVA E BRUNSTING Q64181720 30E |
| FEB 1975 | 702.08 | 200 | R105537285E | DITTO R-214370760E |
| MARCH 1975 | 175.52 | 50 | L1110504385E | DITTO L222513185BE |
| MARCH 1975 | 702.08 | 200 | R105552232E | DITTO R-214370759E |
| APRIL 1975 | 175.52 | 50 | L10655080468E | DITTO L-222513185YE |
| APRIL 1975 | 702.08 | 200 | R105555261E | DITTO R-214370758E |
| MAY 1975 | 172.04 | 50 | L20046344533E | DITTO L-222513186OE |
| MAY 1975 | 688.16 | 200 | R200729202E | DITTO R-214370757E |
| JUNE 1975 | 86.23 | 25 | Q6011260745E | DITTO Q64181720 31E |
| JUNE 1975 | 689.84 | 200 | R200475099E | DITTO R-214370756E |
| JULY 1975 | 172.45 | 50 | L2008122240E | DITTO L-222513186IE |
| JULY 1975 | | 200 | R200478983E | DITTO R-214370755E |
| AUG 1975 | | 50 | L2011260401E | DITTO L222513186ZE |
| AUG 1975 | | 200 | R201130474E | DITTO R-214370754E |
| SEPT 1975 | 172.44 | 50 | L2019145590E | DITTO L-222513186JE |
| SEPT 1975 | 689.76 | 200 | R201134203E | DITTO R-214370753E |
| OCT 1975 | 172.44 | 50 | L2025225306E | DITTO L-222513186HE |
| OCT 1975 | 689.76 | 200 | R201145065E | DITTO R-214370752E |
| NOV 1975 | 253.50 | 75 | K202269628E | DITTO K223036213E |
| NOV 1975 | 67[illegible]24 | 200 | R201438781E | DITTO R-214370774E |
| DEC 1975 | 254.16 | 75 | K202852678E | DITTO K223036212E |
| DEC 1975 | 677.76 | 200 | R202448340E | DITTO R-214370773E |

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deposited 33,24.29

7,212,24 of which 6087.24 is taxable

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|---|---|---|---|
| JAN1976 | 254.1675 | K202864265E | ELMER H BRUNSTING OR |
| JAN 1976 | 677.84200 | R202451895E | NELVA E BRUNSTING |
| FEB 1976 | 254.1975 | K203112916E | DITTO |
| FEB 1976 | 677.84200 | R202690829E | DITTO |
| MARCH 1976 | 254.1975 | K203265303E | DITTO |
| MARCH 1976 | 677.84200 | R202694335E | DITTO |
| APRIL1976 | 254.1975 | K203366117E | DITTO |
| APRIL 1976 | 677.84200 | R202698397E | DITTO |
| MAY 1976 | 249.1275 | K203354323E | DITTO |
| MAY 1976 | 664.32200 | R202699682E | DITTO |
| JUNE 1976 | 249.6975 | K203364078E | DITTO |
| JUNE 1976 | 665.84200 | R203951602E | DITTO |
| JULY 1976 | 249.6675 | K203386120E | DITTO |
| JULY 1976 | 665.76200 | R203944366E | DITTO |
| AUG 1976 | 332.88100 | C2030829953E | DITTO |
| AUG 1976 | 665.76200 | R203949180E | DITTO |
| SEPT 1976 | 249.6675 | K207076144E | DITTO |
| SEPT 1976 | 665.76200 | R203978493E | DITTO |
| OCT 1972 | 249.6675 | K207094581E | DITTO |
| OCT 1976 | 665.76200 | R204483052E | DITTO |
| NOV 1976 | 249.75 | K207452453E | DITTO |
| NOV 1976 | 652.56200 | R204507335E | DITTO |
| DEC 1976 | 245.4375 | K207459456E | DITTO |
| DEC 1976 | 654.48200 | R204523975E | DITTO |
| | 11,099.16 | | |
| JAN 1977 | 327.24100 | C20361322118E | ELMER H BRUSTING OR |
| JAN 1977 | 654.48200 | R204541333E | NELVA E BRUNSTING |
| FEB 1977 | 327.24100 | C2039832289E | DITTO |
| FEB 1977 | 654.48200 | R204553456E | DITTO |
| MARCH 1977 | 327.24100 | C2041431316E | DITTO |
| MARCH 1977 | 654.48200 | R204557856E | DITTO |
| APRIL 1977 | 327.24100 | C2043336989E | DITTO |
| APRIL 1977 | 654.48200 | R205675270E | DITTO |
| MAY 1977 | 80.21 25 | Q6185728367E | DITTO |
| MAY 1977 | 320.84100 | C2046633576E | DITTO |
| MAY 1977 | 641.68200 | R205991077E | DITTO |
| JUNE 1977 | 321.42100 | C2049536154E | DITTO |
| JUNE 1977 | 643.04200 | R20634880E | DITTO |
| JULY 1977 | 321.44100 | C204981455E | DITTO |
| JULY 1977 | 642.88200 | R206596261E | DITTO |
| AUG.1977 | 80.36 25 | Q6204923639E | DITTO |
| AUG 1977 | 321.44100 | C2054099290E | DITTO |
| AUG 1977 | 642.88200 | R2060846501E | DITTO |
| SEPT 1977 | 321.44100 | C2054145624E | DITTO |
| SEPT 1977 | 642.88200 | R207208675E | DITTO |
| OCT 1977 | 321.44100 | C2058634132E | DITTO |
| OCT 1977 | 642.88200 | R207528154E | DITTO |
| NOV 1977 | 256.20100 | C2059773778E | DITTO |
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| DEC 1977 | 71.7525 | Q6233839753E | DITTO |
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| | 2/27/07 19,708.78 | | |

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|---|---|---|---|---|
| DEC 1977 | 25 | Q6233839753E | DITTO | |
| DEC 1977 | 100 | C2061750948E | DITTO | |
| DEC 1977 | 200 | R207846639E | DITTO | R214370789E |
| JAN 1978 | 287 100 | C2063616775E | ELMER H. BRUNSTING OR | C-211658123 1E |
| JAN 1978 | 594 200 | R 208068104E | NELVA E BRUNSTING | R214370788E |
| | 811 | | | |
| ~~FEB 1980~~ | 194.43 75 | K221891597E | ELMER H BRUNSTING OR | K223036179E |
| ~~FEB 1980~~ | 259.24 100 | C2107430100E | NELVA E BRUNSTING | C-211658123 2E |
| ~~FEB 1980~~ | 518.48 200 | R212872691E | DITTO | R-214370787E |
| ~~MARCH 1980~~ | 518.48 200 | R212956976E | DITTO | R-214370786E |
| ~~MARCH 1980~~ | 518.48 200 | R212956977E | DITTO | R214370785E |
| ~~APRIL 1980~~ | 194.43 75 | K222388747E | DITTO | K223036200E |
| ~~APRIL 1980~~ | 259.24 100 | C2108816696E | DITTO | C-211658123 3E |
| | 2462.78 | | | |
| FEB 1981 | 161.40 50 | L50420726EE | ELMER H BRUNSTING OR | L550298074EE |
| FEB 1981 | 242.1 75 | K19777823EE | NELVA E BRUNSTING | K101747190EE |
| FEB 1981 | 645.60 200 | R7766450EE | DITTO | R137344640EE |
| MARCH 1981 | 161.40 50 | L57948286EE | DITTO | L550298073EE |
| MARCH 1981 | 242.1 75 | K19824806EE | DITTO | K101747189EE |
| MARCH 1981 | 645.60 200 | R7862790EE | DITTO | R137344693EE |
| APRIL 1981 | 161.40 50 | L62652169EE | DITTO | L550298072EE |
| APRIL 1981 | 322.80 100 | C22831762EE | DITTO | C586074555EE |
| APRIL 1981 | 645.60 200 | R7935030EE | DITTO | R137344638EE |
| MAY 1981 | 152.96 50 | L66997209EE | DITTO | L550298071EE |
| MAY 1981 | 229.44 75 | K20201615EE | DITTO | K101747188EE |
| MAY 1981 | 611.84 200 | R8890396EE | DITTO | R137344637EE |
| JUNE 1981 | 152.96 50 | L67154411EE | DITTO | L550298070EE |
| JUNE 1981 | 229.44 75 | K20988705EE | DITTO | K101747187EE |
| JUNE 1981 | 611.84 200 | R8963741EE | DITTO | R137344636EE |
| JULY 1981 | 152.96 50 | L71018815EE | DITTO | L550298069EE |
| JULY 1981 | 305.92 100 | C27478706EE | DITTO | C586074554EE |
| JULY 1981 | 611.84 200 | R9080782EE | DITTO | R137344635EE |
| AUG. 1981 | 152.96 50 | L77515409EE | DITTO | L550298068EE |
| AUG. 1981 | 229.44 75 | K21069991EE | DITTO | K101747186EE |
| AUG. 1981 | 611.84 200 | R9163791EE | DITTO | R-137344634EE |
| SEPT 1981 | 152.96 50 | L78689195EE | DITTO | L550298067EE |
| SEPT 1981 | 305.92 100 | C31829104EE | DITTO | C586074553EE |
| SEPT 1981 | 611.84 200 | R299558EE | DITTO | R137344633EE |
| OCT 1981 | 152.96 50 | L83335953EE | DITTO | L550298066EE |
| OCT 1981 | 229.44 75 | K21754483EE | DITTO | K101747185EE |
| OVT 1981 | 611.84 200 | R10284711EE | DITTO | R137344632EE |
| NOV 1981 | 148.52 50 | L87201014EE | DITTO | L550298065EE |
| NOV 1981 | 222.78 75 | K21962801EE | DITTO | K101747184EE |
| NOV 1981 | 594.08 200 | R10473740EE | DITTO | R137344631EE |
| DEC 1981 | 148.52 50 | L87994774EE | DITTO | L550298064EE |
| DEC 1981 | 297.04 100 | C35846236EE | DITTO | C-586074552EE |
| DEC 1981 | 594.08 200 | R10720744EE | DITTO | R137344630EE |
| | 11,196.98 | | | |

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| JAN 1982 | 222.78 | 75 | K22664763EE | ELMER H BRUNSTING OR |
| JAN 1982 | 297.04 | 100 | C36623992EE | NELVA E BRUNSTING |
| JAN 1982 | 594.00 | 200 | R11303467EE | DITTO |
| FEB 1982 | 148.52 | 50 | L91576789EE | DITTO |
| FEB 1982 | 297.04 | 100 | C36678673EE | DITTO |
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| MARCH 1982 | 222.78 | 75 | K23083831EE | DITTO |
| MARCH 1982 | 297.04 | 100 | C36718817EE | DITTO |
| MARCH 1982 | 594.00 | 200 | R11374723EE | DITTO |
| APRIL 1982 | 222.78 | 75 | K23121260EE | DITTO |
| APRIL 1982 | 297.04 | 100 | C40523680EE | DITTO |
| APRIL 1982 | 594.00 | 200 | R11584168EE | DITTO |
| MAY 1982 | 216.30 | 75 | K23495917EE | DITTO |
| MAY 1982 | 288.40 | 100 | C40594461EE | DITTO |
| MAY 1982 | 576.80 | 200 | R11601130EE | DITTO |
| JUNE 1982 | 216.30 | 75 | K23536240EE | DITTO |
| JUNE 1982 | 288.40 | 100 | C41593583EE | DITTO |
| JUNE 1982 | 576.80 | 200 | R11710847EE | DITTO |
| JUL7 1981 | 216.30 | 75 | K23579140EE | DITTO |
| JULY 1982 | 288.40 | 100 | C43012682EE | DITTO |
| JULY 1982 | 576.80 | 200 | R11827387EE | DITTO |
| AUG 1982 | 216.30 | 75 | K29080326EE | DITTO |
| AUG 1982 | 288.40 | 100 | C43673159EE | DITTO |
| AUG 1982 | 576.80 | 200 | R11843838EE | DITTO |
| SEPT 1982 | 144.20 | 50 | L109061867EE | DITTO |
| SEPT 1982 | 288.40 | 100 | C43899488EE | DITTO |
| SEPT 1982 | 576.80 | 200 | R11932700EE | DITTO |
| OCT 1982 | 216.30 | 75 | K34434512EE | DITTO |
| OCT 1982 | 288.40 | 100 | C46517845EE | DITTO |
| OCT 1982 | 576.80 | 200 | R12764765EE | DITTO |
| NOV 1982 | 192.72 | 75 | K34462816EE | DITTO |
| NOV 1982 | 256.96 | 100 | C46556481EE | DITTO |
| NOV 1982 | 513.92 | 200 | R12807995EE | DITTO |
| DEC 1982 | 192.72 | 75 | K35841574EE | DITTO |
| DEC 1982 | 256.96 | 100 | C47000524EE | DITTO |
| DEC 1982 | 513.92 | 200 | R13202009EE | DITTO |
| | 12,725 | | | |
| JAN 1983 | 192.72 | 75 | K35869372EE | ELMER H BRUNSTING OR |
| JAN 1983 | 256.96 | 100 | C47086584EE | NELVA E BRUNSTING |
| JAN 1983 | 513.92 | 200 | R13214791EE | DITTO |
| FEB1983 | 128.48 | 50 | L136290497EE | DITTO |
| FEB1983 | 256.96 | 100 | C54019850EE | DITTO |
| FEB 1983 | 513.92 | 200 | R13915588EE | DITTO |
| MARCH 1983 | 192.66 | 75 | K36534795EE | DITTO |
| MARCH 1983 | 256.88 | 100 | C54064392EE | DITTO |
| MARCH 1983 | 513.76 | 200 | R14184718EE | DITTO |
| APRIL 1983 | 192.66 | 75 | K39737381EE | DITTO |
| APRIL 1983 | 256.88 | 100 | C55118367EE | DITTO |
| APRIL 1983 | 513.76 | 200 | R14244640EE | DITTO |
| MAY 1983 | 182.34 | 75 | K39755808EE | DITTO |
| MAY 1983 | 243.12 | 100 | C55144028EE | DITTO |

1-800-333-2919

4%

| | | | | |
|---|---|---|---|---|
| MAY 1983 | 486.24 200 | R14256620EE | DITTO R137344613EE |
| JUNE 1983 | 182.34 75 | K39784382EE | DITTO K101747169EE |
| JUNE 1983 | 243.12 100 | C55185840EE | DITTO C586074534EE |
| JUNE 1983 | 486.24 200 | R15649975EE | DITTO R137344612EE |
| JULY 1983 | 182.34 75 | K39817083EE | DITTO K101747168EE |
| JULY 1983 | 234.12 100 | C55647118EE | DITTO C586074533EE |
| JULY 1983 | ~~486.24 200~~ | R14702862EE | DITTO R137344611EE |

4%

6515.77

SERIES HH BONDS

Redeemed by Fed Res only 713-659-4433

| | TAXABLE | | | |
|---|---|---|---|---|
| ~~OCT 1982~~ | 385.52 | 500 Sent in | D284696HH | ELMER H BRUNSTING OR D4252731HH |
| ~~OCT 1982~~ | 385.53 | 500 1/21/02 | D284697HH | NELVA E BRUNSTING D4252732HH |

6%

New #'s

| | | | | |
|---|---|---|---|---|
| NOV 1988 | 694.56 | 1000 | M2577341HH | DITTO M6024223HH |
| NOV 1988 | 694,56 | 1000 | M2577342HH | DITTO M6024224HH |

4% 6%

3000

Saved for 20 yrs

Purchase Price 123,531.51

123,581.51

3000 HH

120,581.51

E&EE 26,493.75 cost

94087.76 TAXABLE

2160.18 HH Taxable

96247.94 TAX ABF

26949.42 @ 28%

69298.52 TAX PD

26493.75 cost E-EE

8832 cost H-H

96624.27 clear

1413 at @ 18.75

Taxable

HH - 3000 Face

Int. Taxable 21.60

8840

385.53
694.56
1080.09
x 2
2160.18

3000
2168
8832

1403 $25 cent

1800 3332919

FOB Kansas City

P4949

PD F 5313
Department of the Treasury
Bureau of the Public Debt
(Revised June 1997)

# SAVINGS BOND REDEMPTION CHECK

The enclosed check represents payment for the redemption of series F, G, H, J, K, or HH bonds. If you also requested payment for the redemption of series EE or E bonds or the issue of new bonds, you will receive them separately.

Please direct questions concerning this check to the Bureau of the Public Debt at (304) 480-7999.

*U.S.GPO:1997-418-006/64315

P4950

*PLEASE READ INSTRUCTIONS BEFORE PREPARING FORM*

# REQUEST FOR REDEMPTION OF U.S. SAVINGS BONDS, NOTES, RETIREMENT PLAN & INDIVIDUAL RETIREMENT BONDS

INSTRUCTIONS

1. Complete separate requests for Series E/EE, H/HH, and I bonds.
2. All bonds must be signed by the payee and the signature must be **certified** by a bank official, authorized bank individual or **notary** on the back of the bond.
3. When bonds are being submitted to the Federal Reserve Bank for redemption, we become the paying agent. Therefore, your paying agent stamp is not needed on the front of the bond and the 1099-INT will be issued by the Bureau of Public Debt at the end of the year.
4. Series H/HH bonds will suffer a loss of interest if presented for payment in any month other than the month that interest is paid. Be sure to check the appropriate box below to clarify the payee's intentions for payment.
5. Series EE bonds issued after May 1, 1997, and I bonds are subject to a loss of the three most recent months' interest when redeemed within the first five years.

If you have any questions, please do not hesitate to call the Savings Bond Customer Service Unit between the hours of 8:00 a.m. and 6:00 p.m. CDT.

| | |
|---|---|
| Kansas City Area | 881-2919 |
| Long Distance Calls | (800) 333-2919 |

Submit completed form to:

Federal Reserve Bank of Kansas City
Savings Bond Department
P.O. Box 419440
Kansas City, Missouri 64141-6440

| Series of Bonds | Number of Bonds | Total Face Value | Payee's Social Security or Tax I.D. Number | Date |
|---|---|---|---|---|
| | | | | |

Payee's Name

Payee's Street Address

City, State, Zip Code

Name of Contact and Telephone Number for Questions Regarding Request

**Method of Payment**

☐ Check, mail payment to:
(If other than payee's address as indicated above).

☐ Credit financial institution's reserve account or correspondent's reserve account as designated on Federal Reserve Bank records. (This is not an ACH deposit.)

Name of Submitting Financial Institution

| 9-Digit ABA Number | 4-Digit Branch Number |
|---|---|
| | |

Street Address

City, State, Zip Code

Inscription on Savings Bond(s)
(Name(s) and address on face of bond)

**Evidence**

☐ Return Evidence (i.e., death certificate, court papers, or other documentation)

☐ Evidence previously submitted to your processing site. _____ Date

**Complete this section for Series H or HH savings bonds only.**

☐ **Hold bonds until after interest is paid next month.**
NOTE: Requests can only be held for a maximum of 30 business days prior to the next interest payment due date.

**Pay Bonds in month of** _____.

☐ Redeem bonds immediately regardless of interest payment due date and forfeit next interest payment.
NOTE: No payment of bonds will be made during the last five business days of the month prior to the month that interest is due.

**FOR FEDERAL RESERVE BANK USE ONLY - DO NOT WRITE BELOW THIS LINE**

Evidence Notations

Examiner

Date Received _____

Out Date _____

Initials _____

Date Examined _____

Processing Notations

| | |
|---|---|
| TRAN | PRI |
| 1st Pass | Total CRV |
| 2nd Pass | |
| Arb | Unbal |
| Res | Bal |

SD 120 (Rev. 10-98)

*WHITE COPY - FRB*
*YELLOW COPY - Customer Copy*

**P4951**

*PLEASE READ INSTRUCTIONS BEFORE PREPARING FORM*

# REQUEST FOR REDEMPTION OF U.S. SAVINGS BONDS, NOTES, RETIREMENT PLAN & INDIVIDUAL RETIREMENT BONDS

INSTRUCTIONS

1. Complete separate requests for Series E/EE, H/HH, and I bonds.
2. **All** bonds must be signed by the payee and the signature must be **certified** by a bank official, authorized bank individual or **notary** on the back of the bond.
3. When bonds are being submitted to the Federal Reserve Bank for redemption, we become the paying agent. Therefore, your paying agent stamp is not needed on the front of the bond and the 1099-INT will be issued by the Bureau of Public Debt at the end of the year.
4. Series H/HH bonds will suffer a loss of interest if presented for payment in any month other than the month that interest is paid. Be sure to check the appropriate box below to clarify the payee's intentions for payment.
5. Series EE bonds issued after May 1, 1997, and I bonds are subject to a loss of the three most recent months' interest when redeemed within the first five years.

If you have any questions, please do not hesitate to call the Savings Bond Customer Service Unit between the hours of 8:00 a.m. and 6:00 p.m. CDT.

| | |
|---|---|
| Kansas City Area | 881-2919 |
| Long Distance Calls | (800) 333-2919 |

Submit completed form to:

Federal Reserve Bank of Kansas City
Savings Bond Department
P.O. Box 419440
Kansas City, Missouri 64141-6440

| Series of Bonds | Number of Bonds | Total Face Value | Payee's Social Security or Tax I.D. Number | Date |
|---|---|---|---|---|
| | | | | |

Payee's Name

Payee's Street Address

City, State, Zip Code

Name of Contact and Telephone Number for Questions Regarding Request

**Method of Payment**

☐ Check, mail payment to: (If other than payee's address as indicated above).

☐ Credit financial institution's reserve account or correspondent's reserve account as designated on Federal Reserve Bank records. (This is not an ACH deposit.)

Name of Submitting Financial Institution

| 9-Digit ABA Number | 4-Digit Branch Number |
|---|---|
| | |

Street Address

City, State, Zip Code

Inscription on Savings Bond(s)
(Name(s) and address on face of bond)

**Evidence**

☐ Return Evidence (i.e., death certificate, court papers, or other documentation)

☐ Evidence previously submitted to your processing site. _____ Date

**Complete this section for Series H or HH savings bonds only.**

☐ **Hold bonds until after interest is paid next month.**
NOTE: Requests can only be held for a maximum of 30 business days prior to the next interest payment due date.

**Pay Bonds in month of** _____.

☐ Redeem bonds immediately regardless of interest payment due date and forfeit next interest payment.
NOTE: No payment of bonds will be made during the last five business days of the month prior to the month that interest is due.

**FOR FEDERAL RESERVE BANK USE ONLY - DO NOT WRITE BELOW THIS LINE**

Evidence Notations

Examiner

Date Received _____

Out Date _____

Initials _____

Date Examined _____

Processing Notations

| | |
|---|---|
| TRAN | PRI |
| 1st Pass | Total CRV |
| 2nd Pass | |
| Arb | Unbal |
| Res | Bal |

SD 120 (Rev. 10-98)

*WHITE COPY - FRB*
*YELLOW COPY - Customer Copy*

**P4952**

Dear Savings Bond Customer: CW

Enclosed are the Savings Bond forms you requested. If you are sending a transaction to our office for processing, please be sure to include the completed form and any necessary legal documents. If enclosing savings bonds, please record serial numbers prior to mailing.

Federal Reserve Bank - K.C.
PO Box 419440
Kansas City, MO 64141-6440

[redacted]

SD 89 (Rev. 4-96)

E. Brunstng
13630 Pine Rock
Houston TX 77079

Attention: _____

ABA No. _____ Daytime Phone # 713 464-4391 ☑ Over

| Form # | Quantity |
|---|---|
| PD 345 | |
| PD 385-1 | |
| PD 1048 | |
| PD 1050 | |
| PD 1455 | |
| PD 1522 | |
| PD 1849 | |
| PD 1851 | |
| PD 1938 | |
| PD 1980 | |
| PD 1993 | |
| PD 2458 | |
| PD 2488-1 | |
| PD 2517 | |

| Form # | Quantity |
|---|---|
| PD 2966 | |
| PD 3062 | |
| PD 3253 | |
| PD 3360 | |
| PD 3500 | |
| PD 3501 | |
| PD 3600 | |
| PD 3782 | |
| PD 3900 | |
| PD 4000 | |
| PD 4651 | |
| PD 4652 | |
| PD 5255 | |
| PD 5263 | |

P4953

| Form # | Quantity |
|---|---|
| PD 5263-1 | |
| PD 5276 | |
| PD 5336 | |
| Supply Requisition | |
| SD 3 B | |
| SD 23 | |
| SD 91 | |
| SD 103 | |
| SD 120 | |
| SD 211 | |
| FA 500 | |
| SD 500 | |
| SD 1340 | |
| SF 1199A | |

| Form # | Quantity |
|---|---|
| W8 | |
| W9 | |
| SBD 2059 | |
| SBD 2084 | |
| SBD [redacted] | |
| SBD 2113 | |
| SBD 2118 | |
| SBD 2139 | |
| SBD 2162 | |
| CIRC 1-80 | |
| CIRC 2-80 | |
| CIRC 3-80 | |
| CIRC 4-67 | |
| CIRC 530 | |

| Form # | Quantity |
|---|---|
| CIRC 750 | |
| Red. Table E/SN | |
| Red. Table EE | |
| Guaranteed Rate | 1 |
| IB Packet | |
| PD News | |
| Interim Rate | |
| Table of Interest Dates | |
| The Book | |
| Form 1001 | |
| Other | |
| | |
| | |
| | |

**P4954**

Bonds to cash in

X 507
per 100

March 1968 100 C 2116581320 E
March 1969 50 L 2225131884 E
100 C. 2116581132 4 E
July 1970 100 L 2225131865 E
50 C. 2116581284 E

400 X ~2027

Cashed 9/23/97

P4955

0.00 *

0.00 *

0.00 *

68 2,496.00 +
2,496.00 *

120.00 +
120.00 +
120.00 +
240.00 +
240.00 +
69 240.00 +
240.00 +
480.00 +
480.00 +
480.00 +
480.00 +
480.00 +
480.00 +
480.00 +
480.00 +
5,160.00 *

120.00 +
2,400.00 +
70 4,800.00 +
7,320.00 *

2,500.00 +
5,100.00 +
7,300.00 +
14,900.00 *

+ mort 971
or clear out
1980 which is
short $ 6%

P4956

**Bank of America**

**Customer Receipt**

☐ Checking Deposit ☐ Savings Deposit ☐ Line of Credit ☐ Consumer Loan ☐ Commercial Loan ☐ Visa/MasterCard
☐ Federal Tax Deposit ☐ Safe Deposit Box ☐ Other (specify) _____

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

**Thank you for banking with Bank of America.**
**Member FDIC**

Home State of Account _____

Travon Jacobs

TOTAL

8519001143M 008 159 948 70601M013D $23054.12 D

95-14-1960B 6-2000

**P4957**

**Bank of America**

**U.S. Savings Bond E/EE**
**Interest Income**

Interest Income to be Reported to the Internal Revenue Service (Form must be typed or printed legibly)

**Customer Information** (Customer Mailing Address for 1099 Statement)

| | |
|---|---|
| Customer Name (Name of party receiving funds) Elmer H. Brunsting | Tax ID (TIN) 282-32-8905 |
| Street Address/Apt. Number 13630 Pinerock | City/State/Zip Code Houston, Tx, 77079 |

I certify that the TIN shown on this form is my correct Taxpayer Identification Number for reporting to the IRS.

Customer Signature Elmer H Brunsting Date 07-06-01

**Associate Information**

| | | |
|---|---|---|
| Prepared By M. Sarrami | Teller Number 008 | Telephone Number (713) 365-3220 |
| Bank Number/Cost Center 159/8519 | Banking Center Name/ Number Town & Country / 159 | |

**Transaction Information** (Complete all applicable fields)

| | | |
|---|---|---|
| Type of Bonds (Check applicable type) ☑ Series E ☐ Series EE | Redemption Date 07-06-01 | Number of Bonds 11 |
| Purchase Price (A) $ 825.00 | Interest Amount paid (B) (Amount reported to the IRS as Interest Income) $ 4229.12 | Total Amount Paid (C) (A + B = C) $ 5054.12 ✓ |
| Deposit to Account Number 0085190011435 | Total Deposit Amount $ 5054.12 | |
| Cash Ticket Number | Cashier's Check Number 18000 — | |

TX 1147 @27% $1141.86 TX @27% 23054.12

**TEFRA Use Only**

| | | | |
|---|---|---|---|
| Entered By | Date | Delete | Date |
| Verified By | Date | Re-entered | Date |

00-14-2944B 4-1999 White - TEFRA Canary - Customer Pink - File

P4958

20-20566.2092
BRUNSTING000991

BOND INFORMATION

PRESS PRINT KEY FOR CPY OF SCREEN

REDEMPTION YYYY/MO 2001/07 SERIES: 1 - E BONDS 3 - SAVINGS NOTES
2 - EE BONDS 4 - I BONDS

| # OF BONDS | SERIES 1,2,3,4 | FACE VALUE | ISSUE YYYY/MO | PER BOND REDEMP. VAL | PER BOND INT EARNED | TOTALS REDEMP. VAL | TOTALS INT EARNED |
|---|---|---|---|---|---|---|---|
| 1 | 1 | 100 | 1974/01 | 465.48 | 390.48 | 465.48 | 390.48 |
| 1 | 1 | 100 | 1974/02 | 456.36 | 381.36 | 456.36 | 381.36 |
| 2 | 1 | 100 | 1974/03 | 456.36 | 381.36 | 912.72 | 762.72 |
| 2 | 1 | 100 | 1974/04 | 456.36 | 381.36 | 912.72 | 762.72 |
| 2 | 1 | 100 | 1974/05 | 460.72 | 385.72 | 921.44 | 771.44 |
| 2 | 1 | 100 | 1974/06 | 461.80 | 386.80 | 923.60 | 773.60 |
| 1 | 1 | 100 | 1974/07 | 461.80 | 386.80 | 461.80 | 386.80 |

PAGE TOTAL 5054.12 4229.12

DO YOU WANT TO ENTER MORE BONDS? (Y/N)

Bonds sold 1997

7/3, 8/3 and 9/23 Investment 1237.50
Earned Interest 7041
Redemption Bal 8378

all funds & checking acct. no tax paid $0
Tax due 7041 x .28 = 1971.48

---

12/x/97 - Investment $5990
Earned Int $28,321
Redemption $34311

Tax due = 28,321 x .28 = $7930

---

Funds after tax

| | |
|---|---|
| Invest Refund | $5990 |
| Earned 28,321 x .28 | 28,321 |
| Funds available | 34,311 |
| for Mut Funds | 25000 |
| to Taxes | 9311 |

7, 8, 9 - 1971
12 7930
9901

9,901
24,410
for 25000 Inv 25000
~~590~~
Short 464

9901
9437
464

P4960

**Modifications**
In order to insure the success of the project, all exceptions and modifications to these obligations are to be negotiated with the Executive Director of Houston Habitat for Humanity, Inc.

The purpose of this document is not to create a legally binding agreement, but rather to set forth the expectations of each party so as to aid in creating a satisfying experience for Sponsoring Organization and Houston Habitat for Humanity.

The Board and Staff of Houston Habitat for Humanity look forward to working with in this exciting adventure.

HOUSTON HABITAT FOR HUMANITY

SPONSORING ORGANIZATION

Contributory Retirement Plan and
Savings-Stock Bonus Plan of
Gulf Oil Corporation

EMPLOYEE NO. 114162
LOCATION NO. 800
SOCIAL SECURITY NO. 282-32-8905

# AUTHORIZATION FOR SETTLEMENT

In accordance with the provisions of the Contributory Retirement Plan and/or the Savings-Stock Bonus Plan, the settlement shown below is authorized to be made for the account of E. H. BRUNSTING by reason of REQUEST 12/31/73

[X] None of this settlement is taxable [ ] Part of this settlement is taxable (see attachment)

| | DESCRIPTION | COST OF BONDS AND/OR STOCK | CASH PAYMENT | TOTAL FUND SETTLEMENT |
|---|---|---|---|---|
| CRP (Cash) | PAYMENT FROM MEMBER'S ACCOUNT: CONTRIBUTIONS; INTEREST; ACCUMULATED CONTRIBUTIONS; PAYMENT UNDER SECTION 4F-1 OF THE PLAN | | | |
| | TOTAL SETTLEMENT UNDER CRP | | | |
| SAVINGS FUND(S) (U.S. Savings Bond(s) Series E and/or Cash) | TERM NO. 1972 24 BOND(S) 84 UNIT(S) | 1,575.00 | 3.42 | 1,578.42 |
| | TERM NO. 1973 24 BOND(S) 90 UNIT(S) | 1,687.50 | 11.70 | 1,699.20 |
| | TERM NO. BOND(S) UNIT(S) | | | |
| | TOTAL SETTLEMENT UNDER SAVINGS FUND(S) 48 BOND(S) 174 UNIT(S) | 3,262.50 | 15.12 | 3,277.62 |
| STOCK BONUS FUND(S) (Capital Stock of Gulf Oil Corporation and/or Cash) | TERM NO. SHARE(S) @ | | | |
| | TERM NO. SHARE(S) @ | | | |
| | TERM NO. SHARE(S) @ | | | |
| | TOTAL SETTLEMENT UNDER STOCK BONUS FUND(S) SHARE(S) | | | |
| TOTAL SETTLEMENT UNDER ALL FUND(S) | | 3,262.50 | 15.12 | 3,277.62 |

| NO. OF SHARES | | IN NAME OF | AMOUNT |
|---|---|---|---|
| | | | |

| DATE | CHECK NUMBER(S) | IN NAME OF | AMOUNT |
|---|---|---|---|
| 3/08/74 | 044993 | E. H. BRUNSTING | $15.12 |

RETIREMENT PLAN COMMITTEE
SAVINGS PLAN COMMITTEE

Date MARCH 8, 1974 By James W. Chappel SECRETARY

GULF 8549-F PRINTED IN U.S.A.

(RETAIN THIS FORM FOR RECORD PURPOSES)

P4962

Bank of America
embracing ingenuity

USA

Official Sponsor ... Olympic Teams

**Customer Receipt**

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

**Thank you for banking with Bank of America.**
**Try Online Banking at www.bankofamerica.com**

6230515416

95-14-2005B 06-2002

P4963

| TERM | LOC. | EMPL. NO. | NAME | BONDS | UNITS |
|---|---|---|---|---|---|
| 1972 | 800 | 114162 | E. H. BRUNSTING | 24 | 84 |

PLEASE NOTE

THE UNITED STATES TREASURY DEPARTMENT REGULATIONS REQUIRE THAT AN ADDRESS BE SHOWN FOR THE OWNER ON ALL BONDS ISSUED. HOWEVER, SINCE THE ADDRESS IS NOT USED FOR MAILING THE BONDS, AND SINCE AN OLD ADDRESS DOES NOT AFFECT THEIR VALIDITY, THE FEDERAL RESERVE BANK WILL NOT CHANGE ADDRESSES ON THE BONDS PURCHASED UNDER THE SAVINGS-STOCK BONUS PLAN.

ALSO, UNITS INDICATED ABOVE ARE THE TOTAL NUMBER OF $25 BONDS (I.E., $25 AT MATURITY, BUT $18.75 WHEN PURCHASED). FOR EXAMPLE, A $50 BOND IS CONSIDERED AS 1 BOND OF 2 UNITS, A $100 BOND AS 1 BOND, BUT 4 UNITS.

P4964

***WAIVER OF LIABILITY***
*(18 and over)*

*To be read and signed by all persons intending to do volunteer work for Houston Habitat for Humanity.*

*I understand that my (or my dependent(s) work as a volunteer on or about a Habitat construction site or project will expose me (or my dependent(s) to various risks of injury or illness. I understand and assume these risks, and agree not to hold Houston Habitat for Humanity, its agents, employees or volunteers liable for such injury or illness.*

*Chapelwood United Methodist Church Group Volunteer*

Shelly Montgomery *Date* 17 Sept 1994
*(Signature)*

1800-333 2919

all 30 yrs.

Series E 1973 Jan – Dec
1974 Jan Dec
1975
1976
1977
1978 Jan only

Series EE 1981
1982
1983 - Jan - July

minimum 9
6 mo

HH - Oct 1982 were 6% now ?

Nov. 1988

1st. Bus Day ~~after~~ month – for interest

Oct - 1st April
Nov 1st May 1st
after 10 yrs
1994.

Fed Res Bk
KC

P4966

20-20566-2100
BRUNSTING000999

**Follow-up Notice**
**Matured HH/H Savings Bonds**

The Bureau of the Public Debt previously notified you that your series HH/H United States savings bonds were about to mature. Our records show that the matured bonds on the reverse side of this notice are registered in your name **and no longer earn interest.**

Please redeem these bonds as soon as possible. Sign the "request for payment" on the back of each bond in the presence of an authorized certifying officer at a financial institution, and send the bonds to one of the Federal Reserve Banks listed on this notice (select the one nearest you).

If the bonds described on the reverse side of this notice have been lost, please write to the Bureau of the Public Debt, PO Box 2186, Parkersburg, West Virginia 26106-2186. We'll send you a form to file a claim.

If you've recently redeemed the bonds, please ignore this notice.

---

**Federal Reserve Banks that Process Redemption Requests**

FRB Pittsburgh
PO Box 299
Pittsburgh, PA 15230-0299

FRB Richmond
PO Box 85053
Richmond, VA 23285-5053

FRB Minneapolis
Savings Bond Services
PO Box 214
Minneapolis, MN 55480-0214

FRB Kansas City
PO Box 419440
Kansas City, MO 64141-6440

FRB New York
Savings Bond Examinations Div.
PO Box 961
Buffalo, NY 14240-0961

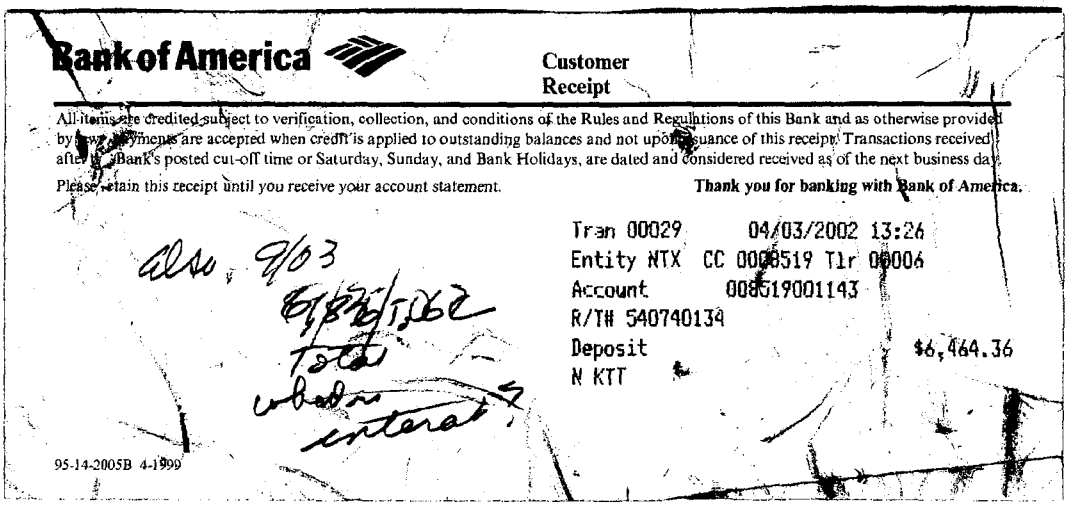
P4967

| ISSUE DATE | DENOMI-NATION | SERIAL NUMBER | | ISSUE DATE | DENOMI-NATION | SERIAL NUMBER | |
|---|---|---|---|---|---|---|---|
| | | | new # | | | | new # |

Deferred Interest
385.53
10/1982 20 years

**PLEASE SEE REVERSE SIDE OF THIS PAGE FOR AN IMPORTANT NOTICE ABOUT YOUR MATURED SERIES HH/H UNITED STATES SAVINGS BONDS**

P4968



**Bank of America**

**Customer Receipt**

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

**Thank you for banking with Bank of America.**

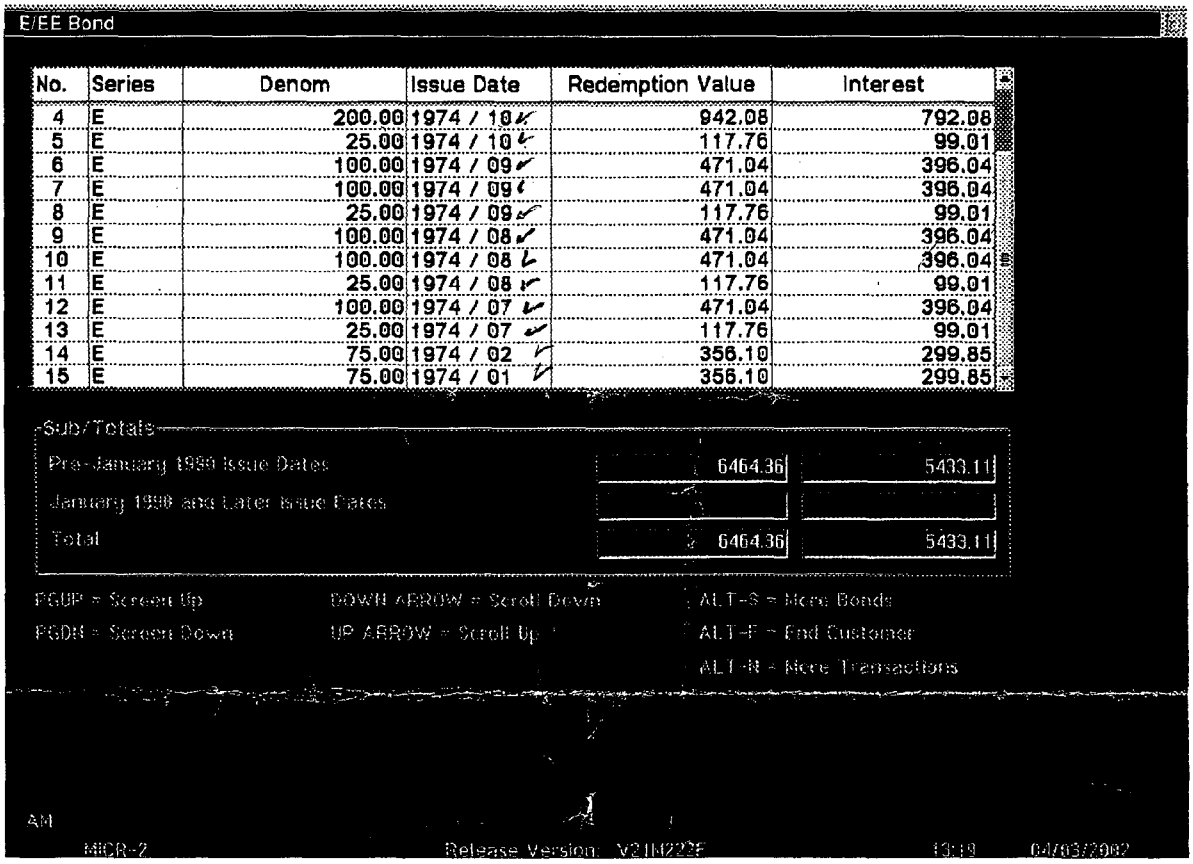
Also, 9/03
6,836/1,062
Total
when interest?

Tran 00029 04/03/2002 13:26
Entity NTX CC 0008519 Tlr 00006
Account 008519001143
R/T# 540740134
Deposit $6,464.36
N KTT

95-14-2005B 4-1999

P4969

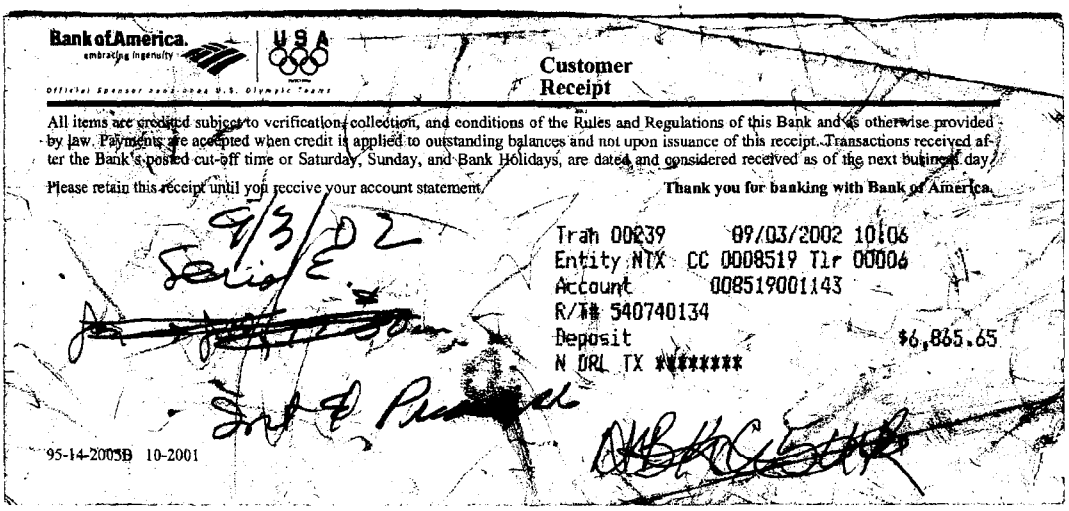
20-20566.2103
BRUNSTING001002




800 299 2265

0+0+0

P4970



Bank of America
embracing ingenuity
USA

Official Sponsor 2002 USA U.S. Olympic Teams

**Customer Receipt**

All items are credited subject to verification, collection, and conditions of the Rules and Regulations of this Bank and as otherwise provided by law. Payments are accepted when credit is applied to outstanding balances and not upon issuance of this receipt. Transactions received after the Bank's posted cut-off time or Saturday, Sunday, and Bank Holidays, are dated and considered received as of the next business day.

Please retain this receipt until you receive your account statement.

**Thank you for banking with Bank of America.**

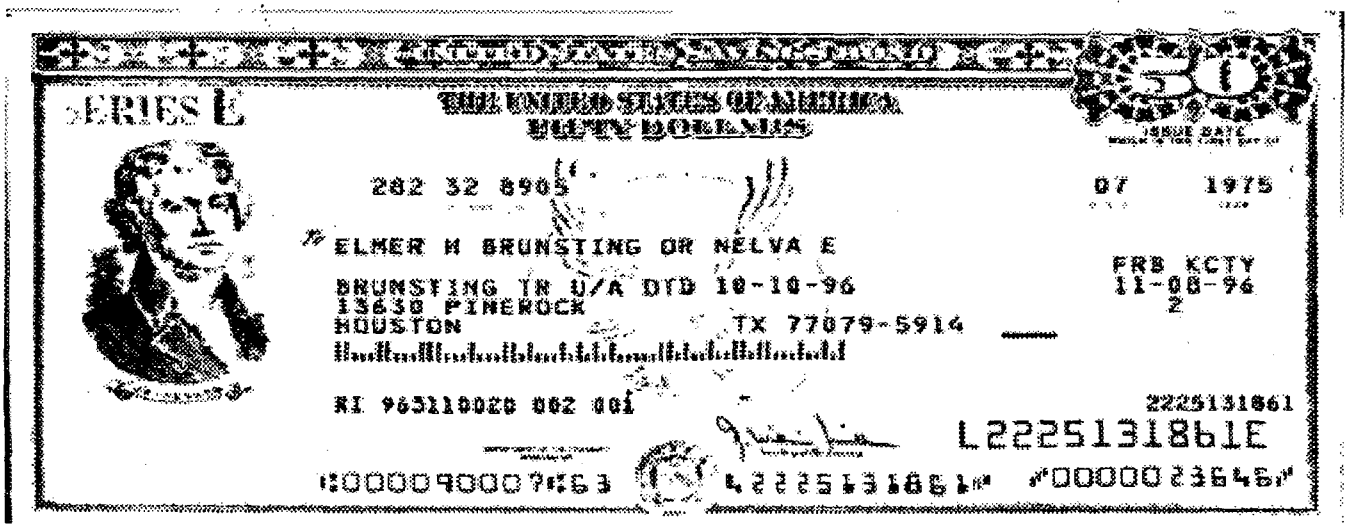
9/3/02

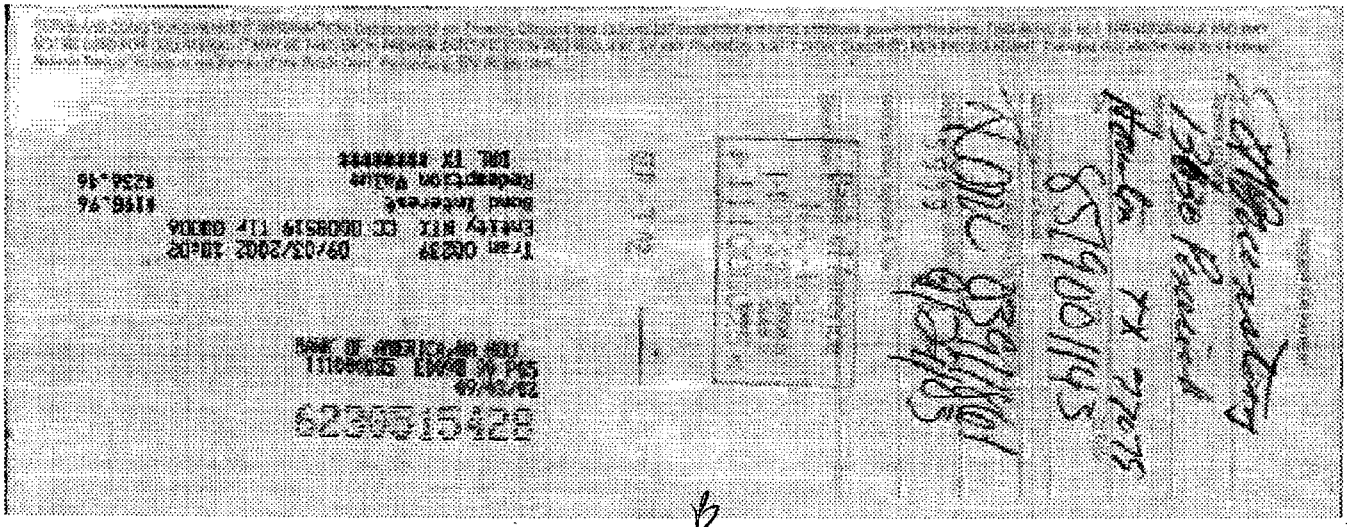
Tran 00239 09/03/2002 10:06
Entity NTX CC 0008519 Tlr 00006
Account 008519001143
R/T# 540740134
Deposit $6,865.65
N ORL TX ********

95-14-2003B 10-2001

Bank #: 00009000 Acct #: 06342225131861 Check #:

Amount: $236.46
Account: 06342225131861
Bank Number: 00009000
CD Volume #:
Check Number:

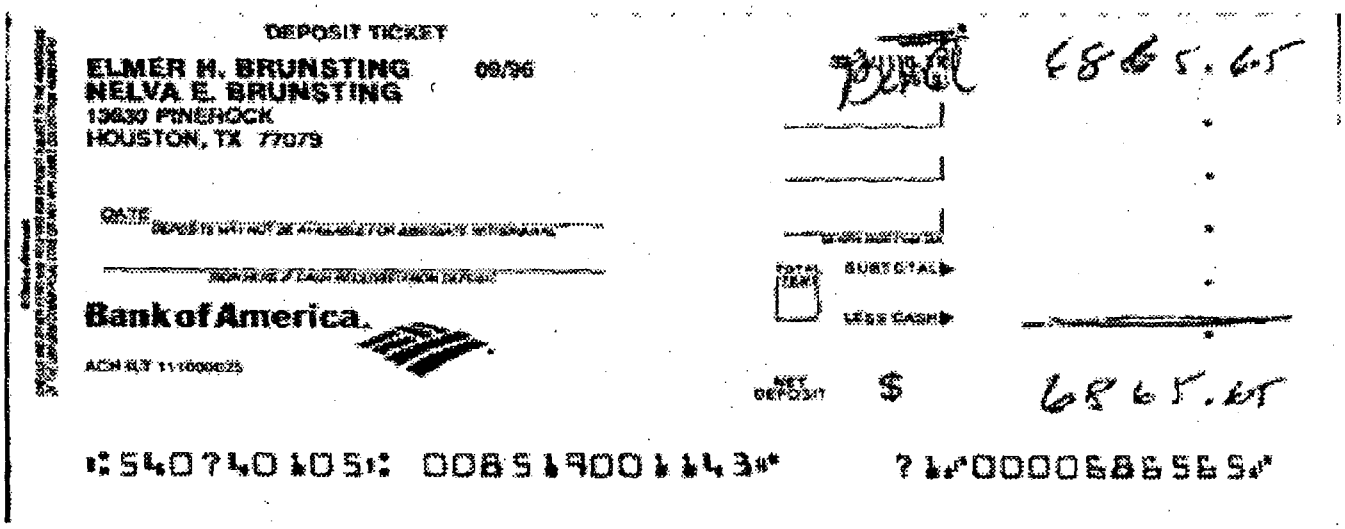


P4972

Bank #: 54074010 Acct #: 00008519001143 Check #:

Amount: $6865.65
Account: 00008519001143
Bank Number: 54074010
CD Volume #:
Check Number:



DEPOSIT TICKET
ELMER H. BRUNSTING 09/96
NELVA E. BRUNSTING
13630 PINEROCK
HOUSTON, TX 77079

DATE

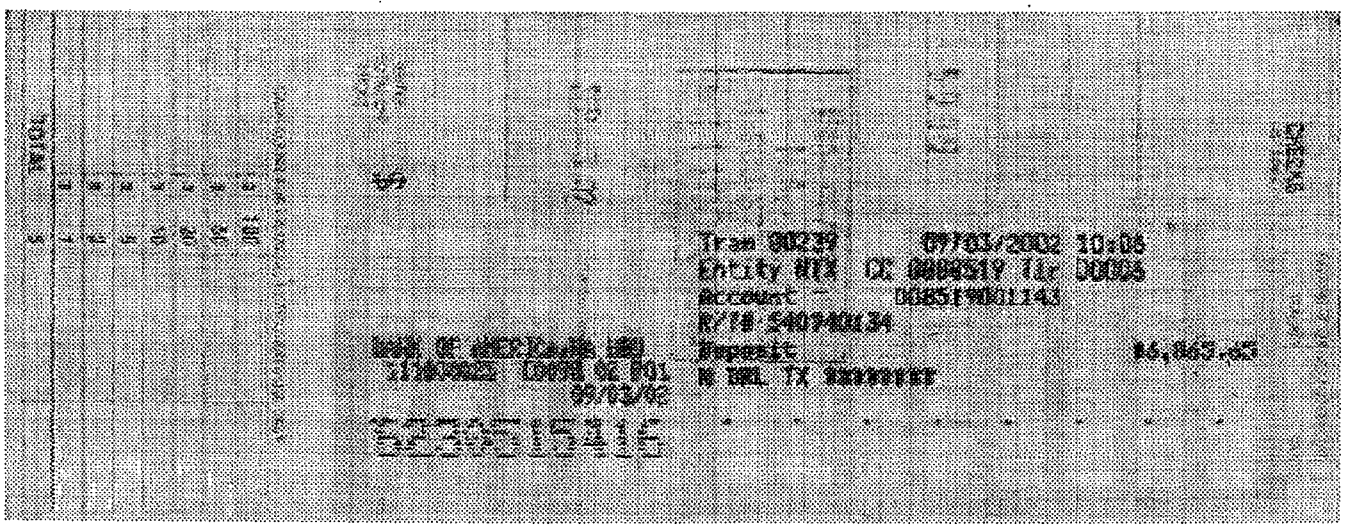
Bank of America.

ACH R/T 111000025

Bend 6865.65

SUBTOTAL
LESS CASH
NET DEPOSIT $ 6865.65

⑆540740105⑆ 008519001143⑈ 71⑈0000686565⑈



Tran 00239 09/03/2002 10:06
Entity NTX CC 0000519 Tlr 00006
Account 008519001143
R/T# 540740134
Deposit $6,865.65
N BRL TX

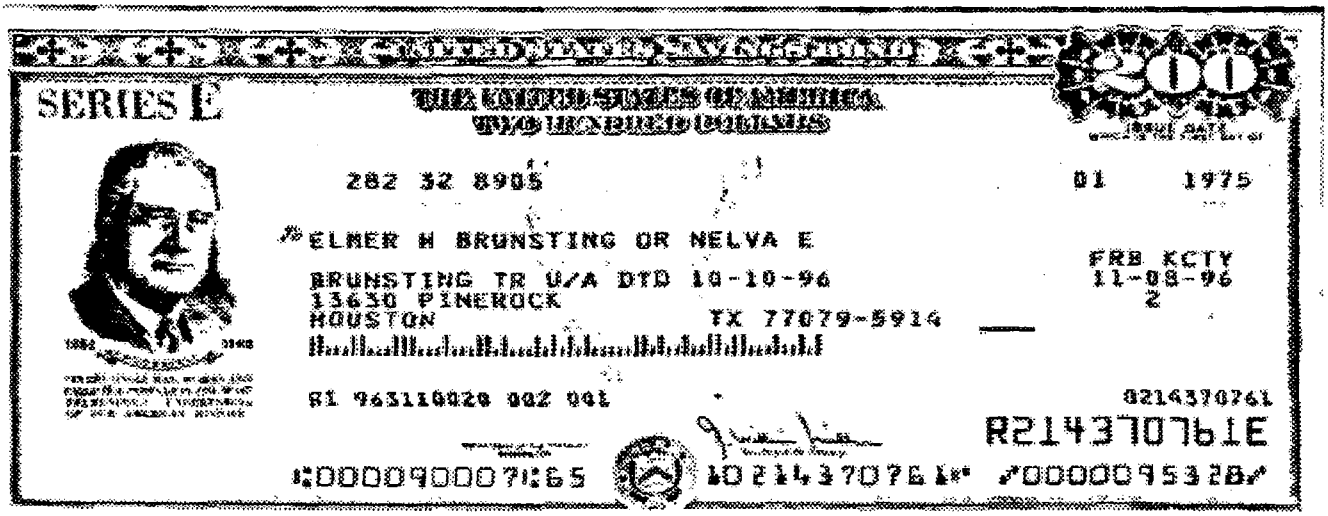
BANK OF AMERICA, NA USD
111000025 [illegible] 02 P01
09/03/02

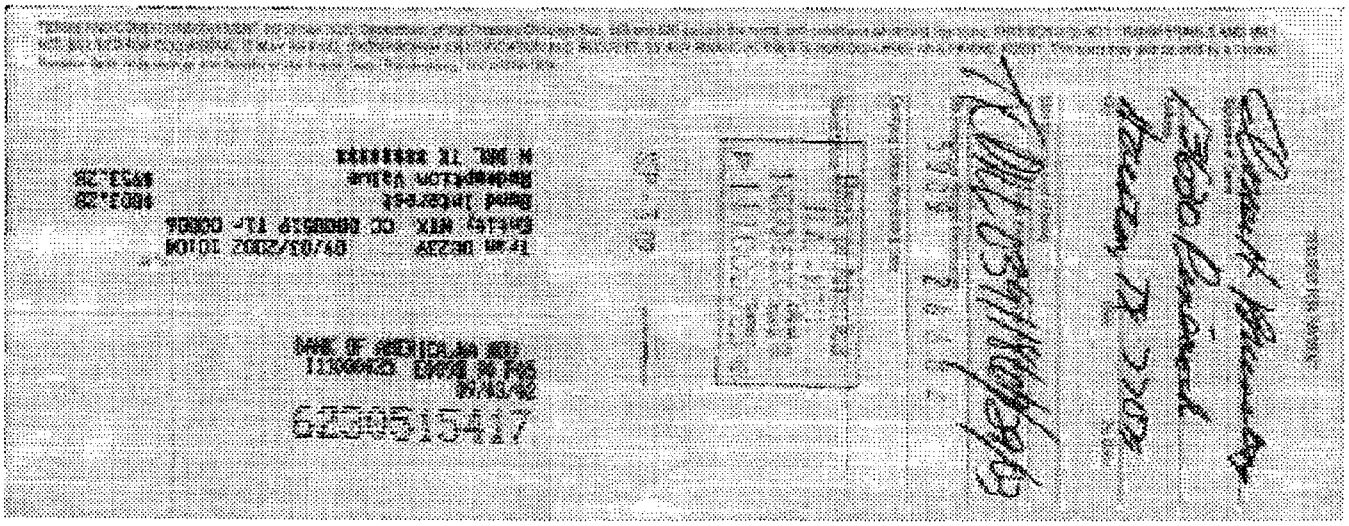
P4973

20-20566.2107
BRUNSTING001006

**Bank #: 00009000 Acct #: 06510214370761 Check #:**

**Amount:** $953.28
**Account:** 06510214370761
**Bank Number:** 00009000
**CD Volume #:**
**Check Number:**

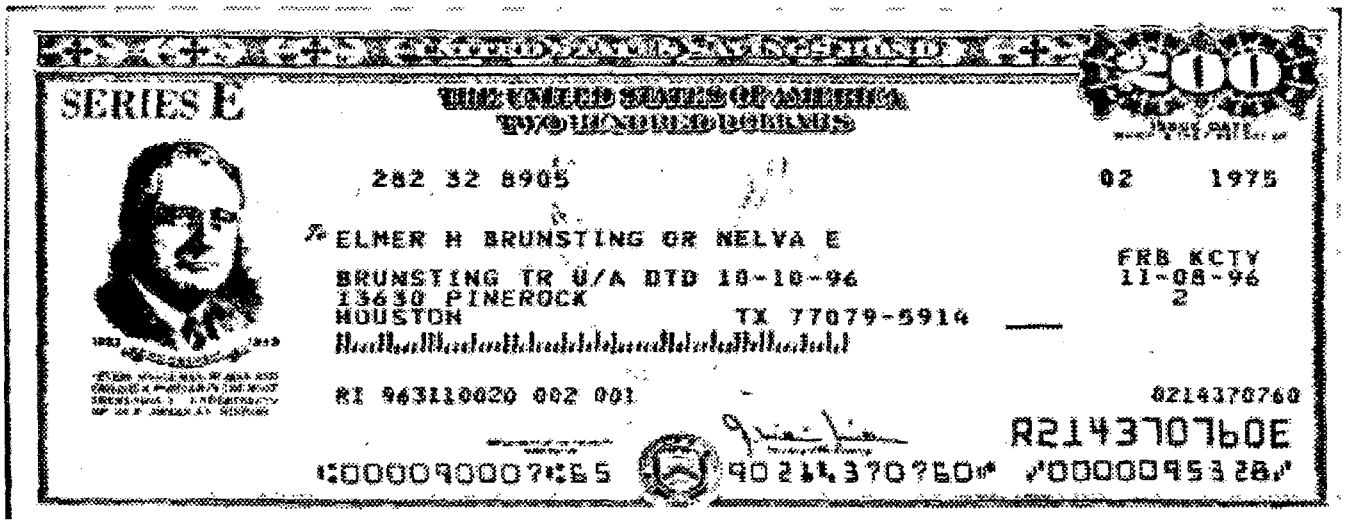


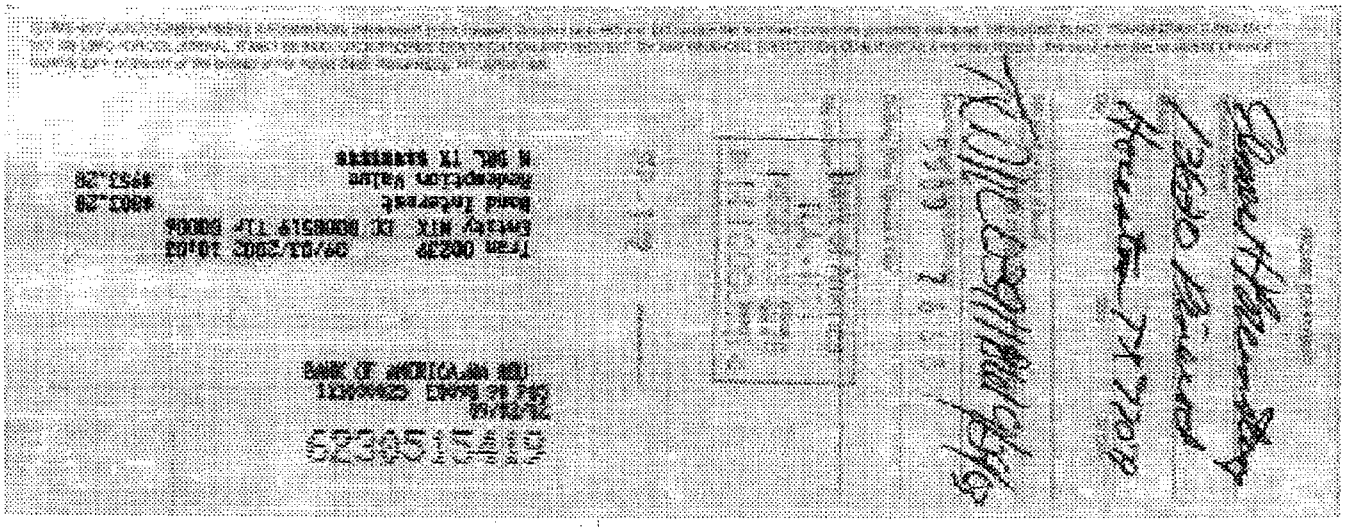



P4974

Bank #: 00009000 Acct #: 06590214370760 Check #:

Amount: $953.28
Account: 06590214370760
Bank Number: 00009000
CD Volume #:
Check Number:

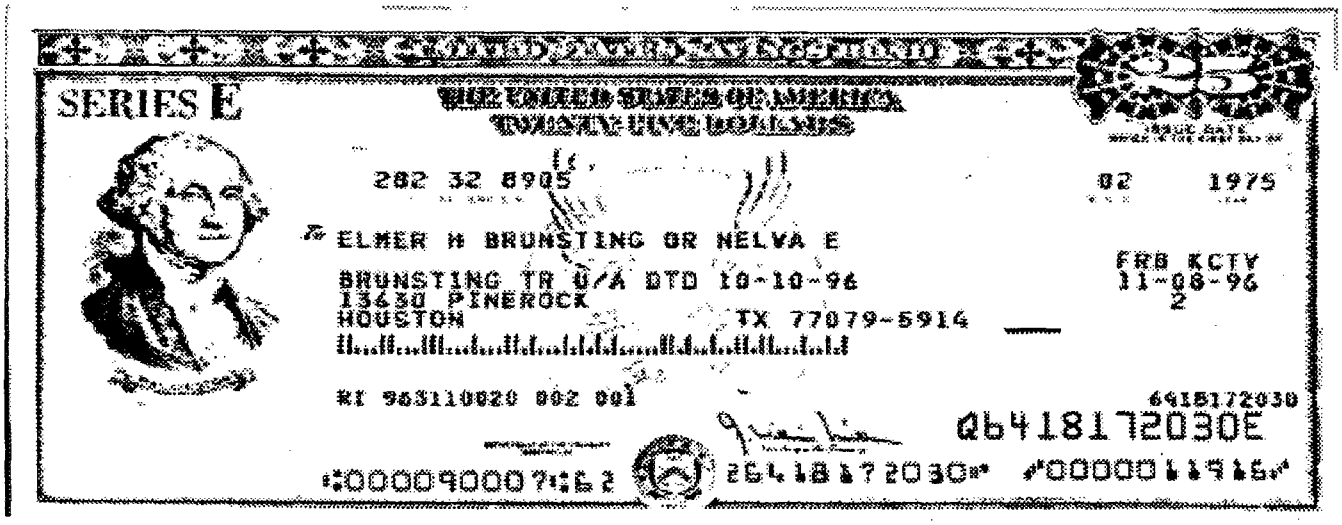


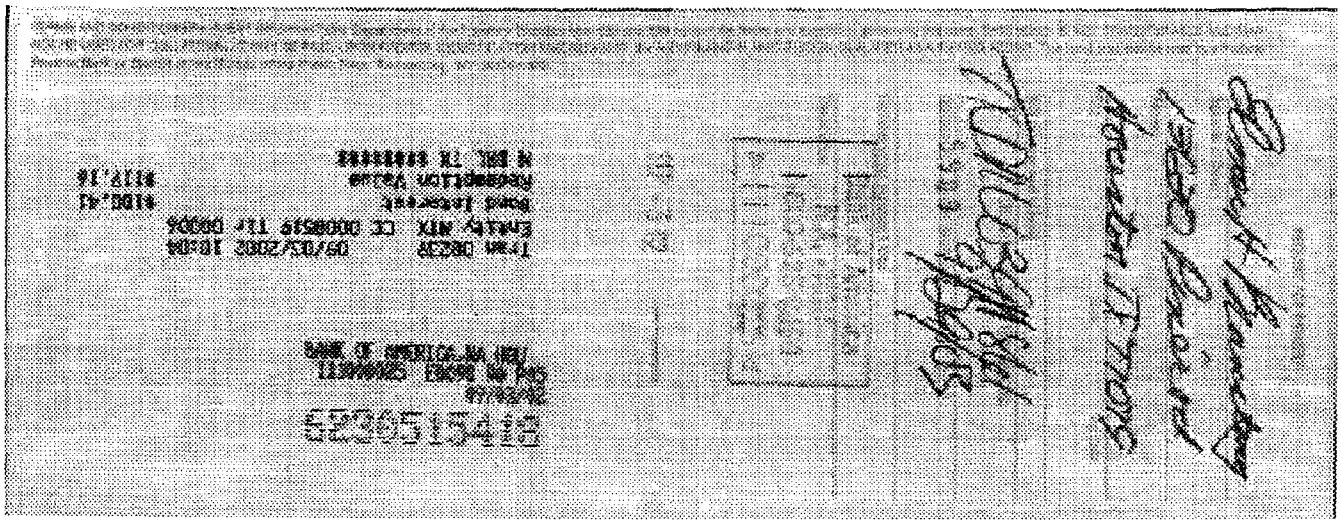



P4975

Bank #: 00009000 Acct #: 06226418172030 Check #:

Amount: $119.16
Account: 06226418172030
Bank Number: 00009000
CD Volume #:
Check Number:

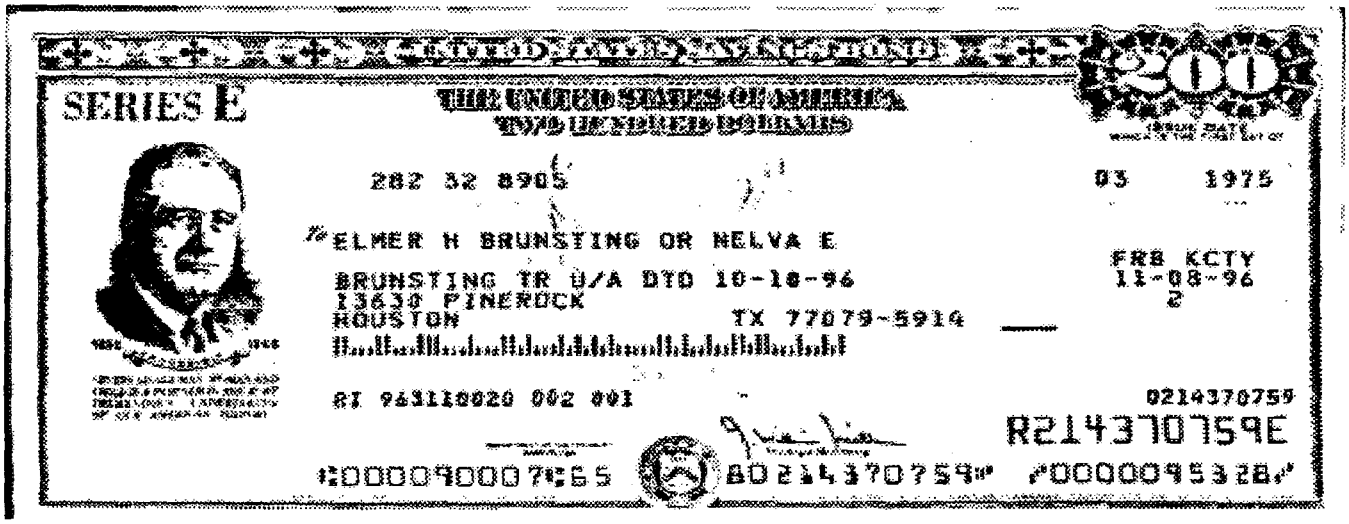


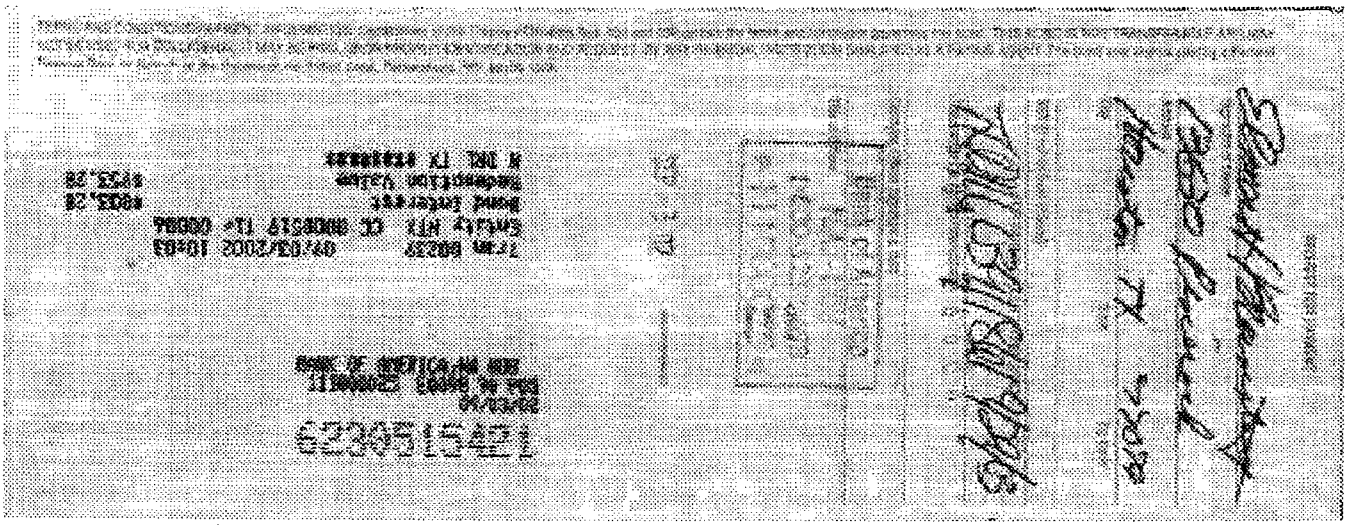



P4976

**Bank #: 00009000 Acct #: 06580214370759 Check #:**

| | |
|---|---|
| **Amount:** | **$953.28** |
| **Account:** | **06580214370759** |
| **Bank Number:** | **00009000** |
| **CD Volume #:** | |
| **Check Number:** | |

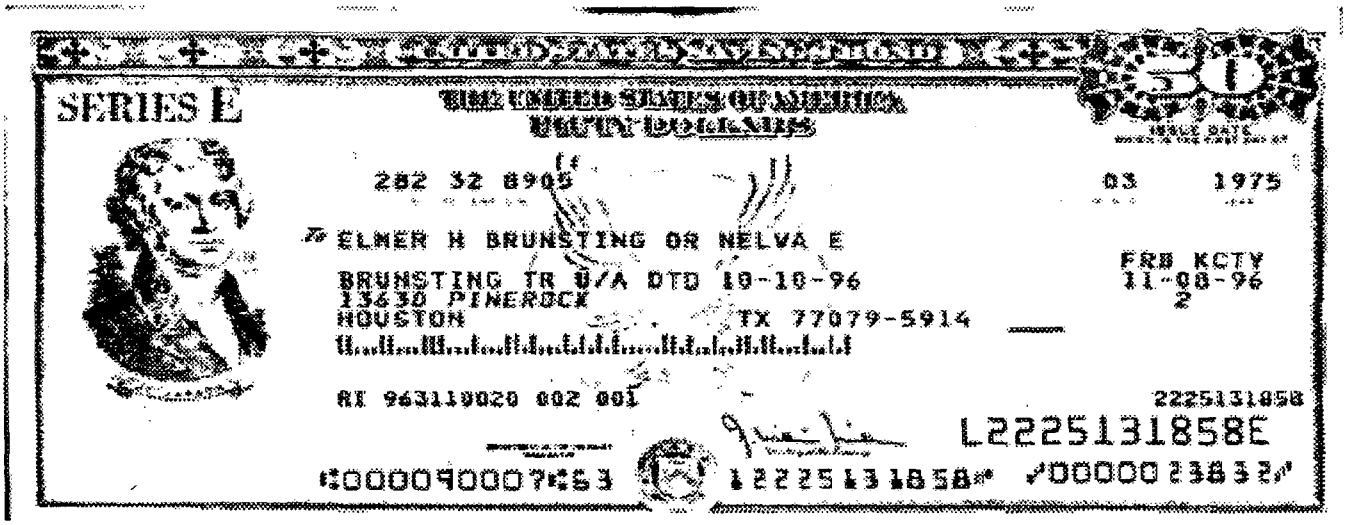


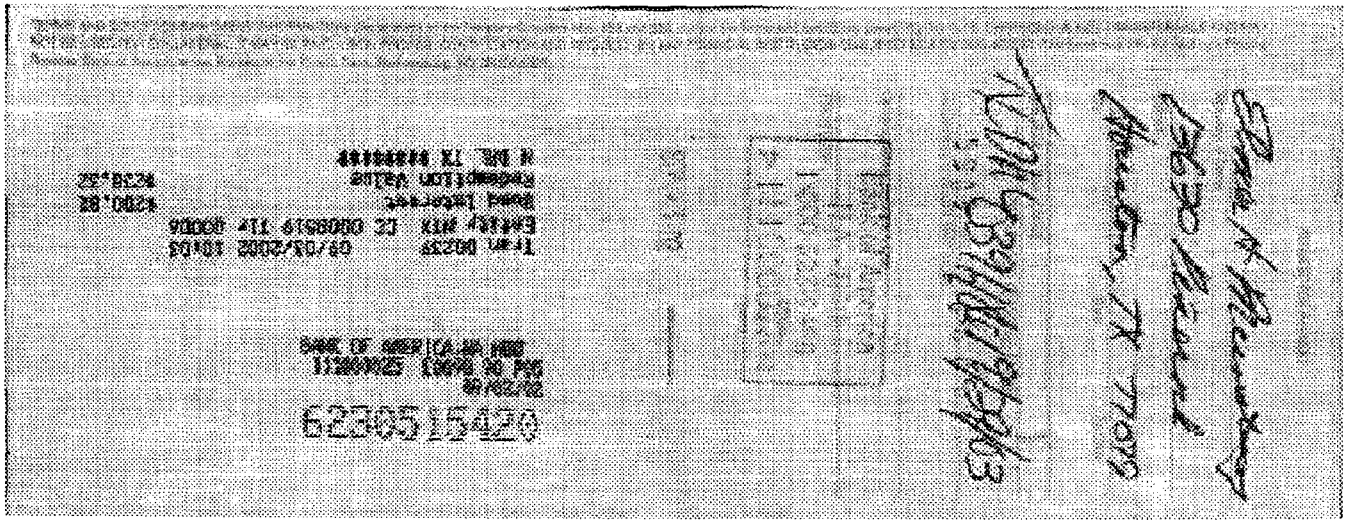



P4977

**Bank #: 00009000 Acct #: 06312225131858 Check #:**

**Amount:** $238.32
**Account:** 06312225131858
**Bank Number:** 00009000
**CD Volume #:**
**Check Number:**

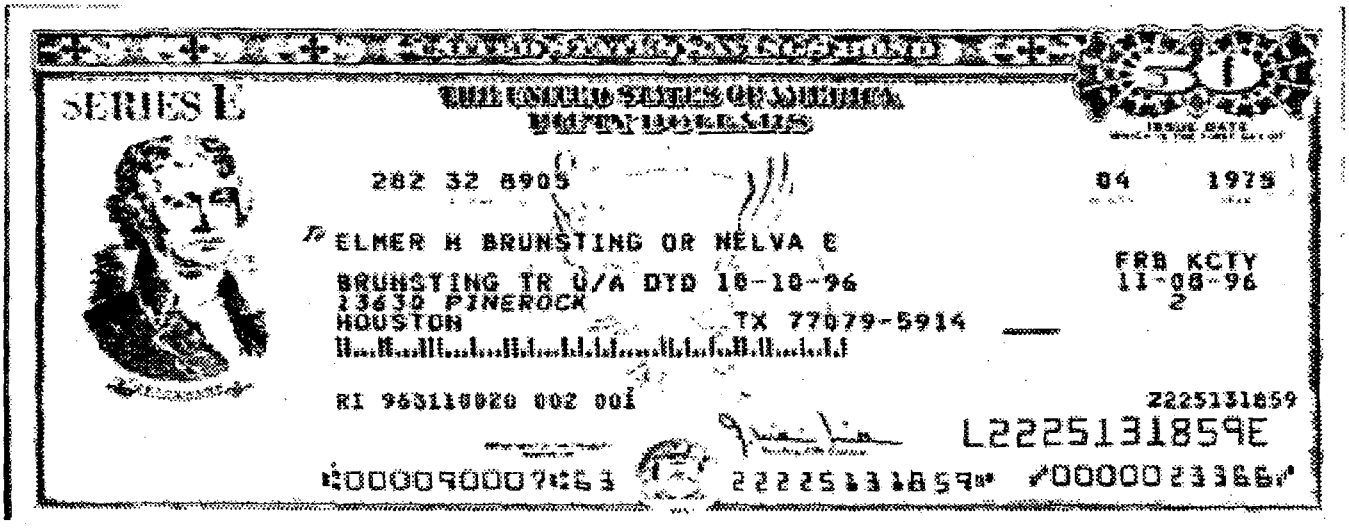


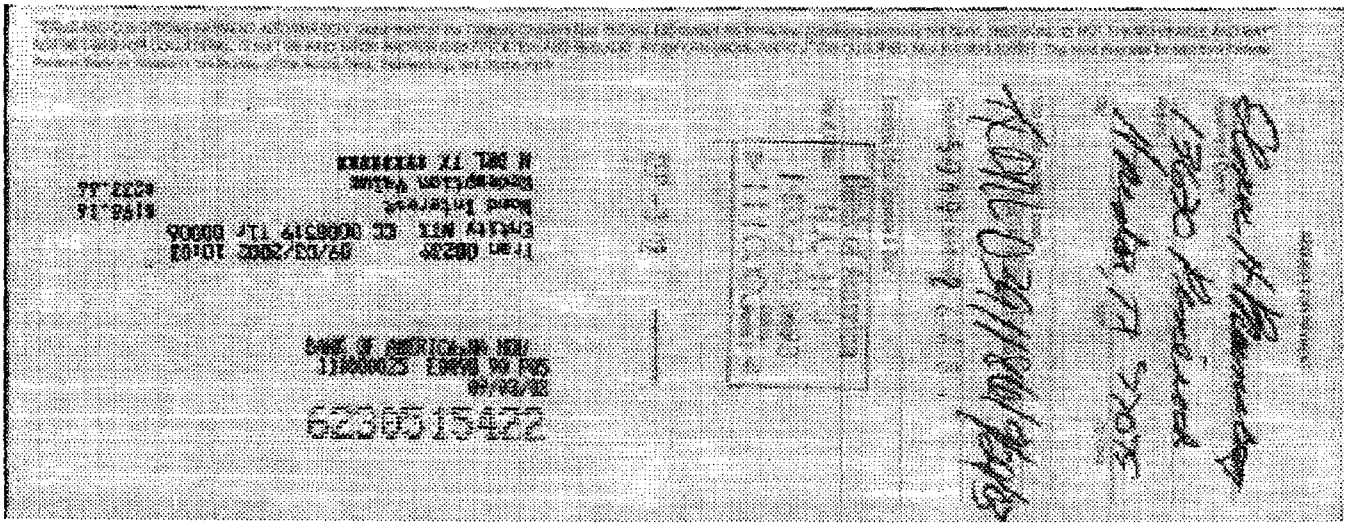



P4978

Bank #: 00009000 Acct #: 06322225131859 Check #:

Amount: $233.66
Account: 06322225131859
Bank Number: 00009000
CD Volume #:
Check Number:

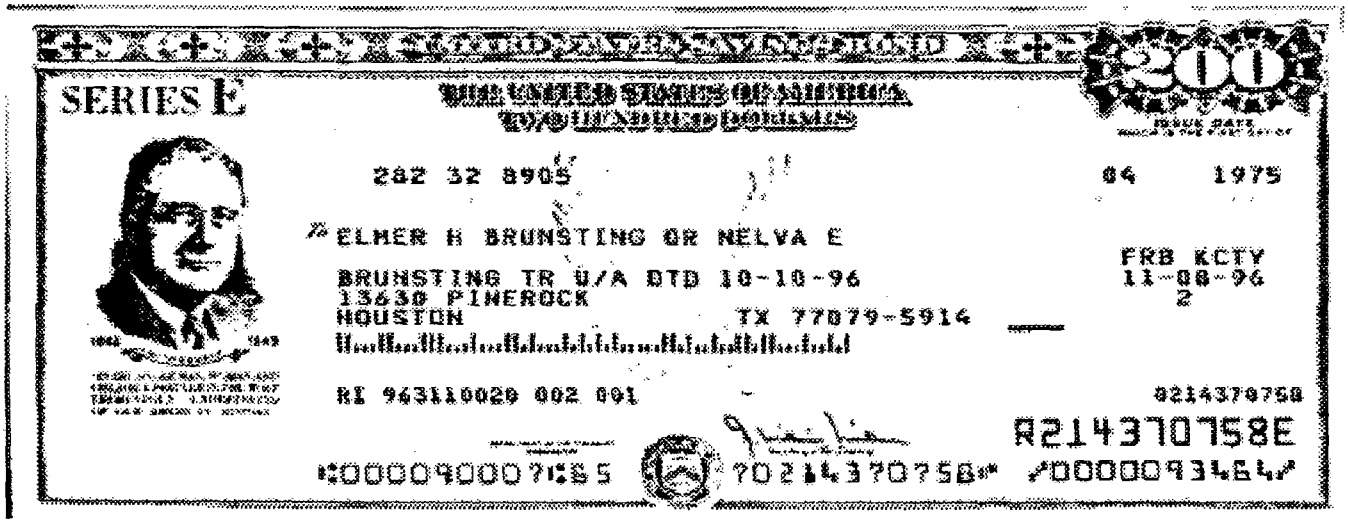


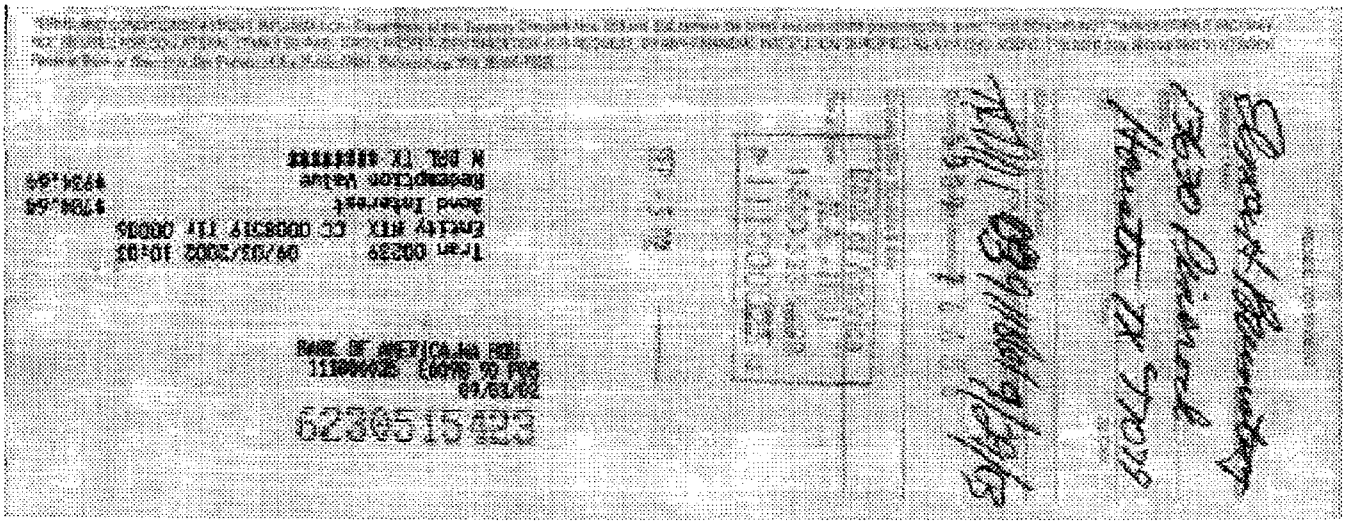



P4979

Bank #: 00009000 Acct #: 06570214370758 Check #:

Amount: $934.64
Account: 06570214370758
Bank Number: 00009000
CD Volume #:
Check Number:

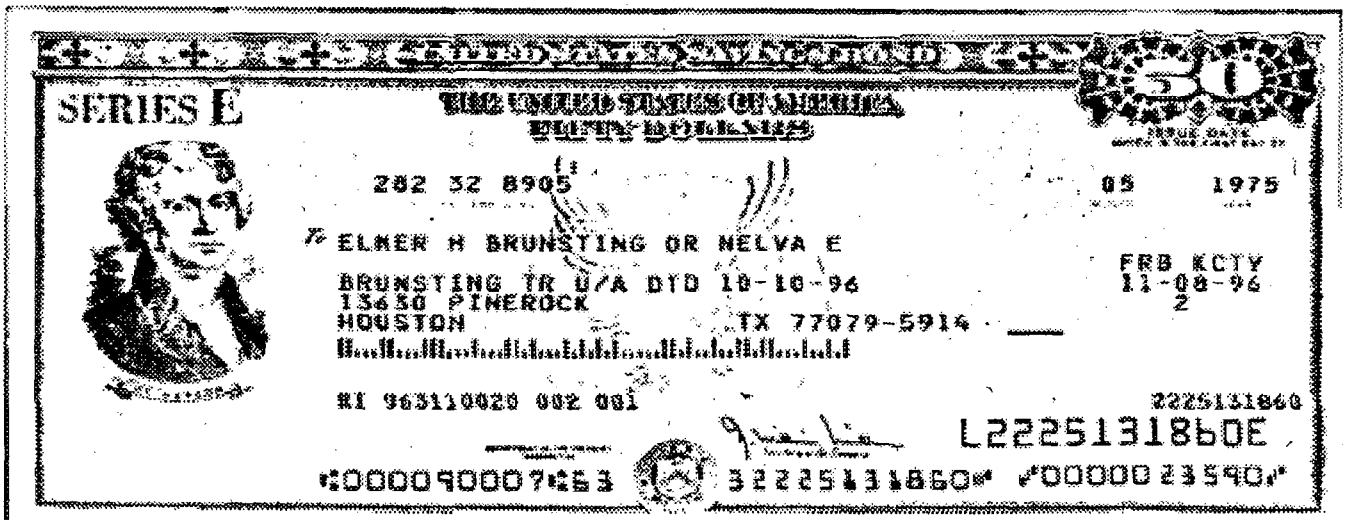


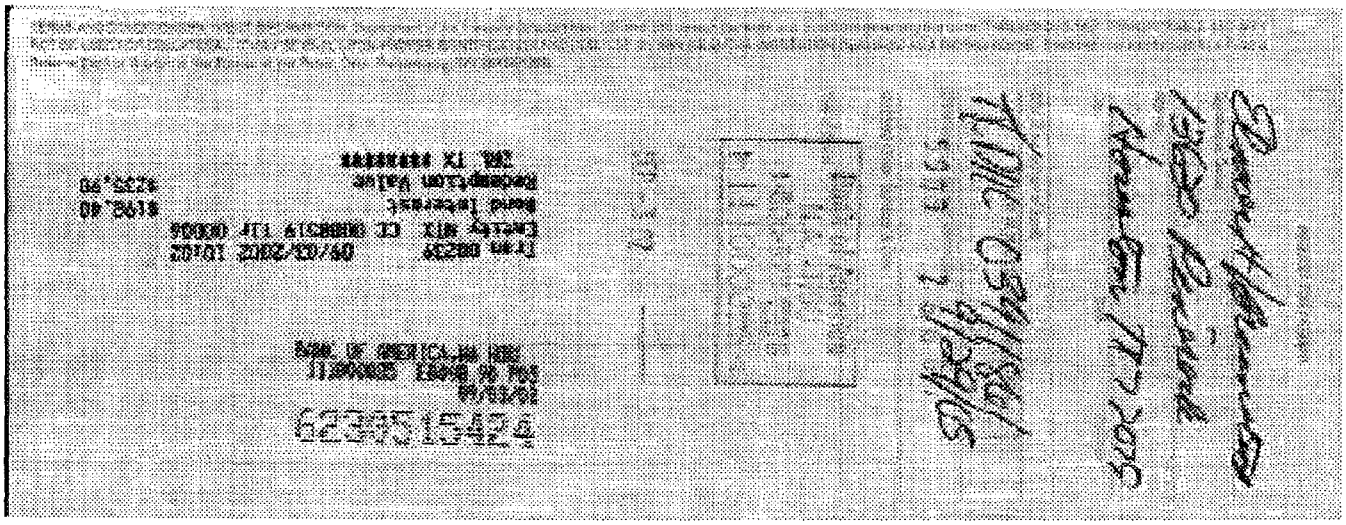



P4980

Bank #: 00009000 Acct #: 06332225131860 Check #:

Amount: $235.90
Account: 06332225131860
Bank Number: 00009000
CD Volume #:
Check Number:

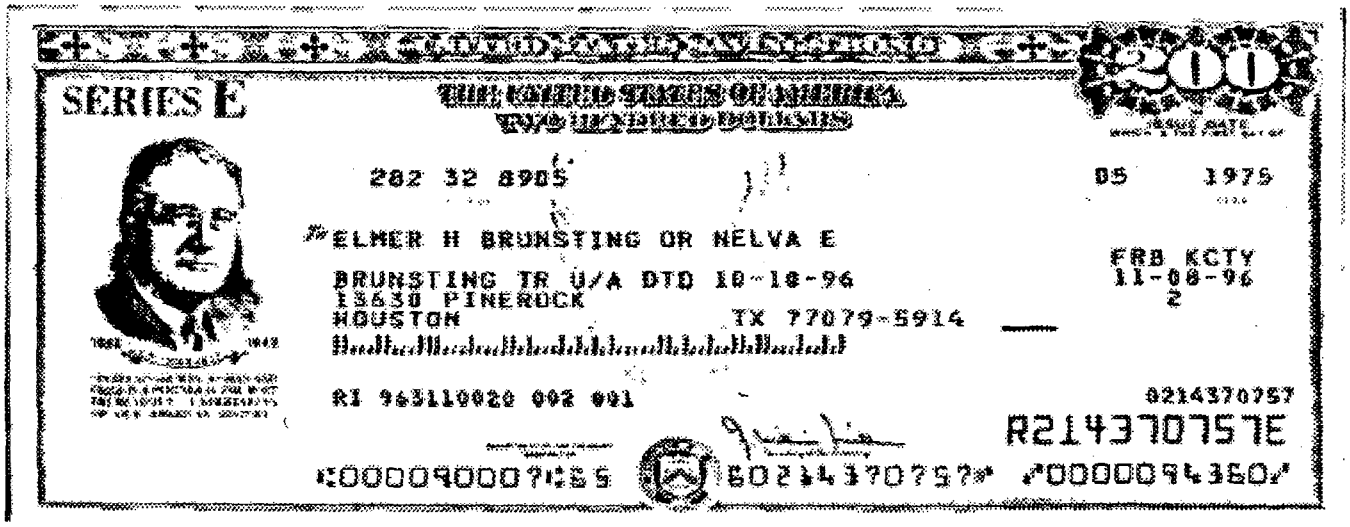


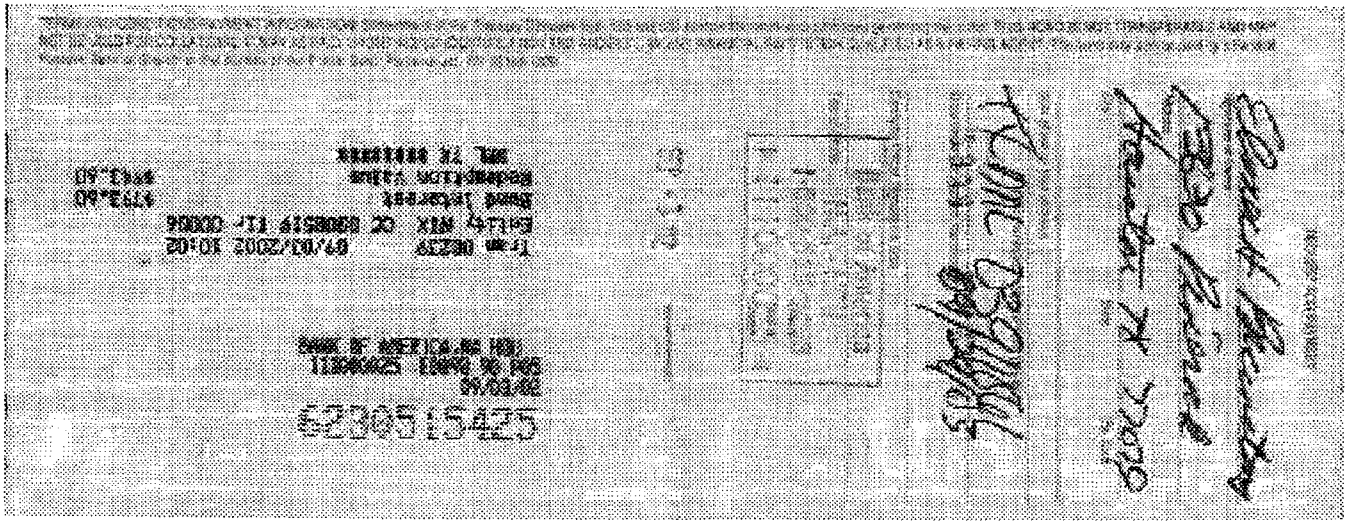



P4981

Bank #: 00009000 Acct #: 06560214370757 Check #:

Amount: $943.60
Account: 06560214370757
Bank Number: 00009000
CD Volume #:
Check Number:

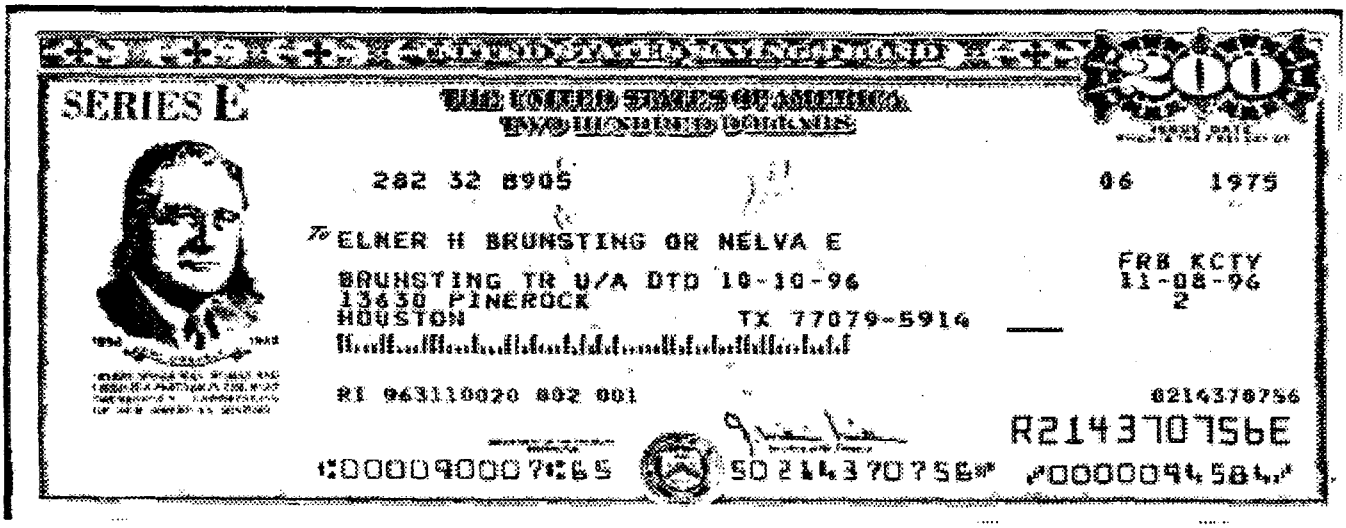


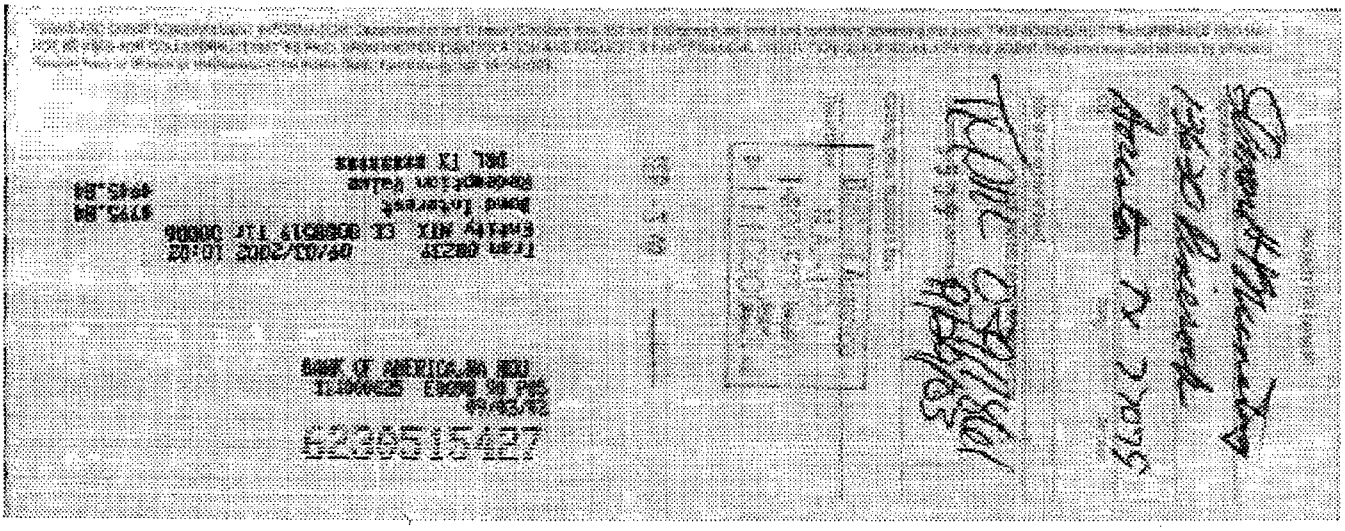



P4982

Bank #: 00009000 Acct #: 06550214370756 Check #:

Amount: $945.84
Account: 06550214370756
Bank Number: 00009000
CD Volume #:
Check Number:

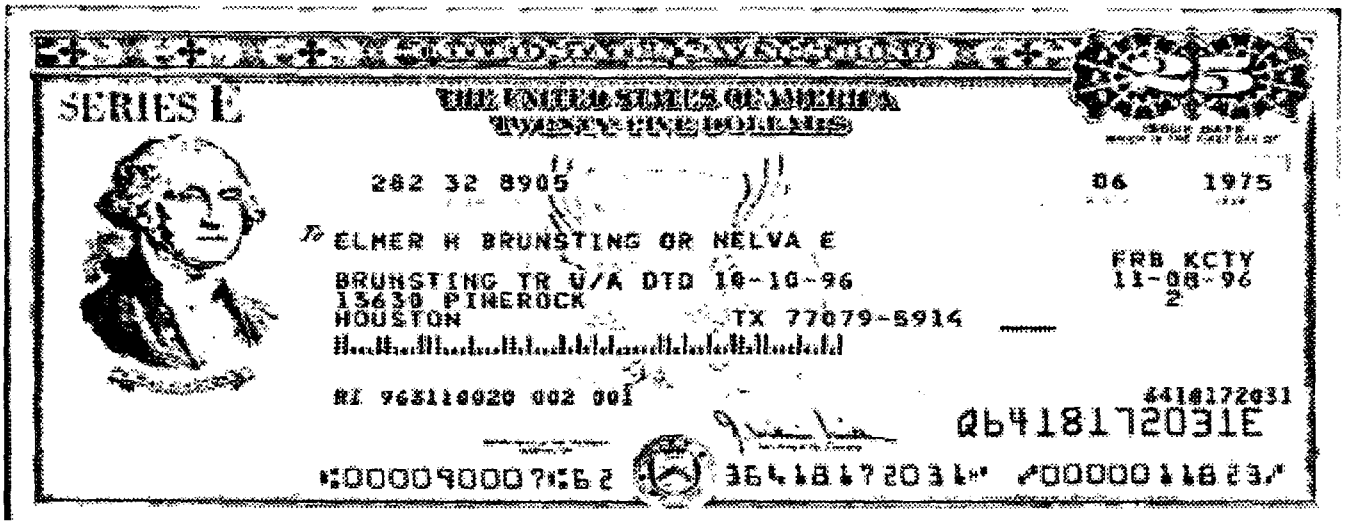


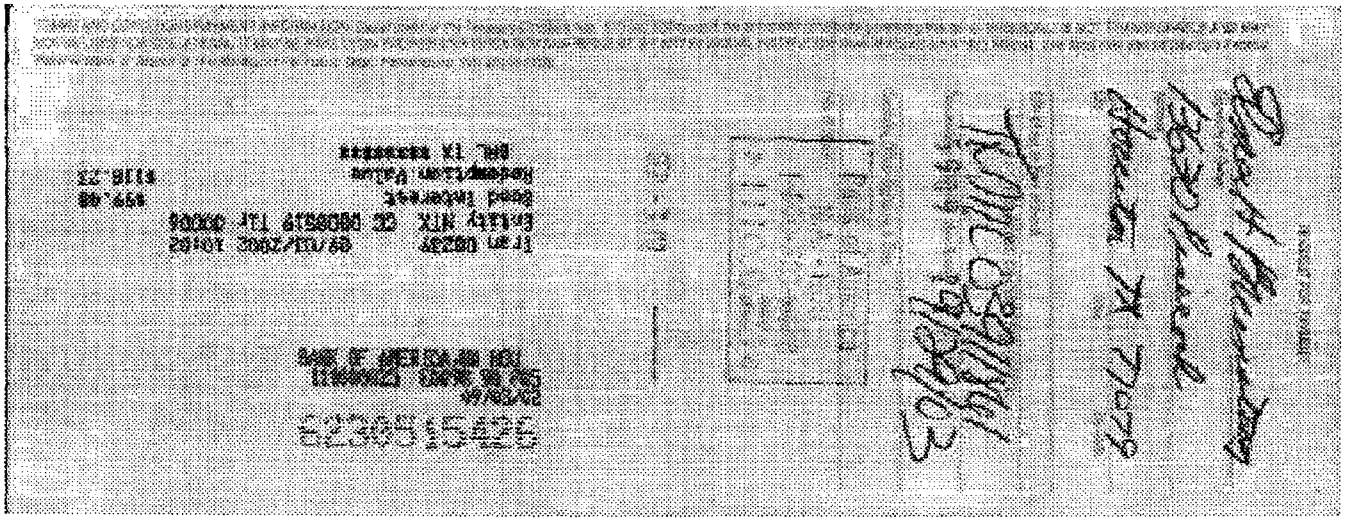



P4983

Bank #: 00009000 Acct #: 06236418172031 Check #:

Amount: $118.23
Account: 06236418172031
Bank Number: 00009000
CD Volume #:
Check Number:



P4984

# The Gulf Companies

LAW DEPARTMENT

Robert F. Ochs
COUNSEL

P. O. Box 3725
Houston, TX 77253

2 Houston Center
909 Fannin Street

P4985

IRA - P 11 - Primary Spouse
Secondary to Trust

709 - ~~Brade~~ ~~filt~~ file form 709
Gift Tax return - claiming each of kids
getting part of premium - to claim
generation ~~gift~~ skipping tax exemption

Safe deposit to Trust.
Stock - check if kids on them
Car - Survival ship - ownership

P4986

20-20566.2120
BRUNSTING001019

SAVINGS - STOCK BONUS PLAN OF
GULF OIL CORPORATION

EMPLOYEE NO: 114162
LOCATION NO: 150
SOC SEC NO: 282-32-8905

## AUTHORIZATION FOR SETTLEMENT

IN ACCORDANCE WITH THE PROVISIONS OF THE SAVINGS-STOCK BONUS PLAN, THE SETTLEMENT SHOWN BELOW IS AUTHORIZED TO BE MADE FOR THE ACCOUNT OF E.H. BRUNSTING BY REASON OF REQUEST 12/31/80

NONE OF THIS SETTLEMENT IS TAXABLE.

| | | | COST OF SECURITIES | CASH PAYMENT | TOTAL FUND SETTLEMENT |
|---|---|---|---|---|---|
| SAVINGS FUNDS: | | | | | |
| 1980 TERM- | 28 BONDS | 176 UNITS | 2,693.75 | 11.65 | 2,705.40 |
| STOCK BONUS FUNDS: | | | | | |
| LONG TERM- | SHARES @ | $.000 | | | |
| LONG TERM SAVINGS FUNDS: | | | | | |
| OPTION 1- | SHARES @ | $.000 | | | |
| OPTION 2 | | | | | |
| TOTAL SETTLEMENT UNDER ALL FUNDS: | | | | | |
| 28 BONDS | SHARES | | 2,693.75 | 11.65 | 2,705.40 |

CHECK DATE 03/19/81 , NUMBER 167786, PAYEE E. H. BRUNSTING

BENEFITS COMMITTEE

DATE MARCH 19, 1981

BY PHILIP E. LININER
SECRETARY

P4987

**Bank of America**

BOND INFORMATION
PRESS PRINT KEY FOR CPY OF SCREEN

REDEMPTION YYYY/MO 2001/05 SERIES: 1 - E BONDS 3 - SAVINGS NOTES
2 - EE BONDS 4 = I BONDS

| # OF BONDS | SERIES 1,2,3,4 | FACE VALUE | ISSUE YYYY/MO | PER BOND REDEMP. VAL | PER BOND INT EARNED | TOTALS REDEMP. VAL | TOTALS INT EARNED |
|---|---|---|---|---|---|---|---|
| 1 | 1 | 100 | 1974/01 | 456.36 | 381.36 | 456.36 | 381.36 |

4/24/mo-

2001
1974
27 x 12 = 324

456.36 / 75 = 6.0848

381.36 / 75 = 5.0848

PAGE TOTAL 456.36 381.36

DO YOU WANT TO ENTER MORE BONDS? (Y/N)

1974 Bonds

| | | |
|---|---|---|
| 16 | 100 - | 1600 |
| 3 | 200 | 600 |
| 2 | 25 | 150 |
| 5 | 25 | 125 |
| | | 2475 FACE VALUE |

REDEMP. 456.36 / 2475 / 100 = 11,294.91

INT. EARNED 381.36 / 2475 / 100 = 9,438.66

1856.25

INVESTMENT = 2475 x .75 = 1856.25

TOTAL Investment = 9,438.66 X .28 = 2642.82 INT

11,294.91 = 76.60% of Total
2642.82
8,652.09

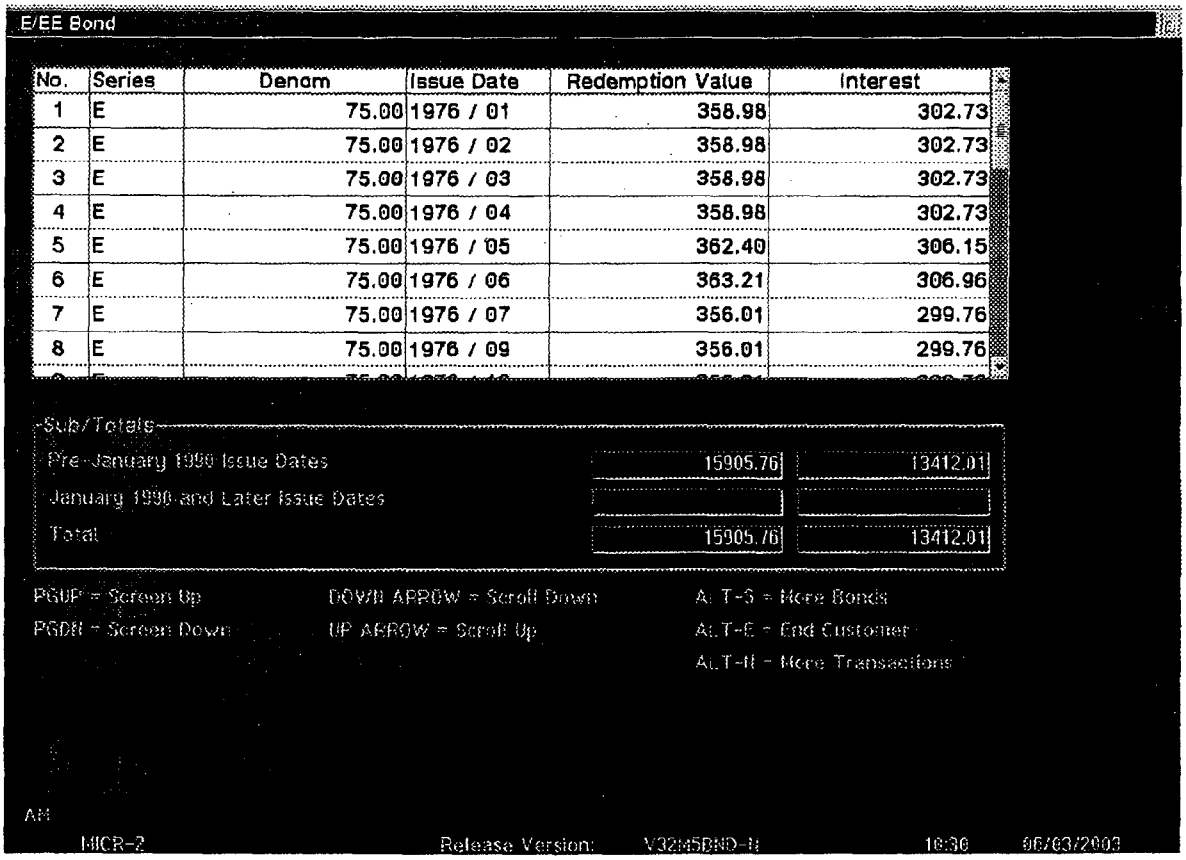
Jan 74 27 yrs 324 mo.
Jan 01

net -

20,000 / 8,652.09 = 2.3 yrs

MEMORIAL HOSPITAL

P4988




P4989

20-20566.2123

BRUNSTING001022

E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 9 | E | 75.00 | 1976 / 10 | 356.01 | 299.76 |
| 10 | E | 75.00 | 1976 / 11 | 359.49 | 303.24 |
| 11 | E | 75.00 | 1976 / 12 | 360.51 | 304.26 |
| 12 | E | 100.00 | 1976 / 08 | 474.68 | 399.68 |
| 13 | E | 200.00 | 1976 / 01 | 957.28 | 807.28 |
| 14 | E | 200.00 | 1976 / 02 | 957.28 | 807.28 |
| 15 | E | 200.00 | 1976 / 03 | 957.28 | 807.28 |
| 16 | E | 200.00 | 1976 / 04 | 957.28 | 807.28 |

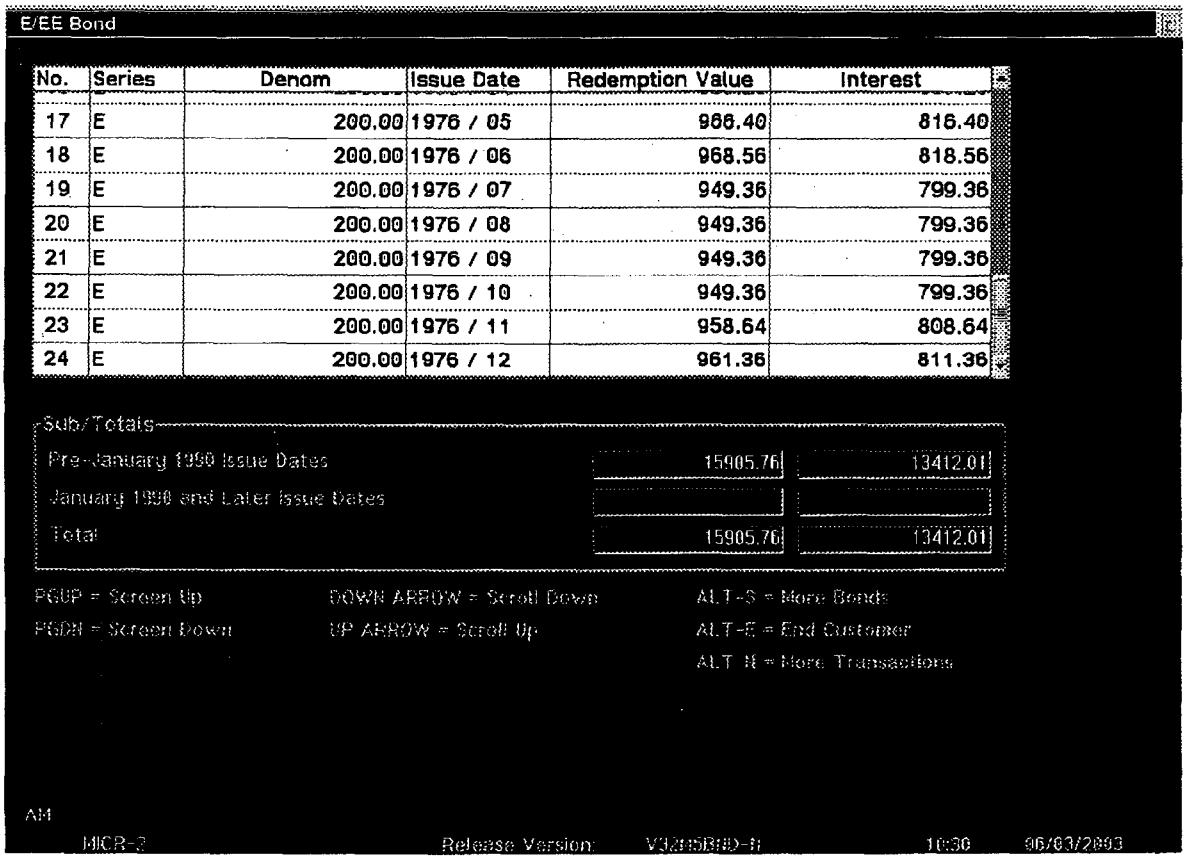
Sub/Totals

| | | |
|---|---|---|
| Pre-January 1998 Issue Dates | 15905.76 | 13412.01 |
| January 1998 and Later Issue Dates | | |
| Total | 15905.76 | 13412.01 |

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM
MICR-2 Release Version: V32M5BNB-N 10:30 06/03/2003

P4990



E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 17 | E | 200.00 | 1976 / 05 | 966.40 | 816.40 |
| 18 | E | 200.00 | 1976 / 06 | 968.56 | 818.56 |
| 19 | E | 200.00 | 1976 / 07 | 949.36 | 799.36 |
| 20 | E | 200.00 | 1976 / 08 | 949.36 | 799.36 |
| 21 | E | 200.00 | 1976 / 09 | 949.36 | 799.36 |
| 22 | E | 200.00 | 1976 / 10 | 949.36 | 799.36 |
| 23 | E | 200.00 | 1976 / 11 | 958.64 | 808.64 |
| 24 | E | 200.00 | 1976 / 12 | 961.36 | 811.36 |

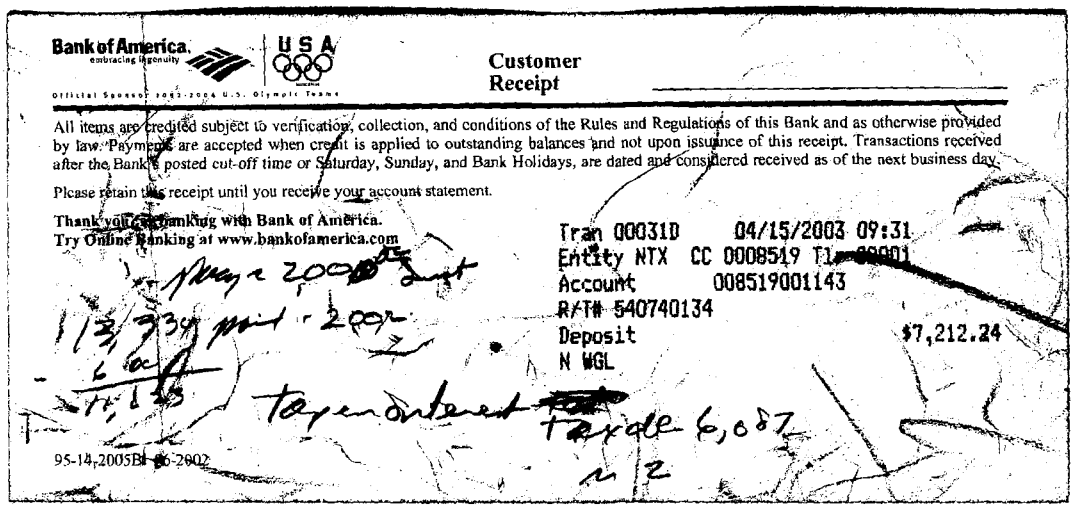
Sub/Totals

| | | |
|---|---|---|
| Pre-January 1998 Issue Dates | 15905.76 | 13412.01 |
| January 1998 and Later Issue Dates | | |
| Total | 15905.76 | 13412.01 |

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-R = More Transactions

AM
MICR-2 Release Version: V32R5B1D-R 10:30 06/03/2003

P4991



Bank of America
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USA

Official Sponsor 2003-2004 U.S. Olympic Teams

**Customer Receipt**

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Please retain this receipt until you receive your account statement.

**Thank you for banking with Bank of America.**
**Try Online Banking at www.bankofamerica.com**

Tran 000310 04/15/2003 09:31
Entity NTX CC 0008519 TL [illegible]
Account 008519001143
R/T# 540740134
Deposit $7,212.24
N WGL

95-14,2005BI 06-2002

E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 4 | E | 200.00 | 1975 / 09 | 964.80 | 814.80 |
| 5 | E | 200.00 | 1975 / 08 | 964.80 | 814.80 |
| 6 | E | 200.00 | 1975 / 07 | 964.80 | 814.80 |
| 7 | E | 75.00 | 1975 / 12 | 358.95 | 302.70 |
| 8 | E | 75.00 | 1975 / 11 | 358.17 | 301.92 |
| 9 | E | 50.00 | 1975 / 10 | 241.20 | 203.70 |
| 10 | E | 50.00 | 1975 / 09 | 241.20 | 203.70 |
| 11 | E | 50.00 | 1975 / 08 | 241.20 | 203.70 |

Sub/Totals

| | | |
|---|---|---|
| Pre-January 1990 Issue Dates | 7212.24 | 6087.24 |
| January 1990 and Later Issue Dates | | |
| Total | 7212.24 | 6087.24 |

PGUP = Screen Up
PGDN = Screen Down
DOWN ARROW = Scroll Down
UP ARROW = Scroll Up
ALT-S = More Bonds
ALT-E = End Customer
ALT-N = More Transactions

AM
MICR-2 Release Version: V32H408T-N 09:26 04/15/2003

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E/EE Bond

| No. | Series | Denom | Issue Date | Redemption Value | Interest |
|---|---|---|---|---|---|
| 1 | E | 200.00 | 1975 / 12 | 957.20 | 807.20 |
| 2 | E | 200.00 | 1975 / 11 | 955.12 | 805.12 |
| 3 | E | 200.00 | 1975 / 10 | 964.80 | 814.80 |
| 4 | E | 200.00 | 1975 / 09 | 964.80 | 814.80 |
| 5 | E | 200.00 | 1975 / 08 | 964.80 | 814.80 |
| 6 | E | 200.00 | 1975 / 07 | 964.80 | 814.80 |
| 7 | E | 75.00 | 1975 / 12 | 358.95 | 302.70 |
| 8 | E | 75.00 | 1975 / 11 | 358.17 | 301.92 |

Sub/Totals

| | | |
|---|---|---|
| Pre-January 1998 Issue Dates | 7212.24 | 6087.24 |
| January 1998 and Later Issue Dates | | |
| Total | 7212.24 | 6087.24 |

PGUP = Screen Up DOWN ARROW = Scroll Down ALT-S = More Bonds

PGDN = Screen Down UP ARROW = Scroll Up ALT-E = End Customer

ALT-N = More Transactions

AM

MCR-2 Release Version: V32N408T-N 05:26 04/15/2003

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Interest Paid every 6 mo. So turn in on Anniversary or 6 mo later.

**INTEREST RATES FOR SERIES HH AND H SAVINGS BONDS**
**(Table good for March 1997 only)**

| Issue Date | Original Maturity Period | Interest Through Current Maturity Period[1] | Date Next Extended Maturity Period Begins | Life of Bond |
|---|---|---|---|---|
| **SERIES HH** | | | | |
| Mar. 1993-Mar. 1997 | 10 yrs. | 4.0 | Mar. 2003-Mar. 2007 | 20 yrs. |
| Apr. 1987-Feb. 1993 | 10 yrs. | 6.0 | Apr. 1997-Feb. 2003 | 20 yrs. |
| Mar. 1983-Mar. 1987 | 10 yrs. | 4.0 | [2] | 20 yrs. |
| Jan. 1980-Feb. 1983 | 10 yrs. | 6.0 | [2] | 20 yrs. |
| **SERIES H** | | | | |
| Apr. 1977-Dec. 1979 | 10 yrs. | 6.0 | Apr. 1997-Dec. 1999 | 30 yrs. |
| Mar. 1973-Mar. 1977 | 10 yrs. | 4.0 | [2] | 30 yrs. |
| Apr. 1967-Feb. 1973 | 10 yrs. | 6.0 | [2] | 30 yrs. |
| Feb. 1957-Mar. 1967 | | Bonds reached final maturity at | | 30 yrs. |
| June 1952-Jan. 1957 | 9 yrs,8mos. | Bonds reached final maturity at | | 29 yrs,8mos. |

[1] Bonds that entered an extended maturity period between November 1, 1986 and February 28, 1993 have a rate of 6%. Bonds entering maturities after March 1, 1993 have a 4% rate.

[2] Bonds issued during this period are in their last extended maturity period.

## GUARANTEED MINIMUM RATES FOR SERIES EE AND E SAVINGS BONDS AND U.S. SAVINGS NOTES ISSUED BEFORE MAY 1, 1995[1]

(Table good for March 1997 only)

| Issue Date | Original Maturity Period | Guaranteed Through Current Maturity Period[2] | Date Next Extended Maturity Period Begins | Life of Bond |
|---|---|---|---|---|
| **SERIES EE** | | | | |
| Mar. 1993-Apr. 1995 | 18 yrs. | 4.0 | Mar. 2011-Apr. 2013 | 30 yrs. |
| Nov. 1986-Feb. 1993 | 12 yrs. | 6.0 | Nov. 1998-Feb. 2005 | 30 yrs. |
| Mar. 1983-Oct. 1986 | 10 yrs. | 4.0 | Mar. 2003-Oct. 2006 | 30 yrs. |
| Nov. 1982-Feb. 1983 | 10 yrs. | 6.0 | Nov. 2002-Feb. 2003 | 30 yrs. |
| May 1981-Oct. 1982 | 8 yrs. | 6.0 | May 1999-Oct. 2000 | 30 yrs. |
| Nov. 1980-Apr. 1981 | 9 yrs. | 6.0 | Nov. 1999-Apr. 2000 | 30 yrs. |
| Jan. 1980-Oct. 1980 | 11 yrs. | 6.0 | Jan. 2001-Oct. 2001 | 30 yrs. |
| **SERIES E** | | | | |
| Mar. 1978-June 1980 | 5 yrs. | 4.0 | Mar. 2003-June 2005 | 30 yrs. |
| Dec. 1973-Feb. 1978 | 5 yrs. | 6.0 | Dec. 1998-Feb. 2003 | 30 yrs. |
| June 1971-Nov. 1973 | 5 yrs.10 mos. | 6.0 | Apr. 1997-Sep. 1999 | 30 yrs. |
| June 1969-May 1971 | 5 yrs.10 mos. | 4.0 | [3] | 30 yrs. |
| Apr. 1967-May 1969 | 7 yrs. | 4.0 | [3] | 30 yrs. |
| Dec. 1965-Mar. 1967 | | Bonds reached final maturity at | | 30 yrs. |
| June 1965-Nov. 1965 | 7 yrs. 9 mos. | 4.0 | Mar. 2003-Aug. 2003 | 40 yrs. |
| July 1959-May 1965 | 7 yrs. 9 mos. | 6.0 | Apr. 1997-Feb. 2003 | 40 yrs. |
| June 1959-June 1959 | 7 yrs. 9 mos. | 4.0 | [3] | 40 yrs. |
| May 1958-May 1959 | 8 yrs.11 mos. | 6.0 | Apr. 1997-Apr. 1998 | 40 yrs. |
| Apr. 1957-Apr. 1958 | 8 yrs.11 mos. | 4.0 | [3] | 40 yrs. |
| May 1941-Mar. 1957 | | Bonds reached final maturity at | | 40 yrs. |
| **SAVINGS NOTES** | | | | |
| Sep. 1968-Oct. 1970 | 4 yrs. 6 mos. | 4.0 | [3] | 30 yrs. |
| May 1967-Aug. 1968 | 4 yrs. 6 mos. | 6.0 | [3] | 30 yrs. |

[1] Bonds issued on or after May 1, 1995 earn interest under a market-based structure.

[2] Bonds that entered an extended maturity period between November 1, 1986 and February 28, 1993 have a guaranteed minimum rate of 6%. Bonds entering maturities after March 1, 1993 have a 4% minimum rate. Investors should remember that this table shows minimum rates only. Actual bond yields may be different because bonds earn market-based rates.

[3] Bonds issued during this period are in their last extended maturity period.

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## INTEREST RATES FOR SERIES HH AND H SAVINGS BONDS
(Table good for April 1997 only)

| Issue Date | Original Maturity Period | Interest Through Current Maturity Period[1] | Date Next Extended Maturity Period Begins | Life of Bond |
|---|---|---|---|---|
| **SERIES HH** | | | | |
| Mar. 1993-Apr. 1997 | 10 yrs. | 4.0 | Mar. 2003-Apr. 2007 | 20 yrs. |
| May 1987-Feb. 1993 | 10 yrs. | 6.0 | May 1997-Feb. 2003 | 20 yrs. |
| Mar. 1983-Apr. 1987 | 10 yrs. | 4.0 | [2] | 20 yrs. |
| Jan. 1980-Feb. 1983 | 10 yrs. | 6.0 | [2] | 20 yrs. |
| **SERIES H** | | | | |
| May 1977-Dec. 1979 | 10 yrs. | 6.0 | May 1997-Dec. 1999 | 30 yrs. |
| Mar. 1973-Apr. 1977 | 10 yrs. | 4.0 | [2] | 30 yrs. |
| May 1967-Feb. 1973 | 10 yrs. | 6.0 | [2] | 30 yrs. |
| Feb. 1957-Apr. 1967 | | Bonds reached final maturity at | | 30 yrs. |
| June 1952-Jan. 1957 | 9 yrs, 8mos. | Bonds reached final maturity at | | 29 yrs, 8mos. |

[1] Bonds that entered an extended maturity period between November 1, 1986 and February 28, 1993 have a rate of 6%. Bonds entering maturities after March 1, 1993 have a 4% rate.

[2] Bonds issued during this period are in their last extended maturity period.

## GUARANTEED MINIMUM RATES FOR SERIES EE AND E SAVINGS BONDS AND U.S. SAVINGS NOTES ISSUED BEFORE MAY 1, 1995[1]

(Table good for April 1997 only)

| Issue Date | Original Maturity Period | Guaranteed Through Current Maturity Period[2] | Date Next Extended Maturity Period Begins | Life of Bond |
|---|---|---|---|---|
| **SERIES EE** | | | | |
| Mar. 1993-Apr. 1995 | 18 yrs. | 4.0 | Mar. 2011-Apr. 2013 | 30 yrs. |
| Nov. 1986-Feb. 1993 | 12 yrs. | 6.0 | Nov. 1998-Feb. 2005 | 30 yrs. |
| Mar. 1983-Oct. 1986 | 10 yrs. | 4.0 | Mar. 2003-Oct. 2006 | 30 yrs. |
| Nov. 1982-Feb. 1983 | 10 yrs. | 6.0 | Nov. 2002-Feb. 2003 | 30 yrs. |
| May 1981-Oct. 1982 | 8 yrs. | 6.0 | May 1999-Oct. 2000 | 30 yrs. |
| Nov. 1980-Apr. 1981 | 9 yrs. | 6.0 | Nov. 1999-Apr. 2000 | 30 yrs. |
| Jan. 1980-Oct. 1980 | 11 yrs. | 6.0 | Jan. 2001-Oct. 2001 | 30 yrs. |
| **SERIES E** | | | | |
| Mar. 1978-June 1980 | 5 yrs. | 4.0 | Mar. 2003-June 2005 | 30 yrs. |
| Dec. 1973-Feb. 1978 | 5 yrs. | 6.0 | Dec. 1998-Feb. 2003 | 30 yrs. |
| July 1971-Nov. 1973 | 5 yrs.10 mos. | 6.0 | May 1997-Sep. 1999 | 30 yrs. |
| June 1969-June 1971 | 5 yrs.10 mos. | 4.0 | [3] | 30 yrs. |
| May 1967-May 1969 | 7 yrs. | 4.0 | [3] | 30 yrs. |
| Dec. 1965-Apr. 1967 | | Bonds reached final maturity at | | 30 yrs. |
| June 1965-Nov. 1965 | 7 yrs. 9 mos. | 4.0 | Mar. 2003-Aug. 2003 | 40 yrs. |
| Aug. 1959-May 1965 | 7 yrs. 9 mos. | 6.0 | May 1997-Feb. 2003 | 40 yrs. |
| June 1959-July 1959 | 7 yrs. 9 mos. | 4.0 | [3] | 40 yrs. |
| June 1958-May 1959 | 8 yrs.11 mos. | 6.0 | May 1997-Apr. 1998 | 40 yrs. |
| May 1957-May 1958 | 8 yrs.11 mos. | 4.0 | [3] | 40 yrs. |
| May 1941-Apr. 1957 | | Bonds reached final maturity at | | 40 yrs. |
| **SAVINGS NOTES** | | | | |
| Sep. 1968-Oct. 1970 | 4 yrs. 6 mos. | 4.0 | [3] | 30 yrs. |
| May 1967-Aug. 1968 | 4 yrs. 6 mos. | 6.0 | [3] | 30 yrs. |

[1] Bonds issued on or after May 1, 1995 earn interest under a market-based structure.

[2] Bonds that entered an extended maturity period between November 1, 1986 and February 28, 1993 have a guaranteed minimum rate of 6%. Bonds entering maturities after March 1, 1993 have a 4% minimum rate. Investors should remember that this table shows minimum rates only. Actual bond yields may be different because bonds earn market-based rates.

[3] Bonds issued during this period are in their last extended maturity period.

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Minneapolis Minn.
1-800-563-2663

**Toll free number for Federal Reserve Bank in K.C. ~~1-800-333-2919~~.**

**United States Savings Bonds on hand:-**

**Series E - 1977 - all months - Expire 2007**
**$25-100-200 denomination**

**Series EE - 1978 - January - one $100** — Cashed www Treas Dallas.
**one $200 - Expire 2008**

**Series HH - 1988 - Nov. only $1000 - 2 bonds - Expire 2008** ?

**Series EE - 1981-From February to Dec. Expire 2011**
**All denominations**

**Series EE - 1982 - all months - up to $200 - Expire 2012**

**Series EE - 1983 -January through July - Expire - 2013**

KLM
1-800-374-7747
Request

Air France
phil

P5000

# Exhibit 20

Brad Featherston December 4, 2014 email re permission to cash EE bonds and deposit the funds

Brad's December 14, 2014 email received from Drina on March 28, 2015!

"To save all of our clients' the time and expense, please respond to this email with "Agreed" and your electronic signature, indicating your agreement that Anita may cash the listed bonds, deposit the proceeds into the Decedent's Trust BOA account, and then disburse 50% or the proceeds into the Survivor's Trust BOA account. Anita will supplement her production with such pape1work showing these transactions. This agreement is without prejudice to reallocating these funds if it is later determined that such bonds were not community property or should have some other allocation under the trust instruments. Very Truly Yours, Bradley E. Featherston The Mendel Law Firm, L.P. 115 5 Dairy Ashford, Ste 1 04 Houston, TX 77079 Tel: (281)759-3213 Fax: (281)759-3214 brad@mendellawfirm.com"

# Exhibit 21

Plaintiff Curtis Correspondence with US Treasury re; EE bonds

Can I find out if an EE/E Bond has already been redeemed?

If you have the serial numbers for EE/E Bonds, we can look up the status for you. If you are the owner or co-owner of the bonds, send a signed request to the address below. Be sure to include the serial numbers of the bonds you are asking about.

If the owner or both co-owners have died, you must provide proof such as a copy of the death certificate for each deceased person, with your letter.

Send your letter to:

Bureau of the Fiscal Service
P.O. Box 7012
Parkersburg, WV 26106-7012

Other written inquiries can be sent to that address. Any information you have about the bonds should be included.

28-30

NV

TreasuryDirect

# Redeeming (Cashing In) EE/E Savings Bonds

On this page:

When can I redeem my EE/E Bonds?
What are my EE/E Bonds worth?
How do I redeem my EE/E Bonds?
How do I authorize an attorney-in-fact to redeem my bonds?
How much can I redeem at one time?
What will I need to redeem a paper bond?
Will I get a form for my taxes?
Can I find out if my EE/E Bonds have already been redeemed?

## When can I redeem my EE/E Bonds?

After they are 12 months old.

If you redeem an EE Bond before it is five years old, you will lose the last three months of interest.

EE Bonds earn interest for 30 years, so the longer you hold on to the bond (up to 30 years), the more it is worth.

If you've been affected by a disaster, special provisions may apply.

All E bonds and some EE bonds have stopped earning interest and should be redeemed.

## What are my EE/E Bonds worth?

Use the Savings Bond Calculator.

**Note:** Savings bonds cannot be transferred. If you find a bond that belongs to someone else or buy a bond on an online auction site, you cannot redeem it. (If you inherit a bond through the death of the bond owner, see Death of a Registered Owner.)

## How do I redeem my EE/E Bonds?

| | |
|---|---|
| **Electronic bonds** | Log in to TreasuryDirect and follow the directions there. The cash amount can be credited to your checking or savings account within two business days of the redemption date. |
| **Paper bonds** | You can cash paper EE/E Bonds at many local financial institutions. We don't keep a list of banks that redeem bonds, so check with banks in your area.<br><br>More information for special situations:<br>Redeeming Bonds Outside the United States and<br>Redeeming a Young Child's Bond |

## How do I authorize an attorney-in-fact to redeem my bonds?

*For instructions, please see publication PD F 4 1 8 , "Power of Attorney: United States Savings Bonds & Notes."*

## How much can I redeem at one time?

| | |
|---|---|
| **Electronic bonds in your TreasuryDirect account** | No limit |
| **Paper bonds up to $1,000 (redemption value)** | With just the evidence described in the next section, "What will I need to redeem a paper bond?" |
| **Paper bonds -- $1,000 or more (redemption value)** | *As described in the next section "What will I need to redeem a paper bond?" Alternatively, you can:*<br>Have a certifying officer at a bank where you have an account certify your signature in each request for payment on the back of each bond.<br><br>Provide your Social Security Number.<br><br>Mail the bonds to the Treasury Retail Securities Site. |

## What will I need to redeem a paper bond?

Before taking in the bonds to redeem them, it's usually a good idea to check with the financial institution to find out what identification and other documents you'll need. When you present your paper bonds, you'll be asked to show your identity. You can do this by:

- being a customer with an active account open for at least 6 months at the financial institution that will be paying the bonds, or
- *presenting acceptable identification such as a valid driver's license if the redemption value of the bonds is less than* $1,000.

If you are not listed as the owner or co-owner on the bond, you'll have to show that you are entitled to cash in the bond.

## Will I get a form for my taxes?

Yes. IRS Form 1099-INT is provided for all redeemed bonds. The form may be available when you redeem your bond or after the end of the year.

| | |
|---|---|
| **Electronic bonds** | Log in to TreasuryDirect and go to ManageDirect. Form 1099-INT is one of the links on the ManageDirect page. |
| **Paper bonds** | The financial institution where you redeemed the bond will mail the form to the address on record for the bond owner. (Typically, this mailing takes place after the end of the year in which the bond is redeemed.) |

Can I find out if my EE/E Bonds... Translate

**CANDACE L. CURTIS**
218 Landana Street
American Canyon, CA 94503
(925) 759-9020
occurtis@sbcglobal.net

September 13, 2014

Bureau of the Fiscal Service
P.O. Box 7012
Parkersburg, WV 26106-7012

RE: EE/HH Bond Status Request

To Whom It May Concern:

My parents, Elmer H. and Nelva E. Brunsting, are both deceased. Their estate plan referenced EE bonds, and their financial records contained bond inventories and other bond related transaction records for both EE and HH bonds.

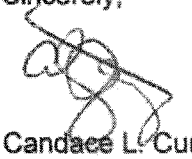
I have been unable to locate any of the bonds and it is unknown whether all of them had been cashed in before their demise.

I have enclosed copies of the death certificates, and a complete inventory of the bonds as of October 21, 1996.

If possible I would like to obtain a complete printout of transactions related to my parents' EE and HH bond accounts. If this information is not available, please provide the status of any bonds purchased starting in January 1981.

Please feel free to contact me if you have any questions or need further information.

Sincerely,



Candace L. Curtis

enclosures

# CERTIFICATION OF VITAL RECORD

## DEPARTMENT OF STATE HEALTH SERVICES
## VITAL STATISTICS UNIT

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS
ACT 49 2009

**STATE OF TEXAS** — **CERTIFICATE OF DEATH** — **STATE FILE NUMBER** 142-09-043770

| | |
|---|---|
| 1. LEGAL NAME OF DECEASED (Include AKA's, if any) (First, Middle, Last) | (Maiden) |
| ELMER H BRUNSTING | |
| 2. DATE OF DEATH (ACTUAL OR PRESUMED) | 04/01/2009 |
| 3. SEX | MALE |
| 4. DATE OF BIRTH | 09/29/1921 |
| 5. AGE-Last Birthday (Years) | 87 |
| If UNDER 1 YEAR (Months / Days) | |
| If UNDER 1 DAY (Hours / Min) | |
| 6. BIRTHPLACE (City & State or Foreign Country) | HULL IA |
| 7. SOCIAL SECURITY NUMBER | 282-32-8905 |
| 8. MARITAL STATUS AT TIME OF DEATH | ☒ Married ☐ Widowed ☐ Divorced ☐ Never Married ☐ Unknown |
| 9. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage) | NELVA RENSINK |
| 10a. RESIDENCE STREET ADDRESS | 13630 PINEROCK |
| 10b. APT. NO. | |
| 10c. CITY OR TOWN | HOUSTON |
| 10d. COUNTY | HARRIS |
| 10e. STATE | TEXAS |
| 10f. ZIP CODE | 77079 |
| 10g. INSIDE CITY LIMITS? | ☒ Yes ☐ No |
| 11. FATHER'S NAME | LUKE BRUNSTING |
| 12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE | GERTUDE RIKKERS |

13. PLACE OF DEATH (CHECK ONLY ONE)

IF DEATH OCCURRED IN A HOSPITAL: ☐ Inpatient ☐ ER/Outpatient ☐ DOA

IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: ☐ Hospice Facility ☐ Nursing Home ☒ Decedent's Home ☐ Other (Specify)

| | |
|---|---|
| 14. COUNTY OF DEATH | HARRIS |
| 15. CITY/TOWN, ZIP (IF OUTSIDE CITY LIMITS, GIVE PRECINCT NO.) | HOUSTON, 77079 |
| 16. FACILITY NAME (If not institution, give street address) | 13630 PINEROCK |
| 17. INFORMANT'S NAME & RELATIONSHIP TO DECEASED | NELVA BRUNSTING - WIFE |
| 18. MAILING ADDRESS OF INFORMANT (Street and Number, City, State, Zip Code) | 13630 PINEROCK, HOUSTON, TX 77079 |
| 19. METHOD OF DISPOSITION | ☒ Burial ☐ Cremation ☐ Donation ☐ Entombment ☐ Removal from state ☐ Other (Specify) |
| 20. SIGNATURE AND LICENSE NUMBER OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH | MARICELLA JIRON ,BY ELECTRONIC SIGNATURE - 113482 |
| 21. | ☐ Unknown |
| Section | 210 |
| Block | |
| Lot | 0010 |
| Space | 6A |
| 22. PLACE OF DISPOSITION (Name of cemetery, crematory, other place) | MEMORIAL OAKS CEMETERY |
| 23. LOCATION (City/Town, and State) | HOUSTON, TX |
| 24. NAME OF FUNERAL FACILITY | MEMORIAL OAKS FUNERAL HOME |
| 25. COMPLETE ADDRESS OF FUNERAL FACILITY (Street and Number, City, State, Zip Code) | 1300 I KATY FREEWAY, HOUSTON, TX 77079 |

26. CERTIFIER (Check only one)

☒ Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.

☐ Medical Examiner/Justice of the Peace - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.

| | | | |
|---|---|---|---|
| 27. SIGNATURE OF CERTIFIER | 28. DATE CERTIFIED (Mo/Day/Yr) | 29. LICENSE NUMBER | 30. TIME OF DEATH (Actual or presumed) |
| CYNTHIA ZINNER, BY ELECTRONIC SIGNATURE | 04/10/2009 | M3609 | 09:30 AM |

| | |
|---|---|
| 31. PRINTED NAME, ADDRESS OF CERTIFIER (Street and Number, City, State, Zip Code) | CYNTHIA ZINNER 1980 SOUTH DAIRY ASHFORD STE # 330, HOUSTON, TX 77077 |
| 32. TITLE OF CERTIFIER | MD |

CAUSE OF DEATH

33. PART I. ENTER THE CHAIN OF EVENTS - DISEASES, INJURIES, OR COMPLICATIONS - THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. DO NOT ABBREVIATE. ENTER ONLY ONE CAUSE ON EACH LINE.

| | | Approximate Interval Onset to death |
|---|---|---|
| IMMEDIATE CAUSE (Final disease or condition resulting in death) | a. DEMENTIA, LIKELY VASCULAR TYPE | 3 YEARS |
| Due to (or as a consequence of): | | |
| Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST | b. | |
| Due to (or as a consequence of): | | |
| | c. | |
| Due to (or as a consequence of): | | |
| | d. | |

34. PART II. ENTER OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART I.

CHRONIC LYMPHOCYTIC LEUKEMIA, CORONARY ARTERY DISEASE, REMOTE PROSTATE CANCER, HYPERLIPIDEMIA

34. WAS AN AUTOPSY PERFORMED? ☐ Yes ☒ No

35. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? ☐ Yes ☐ No

| | | | |
|---|---|---|---|
| 36. MANNER OF DEATH | 37. DID TOBACCO USE CONTRIBUTE TO DEATH? | 38. IF FEMALE | 39. IF TRANSPORTATION INJURY, SPECIFY: |
| ☒ Natural ☐ Accident ☐ Suicide ☐ Homicide ☐ Pending Investigation ☐ Could not be determined | ☐ Yes ☒ No ☐ Probably ☐ Unknown | ☐ Not pregnant within past year ☐ Pregnant at time of death ☐ Not pregnant, but pregnant within 42 days of death ☐ Not pregnant, but pregnant 43 days to one year before death ☐ Unknown if pregnant within the past year | ☐ Driver/Operator ☐ Passenger ☐ Pedestrian ☐ Other (Specify) |

| | | | | |
|---|---|---|---|---|
| 40a. DATE OF INJURY (Mo/Day/Yr) | 40b. TIME OF INJURY | 40c. INJURY AT WORK? ☐ Yes ☐ No | 40d. PLACE OF INJURY (e.g. Decedent's home, construction site, residential, wooded area) | |
| 40e. LOCATION (Street and Number, City, State, Zip Code) | | | 40f. COUNTY OF INJURY | |

41. DESCRIBE HOW INJURY OCCURRED

| | | |
|---|---|---|
| 42a. REGISTRAR FILE NO. | 42b. DATE RECEIVED BY LOCAL REGISTRAR | 42c. REGISTRAR |
| 0206214 | 04/28/2009 | REGISTRAR - CITY OF HOUSTON, ELECTRONICALLY FILED |

EDR NUMBER 000000554436

VS-112 REV 12/2006

WARNING: It is a felony for anyone to knowingly make a false statement on this form and can be fined up to $10,000, (Health and Safety Code, Sec. 194, 489)

a 0029957 6

AME

This is a true and correct reproduction of the original record as recorded in this office. Issued under authority of Section 191.051, Health and Safety Code.

ISSUED MAR 10 2011

Geraldine R. Harris

GERALDINE R. HARRIS
STATE REGISTRAR

WARNING: THIS DOCUMENT HAS A DARK BLUE BORDER AND A COLORED BACKGROUND

# CERTIFICATION OF VITAL RECORD

## DEPARTMENT OF STATE HEALTH SERVICES
## VITAL STATISTICS UNIT

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS
NOV 17 2011

**STATE OF TEXAS** — **CERTIFICATE OF DEATH** — **STATE FILE NUMBER 142-11-142463**

1. LEGAL NAME OF DECEASED (Include AKA's if any) (First, Middle, Last): NELVA E. BRUNSTING
(Suffix):
2. DATE OF DEATH (MM/DD/YYYY) ACTUAL OR PRESUMED: 11/11/2011
3. SEX: FEMALE
4. DATE OF BIRTH (MM/DD/YYYY): 10/08/1926
5. AGE (Last Birthday) (Years): 85
Under 1 Year: Days / Hours / Min
6. BIRTHPLACE (City & State or Foreign Country): SHELDON, IA
7. SOCIAL SECURITY NUMBER: 461-30-4655
8. MARITAL STATUS AT TIME OF DEATH: [X] Widowed [ ] Divorced [ ] Never Married [ ] Unknown [ ] Married
9. SURVIVING SPOUSE'S NAME (If wife, give name prior to first marriage):
10a. RESIDENCE STREET ADDRESS: 13630 PINEROCK LANE
10b. APT NO.:
10c. CITY OR TOWN: HOUSTON
10d. COUNTY: HARRIS
10e. STATE: TEXAS
10f. ZIP CODE: 77079
10g. INSIDE CITY LIMITS? [X] Yes [ ] No
11. FATHER'S NAME: SYLVESTER RENSINK
12. MOTHER'S NAME PRIOR TO FIRST MARRIAGE: HARRIET KOOLBECK
13. PLACE OF DEATH (CHECK ONLY ONE)
IF DEATH OCCURRED IN A HOSPITAL: [X] Inpatient [ ] ER/Outpatient [ ] DOA
IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL: [ ] Hospice Facility [ ] Nursing Home [ ] Decedent's Home [ ] Other (Specify)
14. COUNTY OF DEATH: HARRIS
15. CITY OR TOWN, ZIP OR OUTSIDE CITY LIMITS (If Known): HOUSTON, 77055
16. FACILITY NAME (If not institution, give street address): SELECT SPECIALTY HOSPITAL - HOUSTON WEST
17. INFORMANT'S NAME & RELATIONSHIP TO DECEASED: CAROL BRUNSTING - DAUGHTER
18. MAILING ADDRESS OF INFORMANT (Street and Number, City, State, Zip Code): 6922 JASON ST., HOUSTON, TX 77074
19. METHOD OF DISPOSITION: [X] Burial [ ] Cremation [ ] Donation [ ] Entombment [ ] Removal from state [ ] Other (Specify)
20. SIGNATURE AND LICENSE NUMBER OF FUNERAL DIRECTOR OR PERSON ACTING AS SUCH: ARACELI J GALINDO ,BY ELECTRONIC SIGNATURE - 114721
21. [ ] Unknown — Section: 314, Block:, Lot: 24, Space:
22. PLACE OF DISPOSITION (Name of cemetery, crematory, other place): MEMORIAL OAKS CEMETERY
23. LOCATION (City, Town, and State): HOUSTON,TX
24. NAME OF FUNERAL FACILITY: MEMORIAL OAKS FUNERAL HOME
25. COMPLETE ADDRESS OF FUNERAL FACILITY (Street and Number, City, State, Zip Code): 12001 KATY FREEWAY, HOUSTON, TX 77079
26. CERTIFIER (Check only one)
[X] Certifying physician-To the best of my knowledge, death occurred due to the cause(s) and manner stated.
[ ] Medical Examiner/Justice of the Peace - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date and place, and due to the cause(s) and manner stated.
27. SIGNATURE OF CERTIFIER: JERSON CADENAS , BY ELECTRONIC SIGNATURE
28. DATE CERTIFIED (MM/DD/YY): 11/13/2011
29. LICENSE NUMBER: N3531
30. TIME OF DEATH (Actual or presumed): 04:50 PM
31. PRINTED NAME, ADDRESS OF CERTIFIER (Street and Number, City, State, Zip Code): JERSON CADENAS 4545 POST OAK PLACE #130, HOUSTON, TX 77027-3133
32. TITLE OF CERTIFIER: MD

**CAUSE OF DEATH**

33. PART I. ENTER THE CHAIN OF EVENTS - DISEASES, INJURIES, OR COMPLICATIONS - THAT DIRECTLY CAUSED THE DEATH. DO NOT ENTER TERMINAL EVENTS SUCH AS CARDIAC ARREST, RESPIRATORY ARREST, OR VENTRICULAR FIBRILLATION WITHOUT SHOWING THE ETIOLOGY. DO NOT ABBREVIATE. ENTER ONLY ONE CAUSE ON EACH LINE.
Approximate Interval: Onset to death
Immediate Cause (Final disease or condition resulting in death): a. RESPIRATORY FAILURE
Due to (or as a consequence of):
Sequentially list conditions, if any, leading to the cause listed on line a. Enter the UNDERLYING CAUSE (disease or injury that initiated the events resulting in death) LAST: b. METASTATIC BILIARY CANCER
Due to (or as a consequence of):
c. SEVERE PROTEIN CALORIE MALNUTRITION
Due to (or as a consequence of):
d. SEPTIC SHOCK

PART II. ENTER OTHER SIGNIFICANT CONDITIONS CONTRIBUTING TO DEATH BUT NOT RESULTING IN THE UNDERLYING CAUSE GIVEN IN PART I: ADULT FAILURE TO THRIVE

34. WAS AN AUTOPSY PERFORMED? [ ] Yes [X] No
35. WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? [ ] Yes [ ] No
36. MANNER OF DEATH: [X] Natural [ ] Accident [ ] Suicide [ ] Homicide [ ] Pending Investigation [ ] Could not be determined
37. DID TOBACCO USE CONTRIBUTE TO DEATH? [ ] Yes [ ] No [ ] Probably [X] Unknown
38. IF FEMALE: [X] Not pregnant within past year [ ] Pregnant at time of death [ ] Not pregnant, but pregnant within 42 days of death [ ] Not pregnant, but pregnant 43 days to one year before death [ ] Unknown if pregnant within the past year
39. IF TRANSPORTATION INJURY, SPECIFY: [ ] Driver/Operator [ ] Passenger [ ] Pedestrian [ ] Other (Specify)
40a. DATE OF INJURY (MM/DD/YY):
40b. TIME OF INJURY:
40c. INJURY AT WORK? [ ] Yes [ ] No
40d. PLACE OF INJURY (e.g. Decedent's home, construction site, restaurant, wooded area):
40e. LOCATION (Street and Number, City, State, Zip Code):
40f. COUNTY OF INJURY:
41. DESCRIBE HOW INJURY OCCURRED:
42a. REGISTRAR FILE NO.: 0217344
42b. DATE RECEIVED BY LOCAL REGISTRAR: 11/17/2011
42c. REGISTRAR: REGISTRAR - CITY OF HOUSTON, ELECTRONICALLY FILED

JHE

EDR NUMBER 00000104626

VS-112 REV 1/2006

WARNING: The penalty for knowingly making a false statement on this form can be 2-10 years imprisonment and a fine up to $10,000 (Health and Safety Code, Sec. 195.003)

TEXAS DEPARTMENT OF STATE HEALTH SERVICES - VITAL STATISTICS UNIT

QA00249697

This is a true and correct reproduction of the original record as recorded in this office. Issued under authority of Section 191.051, Health and Safety Code.

ISSUED NOV 18 2011

GERALDINE R. HARRIS
STATE REGISTRAR

WARNING: THIS DOCUMENT HAS A DARK BLUE BORDER AND A COLORED BACKGROUND

STATE OF TEXAS

DEPARTMENT OF STATE HEALTH SERVICES

PD F 1851
Department of the Treasury
Bureau of the Public Debt
(Revised February 1995)

OMB No. 1535-0009

# REQUEST FOR REISSUE OF UNITED STATES SAVINGS BONDS/NOTES IN NAME OF TRUSTEE OR PERSONAL TRUST ESTATE

*IMPORTANT: Follow instructions in filling out this form. You should be aware that the making of any false, fictitious or fraudulent claim to the United States is a crime punishable by imprisonment of not more than five years or a fine up to $250,000, or both, under 18 U.S.C. 287 and 18 U.S.C. 3571. Additionally, 31 U.S.C. 3729 provides for civil penalties for the maker of a false or fraudulent claim to the United States of an amount not less than $5,000 and not more than $10,000, plus treble the amount of the Government's damages as an additional sanction.*

PRINT IN INK OR TYPE ALL INFORMATION

TO: Federal Reserve Bank

**BEFORE FILLING OUT THIS FORM, READ TAX LIABILITY NOTICE ON PAGE 3**

**(The applicable statement(s) below MUST be completed. Failure to furnish this information could cause rejection of the transaction. See instructions.)**

1. I (we) hereby (request) reissue of the bonds described on the reverse hereof in the form set out in item 7 below to the extent of $ 38,025 (face amount).

2. In support of this request, I (we severally) certify that the trust estate described in item 7 below is a personal trust estate as defined in item 1 of the instructions on page 3 of this form, and

   a. ☒ was created by ELMER H. BRUNSTING & NELVA E. BRUNSTING
   (Name(s) of owner, coowner, or both coowners creating trust)

   b. ☐ was created by some other person and

   (i) ☐ I am (one of us is) a beneficiary of the trust.

   (ii) ☐ _____ (Name), a beneficiary of the trust, is related to _____ (Name of owner or coowner) as _____ (Give exact relationship)

3. You must check box a. or b. (SEE "TAX LIABILITY" SECTION OF INSTRUCTIONS):

   a. ☒ I (we) certify that, for federal income tax purposes, I (we) will be treated as owner(s) of the portion of the trust represented by any tax-deferred accumulated interest on the surrendered bonds.

   OR

   b. ☐ I (we) certify that, for federal income tax purposes, I (we) will not be treated as owner(s) of the portion of the trust represented by any tax-deferred accumulated interest on the surrendered bonds, and therefore, I (we) will include the tax-deferred accumulated interest in gross income for the taxable year in which the bonds are reissued to the trust. I (we) am aware that a 1099 INT will be issued and the interest will be reported to the Internal Revenue Service by the agent that processes the transactions. The interest which will be reported includes deferred interest on H/HH bonds as well as interest earned on E/EE bonds from the issue date until the date of reissue.

4. ELMER H. BRUNSTING & NELVA E. BRUNSTING are the trustee/co-trustees of the trust.

5. The trust was created on OCTOBER 10, 1996 (Month/Day/Year) EBB 10/29/96

6. ELMER H. BRUNSTING (Name of coowner), whose Social Security Account number is 282-32-5905, is the principal coowner of any bonds registered in coownership form submitted herewith. He/she is responsible for any tax liability arising from the reissue transaction requested herein. (A principal coowner is a coowner who (1) purchased the bonds with his or her own funds or (2) received them as a gift, inheritance or legacy, or as a result of judicial proceedings, and has them reissued in coownership form, provided her or she has received no contribution in money or money's worth for designating the other person as coowner on the bonds. Both registrants are considered to be coowners when bonds are registered in the form "A" or "B") 10/29/96

7. Form in which bonds are to be reissued. ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.
13630 PINEROCK, HOUSTON TX 77079
(Address)

(Taxpayer Identifying number Assigned to Trust) ☐☐-☐☐☐☐☐☐☐ (Employer Identification Number) 282-32-5905 (Social Security Account Number)

If the new bonds are not to be delivered to address shown above, deliver them to:
ELMER H. BRUNSTING (Name)
13630 PINEROCK (Street Address)
HOUSTON (City or town) TX (State) 77079 (ZIP Code)

OWNER AND OTHER REGISTRANTS MUST SIGN AND HAVE THEIR SIGNATURE CERTIFIED ON PAGE 2

SEE INSTRUCTIONS FOR PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

P1182

Under penalty of perjury, I, the undersigned grantor (creator) of the trust, certify that the above taxpayer identification number assigned to the trust is correct; and that I am not subject to backup withholding either (i) because I have not been notified that I am subject to backup withholding (as a result of a failure to report all interest or dividends), or (ii) because I have been notified by the Internal Revenue Service that I am no longer subject to backup withholding. I further certify that the trust estate is not subject to backup withholding for one of the aforesaid reasons. (See Item 3 of the instructions on page 3.) (If an employer identification number, i.e., 12-3456789, has been assigned to the trust estate, then the trustee must furnish an I.R.S. Form W-9.)

Elmer H Brunsting
(Signature of Owner or coowner)
13630 Pinerock, Houston TX 77075
(Home Address)
282 32-8905
(Social Security Account Number)
(713) 464 4391
Daytime Telephone Number

Nelva E. Brunsting
(Signature of coowner or beneficiary)
13630 Pinerock
(Home Address)
481-30-4685
(Social Security Account Number)
(713) 464-4391
Daytime Telephone Number

I CERTIFY that ELMER H BRUNSTING, whose identity is well-known or proved to me, personally appeared before me this 31 day of October, 1996 at Houston TX (City or State) and signed the above request, acknowledging the same to be a free act and deed.

BANK OF AMERICA TEXAS
TELLER # 001
(OFFICIAL STAMP OR SEAL)
OCT 21 1996
BRANCH # 08519
TOWN & COUNTRY

Cathy Sue Bowler CSM
(Signature and title of certifying officer)
701 Town & Country
(Address)
Houston TX 77024

I CERTIFY that NELVA E BRUNSTING, whose identity is well-known or proved to me, personally appeared before me this 31 day of October, 1996 at Houston TX (City or State) and signed the above request, acknowledging the same to be a free act and deed.

BANK OF AMERICA TEXAS
TELLER # 001
(OFFICIAL STAMP OR SEAL)
OCT 21 1996
BRANCH # 08519
TOWN & COUNTRY

Cathy Sue Bowler
(Signature and title of certifying officer)
701 Town & Country
(Address)
Houston TX 77024

## RESERVED FOR IDENTIFICATION NOTATIONS

☐ Customer Account Number and Date Established: Document(s) - Description: _____

☐ Identified by (Signature and Address): _____

## FOR OFFICIAL USE ONLY

☐ This transaction was a taxable event

$ _____ was reported under _____ (Social Security Account Number) for _____ (Year).

☐ This transaction was not a taxable event. No interest was reported.

## DESCRIPTION OF UNITED STATES SAVINGS BONDS PRESENTED AND SURRENDERED

| ISSUE DATE | DENOMINATION (FACE AMOUNT) | SERIAL NUMBER | INSCRIPTION (Please type or print names, including middle names or initials, social security account number, if any, and addresses as inscribed on the bonds.) |
|---|---|---|---|
| ALL INFORMATION IS LISTED ON THE ATTACHED 8 PAGES | | | |

(If space is insufficient, use sheet on page 4, sign it and refer to it above - or use PD F 3500 for this purpose.)

(2)

P1183

BRUNSTING001612
20-20566.2144

DESCRIPTIONS OF UNITED STATES SAVINGS BONDS PRESENTED AND SURRENDERED

| ISSUE DATE | DENOMINATION | SERIAL NUMBER | INSCRIPTION |
|---|---|---|---|
| JAN 1968 | 25 | Q2323610188E | ELMER H. BRUNSTING OR |
| JAN 1968 | 100 | C488366018E | NELVA E BRUNSTING |
| FEB 1968 | 100 | C488381553E | DITTO |
| MARCH 1968 | 100 | C487597606E | DITTO |
| JULY 1968 | 100 | C492930507E | DITTO |
| AUG 1968 | 25 | Q2369597957E | DITTO |
| AUG 1968 | 100 | C495526689E | DITTO |
| SEPT 1968 | 25 | Q2376239798E | DITTO |
| SEPT 1968 | 100 | C495554472E | DITTO |
| OCT 1968 | 25 | Q2376412853E | DITTO |
| OCT 1968 | 100 | C495571546E | DITTO |
| NOV 1968 | 25 | Q2382934338E | DITTO |
| NOV 1968 | 100 | C496529219E | DITTO |
| DEC 1968 | 100 | C496545465E | DITTO |
| DEC 1968 | 25 | Q2389590020E | DITTO |
| JAN 1969 | 25 | Q2402769422E | ELMER H BRUNSTING |
| JAN 1969 | 100 | C497448486E | NELVA E BRUNSTING |
| FEB 1969 | 25 | Q2409958642E | DITTO |
| FEB 1969 | 100 | C499254901E | DITTO |
| MARCH 1969 | 50 | L757031560E | DITTO |
| MARCH 1969 | 100 | C499266790E | DITTO |
| APRIL 1969 | 25 | Q2422715395E | DITTO |
| APRIL 1969 | 100 | C499274128E | DITTO |
| MAY 1969 | 50 | L763056023E | DITTO |
| MAY1969 | 100 | C5022244708E | DITTO |
| JUNE 1969 | 50 | L766519117E | DITTO |
| JUNE 1969 | 100 | C502238466E | DITTO |
| JULY 1969 | 25 | Q2440232983E | DITTO |
| JULY 1969 | 100 | C502260677E | DITTO |
| AUG 1969 | 50 | L772779399E | DITTO |
| AUG 1969 | 100 | C504859197E | DITTO |
| SEPT 1969 | 50 | L775389203E | DITTO |
| SEPT 1969 | 100 | C5048833348E | DITTO |
| OCT 1969 | 25 | Q2468249697E | DITTO |
| OCT 1969 | 100 | C506399101E | DITTO |
| NOV 1969 | 50 | L777324452E | DITTO |
| NOV 1969 | 100 | C506442126E | DITTO |
| DEC 1969 | 25 | Q2476363422E | DITTO |
| DEC 1969 | 100 | C506449027E | DITTO |
| JAN 1970 | 50 | L779356396E | ELMER H BRUNSTING OR |
| JAN 1970 | 100 | C507351868E | NELVA E BRUNSTING |
| FEB 1970 | 25 | Q2489045403E | DITTO |
| FEB 1970 | 100 | C507371517E | DITTO |
| MARCH 1970 | 50 | L781533895E | DITTO |

PAGE2

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|---|---|---|---|
| MARCH 1970 | 100 | C509742914E | DITTO |
| APRIL 1970 | 50 | L781622843E | DITTO |
| APRIL 1970 | 100 | C513299043E | DITTO |
| MAY 1970 | 50 | LL781689413E | DITTO |
| MAY 1970 | 100 | C513338157E | DITTO |
| JUNE 1970 | 50 | L781840738E | DITTO |
| JUNE 1970 | 100 | C513377785E | DITTO |
| JULY 1970 | 50 | L794088310E | DITTO |
| JULY 1970 | 100 | C513404100E | DITTO |
| AUG 1970 | 50 | L796803115E | DITTO |
| AUG 1970 | 100 | C 515732747E | DITTO |
| SEPT 1970 | 25 | Q2528750393E | DITTO |
| SEPT 1970 | 100 | C515801272E | DITTO |
| OCT 1970 | 50 | L801969302E | DITTO |
| OCT 1970 | 100 | C515833390E | DITTO |
| NOV 1970 | 50 | L802022535E | DITTO |
| NOV 1970 | 100 | C515886588E | DITTO |
| DEC 1970 | 50 | L807326463E | DITTO |
| DEC 1970 | 100 | C 515436590E | DITTO |
| JAN 1971 | 50 | L807366168E | ELMER H BRUNSTING OR |
| JAN 1971 | 100 | C518450821E | NELVA BRUNSTING |
| FEB 1971 | 50 | L812941238E | DITTO |
| FEB 1971 | 100 | C518516321E | DITTO |
| MARCH 1971 | 50 | L815611153E | DITTO |
| MARCH1971 | 100 | C522495921E | DITTO |
| APRIL 1971 | 50 | L817774095E | DITTO |
| APRIL 1971 | 100 | C523365879E | DITTO |
| MAY 1971 | 75 | K14200621E | DITTO |
| MAY 1971 | 100 | C523483834E | DITTO |
| JUNE 1971 | 75 | K14670394E | DITTO |
| JUNE 1971 | 100 | C526107354E | DITTO |
| JULY 1971 | 50 | L819574435E | DITTO |
| JULY 1971 | 100 | C528427319E | DITTO |
| AUG 1971 | 75 | K15016278E | DITTO |
| AUG 1971 | 100 | C529794380E | DITTO |
| SEPT 1971 | 50 | L825480119E | DITTO |
| SEPT 1971 | 100 | C529877212E | DITTO |
| OCT 1971 | 75 | K15187296E | DITTO |
| OCT 1971 | 100 | C529895593E | DITTO |
| NOV 1091 | 50 | L835532053E | DITTO |
| NOV 1971 | 100 | C531353752E | DITTO |
| DEC 1971 | 75 | K16443059E | DITTO |
| DEC 1971 | 100 | C534218555E | DITTO |
| JAN 1972 | 75 | K16841325E | ELMER H BRUNSTING OR |
| JAN 1972 | 100 | C 535345407E | NELVA E BRUNSTING |
| FEB 1972 | 50 | L1002342624E | DITTO |
| FEB 1972 | 100 | C536246756E | DITTO |



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|---|---|---|---|
| MARCH 1972 | 75 | K100205529E | DITTO |
| MARCH 1972 | 100 | C1001140610E | DITTO |
| APRIL 1972 | 75 | K100235027E | DITTO |
| APRIL 1972 | 100 | C1001188897E | DITTO |
| MAY 1972 | 75 | K100574825E | DITTO |
| MAY 1972 | 100 | C1004287178E | DITTO |
| JUNE 1972 | 75 | K100897353E | DITTO |
| JUNE 1972 | 100 | C1004370151E | DITTO |
| JULY 1972 | 75 | K100923508E | DITTO |
| JULY 1972 | 100 | C1005971762E | DITTO |
| AUG 1972 | 75 | K101226740E | DITTO |
| AUG 1972 | 100 | C1007854435E | DITTO |
| SEPT 1972 | 75 | K101234776E | DITTO |
| SEPT 1972 | 100 | C1009583723E | DITTO |
| OCT 1972 | 75 | K101497925E | DITTO |
| OCT 1972 | 100 | C1013424162E | DITTO |
| NOV 1972 | 75 | K101674271E | DITTO |
| NOV 1972 | 100 | C1014677804E | DITTO |
| DEC 1972 | 75 | K101717239E | DITTO |
| DEC 1972 | 100 | C1014769185E | DITTO |
| JAN 1973 | 100 | C1017412539E | ELMER H BRUNSTING OR |
| JAN 1973 | 100 | C1017412540E | NELVA E BRUNSTING |
| FEB 1973 | 75 | K103456625E | DITTO |
| FEB 9173 | 100 | C1019165387E | DITTO |
| MARCH 1973 | 100 | C1020967659E | DITTO |
| MARCH 1973 | 100 | C1020967660E | DITTO |
| APRIL 1973 | 75 | K103502429E | DITTO |
| APRIL 1973 | 100 | C1022725346E | DITTO |
| MAY 1973 | 100 | C1022743153E | DITTO |
| MAY 1973 | 100 | C1022743154E | DITTO |
| JUNE 9173 | 75 | K104260431E | DITTO |
| JUNE 1973 | 100 | C1024190568E | DITTO |
| JULY 1973 | 100 | C1025207524E | DITTO |
| JULY 1973 | 100 | C1025207525E | DITTO |
| AUG 1973 | 75 | K10450196OE | DITTO |
| AUG 1973 | 100 | C1026856168E | DITTO |
| SEPT1973 | 100 | C1028489865E | DITTO |
| SEPT 1973 | 100 | C1028489866E | DITTO |
| OCT 1973 | 75 | K105207666E | DITTO |
| OCT 1973 | 100 | C1030186694E | DITTO |
| NOV 1973 | 100 | C1031889677E | DITTO |
| NOV 1973 | 100 | C1031889678E | DITTO |
| DEC 1973 | 100 | C1031993682E | DITTO |
| DEC 1973 | 100 | C1031993683E | DITTO |
| JAN 1974 | 75 | K105609333E | ELMER H BRUNSTING OR |
| JAN 1974 | 100 | C1034862765E | NELVA E BRUNSTING |
| FEB 1974 | 75 | K106301025E | DITTO |

| | | | |
|---|---|---|---|
| FEB 1974 | 100 | C1037551320E | DITTO |
| MARCH 1974 | 100 | C1039590046E | DITTO |
| MARCH 1974 | 100 | C1039590047E | DITTO |
| APRIL 1974 | 100 | C1039616578E | DITTO |
| APRIL 1974 | 100 | C1039616579E | DITTO |
| MAY 1974 | 100 | C1040575108E | DITTO |
| MAY 1974 | 100 | C1040575109E | DITTO |
| JUNE 1094 | 100 | C1040666253E | DITTO |
| JUNE 1974 | 100 | C1040666254E | DITTO |
| JULY 1974 | 25 | Q5206129943E | DITTO |
| JULY 1974 | 100 | C1040699695E | DITTO |
| JULY 1974 | 100 | C1040699696E | DITTO |
| AUG 1094 | 25 | Q5207177764E | DITTO |
| AUG 1974 | 100 | C1042675840E | DITTO |
| AUG 1974 | 100 | C1042675841E | DITTO |
| SEPT 1974 | 25 | Q5212656678E | DITTO |
| SEPT 1974 | 100 | C1044277355E | DITTO |
| SEPT 1974 | 100 | C1044277356E | DITTO |
| OCT 1974 | 24 | Q5219890347E | DITTO |
| OCT 1974 | 200 | R104236199E | DITTO |
| NOV 1974 | 25 | Q5227328461E | DITTO |
| NOV 1974 | 200 | R1042380 66E | DITTO |
| DEC 1974 | 200 | R105532207E | DITTO |
| JAN 1975 | 200 | R105534602E | ELMER H BRUNSTING OR |
| FEB 1975 | 25 | Q5250876813E | NELVA E BRUNSTING |
| FEB 1975 | 200 | R105537285E | DITTO |
| MARCH 1975 | 50 | L1110504385E | DITTO |
| MARCH 1975 | 200 | R105552232E | DITTO |
| APRIL 1975 | 50 | L106550804 68E | DITTO |
| APRIL 1975 | 200 | R105555261E | DITTO |
| MAY 1975 | 50 | L20046344533E | DITTO |
| MAY 1975 | 200 | R200729202E | DITTO |
| JUNE 1975 | 25 | Q6011260745E | DITTO |
| JUNE 1975 | 200 | R200475099E | DITTO |
| JULY 1975 | 50 | L2008122240E | DITTO |
| JULY 1975 | 200 | R200478983E | DITTO |
| AUG 1975 | 50 | L2011260401E | DITTO |
| AUG 1975 | 200 | R201130474E | DITTO |
| SEPT 1975 | 50 | L2019145590E | DITTO |
| SEPT 1975 | 200 | R201134203E | DITTO |
| OCT 1975 | 50 | L2025225306E | DITTO |
| OCT 1975 | 200 | R201145065E | DITTO |
| NOV 1975 | 75 | K202269628E | DITTO |
| NOV 1975 | 200 | R201438781E | DITTO |
| DEC 1975 | 75 | K202852678E | DITTO |
| DEC 1975 | 200 | R202448340E | DITTO |

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|---|---|---|---|
| JAN1976 | 75 | K202864265E | ELMER H BRUNSTING OR |
| JAN 1976 | 200 | R202451895E | NELVA E BRUNSTING |
| FEB 1976 | 75 | K203112916E | DITTO |
| FEB 1976 | 200 | R202690829E | DITTO |
| MARCH 1976 | 75 | K203265303E | DITTO |
| MARCH 1976 | 200 | R202694335E | DITTO |
| APRIL1976 | 75 | K203366117E | DITTO |
| APRIL 1076 | 200 | R202698397E | DITTO |
| MAY 1976 | 75 | K203354323E | DITTO |
| MAY 1976 | 200 | R202699682E | DITTO |
| JUNE 1976 | 75 | K203364078E | DITTO |
| JUNE 1976 | 200 | R203951602E | DITTO |
| JULY 1976 | 75 | K203386120E | DITTO |
| JULY 1976 | 200 | R203944366E | DITTO |
| AUG 1976 | 100 | C20308299S3E | DITTO |
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| JAN 1977 | 200 | R204541333E | NELVA E BRUNSTING |
| FEB 1977 | 100 | C2039832289E | DITTO |
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| MAY 1977 | 25 | Q6185728367E | DITTO |
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| MAY 1977 | 200 | R205991077E | DITTO |
| JUNE 1977 | 100 | C2049536154E | DITTO |
| JUNE 1977 | 200 | R20634880E | DITTO |
| JULY 1977 | 100 | C204981455E | DITTO |
| JULY 1977 | 200 | R206596261E | DITTO |
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| | | | |
|---|---|---|---|
| JAN 1978 | 100 | C2063616775E | ELMER H. BRUNSTING OR |
| JAN 1978 | 200 | R208068104E | NELVA E BRUNSTING |
| | | | |
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| FEB 1980 | 100 | C2107430100E | NELVA E BRUNSTING |
| FEB 1980 | 200 | R212872691E | DITTO |
| MARCH 1980 | 200 | R212956976E | DITTO |
| MARCH 1980 | 200 | R212956977E | DITTO |
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| MARCH 1981 | 50 | L57948286EE | DITTO |
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| | | | |
|---|---|---|---|
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| JAN 1982 | 100 | C36623992EE | NELVA E BRUNSTING |
| JAN 1982 | 200 | R11303467EE | DITTO |
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| | | | |
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| JAN 1983 | 100 | C47086584EE | NELVA E BRUNSTING |
| JAN 1983 | 200 | R13214791EE | DITTO |
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20-20566.2131

## Instructions

1. Each Click-N-Ship® label is unique. Labels are to be used as printed and used only once. DO NOT PHOTO COPY OR ALTER LABEL.
2. Place your label so it does not wrap around the edge of the package.
3. Adhere your label to the package. A self-adhesive label is recommended. If tape or glue is used, DO NOT TAPE OVER BARCODE. Be sure all edges are secure.
4. To mail your package with PC Postage®, you may schedule a Package Pickup online, hand to your letter carrier, take to a Post Office™, or drop in a USPS collection box.
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## Click-N-Ship® Label Record

**USPS TRACKING # / Insurance Number:**
**9405 9036 9930 0253 1601 07**

| | | | |
|---|---|---|---|
| Trans. #: | 309929516 | Priority Mail® Postage: | $5.05 |
| Print Date: | 09/13/2014 | Insurance Fee: | $0.00 |
| Ship Date: | 09/13/2014 | Total: | $5.05 |
| Expected Delivery Date: | 09/15/2014 | | |
| Insured Value: | $1.00 | | |

From: CANDACE CURTIS
218 LANDANA ST
AMERICAN CYN CA 94503-1050

To: BUREAU OF THE FISCAL SERVICE
PO BOX 7012
PARKERSBURG WV 26106-7012

* Commercial Base Pricing Priority Mail rates apply. There is no fee for USPS Tracking™ service on Priority Mail service with use of this electronic rate shipping label. Refunds for unused postage paid labels can be requested online 30 days from the print date.

UNITED STATES POSTAL SERVICE®

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BUREAU OF THE FISCAL SERVICE
PO BOX 2186
PARKERSBURG WV 26106

233 1 SP 0.480

October 8, 2014

CANDACE L CURTIS
218 LANDANA ST
AMERICAN CANYON CA 94503

# Treasury Retail Securities

## IMPORTANT INFORMATION

Thank you for your recent inquiry regarding Treasury Retail Securities. **If you are responding to our correspondence, please include this bar code sheet with your response**. Failure to include this sheet may delay the processing of your request. Please note:

- Place this bar code sheet on the top of all documents you submit.
- Mail your transaction to the address provided below using the enclosed return envelope.
- Ensure that the return address at the bottom of this sheet is visible in the envelope window.
- Make a note of the Customer Number (shown below) for all future reference or communication purposes.

**For Internal purposes only**

Customer#: 0001326239S

Service Request#: 1-500690063

CC5

BUREAU OF THE FISCAL SERVICE
PO BOX 2186
PARKERSBURG WV 26106

For information about Treasury Retail securities, go to:
www.treasurydirect.gov

# Treasury Securities Services

October 8, 2014

Customer: 0001326239S
Elmer H. Brunsting

CANDACE L CURTIS
218 LANDANA ST
AMERICAN CANYON CA 94503

Dear Ms. Curtis:

This letter refers to your recent transaction and/or inquiry.

I am trying to get photos of paid bonds; usually we cannot get photos of any bonds that have been paid over ten years ago.

I did locate some Series EE bonds issued to Elmer H Brunsting or Nelva E Brunsting's Trust.

To proceed with the request, we will need from the successor trustee:

- A certified copy of any deceased trustee's death certificate. Death certificates must be certified or sworn to by the state or local registrar, under seal or stamp, as true and correct copies taken from the official records.

In support of the request we will need a Certificate of Trust. If this is not available or your state does not allow for one, please send a copy of the original trust agreement with amendments or relevant trust excerpts and amendments. The copy of the trust must be a true and correct copy of the original and the following pages must be included:

- The page showing the name and date of the trust (not a title or cover page).
- The page(s) identifying the acting trustee(s). If more than one acting trustee is named and each can act independently, submit that portion of the trust.
- The signature page(s).
- Any amendments to the trust that may alter the information on the pages submitted or limit the authority of the acting trustee(s) to request the transaction.

If the bond(s) are missing, we will also need:

- The person(s) entitled to complete and sign the enclosed *Claim For Lost, Stolen or Destroyed United States Savings Bonds* (PD F 1048).

We may also need information concerning the estate of the last deceased.

Please send your response in the enclosed envelope. When contacting us, please provide the customer name and reference number shown at the top of this letter as well as your daytime telephone number. Also provide your email address if you prefer contact by email.

For general questions about Treasury Securities, visit our website at www.treasurydirect.gov. If you have questions about this letter, call 304-480-7711 ext. 297414, between the hours of 8:00 a.m. and 4:30 p.m. Eastern Time.

Sincerely,

Bureau of the Fiscal Service

Enclosure: Return Envelope

# Exhibit 22

Amy June 24, 2015 answers to interrogatories and Requests for Production

# GRIFFIN & MATTHEWS

*Attorneys at Law*
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
(281) 870-1124
(281) 870-1647 FAX

## FACSIMILE TRANSMISSION

| | | | | | |
|---|---|---|---|---|---|
| **To:** | Bobbie Bayless<br>Darlene Payne Smith<br>Bradley Featherston | **Fax:** | 713.522.2218<br>713.658.1921<br>281.759.3214 | **Phone:** | 713.522.2224<br>713.752.8640<br>281.759.3213 |
| **From:** | Neal E. Spielman | **Pages:** | 29 including this cover page | **Date:** | 6/24/2015 |
| **Re:** | Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.*; In Probate Court No. Four (4) of Harris County, Texas | | | | |

## PLEASE DELIVER AS SOON AS POSSIBLE

- Amy Brunsting's Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production (with Verification)

**THIS FACSIMILE TRANSMISSION (AND/OR THE DOCUMENTS ACCOMPANYING IT) IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION WHICH IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE AND MAY CONTAIN INFORMATION BELONGING TO THE SENDER WHICH IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE. If the reader of this message is not the intended recipient, you are hereby notified that any use, dissemination, distribution or reproduction of this message is strictly prohibited. If you have received this message in error, please immediately notify the sender by telephone.**

# GRIFFIN & MATTHEWS
*Attorneys at Law*

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BEAUMONT, TEXAS 77701
(409) 832-6006
FAX: (409) 832-1000

NEAL E. SPIELMAN
nspielman@griffmatlaw.com

June 24, 2015

Ms. Candace Louise Curtis
218 Landana Street
American Canyon, California 94503

***Via C.M.R.R.R.***
***7014 0150 0001 5384 0078***

RE: Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.;* In Probate Court No. Four (4) of Harris County, Texas

Dear Ms. Curtis:

In accordance with the Texas Rules of Civil Procedure, enclosed please find my client's Objections, Answers and Responses to the written interrogatories and requests for production recently issued. My client's verification is also enclosed.

Very truly yours,

Griffin & Matthews

By: _____
Neal E. Spielman

NES:mf
Enclosures
cc: Ms. Bobbie G. Bayless
Bayless & Stokes
***Via Facsimile: 713.522.2218***

Ms. Darlene Payne Smith
Crain, Caton & James
***Via Facsimile: 713.425.7945***

Mr. Bradley E. Featherston
The Mendel Law Firm, L.P.
***Via Facsimile: 281.759.3214***

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 |

**AMY RUTH BRUNSTING'S**
**OBJECTIONS, ANSWERS AND RESPONSES TO CANDACE LOUISE CURTIS'S**
**WRITTEN INTERROGATORIES AND REQUESTS FOR PRODUCTION**

*TO: Candace Louise Curtis, Pro Se, – 218 Landana Street, American Canyon, California 94503*

Amy Ruth Brunsting, serves these Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production in accordance with the Texas Rules of Civil Procedure.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: _____

NEAL E. SPIELMAN
Texas State Bar No. 00794678
nspielman@grifmatlaw.com
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124 - Phone
281.870.1647 - Facsimile

*ATTORNEYS FOR DEFENDANT, AMY RUTH BRUNSTING*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 24th day of June 2015, to the following in the manner set forth below:

Candace Louise Curtis – Pro Se:

Candace Louise Curtis
218 Landana Street
American Canyon, California 94503
***Via C.M.R.R.R. 7014 0150 0001 5384 0078***

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
***Via Facsimile: 713.522.2218***

Attorneys for Carole Ann Brunsting:

Darlene Payne Smith
Alec B. Covey
Crain, Caton & James
Five Houston Center
1401 McKinney, 17TH Floor
Houston, Texas 77010
***Via Facsimile: 713.425.7945***

Attorneys for Anita Kay Brunsting:

Bradley E. Featherston
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
***Via Facsimile: 281.759.3214***

NEAL E. SPIELMAN

## OBJECTIONS, ANSWERS & RESPONSES

Amy Brunsting ("Amy" or "Respondent") objects to the interrogatories and requests for production issued by Candace Louise Curtis ("Candace") to the extent they are, by Candace's own admission, first made pursuant to "fiduciary obligations" allegedly owed to her. If, via the trust documents, Candace actually has the right to inquire into the topics covered in her interrogatories and requests for production, then that right is subject to other provisions in the trust documents requiring her to pay costs associated with responding, which she has not done. As a result, Amy's purported obligation to address these issues with Candace has not yet been triggered, and will not trigger until, at least, all necessary costs have been paid.

To the extent Candace's interrogatories and requests for production are issued pursuant to the Texas Rules of Civil Procedure, Amy's objections, answers and responses are as follows:

**Interrogatory No. 1** *(Really, Interrogatories 1-4)*

(a) Regarding the Affidavit in Support of Removal of Lis Pendens, Sworn to and signed by you on March 6, 2012, at Item 5 you state:

> *"As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston."*

**With respect to this statement:**

i. **Has a Personal Asset Trust been set up for?**

1. **Candace Louise Curtis**
2. **Carole Ann Brunsting**
3. **Carl Henry Brunsting**
4. **Amy Ruth Brunsting**
5. **Anita Kay Brunsting**

**If the answer to any of 1 - 5 is yes, please state when and how each personal asset trust was "set up", how and from what assets each was funded. Please explain also the dispositive provisions for the personal asset trusts and the instruments from which each article was derived. Please also explain what administrative provisions were used to "set up" the personal asset trusts and identify the instrument(s) from which those provisions were derived.**

**If the answer to any of 1 - 5 is no, please explain the process for the creation of the personal asset trust(s) and itemize, with a particularity, the causes for your failure to establish said trust(s).**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Personal Asset Trusts have not been established. This is a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

(b) At item 10 you state:

*"The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the Lis Pendens so the sale can be consummated, for the benefit of all of the heirs".*

**The house sold more than 3 years ago, what benefit has any heir received from the sale of the house?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is vague, confusing, premature, misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The proceeds from the sale of the house have been deposited in an interest-bearing account where they will remain pending resolution of the various legal proceedings initiated by Carl and Candace

(c) At item 3 in your Affidavit in Support of Removal of Lis Pendens, dated March 6, 2012, you state:

*"The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance."*

With respect to this statement:

**Our father died April 1, 2009. At the time of his death the named successor co-trustees, as per the 2007 Amendment, were Carl and Candace. "Our parents" removed your name as successor co-trustee with the 2007 Amendment, and my name remained as a successor co-trustee with Carl. What instruments created between the 2007 Amendment and our father's death indicate: "our parents did not feel she was competent to handle her own inheritance"?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

All of them. Taken in their totality, the documents evidence our parents changing attitudes and confidence in Candace and Carl's respective abilities to properly care for themselves, manage money, make reasonable decisions, avoid negative influences in the form of spouses and/or significant others, etc.

**Interrogatory No. 2** *(Really, Interrogatories 5-8)*

In your Verified Answer to Plaintiff Carl Brunsting's Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, filed May 13, 2013, you state:

> *"AMY RUTH BRUNSTING F/F/A AMY RUTH TSCHIRHART is not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Brunsting Asset Trust because such trusts have not been created and therefore do not contain any trust property."*

Section 3(A)(A) at page 5 of the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment" states:

> *A. Establishment of the Personal Asset Trust:*
>
> *A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified to be made to said beneficiary's Personal Asset Trust first occurs.*

Pursuant to Article X Section "A" of the family trust, distributions were specified to be made to the five personal asset trusts at the death of the Surviving Founder.

> *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:*

That event occurred on November 11, 2011.

(a) **What clause in what trust instrument allows the trustees to ignore the dispositive provisions of Article X (compelling establishment of personal asset trusts) and to continue acting as trustees for the Survivor's and Decedent's trusts well beyond the period of time necessary to settle those trusts?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Further, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

(b) **Did the trustees ever have any intention of funding individual asset trusts? If yes, when, for whom, in what proportions, and based upon what criteria?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

(c) **Did the trustees ever intend to render full, true, and complete accounts? If yes, why have proper accounts not been rendered?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons. Additionally, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

(d) **Which of the ten purposes for establishing personal asset trusts, expressed in the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", were considered in the decision not to express and fund personal asset trusts?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The document speaks for itself relative to the Trustor's intent. This notwithstanding, the Personal Asset Trusts have not been established as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and

when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

**Interrogatory No. 3** *(Really, Interrogatories 9-10)*

You communicated with Frost Bank by email on January 24, 2012 "about the management of the trust accounts for my brother Carl and my sister Candy". Your email states "A copy of the trust is attached". The only attachment was the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement".

(a) **Is it your opinion that the 8/25/2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" constitutes the complete trust agreement from which the personal asset trusts are to be created?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is confusing, misleading and capable of causing jury confusion. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

(b) **What was the reason why Frost Bank declined the management of the trust accounts for Carl and Candy?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is vague, confusing, misleading and capable of causing jury confusion. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

My understanding is that Frost Bank declined as a result of real property being located outside the State of Texas. Whether there were other or different reasons, I cannot say.

**Interrogatory No.4** *(Really, Interrogatories 11-15)*

In 2011, you, Ann, and Jack each received distributions in the form of Exxon and Chevron securities.

(a) **Were you involved in the decision to distribute those assets? If yes, what trust distribution standard was utilized and what facts were considered in relation to those standards as that criteria relates to each of the five Brunsting beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Exxon and Chevron securities were received while my mother was still alive. They were presented as gifts. I was not involved in mother's decision.

**(b) Were you aware that those distributions were not equal?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Yes, I was aware that the gift I received was not the same amount as the gifts received by Ann and Jack. However, to my knowledge, the amounts received by Ann and Jack were equal in amount to similar gifts received by mother's other grandchildren

**(c) Were you aware that Carl received no stock or other assets of any kind at that time?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe this is a true statement. I believe, at or around this time, Carl was receiving monies from mother directly and/or via mother's payment of bills, invoices or other expenses.

**(d) Were you involved in the decision making process in labeling those distributions as gifts?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe that any monies, securities, etc. given out by mother while she was alive were distributions; but, no, I was not involved in any "decision" of this sort.

**(e) Was any specific trust property directed to be distributed by the 8/25/2010 exercise of the Article III Qualified Beneficiary Designation? If yes; what was the specific property, to who**

**was the specific property directed to be distributed, when, in what proportions and according to what criteria?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I was not a co-trustee until after mother died in November 2011, so I was not involved in anything that occurred up until that time, and Candace's lawsuit began approximately 3 months later. As to specific trust property and its distribution, the documents speak for themselves.

**Interrogatory No. 5** *(Really, Interrogatories 16-26)*

As co-trustee, regarding the exercise of "Sole and Absolute Discretion" in recent opposition to a distribution to Candace Curtis:

(a) **What are, and how did the trustees interpret, the particular distribution standards contained in "the trust"?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(b) **What is the trustee's process for making discretionary distribution decisions?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or

obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(c) **What does the trustee require when asked to consider other resources and establish the beneficiary's standard of living?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(d) **Does the trust require a beneficiary to waive their right of privacy as a condition of receiving a beneficial interest? If so, identify the controlling provisions and the instrument(s) that contain those provisions.**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

**(e) Does the trustee work with distribution advisors? If so, who and when? If not, why not?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> My ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

**(f) What types of distributions would the trustees like a beneficiary to receive?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

**(g) For what purposes can the beneficiary request a distribution from the trust?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

**(h) When would the trustees like distributions to be made and in what priority?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

**(i) What circumstances should or should not exist prior to a distribution from "the trust"?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

**(j) Who should be involved in the decision making process?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

**(k) What factors does the decision-maker measure in determining the beneficiary's need for a distribution?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein.

Respondent invokes all rights and remedies associated with instances of offensive discovery abuse, including without limitation, a request for a protective order. This request is occasioned, in part, by Candace Louise Curtis' abuse of the Texas Rules of Civil Procedure and her violation of "discrete sub-part" standards and restrictions. Candace Louise Curtis has issued more interrogatories than she is permitted to issue under the Rules. Until her interrogatories are re-drafted to remedy the violation, or pending further instructions from the Court, additional objections to the remaining interrogatories are reserved, as are additional factual answers.

**(l) What facts were relied upon in your determination to oppose distributions to Candace?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 6** *(Really, Interrogatories 27-29)*

On March 8, 2011, Anita sent an email to you, Candy, and Carole in which she said:

> *"I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care."*

**(a) Did you meet with Candace Freed to discuss any trust business prior to the death of Nelva Brunsting? If yes, provide the dates and explain the purposes for each of those meetings.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) How much were you involved with Anita's efforts to convince Nelva to alter the terms of the trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) How much was Carole involved with Anita's efforts to convince Nelva to alter the terms of the trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No.7** *(Really, Interrogatories 30-31)*

Instruments are alleged to have been signed by Nelva Brunsting on August 25, 2010.

**(a) Were you involved in discussions involving the creation or signing of the August 25, 2010 trust amendment instrument(s)? If yes, explain the circumstances leading up to the creation of the instrument.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 8** *(Really, Interrogatories 32-33)*

Instruments are alleged to have been signed by Nelva Brunsting on December 21, 2010.

**(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the December 21, 2010 instruments.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 9** *(Really, Interrogatories 34-37)*

Pursuant to the Provisions of the 2005 Restatement, Administration of the Decedent's trust in Article IX:

**(a) Did Nelva have the authority to remove the trustees of the Decedent's Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) Did the exercise of the Qualified Beneficiary Designation and Testamentary Power of Appointment, dated 8/25/2010, appoint specific property to any specified beneficiary or beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) Did the Limited Testamentary Power of Appointment, dated 812512010, direct distributions of principal of the Decedent's Trust in a manner that discharged the surviving Founder's legal obligations to any beneficiary of the Decedent's Trust? If yes, please explain with a specificity as it affects each of the five Brunsting heirs/beneficiaries.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(d) If Nelva discharged her legal obligations to a beneficiary of the Decedent's Trust, what beneficiary(s) and to what extent did Nelva discharge her legal obligations to those beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 10** *(Really, Interrogatories 38-41)*

Please refer to George Vie's July 15, 2013 letter to the Special Master and Attachment 1 to these Interrogatories when considering the following questions. Note that Attachment 1 is a summary of your Schedule F, plus distributions to beneficiaries from the Edward Jones account during the 10-year period covered by the schedule, also including the $100,000.00 distribution Anita received in 2005 to pay off her house.

Your letter states that:

> *"Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their m id-3 Os); and Carl's*

*daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses."*

Attachment 1 demonstrates that during the 10-year period of the schedule, approximately 46% of the distributions went to Candy, Carole, Carl, Kevan and Andy, with the balance of approximately 54% going to you, Anita and your respective children. Nothing was noted to have been received by Marta during the 10-year period.

(a) **Please state with specificity the dates and amounts of all gifts given to the older beneficiaries and the source of the information in support of these alleged transactions, as claimed by you in your July 15, 2013 letter of intended influence addressed to the Special Master.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **Our Dad died April 1, 2009. The only noted transactions labeled as gifts to Kevan and Andy Curtis are dated October 2, 2009. Please state with specificity the dates and amounts of all other alleged gifts given to Kevan, Andy, or Marta between 2001 and April 1, 2009, the source of the information in support of these transactions, and the reason why these transactions were not listed on any schedules. If none say none.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

In general the July 15, 2013 letter to the Master attempts to provide explanation for the accelerated dissipation of trust assets while our Mother was still alive. These take-my-word-for it assertions have not been supported by Generally Accepted Accounting Principles (GAAP) in any disclosures. The recap of distributions, or gifts if you want to call them that, reflected on Attachment 1, clearly shows an inequity.

(c) **Were you involved in the decision making process for any of those distributions? If yes, explain.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) **In your July 15, 2013 letter to the Master you claim "Defendants are individuals, not financial professionals." Did you hire financial professionals to assist you in meeting the obligations commensurate with your fiduciary duties? If yes, who, when, and what did they do? If not, why not?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 11** *(Really, Interrogatories 42-56)*

Regarding the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement"

**(a) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) What changes to the administrative provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(d) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(e) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(f) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(g) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(h) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(i) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(j) What changes to the administrative provisions of the Survivor's Trust (Article VIII) were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(k) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(l) Has the Brunsting Family Trust ever been amended or revoked by a court of competent jurisdiction?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(m) **Has the Elmer H. Brunsting Irrevocable Decedent's trust ever been amended or revoked by a court of competent jurisdiction?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(n) **Was any specific trust property directed to be distributed by the 8125/2010 exercise of the Article VIII Limited Testamentary Power of Appointment? If yes, what was the specific property; to who was the specific property directed to be distributed; when, in what proportions; and, according to what criteria?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(o) **What specific trust property was directed to be distributed by the 8/25/2010 exercise of the Article IX limited testamentary power? According to what standard was it to be distributed, when, how and to whom was it to be distributed?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 12** *(Really, Interrogatories 57-65)*

With respect to the August 25, 2010 QBD "Section B. Trustor's Intent in Establishing Personal Asset Trusts,"

Intention 1. To protect and conserve trust principal

EE Bonds have long been known to exist, yet have never been included in the list of assets of the trust, or accounted for by the trustees. This was brought to your attention at the hearing in connection with the Report of Master in July 2013. Anita received a letter from the Treasury dated December 4, 2014, referring to "your recent transaction and/or inquiry", which says the search "identified the unredeemed bonds described on the enclosed list". It goes on to state "The Department of the Treasury requires the properly completed forms be submitted in order to process the claims." A check with the Treasury Department gave a total value of the bonds as approximately $6,452.64. A statement at the end of the Bond List received as an attachment to the correspondence says: **"*If there are any bonds marked with an asterisk, they are within one month of their final maturity and may not be reissued or replaced."** All bonds on the list are marked with an asterisk.

(a) **Why was your inquiry made more than one year after you were noticed of the existence of those EE Bonds?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) What claim(s), if any, were requested to be processed?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) Were the properly completed forms subsequently submitted? If no, why not? If yes, what were the results and why have the transaction records not been disclosed to Plaintiff(s)?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary

The Decedent's Trust has received farm income every year, which has not been distributed since 2012. Consequently the decedent's trust owed hefty income taxes each year.

**(a) Why have those taxes not been reduced by distributions of farm income to personal asset trusts for the five beneficiaries? What advice have you obtained or been given regarding income taxes paid by the trusts, if any?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

**(a) In what way have you respected this intention?**
Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Answer:**

Intention 5 To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

**(a) In what way have you considered the needs and resources of beneficiary Candace Curtis in your distribution considerations?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **What facts did you rely upon in evaluating the needs and personal resources of beneficiary Candace Curtis in your distribution considerations?**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

(a) **What inquiry did you make in effort to determine the existence of business ventures or start-ups that beneficiary Candace Curtis may be involved in as a part of your distribution considerations?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **In your determination not to fund individual asset trusts what facts were considered in relation to any of the remaining expressed intentions for such actions?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 13** *(Really, Interrogatories 66-69)*

The Bates stamped documents included in Plaintiffs document production P6-P155,"My Trustee Manual", Chapter 2, P19-P22 is titled "BEFORE GETTING STARTED: A FEW IMPORTANT "DO'S AND DON'TS".

Please review pages 2-1 through 2-4 of My Trustee Handbook and answer the following questions with specificity:

(a) **Which of the eight "Do's" have you done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **Which of the eight "Do's" have you not done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) Which of the nine "Do Not's" have you done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(d) Which of the nine "Do Not's" have you not done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 14** *(Really, Interrogatories 70-75)*

In establishing Personal Asset Trusts for the beneficiaries

**(a) Describe the steps you have taken to honor the provisions at Page 6 Item C of the August 25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) What dispositive and administrative provisions flow to the personal asset trusts from the Decedent's Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) What dispositive and administrative provisions flow to the personal asset trusts from the Survivor's Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(d) When the dispositive provisions of the Decedent's Trust and those of the amended Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(e) When the administrative provisions of the Decedent's Trust and those of the Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(f) Describe the steps you have taken to honor the provisions of Article X, Section B (l)(a)(i) of the Brunsting Family Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 15** *(Really, Interrogatories 76-77)*

Accounts and Accounting

**(a) How can you create personal asset trusts and fulfill the purposes of the trust without a full, true, and complete statutory accounting?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) When and how did the acting trustees inform the beneficiaries regarding their beneficial interests?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

## OBJECTIONS AND RESPONSES

**Request for Production No. 1**

Schedule F - Purports to be a partial gifting reconciliation from Elmer and Nelva Brunsting from 2001, as developed from checking transactions. Please provide any bank statements beginning January 1, 2001 through the present that have not already been provided.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 2**

Please provide any Edward Jones statements beginning January 1, 2001 through the present that have not already been provided.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 3**

Please provide a true and correct copy of the "Appointment of Successor Trustees" dated July 1, 2008 referenced in such instruments as the Certificates of Trust bearing Bates Stamps P6783, V&F 000004; P6784, V&F 000005 and P6785, V &F 000006.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 4**

Please provide a true and correct copy of the "Agreement" signed by Nelva Brunsting establishing the rate of trustee compensation claimed in the April 2012 spreadsheets and July 2013 Master's report. Please also include a copy of any letters of notice of change in trustee compensation, along with proofs of certified mailing to beneficiaries, as required by the Texas property statutes.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 5**

Please provide any and all parole evidence indicating Nelva's knowledge of and direct participation in discussions related to "changes to the trust" specifically in regard to the instruments dated August 25, 2010, and those dated December 21, 2010.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request. Further, it seeks information, which – if it exists – is in the hands of third parties over whom Respondent has no control.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 6**

Please provide copies of all supporting documentation upon which 2014 taxes were calculated and paid in regard to any Brunsting related trust(s).

**Response:**

Materials responsive to this Request have previously been provided by Anita Brunsting directly and/or through counsel. Additional responsive materials are in the process of being accumulated and will likewise be provided by Anita Brunsting directly and/or through counsel.

## VERIFICATION

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned notary, on this day personally appeared AMY RUTH BRUNSTING, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

My name is Amy Ruth Brunsting, and I am over 18 years of age, of sound mind and capable of making this verification. I have read answers to the interrogatories issued to me by Candace Louise Curtis. Unless otherwise noted in the content of the answers, the facts stated are within my personal knowledge and are true and correct.

Amy Brunsting
Printed Name: Amy Brunsting
Date: 6-19-15

Sworn to and subscribed before me by Amy Brunsting on the 19 day of June, 2015.

KIMBERLY A JOHNESE
Notary Public, State of Texas
My Commission Expires
NOVEMBER 16, 2016

Kimberly A Johnese
Notary Public in and for the State of Texas

# Exhibit 23

Anita's June 4, 2015 answers to interrogatories

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 | § | |

# Anita Kay Brunsting 's Response to Candace Louise Curtis' First Written Interrogatories

Anita Kay Brunsting serves her response to Candace Louise Curtis' first written interrogatories.

Respectfully submitted,

/s/ Brad Featherston

Stephen A. Mendel (13930650)
Bradley E. Featherston (24038892)
The Mendel Law Firm, L.P.
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Houston, Texas 77079
Tel: 281-759-3213
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brad@mendellawfirm.com

Counsel for Anita Kay Brunsting
In Capacities at Issue

# Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Candace Louis Curtis
218 Landana Street
American Canyon, CA 94503
Tel: 925-759-9020

*Pro Se*

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224; F: 713-522-2218

Attorney for Drina Brunsting,
Alleged Attorney in Fact for
Carl Brunsting

Darlene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010
O: 713-752-8640; F: 713-425-7945

Attorney for Carole Ann Brunsting

Neal Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124; F: 281-870-1647

Attorney for Amy Brunsting

via email on June 4, 2015.

/s/ Brad Featherston

Bradley E. Featherston

# Response to Written Interrogatories[1]

Anita Brunsting objects to Candace's interrogatories and request for production made pursuant to "fiduciary obligations." Interrogatories and request for production are exclusive to the Texas Rules of Civil Procedure and are not contemplated by the trust instruments nor any other applicable law. To the extent Candace's interrogatories and request for production are made pursuant to fiduciary obligations under the trust instruments then, pursuant to the trust, the Trustee requires that Candace pay the additional costs incurred to respond to such requests before the Trustee is required to comply with such request.

1. In your exercise of discretion, which of the Founders' ten intended purposes and what aspects of the HEMS standard were factored into your determination to oppose a distribution to beneficiary Candace from her personal asset trust, and upon what set of facts did your determination rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, see Anita's response to Candace's request for distributions that was filed with the Court and which documents speak for themselves.

2. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Carole, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

3. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Candace, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

[1] Candace's Interrogatories were renumbered for the convenience of the parties and the Court.

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

4. In 2011, which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in transferring Exxon Stock to Amy, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Subject to and without waiving the foregoing objections, such transfer was made at Nelva Brunsting's instruction.

5. Which of the ten intended purposes, if any, and what aspects of the HEMS standard did you apply to your exercise of discretion in not transferring Exxon Stock to Carl, and upon what set of facts did your exercise of discretion rely? If you did not use any of the ten expressed purposes or the HEMS standard, what standard did you use, if any?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, presumably the inquiry relates to the time period Nelva Brunsting was alive and Nelva Brunsting did not instruct an Exxon Stock transfer to Carl.

6. What are, and how did the trustees interpret, the particular distribution standards contained in "the trust"?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the distribution standards are as set forth in the trust instruments, which were interpreted as written.

7. What is/was the trustee's process for making discretionary distribution decisions?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the process is as set forth in the trust instruments.

8. What does the trustee require when asked to consider other resources and establish the beneficiary's standard of living?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. The trustee requires what the trust instruments provide.

9. Does the trust require a beneficiary to waive their right of privacy as a condition of receiving a beneficial interest? If so, under which provision of what instrument(s)?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the trust instruments speak for themselves.

10. Does the trustee work with distribution advisors? If so, who and when? If not, why not?

RESPONSE: The trustee has not worked with distribution advisors. No distributions have been made since the Nelva's death due to the litigation filed by Candace and Carl.

11. When and how did the acting trustees inform the beneficiaries of their beneficial interests?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, prior to defendant's appointment as trustee, on or about October 23, 2010, Candace was informed of her beneficial interest via email. Shortly after Nelva's death in November 2011, the trustees and their counsel were in the process handling the trust affairs incident to Nelva's death. The trustees and

their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries.

12. What types of distributions would the trustees like a beneficiary to receive?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, defendant would like a beneficiary to receive distributions in accordance with the trust instruments.

13. For what purposes can the beneficiary request a distribution from the trust?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, the beneficiary can request a distribution for the purposes contained in the trust instruments.

14. When would the trustees like distributions to be made and in what priority?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, Subject to, and without waiving the foregoing objections, defendant would like a beneficiary to receive distributions in accordance with the trust instruments.

15. What circumstances should or should not exist prior to a distribution from "the trust"?

RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, with respect to Candace, the Court must resolve Candace's claims and allegations in the pending lawsuit and, in particular, Candace's allegation that the no contest provisions in the trust instruments are unenforceable, prior to a distribution.

16. Who should be involved in the decision making process?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, the Court and the parties to the litigation should be involved in the decision making process.

17. What factors does the decision-maker measure in determining the beneficiary's need for a distribution?

RESPONSE: Defendant objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. Subject to and without waiving the foregoing objections, currently, the Court would consider the factors set forth in the trusts.

18. Describe the steps you have taken to honor the provisions of Article X, Section B (1)(a)(i) of the Brunsting Family Trust?

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and misconstrues the provisions and effects of the trust instruments. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (*i.e.*, before Nelva's death or after Nelva's death) and is, therefore, vague. The referenced section was superseded by Nelva and therefore, is inapplicable.

19. Describe the steps you have taken to honor the provisions at Page 6 Item C of the August 25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?

RESPONSE: After Nelva's death, defendant began the process of collecting assets, informing trust beneficiaries, and working the attorneys specifically referenced in such section to implement the terms of the trust instruments. The trustees and their counsel provided trust documents and assets lists via email and/or mail in December 2011 and thereafter to beneficiaries. Candace then brought litigation.

20. A copy of the 8/25/2010 QBD was included in the October 23, 2010 email attachments. How did you come to be in possession of the 8/25/2010 QBD on October 23, 2010 when Nelva was the only then serving trustee?

RESPONSE: Nelva provided defendant such instrument.

21. What was your forthright explanation to Nelva regarding the changes that you planned for her to make to the trust and what were the exact changes that you intended to be made?[2]

RESPONSE: Defendant objects to this interrogatory, as it is misleading, capable of causing jury confusion, and is a compound question. Defendant never planned to make any changes to the trust for Carl. It was defendant's understanding that Nelva planned to make changes to the trust. There was a concern by Nelva, defendant, and defendant's siblings that Carl's future well-being may not be met by Drina, and that Drina may take steps to reach Carl's share of trust assets. Nelva never signed the changes into effect.

22. Where are the documents you referred to that you intended for Nelva to sign?[3]

RESPONSE: To defendant's knowledge they were never signed. Defendant does not know what happened to such documents.

23. What was the date of your prior inquiry and why was the inquiry made more than one year after you were noticed of the existence of those EE Bonds?

RESPONSE: Candace and Carl consistently and repeatedly accused Carol of stealing bonds that were alleged to be in the name of Nelva or Elmer. Defendant did not see a record of the bonds being in the name of the trusts. In late 2014, Carol informed defendant that she could request a record of the outstanding bonds, which was done in mid to late 2014.

24. What claim(s), if any, were you asking to be processed?

RESPONSE: None.

25. Did you subsequently submit the properly completed forms? If no, why not? If yes, what were the results and where are the transaction records?

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[2] This is a question about a March 8, 2011 email from Anita.

[3] This is a question about a March 8, 2011 email from Anita.

RESPONSE: No, because Candace would not agree to the disposition of the bonds and the legal fees to seek court approval to cash the bonds in light of Candace's failure to agree made the transaction cost prohibitive.

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Defendant objects to the balance of the interrogatories as exceeding the limits of permissible discovery under the Texas Rules of Civil Procedure. Defendant further objects to the balance of the interrogatories because Candace has not paid Candace pay the additional costs incurred to respond to such requests before the Trustee is required to comply with such request.

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Intention 2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary,

(a) The decedent's trust has received farm income every year, which has not been distributed since 2012. Consequently the decedent's trust owed hefty income taxes each year. Why have those taxes not been reduced by distributions of farm income to personal asset trusts for the five beneficiaries? What advice have you been given regarding income taxes paid by the trusts, if any?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) When considering funding for Mother's day-to-day needs prior to the establishment of the Rights of Survivorship account in the name of Carole Brunsting and Nelva Brunsting, what criteria did you use when you liquidated assets in the Edward Jones account? Was avoidance of capital gains tax a factor? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

5. Trustee Manual: The Bates stamped documents included in Plaintiff's document production P6-P155, "MyTrustee Manual". Chapter 2, P19-P22 is titled "BEFORE GETTING STARTED: A FEW IMPORTANT "DO'S AND DON'TS".

(a) Please review pages 2-1 through 2-4 of My Trustee Handbook and answer the following questions with specificity:

i. Which of the eight "Do's" have you done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. Which of the eight "Do's" have you not done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

iii. Which of the nine "Do Not's" have you done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

iv. Which of the nine "Do Not's" have you not done?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

6. Instruments are alleged to have been signed by Nelva Brunsting on August 25, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the instruments.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

7. Instruments are alleged to have been signed by Nelva Brunsting on December 21, 2010.

(a) Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the instruments.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

8. Please refer to the RESPONSE OF DEFENDANTS TO REPORT OF MASTER, filed

August 27, 2013, and answer the following:

Regarding trustee compensation,

(a) At the point in time when you paid your personal credit card debts from trust assets, were you aware that paying personal debt obligations directly out of trust accounts can be considered self-dealing or co-mingling, whether you were entitled to trustee compensation or not? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Appendix A, Section 1. states that Vacek & Freed determined the percentage amount of your fee to be 2% of the trust value of $2,291,300, or $45,826.00. What date was the fee calculation determined? What trust was the value based upon? What trust assets and their corresponding values were used in the calculation? Why was this calculated on an annual basis, rather than monthly or quarterly, since the value of the trust diminished every single month? What provision(s) in the trust set forth the standard for calculating this rate of compensation?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

9. Please refer to George Vie's July 15, 2013 letter to the Master and Attachment 1 to these interrogatories when considering the following questions. Note that Attachment 1 is a summary of your Schedule F, plus distributions to beneficiaries from the Edward Jones account during the 10-year period covered by the schedule, and the distribution you received in 2005 to pay off your house.

Your letter states that:

"Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their mid-30s); and Carl's daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses." Attachment 1 demonstrates that during the 10-year period of the schedule, approximately 46% of the distributions went to Candy, Carole, Carl, Kevan and Andy, with the balance of approximately 54% going to you, Amy and your respective children. Nothing was noted to have been received by Marta during the 10-year period.

(a) Please state with specificity the dates and amounts of all gifts given to the older beneficiaries and the source of the information in support of these alleged transactions, as claimed by you in your July 15, 2013 letter of influence addressed to the Special Master.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in

the Texas Rules of Civil Procedure.

(b) Our Dad died April 1, 2009. The only noted transactions labeled as gifts to Kevan and Andy Curtis are dated October 2, 2009. Please state with specificity the dates and amounts of all other alleged gifts given to Kevan, Andy, or Marta between 2001 and April 1, 2009, the source of the information in support of these transactions, and the reason why these transactions were not listed on any schedules.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(d) In general the July 15, 2013 letter to the Master attempts to provide excuses for the sudden acceleration of dissipation of mass quantities of trust assets while our Mother was still alive. These take-my-word-for it assertions have not been supported by Generally Accepted Accounting Principles (GAAP) in any disclosures. The recap of distributions, or gifts if you want to call them that, reflected on Attachment 1, clearly shows an inequity. What was the distribution standard applied to those transactions? What effect did these transactions have on the value of the trust assets, trust tax liabilities, and the personal tax liabilities of the recipients? What were the facts upon which discretion was exercised in each of these transactions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(e) In your July 15, 2013 letter to the Master you claim "Defendants are individuals, not financial professionals." It is presumed you knew of this fiscal incompetence before accepting the appointment to a fiduciary office. Did you hire financial professionals to assist you in meeting the obligations commensurate with your fiduciary duties? If yes, who, when, and what did they do? If not, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(f) In a letter dated May 22, 2012, Edward Jones states "We're contacting you because either your financial advisor recently updated your account information or it has been three years since we last verified your information." It goes on to ask you to "Please review the enclosed pages, which list your account information. If the information is correct, you do not need to return this letter." This information contains the following:

Net Worth (must exclude value of primary residence): $1,700,000

Annual Income: $64,000

Prior Investment Experience: (4) Extensive Experience

Risk Profile: (3) Moderate

Current Occupation: Homemaker

Did you return the letter? If not, why not? When did you provide this information to Edward Jones originally?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

10. The following questions refer to information contained in the 2011 Form 1040 for Nelva E Brunsting, prepared by Kroese & Kroese P.C., signed by you as fiduciary "Under penalties of perjury".

(a) Line 15a IRA distributions = $58,792 / 15b Taxable amount = $58,792. On February 24, 2010, Mother executed a Change of Beneficiary Designations for IRA Account at Edward Jones, designating the five of us as " beneficiaries in equal shares". A previous List of Beneficiaries under Edward Jones letterhead, dated July 23, 2009, stated the same designation. On May 23, 2011, an electronic transfer was made from the IRA account number 609-91956-1-9, to the B of A account ending in 1143, in the amount of $54,000.

i. Were you aware of Mother's beneficiary designation for her IRA? If yes, why did you fail to follow it? If no, how could you not be?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. Did you know this transaction would cause a tax liability for Mother?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) Schedule A Medical and Dental expenses are listed as $118,893.

i. Many of the caregiver payments contained reimbursements for meals and incidental expenses purchased on behalf of our Mother. Were these reimbursementsincluded in the caregiver costs? If so, what is the total for these reimbursements? Did the preparer know these reimbursements were included? If so, please provide support of the preparer's knowledge.

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

ii. IRS Publication 926 Household Employer's Tax Guide sets forth the rules for employment taxes. You were required to withhold and pay social security and Medicare taxes on the wages. As the employer you can choose to pay this yourself and not withhold it. Did you

withhold social security and Medicare from the caregivers paychecks? If no, why not? Did you pay 13.3% of gross wages on behalf of the caregivers to the IRS? If no, why not? Did you issue a W-2 to each caregiver? If no, why not?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(c) Did you seek the advice of a professional in connection with employing caregivers and related employment taxes? Did you seek the advice of a professional regarding what medical and dental expenses are deductible? If so, who did you consult with and what did they tell you?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

11. Numerous distributions have been made and some requests for distribution have been declined or opposed by you based upon your exercise of discretion.

(a) To what extent, if any, did Amy participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(b) To what extent, if any, did Carole participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(c) To what extent, if any, did Candace participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(d) To what extent, if any, did Carl participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

(e) To what extent, if any, did Candace Freed participate in your discretionary decisions?

RESPONSE: Defendants objects to this interrogatory as it exceeds the interrogatory limitations in the Texas Rules of Civil Procedure.

* * * * *

# Exhibit 24

Candace email statutory demand for accounting

**MIME-Version:** 1.0
**Content-Type:** multipart/mixed; boundary="----=_Part_483675_1625879494.1443134736376"

On Monday, June 15, 2015 3:40 PM, Candace Curtis <occurtis@sbcglobal.net> wrote:

Anita and Amy have a fiduciary **obligation** to provide **ALL** of the beneficiaries with the same information regarding trust income and expenses, on a regular basis. **IT IS THEIR DUTY TO ACCOUNT,** and to keep us advised of our beneficial interests, yet they have failed to properly do so for more than 4 and a half years.

Judge Butts' September 4, 2014 order states that the trustees:

"- provide all parties with notice of their intent to pay all federal income taxes... within five business days of the receipt of the amount of taxes due along with all documentation received from the accountant of the amount of such taxes and provide all parties with copies of all tax returns to be filed... and all invoices form the accountant related to the preparation of federal and state income tax returns...; and provide all parties with copies of the checks paid within five business days of the date of payment and a copy of all executed documents filed with the checks;"

Your flagrant disrespect of the federal injunction, calling it questionable, and Anita's willful violation of the injunction is contemptible, to say the least.

None of the criteria of Judge Butts' order has been met.

Please provide the backup for the 2014 Decedent's Trust Form 1041. Line 14 - Attorney, accountant, and return preparer fees, in the amount of $16,831, needs to be supported in more detail, as does the capital gain on line 4.

Please send copies of all bank and brokerage statements for 2014. It is possible these were forwarded earlier to prior counsel, but I don't have them.

The payment to Kroese & Kroese P.C. for the "farm lease" (BRUNSTING005519) was unauthorized and a violation of the injunction.

Amy and Anita's failure to negotiate the EE Bonds before they reached the point where they "may not be reissued or replaced" cannot be excused. The assertion that they did not know about them, when they themselves disclosed their existence in their April 9, 2013 CD, simply won't cut it. On August 13, 2013, in response to their objection to the Report of Master, at item 4, I identify the missing EE Bonds as known assets of the trust that the trustees did not account for. On September 3, 2013, at a hearing on the Report of Master, during Mr. West's testimony, he mentioned his curiosity as to the whereabouts of said bonds. A check with the Treasury Department website revealed how easy it is to have the bonds replaced or reissued when they have been lost, or stolen (as the case may be). One need only submit the documentation as listed on the attached letter I received from the Treasury Department, dated October 8, 2014. I do not possess this documentation, the trustees are supposed to have these instruments.

This failure equates to approximately $6,500.00 in lost value of the trust assets. Whether it is irresponsible, reckless, careless, negligent, or intentional, is inconsequential in the face of the blatant refusal of the trustees to properly protect and account for these assets. It is not even a little amusing that three years after Anita allegedly became trustee, that she should claim

ignorance as to the trusts' ownership interest in those bonds or that after more than 2 years of attempting to get them to account for the bonds it is apparently the plaintiff's fault for not consenting to the trustees' cashing of bonds not even in their possession.

This electronic communication shall stand as a demand for a full, true, and complete accounting, certified as such, in conformance with the Texas Property Code and the common law.

It is also my final informal demand for the fiduciary disclosure, which the trustees full well know is the property of all five beneficiaries, and I do not have to pay them anything to meet their fiduciary obligations. Let's start with the July 1, 2008 appointment that you assert has already been disclosed.

Candace L. Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

Attachments:

| | |
|---|---|
| 10082014 EE Bond Treasury Response Letter to candy.pdf | 4.4 MB |

# Exhibit 25

Defendants 1st Amended Disc Responses

# THOMPSON COE

Thompson, Coe, Cousins & Irons, L.L.P.
Attorneys and Counselors

**To:** Bobbie G. Bayless **Fax:** (713) 522-2218

**Phone:**

**From:** Cory S. Reed **Phone:** (713) 403-8213

**Date:** March 4, 2014 **Time:**

**File No:** 00520.415 **User ID:** REEDC

**Re:** Cause No. 2013-05455; *Carl Henry Brunsting, et al v. Candace L. Kunz-Freed, et al*; In the 164th Judicial District Court of Harris County, Texas

**There are** 28 **pages being sent, including this page.**

**If you are having difficulty receiving this document, please call:**

Rosie Gonzalez **at** (713) 403-8396

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply**

**Message:** **Please see attached.**

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# THOMPSON COE

Thompson, Coe, Cousins & Irons, L.L.P.
Attorneys and Counselors

Cory S. Reed
Direct Dial: (713) 403-8213
creed@thompsoncoe.com

Austin
Dallas
Houston
Los Angeles
Northern California
Saint Paul

March 4, 2014

**VIA FACSIMILE**
Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

Re: No. 2013-05455; *Carl Henry Brunsting, et al v. Candace L. Kunz-Freed, et al*; In the 164th Judicial District Court of Harris County, Texas.

Dear Ms. Bayless:

Enclosed, please find the following:

1. Defendants' First Amended Objections and Responses to Plaintiff's First Request for Production; and

2. Defendant Candace L. Kunz' First Amended Objections and Answers to Plaintiff's First Set of Interrogatories.

Sincerely,

Cory S. Reed

/rg
Enclosures

1979525v1
00520-415

**CAUSE NO. 2013-05455**

| | | |
|---|---|---|
| CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING, | § | IN THE DISTRICT COURT OF |
| Plaintiff, | § | |
| V. | § | HARRIS COUNTY, TEXAS |
| CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC, | § | |
| Defendants. | § | 164TH JUDICIAL DISTRICT |

**DEFENDANTS' FIRST AMENDED OBJECTIONS AND RESPONSES TO PLAINTIFF'S FIRST REQUEST FOR PRODUCTION**

TO: **CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATE OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING**, Plaintiff, by and through his attorney of record, Bobbie G. Bayless, Bayless & Stokes, 2931 Ferndale, Houston, Texas 77098.

Pursuant to Rule 196, TEXAS RULES OF CIVIL PROCEDURE, Defendants **CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC** hereby submits their First Amended Objections and Responses to Plaintiff's First Request for Production.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: _____

Zandra E. Foley
State Bar No. 24032085
Cory S. Reed
State Bar No. 24076640
One Riverway, Suite 1600
Houston, Texas 77056
Telephone: (713) 403-8200
Telecopy: (713) 403-8299
E-Mail: zfoley@thompsoncoe.com
E-Mail: creed@thomspsoncoe.com

**ATTORNEYS FOR DEFENDANTS, CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC**

## CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Texas Rules of Civil Procedure, on this the 4th day of March, 2014, a true and correct copy of this document has been forwarded by certified mail, facsimile and/or e-filing to counsel:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

_____
Cory S. Reed

1922730v1
00520-415

## REQUEST FOR PRODUCTION

**REQUEST FOR PRODUCTION NO. 1:** All agreements with Elmer Brunsting.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 2:** All agreements with Nelva Brunsting.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 3:** All agreements with Anita Brunsting.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

**REQUEST FOR PRODUCTION NO. 4:** All agreements with Amy Brunsting.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

**REQUEST FOR PRODUCTION NO. 5:** All agreements with Carole Brunsting.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants object to

this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 6:** All joint defense agreements with any party concerning the Brunsting Trust dispute.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 7:** All invoices for services provided or expenses incurred on behalf of Elmer and/or Nelva Brunsting.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 8:** All documents reflecting payments made on the invoices described in number 7 above.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 9:** All invoices for services provided or expenses incurred on behalf of Anita and/or Amy Brunsting.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time.

Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

**REQUEST FOR PRODUCTION NO. 10:** All documents reflecting payments made on the invoices described in number 9 above.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

**REQUEST FOR PRODUCTION NO. 11:** All invoices for services provided or expenses incurred on behalf of any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 12:** All documents reflecting payments made on the invoices described in number 11 above.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 13:** All correspondence, including emails, with Elmer and/or Nelva Brunsting.

**RESPONSE:** Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 14:** All correspondence, including emails, with Anita Brunsting prior to the establishment, if any, of an attorney client relationship with her.

**RESPONSE:** Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 15:** All correspondence, including emails, with Amy Brunsting prior to the establishment, if any, of an attorney client relationship with her.

**RESPONSE:** Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 16:** All correspondence, including emails, with Carole Brunsting.

**RESPONSE:** Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 17:** All correspondence, including emails, with Carl and/or Drina Brunsting.

**RESPONSE:** Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 18:** All correspondence, including emails, with Carl Brunsting's daughter, Marta.

**RESPONSE:** Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 19:** All correspondence, including emails, with any third parties, other than your attorney, about Nelva Brunsting, any other member of the Brunsting family, and/or any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 20:** All drafts of documents prepared by Vacek & Freed for Nelva Brunsting's signature.

**RESPONSE:** Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 21:** Originals of all documents signed by Nelva, Elmer, Anita, Amy, Candy, Carole, or Carl Brunsting.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced. The originals will be made available at the offices of Defendants' counsel at a reasonable and mutually agreeable date and time.

**REQUEST FOR PRODUCTION NO. 22:** Originals of all documents notarized by Candace Freed involving Elmer, Nelva, Anita, Amy, Candy, Carole, or Carl Brunsting and/or any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced. The originals will be made available at the offices of Defendants' counsel at a reasonable and mutually agreeable date and time.

**REQUEST FOR PRODUCTION NO. 23:** Originals of all documents notarized or witnessed by anyone at Vacek & Freed, PLLC other than Candace Freed which involve Elmer, Nelva, Anita, Amy, Candy, Carole, or Carl Brunsting and/or any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced. The originals will be made available at the offices of Defendants' counsel at a reasonable and mutually agreeable date and time.

**REQUEST FOR PRODUCTION NO. 24:** All opinion letters or reports provided concerning Elmer, Nelva, Amy, Anita, Candy, Carole, or Carl Brunsting or any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 25:** All opinion letters or reports sought or received from any third parties concerning Elmer, Nelva, Amy, Anita, Candy, Carole, or Carl Brunsting or any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 26:** All joint representation or conflict of interest disclosures provided to Elmer, Nelva, Anita and/or Amy Brunsting.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause,

is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 27:** All documents establishing your attorney/client relationship with Elmer and/or Nelva.

**RESPONSE:** Defendants object that this request is vague, ambiguous, and overbroad. Defendants further object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 28:** All documents terminating your attorney/client relationship with Nelva.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 29:** All documents establishing your attorney/client relationship with Anita, either individually or as trustee of any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

**REQUEST FOR PRODUCTION NO. 30:** All documents terminating your attorney/client relationship with Anita, either individually or as trustee of any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause,

is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

**REQUEST FOR PRODUCTION NO. 31:** All documents terminating your attorney/client relationship with Amy, either individually or as trustee of any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

**REQUEST FOR PRODUCTION NO. 32:** All documents establishing your attorney/client relationship with Amy, either individually or as trustee of any of the Brunsting Trusts.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

**REQUEST FOR PRODUCTION NO. 33:** All documents relating to any referrals of Anita and/or Amy, either individually or as trustees of any of the Brunsting Trusts, to other attorneys.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request because it is not limited in time. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

**REQUEST FOR PRODUCTION NO. 34:** All cell phone and/or long distance records and logs reflecting telephone calls with Anita, Amy, and/or Candy from July 1, 2010 to the present.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 35:** All long distance records and logs reflecting faxes to Anita, Amy, and/or Candy from July 1, 2010 to the present.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 36:** All logs reflecting faxes from Anita, Amy and/or Candy from July 1, 2010 to the present.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 37:** All cell phone records reflecting calls with Nelva from July 1, 2010 to the present.

**RESPONSE:** Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 38:** All records reflecting 'faxes to or from Nelva from July 1, 2010 to the present.

**RESPONSE:** Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 39:** All cell phone records reflecting calls with Carl and/or Drina Brunsting from July 1, 2010 to the present.

**RESPONSE:** Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 40:** All records reflecting faxes to or from Carl and/or Drina Brunsting from July 1, 2010 to the present.

**RESPONSE:** Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 41:** All cell phone records reflecting calls with Carole Brunsting from July 1, 2010 to the present.

**RESPONSE:** Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 42:** All records reflecting faxes to or from Carole Brunsting from July 1, 2010 to the present.

**RESPONSE:** Defendants object to this request because it assumes facts not in evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 43:** All investigators' reports relating to the Brunsting family and/or any of the Brunsting Trusts.

**RESPONSE:** Defendants object to this request because it is overly broad, unduly burdensome, and harassing. Defendants object to this request because it seeks information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request on the grounds that it is overbroad, exceeds the scope of permissible discovery, and requires Defendants to marshal their evidence. TEX. R. CIV. P. 192.5(c)(2). Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants object to this request because it assumes facts not in evidence. Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 44:** All tape recordings and/or video recordings involving any Brunsting family member and/or any of the Brunsting Trusts.

**RESPONSE:** Defendants object to this request because it is overly broad, unduly burdensome, and harassing. Defendants object to this request because it seeks information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request on the grounds that it is overbroad, exceeds the scope of permissible discovery, and requires Defendants to marshal their evidence. TEX. R. CIV. P. 192.5(c)(2). Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants object to this request because it assumes facts not in evidence. Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 45:** All photographs involving any Brunsting family member and/or any of the Brunsting Trusts.

**RESPONSE:** Defendants object to this request because it is overly broad, unduly burdensome, and harassing. Defendants object to this request because it seeks information that is not relevant or reasonably calculated to lead to the discovery of relevant evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request on the grounds that it is overbroad, exceeds the scope of permissible discovery, and requires Defendants to marshal their evidence. TEX. R. CIV. P. 192.5(c)(2). Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants object to this request because it assumes facts not in evidence. Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 46:** All materials provided to Elmer and/or Nelva Brunsting.

**RESPONSE:** Defendants object to this request because it is overly broad, unduly burdensome, harassing, and fails to specify those documents sought with reasonable particularity. Defendants object to the request as it is overly broad, calls for material wholly irrelevant to this cause, and is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it is not limited in time. Defendants further object to this request to the extent it documents that are equally available to Plaintiff.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants could not possibly recall every material ever provided to Elmer and/or Nelva

Brunsting. Please see the responsive documents previously produced which Defendants specifically recall providing to them.

**REQUEST FOR PRODUCTION NO. 47:** All communications to beneficiaries of the Brunsting Trusts.

**RESPONSE:** Defendants object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 48:** All calendars reflecting legal work and/or meetings or telephone conferences with any member of the Brunsting family or with any third parties concerning Brunsting family issues and/or any of the Brunsting Trusts.

**RESPONSE:** Defendants object to this request because it is not limited in time. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 49:** All source documents used to prepare any accountings relating to assets owned by Elmer Brunsting, Nelva Brunsting and/or any of the Brunsting Trusts.

**RESPONSE:** Please see the responsive documents previously produced.

**REQUEST FOR PRODUCTION NO. 50:** All speeches, outlines and/or materials distributed at presentations made by Vacek & Freed attorneys or employees which were attended by Elmer or Nelva Brunsting.

**RESPONSE:** Defendants object to this request because it is overly broad, unduly burdensome, harassing, and fails to specify those documents sought with reasonable particularity. Defendants object to the request as it is overly broad, calls for material wholly irrelevant to this cause, and is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it is not limited in time.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants do not recall which presentations were attended by Elmer and/or Nelva Brunsting.

**REQUEST FOR PRODUCTION NO. 51:** All speeches, outlines and/or materials distributed at presentations made by Vacek & Freed attorneys or employees since January 1, 2008.

**RESPONSE:** Defendants object to the request as it is overly broad, calls for material wholly irrelevant to this cause, does not state with reasonable particularity what is being called for, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants will supplement related speeches, outlines and/or materials distributed at presentations in accordance with the Texas Rules of Civil Procedure.

**REQUEST FOR PRODUCTION NO. 52:** All pleadings from any cases in which you have been named as a party since January 1, 2008, other than those relating to the Brunsting Trusts.

**RESPONSE:** Defendants object to this request because it is overly broad, unduly burdensome, and harassing. Defendants also object to this request because it seeks information that is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this request to the extent it seeks public information that is equally available to Plaintiff.

**REQUEST FOR PRODUCTION NO. 53:** All expert designations identifying attorneys at Vacek & Freed as experts in any cases since January 1, 2008.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 54:** All opinions or expert reports concerning fiduciary or trust issues prepared by any attorney with Vacek & Freed since January 1, 2008.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 55:** All designations of experts, reports prepared by experts, and depositions of experts in cases in which you have been named as a party since January 1, 2008.

**RESPONSE:** Defendants object that this request is vague, ambiguous, overbroad, and harassing. Defendants object to the request as it calls for material wholly irrelevant to this cause, is a mere fishing expedition and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants object to this request because it assumes facts not in evidence. Defendants further object to this request to the extent it seeks information protected by the attorney-client privilege. Defendants object to this request to the extent it seeks confidential and private information of person(s) who are not parties to this lawsuit. Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories, and thereby invades the work product privilege.

Subject to and without waiving the foregoing objects, Defendants respond as follows: Defendants have no documents responsive to this request at this time.

**REQUEST FOR PRODUCTION NO. 56:** All exhibits you plan to offer in the trial of this case.

**RESPONSE:** Defendants object to this request on the grounds that it is overbroad, exceeds the scope of permissible discovery, and requires Defendants to marshal their evidence. TEX. R. CIV. P. 192.5(c)(2). Defendants further object to this request because it seeks, on its face, the mental impressions, opinions, and legal theories of Defendants' counsel, and thereby invades the work product privilege.

Subject to the foregoing objection and without waiving the same, Defendants respond as follows: Defendants will timely supplement such documents in accordance with the Texas Rules of Civil Procedure, if necessary.

**CAUSE NO. 2013-05455**

| | | |
|---|---|---|
| CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING, | § | IN THE DISTRICT COURT OF |
| Plaintiff, | § | |
| V. | § | HARRIS COUNTY, TEXAS |
| CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC, | § | |
| Defendants. | § | 164TH JUDICIAL DISTRICT |

**DEFENDANT CANDACE L. KUNZ' FIRST AMENDED OBJECTIONS AND ANSWERS TO PLAINTIFF'S FIRST SET OF INTERROGATORIES**

TO: **CARL HENRY BRUNSTING, INDEPENDENT EXECUTOR OF THE ESTATE OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING**, Plaintiff, by and through his attorney of record, Bobbie G. Bayless, Bayless & Stokes, 2931 Ferndale, Houston, Texas 77098.

Pursuant to Rule 197, TEXAS RULES OF CIVIL PROCEDURE, Defendants **CANDACE L. KUNZ** hereby submits her First Amended Objections and Answers to Plaintiffs' First Set of Interrogatories.

Respectfully submitted,

THOMPSON, COE, COUSINS & IRONS, L.L.P.

By: _____

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## CERTIFICATE OF SERVICE

I hereby certify that pursuant to the Texas Rules of Civil Procedure, on this the 4th day of March, 2014, a true and correct copy of this document has been forwarded by certified mail, facsimile and/or e-filing to counsel:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098

_____
Cory S. Reed

## INTERROGATORIES

**INTERROGATORY NO. 1:** Provide any cell phone numbers you have had since July 1, 2010 and identify the company providing cell phone service for each such number.

**ANSWER:** Defendant further objects to the request on the grounds of undue burden, harassment, irrelevancy, and violation of confidentiality and rights of privacy of Defendant and it is not reasonably calculated to lead to the discovery of admissible evidence. Further, it constitutes an unfair prejudicial invasion of Defendant's proprietary interest, personal, constitutional, and property rights absent probative value to the issues of this case. The unfairness far outweighs any probative value.

Subject to the foregoing objection and without waiving the same, Defendant answers as follows: Since July 1, 2010 my cell phone number has been (281) 217-0013.

**INTERROGATORY NO. 2:** Identify the company providing your long distance service both at work and at home since July 1, 2010.

**ANSWER:** Defendant further objects to the request on the grounds of undue burden, harassment, irrelevancy, and violation of confidentiality and rights of privacy of Defendant and it is not reasonably calculated to lead to the discovery of admissible evidence. Further, it constitutes an unfair prejudicial invasion of Defendant's proprietary interest, personal, constitutional, and property rights absent probative value to the issues of this case. The unfairness far outweighs any probative value.

Subject to the foregoing objection and without waiving the same, Defendant answers as follows: Since July 1, 2010 the provider of my long distance service at home has been AT&T and at the office has been Cbeyond, Inc.

**INTERROGATORY NO. 3:** Provide all email addresses you have had since July 1, 2010 and identify the internet service provider for all such addresses.

**ANSWER:** Defendant further objects to the request on the grounds of undue burden, harassment, irrelevancy, and violation of confidentiality and rights of privacy of Defendant and it is not reasonably calculated to lead to the discovery of admissible evidence. Further, it constitutes an unfair prejudicial invasion of Defendant's proprietary interest, personal, constitutional, and property rights absent probative value to the issues of this case. The unfairness far outweighs any probative value.

Subject to the foregoing objection and without waiving the same, Defendant answers as follows: Since July 1, 2010 I have used Candace@vacek.com and freedcandace@sbcglobal.net.

**INTERROGATORY NO. 4:** If you contend Nelva Brunsting had capacity at each time after July 1, 2010 when she signed documents prepared by Vacek & Freed, state all actions you took to insure her capacity.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal its evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: As I do for all of my clients, I met with Ms. Nelva Brunsting in-person and discussed all of the documents prior to her signing them. Before she actually signed any of the documents I ensured they were properly drafted as she requested.

**INTERROGATORY NO. 5:** If you contend Nelva Brunsting lost capacity at some point after July 1, 2010, state when that occurred, how it was determined she lacked capacity, what documents it prevented her from signing, and all facts indicating her lack of capacity at that point.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: At no time before or after July 1, 2010 have I ever stated that Ms. Brunsting lost capacity.

**INTERROGATORY NO. 6:** Please indicate all steps taken to ensure that Nelva Brunsting was not unduly influenced by other parties in connection with documents prepared by Vacek & Freed after Elmer Brunsting's death.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: As I do for all of my clients, I met with Ms. Brunsting in-person and discussed all of the documents prior to her signing them. Before she actually signed any of the documents I ensured they were properly drafted as she requested. I do not think/believe Ms. Brunsting was influenced by other parties, because at no time were any material changes made in the disposition of her estate plan with respect to the beneficiaries.

**INTERROGATORY NO. 7:** Describe all steps taken after July 1, 2010 to ensure that the beneficiaries of the Brunsting Trusts were treated impartially.

**ANSWER:** Defendant objects that this interrogatory is vague, ambiguous, overbroad, unduly burdensome, and fails to specify the information sought with reasonable particularity. Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: Ms. Brunsting had a general power of appointment over the Survivor's Trust assets and a Limited Power of Appointment over the Decedent's Trust assets among the joint descedents of Elmer and Nelva. These power of appointments allowed her to include or exclude descendants of both Nelva and Elmer Brunsting from the assets. No notice is required to be given if she had exercised these limited and general powers of appointment. Notwithstanding, at one point in time, Ms. Brunsting requested that I draft documents removing one of her grandchildren as a remainder beneficiary. After further discussion, Ms. Brunsting decided not to sign the power of appointment.

**INTERROGATORY NO. 8:** Describe all steps taken to ensure that the beneficiaries of the Brunsting Trusts were properly informed concerning the terms and activities of the Brunsting Trusts after Elmer Brunsting died.

**ANSWER:** Defendant objects that this interrogatory is vague, ambiguous, overbroad, unduly burdensome, and fails to specify the information sought with reasonable particularity. Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: Ms. Brunsting had a general power of appointment over the Survivor's Trust assets and a Limited Power of Appointment over the Decedent's Trust assets. These powers of appointments allowed her to include or exclude descendants of both Nelva and Elmer Brunsting from the assets. No notice was required to be given if she had exercised these powers of appointment. Ms. Brunsting was the primary beneficiary of both the Decedent's Trust and the Survivor's Trust until her passing. Upon her death, I provided the Successor Trustees with a document titled "I'm a Trustee Now What." This document provided the Successor Trustees with information related to their fiduciary duties as an acting trustee and accounting requirements. It would be the Successor Trustee(s) responsibility to keep the beneficiaries informed of the terms and activities of the Trust according to the terms of the Trust.

**INTERROGATORY NO. 9:** Describe all steps taken to ensure that Nelva Brunsting's interests were protected both before and after she resigned as trustee.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: As I do for all of my clients, I met with Ms. Brunsting in-person and discussed all of the documents prior to her signing them. Before she actually signed any of the documents I ensured they were properly drafted as she requested. Specifically, I explained to Ms. Brunsting the effect of the resignation and that the resignation was revocable and could be reversed if she later desired. Also, as a matter of course, trustees are advised of their fiduciary duty to the beneficar(ies) and their duty to account for trust assets. Trustees are advised to be familiar with and defer to the trust documents.

**INTERROGATORY NO. 10:** Describe all steps taken to ensure that the assets of the Brunsting Trusts were preserved after July I, 2010.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: I did not take any steps to preserve the Trust assets. It is one of the duties of the Trusee(s) to preserve the assets of the trust.

**INTERROGATORY NO. 11:** Describe all steps taken to determine the nature and values of the assets owned by Elmer Brunsting, Nelva Brunsting, or by any of the Brunsting Trusts at the time of Elmer Brunsting's death and identify every person providing information concerning the value and existence of assets.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: After the death of a Grantor, the remaining trustee or successor trustee may engage my firm to assist in the identification of assets, titling, and if recommended or desired, implement tax planning and file federal estate tax return, if necessary. In this case, Ms. Brunsting did retain our firm to advise on the administration of the Trust and to implement the tax planning, including the funding of a credit shelter trust. In fact, I met with Ms. Brunsting a minimum of three times to discuss the value and existence of assets. Date of death values are/were obtained from brokers, appraisers, tax preparers, and banks, as well as the internet, evaluation programs and monthly account statements provided by Ms. Brunsting herself. These values are/were used to determine proper allocation among trusts and then are divided according to the terms of the trust agreement, State law and Trustee discretion. In this case, asset information was obtained from the following persons or companies:

Rich Rikkers
Bennie K. Jans, Broker at Jans Real Estate
Darlene at Edward Jones
Nelva Brunsting
Harris County Appraisal District
Anita Brunsting
Kelley Blue Book
John Hancock: Donna Vickers
Securian: Erin Nuccum
BNY Mellon
Computershare
Metlife: Clare Cook, Douglas Uhling
Ohio State Life Insurance Co
ChaseMellon Shareholder Services
Bank of America
BlueBonnett Credit Union

**INTERROGATORY NO. 12:** Describe all steps taken to determine the nature and values of the assets owned by the Brunsting Trusts at the time of Nelva Brunsting's resignation as trustee and identify every person providing information concerning the value and existence of assets.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony.

Subject to and without waiving the foregoing objects, Defendant answers as follows: I did not take any steps to determine the nature and value of the assets owned by the Trusts at the time of Ms. Brunsting's resignation as trustee, and I was requested or engaged to do so. One of the duties of the Successor Trustee would have been to determine the Trusts assets.

**INTERROGATORY NO. 13:** Describe all steps taken to determine the nature and values of the assets owned by Elmer Brunsting's estate, Nelva Brunsting, or by any of the Brunsting Trusts at the time of Nelva Brunsting's death, and identify every person providing information concerning the value and existence of assets.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks to limit future deposition and/or trial testimony by requesting Defendant to answer this question without any limitation when the information would be better elicited through deposition and/or trial testimony. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: After the death of a Grantor, the remaining trustee or successor trustee may engage my firm to assist in the identification of assets, titling, and if recommended or desired, implement tax planning and file federal estate tax return, if necessary. Date of death values are obtained from brokers, appraisers, tax preparers, and banks, as well as the internet, evaluation programs and monthly account statements. These values are used to determine proper allocation among trusts and then are to be divided according to the terms of the trust agreement. In this case, asset information was obtained from the following persons or companies:

Anita Brunsting
Amy Brunsting
Carol Brunsting
Candace Curtis
Bank of America Statements
Houston Association of Realtors
Harris County Appraisal District
BNY Mellon
Bluebonnett Credit union
Internal Revenue Services
Lincoln Financial Group
Edward Jones
Doug Williams
Kally Mouw, Certified Appraiser

**INTERROGATORY NO. 14:** Specify the dates and locations of all meetings any representative of Vacek & Freed had with Nelva Brunsting after July 1, 2010 and identify all parties attending such meetings.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: I met with Ms. Brunsting in her residence on December 21, 2010. At this time I cannot recall everyone present, but believe remember Anita Brunsting, Amy Brunsting, and Carole Brunsting, along with a caregiver to have been present.

**INTERROGATORY NO. 15:** Specify the date of every telephone conference any representative of Vacek & Freed had with Nelva Brunsting after July 1, 2010 and identify any other parties participating in each telephone conference.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: The following conference calls were conducted between Ms. Brunsting and a representative of Vacek & Freed after July 1, 2010:

October 7, 2010 (am) – Candace Kunz-Freed and Nelva Brunsting. Carol Brunsting was on the telephone for part of the conversation.
October 7, 2010 (pm) – Candace Kunz-Freed and Nelva Brunsting.
October 11, 2010 – Summer Peoples and Nelva Brunsting.
October 11, 2010 – Candace Kunz-Freed, Susan Vacek, and Nelva Brunsting.
October 14, 2010 – Summer Peoples and Nelva Brunsting.
October 25, 2010 – Candace Kunz-Freed, Carol Brunsting, Anita Brunsting, Amy Brunsting, and Candace Curtis.

It is possible there more telephone calls, but these are all of the conference calls that I can recall based on my notes up to the time Nelva resigned.

**INTERROGATORY NO. 16:** Specify the date of every telephone conference any representative of Vacek & Freed had with Anita Brunsting after July 1, 2010 and identify any other parties participating in each telephone conference.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: The following conference calls were conducted between Anita Brunsting and a representative of Vacek & Freed after July 1, 2010 and up to the time Nelva resigned:

July 20, 2010 – Candace Kunz-Freed and Anita Brunsting.
October 6, 2010 – Candace Kuntz-Freed and Anita Brunsting.
October 11, 2010 – Summer Peoples and Anita Brunsting.

October 25, 2010 – Candace Kunz-Freed, Carol Brunsting, Anita Brunsting, Amy Brunsting, and Candace Curtis.

It is possible there more telephone calls, but these are all of the conference calls that I can recall based on my notes up to the time Nelva resigned.

**INTERROGATORY NO. 17:** Specify the date of every telephone conference any representative of Vacek & Freed had with Amy Brunsting after July 1, 2010 and identify any other party participating in the call.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence. Defendant further objects to this interrogatory to the extent it seeks information protected by the attorney-client privilege.

Subject to and without waiving the foregoing objects, Defendant answers as follows: The following conference calls were conducted between Amy Brunsting and a representative of Vacek & Freed after July 1, 2010 and up to the time Nelva resigned:

October 25, 2010 – Candace Kunz-Freed, Carol Brunsting, Anita Brunsting, Amy Brunsting, and Candace Curtis.

It is possible there more telephone calls, but these are all of the conference calls that I can recall based on my notes up to the time Nelva resigned..

**INTERROGATORY NO. 18:** Specify the date of every telephone conference any representative of Vacek & Freed had with Carole Brunsting after July 1, 2010 until the present and identify any other party participating in the call.

**ANSWER:** Defendant objects to this interrogatory because it assumes facts not in evidence. Moreover, Defendant objects to this interrogatory for the reason it requires Defendant to marshal her evidence.

Subject to and without waiving the foregoing objects, Defendant answers as follows: The following conference calls were conducted between Amy Brunsting and a representative of Vacek & Freed after July 1, 2010:

October 7, 2010 (am) – Candace Kunz-Freed and Nelva Brunsting. Carol Brunsting was on the telephone for part of the conversation.
October 13, 2010 – Candace Kuntz-Freed and Carol Brunsting.
October 25, 2010 – Candace Kunz-Freed, Carol Brunsting, Anita Brunsting, Amy Brunsting, and Candace Curtis.

It is possible there more telephone calls, but these are all of the conference calls that I can recall based on my notes up to the time Nelva resigned.

# EXHIBIT 15

**Subject:** Hearing Date Request

**From:** Candace Curtis (occurtis@sbcglobal.net)

**To:** clarinda.comstock@prob.hctx.net;

**Date:** Tuesday, February 9, 2016 6:26 PM

Dear Judge Comstock:

The motion I filed today asks that Judge Butts order the transfer of the related District Court case to Probate Court #4. Hearing on the transfer motion should not be necessary. However, at this time I would respectfully request a hearing date for the following dispositive motions and any other dispositive motions the Court deems appropriate to resolve at the hearing:

1. Plaintiff Curtis' Answer with Motion and Demand to Produce Evidence (PBT-2015-227757)
2. Plaintiff Curtis' Verified Motion for Partial Summary Judgment and Petitions for Declaratory Judgment (PBT-2016-26242)

Respectfully submitted,

Candace L. Curtis
Plaintiff pro se
Beneficiary of the Brunsting family of trusts
Heir to Nelva E. Brunsting
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

# EXHIBIT 16

REPORTER'S RECORD

VOLUME 1 OF 1

COURT CAUSE NO. 412.249-401

APPELLATE NO. _____

| | | |
|---|---|---|
| THE ESTATE OF:<br>NELVA E. BRUNSTING,<br>DECEASED | ) | IN THE PROBATE COURT<br>NUMBER 4 (FOUR) OF<br>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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Ms. Carole Ann Brunsting

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CANDACE L. KUNZ-FREED

ALSO PRESENT:

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FORMER TEMPORARY ADMINSTRATOR

VOLUME 1
(MOTION TO TRANSFER/STATUS CONFERENCE/
MOTION FOR CONTINUANCE)


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March 9, 2016

PROCEEDINGS

THE COURT: Okay. So, calling Cause Number 412.249 in the 409, Nelva E. Brunsting, Deceased.

We have several matters to address in this file today.

We were asked to consider a motion to transfer consolidate -- motion to transfer cause in district court to Probate Court 4 which is what was originally set in this case. I now have a motion for continuance in that matter or for continuance of that motion.

Zandra Foley, the attorney representing Candace Kunz-Freed and Vacek & Freed; is anyone here from that firm today?

MR. REED: I am, Your Honor. Cory Reed for Thompson, Coe.

THE COURT: Thank you. I'm sorry, tell me your name again.

MR. REED: Cory Reed.

THE COURT: How do you spell your last name?

MR. REED: Reed, R-E-E-D.

THE COURT: Say it again.

MR. REED: R-E-E-D.

THE COURT: Thank you. You speak very quickly.

Okay. Why don't we start with announcements. We've heard from Mr. Reed, could we start with you, Mr. Spielman.

MR. SPIELMAN: Yes, Judge. Neal Spielman representing Amy Brunsting.

MR. MENDEL: Steve Mendel representing Anita Brunsting.

MS. BRUNSTING: And I'm Carole Brunsting, and I'm now pro se. Darlene Payne Smith was my attorney but now I'm pro se.

THE COURT: Thank you.

MR. LESTER: I'm Greg Lester. I was temporary administrator and now I'm, I'm observer, I guess, participant.

THE COURT: Thank you.

MS. CURTIS: Candace Curtis, pro se.

MS. BAYLESS: Bobbie Bayless on behalf of Drina Brunsting as Attorney In Fact for Carl Brunsting.

THE COURT: Thank you.

Is anyone here inclined to stand up and begin this proceeding or should I?

MOTION TO TRANSFER

ARGUMENT BY MS. CURTIS:

MS. CURTIS: Okay. So, I guess the first thing that we're talking about is my motion to transfer the district court case into Probate Court Number 4.

And there's been a response with an objection saying that they are not the same questions in both courts; and so basically, all equitable claims related to the estates of our parents belong in this court. All equitable remedy belongs before this Court.

The causes of action in Curtis v. Brunsting are equitable. They are not legal causes of action. In other words, they do not sound in tort or contract actions in law. That distinction must be maintained --

THE COURT: Ms. -- I don't mean to -- I'm sorry. I feel a little pressured for time because I'm running so far behind today --

MS. CURTIS: This is real short.

THE COURT: Okay.

MS. CURTIS: So, Ms. Foley refers to the district court action as a legal malpractice action, but legal malpractice shows up in the district court case as many times as to actual theories pending in the district court case, appear in her objection. She refers to the

district court case as a legal malpractice action 42 times in her response. But the complaint in the district court never mentions "malpractice." So, the causes of action are the same in the district court as they are here with the exception of the Deceptive Trade Act. And there is a negligence, and those causes appear zero times in Ms. Foley's objection.

So, I just -- I don't think that there is representation in the district court for any of the matters in this court. And so, they need to come over here so that we can discuss all of the things that are the same in both cases and decide the facts. And they want to go back and deal with malpractice in the district court - that's fine.

THE COURT: Okay. Would you like to respond?

MR. REED: I'll let you finish and see if I still need to say anything.

THE COURT: I'm disinclined because the motion for continuance was filed. I'm, I guess, I'm disinclined to make a ruling on that motion today; but I have to say that it seems to me like all of these -- like you're correct - that these matters would best be handled in the probate court.

I'm hesitant because it seems to me that

if everyone were in one venue, that it would be easier to come to some sort of resolution in this case. And I think that this case is begging for some kind of resolution, perhaps, outside of a ruling by one of the courts that's involved.

Having said that, I didn't want to waste your time, Ms. Curtis; I know that you've come from California, and I wanted to give you all the opportunity you needed to voice your concerns on that issue, and I want to go forward with the status conference today and get as much accomplished as we can.

I'm happy to hear the motion for continuance. I'm happy to continue the motion to transfer until a later date so that we could hear from your firm. I don't know whether you or Ms. Foley is the more appropriate person to respond to that motion. I was hopeful that we might be able to get a response from you today about the substance; are you still wanting to continue that?

MOTION FOR CONTINUANCE

ARGUMENT BY MR. REED:

MR. REED: Yes, Your Honor, our client would prefer Ms. Foley to argue it so we would continue our -- or seek to continue today's hearing. I mean, if you have any specific questions -- I mean, one of your

concerns seems to be that it makes more sense to have everyone here for resolution like it's not even adding this -- the malpractice case is not going to help this case get resolved at all. It is going to take a ruling from the district court or this case to resolve this matter.

Having monitored this case for the past two years, it's going to take a ruling from the Court to resolve the case. So, I just, you know, would implore the Court not to bring over the malpractice case, let us get a ruling in that court, be done with that case, and you guys continue on with what's going on here.

THE COURT: Well I'm interested to hear from you or from Ms. Foley about you think those issues are better addressed in the district court than in the probate court where, you know, so much -- such similar issues are pending.

MR. REED: And I guess that's where we disagree on the "similar issues are pending."

In our mind, the only thing that's at issue is whether our -- the firm drafted the documents as requested by Ms. Brunsting. So, all these issues, whether she had capacity at the time, whether there was conspiracies or what not, that has no bearing, really, on the ultimate outcome of the malpractice case. The

only determination that would be made in our case is, is whether the lawyers acted like a reasonable lawyer should or would have done under similar circumstances.

THE COURT: Is that the meat of your summary judgment over in the district court is whether your client drafted the documents as requested?

MR. REED: The meat of our no-evidence motion is you have no evidence of any of the claims that have been brought against us. So and the point being there, at the time Carl Brunsting was the executor, he made, you know, a 30-page-plus of claims, took his deposition, had no facts to support any of it. I don't think anyone else in this room could step into that chair and have facts that could support the conduct they made in the malpractice case.

So, again, just bringing us over here is just going to delay us, and it's definitely not going to help resolve the malpractice claims.

THE COURT: Okay. Ms. Curtis?

MS. CURTIS: Can somebody explain to me how the claims in district court are malpractice claims? That's what I just can't see. They don't say, "malpractice." The only thing that could possibly be malpractice is maybe negligence, but never once is "malpractice" stated in the claims. Never.

THE COURT: There are lots of ways of drafting things, and I'm not familiar with the pleadings over in the district court to that extent; so, I'm not -- I'm really not the appropriate person to respond to that for you. There are a lot of lawyers, although they seem to be dropping, there are a lot of lawyers still involved in this case who might be able to better address that for you.

I would like to hear from everyone. Now that Mr. Lester has provided his report to the Court, I would like to hear from everyone about where you think we stand and how you feel this case ought to progress. Does somebody want to volunteer to go first?

STATUS CONFERENCE

ARGUMENT BY MR. MENDEL:

MR. MENDEL: We'd like you to order these parties to mediation, designate who the mediator is, give us a time frame to get it done. That was recommended in a report, and I think that would be an effective use of the parties' time.

THE COURT: Okay. Ms. Curtis, do you have a response to that?

MS. CURTIS: We've been to mediation already in this case. It was shortly after my case was remanded to the probate court --

THE COURT: Who was the mediator on that?

MS. BAYLESS: Bill Miller.

THE COURT: Sorry?

MS. BAYLESS: Bill Miller.

MS. CURTIS: And nothing was resolved. And I'm not going to go to mediation again because we've already been there once. The only issue that really was discussed were how the attorneys were going to get paid, and that doesn't matter to me.

I want my summary judgment motions heard, and if we can do that without bringing the district court case over here, then we should go ahead and do it. But that's my purpose for coming here today - is to get the summary judgment motions set for hearing. And I'm not going to go to mediation, again, because there is no point.

MR. SPIELMAN: Judge -- were you going to say something?

THE COURT: Please proceed.

STATUS CONFERENCE

ARGUMENT BY MR. SPIELMAN:

MR. SPIELMAN: We all, collectively, the parties and their counsel at the time, we all agreed to Mr. Lester taking the role that he was taking. And Ms. Curtis, herself, I believe, on the record, spoke of

having done her due diligence into every person that was suggested by any attorney that was in this room to serve in Mr. Lester's role, and it was Ms. Curtis' opinion that only Mr. Lester can serve in that role.

We all, as attorneys or as pro se parties, agreed that what the function that was designated to Mr. Lester was important, was necessary, and that we were going to live by and abide by the report that he wrote.

The problem that I see right now, and one of the reasons I suspect why Mr. Mendel suggested that we go to mediation is in deference to and with respect for what Mr. Lester said in his report and what he seems to be trying to suggest to the parties as to what the future of this lawsuit might hold.

I think that what we're seeing now is an effort to backtrack from the direction that Mr. Lester tried to set us on and some of the conclusions or recommendations that he made as to what some of these claims, particularly the ones that Ms. Curtis is attempting to bring forward in summary judgment, are going to actually look like.

I think the effort to backtrack from what Mr. Lester was instructed to do/ordered to do and what he did, in retrospect, you have to wonder what was the point of even having done that if the parties, or a

party, is now going to try to back away from the impact of what that was done?

One of the reasons we thought that mediation, like Mr. Lester suggested that mediation might work, is that the right mediator, he talked to -- talked about the idea of using a former judge - I think we talked about that in the courtroom last time - that the right mediator might help to explain, to educate, to unentrench anybody - whether that be me, whether that be Mr. Mendel, whether that be Ms. Bayless, whether that be Ms. Brunsting, Ms. Curtis, whomever. I think Mr. Lester saw the wisdom in mediation. I think we see the wisdom in mediation. But the consternation or the concern at this point, again, is this issue that Ms. Curtis seems to be unwilling to appreciate, adapt, recognize, embrace what Mr. Lester concluded or recommended in his report; and if that's the case, then I wonder if, if spending the money that it takes to go to mediation makes sense.

Frankly, Judge, the most interesting thing that I heard Ms. Curtis say was on the issue of attorneys fees and that that doesn't matter to her; and that is exactly part of the point. I think you were in the courtroom, Judge, the last time when Carole Brunsting made a very impassioned plea or explanation to

the Court about how Ms. Curtis' pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is never going to lead to this being resolved. I may have lost my train of thought there for a second.

But the point here, Judge, is there seems to be no accountability on Ms. Curtis' behalf for the amount of money that is being spent in this case. Parties have, in the past, suggested, oh, let's not worry about the attorneys fees because that will all even out at the end of the story when everybody decides to divide by five, the corpus of the trust, and the winning parties or the prevailing parties can -- everything can be adjusted through the division of that estate.

But, Your Honor, if you look at what Mr. Lester recommended/suggested/reported in his report, there's now the very real possibility that there isn't going to be a divide-by-five scenario because of the no-contest clauses that are recognized as being properly drawn by the Vacek & Freed Law Firm. And if that happens, Judge, then the trust is now spending its own money from those people, whether it be three or four, that are still going to get a portion of the estate, a portion of the trust proceeds when this is all said and

done.

I'm rambling just a bit only because it's such a circular discussion - is how do we get this case finished, given, given the backtracking from everybody's willingness to vest Mr. Lester with the authority to proceed, and now the one person who doesn't like what he said, after she filed motions for summary judgment that are direct contradiction to the conclusions that he reached. The very constant of having to come down here and respond to those, to those motions for summary judgment, the amount of money that that will waste is insulting, is offensive to the parties.

I'd love to come up with a creative idea to create some accountability, perhaps, if it comes in the form of a sanction or perhaps it comes in the form of some kind of bond being posted so that if it turns out that one of the parties who is blowing things up as it were and creating this increased attorneys fees, no longer has an interest in the estate with which we can even that out by the end of the day. Perhaps if Ms. Curtis is ordered to post a bond against her claims or to protect against the ability -- our ability to recover fees from her if, as and when she loses her case, perhaps then we can move forward with additional hearings, additional motions and so forth.

Keep in mind, Judge, that it's not simply -- it's not as simple as getting a date for Ms. Curtis' summary judgment motions. There's been no discovery, in terms of depositions done in this case, not the least of which will be depositions from, perhaps, even from the lawyers in the other district court case who drafted the documents that can explain what all went into those documents, what Nelva Brunsting's state of mind was at the time. There's no way to respond to those summary judgment motions right now without the full weight of the discovery process moving forward and all of the money that that's going to cost.

So, you wanted my thoughts on what to do and on one hand, you know, I'm still of the belief that mediation with the right mediator should work, but beyond that, I'm also of the opinion that I'm not really sure what the next thing is.

THE COURT: Okay. Well, and I appreciate your argument, and I share in many of your concerns. I haven't heard from you, yet, Ms. Bayless.

MOTION TO TRANSFER

ARGUMENT BY MS. BAYLESS:

MS. BAYLESS: No, that's true. Trying to maintain a low profile, it's hard sometimes.

But I think that you've heard some things that the risk of going back to the motion to transfer that make it the obvious one - all the cases need to be together so that everything can be resolved at one time.

My client desperately wants to get this case settled, but I do not -- I share Mr. Spielman's concerns, and I have some others. I don't know how we're going to find a mediator who is thrilled about pro se parties. Many mediators won't take a case that has pro se parties. So, we have to deal with that issue. You -- maybe he knows one.

I will say this: That Mr. Miller, God love him, and I know him well, and he's mediated many cases for me, but he is not the mediator for this case.

THE COURT: And I was not considering sending you back to Mr. Miller.

MS. BAYLESS: Okay, good.

It really, really does cry out for some kind of a resolution. I don't think this suggestion of bond is particularly workable, and it's needed. I mean, there is valuable real estate in this estate that can be used to do whatever sanction-wise, division-wise, whatever he thinks he can prove. We don't have to go outside this case to resolve this case. I mean, we don't have to be making the case more complicated to get

the case resolved, in my view.

Now there may well be parties who don't want to resolve it, for whatever reason, you know and want to have a trial. I heard Mr. Reed say that and, you know, that it's going to require a Court decision. You know, but frankly, the whole no-contest issue that Mr. Lester raised in his report, and I assume if we don't work out some settlement procedure, we'll be filing responses to his report and dealing with that.

The whole no-contest clause violates the Trust Code and the Probate Code in its very language; and frankly, to prosecute a no-contest clause, you have to have a trial. You have to see whether it was filed and there was good cause in the filing and whether the case was prosecuted in good faith.

So, you're necessarily, to get to that issue, you're necessarily going to have to have a trial.

You could rule all day long that you believe it to be a valid clause not withstanding the fact that its very language violates the Trust Code and the Probate Code -- or the Estates Code, excuse me, but you're still going to have to have a trial about what that means. So, we need some mechanism that doesn't make us have to have a trial.

And now we've got two pro se parties, and

I just don't know a strong mediator that is going to deal with two pro se parties. Maybe there is one, but it is going to require someone strong if you go that route.

If Ms. Curtis is saying she's absolutely not going to go, I mean, I don't know what we do about that. And for all I know, Carole Brunsting may say she's not going to go. We haven't heard from her either.

You know, everybody else maybe could work out a resolution. My client wants very much to resolve the case, but I don't know how you resolve it piecemail when you're talking about a trust that has five beneficiaries. I mean, maybe somebody's smarter than I and could figure that out and you can come up with some kind of a, some kind of a design that says this happens, you know, if X, Y and Z falls into place and it says that. It's very -- it's a very problematic situation, and I don't think, you know, right now we don't even have a personal representative of the estate. So, I don't know how -- I think, frankly, that the district court case, there is some advantage being taken of an unfortunate situation relating to my client's, obviously capacity, unexpected incapacity in deposition. I get that. They're trying to zealously represent their

client. But the reality is if they go and dispose of that case without a personal representative when the Court has been notified of that, that is going to come back so fast from the court of appeals.

And, you know, they, today, before we came down here, they filed a motion for sanctions. You know, it's all about pressure in that case to maybe make that go away. And I think we sort of see the same problem in this case that, although people try to punch pressure buttons, nobody -- there's no structure, as frustrating as it is for me to say this, there's no structure where everybody is on board. And so, you know, we don't have a way to get these five beneficiaries separated from each other and separated from these courts and on down the road short of forcing someone to do something they don't want to do.

These are all strong-willed people. I don't know what happens if you force someone to do something that they don't want to do. You know, maybe they get there and they realize, well, there is some merit to this, but I agree, it's a waste of money if that isn't what happens.

And, I mean, I know there's some great mediators in town. We can go to Alice All [sic] to repair it. Maybe she would deal with pro se parties, I

don't know but I --

THE COURT: Well I want to explore that. You know, in my mind, every puzzle has a solution even if it feels a little bit like a Rubik's Cube, and I think that that's true of this case.

I feel like it does need to go back to mediation. I feel like any other direction at this point is, is going to -- it's just not going to advance the ball. This has been dragging on for so long and stalled out for so long, we really need to get it moving. And I feel in my heart that the best way to try to move this forward is to have it go to mediation. We do need a strong mediator. I have someone in mind who I haven't contacted yet, but I wanted to hear from everyone here, first, about their suggestions.

You have your hand up, but I want to hear from Carole first.

MR. MENDEL: Could I make one quick comment?

THE COURT: Uh-huh.

STATUS CONFERENCE

ARGUMENT BY MR. MENDEL:

MR. MENDEL: In fairness to Mr. Miller, the case was probably not right for mediation at early on in the case, but a lot has transpired since then that

I think makes it ripe for mediation.

I would agree oftentimes that a second mediation could be a waste of time, but not in this case. I think this case screams for a second mediation.

THE COURT: I agree.

MR. MENDEL: In terms of answering the Court's question - I think it should be a forceful personality; I think it should be a judge. I would like to see Judge Davidson be appointed to serve as the mediator in this case.

MR. SPIELMAN: That was actually going to be my suggestion, Judge. I know Judge Davidson would not have an issue with pro se elements in the case. I know, as a judge, he's certainly aware of the dynamics that that brings to the table.

I can say that Judge Davidson, having gone to a mediation with Judge Davidson in which I, because of his forcefulness, was forced to completely reevaluate the entire case that we came in there with. I know that he is the type of forceful personality that can unentrench people, that can and will do his own research and bring issues to the table that, perhaps, the parties walking in the mediation haven't even considered yet. I could not more strongly recommend Judge Davidson as being somebody that fits the bill for what this case is

needing; and, of course, everybody is welcome to do their due diligence to see the types of cases that he's presided over in the past, to see the docket that he carries now in the multi-district litigations. I would be as flabbergasted as flabbergasted could be if people walked away not thinking that he was the right person to make a try at this.

MS. BAYLESS: Just one question, I'm sorry. Just one question.

Do you know for sure? I have absolutely no problem with Judge Davidson. I think he's a great resolver of problems, but do you know that he would do a -- have you had a situation where there was a pro se party?

MR. SPIELMAN: I'm going to go with I'm 95 percent sure, but I'll be happy to make that phone call.

MS. BAYLESS: Anyway, that's my only --

THE COURT: I know Judge Davidson. And I, you know, similarly, I think that he could probably get the job done quite well. We could contact him and see how he feels about pro se parties.

MS. CURTIS: I also have a quick question about mediation.

Is there any reason why all of the siblings and their representatives can't be in the same

room to talk about it? Because I think that's where it fell down. The mediator came in one room and talked for a few minutes and then went to the next room and then the next room and then came back and told us what these other people said --

THE COURT: And that's how mediations often go. The mediator often makes a decision at the beginning of the day about whether he thinks it will be productive or not to bring everyone together. Often, you start out all in the same room. Sometimes, if things are going well, you get back together in the same room towards the end. And I would rely on the mediator to make that call because sometimes the parties are so far apart and antagonistic to one another, that putting them in the room, just escalates things. And so that's what -- that's why, you know, we leave that to the mediator, to kind of make that call. And hopefully, you know, if everybody is civil and can sit around the table and reasonably and constructively discuss the issues, then maybe that's the direction the mediation will go. There's nothing saying that you can't get together.

MS. CURTIS: And that's, if we could, then, yes, I would consider mediation; but I can't go through the mediation like we had before.

THE COURT: Okay. And, you know, and

there's some indication that there are a lot of reasons why that mediation was not successful. And maybe, you know, maybe if you got together for mediation now, your entire family would have a kumbaya experience and find one another. And I know that there is some head-shaking and things, but I need you, and frankly, everyone here, everyone involved in this, needs you to try to keep an open and forgiving mind going into mediation. And I'm not saying that you're going to, you know, walk away and forgive everything that's happened but at least see that there is some benefit to that, to some level of forgiveness going forward, so that you can get this resolved because being here in this building is not helping you. Ultimately, it's not helping anyone involved in this case. And so, that's why I feel that it's, you know -- I need you to go to mediation.

It sounds like you're coming around which I'm glad to hear, on some level, because even if you don't come around, I think I'm going to have to get to the point where I order you to go. And, you know, I mean, we don't like ordering people to do things that they don't want to do, but I think that it's in the best interest of everyone to go ahead and get to mediation.

If Judge Davidson doesn't pan out, the other name that came to my mind was John Coselli. I

hear that he's been doing some very good mediations recently, and I know that he's not -- well, I don't know. I don't think that his focus is probate, but I understand that he's very quick to come up to speed on the issues and has been quite effective in getting things done. So, that's another name that if Mr. Davidson doesn't pan out, we might look at.

Let's see...

Ms. Brunsting, did you have something you wanted to add?

MS. BRUNSTING: Well, I mean, I hear the word "pro se," and it's almost like it's a bad word in this court --

THE COURT: It is not a bad word in this court.

STATUS CONFERENCE

ARGUMENT BY MS. BRUNSTING:

MS. BRUNSTING: I've never been through anything like this before. I thought that it was in my best interest to get an attorney. And Darlene Payne Smith, while she's a very, very good attorney, she's a very expensive attorney. I finally just had to make the decision because I don't know if this is going to drag out another month or another 10 years. But I don't want it -- it's upside down, and so I had to just make the

decision, as I kind of talked about last year, to try to stop the bleeding. I had to just stop my own bleeding because otherwise what's going to happen is there may not be anything left to divide, but I'm going to end up having to go into my retirement savings to pay this bill now. So, I'm just having to make some life-decisions here. And, unfortunately, one of the things I had to do which is terminate my relationship with Darlene Payne Smith. It's nothing against her, but I just had to make a financial decision on my own because right now I'm faced with this huge bill that I'm going to pay because I try to live my life debt-free. It's going to take me a long time to pay it because I hadn't planned on having this bill.

But I guess my other concern is, and I heard some of the other attorneys make it is I feel like what Candy asked for, everybody tries to give to her. And we paid $42,000 for this accounting when we were in Judge Hoyt's [sic] court and that wasn't good enough. And now we've all agreed to Greg Lester, and that's not good enough. And so it just seems like it's going to go on forever, that whatever everybody tries to do to try to make Candy happy, we're always going to just end up straying away from that.

And so it's just like I'm hearing with

mediation, and I think the rest of us are willing to go to mediation, it's going to be, yes, I'll go to mediation but only if. What if everybody else doesn't agree to that? It is we all agree to go to mediation if we all agree to go sit in the same room, I'm thinking well -- that's why I'm shaking my head. I'm thinking, I doubt that will happen.

THE COURT: Well, as I said, you know, we need to leave that up to the mediator because the mediator controls how the mediation proceeds. And, you know, I encourage you to consider that if it looks like it's going to be constructive. She's not putting limitations on the mediation by any stretch of the imagination. We're going to go forward. We're going to go to mediation. We need to find an appropriate mediator, and that's going to happen. So, I want you to feel --

MS. BRUNSTING: But in the last mediation, I just felt like everybody was kind of blindsided because I sat in a room for probably three and four hours before -- just waiting and really had no idea what was going to happen. And then somebody comes in -- I mean, a mediator came in and just put a piece of paper in front of me and I go, "What is this?" "Well this is what they want." And, I mean, it was just ridiculous.

And then after that, we waited another few hours. And then what we were asked to give up was even bigger than that. And so, it was so ridiculous and I saw no attempt at anybody trying to mediate the system. Nobody knew what was going on.

So, I had actually talked to Mr. Lester about before -- I think before anybody's going to agree to mediation, everybody is going to have to be convinced that it's much better organized. The mediator's already talked to everybody to see what the real expectations are because if they're not realistic going in, we're going to be right back where we were before.

THE COURT: Okay. Thank you.

I want to comment about Mr. Lester. He's here today. He's not, my understanding is, he's not billing for his time today, so we're very grateful that you're here. I asked him to be here in case there are any questions about his report.

I think that the accounting that was done previously in the federal court, as well as the report that Mr. Lester provided, is helpful in this case because I think it gives the Court and it gives all the parties some insight into how the claims are viewed by an independent person. And I hope that you'll look at his report and consider his conclusions going forward.

I'm not making any rulings about whether his conclusion are right or wrong, but I think they're quite informative. And so I think that it's useful and sort of leading up to mediation.

How -- my next concern about mediation is how are we going to pay for it? I know that the parties are motivated to get this resolved, mostly; and in the past, the -- I've always looked to this end of the table to fund things, and I'm not sure that I'm going to do anything different this time.

Do you have some opinions about how the mediator should be paid?

MR. SPIELMAN: My opinion is simply that the parties should pay the mediator's cost as the parties.

Now, again, remember, Judge Comstock, my client and Anita as the current co trustees are actually the only ones who should be having their lawsuit defense financed by the Trust but they have not --

MS. CURTIS: Excuse me. Objection.

MR. SPIELMAN: Okay.

THE COURT: Let him finish, and I'll give you a chance to respond --

MS. CURTIS: But this is --

THE COURT: I know.

MS. CURTIS: -- incorrect information that he's saying.

THE COURT: You'll have a chance to respond as soon as he finishes.

STATUS CONFERENCE

FURTHER ARGUMENT BY MR. SPIELMAN:

MR. SPIELMAN: The point, though, Judge, is because I know that there is not an agreement on that point currently, that is why my opinion is each party should pay their own mediation cost.

One -- again, I can't make a representation for Judge Davidson, but I suspect, as he has done for mediations in the past, maybe, Ms. Bayless, you've experienced this with him before, I think he will see a way to not necessarily say, you pay a fee; you pay a fee; you pay a fee; you pay a fee and you pay a fee. I think he will probably find some way to structure it by people that have common interests on one side or the other or something like that. We can certainly talk to him about that. I'm happy to talk -- it's my interest to find a way to convince him to charge as little as possible for this as much as it's to the benefit of everybody else here. So, I'm happy to do that.

If the Court would like to be the one that reaches out to Judge Davidson to sort of explain a

little bit of the back story, maybe that's appropriate that would make people feel more comfortable, we will all have a chance to present our view of the case to Judge Davidson in advance of the mediation because he asks for premediation briefing material, premediation statement. I know he would take phone calls from folks if they would rather handle it that way.

I think that all of the issues that are being expressed as concerns about the mediation process, all of them have solutions, and perhaps the attorneys are more aware of this just by the nature of what we do.

But particularly with Judge Davidson, he has seen and done it all in his time on the bench. As difficult as this case has been for people particularly on an emotional level, he would have seen this level before, and he will know how to massage everybody's concerns and the law and the facts.

Again, I can't say strongly enough -- even if it's not to my client's benefit when it's all said and done, that I think he has the ability to get everybody, you know, on the straight and narrow.

STATUS CONFERENCE

ARGUMENT BY MS. BAYLESS:

MS. BAYLESS: Judge, I agree. The question was how do we pay for it? And I don't see how

it makes sense to create another controversy among everybody to not want it, those who don't want it to begin with to think it may be a waste of time. I don't understand why -- I'm not even sure why Mr. Spielman makes this suggestion. I would think that we would have the Trust pay for it, and it can be divided as cost as may need to be part of the settlement just like we dealt with Mr. Lester. I don't know why this is -- that was, frankly, I viewed, anyway, an attempt by the Court to move everything in the direction of trying to work toward a resolution. I don't think the mediation is even more so that way, and I don't know why it's going to be probably less money. I don't know why it should be controversial to deal with it as a cost of getting this case resolved and deal with that and the resolution, but that's just my two cents.

THE COURT: Well, I like the suggestion that if Judge Davidson is amenable to that, to let him kind of work that out as part of the mediation, and perhaps that's the route we need to go.

Ms. Curtis, you have -- you wanted to speak?

STATUS CONFERENCE

FURTHER ARGUMENT BY MS. CURTIS:

MS. CURTIS: Basically, I just -- people

are formulating their opinions by talking to parties in the case, and it's fairly obvious that no one has read everything starting with the original petition in the federal court.

I sent my sisters a couple of demand letters after my mother passed away, and I gave them every opportunity to cure and save face. And I told them, "If you don't give me an accounting which has been owed for weeks now," and then I gave them 60 days, that I'd have no alternative, and that I reserve the right to file suit against them.

And here we are, almost five years later. Vacek & Freed sold my parents' peace of mind and then betrayed them because my sister, Anita, developed a relationship with Candace Freed. And there is evidence in the record now that shows that. And I'm willing to come to a conclusion, but we can't have all these attorneys. Amy and Anita are on their third attorneys now. And so, how much longer do my brother, Carl, and I have to spend, money, time and emotional stress to get what our parents gave to us to begin with? And that's all they want - not a penny more/not a penny less.

THE COURT: Well, often when things get to this point when you're five years down the road in litigation and people are in the positions that you find

yourselves today, often what it takes is going to a good mediator and getting everyone in the same room or at least the same building and really looking at the issue, perhaps, with fresh eyes, and finding the reality that there's a better way to resolve this whole game.

MS. CURTIS: I want to look at my sisters and my brother in the eye in the same room. I mean, it's just -- I've been able to talk to Carole until she got an attorney and then I couldn't speak to her anymore. I can't talk to Amy and Anita. I tried to call them early on. I just -- this is a family. We don't need these outside people in here paying money for them to draw conclusions when they don't know what's going on. And so I just --

THE COURT: And I appreciate your bringing that emotional side of it because I think that's what all of this sometimes comes down to is, the emotions that are involved. And if, you know -- I'm glad that you're saying this here today. All of these attorneys, I'm sure, are hearing you, are hearing your position; and I know that they're aware of the emotions -- the emotional responses from their own clients. And perhaps, perhaps your wish will come true. Perhaps we'll get to mediation, and you'll be able to sit in a room and reach some kind of understanding.

I don't have a problem calling Judge Davidson if nobody has a problem with my doing so. So, I'll put a call into him. I know him. He was the scout master of my son's scout troop. So, I'll put a call into him, and we'll see if we can move that piece forward.

STATUS CONFERENCE

FURTHER ARGUMENT BY MR. MENDEL:

MR. MENDELL: I would just like to add, besides Judge Davidson, I don't have any problem with Judge Coselli. I've been in front of Judge Coselli when he was a mediator before he got on the bench. He's excellent.

In terms of the fee, I'm open to how the mediator would want to handle it. But the vast majority of mediators, as the Court is aware, expect people to have some sort of an investment, and a great investment is to come out of pocket and pay for it. So, I would oppose that the Trust pays for everybody's pro rata share. Everybody needs to get out their checkbook and pay the mediator regardless of how the fee is structured.

THE COURT: Okay. I understand.

MS. CURTIS: I can't do that. I work full time. I have no retirement. I have to do without

things to come to Houston which I'm more than happy to do, but I don't have extra money to throw away on more wasted time. And that's why I didn't hire an attorney to begin with. My brother shouldn't have had to hire an attorney.

THE COURT: Well, Ms. Curtis, Ms. Curtis, please. Therein lies the rub. If this is a waste of time then why are we here? You know --

MS. CURTIS: To get resolution.

THE COURT: -- we need to move this case forward, and most of the people in this room feel like this is the best way to move it forward.

MS. CURTIS: I'd like to move it forward by scheduling the summary judgments.

COURT'S RULING

THE COURT: Okay. We're going to go to mediation first. And so I'm going to contact Judge Davidson. I'll get information about his fees, and I'll explain the issues and --

MS. CURTIS: Okay. I have a personal friend in Houston that I've known for 30 years. He is also a mediator, I understand now; is that a conflict if I suggest that we contact him as well?

THE COURT: I don't want to get into what we've had in prior hearings with everyone objecting to

people who are suggested. I think that Judge Davidson is a good choice. He's going to be a strong mediator, and I don't want to take lightly the choice of mediator in this case because I don't want to waste your time. I want to get to a mediation with somebody who can make things happen. And I'm not saying that your buddy, your friend, can't make that happen, but I am concerned that there are, you know, you have several siblings who are going to stand up and object for the reasons that I just mentioned. And I know where that's going to go, and I don't think that it's a good idea to go down that road at this point. So, I'm going to call Judge Davidson and see how that will work out.

MS. BAYLESS: I just have a question on timing.

I'm assuming, and maybe I shouldn't say, that you will be dealing with the motion to transfer first so that that's part of what is being mediated and maybe that's not what you had in mind.

I think that there is some merit to having everybody in the room. I recognize Mr. Reed is going to stand up and say he doesn't want to be in the room, but, you know, we need to deal with that. And I think Judge Davidson could deal with all of these issues very well. And if that loose end is left out there, I don't know if

it will impact being able to get this case over. I have no -- I don't know.

THE COURT: That's a good point. I don't know that we need to transfer the case over here before that happens if we can get some buy-in from the folks involved in the district court case to be a part of that negotiations of the mediation. I don't know whether that's possible, but it seems like if we can get to mediation and get every piece of this resolved, that would be a lot more cost efficient than going through the transfer and getting all of that done.

What I'm saying is you guys don't all have to be in this court in order to negotiate a settlement.

Do you want to respond to that?

MS. BRUNSTING: This is something I spoke with Darlene about is because somehow my brother brought this suit against Vacek is somehow, I think all of us are party to it somehow but without our knowledge, we don't know how this case is going to impact the rest of us and so that's why I spoke with Darlene, and said I'm a bit concerned about going to mediation when I don't know the outcome of this case yet. And so well this case will have some impact on the rest of this. So, that is a valid concern that I have.

THE COURT: Mr. Reed, what's your position

about participating in a mediation?

MR. REED: I think the biggest issue that we have is you or someone has to be appointed or has to appoint someone on behalf of the estate. Right now, if I went to mediation, I would have no one to negotiate with. So, that's the problem by sending a malpractice case is I have, technically, five people I have to deal with that I really need -- I can only really deal with one person that's actually absent right now which is what's delaying the malpractice case from being dismissed.

So, I mean, if you send us to mediation, what you're going to have to do is appoint somebody for us to negotiate which means you're actually appointing someone on behalf of the estate. So, that creates to me a big issue that is, again, outside of, really, what we need to deal with today.

THE COURT: How do the rest of you -- how do the rest of the attorneys in the room feel about whether we can get to a resolution?

MR. MENDEL: I think we can get to a resolution. I mean, if everybody else on this -- in this particular case agrees to an outcome and a resolution for Mr. Reed, then, as I see it, we don't necessarily need to have someone appointed before they

come over to the mediation. I mean, if everybody is in agreement then it becomes a moot point.

THE COURT: And if you can reach an agreement that a resolution will be reached then you could, perhaps, agree to appoint a temporary administrator who could make decisions on behalf of the estate --

MR. SPIELMAN: And that's just the point, Judge. If you backtrack beyond Mr. Lester's appointment, the competing applications before the Court are from my client and from Ms. Curtis. So, if the mediation goes well, those two competing next in line, allegedly executors, can sign off on a deal that would then be able to resolve everything.

MR. REED: It's not that the deal can be worked out, it's, at mediation, I have to go to five different rooms to negotiate the deal. So, maybe his client says, okay, I give a million bucks to the estate - that's great; but Ms. Curtis wants $2 million. So, then all of a sudden, I've got to deal with one of the four. Maybe I get four out of the five. And the point is you need one voice for the entire estate, and you're not going to get it with me trying to negotiate with five people at mediation.

THE COURT: Well, at some point, all five

of those people are going to have to negotiate something to move forward rather it's who's going to be the administrator or the executor going forward. I think that that negotiation is better to take place at the mediation than outside of it.

MR. REED: I think the problem you're sending us to mediation with is now we have one extra level, and we already have too many levels of things we need to negotiate. It's going to take almost the entire mediation, if it is successful, to deal with just the sibling issue, and now you're adding the malpractice case on top of that to see if, you know, whether all four or five or one or two agrees with how much money the malpractice case is worth defending at all.

So, I think you're adding too much to the puzzle to what's already going to be a difficult mediation.

THE COURT: I don't know that the mediation will be successful without that, though. And I think that I kind of like the complication that it has. You know, the more cards on the table, the more you can mix up the deck, am I wrong? It seems like everyone has an interest in going forward. Does anyone disagree with that other than, I'm sorry, Mr. Reed?

MS. CURTIS: I don't disagree. And, in

fact, it's Candace Freed who drew up these illegitimate papers - whether they were signed or not - she's the one that started this. All five of us have been damaged by what Candace Freed did.

I'm happy to let Amy be executor if Neal will represent the executor in this mediation and in the case against Vacek & Freed because it's not malpractice - it's breach of fiduciary. But I just wanted to get it moved along, okay. So, now you've got me convinced that mediation is maybe the way to go, but I don't want any more road blocks for one reason or another.

Why can't Amy be executor? No, let Neal take that ball and run with it and we'll all agree.

MS. BAYLESS: Well I don't know if my clients will agree to that today, but I don't think we have to do -- I don't think we have to go to that level. If we can reach an agreement, then we know we need a temporary person just for purposes of approving a settlement and, you know, moving forward. I don't think -- I don't see any reason why Judge Davidson can't deal with all of those issues. But if he doesn't deal with all of those issues, I don't think -- I think we run a greater risk of not getting the case resolved.

And, frankly, I would think that the law

firm would be delighted if the case could get resolved.

THE COURT: And I hate for you guys to reach a decision about all of your issues and then have to go to another mediation to resolve all the issues in the district court case, particularly, if, you know, if it's decided that it needs to be grabbed and transferred over here.

MR. REED: But it's taking longer, Your Honor, if the case is not settled at mediation. Isn't it somebody is still going to have to be appointed at that point to bring the claims, still, against the malpractice?

THE COURT: Which comes first, you know?

MR. REED: The point is that Mr. -- you know, if we go back to Mr. Lester's report who already, you know, looked at it, looked at the issues and said the writings were correct, we have the malpractice case that's been pending for three years that no one at this point has been able to prove any evidence of malpractice, whatever the claims would be. So, you're wanting us to go --

THE COURT: Well, I'm not sure that Mr. Lester's report says that you win.

MR. REED: I'm not saying that, Your Honor. What I'm saying is I think it's going to be too

difficult for a malpractice case to be negotiated at a mediation with the five siblings we have here without one voice --

MR. MENDEL: I see it that it needs to be a global deal, and if we can't work something out with Vacek & Freed, then the mediation fails. But I'm confident somebody like Judge Davidson can pull this thing together.

THE COURT: And I tend to agree. And, you know, I was -- I would hope that you and Ms. Foley would agree to participating in this mediation. And I'm still considering the motion to transfer, but I have to say if you guys are not willing to consider, that encourages me to grant the motion to transfer just to get everything over here so that we can try to get it settled.

MR. REED: And I don't want you to have a misvoid [sic] that we're not agreeable to going to mediation. My concern is more if I go to mediation, who am I negotiating with? And the problem is I am being sued -- my client is being sued by the estate. The estate right now doesn't have a representative.

So, my concern is, maybe I didn't express it well enough earlier, is not the mediation itself in going - it's who do I negotiate with because I'm dealing with five separate demands because the family can't

speak, and I think that's clear. They can't speak at this point as a whole.

THE COURT: I understand. And I think that Judge Davidson's qualified. He's capable of seeing the big picture and putting all those pieces together and dealing with that.

MS. BAYLESS: And, frankly, Judge, I think I'm going to have to provide the information that Judge Davidson needs about why the claims are filed to begin with. And it doesn't matter how many times you say there is no proof, there is no evidence - the point is, Judge Davidson is going to have to negotiate this thing. There is proof, there is evidence, and I can take the laboring of presenting some kind of summary to him so that he understands the case from its inception and can deal with that case.

The idea that, well, there is nobody right now because my client had resigned so there's nobody to deal with this. Let's jump in there and take advantage of it and everything says there is no way to prove this case, there is no way to do that. That's what Judge Davidson will be trying to deal with, and I can provide him with the information and the evidence that does inform him about the case. And it's out there, and they know it's out there. So, we can get past that.

I think it a lot more efficiently if they agree to deal with the mediation and everything can be dealt with that way, but I tend to agree - if they can't do that by agreement, then we're right back where we were in this suit about what do we do with that case because that case may very well keep us from resolving this case. Even a non lawyer in the room has said that today. So, you know, I think that's pretty obvious.

THE COURT: It sounds to me like everyone except Mr. Reed agrees with that.

Do you need to get back with Ms. Foley in order to get me an answer on whether you will voluntarily participate?

MR. REED: We'll voluntarily participate. I'm just expressing my concern of why it's not going to be successful.

THE COURT: And I appreciate that. And that's a level of, you know, difficulty that I think you will need to bring to the mediation and explain to Judge Davidson and have him address that. So, I mean, everyone has voiced complications today that need to come out on the table and need to be part of the mediation. So, I'm glad that you're all here and voicing those opinions.

So, I think we all agree that I'm going to

call Judge Davidson. Is there anything else that needs to be discussed today? Is there any -- is there any timing issues that I need to make Judge Davidson aware of?

MS. BAYLESS: Well there is a trial setting in May in the district court.

MR. MENDEL: I don't think that one is going to stick given the current posture --

MS. BAYLESS: Having gone through that argument before, I don't know that I would take that for granted.

MR. MENDEL: You're right.

MS. BAYLESS: That's pretty much upon us. We're talking. We may not be able to get in to Judge Davidson this month. I don't know what his schedule is but, you know, we're talking about then that does make it a little bit more important the issue of personal representative; in fact, if we're facing that many trials --

THE COURT: Okay. Do we need to reset the motion to transfer at this point? In other words, do I need to have another hearing to have to hear from Ms. Foley from that issue?

MR. REED: I think you should continue it until after the mediation.

THE COURT: And I think I can do that if you guys agree to participate.

MR. REED: Again, I think you're misunderstanding what I was saying.

THE COURT: No. No. No. I hear what you're saying - I'm just confirming it.

MR. REED: Yeah, I hear you loud and clear. And if you would prefer us at mediation, I will be there. I was just expressing to you I think the concerns that convolute the matter even worse, but I hear you loud and clear.

MS. BAYLESS: What's the trial date?

MR. REED: I think it's the 16th, but I will say this. The Court currently, while we're on the trial docket, I think they recognize that we can't go forward with it because we don't have a personal representative. I don't think that they officially debated it, but I think they somehow called us, I'm expressing this court involved them, Your Honor, but I would say -- well, I'll leave it like that.

MR. SPIELMAN: That being said, Judge, probably sooner is probably better than later, you know.

THE COURT: Of course. Yeah, I think everyone wants to get this moving.

MS. BRUNSTING: Because most of us work.

I think each night there's certain meetings that I just can't --

THE COURT: Of course. Why I'm not going to get involved with actually scheduling the day; I'm going to contact him. And I just wanted to know if there are any global problems, but I'll leave it to you guys to, you know, to contact him and find a date that's going to work for everyone. I know that you guys all have your emails and share your email addresses. So, I'm hoping that you can work together and find a date that will be convenient for everyone.

MS. BAYLESS: Speak of that, I don't know if an order has been signed yet. I've got Ms. Smith's withdrawal, but can we have some information about where to serve her like what address or fax --

MS. BRUNSTING: Darlene asked me if it was okay that she send information out, and I said, "Yes, that's okay," but she didn't send it out. I did send it out.

THE COURT: Can you send an email to everyone?

MS. BRUNSTING: We can talk about it.

THE COURT: Including me. I guess you sent me a letter so I got your contact information,

correct? It's on your letter? Ms. Brunsting?

MR. SPIELMAN: Her address, I think, just to be clear, I think what would be useful to everybody would be if you could just let us know your preferred email address, your preferred phone contact. If you do happen to have access to a fax machine for receiving things, that would work too. I think that that covers most of the ways that we can --

THE COURT: And if you could copy me on that as well, that would be helpful. Thank you.

Okay. Anything else?

MS. BAYLESS: One other thing.

I know we held some things, we just held some things while Mr. Lester was doing his thing, and I wonder if it would make some sense to revisit the order that appointed him and the stay provisions and continue those through the mediation date anyway or something or through the next hearing, motion to transfer?

THE COURT: What specifically --

MS. BAYLESS: It just hit me that we've done that. I'm looking at the order right now.

We had talked about it at the hearing that says that the order expires in 90 days. So, I guess --

THE COURT: It doesn't sound like to me that everybody is eager to jump out and do some

discovery and spend more money prior to going to mediation, am I right? So, let's just focus on getting to mediation unless someone needs something specific in writing.

MS. BAYLESS: If I find the order, I'll let --

THE COURT: Thank you everybody for being here, particularly Mr. Lester for coming.

* * * * *

The State of Texas )
County of Harris )

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

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

I further certify that the total cost for the preparation of this Reporter's Record is $334.00 and was paid by Ms. Candace Curtis.

WITNESS MY OFFICIAL HAND this the 28th day of March, 2016.

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

# EXHIBIT 17

# IN THE UNITED STATES COURT OF APPEALS
# FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
January 9, 2013
Lyle W. Cayce
Clerk

No. 12-20164

CANDACE LOUISE CURTIS,

Plaintiff-Appellant

v.

ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas

Before HIGGINBOTHAM, SMITH, and ELROD, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

This appeal concerns the scope of the probate exception to federal subject-matter jurisdiction in the wake of the Supreme Court's decision in Marshall v. Marshall.[1] The Plaintiff contends that, under Marshall, her claims for breach of fiduciary duty against the co-trustees of an inter vivos trust do not implicate the probate exception. We agree.

[1] 547 U.S. 293 (2006).

I.

In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively "the Brunstings' Wills") appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust.[2] Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.

Candace Curtis, Anita Brunsting, and Amy Brunsting are siblings. In February 2012, Candace Curtis ("Curtis") filed a complaint in federal district court against Anita Brunsting and Amy Brunsting (collectively "the Defendants") based on diversity jurisdiction. In that complaint, she alleged that Anita and Amy, acting as co-trustees of the Trust, had breached their fiduciary duties to Curtis, a beneficiary of the Trust. Specifically, she alleged that Anita and Amy had misappropriated Trust property, failed to provide her documents related to administration of the Trust, and failed to provide an accurate and timely accounting. The complaint alleged claims for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. Curtis sought compensatory damages, punitive damages, a temporary restraining order against "wasting the estate," and an injunction compelling both an accounting of Trust property and assets as well as production of documents and accounting records.

On March 1, 2012, the district court denied Curtis's application for a temporary restraining order and injunction because the Defendants had not

[2] The signed copies of the Brunstings' Wills are not included in the record, but Curtis provided unsigned copies, which we assume match the signed versions that have been admitted to probate.

been served with process. In the order, the district court judged noted that it "appears that the court lacks subject matter jurisdiction over the claim(s) asserted." On March 6, 2012, in response to the lis pendens Curtis had filed related to property in Texas and Iowa, Anita and Amy filed an emergency motion to remove the lis pendens. The motion noted that it was subject to the Defendants' contention that the federal district court lacked subject matter jurisdiction under the probate exception to federal court jurisdiction, an issue that the Defendants said would be raised in a separate Rule 12(b) motion to dismiss. On March 8, 2012, following a telephone conference with the parties, the district court judge entered a sua sponte order dismissing the case for lack of subject matter jurisdiction. In doing so, he concluded that the case falls within the probate exception to federal diversity jurisdiction. This appeal followed.

## II.

This Court reviews de novo a district court's dismissal for lack of subject-matter jurisdiction.[3]

## III.

Although a federal court "has no jurisdiction to probate a will or administer an estate,"[4] in Markham v. Allen, the Supreme Court recognized that the probate exception does not bar a federal court from exercising jurisdiction over all claims related to such a proceeding:

> [F]ederal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heris' and other claimants against a decedent's estate 'to establish their claims' so long as the federal court does not interfere with the probate proceedings or assume

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[3] Borden v. Allstate Ins. Co., 589 F.3d 168, 170 (5th Cir. 2009).

[4] Markham v. Allen, 326 U.S. 490, 494 (1946).

> general jurisdiction over the probate or control of the property in the custody of the state court.
>
> Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.[5]

Sixty years later, in Marshall v. Marshall, the Supreme Court expressed concern with lower courts' interpretation of Markham, noting that "[l]ower federal courts have puzzled over the meaning of the words 'to interfere with the probate proceedings,' and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate."[6] Thus, the Supreme Court clarified the "distinctly limited scope" of the probate exception,[7] explaining:

> [W]e comprehend the 'interference' language in Markham as essentially a reiteration of the guiding principle that, when one court is exercising in rem jurisdiction over a res, a second court will not assume in rem jurisdiction over the same res. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.[8]

The Marshall Court concluded that the federal district court had subject-matter jurisdiction, and the probate exception did not apply, reasoning: "[The claimant]

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[5] Id. (internal citations omitted).

[6] 547 U.S. at 311.

[7] Id. at 310.

[8] Id. at 311–12.



20-20566.2294

seeks an in personam judgment against [the Defendant], not the probate or annulment of a will. Nor does she seek to reach a res in custody of a state court."[9] After Marshall, the probate exception only bars a federal district court from (1) probating or annulling a will or (2) "seek[ing] to reach a res in custody of a state court" by "endeavoring to dispose of [such] property."[10]

As we see it, to determine whether the probate exception deprives a federal court of jurisdiction, Marshall requires a two-step inquiry into (1) whether the property in dispute is estate property within the custody of the probate court and (2) whether the plaintiff's claims would require the federal court to assume in rem jurisdiction over that property. If the answer to both inquiries is yes, then the probate exception precludes the federal district court from exercising diversity jurisdiction. Here, we find the case outside the scope of the probate exception under the first step of the inquiry because the Trust is not property within the custody of the probate court.

As a threshold matter, the probate exception only applies if the dispute concerns property within the custody of a state court. The federal court cannot exercise in rem jurisdiction over a res in the custody of another court. Both of the Brunstings' Wills were admitted to probate after the district court dismissed the case, and probate proceedings are ongoing.[11] However, nothing suggests that the Texas probate court currently has custody or in rem jurisdiction over the Trust. It likely does not. Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and

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[9] Id. at 312 (internal citations omitted).

[10] Id. at 312–13.

[11] At the time the district court dismissed the case, no probate proceedings had been initiated. As such, there was no possibility that the case fell within the probate exception. Nevertheless, we must consider whether, upon remand, the federal district court would have subject-matter jurisdiction now that probate proceedings are ongoing.

therefore are not part of the decedent's estate.[12] In other words, because the assets in a living or inter vivos trust are not property of the estate at the time of the decedent's death, having been transferred to the trust years before, the trust is not in the custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust. The record also indicates that there would be no probate of this Trust's assets upon the death of the surviving spouse.[13] Finding no evidence that this Trust is subject to the ongoing probate proceedings, we conclude that the case falls outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.

## IV.

For the reasons set forth above, we REVERSE the district court's dismissal of the case and REMAND for further proceedings. REVERSED AND REMANDED.

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[12] See 3 TEX. PRAC. GUIDE WILLS, TRUSTS, AND EST. PLAN. § 10:83 ("Any property held in a revocable living trust is not considered a probate asset . . . ."); 2 EST. TAX & PERS. FIN. PLAN. § 19:15 ("Avoidance of probate perhaps is the most publicized advantage of the revocable living trust.'"); 18 EST. PLAN. 98 ("Assets in a living trust are not subject to probate administration . . . .").

[13] Any assets "poured over" from the decedents' estates into the Trust would have to go through probate, but that does not change the fact that the Trust property over which the Defendants have been acting as Trustees would not be subject to probate, having been transferred to the Trust prior to the parents' deaths.



20-20566.2296

# EXHIBIT 18

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| | § | CIVIL ACTION NO. H-12-CV-592 |
| | § | |
| vs. | § | |
| | § | |
| ANITA KAY BRUNSTING, and | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |

**AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS**

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at $410,000. We listed the property for $469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered $469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately $270,000.

8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

Amy Ruth Brunsting

AMY RUTH BRUNSTING

Amy Ruth Brunsting

Sworn to and signed before me by _____, on this 6th day of March, 2012.

Notary Public in and for the State of Texas

TERESA SIMMONS
MY COMMISSION EXPIRES
September 7, 2014

Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

# EXHIBIT 19

02202015 : 1134 : P0007

PROBATE COURT 4

No. 412,249-401

| | | |
|---|---|---|
| ESTATE OF | § | PROBATE COURT |
| Nelva E. Brunstag, | § | |
| | § | NUMBER FOUR (4) OF |
| Deceased | § | |
| | § | 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) 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.

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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. Anderson
Judge Presiding

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2015 FEB 20 AM 8:49
Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS

**Party:** Carole Brunsting
Counsel Name: Darlene Payne Smith
SBN: 18643525
Counsel Signature:
Firm: Crain, Caton & James
Address: 1401 McKinney St 1700, Houston, Tx 77010
Phone: 713-752-8640
Fax: 713-658-1921
Email: dsmith@craincaton.com

**Party:** Cindy Brunsting
Counsel Name: Jason B. Ostrom
SBN: 24027710
Counsel Signature:
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**Party:** Amy Brunsting
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SBN: 00794678
Counsel Signature:
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**Party:** Carl Brunsting
Counsel Name: Bobbie G. Bayless
SBN: 01940600
Counsel Signature:
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PARTY: Anita Brunsting
COUNSEL: Brad Featherston (24038892)
The Mendel Law Firm
1155 Dairy Ashford Suite 104, Houston, TX 77079
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# EXHIBIT 20

FILED
12/5/2014 4:13:51 PM
Stan Stanart
County Clerk
Harris County

DM DATA ENTRY PICK UP THIS DATE

PROBATE COURT 4

12062014:1418:P0047

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 | § | |

# RESPONSE TO CANDACE'S MOTION FOR DISTRIBUTION OF TRUST FUNDS & RESPONSE TO CARL'S MOTION FOR DISTRIBUTION OF TRUST FUNDS

Defendant Anita Kay Brunsting files this response to Candace Louise Curtis' Motion for Distribution of Trust Funds and this response to Carl Brunsting's Motion for Distribution of Trust Funds and would respectfully show the Court as follows:

## I. Summary of the Argument

1. Distributions to pay legal-fee creditors are not authorized by the trust and, therefore, the motions must be denied.

2. Distributions to pay legal-fee creditors are prohibited by the trust and, therefore, the motions must be denied.

3. The Court lacks jurisdiction to decide the distributions for legal-fee creditor issue because there are no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.

4. If the Court finds the *in terrorem* clause is enforceable, then Candace and Carl have no right to any distribution from the trust.

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## II. Argument & Authorities

Candace and Carl seek distributions from the trusts to pay their creditor-attorneys.

Neither Candace nor Carl cite any provision in the trust instruments that would allow for the requested distributions. This is a tacit admission that such distributions are not authorized by the trust instruments.

Neither Candace nor Carl cite any legal authority that would allow for the requested distributions. This is a tacit admission that such distributions are not permitted by any legal authority.

Since there is nothing in the trust instruments or in any legal authority that allows the requested distributions, the motions must be denied.

**A. The Brunsting Family Living Trust.**

With respect to distributions under the Brunsting Family Living Trust, the instrument provides:

> i. Distributions of Net Income
>
> Our trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of [the beneficiary] as much of the net income from [the beneficiary's] trust share as our Trustee deems advisable for the health, education, maintenance and support of [the beneficiary], for [the beneficiary's] lifetime.
>
> ii. Distributions of Principal
>
> Our trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of [the beneficiary] as much of the principal from [the beneficiary's] trust share as our Trustee deems advisable for the health, education, maintenance and support of [the beneficiary], for [the beneficiary's] lifetime.[1]

[1] Exhibit 1, Restatement of the Brunsting Family Living Trust, pages 10-1 to 10-12.

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Furthermore, the trust instrument prohibits the trust from being charged with a beneficiary's debt:

> No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.[2]

Finally, the trust instrument provides:

> All trusts created under this agreement shall be administered free from the active supervision of any court.[3]

**B. The Qualified Beneficiary Designation.**

With respect to distributions under the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement ("QBD"), the instrument provides:

> The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for the benefit for whom the trust was created (hereinafter the "primary beneficiary") and the primary beneficiary's issue or to a trust for their benefit, so much of the income and/or principal of the Trust Estate, and at such time or times as Trustee shall deem appropriate for such distributees' health, support, maintenance, and education.[4]

Furthermore, the QBD contains spendthrift provisions that prohibit the requested distribution:

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[2] Exhibit 1, Restatement of the Brunsting Family Living Trust, page 11-1.

[3] Exhibit 1, Restatement of the Brunsting Family Living Trust, page 4-5.

[4] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, pages 7-8.

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> [N]either the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary.[5]

The QBD stated purpose includes:

> (1) To protect trust assets and income from claims of and interference from third parties; and
> (2) To protect the beneficiary against claims of third parties.[6]

Finally, the QBD states:

> It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution, or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will.[7]

**C. Attorneys Fees are not "Health, Education, Maintenance and Support."**

Under both the Brunsting Family Living Trust and the QBD, the distributions are: (1) subject to the sole and absolute discretion of the trustee; and (2) as the trustee deems advisable for the health, education, maintenance and support of a beneficiary. Carl's and Candace's attorneys' fees

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[5] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, page 25.

[6] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, pages 5-6, ¶¶ 4 and 10.

[7] Exhibit 2, Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, page 25.

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sought in their motion are not for their health, education, maintenance and support.[8] Accordingly, the requested distributions are not authorized by the trust.

**D. The Requested Distributions Violate the Spendthrift Provisions.**

The sprendthrift provisions plainly state they are designed to prevent interference and claims of third parties. Candace's and Carl's attorneys are third parties. When the spendthrift provisions of the trust and the *in terrorem* provisions are analyzed together, it becomes abundantly clear that the trust was not intended to pay Candace's and Carl's attorneys fees in this case. Accordingly, the requested distributions are prohibited by the trust.

**E. There is No Justiciable Case or Controversy with Respect to the Request Distribution.**

In the case of *Di Portanova v. Monroe*, the First District Court of Appeals explained:

> Under a discretionary trust, the beneficiary is entitled only to the income or principal that the trustee, in his discretion, shall distribute to the beneficiary. The beneficiary of a discretionary trust cannot compel the trustee to pay him or to apply for his use any part of the trust property, nor can a creditor of the beneficiary reach any part of the trust property until it is distributed to the beneficiary. A court cannot substitute its discretion for that of a trustee, and can interfere with the exercise of discretionary powers only in cases of fraud, misconduct, or clear abuse of discretion.
>
> A court of equity has no right to interfere with and control, in any case, the exercise of a discretionary power, no matter in whom it may be vested; a corporate body or individuals, the aldermen of a city, the directors of a bank, a trustee, executor or guardian; and I add, that meaning and principle of the rule, and the limitations to which it is subject, are in all the cases to which it applies, exactly the same. The meaning and principle of the rule are, that the court will not substitute

[8] Although defendant was unable to find a case directly on point, the case of *Tedder v. Gardner Aldrich, LLP*, 421 S.W.3d 651 (Tex. 2013) appears instructive. The Texas Supreme Court held that attorneys fees in a divorce proceeding were not "necessaries." Defendant recognizes that there is a difference between "necessaries" and the HEMS standard, but nevertheless believes the HEMS standard would not include plaintiffs legal fees in the case at bar.

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> its own judgment for that of the party in whom the discretion is vested, and thus assume to itself a power which the law had given to another[.]
>
> In the absence of evidence of mala fides, the courts are disinclined to interfere where the trustee has been given discretionary powers . . . . The court will refuse to review his decision in the absence of a showing that he did not exercise his discretion in good faith or that his decision was unreasonable; for the trustee in such case stands in the position of an arbitrator.[9]

The First District Court of Appeals ultimately held that the ultimate issue decided by the trial court did not present a justiciable controversy for the trial court to resolve because the issue should have been left to the Trustees' discretion.[10]

Here, Candace and Carl ask this Court to usurp the powers of the trustees and substitute the court's discretion for that of the trustees in violation of the trust. The Court has no jurisdiction to make such determination, because there is no justiciable controversy for the trial court to resolve. There is no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.[11] Even if Candace and Carl made such allegations, there is no evidence to support such allegations.

**F. No Contest Clause - Carl and Candace May Not Have An Interest.**

Both Carl and Candace appear to concede that they have violated the trust's *in terrorem* clause. Both filed a declaratory judgment action asking this Court to rule that the trust's *in terrorem* clause is overly broad, against public policy, and not capable of enforcement, but neither challenges

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[9] *Di Portanova v. Monroe*, 229 S.W.3d 324, 330-331 (Tex. App.–Houston [1st Dist.] 2006, pet. denied)(internal citations omitted).

[10] *Id.* at 331.

[11] *See* Candace's Motion and Carl's Motion.

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that their acts to date violated the *in terrorem* clause.[12]

If it is determined that the trust's *in terrorem* clause is capable of enforcement, then Carl and Candace do not have an interest in the trust.

If Carl and Candace do not have an interest in the trust, then there is no right to a distribution. Thus, until the Court resolves the *in terrorem* clause issues, there cannot be distributions to Carl and Candace. Furthermore, even if the *in terrorem* clause issues are resolved in favor of Carl and Candace, the requested distributions cannot be made for the reasons discussed above.

## III. Prayer

For these reasons, Defendant Anita Kay Brunsting prays that Candace's and Carl's motion for distribution of trust funds be denied and that Defendant Anita Kay Brunsting receive all other relief, general and special, legal and equitable, to which she or the trust may be entitled.

Respectfully submitted,

/s/ Brad Featherston

Stephen A. Mendel (13930650)
Bradley E. Featherston (24038892)
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
Tel: 281-759-3213
Fax: 281-759-3214
stephen@mendellawfirm.com
brad@mendellawfirm.com

Counsel for Anita Kay Brunsting
In Capacities at Issue

[12] Exhibit 3, Carl's First Amended Petition; Exhibit 4, Candace First Amended Petition.

12082014:1418:P0054

## Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Jason B. Ostrom
Ostrom.Sain, LLP
5020 Montrose Blvd., Suite 310
Houston, Texas 77006
O: 713-863-8891
F: 713-863-1051

Attorney for Candace Louis Curtis

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224
F: 713-522-2218
Bayless@baylessstokes.com

Attorney for Carl Henry Brunsting, Individually and as Independent Executor of the Estate of Elmer H. Brunsting and Nelva E Brunsting

Darlene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010
O: 713-752-8640
F: 713-425-7945

Attorney for Carole Ann Brunsting

Amy Ruth Brunsting
2582 Country Ledge
New Braunfels, Texas 78132
Pro Se

via e-service or telefax on December 5, 2014, to Jason B. Ostrom, Bobbie G. Bayless, and Darlene Payne Smith, and by email to Amy Ruth Brunsting.

/s/ Brad Featherston

Bradley E. Featherston

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EXHIBIT 1

# THE RESTATEMENT OF

# THE BRUNSTING FAMILY

# LIVING TRUST

*Prepared By*

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# THE RESTATEMENT OF THE BRUNSTING FAMILY LIVING TRUST

## Article I

## Our Family Living Trust

**Section A. The Restatement of Our Trust**

This restatement of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996 is made this day by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and wife, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, (together called "Founders") who presently reside in Harris County, Texas.

We now wish to restate that original trust agreement and any amendments thereto, in their entirety.

This restatement, dated January 12, 2005, shall replace and supersede our original trust agreement ad all prior amendments.

We shall serve together as the initial Trustees of this joint revocable living trust.

Notwithstanding anything in our trust declaration to the contrary, when we are serving as Trustees under our trust declaration, either of us may act for and conduct business on behalf of our trust as a Trustee without the consent of any other Trustee.

**Section B. The Title of Our Trust**

Although the name we have given to our trust for our own convenience is the BRUNSTING FAMILY LIVING TRUST, the full legal name of our trust for purposes of transferring assets into the trust, holding title to assets and conducting business for and on behalf of the trust, shall be known as:

> ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

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Our trust may also be known as:

> ELMER H. BRUNSTING and NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

In addition to the above descriptions, any description for referring to this trust shall be effective to transfer title to the trust or to designate the trust as a beneficiary as long as that format includes the date of this trust, the name of at least one initial or successor Trustee, and any reference that indicates that assets are to be held in a fiduciary capacity.

**Section C. Our Beneficiaries and Family**

This trust is created for the use and the benefit of ELMER H. BRUNSTING and NELVA E. BRUNSTING, and to the extent provided in this trust, for the other trust beneficiaries named herein.

The term "spouse" will refer to either of us, whichever is appropriate in context, and the term "both spouses" will mean both of us. The term "surviving spouse" or "surviving Founder" will identify the spouse who is living at the time of the other spouse's death (the "deceased spouse" or "deceased Founder").

For reference, our children are:

| Name | Birth Date |
|---|---|
| CANDACE LOUISE CURTIS | private |
| CAROL ANN BRUNSTING | private |
| CARL HENRY BRUNSTING | |
| AMY RUTH TSCHIRHART | |
| ANITA KAY RILEY | |

All references to our children or to our descendants are to these named children, as well as any children subsequently born to us or legally adopted by us.

The terms "trust beneficiary" or "beneficiary" will also mean any and all persons, organizations, trusts and entities who may have or may acquire a beneficial interest in this trust, whether vested or contingent in nature, including a transfer of an interest in the trust

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during our lives, from either of us, or both, or from an exercise of a power of appointment by a trust beneficiary or otherwise.

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# Article II

## Transfers of Assets to Our Trust

**Section A. Our Initial Contribution**

We have delivered to our Trustees certain property as the initial assets of this trust, the receipt of which is acknowledged.

**Section B. Additions to Our Trust**

Any person, trust or entity may add property of any character to this trust by a last will and testament, from another trust (regardless of whether such trust is a living trust or a trust contained in a Will), by a deed or any other legally accepted method of assignment, conveyance, delivery or transfer, subject only to the acceptance of such property or asset by the Trustee.

**Section C. Our Separate and Community Accounts**

Any contributions of separate property to the trust by, or for the benefit of, either Founder shall remain the separate property of such Founder. A separate schedule signed by both of the Founders may be maintained for purposes of identifying such separate property and its ownership.

Each of us may withdraw, remove, sell or otherwise deal with our respective separate property interests without any restrictions. Should we revoke our trust, all separate property shall be transferred, assigned, or conveyed back to the owning Founder as his or her respective separate property.

All community property, as well as the income from and proceeds of such community property, shall retain its community property characterization under the law unless we change such characterization by virtue of a duly executed marital partition agreement.

All community property withdrawn or removed from our trust shall retain its community characterization. Should we revoke our trust, all community property shall be transferred, assigned or conveyed back to us as community property.

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# Article III

## Our Right to Amend or Revoke This Trust

**Section A. We May Revoke Our Trust**

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

**Section B. We May Amend Our Trust**

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.

**Section C. Income Tax Matters**

For so long as this trust remains subject to amendment or revocation in its entirety, and for so long as a Founder is a Trustee of the trust, this trust will be treated for income tax reporting purposes as a "grantor trust" as that term is used by the Internal Revenue Service, particularly in Treasury Regulation Section 1.671-4(b).

For so long as a Founder is a Trustee of the trust, the tax identification numbers will be the social security numbers of the Founders and all items of income, gain, loss, credit and

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deduction are to be reported on the Founders' individual or joint income tax returns. At such time as the trust becomes irrevocable, in whole or in part, because of the death of one of us, the trust is to be treated for income tax purposes as required by Subchapter J of the Internal Revenue Code.

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# Article IV

## Our Trustees

**Section A. Original Trustees**

Founders appoint ELMER H. BRUNSTING and NELVA E. BRUNSTING as the original Trustees of this trust. However, either of us may conduct business and act on behalf of this trust without the consent or authority of any other Trustee. Any third party may conclusively rely on the authority of either of us without the joinder of the other.

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals will serve as Co-Trustees:

CARL HENRY BRUNSTING and ~~AMY RUTH TSCHIRHART~~

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then CANDACE LOUISE CURTIS shall serve as Co-Trustee in his or her place, with the remaining Co-Trustee then serving. However, if there is only one successor Co-Trustee able or willing to serve, such successor Co-Trustee shall serve alone.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

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A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:

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On my oath, and under the penalties of perjury, I swear that I am the duly appointed and authorized Trustee of the BRUNSTING FAMILY LIVING TRUST. I certify that the trust has not been revoked and remains in full force and effect, I have not been removed as Trustee and I have the authority to act for, and bind, the BRUNSTING FAMILY LIVING TRUST in the transaction of the business for which this affidavit is given as affirmation of my authority.

_____
Signature Line

Sworn, subscribed and acknowledged before me, the undersigned authority, on this the _____ day of _____, 20_____.

_____
Notary Public - State of Texas

## Section F. Documentary Succession of Our Trustees

The successor to any Trustee may document succession with an affidavit setting forth that the preceding Trustee is unwilling to serve or has failed or ceased to serve due to death or disability and the successor has assumed the duties of the Trustee.

The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence of a successor's authority to serve and act as the Trustee of the trust.

## Section G. Our Trustees' Compensation

Any person who serves as Trustee may elect to receive reasonable compensation to be measured by the time required in the administration of the trust and the responsibility assumed in the discharge of the duties of office.

A corporate or bank Trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for trusts of a similar size and nature and additional compensation for extraordinary services performed by the corporate Trustee.

If an attorney, accountant or other professional shall be selected as Trustee, such professional shall be entitled to compensation for professional services rendered to a trust by himself or by a member of his firm in addition to compensation for services as Trustee.

A Trustee will be entitled to full reimbursement for expenses, costs or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

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**Section H. Multiple Trustees**

In the event there are two or more Trustees serving the trust, other than the Founders, the authority vested in such Trustees must be exercised by a majority of the Trustees. If only two Trustees are acting, the concurrence or joinder of both shall be required.

When more than two Trustees are acting, any dissenting or abstaining Trustee may be absolved from personal liability by registering a written dissent or abstention with the records of the trust; the dissenting Trustee shall thereafter act with the other Trustees in any manner necessary or appropriate to effectuate the decision of the majority.

**Section I. Delegation of Authority**

Any Trustee may delegate to any other Trustee named in our trust the powers and authority vested in him or her by this declaration. A delegating Trustee may evidence such delegation in writing and may revoke it in writing at any time.

**Section J. Successor Corporate Trustees**

Any successor corporate or bank Trustee must be a United States bank or trust company vested with trust powers pursuant to state or federal law, and must have a combined capital and surplus of 20 million dollars.

Any bank or trust company succeeding to the business of any corporate or bank Trustee serving by virtue of this declaration because of change of name, reorganization, merger or any other reason shall immediately succeed as Trustee of this trust, without the necessity of court intervention or any other action whatsoever.

**Section K. Partial and Final Distributions**

The Trustee, in making or preparing to make a partial or final distribution, may prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Trustee; a release from any loss, liability, claim or question concerning the exercise of due care, skill and prudence of the Trustee in the management, investment, retention and distribution of property during the Trustee's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Trustee, to include the payment of attorney's fees, from any asserted claim of any taxing agency, governmental authority or other claimant.

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**Section L. Court Supervision Not Required**

All trusts created under this agreement shall be administered free from the active supervision of any court.

Any proceedings to seek judicial instructions or a judicial determination shall be initiated by our Trustee in the appropriate state court having original jurisdiction of those matters relating to the construction and administration of trusts.

**Section M. Health Insurance Portability and Accountability Act (HIPAA) of 1996 Compliance**

In order to maintain the integrity of this trust declaration and to meet our estate planning desires and goals, our Trustees shall comply with the directive set forth in this Section to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

1. **Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this Trust Agreement, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in this Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and

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deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

**2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founders' physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. Each of the Founders have separately signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this trust agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

**3. Determination of "Incompetence" or "Incapacity"**

For purposes of this Trust, and notwithstanding any other conflicting provisions contained in this Trust Declaration or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or

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estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founders, the Founders hereby voluntarily waive any physician-patient privilege or psychiatrist-patient privilege and authorize physicians and psychiatrists to examine them and disclose their physical or mental condition, or other personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founders' desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or

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such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under this Trust Agreement (if any), or if there is no such Trust Protector provided under this Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event this Trust Declaration does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of this trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

Each of the Founders have separately signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of this trust agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, each of the Founders hereby grant the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the trust agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

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# Article V

## Insurance Policies and Retirement Plans

### Section A. Our Authority While We Are Living

To the extent of a Founder's community or separate interest in insurance policies, retirement plans or any other third party beneficiary contract, during the life of a Founder, each shall have the following rights, and the Trustee of this trust declaration shall have the following duties with respect to any third party beneficiary contract owned by or made payable to this trust.

#### 1. The Founder's Rights

Each Founder reserves all of the rights, powers, options and privileges with respect to any insurance policy, retirement plan or any other third party beneficiary contract made payable to this trust or deposited with our Trustee. Each Founder may exercise any of the rights, powers, options and privileges with respect to such third party beneficiary contract without the approval of our Trustee or any beneficiary.

Neither Founder shall be obligated to maintain any insurance policy, retirement plan or any other third party beneficiary contract in force.

#### 2. Our Trustee's Obligations

Upon a Founder's written request, our Trustee shall deliver to the requesting Founder or the Founder's designee any and all third party beneficiary contracts and related documents which are owned by or deposited with our Trustee pursuant to our trust declaration. Our Trustee shall not be obligated to have any of such documents returned to the Trustee.

Our Trustee shall provide for the safekeeping of any third party beneficiary contract, as well as any documents related thereto, which are deposited with our Trustee. Otherwise, our Trustee shall have no obligation with respect to any third party beneficiary contract, including payment of sums due and payable under such contracts, other than those obligations set forth in this Article.

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**Section B. Upon the Death of a Founder**

Upon a Founder's death, our Trustee shall have authority to and shall make all appropriate elections with respect to any insurance policies, retirement plans and other death benefits which are the separate estate of the deceased Founder. With respect to any insurance policies, retirement plans and other death benefits which are a part of the community estate, our Trustee and the surviving Founder shall have the authority and shall make all appropriate elections consistent with the laws of the state having jurisdiction over such property.

**1. Collection of Non-Retirement Death Proceeds**

Regarding any life insurance policy, or any other non-retirement death benefit plan, wherein death benefits are made payable to or are owned by our trust, our Trustee shall make every reasonable effort to collect any and all such sums. In collecting such sums, our Trustee may, in its sole and absolute discretion, exercise any settlement option available under the terms of a policy or any other third party beneficiary contract with regard to the interest of the deceased Founder in those policies or death benefit proceeds. However, our Trustee shall not be liable to any beneficiary for the settlement option ultimately selected.

**2. Retirement Plan Elections**

To the extent of the interest of the deceased Founder, our Trustee shall have the right, in its sole and absolute discretion, to elect to receive any retirement plan death proceeds either in a lump sum or in any other manner permitted by the terms of the particular retirement plan. Such right shall exist and pertain to any retirement plan including, but not limited to, any qualified pension plan, profit sharing plan, Keogh plan and individual retirement account. Our Trustee shall not be liable to any beneficiary for the death benefit election ultimately selected.

Any benefit of any retirement plan which is payable to our trust, including individual retirement accounts that are payable to our trust, may be disclaimed by our Trustee in its sole and absolute discretion. Such disclaimed benefits shall be payable in accordance with such plan.

**3. Collection Proceedings**

In order to enforce the payment of any death proceeds, our Trustee may institute any legal, equitable, administrative or other proceeding. However, our Trustee need not take any action to enforce any payment until our Trustee,

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in its sole judgment, has been indemnified to its satisfaction for all expenses and liabilities to which it may be subjected.

Our Trustee is expressly authorized, in its sole and absolute discretion, to adjust, settle and compromise any and all claims that may arise from the collection of any death proceeds. Any decision made by our Trustee pursuant to this Section B.3 shall be binding and conclusive on all beneficiaries.

**4. Payor's Liability**

Any person or entity which pays any type of death proceeds to our Trustee as beneficiary, shall not be required to inquire into any of the provisions of this trust declaration, nor will they be required to see to the application of any such proceeds by our Trustee. Our Trustee's receipt of death proceeds shall relieve the payor of any further liability as a result of making such payment.

**Section C. Special Provisions Pertaining to Tax-Deferred Trust Assets**

Since the Founders anticipate that tax-deferred plans such as 401(k) plans, IRA's, SEP's and similar retirement plans and tax-deferred accounts might name this trust as the designated beneficiary in the event of the death of the Founders, the following provisions will hereby apply in all respects with regard to the assets and proceeds of such plans, notwithstanding that other provisions in this Agreement are in conflict with the following provisions:

**1. Minimum Distribution**

It is the purpose and intent of the Founders that this trust will qualify as a "designated beneficiary" pursuant to Section 401(a)(9) of the Internal Revenue Code and the term "Minimum Required Distribution" shall mean such mandatory distributions as are required to qualify this trust pursuant to the said Section 401(a)(9) of the Internal Revenue Code.

**2. Distribution Restrictions**

Notwithstanding any other provision in this trust declaration, and except as provided in this Article, the Trustee may not distribute to or for the benefit of the estate of either Founder, any charity or any other non-individual beneficiary, any benefits payable to this trust under any qualified retirement plan, individual retirement account or other retirement arrangement subject to the "Minimum Required Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code, or other comparable provisions of law. It is the intent

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of the Founders that all such retirement benefits be distributed to or held only for individual beneficiaries within the meaning of Section 401(a)(9) and applicable regulations. This paragraph shall not apply to any charitable bequest which is specifically directed to be funded with assets other than those encompassed by this provision.

**3. Exclusion of Older Adopted "Descendants"**

Notwithstanding any other provision hereof or state law, the class of the Founders' (or any other persons) "issue" or "descendants" shall not include an individual who is the Founders' (or such persons') "issue" or "descendants" by virtue of legal adoption if such individual (i) was so adopted after the Required Beginning Date of a Founder or a Founder's death, whichever occurs first, and (ii) is older than the oldest beneficiary of this trust who was a living member of said class on the earlier of said dates. The "Required Beginning Date," for purposes of this paragraph means April 1 of the year following the year in which the plan participant reaches 70½, or, if later, the date on which this trust is first named as a beneficiary of any retirement plan, benefit or arrangement subject to the "Minimum Distribution Rules" of Section 401(a)(9) of the Internal Revenue Code. The said Section 401(a)(9) of the Internal Revenue Code is incorporated by reference in this trust declaration for all purposes, together with applicable treasury regulations pertaining thereto.

**4. Payment of Estate Taxes of Plan Participant**

Except as required by state law, the trustee shall not use any plan benefits to pay a plan participant's estate taxes.

**5. Delivery of Trust to Plan Administrator**

If the Founders have not previously done so, the Trustee shall deliver a copy of this trust declaration to any plan administrator within the time limits required by applicable statute, as well as final and proposed treasury regulations.

**6. Distribution to the Beneficiaries**

Notwithstanding any other provision contained in this trust declaration to the contrary, the Trustee shall withdraw from the individual retirement account or other retirement plan payable to the trust, and distribute directly to the beneficiaries named herein, each year, the Minimum Required Distribution for such year based on the oldest beneficiary's life expectancy. After the death

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of a beneficiary, the Trustee shall pay income of the trust and such Minimum Required Distribution to the descendants of such deceased or remainder beneficiary, as specified in Article X of this trust declaration.

**7. Distribution of More Than the Minimum Distribution**

The Trustee is authorized in its sole and absolute discretion, to distribute to the beneficiary and contingent beneficiaries more than the Minimum Required Distribution if deemed necessary and appropriate prior to the mandatory distributions of trust assets provided in Article X of this trust declaration.

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# Article VI

## For So Long As We Both Shall Live

**Section A. Our Use of Income and Assets**

While we are both living, the net income of the trust is to be paid at least monthly to us, or to be used for our benefit. Any unused income will be accumulated and added to the principal assets of this trust.

While we are both living, we shall have the absolute right, either individually or jointly, to add to the trust property at any time.

While we are both living, we shall each have the right to withdraw, use or benefit from all or any part of our own separate property and our respective interests in any community property. However, the surviving spouse will be entitled to the use and benefit of the deceased spouse's interest as provided in this trust declaration.

Either of us, individually, may make gifts of our separate property contributed to the trust or may make gifts of our interests or shares in the trust itself to the extent permitted by law, including our community property interests. Neither of us shall have the power to direct our Trustee to make gifts of any trust principal or income. If any such gift is made directly to a third party, such gift shall be deemed to have first been distributed directly to either or both of us and then distributed as a gift from either or both of us to such third party.

**Section B. If One or Both of Us Are Disabled**

If one or both of us should become disabled, our Trustee shall provide to both of us, and to any person deemed by our Trustee to be dependent on either or both of us, such portions of income and principal from each of our respective interests in separate property and from our respective one-half interests in our community property, as deemed necessary or advisable in its sole discretion, for our health, education, maintenance and support, as well as for the health, education, maintenance and support of any person deemed by our Trustee to be dependent on either or both of us.

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Our Trustee's discretion may include the payment of insurance premiums pursuant to contracts for insurance owned by one of us or by our trust. Premiums paid on a separate property policy shall be paid out of separate property funds of the owner of that policy.

During any period that one or both of us are disabled, it is the intention of each of us that we be cared for in our residence or in the private residence of another who is dear to us. It is our preference that neither of us be admitted to a convalescent care facility or similar facility unless our condition mandates such placement.

Valid obligations of either of us which are confirmed by our Trustee shall be provided for by our Trustee from such portions of income and principal from each of our separate property accounts and from our respective one-half interests in our community accounts, as deemed necessary or advisable in our Trustee's sole discretion.

If, prior to the disability of either one or both of us, one or both of us were making regular lifetime gifts to our children for purposes of estate tax planning, then our Trustee shall continue such gifting program to our children; provided, however, no such gifts shall be made until our support and obligations have been provided for.

**Section C. Income Tax Matters**

If any interest or share in the trust is irrevocable for so long as one or both of us are living, and if the Trustee of the trust is classified as subordinate or related to either of us, the distribution of trust corpus to the beneficiary of an irrevocable share, to the extent of his or her share or interest alone, will be limited to discretionary distributions necessary or appropriate to provide for the beneficiary's health, education, maintenance and support, and this standard shall be construed and limited according to the requirements of Section 674(b)(5)(A) of the Internal Revenue Code.

**Section D. Residence Homestead**

Pursuant to Section 11.13 of the Texas Property Tax Code, a qualifying trust may claim the statutory homestead exemption provided by the said Texas Property Tax Code as well as other provisions of Texas law. In order to comply with the said Texas Property Tax Code provisions, the Founders hereby agree as follows:

1. Our residence shall be owned by us through a beneficial interest in this qualifying trust;

2. Our residence shall be designed or adapted for human residence;

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3. Such property shall at all times be used as our residence;

4. Such property will be occupied by us as Founders or Trustors of this trust as a result of our beneficial interest in this qualifying trust;

5. By separate deed of our residential property, we have conveyed our interest in such real property to this qualifying trust and are therefore qualified as "Trustors" pursuant to the said Code;

6. This revocable intervivos trust is a "Qualifying Trust" in that we specifically provide that as Trustors of the trust we have the right to use and occupy as our principal residence the residential property rent free and without charge except for taxes and other costs and expenses which may be specified in this instrument. Such right to use and occupation shall be for life or until the date the trust is revoked or terminated by an instrument that describes the property with sufficient certainty to identify it and is recorded in the real property records of the county in which the property is located; and

7. This trust has acquired the property in an instrument of title that

   a. describes the property with sufficient certainty to identify it and the interest acquired;

   b. is recorded in the real property records of the county in which the property is located; and

   c. is executed by one or both of us as Trustors or by our personal representatives.

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# Article VII

## Upon the Death of One of Us

**Section A. Settlement of Affairs**

Upon the death of the first Founder to die, our Trustee is authorized, but not directed, to pay the following expenses, claims and liabilities which are attributable to the first Founder to die:

Funeral, burial and expenses of last illness

Statutory or court-ordered allowances for qualifying family members

Expenses of administration of the estate

Legally enforceable claims against the deceased Founder or the deceased Founder's estate

Taxes occasioned by death

Any payment authorized above is discretionary. No claim or right to payment may be enforced against this trust by virtue of such discretionary authority.

**1. Deceased Founder's Probate Estate**

Payments authorized under this Section shall be paid only to the extent that the probate assets (other than real estate, tangible personal property or property that, in our Trustee's judgment, is not readily marketable) are insufficient to make these payments. However, if our trust holds United States Treasury Bonds which are eligible for redemption at par in payment of the federal estate tax, our Trustee shall redeem such bonds to the extent necessary to pay federal estate tax as a result of a death.

Payments authorized under this Section may be made by our Trustee, in its sole and absolute discretion, either directly to the appropriate persons or institutions or to the personal representative of the deceased Founder's probate estate. If our Trustee makes payments directly to the personal representative

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of the deceased Founder's probate estate, our Trustee shall not have any duty to see to the application of such payments. Any written statement of the deceased Founder's personal representative regarding material facts relating to these payments may be relied upon by our Trustee.

As an addition to our trust, our Trustee is authorized to purchase and retain in the form received any property which is a part of the deceased Founder's probate estate. In addition, our Trustee may make loans to the deceased Founder's probate estate with or without security. Our Trustee shall not be liable for any loss suffered by our trust as a result of the exercise of the powers granted in this paragraph.

Our Trustee shall be under no obligation to examine the records or accounts of the personal representative of the deceased Founder's probate estate and is authorized to accept distributions from the personal representative of the deceased Founder's probate estate without audit.

**2. Exempt Property Excluded**

Our Trustee shall not use any property in making any payments pursuant to this Section to the extent that such property is not included in the deceased Founder's gross estate for federal estate tax purposes. However, if our Trustee makes the determination, in its sole and absolute discretion, that other non-exempt property is not available for payments authorized under this Section, it may then use such exempt property where it is not economically prudent to use non-exempt property for the payment of such expenses.

**3. Apportionment of Payments**

Except as otherwise specifically provided in this trust declaration, all expenses and claims, and all estate, inheritance and death taxes, excluding any generation-skipping transfer tax, resulting from the death of a Founder shall be paid without apportionment and without reimbursement from any person.

Notwithstanding anything to the contrary in our trust, no death taxes payable as a result of the death of the first Founder to die shall be allocated to or paid from the Survivor's Trust or from any assets passing to the surviving Founder and qualifying for the federal estate tax marital deduction unless our Trustee has first used all other assets available to our Trustee.

Notwithstanding anything to the contrary in our trust declaration, estate, inheritance and death taxes assessed with regard to property passing outside

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of our trust or outside of our probate estates, but included in the gross estate of a Founder for federal estate tax purposes, shall be chargeable against the persons receiving such property.

**Section B. Division and Distribution of Trust Property**

Our Trustee shall divide the remaining trust property into two separate trusts upon the death of the first one of us to die. The resulting trusts shall be known as the Survivor's Trust and the Decedent's Trust.

**1. Creation of the Survivor's Trust**

The Survivor's Trust shall consist of the surviving Founder's interest in the community portion of the trust property, if any, and his or her separate portion of the trust property. In addition, the Survivor's Trust shall be the fractional share of the deceased Founder's trust property as follows:

**a. Numerator of the Fractional Share**

The numerator of the fractional share shall be the smallest amount which, if allowed as a marital deduction, would result in the least possible federal estate tax being payable as a result of the deceased Founder's death, after allowing for the unified credit against federal estate tax (after taking into account adjusted taxable gifts, if any) as finally determined for federal estate tax purposes, and the credit for state death taxes (but only to the extent that the use of this credit does not require an increase in the state death taxes paid).

The numerator shall be reduced by the value, for federal estate tax purposes, of any interest in property that qualifies for the federal estate tax marital deduction and which passes or has passed from the deceased Founder to the surviving Founder other than under this Article.

**b. Denominator of the Fractional Share**

The denominator of the fractional share shall consist of the value, as finally determined for federal estate tax purposes, of all of the deceased Founder's trust property under this agreement.

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2. **Creation of the Decedent's Trust**

The Decedent's Trust shall consist of the balance of the trust property.

**Section C. Valuation of Property Distributed to the Survivor's Trust**

Our Trustee shall use those values as finally determined for federal estate tax purposes in making any computation which is necessary to determine the amount distributed to the Survivor's Trust. On the dates of distribution, the fair market value of all of the deceased Founder's property shall in no event be less than the amount of the Survivor's Trust as finally determined for federal estate tax purposes.

**Section D. Conversion of Nonproductive Property**

The surviving Founder shall at any time have the absolute right to compel our Trustee to convert nonproductive property held as an asset of the Survivor's Trust to productive property. Such right exists notwithstanding any contrary term in this agreement. The surviving Founder shall exercise this right by directing our Trustee in writing to convert such property.

**Section E. Survivor's Right to Refuse Property or Powers Granted**

With respect to property passing to the surviving Founder or for the surviving Founder's benefit, any portion of any interest in such property or power may be disclaimed by the surviving Founder within the time and under the conditions permitted by law with regard to disclaimers.

Any interest disclaimed by the surviving Founder with respect to any portion of the Survivor's Trust shall be added to the Decedent's Trust. Any interest disclaimed by the surviving Founder with respect to any portion of the Decedent's Trust shall be disposed of under the appropriate provisions of this agreement as though the surviving Founder had predeceased the first Founder to die.

Any disclaimer exercised must be an irrevocable and unqualified refusal to accept any portion of such interest in the property or power disclaimed. Such disclaimer must be delivered to our Trustee in writing.

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**Section F. Allocation of Trust Property**

Subject to the conditions of Section B.1 of this Article, our Trustee shall have the complete authority to make allocations of the deceased Founder's trust property between the Survivor's and Decedent's Trusts.

Our Trustee may make allocations in cash or its equivalent, in kind, in undivided interests, or in any proportion thereof between the two trusts. Our Trustee may also, in its sole discretion, allocate such assets in kind based on the date of distribution values, rather than an undivided interest in each and every asset.

Our Trustee shall not allocate any property or assets, or proceeds from such property or assets, to the Survivor's Trust which would not qualify for the federal estate tax marital deduction in the deceased Founder's estate.

Our Trustee shall not allocate any policies of life insurance insuring the life of the surviving Founder to the Survivor's Trust that are the sole and separate property of the deceased Founder.

To the extent that there are insufficient assets qualifying for the marital deduction to fully fund this Survivor's Trust, the amount of the funding to the Survivor's Trust shall be reduced accordingly.

Our Trustee shall consider the tax consequences of allocating property subject to foreign death tax, property on which a tax credit is available, or property which is income in respect of a decedent under applicable tax laws prior to allocating the deceased Founder's property to the Survivor's Trust.

**Section G. Distributions from Retirement Plan to the Survivor's Trust**

If Retirement Plan distributions are included in the Survivor's Trust, or in any Survivor's Trust Share, our Trustee shall comply with the following guidelines.

**1. Form of Distribution**

Our Trustee may elect to receive distributions from any pension, profit sharing, individual retirement account, or other retirement plan ("Retirement Plan") for which our Trust, or any subtrust provided for herein, is named as beneficiary, in installments or in a lump sum.

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2. Income Requirement

Our Trustee shall elect to receive distributions from a Retirement Plan payable to the Survivor's Trust or any Survivor's Trust Share in compliance with the minimum distribution rules of the Internal Revenue Code if applicable and also so that at least all income earned by the Retirement Plan each calendar year is distributed to the Trust and allocated to trust income during the year. If distributions from the Retirement Plan total less than all income earned by the Retirement Plan for a calendar year, our Trustee shall demand additional distributions equal to at least the shortfall so that the surviving Founder will receive all income earned by the Retirement Plan at least annually. The surviving Founder shall have full power, in such surviving Founder's discretion, to compel our Trustee to demand such distributions and to compel the Retirement Plan Trustee to convert any nonproductive property to productive property.

3. Retirement Plan Expenses

In calculating "all income earned by the Retirement Plan," our Trustee shall allocate all Retirement Plan expenses, including income taxes and Trustee's fees, that are attributable to principal distributions so that all income distributions from the Retirement Plan are not reduced.

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# Article VIII

## Administration of the Survivor's Trust

### Section A. Creation of Two Survivor's Shares

The property passing to the Survivor's Trust shall be divided into two shares. Both shares shall collectively constitute the Survivor's Trust.

**1. Survivor's Share One**

Our Trustee shall allocate all of the surviving Founder's separate portion of the trust property and all of the surviving Founder's community portion of the trust property, if any, to Survivor's Share One.

**2. Survivor's Share Two**

Survivor's Share Two shall consist of the balance, if any, of the property passing to the Survivor's Trust.

If any allocation under this Article results only in the funding of Survivor's Share One, our Trustee shall administer this agreement as if Survivor's Share Two did not exist. The funding of Survivor's Share One, when Survivor's Share Two does not exist, shall be referred to only as the Survivor's Trust and no designation shall be necessary.

Separate accounts shall be maintained for Survivor's Share One and Survivor's Share Two. Our Trustee may, however, hold the separate shares as a common fund for administrative convenience.

### Section B. Administration of Survivor's Share One

Our Trustee shall administer Survivor's Share One for the surviving Founder's benefit as follows:

**1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share One.

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**2. The Surviving Founder's Right to Withdraw Principal**

Our Trustee shall pay to or apply for the surviving Founder's benefit such amounts from the principal of Survivor's Share One as the surviving Founder may at any time request in writing.

No limitation shall be placed on the surviving Founder as to either the amount of or reason for such invasion of principal.

**3. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share One as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the surviving Founder's education, health, maintenance, and support.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

**4. The Surviving Founder's General Power of Appointment**

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, the entire principal and any accrued and undistributed net income of Survivor's Share One as it exists at the surviving Founder's death. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

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**Section C. Administration of Survivor's Share Two**

Our Trustee shall administer Survivor's Share Two for the surviving Founder's benefit as follows:

**1. The Surviving Founder's Right to Income**

Our Trustee shall pay to or apply for the surviving Founder's benefit, at least monthly during the surviving Founder's lifetime, all of the net income from Survivor's Share Two.

The surviving Founder shall have the unlimited and unrestricted general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, any accrued and undistributed net income of Survivor's Share Two. In exercising this general power of appointment, the surviving Founder shall specifically refer to this power.

The surviving Founder shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to the surviving Founder the right to appoint property to the surviving Founder's own estate. It also specifically grants to the surviving Founder the right to appoint the property among persons, corporations, or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as the surviving Founder may elect.

**2. Principal Distributions in Our Trustee's Discretion**

Our Trustee may also distribute to or for the surviving Founder's benefit as much of the principal of Survivor's Share Two as our Trustee, in its sole and absolute discretion, shall consider necessary or advisable for the education, health, maintenance, and support of the surviving Founder.

Our Trustee shall take into consideration, to the extent that our Trustee deems advisable, any income or resources of the surviving Founder which are outside of the trust and are known to our Trustee.

It is our desire, to the extent that it is economically prudent, that principal distributions be made from Survivor's Share One until it is exhausted, and only thereafter from the principal of Survivor's Share Two.

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### 3. The Surviving Founder's Limited Testamentary Power of Appointment

The surviving Founder shall have the limited testamentary power to appoint to or for the benefit of our descendants, either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of the principal of Survivor's Share Two as it exists at the surviving Founder's death.

The surviving Founder may make distributions among our descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as the surviving Founder shall determine.

This power shall not be exercised in favor of the surviving Founder's estate, the creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder.

## Section D. Administration of Both Survivor's Shares at Surviving Founder's Death

Both Survivor's Share One and Survivor's Share Two shall terminate at the surviving Founder's death. Our Trustee shall administer the unappointed balance or remainder of both shares as follows:

### 1. The Surviving Founder's Final Expenses

Our Trustee may, in its sole and absolute discretion, pay for the following expenses:

Expenses of the last illness, funeral, and burial of the surviving Founder.

Legally enforceable claims against the surviving Founder or the surviving Founder's estate.

Expenses of administering the surviving Founder's estate.

Any inheritance, estate, or other death taxes payable by reason of the surviving Founder's death, together with interest and penalties thereon.

Statutory or court-ordered allowances for qualifying family members.

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The payments authorized under this Section are discretionary, and no claims or right to payment by third parties may be enforced against the trust by virtue of such discretionary authority.

Our Trustee shall be indemnified from the trust property for any damages sustained by our Trustee as a result of its exercising, in good faith, the authority granted it under this Section.

It is our desire that, to the extent possible, any payments authorized under this Section be paid from the surviving Founder's probate estate before any payments are made pursuant to this Section.

**2. Redemption of Treasury Bonds**

If the Survivor's Trust holds United States Treasury Bonds eligible for redemption in payment of the federal estate tax, our Trustee shall redeem the bonds to the extent necessary to pay any federal estate tax due by reason of the surviving Founder's death.

**3. Coordination with the Personal Representative**

This Paragraph shall be utilized to help facilitate the coordination between the personal representative of the surviving Founder's probate estate and our Trustee with respect to any property owned by the surviving Founder outside of this trust agreement at the surviving Founder's death.

**a. Authorized Payments**

Our Trustee, in its sole and absolute discretion, may elect to pay the payments authorized under this Section either directly to the appropriate persons or institutions or to the surviving Founder's personal representative.

Our Trustee may rely upon the written statements of the surviving Founder's personal representative as to all material facts relating to these payments; our Trustee shall not have any duty to see to the application of such payments.

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**b. Purchase of Assets and Loans**

Our Trustee is authorized to purchase and retain in the form received, as an addition to the trust, any property which is a part of the surviving Founder's probate estate. In addition, our Trustee may make loans, with or without security, to the surviving Founder's probate estate. Our Trustee shall not be liable for any loss suffered by the trust as a result of the exercise of the powers granted in this paragraph.

**c. Distributions from the Personal Representative**

Our Trustee is authorized to accept distributions from the surviving Founder's personal representative without audit and our Trustee shall be under no obligation to examine the records or accounts of the personal representative.

**4. Trustee's Authority to Make Tax Elections**

Our Trustee may exercise any available elections with regard to state or federal income, inheritance, estate, succession, or gift tax law.

**a. Alternate Valuation Date**

The authority granted our Trustee in this Paragraph includes the right to elect any alternate valuation date for federal estate or state estate or inheritance tax purposes.

**b. Deduction of Administration Expenses**

The authority granted our Trustee in this Paragraph shall include the right to elect whether all or any parts of the administration expenses of the surviving Founder's estate are to be used as estate tax deductions or income tax deductions.

No compensating adjustments need be made between income and principal as a result of such elections unless our Trustee, in its sole and absolute discretion, shall determine otherwise, or unless required by law.

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c. **Taxes and Returns**

Our Trustee may also sign tax returns; pay any taxes, interest, or penalties with regard to taxes; and apply for and collect tax refunds and interest thereon.

**Section E. Subsequent Administration of the Survivor's Trust**

The unappointed balance or remainder of Survivor's Share One and Survivor's Share Two shall be administered as provided in Article X.

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# Article IX

## Administration of the Decedent's Trust

**Section A. Use of Income and Principal**

During the lifetime of the surviving Founder, our Trustee shall pay to or apply for the benefit of the surviving Founder all net income and such portions of principal from the Decedent's Trust according to the following guidelines:

1. **NET INCOME** shall be paid in convenient installments, at least monthly.

2. **PRINCIPAL**

   a. The surviving Founder shall have the noncumulative right to withdraw in any calendar year amounts not to exceed $5,000.00.

   b. In addition, on the last day of any calendar year, the surviving Founder may withdraw an amount by which five percent (5%) of the then market value of the principal of the Decedent's Trust exceeds principal amounts previously withdrawn in that year pursuant to Section A.2.a. of this Article.

   c. Our Trustee may also distribute any amount of principal deemed necessary, in our Trustee's sole and absolute discretion, for the health, education, maintenance and support of the surviving Founder and our descendants.

**Section B. Guidelines for All Distributions**

At all times, our Trustee shall give primary consideration to the surviving Founder's health, education, maintenance and support, and thereafter to our descendant's health, education, maintenance and support.

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If the surviving Founder has the power to remove a Trustee of the Decedent's Trust, our Trustee shall not distribute any of the principal of the Decedent's Trust that would in any manner discharge the surviving Founder's legal obligation to a beneficiary of the Decedent's Trust. If the surviving Founder is disabled, our Trustee shall ignore this restriction during the period of the surviving Founder's disability, and the surviving Founder shall not have the power to remove a Trustee of the Decedent's Trust.

**Section C. Guidelines for Discretionary Distributions**

Before making discretionary distributions of principal from the Decedent's Trust to the surviving Founder, our Trustee shall preferably exhaust the Survivor's Trust.

Before making discretionary distributions pursuant to this Article, our Trustee shall consider income or other resources which are available outside of the Decedent's Trust to any beneficiary. Distributions need not be made to all Decedent's Trust beneficiaries and may be to the complete exclusion of some beneficiaries. Distributions may be made in equal or unequal amounts according to the respective needs of the Decedent's Trust beneficiaries and shall not be charged against a beneficiary's ultimate share of trust property.

**Section D. Termination of the Decedent's Trust**

When the surviving Founder dies, the Decedent's Trust shall terminate and our Trustee shall administer the balance of the Decedent's Trust according to the following guidelines and in the following order:

1. The surviving Founder shall have the limited testamentary power to appoint all of the undistributed principal and income of the Decedent's Trust among our descendants only (but only to the extent such undistributed principal and income have not been transferred or assigned to the Decedent's Trust by virtue of a disclaimer executed by the surviving Founder). Any such appointment may be in any proportion and on such terms and conditions as the surviving Founder may elect. The surviving Founder shall not have the right or power to appoint any portion of the Decedent's Trust in favor of the surviving Founder's estate, creditors of the surviving Founder's estate, or in any manner which would result in any economic benefit to the surviving Founder. The right to exercise this limited testamentary power of appointment is the sole and exclusive right of the surviving Founder. Our Trustee shall distribute the

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appointed portions of the Decedent's Trust according to such appointment if exercised and specifically referred to either (i) in a valid last will and testament; (ii) in a living trust agreement; or (iii) by a written exercise of power of appointment executed by the surviving Founder.

2. Any unappointed balance of the Decedent's Trust shall be administered as provided in the Articles that follow.

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# 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:

| Beneficiary | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| ANITA KAY RILEY | 1/5 |

**Section B. Distribution to our Beneficiaries**

1. (a) Distribution of the share of CANDACE LOUISE CURTIS

The trust share created for CANDACE LOUISE CURTIS shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

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ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CANDACE LOUISE CURTIS as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CANDACE LOUISE CURTIS, for her lifetime.

iii. General Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CANDACE LOUISE CURTIS' share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CANDACE LOUISE CURTIS' death.

In exercising this general power of appointment, CANDACE LOUISE CURTIS shall specifically refer to this power.

CANDACE LOUISE CURTIS shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CANDACE LOUISE CURTIS the right to appointment of property to CANDACE LOUISE CURTIS' own estate. It also specifically grants to CANDACE LOUISE CURTIS the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CANDACE LOUISE CURTIS may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

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iv. Limited Testamentary Power of Appointment

CANDACE LOUISE CURTIS shall have the limited testamentary power to appoint to or for the benefit of CANDACE LOUISE CURTIS' descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CANDACE LOUISE CURTIS' share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CANDACE LOUISE CURTIS' death.

CANDACE LOUISE CURTIS may make distributions among CANDACE LOUISE CURTIS' descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CANDACE LOUISE CURTIS shall determine.

This power shall not be exercised in favor of CANDACE LOUISE CURTIS' estate, the creditors of CANDACE LOUISE CURTIS' estate or in any manner which would result in any economic benefit to CANDACE LOUISE CURTIS.

(b) Distribution on the Death of CANDACE LOUISE CURTIS

If CANDACE LOUISE CURTIS should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CANDACE LOUISE CURTIS shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CANDACE LOUISE CURTIS has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

2. (a) Distribution of the share of CAROL ANN BRUNSTING

The trust share created for CAROL ANN BRUNSTING shall be held in trust and administered and distributed as follows:

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i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

ii. *Distributions of Principal*

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CAROL ANN BRUNSTING as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of CAROL ANN BRUNSTING, for her lifetime.

iii. General Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CAROL ANN BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CAROL ANN BRUNSTING's death.

In exercising this general power of appointment, CAROL ANN BRUNSTING shall specifically refer to this power.

CAROL ANN BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CAROL ANN BRUNSTING the right to appointment of property to CAROL ANN BRUNSTING's own estate. It also specifically grants to CAROL ANN BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CAROL ANN BRUNSTING may elect.

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However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CAROL ANN BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CAROL ANN BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CAROL ANN BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CAROL ANN BRUNSTING's death.

CAROL ANN BRUNSTING may make distributions among CAROL ANN BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CAROL ANN BRUNSTING shall determine.

This power shall not be exercised in favor of CAROL ANN BRUNSTING's estate, the creditors of CAROL ANN BRUNSTING's estate or in any manner which would result in any economic benefit to CAROL ANN BRUNSTING.

(b) Distribution on the Death of CAROL ANN BRUNSTING

If CAROL ANN BRUNSTING should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for CAROL ANN BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CAROL ANN BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

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3. (a) Distribution of the share of CARL HENRY BRUNSTING

The trust share created for CARL HENRY BRUNSTING shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the net income from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of CARL HENRY BRUNSTING as much of the principal from his trust share as our Trustee deems advisable for the health, education, maintenance and support of CARL HENRY BRUNSTING, for his lifetime.

iii. General Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, CARL HENRY BRUNSTING's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at CARL HENRY BRUNSTING's death.

In exercising this general power of appointment, CARL HENRY BRUNSTING shall specifically refer to this power.

CARL HENRY BRUNSTING shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to CARL HENRY BRUNSTING the right to appointment of property to

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CARL HENRY BRUNSTING's own estate. It also specifically grants to CARL HENRY BRUNSTING the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as CARL HENRY BRUNSTING may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

CARL HENRY BRUNSTING shall have the limited testamentary power to appoint to or for the benefit of CARL HENRY BRUNSTING's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of CARL HENRY BRUNSTING's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at CARL HENRY BRUNSTING's death.

CARL HENRY BRUNSTING may make distributions among CARL HENRY BRUNSTING's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as CARL HENRY BRUNSTING shall determine.

This power shall not be exercised in favor of CARL HENRY BRUNSTING's estate, the creditors of CARL HENRY BRUNSTING's estate or in any manner which would result in any economic benefit to CARL HENRY BRUNSTING.

(b) Distribution on the Death of CARL HENRY BRUNSTING

If CARL HENRY BRUNSTING should predecease us or die before the complete distribution of his trust share, and without exercising a power of appointment outlined above, the trust share set aside for CARL HENRY

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BRUNSTING shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if CARL HENRY BRUNSTING has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

4. (a) Distribution of the share of AMY RUTH TSCHIRHART

The trust share created for AMY RUTH TSCHIRHART shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of AMY RUTH TSCHIRHART as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of AMY RUTH TSCHIRHART, for her lifetime.

iii. General Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, AMY RUTH TSCHIRHART's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at AMY RUTH TSCHIRHART's death.

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In exercising this general power of appointment, AMY RUTH TSCHIRHART shall specifically refer to this power.

AMY RUTH TSCHIRHART shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to AMY RUTH TSCHIRHART the right to appointment of property to AMY RUTH TSCHIRHART's own estate. It also specifically grants to AMY RUTH TSCHIRHART the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as AMY RUTH TSCHIRHART may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

AMY RUTH TSCHIRHART shall have the limited testamentary power to appoint to or for the benefit of AMY RUTH TSCHIRHART's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of AMY RUTH TSCHIRHART's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at AMY RUTH TSCHIRHART's death.

AMY RUTH TSCHIRHART may make distributions among AMY RUTH TSCHIRHART's descendants in equal or unequal amounts, and on such terms and conditions, either outright or in trust, as AMY RUTH TSCHIRHART shall determine.

This power shall not be exercised in favor of AMY RUTH TSCHIRHART's estate, the creditors of AMY RUTH

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TSCHIRHART's estate or in any manner which would result in any economic benefit to AMY RUTH TSCHIRHART.

(b) Distribution on the Death of AMY RUTH TSCHIRHART

If AMY RUTH TSCHIRHART should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for AMY RUTH TSCHIRHART shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if AMY RUTH TSCHIRHART has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

5. (a) Distribution of the share of ANITA KAY RILEY

The trust share created for ANITA KAY RILEY shall be held in trust and administered and distributed as follows:

i. Distributions of Net Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the net income from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

ii. Distributions of Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of ANITA KAY RILEY as much of the principal from her trust share as our Trustee deems advisable for the health, education, maintenance and support of ANITA KAY RILEY, for her lifetime.

iii. General Testamentary Power of Appointment

ANITA KAY RILEY shall have the unlimited and unrestricted testamentary general power to appoint either (i) by a valid last

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will and testament; (ii) by a valid living trust agreement; or (iii) by a written exercise of power of appointment, ANITA KAY RILEY's share of the principal and any accrued and undistributed net income from such portion of the Trust assets which is not exempt from federal generation-skipping tax, as they exist at ANITA KAY RILEY's death.

In exercising this general power of appointment, ANITA KAY RILEY shall specifically refer to this power.

ANITA KAY RILEY shall have the sole and exclusive right to exercise the general power of appointment.

This general power of appointment specifically grants to ANITA KAY RILEY the right to appointment of property to ANITA KAY RILEY's own estate. It also specifically grants to ANITA KAY RILEY the right to appoint the property among persons, corporations or other entities in equal or unequal proportions, and on such terms and conditions, whether outright or in trust, as ANITA KAY RILEY may elect.

However, if under the law in effect at the time of the death of the survivor of us this trust is not subject to generation skipping transfer tax and neither this trust nor distributions from it will be subject to generation skipping transfer tax in the future, this general power of appointment shall terminate and shall be replaced by a limited power of appointment pursuant to the provisions which follow.

iv. Limited Testamentary Power of Appointment

ANITA KAY RILEY shall have the limited testamentary power to appoint to or for the benefit of ANITA KAY RILEY's descendants, either (i) by a valid last will and testament; (ii) by a valid trust agreement; or (iii) by a written exercise of power of appointment, all or any portion of ANITA KAY RILEY's share of the principal of such portion of the Trust assets which is exempt from federal generation-skipping tax as they exist at ANITA KAY RILEY's death.

ANITA KAY RILEY may make distributions among ANITA KAY RILEY's descendants in equal or unequal amounts, and on

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such terms and conditions, either outright or in trust, as ANITA KAY RILEY shall determine.

This power shall not be exercised in favor of ANITA KAY RILEY's estate, the creditors of ANITA KAY RILEY's estate or in any manner which would result in any economic benefit to ANITA KAY RILEY.

(b) Distribution on the Death of ANITA KAY RILEY

If ANITA KAY RILEY should predecease us or die before the complete distribution of her trust share, and without exercising a power of appointment outlined above, the trust share set aside for ANITA KAY RILEY shall terminate and our Trustee shall distribute the balance of the trust share to such beneficiary's then living descendants, per stirpes. However, if ANITA KAY RILEY has no then living descendants, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the trust share as provided in Section G of this Article.

**Section C. Administration of the Share of a Descendant of a Deceased Beneficiary**

Notwithstanding the foregoing provisions as to the disposition of a trust share upon the death of a beneficiary, each share set aside for a deceased beneficiary who has then living descendants shall be divided into as many shares as shall be necessary to create shares for each then living descendant of such deceased beneficiary on a per stirpes basis. For example, if a deceased beneficiary has a deceased child who leaves children, then the share that would have passed to such deceased child shall be shared equally among his or her living children on a per stirpes basis. Each such share shall be held in trust to be administered as follows:

1. Distribution of Trust Income

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the net income from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

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2. Distribution of Trust Principal

Our Trustee, in its sole and absolute discretion, shall pay to or apply for the benefit of any descendant of a deceased beneficiary as much of the principal from his or her trust share as our Trustee deems advisable for the health, education, maintenance and support of such descendant.

When such descendant reaches the age of 30 or if, on the creation of his or her trust share, he or she has already attained the age of 30, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute an amount not greater than fifty percent of the accumulated net income and principal, as it is then constituted, free of trust. If more than one written request for distribution is made by such descendant, our Trustee shall not cumulatively distribute to such descendant, in response to all such requests, more than fifty percent of the accumulated income and principal of the trust as it existed on the date of the first request for a distribution made under this paragraph by such descendant or fifty percent of the total trust funds remaining at the date of any subsequent request, whichever is the lesser amount..

When such descendant reaches the age of 40 or if, on the creation of his or her trust share, he or she has already attained the age of 40, thereafter, upon the written request of such descendant delivered to our Trustee, our Trustee shall distribute the balance of the accumulated net income and principal of such trust share, as it is then constituted to such descendant, free of trust. Undistributed funds shall continue to be held in trust.

If a descendant of a deceased beneficiary should die before the complete distribution of such trust share, the trust share shall terminate and our Trustee shall distribute the balance of the trust share to the surviving descendants of such descendant, share and share alike, per stirpes. If such descendant of a deceased beneficiary dies with no surviving descendants, then such share shall terminate and be distributed to the remaining descendants of the deceased beneficiary, share and share alike, per stirpes. If there are no descendants of such deceased beneficiary, our Trustee shall distribute the balance of the trust share to our then living descendants, per stirpes. In the event we have no then living descendants, our Trustee shall distribute the balance of the accumulated income and principal of the trust share as provided in Section G of this Article.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

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**Section D. Subsequent Children**

Notwithstanding the provisions of this Article wherein beneficiaries are named, if, subsequent to the creation of this trust declaration, we have additional children or legally adopt children who are under the age of 18, each such child shall be included among the beneficiaries named in this Article and an equal trust share shall be created for each such beneficiary.

Our Trustee shall administer and distribute each such share according to the provisions of Article XI, Section D.

**Section E. Guidelines for Discretionary Distributions**

Whenever we have given our Trustee any discretionary authority over the distribution of income or principal to any named beneficiary, our Trustee shall be liberal in exercising such discretion and shall give such beneficiary assistance for any opportunity or expense deemed by our Trustee to be in the best interest of such beneficiary. However, before making discretionary distributions, our Trustee shall take into consideration any additional sources of income and principal available to such beneficiary which exist outside of this agreement and are known to our Trustee, and the future probable needs of such beneficiary.

**Section F. Guidelines for All Distributions**

Whenever any provision of this Article authorizes or requires a distribution to any beneficiary, then our Trustee shall retain such distribution in trust at such beneficiary's written request. Our Trustee shall pay to or apply for the benefit of the beneficiary such amounts of income and principal as the beneficiary may at any time request in writing. No limitations shall be placed upon the beneficiary regarding withdrawals from his or her respective trust share. In addition, our Trustee, in its sole and absolute discretion, may distribute to or apply for the benefit of the beneficiary as much of the principal and income of the beneficiary's trust share as our Trustee deems advisable, in its sole and absolute discretion, for the health, education, maintenance and support of the beneficiary.

**Section G. Ultimate Distribution**

If at any time there is no person, corporation or other entity entitled to receive all or any part of the trust property of one of us, it shall be distributed as follows:

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| Beneficiary | Share % |
|---|---|
| CENTRAL COLLEGE OF IOWA<br>Pella, Iowa | 100% |

If the CENTRAL COLLEGE OF IOWA, Pella, Iowa, is no longer in existence at the date of distribution, but has designated a successor, such successor shall receive such beneficiary's share. However, if no such successor has been designated, the share of such beneficiary shall pass one-half to those persons who would be the wife Founder's heirs as if she had died intestate, unmarried, owning such property and the balance shall pass to those persons who would be the husband Founder's heirs as if he had died intestate, unmarried, owning such property.

The distribution of trust property, for purposes of this Section, shall be determined by the laws of descent and distribution for intestate estates in the State of Texas as such laws are in effect at the time of any distribution under this Article.

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# Article XI

## Protection of Beneficial Interests

### Section A. Protection of the Interests of Our Beneficiaries

No beneficiary will have the power to anticipate, encumber or transfer any interest in the trust. No part of the trust will be liable for or charged with any debts, contracts, liabilities or torts of a beneficiary or subject to seizure or other process by any creditor of a beneficiary.

### Section B. Unproductive or Underproductive Assets

A beneficiary who is then entitled to the income of the trust, or the income of any other trust established or continued pursuant to this trust declaration, will have the authority to issue a written directive to the Trustee to convert trust property which does not produce an income, or which is underproductive, into property which is income producing or which will provide a greater income to the trust.

Upon actual receipt of an income beneficiary's written directive, the Trustee will reasonably and prudently proceed to convert unproductive or underproductive property into property which will produce a reasonable and safe rate of return. The Trustee may do so by selling the unproductive or underproductive asset upon such terms and conditions as are prudent and reasonable under all circumstances which may then exist (including the acceptance of an income or interest bearing obligation as the whole or a part of the sales price), and investing the proceeds of the sale in income producing instruments or obligations.

Notwithstanding these requirements, a trust beneficiary cannot direct the Trustee to invest or reinvest trust property in a trust investment which is speculative in nature or which, in result, would violate the spendthrift provisions of this trust declaration.

### Section C. No Contest of Our Trust

The Founders vest in the Trustee the authority to construe this trust instrument and to resolve all matters pertaining to disputed issues or controverted claims. Founders do not want to burden this trust with the cost of a litigated proceeding to resolve questions of law or fact unless the proceeding is originated by the Trustee or with the Trustee's written permission.

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Any person, agency or organization who shall originate (or who shall cause to be instituted) a judicial proceeding to construe or contest this trust instrument, or any will which requires distribution of property to this trust, or to resolve any claim or controversy in the nature of reimbursement, or seeking to impress a constructive or resulting trust, or alleging any other theory which, if assumed as true, would enlarge (or originate) a claimant's interest in this trust or in the Founders' estates, without the Trustee's written permission, shall forfeit any amount to which that person, agency or organization is or may be entitled and the interest of any such litigant or contestant shall pass as if he or she or it had predeceased us, regardless of whether or not such contestant is a named beneficiary.

These directions shall apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause and even though the proceedings may seek nothing more than to construe the application of this no contest provision.

This requirement is to be limited, even to the exclusion thereof, in the event it operates to deny the benefits of the federal estate tax or federal gift tax marital deduction.

**Section D. Our Trustee's Authority to Keep Property in Trust**

Unless this trust declaration provides otherwise, if any trust property becomes distributable to a beneficiary when the beneficiary is under 21 years of age, or when the beneficiary is under any form of legal disability, as defined in Article XIII, our Trustee shall retain that beneficiary's share in a separate trust until he or she attains 21 years of age, or until his or her legal disability has ceased, to be administered and distributed as follows:

**1. Distributions of Trust Income and Principal**

Our Trustee shall pay to or apply for the benefit of the beneficiary as much of the net income and principal of the trust as our Trustee, in its sole and absolute discretion, deems necessary or advisable for the beneficiary's health, education, maintenance and support. No guardian or custodian of a beneficiary shall have any control or interposition over our Trustee.

In making any distributions of income and principal under this Section, our Trustee shall be mindful of, and take into consideration to the extent it deems necessary, any additional sources of income and principal available to the beneficiary which arise outside of this agreement.

Any net income not distributed to a beneficiary shall be accumulated and added to principal.

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**2. Methods of Distribution**

Distributions to an incompetent or disabled beneficiary, or a minor beneficiary, may be made in any of the following ways as in the Trustee's opinion will be most beneficial to the interests of the beneficiary:

(a) Directly to such beneficiary;

(b) To his or her parent, guardian or legal representative;

(c) To a custodian for said beneficiary under any Uniform Gifts to Minors Act and/or Gifts of Securities to Minors Act in the jurisdiction of residence of such beneficiary;

(d) To any person with whom he or she is residing;

(e) To some near relative or close friend; or

(f) By the Trustee using such payment directly for the benefit of such beneficiary, including payments made to or for the benefit of any person or persons whom said beneficiary has a legal obligation to support;

(g) To persons, corporations or other entities for the use and benefit of the beneficiary;

(h) To an account in a commercial bank or savings institution in the name of the beneficiary, or in a form reserving the title, management and custody of the account to a suitable person, corporation or other entity for the use and benefit of the beneficiary; or

(i) In any prudent form of annuity purchased for the use and benefit of the beneficiary.

The Trustee may instead, in the Trustee's sole discretion, hold such income or corpus for the account of such beneficiary as custodian. A receipt from a beneficiary or from his parent, guardian, legal representative, relative or close friend or other person described above shall be a sufficient discharge to the Trustee from any liability for making said payments.

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The Trustee is likewise authorized to consult with and act upon the advice of the parent, guardian, custodian or legal representative of any beneficiary who is either an incompetent or a minor with respect to any and all matters which may arise under this trust and as it concerns the rights or interests of said beneficiary.

All statements, accounts, documents, releases, notices or other written instruments, including but not limited to, written instruments concerning the resignation or replacement of any Trustee or Trustees, required to be delivered to or executed by such beneficiary, may be delivered to or executed by the parent, guardian, custodian or legal representative of said incompetent or minor beneficiary, and when so delivered or executed shall be binding upon said incompetent or minor beneficiary, and shall be of the same force and effect as though delivered to or executed by a beneficiary acting under no legal disability.

3. **Termination and Ultimate Distribution**

Our Trustee shall distribute the trust property to a beneficiary:

When he or she attains 21 years of age, or

When he or she ceases to be disabled.

**Section E. Application to Founders**

Notwithstanding anything in this agreement to the contrary, this Article shall not apply to, modify or affect the surviving Founder's right to receive the net income from the Survivor's Trust as set forth and provided for in this agreement.

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# Article XII

## Our Trustees' Powers and Authority

### Section A. Applicability of Texas Trust Code and Other Statutes

The Trustee shall have the powers, duties, and liabilities set forth in this declaration and as more specifically stated in this Article, as well as such powers, duties and liabilities set forth in the Texas Trust Code, and all other applicable state and federal statutes, as now enacted and as hereafter amended, except to the extent the same may be inconsistent with the provisions of this declaration, in which case the provisions of this declaration shall govern.

### Section B. Powers to Be Exercised in the Best Interests of the Beneficiaries

The Trustee shall exercise the following administrative and investment powers without the order of any court, as the Trustee determines in its sole and absolute discretion to be in the best interests of the beneficiaries.

Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.

The Trustee may perform every act reasonably necessary to administer each and every share or trust created under this agreement.

### Section C. General Investment and Management Powers

The Trustee is authorized to invest in such investments as the Trustee deems proper and prudent, even if such investments fail to constitute properly diversified trust investments or for any other reason could be considered to be improper trust investments. The Trustee's investment authority is intended to be quite broad, and shall include, but is not limited to, all authority that follows.

In addition, the Trustee is granted the authority to exercise any managerial powers of an individual with respect to matters affecting a trust, it being our intention to grant broad managerial discretion to the Trustee that is consistent with the management and administration of a trust, including the following managerial authorities.

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### Originally Contributed Properties

The Trustee may continue to hold and maintain all assets originally contributed to any trust.

### Additional Properties

The Trustee is authorized to receive additional trust property, whether by gift, will, or otherwise, either from us, from either of us, or from any other person, corporation, or entity.

Upon receipt of any additional property, the Trustee shall administer and distribute the same as part of the trust property.

The Trustee may retain, without liability for depreciation or loss resulting from such retention, all property constituting the trust estate at the time of its creation or thereafter received from other sources.

The foregoing shall be acceptable even though such property may not be of the character prescribed by law for the investment of trust funds or may result in inadequate diversification of the trust property.

### Securities Powers

The Trustee may invest and reinvest in such classes of stocks, bonds, securities, commodities, options, metals, or other property real or personal, as it shall determine.

The Trustee is authorized to buy, sell, and trade in securities of any nature, including short sales on margin. The Trustee may maintain and operate margin accounts with brokers, and may pledge any securities held or purchased by other Trustees with such brokers as securities for loans and advances made to the Trustee.

The Trustee may retain, exercise, or sell rights of conversion or subscription with respect to any securities held as part of the trust property.

The Trustee may vote or refrain from voting at corporate meetings either in person or by proxy, whether general or limited, and with or without substitutions.

### Investment of Cash Assets

A corporate entity serving as Trustee may deposit trust funds with itself as either a permanent or temporary investment, and may place trust funds under its administration in common trust funds established and maintained by such corporate trustee or its affiliate. In

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determining where to invest cash resources, the Trustee may consider all factors, including facility of access and security of funds invested, as well as the stated rate of return.

**Unproductive or Wasting Assets**

Except as otherwise provided in this agreement, the Trustee may receive, acquire and maintain assets that may constitute unproductive, underproductive or wasting assets if the Trustee believes it is reasonable to do so. Upon the sale or disposition of any such asset, the Trustee need not make an allocation of any portion of the principal element of such sale proceeds to the income beneficiaries of the trust.

**Personal Residence and Furnishings of Personal Residence**

To the extent that the personal residence that we occupied at the date of the death of the first of us to die and any furnishings of such residence become part of a trust estate, the Trustee is authorized to continue to retain and use, to distribute in kind, or to sell any such assets should the Trustee believe the retention, use, distribution or sale of such assets would be beneficial to the survivor of us.

**Mineral Properties**

The Trustee shall have the power to acquire, exchange, maintain or sell mineral interests, and to make oil, gas and mineral leases covering any lands or mineral interests forming a part of a trust estate, including leases for periods extending beyond the duration of the trust.

The Trustee may pool or unitize any or all of the lands, mineral leaseholds or mineral interests of a trust with others for the purpose of developing and producing oil, gas or other minerals, and may make leases or assignments containing the right to pool or unitize.

The Trustee may enter into contracts and agreements relating to the installation or operation of absorption, repressuring and other processing plants, may drill or contract for the drilling of wells for oil, gas or other minerals, may enter into, renew and extend operating agreements and exploration contracts, may engage in secondary and tertiary recovery operations, may make "bottom hole" or "dry hole" contributions, and may deal otherwise with respect to mineral properties as an individual owner might deal with his own properties.

The Trustee may enter into contracts, conveyances and other agreements or transfers deemed necessary or desirable to carry out these powers, including division orders, oil, gas or other hydrocarbon sales contracts, processing agreements, and other contracts relating to the processing, handling, treating, transporting and marketing of oil, gas or other mineral production.

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Any lease or other agreement may have a duration that the Trustee deems reasonable, even though extending beyond the duration of any trust created in this agreement.

The Trustee may drill, test, explore, mine, develop, and otherwise exploit any and all oil, gas, coal, and other mineral interests, and may select, employ, utilize, or participate in any business form, including partnerships, joint ventures, co-owners' groups, syndicates, and corporations, for the purpose of acquiring, holding, exploiting, developing, operating, or disposing of oil, gas, coal, and other mineral interests.

The Trustee may employ the services of consultants or outside specialists in connection with the evaluation, management, acquisition, disposition, or development of any mineral interests, and may pay the cost of such services from the principal or income of the trust property.

The Trustee may use the general assets of the trusts created under this agreement for the purposes of acquiring, holding, managing, developing, pooling, unitizing, repressuring, or disposing of any mineral interests.

The term "mineral" shall mean minerals of whatever kind and wherever located, whether surface or subsurface deposits, including (without limitation) coal, lignite and other hydrocarbons, iron ore, and uranium.

**Power to Enter Into or Continue Business Activities**

The Trustee shall have the authority to enter into, engage in, expand, carry on, terminate and liquidate any and all business activities, whether in proprietary, general or limited partnership, joint venture or corporate form, with such persons and entities as the Trustee deems proper. This power pertains to business activities in progress at the date of our deaths, and to business opportunities arising thereafter. Business activities conducted by the Trustee should be related to the administration and investment of the trust estate, for it is not our intention to convert any trust into an entity that would be taxable as an association for federal tax purposes.

**Banking Authority**

The Trustee is authorized to establish and maintain bank accounts of all types in one or more banking institutions that the Trustee may choose.

*Corporate Activities*

The Trustee may form, reorganize or dissolve corporations, and may exercise all rights of a stockholder, including the right to vote for or against mergers, consolidations and

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liquidations, and to act with or without substitution. An individual serving as Trustee may elect himself as an officer or director of a corporation owned in part or in whole by a trust created by this declaration, and a corporate entity serving as Trustee may elect one of its officers to such a position, and in each such instance the person so elected may be paid reasonable compensation for services rendered to such corporation in such capacity. The Trustee may retain, exercise or sell rights of conversion or subscription to any securities held as part of the trust property.

**Agricultural Powers**

The Trustee may retain, sell, acquire, and continue any farm or ranching operation whether as a sole proprietorship, partnership, or corporation.

The Trustee may engage in the production, harvesting, and marketing of both farm and ranch products either by operating directly or with management agencies, hired labor, tenants, or sharecroppers.

The Trustee may engage and participate in any government farm program, whether state or federally sponsored.

The Trustee may purchase or rent machinery, equipment, livestock, poultry, feed, and seed.

The Trustee may improve and repair all farm and ranch properties; construct buildings, fences, and drainage facilities; acquire, retain, improve, and dispose of wells, water rights, ditch rights, and priorities of any nature.

The Trustee may, in general, do all things customary or desirable to operate a farm or ranch operation for the benefit of the beneficiaries of the various trusts created under this agreement.

**Real Estate**

The Trustee may purchase or sell real property, and may exchange, partition, subdivide, develop, manage, and improve real property. The Trustee may grant or acquire easements, may impose deed restrictions, may adjust boundaries, may raze existing improvements, and may dedicate land or rights in land for public use. The Trustee may construct, repair, alter, remodel, demolish or abandon improvements. The Trustee may take any other action reasonably necessary for the preservation of real estate and fixtures comprising a part of the trust property or the income therefrom.

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**Authority to Sell or Lease and Other Dispositive Powers**

The Trustee may sell, lease or grant options to lease trust property without the consent or ratification of any court, remainderman, or third party, including the authority to lease beyond the anticipated term of a trust, upon such terms and for such consideration as the Trustee deems appropriate. The Trustee may make such contracts, deeds, leases, and other instruments it deems proper under the circumstances, and may deal with the trust property in all other ways in which a natural person could deal with his or her property.

**Warranties and Covenants**

The Trustee may convey properties with such covenants and warranties of title (general or special) as the Trustee deems appropriate.

**Trustee's Compensation**

The Trustee shall pay itself reasonable compensation for its services as fiduciary as provided in this agreement.

**Employment and Delegation of Authority to Agents**

The Trustee may employ and compensate, and may discharge, such advisors and agents as the Trustee deems proper, and may delegate to an agent such authorities (including discretionary authorities) as the Trustee deems appropriate, by duly executed powers of attorney or otherwise.

**Power to Release or Abandon Property or Rights, and to Pursue Claims**

The Trustee may release, compromise or abandon claims or rights to property for such consideration (including no consideration) as the Trustee determines to be appropriate when the Trustee determines it is prudent to do so. The Trustee is authorized to institute suit on behalf of and to defend suits brought against a trust estate, and to accept deeds in lieu of foreclosure.

**Nominal Title and Use of Nominees**

With or without disclosing fiduciary capacity, the Trustee may acquire title to property in the name of the Trustee or in the name of one or more nominees, and may allow its nominees to take possession of trust assets with or without direct custodial supervision by the Trustee.

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### Power to Lend Money and Guarantee Obligations

The Trustee may lend money to any person, to any business entity, to an estate, or to any trust, if the Trustee deems the loan to be in the best interests of the trust beneficiaries, provided that any such loan (except loans to beneficiaries) shall be adequately secured and shall bear a reasonable rate of interest.

The Trustee, in the Trustee's discretion, may endorse, guarantee, become the surety of or otherwise become obligated for or with respect to the debts or other obligations of any person or legal entity, whether with or without consideration, when the Trustee believes such actions advance the purposes of any trust created hereunder.

The Trustee may make loans from a beneficiary's trust share to or for the benefit of such a beneficiary on an unsecured basis, and for such rate of interest as the Trustee deems appropriate, when in the Trustee's judgment, such loan would be consistent with the purposes of such trust.

### Power to Borrow

The Trustee may assume the payment of and renew and extend any indebtedness previously created by either or both Founders, and the Trustee may create new indebtedness and raise money by any means, including margin trading in securities, when the Trustee believes such borrowing will be beneficial to the trust estate.

The Trustee is authorized to secure the payment of each such indebtedness, and all renewals, extensions and refinancing of same, by pledge, mortgage, deed of trust or other encumbrance covering and binding all or any part of the trust estate of a trust.

The Trustee may loan its own monies to a trust and may charge and recover the then usual and customary rate of interest thereon when, in the discretion of Trustee, it is prudent to do so.

### Payment of Indebtedness and Settlement Costs

The Trustee may in its sole discretion pay the funeral and burial expenses, expenses of the last illness, and valid claims and expenses of an income beneficiary of any trust created under this agreement.

Funeral and burial expenses shall include, but not be limited to, the cost of memorials of all types and memorial services of such kind as the Trustee shall approve. Valid claims and expenses shall include, but not be limited to, all state and federal death taxes.

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The payments shall be paid from the assets of the trust or trusts from which the beneficiary was receiving income.

**Transactions Between the Trustee and Our Personal Representatives**

The Trustee is authorized to accept from our personal representatives, upon the termination or during the administration of our respective probate estates, if any, assets delivered by our personal representatives to the Trustee on the basis of the accounting submitted by the personal representatives, without requiring an audit or other independent accounting of the acts of our personal representatives, and the Trustee shall not have liability for the acts or omissions of our personal representatives. The foregoing shall not limit the right of our Trustee to request an accounting from our personal representatives and our personal representatives shall, upon request from the Trustee, furnish a complete accounting for their actions.

The Trustee shall have the power to purchase property from our estates at its fair market value, as determined by our personal representatives and by our Trustee, and to the extent required to permit such purchase of assets and to permit loans from the Trustee to our estate, we specifically waive application of the provisions of Section 352 of the Texas Probate Code and Sections 113.053 and 113.054 of the Texas Trust Code.

**Commingling Trust Estates**

For the purpose of convenience with regard to the administration and investment of the trust property, the Trustee may hold the several trusts created under this agreement as a common fund.

The Trustee may make joint investments with respect to the funds comprising the trust property.

The Trustee may enter into any transaction authorized by this Article with fiduciaries of other trusts or estates in which any beneficiary hereunder has an interest, even though such fiduciaries are also Trustees under this agreement.

**Addition of Accumulated Income to Principal**

The Trustee shall, on a convenient periodic basis, add the accumulated undistributed income of any trust which does not provide for mandatory income distributions to specified beneficiaries, and which does not require that any undistributed income be maintained separately for ultimate distribution to specified beneficiaries, to the principal of such trust.

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**Distributions Not Treated as Advancements**

No distributions to a beneficiary of any trust created hereunder shall be treated as an advancement against the beneficiary's share of such trust unless the distribution is specially so treated on the Trustee's records at the time of the distribution or unless the Trustee gives notice of such fact to the beneficiary at the time of the distribution. If the Trustee has the discretion to make distributions from a trust to more than one beneficiary, the Trustee ordinarily should not treat distributions to any particular beneficiary as an advancement of that beneficiary's share of the trust unless an event has occurred causing the termination of such trust.

**Tax Elections**

The Trustee may exercise any available elections regarding state or federal income, inheritance, estate, succession or gift tax law including the right to elect any alternate valuation date for federal estate or inheritance tax purposes, the right to elect whether all or any parts of the administration of a deceased Founder's estate are to be used as estate tax deductions or income tax deductions, the right to make compensating adjustments between income and principal as a result of such elections if necessary, and the right to elect to have trust property qualify for the federal estate tax marital deduction as qualified terminable interest property under the appropriate provisions of the Internal Revenue Code and its regulations. The Trustee may also sign tax returns; pay any taxes, interest or penalties with regard to taxes; apply for and collect tax refunds thereon.

The Trustee is authorized to make elections available under applicable tax laws as the Trustee determines, in its discretion, to be advisable even though such elections may affect the interests of trust beneficiaries. The Trustee need not, but may, in its sole discretion, make equitable adjustments of the interests of the trust beneficiaries in light of the effect of such elections.

**Transactions in Which the Trustee Has A Direct or Indirect Interest**

We expressly waive prohibitions existing under the common law and the Texas Trust Code that might otherwise prohibit a person or entity who is serving as a Trustee from engaging in transactions with himself or itself personally, so long as the consideration exchanged in any such transaction is fair and reasonable to the trust created by this declaration. Specifically, we authorize the Trustee (a) to buy or sell trust property from or to an individual or entity serving as a Trustee, or from or to a relative, employee, business associate or affiliate of such individual serving as Trustee; (b) to sell or exchange and to transact other business activities involving properties of one trust with another trust under

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the control of the Trustee; and (c) to sell or purchase from a trust the stock, bonds, obligations or other securities of the Trustee or its affiliate.

Notwithstanding the general powers conferred upon the Trustee, or anything to the contrary contained in this agreement, no individual Trustee shall exercise or participate in the exercise of discretion with respect to the distribution of trust income or principal to or for the benefit of such Trustee.

No individual Trustee shall exercise or participate in the exercise of such discretionary power with respect to distributions to any person or persons such Trustee is legally obligated to support as to that support obligation.

**Section D. Apportionment of Receipts and Expenses Between Income and Principal**

The Trustee shall have the power, exercisable in such Trustee's reasonable and sole discretion, to determine what is principal or income of a trust or trust share. The Trustee shall pay from income or principal all of the reasonable expenses attributable to the administration of the respective trusts created in this agreement. The Trustee shall have the power to establish a reasonable reserve for depreciation or depletion and to fund the same by appropriate charges against income of the trust estate. For purposes of determining an appropriate reserve for depreciable or depletable assets, the Trustee may (but need not) adopt the depreciation or depletion allowance available for federal income tax purposes.

**Section E. Records, Books of Account and Reports**

The Trustee shall promptly set up and thereafter maintain, or cause to be set up and maintained, proper books of account which shall accurately reflect the true financial condition of the trust estate. Such books of account shall at all reasonable times be open for inspection or audit only by current, mandatory income beneficiaries, their parent or court appointed guardians, and the duly authorized agents, attorneys, representatives and auditors of each, at the expense of the beneficiary making such inspection or audit.

The Trustee shall make a written financial report, at least semi-annually, to each beneficiary of the trust who is entitled to receive a present, mandatory income distribution, unless such beneficiary, or such beneficiary's parent or legal guardian, has executed a written waiver of the right to receive such a report. The Trustee shall not be obligated to provide financial reports to a beneficiary who is less than eighteen years old if such reports are being provided to a parent of such beneficiary. Such reports shall be submitted to the parent or guardian of a minor beneficiary, or to the guardian or other legal representative of any incapacitated beneficiary.

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The first financial report shall identify all property initially received by the Trustee. The first report and each subsequent report shall include a statement of all property on hand at the end of such accounting period, of all property that has come to the knowledge or possession of the Trustee that has not been previously listed as property of the trust, of all known liabilities, of all receipts and disbursements during such period (including a statement as to whether the receipt or disbursement is of income or principal), and of such other facts as the Trustee deems necessary to furnish in order to provide adequate information as to the condition of the trust estate.

Except as otherwise provided in this declaration, should any person interested in a trust estate request an accounting for the Trustee's actions that is more extensive or more frequent than the accounting normally to be rendered, the Trustee may require such person to pay the additional costs incurred in preparing the same before complying with such request.

**Section F. Trustee's Liability**

No person or entity serving as Trustee without compensation shall be liable for any error of judgment or mistake of fact or law or for ordinary negligence, but shall be liable for acts involving willful misconduct, gross negligence or bad faith.

Unless otherwise provided, no person or entity serving as Trustee who is receiving compensation for his or its services hereunder shall be liable for any loss which may occur as a result of any actions taken or not taken by the Trustee if such person or entity has exercised the reasonable care, skill and prudence generally exercised by a compensated fiduciary with respect to the administration, investment, and management of similar estates.

No person or entity serving as Trustee shall be liable for the acts, omissions or defaults of any other person or entity serving as Trustee, agent or other person to whom duties may be properly delegated hereunder (except that each corporate trustee shall be liable for the acts, omissions and defaults of its officers and regular employees) if such agent or other person was engaged with reasonable care.

Unless a Trustee shall expressly contract and bind himself or itself individually, no Trustee shall incur any personal liability to any person or legal entity dealing with the Trustee in the administration of a trust. The Trustee shall be entitled to reimbursement from the properties of a trust for any liability or expense, whether in contract, tort or otherwise, incurred by the Trustee in the proper administration of a trust.

The Trustee shall be indemnified from the trust property for any damages sustained by the Trustee as a result of its exercising, in good faith, any of the authorities granted it under this trust declaration.

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**Section G. Duty of Third Parties Dealing with Trustee**

No person dealing with the Trustee shall be responsible for the application of any assets delivered to the Trustee, and the receipt of the Trustee shall be a full discharge to the extent of the property delivered. No purchaser from or other person dealing with the Trustee, and no issuer or transfer agent of any securities to which any dealing with the Trustee shall relate, shall be under any duty to ascertain the power of the Trustee to purchase, sell, exchange, transfer, encumber or otherwise in any manner deal with any property held by the Trustee. No person dealing with the Trustee in good faith shall be under any duty to see that the terms of a trust are complied with or to inquire into the validity or propriety of any act of the Trustee.

**Section H. Division and Distribution of Trust Estate**

When the Trustee is required to divide or make distribution from a trust estate, in whole or in part, such division or distribution may be made by the Trustee in cash or in kind, or partly in cash and partly in kind, and the Trustee may assign or apportion to the distributees undivided interests in any assets then constituting a part of such trust estate. The Trustee may encumber property, may sell property, and may make non-pro-rata distributions when the Trustee believes it is practical or desirable and equitable to do so in order to effectuate a trust distribution regardless of the income tax basis of any asset.

If non-pro-rata distributions are to be made, the Trustee should attempt to allocate the tax basis of the assets distributed in an equitable manner among the beneficiaries of the trust, but the Trustee may at all times rely upon the written agreement of the trust beneficiaries as to the apportionment of assets. To the extent non-pro-rata distributions are made and the tax basis of the assets so distributed is not uniformly apportioned among beneficiaries, the Trustee may, but need not, make any equitable adjustments among such beneficiaries as a result of such nonuniformity in basis.

**Section I. Life Insurance**

The Trustee shall have the powers with regard to life insurance as set forth in this Section I, except as otherwise provided in this agreement.

The Trustee may purchase, accept, hold, and deal with as owner, policies of insurance on both Founders' individual or joint lives, the life of any trust beneficiary, or on the life of any person in whom any trust beneficiary has an insurable interest.

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The Trustee shall have the power to execute or cancel any automatic premium loan agreement with respect to any policy, and shall have the power to elect or cancel any automatic premium loan provision in a life insurance policy.

The Trustee may borrow money with which to pay premiums due on any policy either from the company issuing the policy or from any other source and may assign any such policy as security for the loan.

The Trustee shall have the power to exercise any option contained in a policy with regard to any dividend or share of surplus apportioned to the policy, to reduce the amount of a policy or convert or exchange the policy, or to surrender a policy at any time for its cash value.

The Trustee may elect any paid-up insurance or any extended-term insurance nonforfeiture option contained in a policy.

The Trustee shall have the power to sell policies at their fair market value to the insured or to anyone having an insurable interest in the policies.

The Trustee shall have the right to exercise any other right, option, or benefit contained in a policy or permitted by the insurance company issuing that policy.

Upon termination of any trust created under this agreement, the Trustee shall have the power to transfer and assign the policies held by the trust as a distribution of trust property.

**Section J. Insured Trustee's Authority**

Any individual Trustee under this agreement, other than either Founder, is prohibited from exercising any power conferred on the owner of any policy which insures the life of such individual Trustee and which is held as part of the trust property.

If the Trustee holds any such policy or policies as a part of the trust property, the powers conferred on the owner of such a policy shall be exercised only by the other then acting Trustee.

If the insured Trustee is the only then acting Trustee, then such powers shall be exercised by a substitute Trustee designated pursuant to the provisions of this agreement dealing with the trusteeship.

If any rule of law or court decision construes the ability of the insured Trustee to name a substitute Trustee as an incident of ownership, the substitution process shall be implemented

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by a majority of the then current mandatory and discretionary income beneficiaries, excluding the insured Trustee if the insured Trustee is a beneficiary.

**Section K. Estimated Income Tax Payment Allocation**

The Trustee, in its sole discretion, may elect or not elect to treat all or any portion of federal estimated taxes paid by any trust to be treated as a payment made by any one or more beneficiaries of such trust who are entitled to receive current distributions of income or principal from such trust. The election need not be made in a pro rata manner among all beneficiaries of the trust.

If there is an individual serving as a co-trustee who is a beneficiary of a trust created by this declaration, that individual may not take part in any decision to treat any trust estimated income tax payment as a payment by such individual.

In exercising or choosing not to exercise the discretion granted in this paragraph, the Trustee shall not be liable to any beneficiary or to any other persons directly or indirectly for any action or inaction so taken except for its willful fraud or gross negligence.

**Section L. Merger of Trusts**

If at any time the Trustee determines it would be in the best interest of the beneficiary or beneficiaries of any trust created by this declaration to transfer or merge all of the assets held in such trust with any other trust created either by trust instrument or by will for the benefit of the same beneficiary or beneficiaries and under substantially similar trusts, terms and conditions, the Trustee under this declaration, after giving not less than thirty days advance written notice to its beneficiaries, is authorized to transfer to or merge all of the assets held under the trust created by this declaration to such other substantially similar trust, and to terminate the trust created under this declaration regardless of whether the Trustee under this declaration also is acting as the trustee of such other trust.

The Trustee under this declaration shall not be subject to liability for delegation of its duties for any such transfer to a substantially similar trust having a different person or entity serving as trustee, and shall have no further liability with respect to trust assets properly delivered to the trustee of any such other substantially similar trust. Similarly, the Trustee of any trust created by this declaration is authorized to receive from the trustee of any other substantially similar trust the assets held under such other trust.

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**Section M. Termination and Distribution of Small Trust**

If, in the discretionary judgment of the person(s) or entity serving as Trustee, other than a surviving Founder acting as Trustee, any trust shall at any time be a size which, in the Trustee's sole judgment, shall make it inadvisable or unnecessary to continue such trust, then the Trustee may distribute the trust estate of such trust to its beneficiaries in proportion to their respective presumptive interests in such trust at the time of such termination.

If either or both of us are a beneficiary of a trust terminated pursuant to this paragraph and are surviving at the date of such termination, the Trustee (other than a surviving Founder acting as Trustee) shall distribute the assets of such terminated trust to both of us or the survivor of us. The Trustee shall not be liable either for terminating or for refusing to terminate a trust as authorized by this paragraph.

**Section N. Elimination of Duty to Create Identical Trusts**

If the provisions of this trust direct the Trustee to hold any portion of its trust estate at its termination as the trust estate of a new trust for the benefit of any person or persons who already are beneficiaries of an existing identical trust, that portion of the terminating trust shall be added to the existing identical trust, and no new trust shall be created.

**Section O. Powers of Trustee Subsequent to an Event of Termination**

The Trustee shall have a reasonable period of time after the occurrence of an event of termination in which to wind up the administration of a trust and to make a distribution of its assets. During this period of time the Trustee shall continue to have and shall exercise all powers granted herein to the Trustee or conferred upon the Trustee by law until all provisions of this declaration are fully executed.

**Section P. Requesting Financial Information of Trust Beneficiaries**

In exercising its discretion to make any discretionary distributions to the beneficiaries of any trust created hereunder, the Trustee is authorized to request any financial information, including prior federal income tax returns, from the respective beneficiaries that the Trustee deems necessary in order to exercise its discretion in accordance with the provisions for making such distributions under this declaration.

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**Section Q. Retirement Plan Elections**

Except as otherwise provided in this trust declaration, the Trustee may receive or disclaim any and all proceeds from retirement plans, including, but not limited to, qualified pension, profit sharing, Keogh, individual retirement accounts, or any other form or type of plan. The Trustee may make such elections and exercise options as provided in such plan, without liability to any beneficiary for the election made or option elected. Any disclaimed proceeds or benefits shall be paid in accordance with the terms, conditions, and directives set forth in the subject plan.

**Section R. Qualification as a Qualified Subchapter S Trust**

If any stock of an S corporation becomes distributable to a trust created under this agreement, and such trust is not a qualified Subchapter S trust, the Trustee may implement any of the following alternatives with respect to the S corporation stock:

**1. A Sole Beneficiary**

Where the original trust is for a sole beneficiary, the Trustee may create for that beneficiary a separate trust that qualifies as a Subchapter S trust, and then distribute such stock to the newly created trust.

**2. Multiple Beneficiaries**

Where the original trust is for multiple beneficiaries, the Trustee may divide the trust into separate trusts for each of the beneficiaries. Each newly created trust shall hold that beneficiary's pro rata share of the S corporation stock, and shall qualify as a Subchapter S trust.

**3. Outright Distribution**

If circumstances prevent the Trustee from accomplishing the first two alternatives under this paragraph, the Trustee may, in its sole and absolute discretion, distribute such stock to the beneficiaries as if the trust had terminated, while continuing to hold any other non-S corporation property in trust.

Each newly created S corporation trust shall have mandatory distributions of income and shall not provide for powers of appointment that can be exercised by the beneficiary during the beneficiary's lifetime. In all other respects, the

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newly created trusts shall be as consistent as possible with the original trusts and still qualify as Subchapter S trusts.

The Trustee may take any action necessary with regard to S corporations, including making any elections required to qualify stock as S corporation stock, and may sign all required tax returns and forms.

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10. Power of Appointment or Qualified Beneficiary Designation. Whenever this trust declaration gives a trust beneficiary the power or authority to appoint a beneficiary of the trust, the designation must be in writing and be acknowledged in the form required of acknowledgements by Texas law or exercised by a will executed with the formalities required by law of the trust beneficiary's residence.

The designation must clearly evidence the intent of the trust beneficiary to exercise a power of appointment; and, the written beneficiary designation must have been delivered to the Trustee prior to the trust beneficiary's death or, if exercised by will, must subsequently be admitted to probate no matter the time interval.

The term of this trust may be extended if the qualified beneficiary designation requires that a beneficiary's interest remain in trust, or the trust may be divided and be held as a separate trust which is governed by the terms of this trust declaration.

11. Relative or Relatives. Reference to a "relative" or "relatives" will identify any person or persons related to the Founders by blood or lawful adoption in any degree.

12. Trust. "Trust" means the trust created by this trust declaration as well as any trusts created in it.

13. Trust Fund. The terms "trust fund", "trust property" or "trust assets" mean all property comprising: the initial contribution of corpus to the trust; all property paid or transferred to, or otherwise vested in, the Trustee as additions to the corpus of this trust; accumulated income, if any, whether or not added to the corpus of this trust; and, the investments and reinvestment of the trust property, including the increase and decrease in the values thereof as determined from time to time. The terms "corpus", "principal" and "assets" are used interchangeably.

14. Trustee. All references to "Trustee" shall refer to the original Trustees, if serving in such capacity, as well as our successor Trustees who are then serving in such capacity, under this trust declaration. For convenience, the term "Trustee", used in the singular, will mean and identify multiple Trustees serving and acting pursuant to the directions of this trust declaration. The term "corporate Trustee" will identify a banking or trust corporation with trust powers.

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# Article XIV

# Miscellaneous Matters

**Section A. Distribution of Personal Belongings by Memorandum**

Each of us may have certain items of tangible personal property which have been transferred to the trust or otherwise subject to the Trustee's control which we wish to give to particular individuals while we are living or at the time of our respective deaths.

The term "personal belongings" or "tangible personal property" will mean and identify personal wearing apparel, jewelry, household furnishings and equipment, books, albums, art work, entertainment and sports equipment and all items of decoration or adornment.

Each spouse may, at any time and from time to time, deliver to the Trustee written, signed and dated instructions as to any living or post-mortem gifts of his or her personal belongings and the Trustee shall be authorized and bound to make disposition of these items as a spouse has reasonably directed in any such instructions which may be in the form of a Memorandum of Distribution or a love letter from either of us to the intended recipients of such items.

If there are conflicting instructions at the time of our deaths, then the instructions bearing the latest date shall be controlling. All such instructions are hereby incorporated by reference into this declaration.

**Section B. Special Bequests**

Unless otherwise provided in this trust document, or in any amendment, or in a document exercising a power to appoint the beneficiaries of this trust, if property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient.

The obligation to be assumed shall be the principal balance of the indebtedness on the date of death, and the trust shall be entitled to reimbursement or offset for principal and interest payments paid by the trust to date of distribution.

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**Section C. The Rule Against Perpetuities**

In no event will the term of this trust continue for a term greater than 21 years after the death of the last survivor of the Founders and all relatives of the Founders living on the effective date of this trust declaration.

Any continuation of the trust by the qualified exercise of a power of appointment will be construed as the creation of a separate trust and an extension of the rule against perpetuities to the extent permitted by law. A court of competent jurisdiction is to liberally construe and apply this provision to validate an interest consistent with the Founders' intent and may reform or construe an interest according to the doctrine of cy pres.

**Section D. Jurisdiction**

The jurisdiction of this trust will be the State of Texas. Any issue of law or fact pertaining to the creation, continuation, administration and termination of the trust, or any other matter incident to this trust, is to be determined with reference to the specific directions in the trust declaration and then under the laws of the State of Texas.

If an Article or Section of this trust declaration is in conflict with a prohibition of state law or federal law, the Article or Section, or the trust declaration as a whole, is to be construed in a manner which will cause it to be in compliance with state and federal law and in a manner which will result in the least amount of taxes and estate settlement costs.

**Section E. Dissolution of Our Marriage**

If our marriage is dissolved at any time, each spouse shall be deemed to have predeceased the other for purposes of distributions under this agreement. It is our intent that our respective property held in our trust shall not be used for the benefit of the other spouse upon the dissolution of our marriage.

**Section F. Maintaining Property in Trust**

If, on the termination of any separate trust created under this agreement, a final distribution is to be made to a beneficiary for whom our Trustee holds a trust created under this agreement, such distribution shall be added to such trust rather than being distributed.

The property that is added to the trust shall be treated for purposes of administration as though it had been an original part of the trust.

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**Section G. Survival**

Except as otherwise provided in this trust declaration, for the purpose of vesting in the event two or more persons who have an interest in the trust die within a short time of one another, one must have survived the other for a period of at least 90 days as a condition to vesting.

**Section H. Simultaneous Death**

In the event that the Co-Founders shall die simultaneously, or if there is insufficient evidence to establish that Co-Founders died other than simultaneously, it is deemed that the spouse owning the greater share of the separate property in this trust or passing into this trust due to the death of the Co-Founders, as defined for federal estate tax purposes, shall have predeceased the other Co-Founder, notwithstanding any provision of law to the contrary, and the provisions of this trust shall be construed on such assumption.

**Section I. Changing the Trust Situs**

After the death or disability of one of us, the situs of this agreement may be changed by the unanimous consent of all of the beneficiaries then eligible to receive mandatory or discretionary distributions of net income under this agreement.

If such consent is obtained, the beneficiaries shall notify our Trustee in writing of such change of trust situs, and shall, if necessary, designate a successor corporate fiduciary in the new situs. This notice shall constitute removal of the current Trustee, if appropriate, and any successor corporate Trustee shall assume its duties as provided under this agreement.

A change in situs under this Section shall be final and binding, and shall not be subject to judicial review.

**Section J. Construction**

Unless the context requires otherwise, words denoting the singular may be construed as denoting the plural, and words of the plural may be construed as denoting the singular. Words of one gender may be construed as denoting another gender as is appropriate within such context.

**Section K. Headings of Articles, Sections and Paragraphs**

The headings of Articles, Sections and Paragraphs used within this agreement are included solely for the convenience and reference of the reader. They shall have no significance in the interpretation or construction of this agreement.

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**Section L. Notices**

All notices required to be given in this agreement shall be made in writing by either:

Personally delivering notice to the party requiring it, and securing a written receipt, or

Mailing notice by certified United States mail, return receipt requested, to the last known address of the party requiring notice.

The effective date of the notice shall be the date of the written receipt or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section M. Delivery**

For purposes of this agreement "delivery" shall mean:

Personal delivery to any party, or

Delivery by certified United States mail, return receipt requested, to the party making delivery.

The effective date of delivery shall be the date of personal delivery or the date of the return receipt, if received, or if not, the date it would have normally been received via certified mail, provided there is evidence of mailing.

**Section N. Duplicate Originals**

This agreement may be executed in several counterparts; each counterpart shall be considered a duplicate original agreement.

**Section O. Severability**

If any provision of this agreement is declared by a court of competent jurisdiction to be invalid for any reason, such invalidity shall not affect the remaining provisions of this agreement. The remaining provisions shall be fully severable, and this agreement shall be construed and enforced as if the invalid provision had never been included in this agreement.

**Section P. Gender, Plural Usage**

The use of personal pronouns, such as he, she or it are to be construed in context. The term "person" will include a non-person, such as a corporation, trust, partnership or other entity

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as is appropriate in context. The identification of person in the plural will include the singular and vice versa, as is appropriate in context.

**Section Q. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, the estate of a deceased spouse, or the Trustee of this trust, may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as qualified terminable interest property had not been made.

Reference to the "special election for qualified terminable interest property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code.

The term "GST exemption" or "GST exemption amount" is the dollar amount of property which may pass as generation skipping transfer under Subtitle B, Chapter 13, of the Internal Revenue Code 1986 (entitled "Tax On Generation-Skipping Transfers") which is exempt from the generation skipping tax.

**Section R. Generation Skipping Transfers**

Our Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

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**Section S. Elective Deductions**

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005

ELMER H. BRUNSTING, Founder

NELVA E. BRUNSTING, Founder

ELMER H. BRUNSTING, Trustee

NELVA E. BRUNSTING, Trustee

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THE STATE OF TEXAS

COUNTY OF HARRIS

On January 12, 2005, before me, a Notary Public of said State, personally appeared ELMER H. BRUNSTING and NELVA E. BRUNSTING, personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument and acknowledged that they executed the same as Founders and Trustees.

WITNESS MY HAND and official seal.

Charlotte Allman
Notary Public, State of Texas

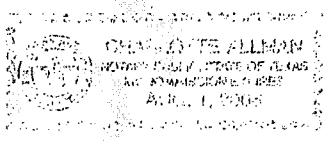

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EXHIBIT 2

**QUALIFIED BENEFICIARY DESIGNATION AND EXERCISE OF TESTAMENTARY POWERS OF APPOINTMENT UNDER LIVING TRUST AGREEMENT**

**Section 1. Exercise of General Power of Appointment and Qualified Beneficiary Designation**

I, NELVA E. BRUNSTING, the surviving Founder (herein also referred to as "Trustor" and "Founder") of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a general power of appointment over the principal and accrued and undistributed net income of a trust named the NELVA E. BRUNSTING SURVIVOR'S TRUST (pursuant to Article VIII, Section B.4 of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), (hereinafter called "The Survivor's Trust") the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the NELVA E. BRUNSTING SURVIVOR'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The NELVA E. BRUNSTING SURVIVOR'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article VIII of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the NELVA E. BRUNSTING SURVIVOR'S TRUST. All property in the NELVA E. BRUNSTING SURVIVOR'S TRUST is allocated to "Share One" under Article VIII of the said BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended. Article III further allows a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the trust property.

In the exercise of the general power of appointment, which is to take effect at my death, and as a qualified beneficiary designation as to the ownership interest of NELVA E. BRUNSTING in the subject trust property, I direct my Trustee, at the time of my death, to administer and distribute the balance of the principal and undistributed income from the NELVA E. BRUNSTING SURVIVOR'S TRUST as set forth in Section 3 of this document.

The BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, is incorporated herein by reference for all purposes (herein sometimes referred to as "the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996," and the "Trust Agreement").

**Section 2. Exercise of Limited Power of Appointment and Qualified Beneficiary Designation**

I, NELVA E. BRUNSTING, the surviving Founder of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, am the holder of a limited power of appointment over the principal and accrued and undistributed net income of a trust named

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the ELMER H. BRUNSTING DECEDENT'S TRUST (pursuant to Article IX, Section D of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996), the full legal name of which is as follows:

> NELVA E. BRUNSTING, Trustee, or the successor Trustees, of the ELMER H. BRUNSTING DECEDENT'S TRUST dated April 1, 2009, as established under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

The ELMER H. BRUNSTING DECEDENT'S TRUST was created pursuant to Article VII of the BRUNSTING FAMILY LIVING TRUST, dated October 10, 1996, as amended. Article IX of the BRUNSTING FAMILY LIVING TRUST contains the administrative provisions of the ELMER H. BRUNSTING DECEDENT'S TRUST.

In the exercise of this limited power of appointment, which is to take effect at my death, I direct my Trustee to administer and distribute the balance of the principal and undistributed income from the ELMER H. BRUNSTING DECEDENT'S TRUST, except for any portion which has been disclaimed by me, as set forth in Section 3 of this document.

**Section 3. Provisions for Distribution and Administration of the Survivor's Trust and the Decedent's Trust**

**DISTRIBUTION OF TRUST ASSETS**

**A. Beneficiaries**

The Trustee shall divide the remainder of the Trust Estate into separate shares hereinafter individually referred to as Personal Asset Trusts, as follows:

| Beneficiaries | Share |
|---|---|
| CANDACE LOUISE CURTIS | 1/5 |
| CAROL ANN BRUNSTING | 1/5 |
| AMY RUTH TSCHIRHART | 1/5 |
| CARL HENRY BRUNSTING | 1/5 |
| ANITA KAY BRUNSTING | 1/5 |

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B. **Division into Separate Shares**

My Trustee shall distribute the share for each of my beneficiaries in a separate Personal Asset Trust for the benefit of each beneficiary as provided in this Section 3. If a named beneficiary fails to survive me, then that share shall be distributed as set forth below as if it had been an original part thereof. The decisions of the Trustee as to the assets to constitute each such share shall be conclusive, subject to the requirement that said shares shall be of the respective values specified.

1. **Share for CANDACE LOUISE CURTIS**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CANDACE LOUISE CURTIS, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CANDACE LOUISE CURTIS fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CANDACE LOUISE CURTIS, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

2. **Share for CAROL ANN BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CAROL ANN BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CAROL ANN BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CAROL ANN BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

3. **Share for AMY RUTH TSCHIRHART**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of AMY RUTH TSCHIRHART, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If AMY

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RUTH TSCHIRHART fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of AMY RUTH TSCHIRHART, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**4. Share for CARL HENRY BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of CARL HENRY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If CARL HENRY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of CARL HENRY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

**5. Share for ANITA KAY BRUNSTING**

My Trustee shall distribute one-fifth (1/5) of the remainder of the trust property to a Personal Asset Trust for the benefit of ANITA KAY BRUNSTING, if surviving, to be held, administered and distributed as set forth in this Section 3 entitled "Personal Asset Trust Provisions." If ANITA KAY BRUNSTING fails to survive, then this share shall be held, administered and distributed to said individual's descendants, per stirpes, as set forth in Section H of the Personal Asset Trust provisions entitled "Final Disposition of Trust." If there are no then living descendants of ANITA KAY BRUNSTING, such share shall be distributed to my then living descendants, per stirpes. In the event I have no then living descendants, such share shall be distributed according to Section G of Article X of the Brunsting Family Living Trust dated October 10, 1996, as amended.

## PERSONAL ASSET TRUST PROVISIONS

A. Establishment of the Personal Asset Trust:

A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified

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to be made to said beneficiary's Personal Asset Trust first occurs. The Personal Asset Trust shall be held, administered and distributed as set forth under this Agreement. After a beneficiary's Personal Asset Trust is established, any further distribution specified to be made to said beneficiary's Personal Asset Trust under any other provisions of this Agreement shall be added to and become a part of said existing Personal Asset Trust, to be held, administered and distributed as if it had been an original part thereof. The Personal Asset Trust may be referred to by either using the name of the beneficiary for whom such trust is created or such other name as is designated by the Trustee. Notwithstanding the foregoing, if the Trustee exercises his or her right to create a separate and distinct Personal Asset Trust for said beneficiary (pursuant to the paragraph of this Agreement entitled "Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners"), any further distributions specified to be made to said beneficiary's Personal Asset Trust may, in the Trustee's sole and absolute discretion, instead be partly or entirely made to such newly created Personal Asset Trust.

B. Trustor's Intent in Establishing Personal Asset Trusts: The Trustor's intended purposes in creating a Personal Asset Trust for a beneficiary are as follows:

1. To protect and conserve trust principal;

2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary;

3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

4. To protect trust assets and income from claims of and interference from third parties;

5. To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

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7. To give the beneficiary the ability to direct the distribution of wealth (during life or at death) to other individuals or charitable organizations (subject to any limitation provided elsewhere herein);

8. To allow for the prudent management of property if the beneficiary is incapacitated or otherwise unable to handle his or her own financial affairs because of alcohol or drug abuse or other reasons;

9. To protect the beneficiary from the unreasonable or negative influence of others, divorce claims, paternity or maternity suits or claims, and other lawsuits; and

10. To protect the beneficiary against claims of third parties.

C. Duty to Inform Beneficiary of Trust Benefits and Protections: Immediately prior to a Personal Asset Trust being established for a beneficiary hereunder, the then acting Trustee of the Trust shall, if at all practicable, have a private meeting or telephone call with such beneficiary to explain the above stated long-term purposes and benefits of the Personal Asset Trust and to advise such beneficiary how he or she may maintain the benefits and protections that such trust provides. The Trustee is directed to have an attorney assist the Trustee in conducting this meeting or call and the Trustor hereby authorizes the Trustee to employ the services of VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, for such purpose and waive any potential conflict that may otherwise deter them from acting; however, the Trustee is free to hire any other attorney, provided such attorney is an experienced estate planning specialist.

D. Designation of Trustee: Except for the Personal Asset Trusts created for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS, each beneficiary for whom a Personal Asset Trust is created shall act as sole Trustee of said trust. ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall act as Co-Trustees for the Personal Asset Trusts for CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS. If either ANITA KAY BRUNSTING or AMY RUTH TSCHIRHART cannot serve for any reason, the remaining Co-Trustee shall serve alone. Both ANITA KAY BRUNSTING and AMY RUTH TSCHIRHART shall have the right to appoint their own successor Trustee in writing. Notwithstanding the foregoing, each beneficiary who is acting as his or her own Trustee of his or her said trust shall have the right, at such time as said beneficiary is acting as sole Trustee and in said beneficiary's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said beneficiary as Co-Trustee of said trust. Said beneficiary shall also have the right, at any time and in said beneficiary's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said beneficiary appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said beneficiary shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a

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successor Trustee or Co-Trustee(s) in said beneficiary's place, as the case may be, in the event of said beneficiary's death, incompetency, inability or unwillingness to act; but, if said beneficiary is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c) and said beneficiary shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said beneficiary fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said beneficiary to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

E. Designation of Trustee for Primary Beneficiary's Issue: Notwithstanding the foregoing, upon attaining age thirty five (35) each of the descendants of a Primary Beneficiary (hereinafter sometimes referred to as "issue") shall act as sole Trustee of the Personal Asset Trust created for such issue. Said issue shall have the right, at such time as said issue is acting as sole Trustee and in said issue's sole and absolute discretion, to appoint an independent bank or trust company to act jointly with said issue as Co-Trustee of said trust. Said issue shall also have the right, at any time and in said issue's sole and absolute discretion, to remove said independent bank or trust company acting as Co-Trustee provided said issue appoints another independent bank or trust company in its place. The appointment or removal of an independent bank or trust company as Co-Trustee shall be by written instrument delivered to the Co-Trustee. Furthermore, said issue shall have the right to designate by will or other written instrument, either individual(s) or an independent bank or trust company, to act as a successor Trustee or Co-Trustee(s) in said issue's place, as the case may be, in the event of said issue's death, incompetency, inability or unwillingness to act; but, if said issue is still living, the majority of acting Trustees must be independent within the meaning of Internal Revenue Code Section 674(c)) and said issue shall not have the right to remove the successor Trustee or Co-Trustee so designated and appoint another in its place. Should said issue fail to so designate a successor Trustee or Co-Trustees of such trust, then the FROST NATIONAL BANK shall act as successor Trustee, notwithstanding any other provisions contained in the trust agreement. Notwithstanding the foregoing provisions of this paragraph, the ability of said issue to appoint a successor Trustee may be limited as set forth in the Sections of the Trust entitled "Special Co-Trustee Provisions" and "Trust Protector Provisions."

F. Administration of Personal Asset Trust: The Personal Asset Trust shall be held, administered and distributed by the Trustee appointed under this Section of the Trust Agreement as follows:

1. Discretionary Distributions of Income and/or Principal: The Trustee, shall have the power, in such Trustee's sole and absolute discretion, binding on all persons interested now or in the future in this trust, to distribute or apply for

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but not limited to, the expense of travel and charges for tutoring, tuition, room and board (whether or not charged by an educational institution at which such beneficiary shall be a student), laboratory fees, classroom fees, clothing, books, supplies, laboratory or other equipment or tools (including computer hardware and software) or other material or activities that the Trustee shall determine to be of educational benefit or value to such beneficiary. In determining the need for funds for education, the Trustee shall consider all direct and indirect expenses, including living expenses of the beneficiary and those persons who may be dependent upon said beneficiary. The terms "support" and "maintenance" may include but are not limited to investment in a family business, purchase of a primary residence, entry into a business, vocation or profession commensurate with a beneficiary's abilities and interests; recreational or educational travel; expenses incident to marriage or childbirth; and for the reasonably comfortable (but not luxurious) support of the beneficiaries. When exercising the powers to make discretionary distributions from the trust, the Trustee shall maintain records detailing the amount of each distribution made to any beneficiary from trust income and/or principal and the reasons for such distribution. The distributions made to a beneficiary shall not be allocated to or charged against the ultimate distributable share of that beneficiary (unless so provided in the primary beneficiary's exercise of his or her limited power of appointment).

b. Consider the Situation of the Beneficiary: In determining whether or not it is in the best interest of a beneficiary for any payment to be made to that beneficiary, the Trustee shall consider the financial responsibility, judgment and maturity of such beneficiary, including whether or not, at the time of such determination, such beneficiary: (i) is suffering from any physical, mental, emotional or other condition that might adversely affect the beneficiary's ability to properly manage, invest and conserve property of the value that would be distributed to said beneficiary; (ii) is at such time, or previously has been, a substantial user of or addicted to a substance the use of which might adversely affect the beneficiary's ability to manage, invest and conserve property of such a value; (iii) has demonstrated financial instability and/or inability to manage, invest and conserve the beneficiary's property; or (iv) is going through a period of emotional, marital or other stress that might affect the beneficiary's ability to manage, invest and conserve such property.

c. Consider Any Written Letter of Instructions from the Trustor: The Trustor may from time to time by written letter or other instrument, not constituting a holographic will or codicil or amendment to any trust, set forth instructions to the Trustee as to how the Trustor wishes the

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Trustee's discretion to be exercised. The Trustor recognizes and intends that such instructions shall only be directive in nature and not binding on the Trustee or any beneficiary hereunder; however, the Trustor requests, to the extent possible, that the Trustee be mindful of these instructions when administering the trust.

d. Loans, Use of Trust Property and Joint Purchases Preferred Over Distributions: The Trustee is directed, prior to making any distributions directly to or for the benefit of a beneficiary, to consider the alternatives of making a loan to the beneficiary, allowing the beneficiary the use of property of the Trust Estate (or such property to be acquired) and/or making a joint purchase of property with the beneficiary, pursuant to the paragraph below entitled "Special Trustee Powers."

e. Restrictions on Distributions That Discharge Legal Obligations of a Beneficiary: The primary beneficiary is expressly prohibited from making any distributions from the trust, either as Trustee or under any limited power of appointment, either directly or indirectly, in favor of anyone to whom the primary beneficiary owes a legal obligation, to satisfy, in whole or in part, such legal obligation. Any such distributions may only be made by the Trust Protector.

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G. Primary Beneficiary's Limited Power of Appointment: The primary beneficiary shall have the following Limited Powers of Appointment. During the lifetime of the primary beneficiary, said beneficiary may appoint and distribute the accumulated income and/or principal to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions, and in such amounts or proportions as said beneficiary wishes. Upon the death of the primary beneficiary, the Trustee shall distribute any remaining balance, including accumulated income and principal, to any one or more of said beneficiary's issue, either outright or in trust upon such terms and conditions and in such amounts or proportions as said beneficiary shall appoint by said beneficiary's last unrevoked Will, codicil or other written instrument executed prior to said beneficiary's death and specifically referring to this power of appointment. In the event there should be a failure of disposition of all or any portion of said income or principal, either in connection with the exercise or as a result of the nonexercise of the above testamentary limited power of appointment, all of said income and principal not disposed of shall be administered and distributed as set forth below in the paragraph entitled "Final Disposition of Trust." The terms of this paragraph may be limited by the Section of this Trust Agreement entitled "Trust Protector Provisions."

H. Final Disposition of Trust: If the primary beneficiary for whom the Personal Asset Trust has been created should die before complete distribution of said trust, and the beneficiary's above powers of appointment have not been fully exercised, said trust shall terminate and the remaining principal (including accumulated income added

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thereto) in said trust shall be held, administered and distributed for the benefit of the succeeding or contingent beneficiaries named, if any, pursuant to the respective paragraph set forth in Section 3.B. of this Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment establishing said beneficiary's share as if such beneficiary had been an original part thereof. Any share or portion thereof of any trust administered hereunder which is not disposed of under any of the foregoing provisions (or the provisions of the Article entitled "Trust Protector Provisions") shall be distributed pursuant to the paragraph of the Trust Agreement entitled "Ultimate Distribution."

I. Special Trustee Powers: With respect to each Personal Asset Trust created under this Section, and in addition to or in lieu of the powers and authority granted to the Trustee under any other provisions of the Trust Agreement, during the existence of the Personal Asset Trust and until such time of its termination the Trustee, in his or her sole and absolute discretion, shall have the powers and authority to do the following.

1. Permit Beneficiaries to Use Trust Assets: The Trustor desires that the beneficiaries of the trust be given the liberal use and enjoyment of trust property. To the extent deemed practical or advisable in the sole and absolute discretion of the Trustee, the primary beneficiary (or other beneficiaries) of each trust hereunder may have the right to the use, possession and enjoyment of (a) all of the tangible personal property at any time held by such trust, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, and (b) all real property that may at any time constitute an asset of such trust. Such use, possession and enjoyment may be without rent or other financial obligation. To the extent of the trust assets and unless the Trustee is relieved of such obligation by such beneficiary (or beneficiaries), which the Trustee may agree to do, the Trustee shall see to the timely payment of all taxes, insurance, maintenance and repairs, safeguarding and other charges related to the preservation and maintenance of each and every such property. The Trustor requests, but do not require, that any such use, possession or enjoyment by a beneficiary other than the primary beneficiary be subject to veto at any time by the primary beneficiary.

a. Hold and Maintain a Residence for the Use of Beneficiaries: The Trustee is specifically authorized to hold and maintain any residence (whether held as real property, condominium or cooperative apartment) for the use and benefit of any beneficiary of any trust. If the Trustee, in the Trustee's sole and absolute discretion, determines that it would be in the best interests of any beneficiary of any trust to maintain a residence for their use, but that the residence owned by the Trustee should not be used for such purpose, the Trustee is authorized to sell said residence and to apply the net proceeds of the sale to the purchase of such other residence or to make such other arrangements as the Trustee, in such Trustee's sole and absolute discretion, deems suitable



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for the purpose. Any proceeds of sale not needed for reinvestment in a residence as provided above shall be added to the principal of the trust and thereafter held, administered and disposed of as a part thereof. The Trustee is authorized to pay all carrying charges of such residence, including, but not limited to, any taxes, assessments and maintenance thereon, and all expenses of the repair and operation thereof, including the employment of domestic servants and other expenses incident to the running of a household for the benefit of any beneficiary of the trust; the Trustee may alternatively provide, by agreement with the beneficiary, that such charges and expenses, or a portion of them, are to be paid by the beneficiary. Having in mind the extent to which funds will be available for future expenditure for the benefit of the beneficiaries, the Trustee is authorized under this paragraph to expend such amounts as such Trustee shall, in his or her sole and absolute discretion, determine to maintain the current lifestyle of the beneficiaries and their personal care and comfort; the Trustor does not, however, desire that the Trustee assist the beneficiaries in maintaining a luxurious lifestyle.

2. Special Investment Authority: Notwithstanding any investment limitations placed on the Trustee under the Trust Agreement or the provisions of any state law governing this trust which may contain limitations such as the prudent investor rule, the Trustee is authorized to make the following types of investments of trust assets:

a. Closely Held Businesses: To continue to hold and operate, to acquire, to make investments in, to form, to sell, or to liquidate, at the risk of the Trust Estate, any closely held partnership, corporation or other business that a beneficiary is involved in as an owner, partner, employee, officer or director, as long as the Trustee deems it advisable. The Trustee shall not be liable in any manner for any loss, should such loss occur, resulting from the retention or investment in such business. In the absence of actual notice to the contrary, the Trustee may accept as correct and rely on financial or other statements rendered by any accountant for any such business. Any such business shall be regarded as an entity separate from the trust and no accounting by the Trustee as to the operation of such business shall be required to be made. The Trustee shall have these powers with respect to the retention and purchase of such business, notwithstanding any rule or law requiring diversification of assets. Additionally, the foregoing shall not be limited by the fact that the Trustee or related parties, or any of them, shall be owners, partners, employees, officers or directors of the business. This paragraph, however, shall not be deemed to be a limitation upon the right of the Trustee to sell the investment in any

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business if in the Trustee's sole and absolute discretion such sale is deemed advisable.

b. Tangible Personal Property: To acquire and/or continue to hold as an asset of the trust such items of tangible personal property as an investment or for the use of a beneficiary, including but not limited to artwork, jewelry, coin or stamp collections and other collectible assets, home furniture and furnishings.

3. Permit Self-Dealing: Financial transactions, both direct and indirect, between any trust and any beneficiary and/or Trustee who is also a beneficiary of that trust (including, for example, the sole or joint purchase, sale or leasing of property, investments in mortgages, acquisitions of life insurance policies, employment in any capacity, lending, etc.), whether or not specifically described in the Trust Agreement as permitted between such parties, except to the extent expressly prohibited hereunder, are expressly authorized, notwithstanding any rule of law relating to self-dealing, provided only that the Trustee, in thus acting either on behalf of or with or for such trust, shall act in good faith to assure such trust receives in such transaction adequate and full consideration in money or money's worth. Furthermore, the Trustee shall have the power to employ professionals or other individuals to assist such Trustee in the administration of any trust as may be deemed advisable (and as more particularly described in the paragraph of the Trust Agreement entitled "Trustee Powers"), notwithstanding such person or entity may be, or is affiliated in business with, any Trustee or beneficiary hereunder. The compensation to which a Trustee who is also a beneficiary is entitled under the Trust Agreement shall not be reduced or offset by any employment compensation paid to such Trustee for services rendered outside the scope of such Trustee's ordinary fiduciary duties and responsibilities, or for reason of receiving sales or other fees or commissions on property sold to the trust by such Trustee (directly or indirectly), which sales are hereby authorized.

4. Make Loans: Loan money to any beneficiary, or to any estate, trust or company in which such person or any trust hereunder has an interest, or had an interest while living, for any purpose whatsoever (including but not limited to purchasing, improving, repairing and remodeling a principal residence or entering into, purchasing or engaging in a trade or business or professional career), with or without security and at such rate of interest as the Trustee shall determine in the exercise of reasonable fiduciary discretion, and, with respect to such loans and/or security interests, to renew, extend, modify and grant waivers. Notwithstanding the foregoing, and without limiting the ability of the Trustee to act in such Trustee's discretion under this paragraph, the Trustor hereby expresses his preference that, whenever economically feasible, any and all loans made pursuant to the provisions of this paragraph be adequately secured and bear interest at least at the higher of the "applicable federal rate"

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as set forth by the Internal Revenue Service for loans with similar payment terms and length or a fair market rate for such loans.

5. Take Actions With Respect to Properties and Companies Owned in Common With a Beneficiary or Others: The Trustee is specifically authorized, with or without the joinder of other owners of the property or securities that may be held in trust (and notwithstanding that one or more such other owners may be, directly or indirectly, a beneficiary or a fiduciary hereunder), to enter upon and carry out any plan (a) for the foreclosure, lease or sale of any trust property, (b) for the consolidation or merger, dissolution or liquidation, incorporation or reincorporation, recapitalization, reorganization, or readjustment of the capital or financial structure of any corporation, company or association, the securities of which, whether closely held or publicly traded, may form a part of such trust, or (c) for the creation of one or more holding companies to hold any such securities and/or properties (even if it leaves, following the termination of such trust, a trust beneficiary as a minority shareholder in such holding company), all as such Trustee may deem expedient or advisable for the furtherance of the interests of such trust and the carrying out of the Trustor's original intent as to such trust, its beneficiaries and as to those properties and/or securities. In carrying out such plan, such Trustee may deposit any such securities or properties, pay any assessments, expenses and sums of money, give investment letters and other assurances, receive and retain as investments of such trust any new properties or securities transferred or issued as a result thereof, and generally do any act with reference to such holdings as might be done by any person owning similar securities or properties in his own right, including the exercise of conversion, subscription, purchase or other rights or options, the entrance into voting trusts, etc., all without obtaining authority therefor from any court.

6. Right to Distribute to Entities: Any distribution from the trust, including a distribution upon trust termination (whether made by the Trustee or Trust Protector) may be made directly to an entity, such as a trust, "S" corporation, limited liability company or limited partnership, whether existing or newly created, rather than directly to the beneficiary (and if it is a newly created entity or one in which the Trust Estate holds an interest, the interest in the entity may be distributed to such beneficiary).

7. Trustee's Discretion to Hold, Manage and Distribute Separate Trusts in Different Manners: Without in any manner limiting any other power or right conferred upon the Trustee hereunder, the Trustee may divide a trust into separate trusts, and if a trust is held as, or divided into, separate trusts, the Trustee may, at any time prior to combining such trusts, treat the trusts in substantially different manners, including, without limitation, the right to: (a) make different tax elections (including the disproportionate allocation of the generation skipping tax exemption) with respect to each separate trust; (b)

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make disproportionate principal distributions; (c) exercise differently any other discretionary powers with respect to such separate trusts; (d) invest the property of such separate trusts in different investments, having different returns, growth potentials, or bases for income tax purposes; and (e) take any and all other actions consistent with such trusts being separate entities. Furthermore, the holder of any power of appointment with respect to any trust so divided may exercise such power differently with respect to the separate trusts created by the division of a trust.

## TRUST PROTECTOR PROVISIONS

A. Purpose of Trust Protector: The Trustor has established the position of Trust Protector for the reasons and purposes set forth below, which are intended as general guidelines only and in no way shall limit any other provisions relating to the Trust Protector.

1. Insulate the Trustee from Negative Influences: To protect the Trustee from the negative, or potentially negative, influences of third parties and to protect the Trust Estate and its beneficiaries from damaging, or potentially damaging, conduct by the Trustee.

2. Carry Out the Purposes of the Trust: To help ensure that the Trustor's purpose in establishing the Trust Agreement, as defined elsewhere herein, will be properly carried out.

3. Adapt to Changing Laws and Conditions: To adapt the provisions of the Trust Agreement to law changes, changes in interpretation of the law or other changing conditions that threaten to harm the Trust or its beneficiaries, keeping in mind the dispositive wishes of the Trustor and the Trustor's desires as expressed in the Trust Agreement.

B. Designation of Trust Protector: In addition to the Trustee and Special Co-Trustee provided in the Trust Agreement, there shall, from time to time, be a Trust Protector whose limited powers and duties are defined below. The order of succession of Trust Protector shall be as follows:

1. Initial Trust Protector: The Special Co-Trustee, at any time and in his sole and absolute discretion, may appoint a Trust Protector of the entire Trust or of any separate trust established hereunder (hereinafter the trust for whom a Trust Protector is appointed shall be referred to as "the affected trust") by a writing delivered to the Trustee of the affected trust. The Trustor requests that the Special Co-Trustee, prior to making the appointment, meet (in person or by telephone) with VACEK & FREED, PLLC, formerly the Vacek Law Firm,

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require, that VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or its successors or assigns, act as such temporary Trust Protector and the Trustor hereby waives any conflict of interest that may arise if VACEK & FREED, PLLC, or its successors or assigns, is also representing the Trustee of the affected trust and/or the Trustor. Any Trust Protector acting under this paragraph shall first notify the Trustee of the affected trust and only serve as Trust Protector until such time as a successor Trust Protector is appointed by the Special Co-Trustee in accordance with paragraph 2 above and there is delivered to the Trust Protector acting under this paragraph a written acceptance of such appointment signed by the successor Trust Protector.

C. Limited Powers of the Trust Protector: The Trust Protector shall not have all the broad powers of a Trustee; rather, the powers of the Trust Protector shall be limited to the powers set forth below. The Trustor directs the Trust Protector, prior to exercising any power, to consult with VACEK & FREED, PLLC, formerly the Vacek Law Firm, PLLC, or another law firm or attorney specializing in estate planning and/or asset protection planning in order to be fully informed of the consequences of exercising such power.

1. Give Advance Notice to Affected Beneficiaries: Within a reasonable time prior to the exercise of any power under this paragraph C, the Trust Protector shall provide to the Trustee and the primary beneficiary or beneficiaries of the affected trust a written notice, setting forth the power intended to be exercised, the intended date of exercise and the reasons for exercise. The Trust Protector shall, in his sole and absolute discretion, determine what is "a reasonable time," as the Trustor recognizes that emergency situations may arise which may permit little or no time for advance notice or, as a practical matter, it may be too difficult to notify the beneficiary; the Trustor specifically waives this advance notice requirement when the particular beneficiary is "incapacitated" as defined below. Once notice is given, the Trust Protector shall not exercise the power prior to the date specified in the notice, unless the Trust Protector in his sole and absolute discretion determines that an emergency so warrants.

A person shall be deemed "incapacitated" if in the Trustee's sole and absolute discretion, it is impracticable for said person to give prompt, rational and prudent consideration to financial matters, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause.

A person shall be conclusively deemed "incapacitated" if a guardian of the person or his or her estate, or both, has been appointed by a court having jurisdiction over such matters or two (2) licensed physicians who are not related by blood or marriage to such person have examined said person and stated in writing that such incapacity exists; the Trust Protector may, but shall not be under any duty to, institute any inquiry into a person's possible

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incapacity (such as, but not limited to, by drug testing) or to obtain physician statements; and if he does, then the expense may be paid from the Trust Estate of said person's trust.

2. Postpone Distributions: Notwithstanding any other provisions of the Trust Agreement, except the paragraph herein entitled "Rule Against Perpetuities," the Trust Protector shall have the power to postpone any distribution of income and/or principal otherwise required to be made from the affected trust to any one or more of its beneficiaries (including as the result of exercise of a power of appointment or withdrawal right) and to postpone the termination of such trust which might otherwise be required if the Trust Protector, in his or her sole and absolute discretion, determines, after taking into consideration the Trustor's overall intent as expressed in the Trust Agreement, that there is a compelling reason to do so.

A "compelling reason" may include but is not limited to: the beneficiary requesting in writing that distributions be retained by the trust; the beneficiary being "incapacitated" as defined in paragraph 1 immediately above; the beneficiary contemplating, or in the process of filing for or has a pending bankruptcy; a pending or threatened divorce, paternity or maternity claim or other lawsuit; a creditor claim (including for unpaid taxes or reimbursement of government benefits); an existing judgment or lien; the fact the beneficiary is receiving (or may in the near future receive) government or other benefits that may be jeopardized; the beneficiary having demonstrated financial instability and/or inability to manage, invest or conserve the beneficiary's own property; the beneficiary being under the negative influence of third parties, such that the beneficiary's good judgement may be impaired; a serious tax disadvantage in making such distribution; or any other substantially similar reasons.

Any such postponement of distribution or termination may be continued by the Trust Protector, in whole or in part and from time to time, up to and including the entire lifetime of the beneficiary. While such postponement continues, all of the other provisions previously applicable to such trust shall continue in effect, except (a) any power of appointment or withdrawal shall be exercisable only with the approval of the Trust Protector and (b) distributions of income and/or principal shall only be made to or for the benefit of the beneficiary from time to time and in such amounts as the Trust Protector, in his or her sole and absolute discretion, deems appropriate for the best interests of the beneficiary; provided, however, the Trust Protector may, in his or her sole and absolute discretion, determine that the beneficiary's situation is extreme enough to warrant the establishment of a special needs trust pursuant to other provisions of this Section of the Trust Agreement.

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The Trust Protector may also, from time to time, make certain distributions which cannot be made by the primary beneficiary because of limits imposed in this Section entitled "Restrictions on Distributions That Discharge Legal Obligations of the Beneficiary."

3. Terminate a Trust Due to Unforeseen Conditions: The Trustor recognizes that some or all of the following conditions may arise in the future, although they cannot be foreseen at the time of creation of this Trust: (a) a radical, substantial and negative change in the political, economic or social order in the United States of America; (b) legislation or IRS or court decisions highly detrimental to a trust or beneficiary hereunder (including, for example, if the federal estate tax or IRA required minimum distribution rules are modified, repealed or no longer applicable and the non-tax reasons for the trust no longer justify the trust's existence); (c) a beneficiary's capability to prudently manage his own financial affairs or a radical, positive change in his situation regarding possible third party claims; (d) a beneficiary no longer has a need for (or the availability of) government benefits; and (e) other events that may greatly impair the carrying out of the intent and purposes of the Trust Agreement.

If any of the foregoing conditions occur, the Trust Protector may, in addition to the other powers granted him or her, in his sole and absolute discretion, and keeping in mind the Trustor's wishes and dispositive provisions of the Trust Agreement, terminate the affected trust, or a portion thereof, and distribute same to or for the benefit of the primary beneficiary thereof (notwithstanding any other provisions of the Trust Agreement), or to a newly created or existing Personal Asset Trust for that beneficiary.

4. Revise or Terminate a Trust So It Can Qualify as a "Designated Beneficiary" of an IRA or Retirement Plan: In the event that the affected trust does not qualify as a "designated beneficiary" of an IRA or other retirement plan as that term is used in IRC Section 401(a)(9), the Regulations thereunder and any successor Section and Regulations, the Trust Protector may, keeping in mind the Trustor's wishes and the dispositive provisions of the Trust Agreement: (a) revise or reform the terms of the Trust Agreement in any manner so that the affected trust will qualify as a "designated beneficiary" (any such revision or reformation may by its terms apply retroactively to the inception of the Trust Agreement or creation of any separate trust established hereunder); or (b) deem it to have been dissolved in part or in whole as of September 30 of the year following the year of the Trustor's death, with fee simple interest vesting outright in the primary beneficiary and the rights of all other persons who might otherwise have an interest as succeeding life income beneficiaries or as remaindermen shall cease.

If the beneficiary is still a minor, the Trustee may designate a custodian and transfer the principal and accrued income of the beneficiary's trust to the

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custodian for the benefit of the minor under the Texas Uniform Transfers to Minors Act until such beneficiary attains age 21. A receipt from the custodian shall be a complete discharge of the Trustee as to the amount so paid.

Notwithstanding any provisions of the Trust Agreement to the contrary, after the Trustor's death this Trust or any separate trust established hereunder shall not terminate and be distributed in full prior to September 30 of the year following the year of the Trustor's death pursuant to this paragraph if this will result in this Trust or any separate trust established hereunder not qualifying as a "designated beneficiary."

5. Modify Certain Other Trust Provisions: The Trust Protector shall have the power, in his or her sole and absolute discretion, at any time and from time to time, to delete, alter, modify, amend, change, add to or subtract from all or any part of the various paragraphs and provisions of the Trust Agreement and any trust created thereunder, effective (even retroactively) as of the date determined by the Trust Protector, for the following purposes.

a. Change Income Tax Treatment of the Trust: The Trust Protector may, at any time, and from time to time, create, terminate and/or reinstate a power granted to a beneficiary, either prospectively or retroactively, enabling trust income to be income taxable to a beneficiary, even as income accumulates in the trust, if the Trust Protector deems this to be in the best interests of the affected trust and its beneficiaries.

b. Protect a Disabled Beneficiary's Government Benefit by Establishing a Special Needs Trust: The Trust Protector may take any such actions he or she deems appropriate or necessary in connection with a beneficiary's qualification for, receipt of and/or possible future liability to reimburse government benefits (whether income, medical, disability or otherwise) from any agency (state, federal or otherwise), such as but not limited to Social Security, Medicaid, Medicare, SSI and state supplemental programs. In particular, but not by way of limitation, the Trust Protector may add new trust provisions to govern administration and distribution of assets for the benefit of the beneficiary (such as would create a "special needs trust").

c. Protect a Beneficiary from Himself or from Creditors by Establishing a Spendthrift Trust or Eliminating Any General Power of Appointment: In the event there is a compelling reason to postpone distributions to a beneficiary pursuant to the paragraph of this Section entitled "Postpone Distributions," the Trust Protector may alternatively, in his or her sole discretion, add new trust provisions to govern administration and distribution of assets for the benefit of said beneficiary (such as would create a "spendthrift trust" in the form recognized by the laws of the

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state(s) in which trust assets are located). Furthermore, the Trust Protector may, in his or her sole discretion, in order to protect the beneficiaries of a Trust beneficiary, terminate and/or reinstate said Trust beneficiary's testamentary general power of appointment, if any, under the Section of this Trust Agreement entitled "Generation Skipping Tax Provisions."

6. Change Legal Jurisdiction of the Trust: The Trust Protector may change the situs of the affected trust to another jurisdiction by any such means deemed appropriate by the Trust Protector. This paragraph shall in no way limit the Trustee's power and authority to change the situs of this Trust or any separate trust established hereunder.

7. Remove and Reinstate a Trustee: The Trust Protector shall have the power at any time to remove the acting Trustee of the affected trust (but not the Special Co-Trustee) for any reason which he believes to be in the best interests of the beneficiaries. Such removal shall be stated in writing and delivered to the Trustee. The successor Trustee shall then be determined and appointed in accordance with the Section of the Trust Agreement entitled "Successor Trustees." At any time after the Trust Protector removes a Trustee, the Trust Protector may reinstate the previously removed Trustee and the order of successor Trustees shall be thereafter determined as if such reinstated Trustee was never removed.

8. Eliminate Own Powers: The Trust Protector shall have the power, on his own behalf and/or on behalf of all successor Trust Protectors, to release, renounce, suspend, reduce, limit and/or eliminate any or all of his enumerated powers and to make the effective date any date he wishes, including ab initio to the date of establishment of a trust hereunder or retroactively to the date of death of the Trustor, by a writing delivered to the Trustee of the affected trust.

9. Limitations on Above Powers: The Trust Protector may not exercise any power if he is compelled by a court or other governmental authority or agency to do so or is otherwise acting under the duress or undue influence of an outside force; if the Trust Protector is so compelled, or under such duress or influence, his powers shall become void prior to exercise; these limitations are in addition to those contained in the paragraph of the Trust Agreement entitled "Compelled Exercise of Powers Not Effective." The Trust Protector is directed not to exercise any of the foregoing powers if such exercise will result in any substantial, direct or indirect financial benefit to anyone who at the time of exercise is not an ancestor, spouse or issue of a primary beneficiary or is not already a present or contingent beneficiary of this Trust. The Trust Protector shall not exercise any power that may be construed as a general power of appointment to himself, his creditors, his estate or the creditors of his estate under IRC Sections 2041 and 2514, or that would otherwise cause the

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inclusion of any of the Trust Estate in the Trust Protector's taxable estate for estate, inheritance, succession or other death tax purposes.

D. Limited Liability of the Trust Protector: The Trust Protector shall not be held to the fiduciary duties of a Trustee. The Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, merely by reason of his appointment as Trust Protector and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Trust Protector to act. Furthermore, the Trust Protector shall not be liable to anyone, howsoever interested in this Trust either now or in the future, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Trust Protector a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care. In the event a lawsuit against the Trust Protector fails to result in a judgment against him, the Trust Protector shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

E. Compensation: The Trust Protector shall not be entitled to compensation merely as the result of his appointment. The Trust Protector shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Trust Protector shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

F. Waiver of Bond: No bond shall be required of any individual or entity acting as Trust Protector.

## MISCELLANEOUS PROVISIONS

A. Prohibition Against Contest: If any devisee, legatee or beneficiary under the Trust Agreement or any amendment to it, no matter how remote or contingent such beneficiary's interest appears, or any legal heir of the Trustor, or either of them, or any legal heir of any prior or future spouse of the Trustor (whether or not married to the Trustor at the time of the Trustor's death), or any person claiming under any of them, directly or indirectly does any of the following, then in that event the Trustor specifically disinherits each such person, and all such legacies, bequests, devises and interests given to that person under the Trust Agreement or any amendment to it shall be forfeited and shall be distributed as provided elsewhere herein as though he or she had predeceased the Trustor without issue:



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1. unsuccessfully challenges the appointment of any person named as a Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, or unsuccessfully seeks the removal of any person acting as a Trustee, Special Co-Trustee or Trust Protector;

2. objects in any manner to any action taken or proposed to be taken in good faith by the Trustee, Special Co-Trustee or Trust Protector pursuant to the Trust Agreement or any amendment to it, whether the Trustee, Special Co-Trustee or Trust Protector is acting under court order, notice of proposed action or otherwise, and said action or proposed action is later adjudicated by a court of competent jurisdiction to have been taken in good faith;

3. objects to any construction or interpretation of the Trust Agreement or any amendment to it, or the provisions of either, that is adopted or proposed in good faith by the Trustee, Special Co-Trustee or Trust Protector, and said objection is later adjudicated by a court of competent jurisdiction to be an invalid objection;

4. claims entitlement to (or an interest in) any asset alleged by the Trustee to belong to the Trustor's estates (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), whether such claim is based upon a community or separate property right, right to support or allowance, a contract or promise to leave something by will or trust (whether written or oral and even if in exchange for personal or other services to the Trustor), "quantum meruit," constructive trust, or any other property right or device, and said claim is later adjudicated by a court of competent jurisdiction to be invalid;

5. files a creditor's claim against the assets of the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) and such claim is later adjudicated by a court of competent jurisdiction to be invalid;

6. anyone other than the Trustor attacks or seeks to impair or invalidate (whether or not any such attack or attempt is successful) any designation of beneficiaries for any insurance policy on the Trustor's life or any designation of beneficiaries for any bank or brokerage account, pension plan, Keogh, SEP or IRA account, employee benefit plan, deferred compensation plan, retirement plan, annuity or other Will substitute of the Trustor;

7. in any other manner contests this Trust or any amendment to it executed by the Trustor (including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence, or otherwise), or in any other manner,

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attacks or seeks to impair or invalidate this Trust, any such amendment or any of their provisions;

8. conspires with or voluntarily assists anyone attempting to do any of the above acts;

9. refuses a request of the Trustee to assist in the legal defense against any of the above actions.

Expenses to legally defend against or otherwise resist any above contest or attack of any nature shall be paid from the Trust Estate as expenses of administration. If, however, a person taking any of the above actions is or becomes entitled to receive any property or property interests included in the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise), then all such expenses shall be charged dollar-for-dollar against and paid from the property or property interests that said person would be entitled to receive under the Trust Agreement or the Trustor's Will, whether or not the Trustee (or Executor under the Trustor's Will) was successful in the defense against such person's actions.

The Trustor cautions the Trustee against settling any contest or attack or any attempt to obtain an adjudication that would interfere with the Trustor's estate plan and direct that, prior to the settlement of any such action short of a trial court judgment or jury verdict, the Trustee seek approval of any such settlement from the appropriate court having jurisdiction over this Trust by way of declaratory judgment or any other appropriate proceeding under applicable Texas law. In ruling on any such petition for settlement, the Trustor requests the Court to take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the Trust Estate or from the Trustor's estate (whether passing through the Trustor's probate estate, or by way of operation of law or through the Trustor's Living Trust, IRA Inheritance Trust, if any, or otherwise) under any theory and, therefore, no settlement should be approved by the Court unless it is proved by clear and convincing evidence that such settlement is in the best interest of the Trust Estate and the Trustor's estate plan.

In the event that any provision of this Section is held to be invalid, void or illegal, the same shall be deemed severable from the remainder of the provisions in this paragraph and shall in no way affect, impair or invalidate any other provision in this paragraph. If such provision shall be deemed invalid due to its scope and breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

The provisions of this paragraph shall not apply to any disclaimer (or renunciation) by any person of any benefit (or right or power) under the Trust Agreement or any amendment to it.

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B. Compelled Exercise of Powers Not Effective: It is the Trustor's intent that the terms of the Trust Agreement be carried out free from outside interference. Therefore, notwithstanding any other provisions of the Trust Agreement, the purported exercise of any power granted under the Trust Agreement, whether by a Trustee, Special Co-Trustee, Trust Protector or a beneficiary, including a power of appointment, withdrawal, substitution or distribution, shall be of no force and effect if such purported exercise was the result of compulsion. The purported exercise of a power shall be deemed to be the result of compulsion if such exercise is (i) in response to or by reason of any order or other direction of any court, tribunal or like authority having jurisdiction over the individual holding the power, the property subject to the power or the trust containing such property or (ii) the result of an individual not acting of his or her own free will. An individual's agent may not exercise a power given to such individual under the Trust Agreement if such purported exercise is in response to or by reason of any such order or direction unless the order or direction was obtained by the agent in a proceeding in which the agent was the moving party or voluntarily acquiesced. Notwithstanding the above, if a Trustee's failure to exercise a power or to acquiesce in a beneficiary's exercise of a power may result in exposing a Trustee to serious personal liability (such as contempt of court or other sanctions), a Trustee may: (a) withdraw and permit the Special Co-Trustee to act instead in relation to such purported exercise of a power; (b) if the Special Co-Trustee would also be exposed to such liability, then the Trustee may notify the Trust Protector who may, in his discretion, act if permitted under the Trust Agreement; or (c) if neither the Special Co-Trustee nor the Trust Protector acts, then the Trustee may exercise or acquiesce in a beneficiary's exercise of a power.

C. Creditor's Rights – Spendthrift Provisions: Subject to the express grant herein of certain rights to withdraw or substitute assets and/or powers of appointment, if any, no beneficiary under the trusts created herein shall assign, transfer, alienate or convey, anticipate, pledge, hypothecate or otherwise encumber his or her interest in principal or income hereunder prior to actual receipt. To the fullest extent permitted by law:

(1) neither the principal of these trusts nor any income of these trusts shall be liable for any debt of any beneficiary, any beneficiary's spouse, ex-spouse or others, or be subject to any bankruptcy proceedings or claims of creditors of said persons (including said persons' spouses or ex-spouses), or be subject to any attachment, garnishment, execution, lien, judgment or other process of law; (2) no interest of any beneficiary shall be subject to claims of alimony, maternity, paternity, maintenance or support; and (3) no power of appointment or withdrawal or substitution shall be subject to involuntary exercise. Should the Trustee so desire, the Trustee may as a condition precedent, withhold payments of principal or interest under this Trust until personal order for payment is given or personal receipt furnished by each such beneficiary as to his or her share. The Trustee may, alternatively in the Trustee's sole and absolute discretion, deposit in any bank designated in writing by a beneficiary to his or her credit, income or principal payable to such beneficiary. The



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Trustee may, alternatively in the Trustee's sole and absolute discretion, hold and accumulate any income and/or principal so long as it may be subject to the claims, control or interference of third parties, up to and until the beneficiary's death, at which time it shall be distributed in accordance with the beneficiary's exercise of his or her power of appointment, if any, and/or pay to or for the benefit of the beneficiary only such sums as the Trustee deems necessary for said beneficiary's reasonable health, support, maintenance and education.

D. Trustee Power to Determine Principal and Income: The Trustee shall determine what is principal or income of the Trust Estate, and apportion and allocate any and all receipts and expenses between these accounts, in any manner the Trustee determines, regardless of any applicable state law to the contrary including any Principal and Income Act of Texas, or similar laws then in effect. In particular (but not by way of limitation), the Trustee shall have sole and absolute discretion to apportion and allocate all receipts and expenses between principal and income in whole or in part, including the right to: allocate capital gains; elect whether or not to set aside a reserve for depreciation, amortization or depletion, or for repairs, improvement or upkeep of any real or personal property, or for repayments of debts of the Trust Estate; and charge Trustee's fees, attorney's fees, accounting fees, custodian fees and other expenses incurred in the collection, care, management, administration, and protection of the Trust Estate against income or principal, or both. The exercise of such discretion shall be conclusive on all persons interested in the Trust Estate. The powers herein conferred upon the Trustee shall not in any event be so construed as allowing an individual to exercise the Trustee's sole and absolute discretion except in a fiduciary capacity.

E. Broad Trustee Power to Invest: It is the Trustor's express desire and intention that the Trustee shall have full power to invest and reinvest the Trust Estate without being restricted to forms and investments that the Trustee may otherwise be permitted to make by law. The Trustee is empowered to invest and reinvest all or any part of the Trust Estate in such property as the Trustee in his discretion may select including but not limited to bank accounts, money market funds, certificates of deposit, government bonds, annuity contracts, common or preferred stocks, closely held businesses, shares of investment trusts and investment companies, corporate bonds, debentures, mortgages, deeds of trust, mortgage participations, notes, real estate, put and call options, commodities, commodities futures contracts and currency trading. When selecting investments, the Trustee may take into consideration the circumstances then prevailing, including but not limited to the general economic conditions and the anticipated needs of the Trust Estate and its beneficiaries, the amount and nature of all assets available to beneficiaries from sources outside the Trust and the beneficiaries' economic circumstances as a whole, and shall exercise the judgment that a reasonable person would if serving in a like capacity under the same circumstances and having the same objectives. In addition to the investment powers conferred above, the Trustee is authorized (but not directed) to acquire and retain investments not regarded as traditional for trusts, including investments that would

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be forbidden by the "prudent person" (or "prudent investor") rule. In making investments, the Trustee may disregard any or all of the following factors: (i) whether a particular investment, or the trust investments collectively, will produce a reasonable rate of return or result in the preservation of principal; (ii) whether the acquisition or retention of a particular investment, or the trust investments collectively, is consistent with any duty of impartiality as to the different beneficiaries (the Trustor intends no such duty shall exist); (iii) whether the trust is diversified (the Trustor intends that no duty to diversify shall exist); and (iv) whether any or all of the trust investments would traditionally be classified as too risky or speculative for trusts (the Trustor intends the Trustee to have sole and absolute discretion in determining what constitutes acceptable risk and what constitutes proper investment strategy). The Trustor's purpose in granting the foregoing broad authority is to modify the prudent person rule insofar as the rule would prohibit an investment or investments because of one or more factors listed above, or any other factor relating to the nature of the investment itself. Accordingly, the Trustee shall not be liable for any loss in value of an investment merely because of the nature, class or type of the investment or the degree of risk presented by the investment, but shall be liable if the Trustee fails to meet the "reasonable person" standard set forth above or if the Trustee's procedures in selecting and monitoring the particular investment are proven by affirmative evidence to have been negligent, and such negligence was the proximate cause of the loss.

F. Special Co-Trustee Provisions: Notwithstanding anything in the Trust Agreement to the contrary, the powers, duties or discretionary authority granted hereunder to any Trustee shall be limited as follows:

1. Prohibited and Void Trustee Powers: Except where a beneficiary shall act as sole Trustee of his or her share, or unless limited by an ascertainable standard as defined in Code Section 2041 , no Trustee shall participate in the exercise of any discretionary authority to allocate receipts and expenses to principal or income, any discretionary authority to distribute principal or income, or any discretionary authority to terminate any trust created hereunder, if distributions could then be made to the Trustee or the Trustee has any legal obligation for the support of any person to whom distributions could then be made. Any other power, duty or discretionary authority granted to a Trustee shall be absolutely void to the extent that either the right to exercise such power, duty or discretionary authority or the exercise thereof shall in any way result in a benefit to or for such Trustee which would cause such Trustee to be treated as the owner of all or any portion of any of the trusts created herein for purposes of federal or state income tax, gift, estate or inheritance tax laws, or cause any disclaimer of an interest or benefit hereunder to be disqualified under Code Section 2518. Notwithstanding the foregoing, a beneficiary serving as Trustee may have and exercise a power, duty or discretionary authority that causes any Personal Asset Trust created hereunder to be a grantor trust with said beneficiary being treated as the owner for income tax purposes.

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Notwithstanding the foregoing, this paragraph shall not apply during the lifetime of the Trustor, nor shall it apply when the exercise of any power, duty, or discretionary authority relates to any provisions herein directed towards preserving the trust estate for beneficiaries named in the Trust Agreement in the event the Trustor should require long-term health care and/or nursing home care. Should a Trustee be prohibited from participating in the exercise of any power, duty, or discretionary authority, or should a power, duty or discretionary authority granted to a Trustee be absolutely void, as a result of the foregoing, then such power, duty or discretionary authority may be exercised in accordance with the following paragraphs.

2. Exercise of Power by an Existing Independent Co-Trustee: In the event that the right to exercise or the exercise of any power, duty or discretionary authority is prohibited or void as provided above, or is prohibited elsewhere in this Trust Agreement with respect to "incidents of ownership" of life insurance, or the Special Co-Trustee is given any other powers or authority under this paragraph "Special Co-Trustee Provisions," the remaining Co-Trustee, if any, shall have the right to exercise and may exercise said power, duty or discretionary authority, provided the Co-Trustee is independent within the meaning set forth in Section 674(c) of the Code, or any successor statute or regulations thereunder.

3. Exercise of Power if No Existing Independent Co-Trustee: In the event there is no independent Co-Trustee capable of exercising any power, duty or discretionary authority which is prohibited or void as provided above, or which is given to the Special Co-Trustee elsewhere herein, then the following procedure shall apply:

   a. Appointment of Special Co-Trustee: The next succeeding, Trustee or Co-Trustees, as the case may be, of the Trust (or, if only a particular, separate trust created under this Trust Agreement is affected by the exercise of such power, duty or authority, then the next succeeding Trustee or Co-Trustees of said separate trust) who is not disqualified under paragraph "2" above, shall serve as Special Co-Trustee of the Trust herein created.

4. Protect the Trust Estate by Appointment and Removal of an Independent Co-Trustee: In addition to any other powers granted to the Special Co-Trustee under the Trust Agreement, in the event that the Special Co-Trustee named above, in his sole and absolute discretion, determines that it is necessary in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries of any trust established under the Trust Agreement from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may appoint a Co-Trustee (to immediately act with the then existing Trustee) who is independent from the party to be protected within

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the meaning set forth in IRC Section 674(c). The Special Co-Trustee may appoint himself to act as such Co-Trustee if he is independent within the meaning of IRC Section 674(c). In addition, if the Special Co-Trustee, in his sole and absolute discretion, determines that it is no longer necessary for an independent Co-Trustee to act in order to protect the Trust Estate and/or the Trustee and/or the beneficiaries from the negative influence of outside third parties, including but not limited to a spouse or creditors, then the Special Co-Trustee may remove any independent Co-Trustee whom was either appointed by another acting Trustee of the Trust pursuant to other provisions of the Trust Agreement (if any) or appointed by the Special Co-Trustee, and shall not be required to replace such removed independent Co-Trustee with another.

5. Limited Responsibilities of Special Co-Trustee: The responsibilities of the Special Co-Trustee shall be limited to the exercise of the Trustee power, duty or discretionary authority prohibited or void as provided in the Trust Agreement, and the Special Co-Trustee powers regarding the appointment and removal of an independent Co-Trustee as permitted above, and appointment of a Trust Protector as permitted in the Section of the Trust Agreement entitled "Trust Protector Provisions," and said Special Co-Trustee shall not be concerned with, nor shall have, any power, duty or authority with respect to any other aspects of administration of the Trust Estate.

6. Limited Liability of the Special Co-Trustee: The Special Co-Trustee shall not be held to the fiduciary duties of a Trustee. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, merely by reason of his appointment as Special Co-Trustee and shall not have any affirmative duty to monitor, investigate and learn of any circumstances or acts or omissions of others, relating to this Trust, its beneficiaries or otherwise that may warrant the Special Co-Trustee to act. The Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust either now or in the future, for failing to properly or timely appoint a Trust Protector or to properly or timely advise a Trust Protector of any circumstances or facts that might impact a Trust Protector's decisions. Furthermore, the Special Co-Trustee shall not be liable to anyone, howsoever interested in this Trust, by reason of any act or omission and shall be held harmless by the Trust and its beneficiaries and indemnified by the Trust Estate from any liability unless (a) the Trustee and/or a beneficiary has brought directly to the attention of the Special Co-Trustee a circumstance that may warrant his action and (b) such act or omission is the result of willful misconduct or bad faith. Any action taken or not taken in reliance upon the opinion of legal counsel shall not be considered the result of willful misconduct or bad faith, provided such counsel was selected with reasonable care and in good faith. In the event a lawsuit against the Special Co-Trustee fails to result in a judgment against him, the Special Co-Trustee shall be entitled to reimbursement from the Trust for any and all costs and expenses related to his defense against such lawsuit.

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7. Compensation: The Special Co-Trustee shall not be entitled to compensation merely as the result of his appointment. The Special Co-Trustee shall only be entitled to reasonable compensation for his actual time spent and services rendered in carrying out his duties and powers hereunder, at the hourly rate commensurate with that charged by professional Trustees for similar services. The Special Co-Trustee shall, in addition, be entitled to prompt reimbursement of expenses properly incurred in the course of fulfilling his duties and powers, including but not limited to the employment of legal counsel or other professionals to advise him regarding his decisions.

8. Waiver of Bond: No bond shall be required of any individual or entity acting as Special Co-Trustee.

## GENERATION SKIPPING TAX PROVISIONS

Article XIV, Section R of the said Trust entitled "Generation Skipping Transfers" is hereby amended so that from henceforth Article XIV, Section R is replaced in its entirety with the provisions which follow.

A. Explanation of this Section: The purpose of this Section of the Trust Agreement and the desire of the Trustor is to eliminate or reduce the burden on the Trustor's family and issue resulting from the application of the federal generation skipping transfer tax under Chapter 13 of the Code, including any future amendments thereto (hereinafter referred to as the "GST Tax"). The Trustor directs the Trustee and any court of competent jurisdiction to interpret the provisions of this Section in accordance with the Trustor's desires stated above, since the Trustor, when creating this Trust, is aware that the provisions of said GST Tax are very complex and as yet there are few court rulings to aid in their interpretation. The Trustor requests that, before the Trustee or any beneficiary acts in accordance with the provisions of this Section, they seek professional advice from an attorney who specializes in estate planning, in order that they may avoid any unintentional triggering of negative GST Tax consequences.

B. Allocation of Trustor's GST Tax Exemptions: The Trustee (or such other person or persons whom Code provisions, Treasury Regulations or court rulings authorize to make elections or allocations with regard to the Trustor's GST Tax exemptions) is instructed to allocate such exemptions in good faith, without a requirement that such allocation be proportionate, equal or in any particular manner equitably impact any or all of the various transferees or beneficiaries of property subject to or affected by such allocations. When allocating such exemptions, the Trustee may include or exclude any property of which the Trustor is the transferor for GST Tax purposes, including property transferred before the Trustor's death, and may take into account prior transfers, gift tax returns and other relevant information known to the Trustee. It is recommended that, to the extent possible, any such trust allocated an inclusion ratio of zero shall contain any and all Roth IRAs. The Trustee is also directed, when allocating Trustor's GST Tax exemptions, to coordinate with the Executor of Trustor's estate and/or the Trustee of Trustor's revocable Living Trusts regarding the

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most appropriate use of said exemption; however, the Trustee's final determination shall be made in his or her sole and absolute discretion and shall be binding upon all parties howsoever interested in this Trust.

1. Trustee's Power to Combine and Divide Trusts: If a trust hereunder would be partially exempt from GST Tax by reason of an allocation of GST Tax exemption to it, before the allocation the Trustee in his discretion may divide the trust into two separate trusts of equal or unequal value, to permit allocation of the exemption solely to one trust which will be entirely exempt from GST Tax. The Trustee of any trust shall have authority, in the Trustee's sole discretion, to combine that trust with any other trust or trusts having the same exempt or nonexempt character, including trusts established (during life or at death) by the Trustor or any of his issue; and the Trustee may establish separate shares in a combined trust if and as needed to preserve the rights and protect the interests of the various beneficiaries if the trusts being combined do not have identical terms or if separate shares are otherwise deemed desirable by the Trustee. These powers to combine and divide trusts may be exercised from time to time, and may be used to modify or reverse their prior exercise. In deciding whether and how to exercise this authority the Trustee may take account of efficiencies of administration, generation-skipping and other transfer tax considerations, income tax factors affecting the various trusts and beneficiaries (including determination of life expectancy to be used for Retirement Assets required minimum distribution purposes), the need or desirability of having the same or different trustees for various trusts or shares, and any other considerations the Trustee may deem appropriate to these decisions. Prior to exercising any power to combine trusts under this paragraph, the Trustee shall take into consideration that, where possible and appropriate (keeping in mind the dispositive provisions of the Trust Agreement and the situation of the beneficiary), separate trusts should be maintained so that the trust beneficiaries may enjoy the benefit of distributions from any Retirement Assets being stretched out over their separate life expectancies; in particular, the Trustee shall not merge trusts when one provides for the payout to or for the beneficiary of all withdrawals from IRAs and other Retirement Assets, net of trust expenses, and another provides for the accumulation of income (including IRA and Retirement Asset withdrawals).

2. Same Terms and Provisions for Divided Trusts: Except as expressly provided in the Trust Agreement, when a trust otherwise to be established is divided under the foregoing provisions into exempt and non-exempt trusts or otherwise into separate trusts, each trust shall have the same provisions as the original trust from which it is established, and references in the Trust Agreement to the original trust shall collectively refer to the separate trusts derived from it.

3. Exempt (and Non-Exempt) Character of Property to be Preserved: On termination, partial termination, subdivision or distribution of any of the

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separate trusts created by the Trust Agreement, or when it is provided that separate trusts are to be combined, the exempt (zero inclusion ratio) or the non-exempt (inclusion ratio of one) generation-skipping character of the property of the trusts shall be preserved. Accordingly, when property is to be added to or combined with the property of another trust or trusts, or when additional trusts are to be established from one or more sources, non-exempt property or trusts shall not be added to or combined with exempt property or trusts, even if this requires the establishment of additional separate trusts with the same terms and provisions, unless the Trustee believes that economic efficiency or other compelling considerations justify sacrificing their separate generation-skipping characteristics.

4. Trustee's Investment Power; Distributions: Without limiting the foregoing, the Trustor specifically authorizes (but do not require) the Trustee, in administering different trusts wholly or in part for the benefit of a particular beneficiary or group of beneficiaries, to adopt different investment patterns and objectives for different trusts based on whether they are funded by Roth IRAs or other assets and on their generation-skipping ratios, and to prefer making distributions from Retirement Assets other than Roth IRAs and from non-exempt trusts to beneficiaries who are non-skip persons for generation-skipping purposes and from exempt trusts to those who are skip persons. Upon division or distribution of an exempt trust and a nonexempt trust hereunder, the Trustee may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur. It is further recommended that to the extent that distributions would be made for the benefit of skip persons and such distributions would be exempt from GST Tax because such distributions are for the payment of medical expenses exempt under IRC Section 2503(e)(2)(B) or for the payment of tuition or educational expenses exempt under IRC Section 2503 (e)(2)(A), such payments to the extent possible be first made from a trust which has an inclusion ratio of one.

5. Trustee's Exoneration: The Trustor expressly exonerates the Trustee from any liability arising from any exercise or failure to exercise these powers, provided the actions (or inactions) of the Trustee are taken in good faith.

C. Beneficiary's General Power of Appointment: Should a beneficiary die prior to the creation of his or her separate share of the Trust Estate or die subsequent to the creation of such share but before complete distribution of such share, and as a result of said death a portion of the Trust Estate would be subject to GST Tax but for the provisions of this paragraph, the beneficiary may, pursuant to a general power of appointment exercised in his or her last Will (but not in a codicil) or other writing delivered to the Trustee prior to his or her death and specifically referring to the Trust Agreement, provide for such share to pass to the creditors of that beneficiary's estate, in accordance with the terms set forth below. The asset value subject to such general power of appointment shall be the maximum amount, if any, which, when added to

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the beneficiary's net taxable estate (computed prior to said power), will cause the federal estate tax marginal rate to increase until it equals the GST Tax marginal rate; but in no case shall such general power of appointment exceed the asset value of such beneficiary's share. This general power of appointment may be subject to termination and reinstatement by the Trust Protector. To the extent the beneficiary does not effectively exercise the general power of appointment, the unappointed asset value shall be held, administered and distributed in accordance with the other provisions of the Trust Agreement.

## TRUSTEES ENVIRONMENTAL POWERS

A. Trustee Authorized to Inspect Property Prior to Acceptance:

1. Actions at Expense of Trust Estate: Prior to acceptance of this Trust by any proposed or designated Trustee (and prior to acceptance of any asset by any proposed, designated or acting Trustee), such Trustee or proposed or designated Trustee shall have the right to take the following actions at the expense of the Trust Estate:

   a. Enter Property: To enter and inspect any existing or proposed asset of the Trust (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining the existence, location, nature, and magnitude of any past or present release or threatened release of any hazardous substance; and

   b. Review Records: To review records of the currently acting Trustee or of the Trustor (or of any partnership, limited liability company or corporation in which the Trust holds an interest) for the purpose of determining compliance with environmental laws and regulations, including those records relating to permits, licenses, notices, reporting requirements, and governmental monitoring of hazardous waste.

2. Rights Equivalent to Partner, Member or Shareholder: The right of the proposed or designated Trustee to enter and inspect assets and records of a partnership, limited liability company or corporation under this provision is equivalent to the right under state law of a partner, member or shareholder to inspect assets and records under similar circumstances.

3. Right to Still Refuse Acceptance of Trusteeship: Acts performed by the proposed or designated Trustee under this provision shall not constitute acceptance of the Trust.

4. Right to Accept Trusteeship Over Other Assets Only: If an asset of the Trust is discovered upon environmental audit by the acting Trustee or any proposed or designated Trustee to be contaminated with hazardous waste or otherwise

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not in compliance with environmental law or regulation, the Trustee may decline to act as Trustee solely as to such asset, and accept the Trusteeship as to all other assets of the Trust. The Trustee, in his discretion, may petition a court to appoint a receiver or special Trustee to hold and manage the rejected asset, pending its final disposition.

5. Right to Reject Asset: Any currently acting Trustee shall have the right to reject any asset proposed to be transferred to the Trustee.

B. Termination, Bifurcation or Modification of The Trust Due to Environmental Liability:

1. Trustee's Powers over Hazardous Waste Property: If the Trust Estate holds one or more assets, the nature, condition, or operation of which is likely to give rise to liability under, or is an actual or threatened violation of any federal, state or local environmental law or regulation, the Trustee may take one or more of the following actions, if the Trustee, in the Trustee's sole and binding discretion, determines that such action is in the best interests of the Trust and its beneficiaries:

   a. Modify Trust: Modification of trust provisions, upon court approval, granting the Trustee such additional powers as are required to protect the Trust and its beneficiaries from liability or damage relating to actual or threatened violation of any federal, state or local environmental law or regulations, with it being the Trustors' desire that the Trustee keep in mind the Trustors' dispositive wishes expressed elsewhere in this Trust Agreement and that the Trustee consider and weigh any potentially negative federal and state income, gift, estate or inheritance tax consequences to the Trustee, Trust and its beneficiaries;

   b. Bifurcate Trust: Bifurcation of the Trust to separate said asset from other assets of the Trust Estate;

   c. Appoint a Special Trustee: Appointment of a special Trustee to administer said asset; and/or

   d. Abandon Property: Abandonment of such asset.

2. Terminate Trust or Distribute Other Assets: With court approval, the Trustee may terminate the Trust or partially or totally distribute the Trust Estate to beneficiaries.

3. Broad Discretion: It is the intent of the Trustors that the Trustee shall have the widest discretion in identification of and response to administration problems connected to potential environmental law liability to the Trust Estate and the

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Trustee, in order to protect the interests of the Trust, the Trustee and the beneficiaries of the Trust.

C. Trustee's Powers Relating to Environmental Laws: The Trustee shall have the power to take, on behalf of the Trust, any action necessary to prevent, abate, avoid, or otherwise remedy any actual or threatened violation of any federal, state, or local environmental law or regulation, or any condition which may reasonably give rise to liability under any federal, state, or local environmental law or regulation, including, but not limited to, investigations, audits, and actions falling within the definition of "response" as defined in 42 U.S.C. §9601 (25), or any successor statute, relating to any asset, which is or has been held by the Trustee as part of the Trust Estate.

D. Indemnification of Trustee from Trust Assets for Environmental Expenses:

1. Indemnification and Reimbursement for Good Faith Actions: The Trustee shall be indemnified and reimbursed from the Trust Estate for any liabilities, loss, damages, penalties, costs or expenses arising out of or relating to federal, state or local environmental laws or regulations (hereinafter "environmental expenses"), except those resulting from the Trustee's intentional wrongdoing, bad faith or reckless disregard of his fiduciary obligation.

a. Environmental Expenses Defined: Environmental expenses shall include, but not be limited to:

(i) Costs of investigation, removal, remediation, response, or other cleanup costs of contamination by hazardous substances, as defined under any environmental law or regulation;

(ii) Legal fees and costs arising from any judicial, investigative or administrative proceeding relating to any environmental law or regulation;

(iii) Civil or criminal fees, fines or penalties incurred under any environmental law or regulation; and

(iv) Fees and costs payable to environmental consultants, engineers, or other experts, including legal counsel, relating to any environmental law or regulation.

b. Properties and Businesses Covered: This right to indemnification or reimbursement shall extend to environmental expenses relating to:

(i) Any real property or business enterprise, which is or has been at any time owned or operated by the Trustee as part of the Trust Estate; and



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(ii) Any real property or business enterprise, which is or has been at any time owned or operated by a corporation, limited liability company or partnership, in which the Trustee holds or has held at any time an ownership or management interest as part of the Trust Estate.

2. Right to Pay Expenses Directly from Trust: The Trustee shall have the right to reimbursement for incurred environmental expenses without the prior requirement of expenditure of the Trustee's own funds in payment of such environmental expenses, and the right to pay environmental expenses directly from Trust assets.

3. Right to Lien Trust Assets: The Trustee shall have a primary lien against assets of the Trust for reimbursement of environmental expenses, which are not paid directly from Trust assets.

E. Exoneration of Trustee for Good Faith Acts Relating to Environmental Law: The Trustee shall not be liable to any beneficiary of the Trust or to any other party for any good faith action or inaction, relating to any environmental law or regulation, or for the payment of any environmental expense (as defined above); provided, however that the Trustee shall be liable for any such action, inaction or payment which is a breach of Trust and is committed in bad faith, or with reckless or intentional disregard of his fiduciary obligations.

F. Allocation of Environmental Expenses and Receipts Between Principal and Income: The Trustee may, in the Trustee's discretion, allocate between income and principal of the Trust Estate environmental expenses (as defined above) and reimbursements or other funds received from third parties relating to environmental expenses. In making such allocation, the Trustee shall consider the effect of such allocation upon income available for distribution, the value of Trust principal, and the income tax treatment of such expenses and receipts. The Trustee may, in the Trustee's discretion, create a reserve for payment of anticipated environmental expenses.

This instrument shall serve as an exercise of the Testamentary Powers of Appointment provided for in Article VIII and Article IX of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended; and, this instrument will serve as and will constitute the "valid living trust agreement" referred to in Article VIII and Article IX. This instrument shall also serve as a qualified beneficiary designation pursuant to Article III of the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended, as it pertains to the interests of NELVA E. BRUNSTING.

All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996, as amended, and that certain Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated June 15, 2010 are hereby

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ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

***EXECUTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Founder and Beneficiary

***ACCEPTED*** and effective on August 25, 2010.

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

Notary Public, State of Texas

CANDACE LYNNE KUNZ FREED
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
MARCH 27, 2011

12082014:1419:P0179

EXHIBIT 3

NO. 412,249-401 PROBATE COURT 4

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

| | | |
|---|---|---|
| CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting | § | IN PROBATE COURT |
| 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 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 | § | NUMBER FOUR (4) OF |
| | § | HARRIS COUNTY, TEXAS |

Stan Stanart
COUNTY CLERK
HARRIS COUNTY, TEXAS
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**FIRST AMENDED PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING, FOR DAMAGES, AND FOR IMPOSITION OF A CONSTRUCTIVE TRUST**

12082014:1418:P0180

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 First Amended Petition for Declaratory Judgment, for Accounting, for Damages, and for Imposition of a Constructive Trust, 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"),[1] and his mother, Nelva E. Brunsting ("Nelva").[2] 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 Family Trust upon Elmer's death. Those successor trusts are the Elmer H. Brunsting Decedent's

[1]Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

[2]Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

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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. Anita has made an appearance in this action and may be served through her counsel of record. 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").

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4. Defendant Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart ("Amy") is Carl's sister. Amy has made an appearance in this action and may be served through her counsel. 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 has made an appearance in this action and may be served through her counsel. 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. Candy has waived service of citation. 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.

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## 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.

**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 resistence 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



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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

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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



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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 concerning their estate planning and trusts they established in connection with that estate planning. Those documents include, but are not limited to the Family Trust, the 8/25/10 QBD, the 8/25/10 POA, Nelva's purported resignation as trustee of the Family Trust and Nelva's purported appointment of Anita as successor trustee of the Family Trust. In other words, Plaintiff also asks this Court to determine Plaintiff's rights and Defendants' responsibilities relating to those documents.

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 parents' 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.

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VI.

**Demand for Trust Accounting**

24. The Current Trustees 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. Neither the Current Trustees nor Carole have provided any accounting of the bank account on which Carole was a joint signatory with her mother.

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. Anita and Amy 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 had fiduciary duties to Plaintiff, because of the position of trust she held with her elderly parents and her brother and also because she was a signatory on Nelva's bank 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

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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;



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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 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' actions described herein, Plaintiff has been damaged. Because Defendants' actions were committed willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants. Plaintiff seeks monetary relief over $1 million.

## VIII.

## Conversion

29. Plaintiff owned, possessed, or had the right to possession of certain personal property, including, but not limited to, stock, accounts at financial institutions, contents of a safe deposit box, and savings bonds over which Defendants wrongfully exercised dominion or control.

30. Plaintiff has suffered damages as a result of Defendants' actions. Because Defendants' conversion was committed willfully and maliciously, Plaintiff also request that exemplary damages be awarded against Defendants. Plaintiff seeks monetary relief over $1 million.

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IX.

**Tortious Interference with Inheritance**

31. Defendants' actions also constitute tortious interference with Carl's inheritance rights. Through duress, manipulation, and outright deception, Defendants obtained valuable assets which would have otherwise passed by inheritance, thus preventing Carl from receiving what he would otherwise have received from his parents' estates.

32. Carl has been damaged as a result of Defendants' actions. Defendants' actions were committed willfully, maliciously, and with the intent to conceal the true nature of the estate and the trusts, all to Carl's detriment. Accordingly, Carl also requests that exemplary damages be awarded against Defendants. Carl seeks monetary damages in excess of $1 million.

X.

**Constructive Trust**

33. 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.

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XI.

**Fraud**

34. On information and belief, Plaintiff alleges that Defendants made material, false representations to Nelva concerning the actions which were being taken with regard to her assets and the Family Trust, as well as the rights, responsibilities, and changes that were being made to the Family Trust. It is also believed that Defendants misled Nelva about the impact those changes would have, both on Nelva's assets and interest in the Family Trust and on Nelva's wishes concerning the disposition of her estate. Defendants knew the representations were false when they were made, or at the very least, Defendants made the representations recklessly. The representations were made by Defendants with the intent that Nelva act on them. Nelva relied on those representations, and as result, Plaintiff suffered injury.

35. Plaintiff has been damaged as a result of Defendants' actions. Because Defendants' actions were made willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants. Plaintiff seeks monetary relief over $1 million.

XII.

**Civil Conspiracy**

36. Defendants combined to accomplish the unlawful objectives of facilitating the breach of duties to Plaintiff and interference with Plaintiff's rights, as well as the commission of fraud and fraudulent concealment. Defendants had a meeting of the minds on the object or course of action, and all of the Defendants committed unlawful overt acts to further the conspiracy. Such actions by Defendants amount to a civil conspiracy.

37. Plaintiff has been damaged as a result of Defendants' actions. Defendants' actions in furtherance of the civil conspiracy were taken willfully and maliciously, all to the detriment of

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Plaintiff. Accordingly, Plaintiff also requests exemplary damages. Plaintiff seeks monetary damages in excess of $1 million.

XIII.

**Fraudulent Concealment**

38. Plaintiff was not aware of Defendants' wrongful actions because Defendants took affirmative steps to deceive Nelva and Carl and to conceal their wrongful actions from Nelva and Carl. Upon information and belief, such deception included misleading Nelva about what was being done, what she was being asked to sign, why she was being asked to sign it, what would happen if she signed it, and the status of her assets. Carl was not given any information concerning the actions being taken by Defendants. As a result of this affirmative deception by Defendants and Nelva and Carl'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. In fact, Plaintiff still does not know the full extent of his claims.

XIV.

**Discovery Rule**

39. 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**

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

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**XVI.**

**Conditions Precedent**

41. 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**

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

**XVIII.**

**Request for Attorneys' Fees**

43. 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.

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.

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Respectfully submitted,

BAYLESS & STOKES

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*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to counsel of record via Telecopier on the 7th day of June, 2013, as follows:

Maureen Kuzik McCutchen
George W. Vie, III
2228 Mechanic, Suite 400
P.O. Box 1943
Galveston, TX 77553

Darlene Payne Smith
Crain, Caton & James, P.C.
1401 McKinney, 17th Floor
Houston, TX 77010

_____
BOBBIE G. BAYLESS

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EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, PLAINTIFF | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-00592 |
| | § | JUDGE KENNETH M. HOYT |
| ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, AND DOES 1-100, DEFENDANTS | § | JURY TRIAL DEMANDED |

# PLAINTIFF'S FIRST AMENDED PETITION

## I. PARTIES

1. Plaintiff, Candice Louis Curtis is a citizen of the State of California.

2. Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has answered and appeared herein.

3. Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has answered and appeared herein.

4. Necessary Party and involuntary plaintiff is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas and is expected to waive the issuance of citation. He is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

5. Necessary Party is Carole Ann Brunsting, who is a citizen of the State of Texas, and who can be served with citation at 5822 Jason St., Houston, Texas 77074. She is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

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## II. JURISDICTION AND VENUE

6. This Court had jurisdiction of the state law claims alleged herein pursuant to 28 USC § 1332(a)(1) – 28 USC § 1332(b), and 28 USC § 1332(C)(2) in that this action is between parties who are citizens of different states and the amount in controversy exceeds the sum of $75,000.00, exclusive of interests and costs. Jurisdiction may be destroyed if all necessary parties are joined.

7. The Res in this matter includes assets belonging to the Brunsting Family Living Trust ("Trust") and assets belonging to the Estate of Nelva Brunsting, Deceased, under the care and control of Necessary Party Carl Brunsting.

## III. NATURE OF ACTION

8. This action arises out of the misappropriate and mismanagement of assets that belonged to Nelva Brunsting during her life and of assets that belonged to the Brunsting Family Trust, and the execution of invalid documents seeking to amend the Brunsting Family Trust.

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## IV. CAUSES OF ACTION

9. Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff, Carl Brunsting, and Carole Brunsting, a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff's interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment

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interest and costs of court.

10. Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.

11. Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.

12. Money Had and Received. Defendants have taken money that belongs in equity and good conscience to Plaintiff,and has done so with malice and through fraud. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.

13. Conversion. Defendants have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have

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wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brusting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court costs, both individually and on behalf of the Decedent's Estate.

14. Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.

15. Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.

16. Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance

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with the Texas Property Code.

## V. JURY DEMAND

17. Plaintiff hereby makes her demand for a jury trial in this matter.

## VI. PRAYER

18. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

OSTROM/Sain
A limited Liability Partnership

BY: */s/ Jason B. Ostrom*
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Attorneys for Plaintiff

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

*/s/ Jason B. Ostrom*
Jason B. Ostrom

# EXHIBIT 21

MILLSSHIRLEY L.L.P.

ESTABLISHED 1846

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www.millsshirley.com

July 15, 2013

Re: Case No. 4:12-cv-00592; *Candace Louise Curtis v. Anita Kay Brunsting et al* – In the United States District Court for the Southern District of Texas, Houston Division

Mr. William G. West, C.P.A. & Bankruptcy Trustee
Southern District of Texas
12345 Jones Road, Suite 120
Houston, TX 77070

Dear Mr. West:

We previously delivered three binders, a folder, CDs (Bates #s AABrunsting.Financials 002359-004082) and a chart of the Brunsting accounts to you as requested and pursuant to the Court's order. We also delivered an additional binder and CD (Bates #s AABrunsting.Financials 004083-0042832). We want to provide the following information to assist you in your review of the documentation and to provide some background and context you otherwise might not have.

1. Under the terms of the Living Trust and its sub-trusts, the Trustee is entitled to a fee. Anita Brunsting became Successor Trustee on December 21, 2010. Ms. Brunsting consulted with Vacek & Freed, the attorneys who prepared the Living Trust and its sub-trusts, to determine the percentage amount of her fee. Instead of taking her $41,070.08 Trustee's fee in cash, Ms. Brunsting paid her personal credit cards with trust assets and paid for some of her children's college expenses beginning May 5, 2011, through November 8, 2011. During this period, two percent of the trust value was $45,826.00; thus we contend the Trustee's fee was reasonable. (**See Bates 002346**).

2. Mr. and Mrs. Brunsting had a history of making financial gifts to their five children as well as their seven grandchildren. Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their mid-30s); and Carl's daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses. Mrs. Brunsting continued gifting when she was

Trustee. The financial documents we have provided will not show all of the gifts to the older children and the older grandchildren, since many gifts were made prior to Mr. Brunsting's death. Because Anita and Amy are the youngest children and, in turn, their children are the youngest grandchildren, gifts to them may seem to predominate, when in fact all previous gifts to the older children and older grandchildren may not be reflected in the records. (**See Bates 002341-002343**). Further, prior to Anita becoming Trustee, Mr. and Mrs. Brunsting gave Candace Curtis at least $42,000.00 and loaned her an additional $20,000.00 against her inheritance. After Anita became Trustee, her mother requested that an additional $11,000.00 in gifts be made to Candace Curtis (detailed below). See enclosed spreadsheet detailing gifts.

3. When Anita Brunsting became Trustee in December 2010, Mrs. Brunsting wanted to continue her history of gifting to her children and grandchildren. In May 2011, at her mother's direction, Anita transferred stock from the Survivor's Trust to Amy so that Amy could pay off her mortgage, and in June 2011 transferred stock from the Decedent's Trust to Carole so that Carole could update her home and pay off her mortgage. Note that Mrs. Brunsting wanted to ensure that Amy's and Carole's homes were paid off as she and her husband did the same for Anita in approximately 2005. (**See Bates 002342-002343**). Amy and her husband divorced and Mrs. Brunsting was concerned about the welfare of Amy and her children since Amy's ex-husband terminated his parental rights and was not paying any child support. Mrs. Brunsting also instructed Anita to make gifts to Amy's two children, J.B. and A.B. , and for Anita's two children, Katie Riley and Luke Riley for future car and college expenses. Each of the four grandchildren received 135 shares of Chevron stock from the Survivor's Trust in June 2011. (**See Bates 002343**) Before Anita transferred the stock at her mother's instructions, she consulted with attorney Candace Freed of Vacek & Freed, the attorneys who prepared the Living Trust and its sub-trusts, and accountant Rich Rikkers confirming it was not improper to make these transfers.

4. In November 2010, Mrs. Brunsting sent an e-mail to Amy Brunsting stating Mrs. Brunsting was gifting Amy $13,000.00, although the transfer was not complete until 2011. Specifically, $7,000.00 was given on December 31, 2010, and $6,000.00 was given on January 19, 2011 (**See Bates 002333, 002360**).

5. Mrs. Brunsting informed Anita that she had been giving money to Candace and instructed her to continue to give Candace what she needed. In April 2011, Anita gave $3,000.00 to Candace Curtis. (**See Bates 002334,002374**) In June 2011, Anita gave $2,000.00 to Candace Curtis. (**See Bates 002336, 002384**). In August 2011, Anita gave $2,000.00 to Candace Curtis. (**See Bates 002337, 002395**) In October 2011, Anita gave $2,000.00 to Candace Curtis. (**See Bates 002338, 002404**) In November 2011, Anita gave $2,000.00 to Candace Curtis. In November 2011, Mrs. Brunsting instructed Anita to give $2,000.00 for her son,

Luke Riley's education. (See Bates 002339, 002408-002409). Anita distributed $12,585.60 in Exxon stock from the survivor's trust to Candace Curtis in June 2011 for a reserve to help Candace Curtis with expenses, should Mrs. Brunsting passed away.

6. In approximately July 2010, Carl Brunsting became very ill. He was hospitalized and, for a period of time, lived with Mrs. Brunsting instead of his wife, Drina Brunsting. Mrs. Brunsting paid almost $47,000.00 for personal care providers for Carl. (See Bates 002344-002345).

7. Anita Brunsting resides in Victoria, Texas, approximately two hours and approximately 120 miles from her parents' home in Houston. Because Anita could not be with her mother on a daily basis, it was not practical for Anita to oversee her mother's daily incidentals. Thus, Mrs. Brunsting placed Carole Brunsting as a Joint Tenant with Right of Survivorship on one of her Bank of America accounts (ending in 9546), so Carole could assist with Mrs. Brunsting's day-to-day expenses. Since Anita was not a signatory on this account she, as Trustee, transferred funds into this account for her mother and Carole to write checks or make withdrawals for her mother's needs. Note that on April 7, 2011, a $3,000.00 gift was given to Candace Curtis from this account. (See Bates 002336-002340). (This is in addition to the gifts to Candace Curtis described above.)

8. The Brunsting family home was sold in March 2012 and $433,129.52 was deposited into the Survivor's Trust at Bank of America (account ending in 3523). (See Bates 002439) Because the deposits would exceed the FDIC limit, Anita Brunsting transferred $167,000.00 to a Bank of America account ending in 3536. (See Bates 002459, 002524) However, this is an account of the Decedent's Trust, not the Survivor's Trust, so the funds were then transferred to a Survivor's Trust savings account at Bank of America (account ending in 8577). (See Bates 002527, 002576).

If you have any questions regarding the funds or transfers between accounts, my clients and I will be happy to answer them.

Thank you.

Sincerely,

*/s/ George W. Vie III*

George W. Vie III

255001/100925.3

United States District Court
Southern District of Texas
FILED
AUG 05 2016
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | |
| v | § | Civil Action No. 4:12-cv-00592 |
| ANITA KAY BRUNSTING, et al<br>Defendants | § | |

**PLAINTIFF CANDACE LOUISE CURTIS'**
**MOTION FOR SANCTIONS WITH POINTS AND AUTHORITIES**
**PRELIMINARY STATEMENT**

**Plaintiff Advised Defendants' Counsel of Ethical Violations and Counsel Refuses to Acknowledge or Remedy this Misconduct.**

1. This Rule 11(b) Motion was served via email communication dated April 10, 2016 and via priority mail sent April 11, 2016.

2. Plaintiff included a letter advising Defendants' Counsel that violation of a federal injunction and the orders of a federal Judge are a serious matter, and requested that Counsel advise as to how it would remedy its violations of the remand agreement and order. (Exhibit 8)

3. Counsel was also informed that federal and state rules impose a duty of candor, good faith and fair dealing on attorneys representing clients in the courts, including Fed. R. Civ. P. 11, and that violation of a federal injunction may be viewed more than a mere civil contempt.

4. Defendants responded with additional financial disclosures but did not respond to concerns expressed in regard to violations of the federal injunction and remand agreement. In particular, Defendants' Counsel failed to even respond to their continued violation of the injunction's command to "deposit income into an appropriate account for the beneficiary".

5. Financial disclosures not only reveal Defendants' failure to deposit income according to the injunctive orders of this Court, but also show that, as a consequence, excessive income tax

liabilities have been incurred by the trusts. These avoidable tax liabilities continue to accrue for 2016. The first quarterly estimated tax payment was made April 15, 2016 in the amount of $6,170.00.

6. The current motion seeks sanctions against Defendants and their Counsel for deliberate violations of and abject refusal to obey this Court's Injunction and other Orders, even after having agreed to do so in order to secure a remand to Harris County Probate Court No. 4.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | §<br>§<br>§ | |
| v | §<br>§ | Civil Action No. 4:12-cv-00592 |
| ANITA KAY BRUNSTING, et al<br>Defendants | §<br>§ | |

**PLAINTIFF CANDACE LOUISE CURTIS'**
**MOTION FOR SANCTIONS WITH POINTS AND AUTHORITIES**

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20-20566.2463

**Nature and Stage of Proceedings**

1. Plaintiff is one of five siblings. The controversy involves administration and settlement of a family trust purchased by Plaintiff's parents, Elmer and Nelva Brunsting, in 1996, as both a product and a service of Albert Vacek, Jr.

2. Elmer Brunsting passed April 1, 2009 and Nelva Brunsting passed November 11, 2011.

3. Plaintiff Candace Louise Curtis brought claims against Anita and Amy Brunsting in the United States District Court for the Southern District of Texas[1] on February 27, 2012, seeking an accounting and other lawful and equitable relief.

4. On March 6, 2012, Vacek & Freed staff attorney Bernard Mathews, appearing under the letterhead "Green and Mathews", filed a motion for an emergency order accompanied by a false affidavit signed and verified by Defendant Amy Brunsting.[2] (Exhibit 1)

5. On March 8, 2012, in reliance upon the material misrepresentations contained in Defendants' Motion and Affidavit, this Honorable Court dismissed Plaintiff Curtis Pro se Petition sua sponte, under the probate exception to federal diversity jurisdiction. Plaintiff Curtis filed a timely notice of appeal.

6. On January 9, 2013 the Fifth Circuit Court of Appeals, in a unanimous decision, reversed and remanded to this Court. Plaintiff Curtis immediately filed for a protective order.[3]

7. On January 29, 2013 Carl Brunsting, as Executor of the estate of Nelva Brunsting, filed suit against trust attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court.[4]

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[1] USDC Southern District of Texas CIVIL ACTION NO. 4:12-cv-00592
[2] See Amy Affidavit Exhibit 1
[3] Candace Louise Curtis v. Anita Brunsting et al., 710 F.3d 406
[4] No. 2013-05455; Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164TH Judicial District Court of Harris County, TX

8. On April 9, 2013 this Honorable Court issued a protective order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's approval. (Exhibit 2)

9. On April 9, 2013 this Court verbally entered a protective order and on April 9, 2013 this Court published its Memorandum and Order for Preliminary Injunction.[5]

10. Plaintiff Curtis appeared on her Application for Order to Show Cause in October of 2013, but due to a medical emergency her assistant was hospitalized, in a coma and consequently, Plaintiff Curtis was unable to obtain the prepared briefing materials before that hearing.

11. This Court expressed a proper concern over Plaintiff's lack of preparation and advised Pro se Plaintiff Curtis to retain counsel so that the discovery process could proceed. Plaintiff Curtis had difficulty finding counsel within the Court's time frame and had the misfortune of retaining Jason Ostrom.

12. Upon appearing in the matter Mr. Ostrom conceived of an arrangement by which Defendants would agree to modification of Plaintiff's Petition to include her brother Carl Henry Brunsting as an involuntary plaintiff, thus polluting diversity and enabling a remand to the Harris County Probate Court.

13. Defendants agreed, as a condition of the remand arrangement, that they would honor this Court's injunction and all orders entered by the federal Court throughout the state Court proceedings, as if there had been no remand.

14. The remand order (Exhibit 3) is contained in this Court's record as document No. 112 and concludes with:

[5] Document 45 in this Courts record.

*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 15th day of May, 2014.*

**Issues Presented**

15. Plaintiff Candace Louise Curtis (Curtis) respectfully submits this Motion for Sanctions against Defendants and their Counsel pursuant to Fed. R. Civ. P. 11(b) and this Court's inherent power to vindicate its dignity and authority.

16. The current motion seeks sanctions against Defendants and their Counsel for deliberate violations of, and abject refusal to obey, this Court's Injunction and other Orders as hereinafter more fully appears.

17. This Motion is supported by the accompanying Exhibits and the points and authorities stated herein.

**Standard of Review**

18. The Committee Notes to the 1993 rule state that the abuse of discretion standard adopted by the Supreme Court in Cooter & Gell should continue to be applied to Rule 11 cases on appeal. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990) (establishing abuse of discretion as the standard to govern appellate court review of District Court decisions under Rule 11)

**Jurisdiction**

19. This Court retains jurisdiction to impose sanctions, even after its remand of this case to state court. See Cooter & Gell v. Hartmax Corp., 496 U.S. 384, 396 (1990) (holding that a district court retains jurisdiction to impose Rule 11 sanctions even after a case has been voluntarily dismissed); see also Desert Sch. Fed. Credit Union v. Johnson, 473 Fed. App'x 804 (9th Cir. 2012) (holding that court "ha[s] jurisdiction to impose Rule 11 sanctions . . . even after

remanding the case to state court"); Bryant v. Britt, 420 F.3d 161, 164 (2d Cir. 2005) (district court is not deprived of jurisdiction to resolve the collateral issue of Rule 11 sanctions by virtue of an earlier order remanding the suit to state court); Unanue-Casal v. Unanue-Casal, 898 F.2d 839, 841 (1st Cir. 1990) (after dismissal of the removal petition, federal court retained jurisdiction to impose Rule 11 sanctions); Sibley v. Lincoln, Civ. A. No. C-07-258, 2007 WL 2176979, at *3 (S.D. Tex. July 27, 2007) (after remand, federal court retained jurisdiction to consider imposing sanctions on a removing party who allegedly misrepresented his citizenship to manufacture diversity) (citing cases).

20. As the Supreme Court explained in Cooter, the imposition of Rule 11 sanctions "requires the determination of a collateral issue" and "may be made after the principal suit has been terminated." Cooter, 496 U.S. at 396; see also Rector v. Approved Fed. Sav. Bank, 265 F.3d 248 (4th Cir. 2001) (affirming the grant of a motion for sanctions served and filed ten days after the district court had dismissed all claims).

21. In addition to the authority under Rule 11, this Court has "the inherent power" to impose sanctions. Chambers v. NASCO, Inc., 501 U.S. 32, 41, 47, 46-49 (1991) (sanctions imposed under the inherent power for filing false and frivolous pleadings, as well as for bad faith conduct occurring "outside the confines of th[e] Court"); see also United States v. Shaffer Equipment Co., 11 F.3d 450, 458, 461-62 (4th Cir. 1993) (holding that the inherent power "is organic, without need of a statute or rule for its definition" and includes the power to "assess attorney's fees").

22. This honorable Court specifically retained jurisdiction over compliance with its injunction and other orders throughout the controversy, as reflected in the remand Order on file with the state Probate Court.

## Ground for Motion

23. Plaintiff Curtis is informed and believes, and therefore avers that Defendants are in violation of Rule 11(b) for willfully violating this Court's Injunction and other Orders.

**Specifically, this Court's Injunction:**

24. The injunction enjoins Defendants from spending trust funds or liquidating trust assets without express court approval and commands Defendants to deposit income into an appropriate account for the beneficiary.

The Order: (Emphasis added)

> *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.*
>
> *In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court.* ***However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account****. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.*

**Specifically, this Court Ordered:**

25. Information relating to trust business is the property of all of the beneficiaries and not just Anita and Amy Brunsting[6].

[6] Transcript of April 9, 2013 page 37.

26. This Court further ruled that the trust is not liable to pay the personal legal liabilities of the Defendants and that any attorney fees paid from the trust would have to be paid equally by mutual agreement of all of the beneficiaries. (Exhibit 4)[7]

**Information Disclosures**

27. Defendants, Anita and Amy Brunsting, were personally present April 9, 2013[8] when this Court entered the following Orders.

> *THE COURT: So, the point I'm getting to here is under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.*
>
> *MR. VIE: Yes, Your Honor.*
>
> *THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.*
>
> *MR. VIE: I understand that.*

28. The remand order was accepted by the state Probate Court on May 15, 2014, without qualification or reservation.

**Defendants' Contrary Conduct in the State Court**

29. Upon securing remand to state Court, the Mills Shirley attorneys moved to amend the federal injunction and after a non-productive mediation moved for leave to withdraw as counsel of record for Defendants.

30. Anita Brunsting then retained Bradley Featherston and Amy Brunsting retained Neal Spielman, and each resumed the same baseless positions disposed of by this Court at the

[7] April 9, 2013 Transcript page 46 line 10 through page 47 line 2
[8] Transcript of April 9, 2013 page 2 lines 15-16

injunction hearing and also assumed positions not included in the Defendants' affirmative defenses in the federal Court.

**Unexplained Changes in Trust Assets**

31. There have been no evidentiary hearings or rulings in the state Court that would affect this Court's April 9, 2013 Order for the disclosure of information to Plaintiff.

32. On June 15, 2015 Plaintiff sent yet another 90 day demand for statutory accounting. (Exhibit 5)

33. On June 25, 2015 Plaintiff received supplemental production from Anita Brunsting titled 2015-06-25 Anita Sup 5671-5813 (143 pages).

34. Anita's supplemental production included copies of bank and brokerage statements for March 2015 and May 2015, tax payment vouchers and check copies, supporting tax documents for 2014 and the July 1, 2008 Appointment of Successor Trustees.

35. A comparison of account numbers for the statements provided, versus the account numbers from the 1099's in the supporting tax documents for 2014, show four (4) accounts for which statements were not provided in this production.

36. A review of the Master's Report[9] reveals a substantial decrease in dividend income in the Fourth Quarter of 2013, for one or more of these accounts. This would seem to indicate a substantial decrease in the value of the principal in these accounts during that period of time.

37. There were no reported trust business activities or expenses during that period that explain any expenditure, nor were statements ever provided for that period.

[9] Case 4:12-cv-00592 Document 62 filed in TXSD on 8/08/13

**Defendants are Refusing to Disclose Bank and Brokerage Statements**

38. Plaintiff filed the Curtis v Brunsting lawsuit because Defendants, Anita and Amy Brunsting, while claiming to be trustees, refused to disclose information, answer inquiries or properly account for assets.

39. It was discovered by a compelled response that Defendants had violated trust provisions designed to preserve and protect trust principal by improperly invading principal and distributing assets unequally in their own favor. It was also discovered that they had failed to establish and maintain accurate books and records of accounts.[10]

40. Plaintiff has not received a proper statutory accounting as per her June 15, 2015 demand.

41. Defendants, Anita and Amy Brunsting, are again withholding bank and brokerage statements claiming Plaintiffs are not entitled to information because they violated the no contest clause in the imaginary 8/25/2010 QBD, by bringing litigation, and "may no longer be beneficiaries".[11]

42. Defendants, Anita and Amy Brunsting, are believed to be withholding bank and brokerage statements in effort to conceal violations of the federal injunction, as there can be no legitimate reason for their continued concealment of trust asset related information.[12]

43. Defendants also assume the position that Plaintiff must pay for fiduciary disclosures prior to receiving any trust information, in direct violation of this Court's orders. Amy Brunsting's opening remarks in her June 24, 2015 answer to Plaintiff Curtis' interrogatories and requests for disclosures and production: (Exhibit 6)

[10] See report of Special Master, Document 45 in this Court's record.
[11] See Exhibit 6
[12] Transcript of March 9, 2016 Pages 15-end

> *Amy Brunsting ("Amy" or "Respondent") objects to the interrogatories and requests for production issued by Candace Louise Curtis ("Candace") to the extent they are, by Candace's own admission, first made pursuant to "fiduciary obligations" allegedly owed to her. If, via the trust documents, Candace actually has the right to inquire into the topics covered in her interrogatories and requests for production, then that right is subject to other provisions in the trust documents requiring her to pay costs associated with responding, which she has not done. As a result, Amy's purported obligation to address these issues with Candace has not yet been triggered, and will not trigger until, at least, all necessary costs have been paid.*
>
> *To the extent Candace's interrogatories and requests for production are issued pursuant to the Texas Rules of Civil Procedure, Amy's objections, answers and responses are as follows:*

**Defendants Pugnaciously Refuse to Obey the Federal Injunction**

44. Defendants claim that personal asset trusts have not been funded because of the lawsuits brought by Carl and Candace and because of the Injunction:[13]

> *The Personal Asset Trusts have not been established. This is a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.*

45. This is obviously a violation of the federal Injunction and a direct contradiction with the Affidavit filed into this Court under penalty of perjury by Defendant Amy Brunsting on March 6, 2012. (Exhibit 1) At item 5 of that Affidavit Amy claimed: (emphasis added)

> *As Co-Trustees, my sister and I have determined that it is impractical to give **each of the five heirs**, or **the trusts set up for their benefit (as is the case for Candace)**, an undivided share of a house in Houston.*

46. Defendants' refuse to deposit income into an appropriate account for the beneficiary and are in knowing and deliberate contempt of this Court's injunctive orders and all conditions precedent to the remand agreement.

[13] Amy Brunsting's June 24, 2015 answer to Plaintiff Curtis interrogatory No. 1

47. On March 30, 2015 Plaintiff inquired of defendants via email seeking disclosures regarding these four accounts and has received no responsive documents to date. (Exhibit 7)

**Plaintiff Seeks Sanctions Sufficient to Penalize Defendants and their Counsel and Preserve the Integrity of the Proceedings Before This Honorable Court**

48. Conduct by Defendants and their counsel in state Court, in wonton and willful disregard for this Court's Orders, warrants a wide range of sanctions, including monetary and non-monetary penalties including the relief provided by Rule 60(b), referral to the state bar, and whatever other equitable relief the Court deems appropriate to redress the prejudice Plaintiff has suffered as a result of these ethical violations. *See* Fed. R. Civ. P. 11 Advisory Committee's Note ("The court has available a variety of possible sanctions to impose for violations, such as striking the offending paper."); *see also Chambers*, 501 U.S. at 44-45 (discussing court's discretion to impose sanctions pursuant to its inherent power, and reasoning that "[a] primary aspect of that discretion is the ability to fashion an appropriate sanction for conduct which abuses the judicial process").

49. Rule 11 expressly provides for monetary sanctions, including "an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation" and "an order to pay a penalty into court." Fed. R. Civ. P. 11(c)(4).

50. Sanctions are necessary and appropriate to redress the prejudice suffered by Plaintiff, to deter similar abuses by these defendants and their counsel in the future, in the interests of the public policy of upholding the dignity and authority of this Honorable Court and in the interests of justice.

**Conclusion**

51. Defendants have clearly expressed their disrespect for the federal injunction and the Orders entered by this Court in their state court pleadings and no other evidence is required for this Court to act to enforce its dignity and authority.

52. For the foregoing reasons, Plaintiff respectfully requests that the Court impose sanctions on Defendants and their counsel for the improper conduct, under Federal Rule of Civil Procedure 11 or pursuant to its own inherent authority.

53. In accordance with Fed. R. Civ. P. 11(c), this Motion is made separately from any other motion and is being served on Defendants' counsel on April 16, 2016.

54. If Counsel fails to take adequate curative measures within 21 days of service, Plaintiff will file this Motion with the Court.

Respectfully submitted,

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 16 day of April 2016, to the following via email and Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
steve@mendellawfirm.com

Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com



CANDACE L. CURTIS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 2ND day of July 2016, to the following via U.S.P.S. Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
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steve@mendellawfirm.com

Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

CANDACE L. CURTIS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 1st day of August 2016, to the following via U.S.P.S. Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
steve@mendellawfirm.com

Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

CANDACE L. CURTIS

**EXHIBITS**

EXHIBIT 1 – Amy Brunsting Affidavit……..……E1-E3

EXHIBIT 2 – Memorandum and Order Preliminary Injunction……....E4-E8

EXHIBIT 3 – Order Granting Plaintiff's Motion to Remand……,……..…E9-E10

EXHIBIT 4 – April 9, 2013 Transcript……..……E11-E64

EXHIBIT 5 – June 15, 2015 E-Mail Demand for Accounting……..…E65-E66

EXHIBIT 6 – Amy Brunsting's Responses to Curtis' Interrogatories……..…E67-E95

EXHIBIT 7 – March 30, 2016 E-Mail Request for Information……...E96-E97

EXHIBIT 8 – April 16, 2016 Rule 11 Notice Letter……..E98-E99

# EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| | § | CIVIL ACTION NO. H-12-CV-592 |
| | § | |
| VS. | § | |
| | § | |
| ANITA KAY BRUNSTING, and | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |

**AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS**

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at $410,000. We listed the property for $469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered $469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately $270,000.

8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

Amy Ruth Brunsty
AMY RUTH BRUNSTING

Sworn to and signed before me by Amy Ruth Brunsting, on this 6th day of March, 2012.

Notary Public in and for the State of Texas

TERESA SIMMONS
MY COMMISSION EXPIRES
September 7, 2014

Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

# EXHIBIT 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**MEMORANDUM AND ORDER**
**PRELIMINARY INJUNCTION**

## I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

## II. BACKGROUND

### *A. Procedural Background*

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a



20-20566.2484

recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

***B. Contentions of the Parties***

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,



20-20566.2485

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

## III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway,* 489 F.2d at 572-73.

## IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document



20-20566.2486

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

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.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.



20-20566.2487

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge



20-20566.2488

# EXHIBIT 3

05/22/2014 15:01 P0013

PROBATE COURT 4

412249

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Nelva Brunsting, Deceased

CANDACE LOUISE CURTIS, *et al*, §
§
Plaintiffs, §
VS. § CIVIL ACTION NO. 4:12-CV-592
§
ANITA KAY BRUNSTING, *et al*, §
§
Defendants. §

**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.

1 / 2

05222014:1501:P0014

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 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

I HEREBY CERTIFY
ATTEST: MAY 15 2014
Clerk of Court
Deputy Clerk

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

DO NOT COPY

# EXHIBIT 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | * | Civil No. H-12-592 |
| | * | |
| VERSUS | * | Houston, Texas |
| | * | April 9, 2013 |
| ANITA KAY BRUNSTING, et al | * | 9:50 a.m. |

TRO HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

For the Plaintiff:

Ms. Candace Louise Curtis
Pro Se
1215 Ulfinian Way
Martinez, California 94553

For the Defendants:

Mr. George William Vie, III
Mills Shirley LLP
1021 Main Street
Suite 1950
Houston, Texas 77002

Court Reporter:

Fred Warner
Official Court Reporter
515 Rusk Ave.
Houston, Texas 77002

Proceedings recorded by mechanical stenography, produced by computer aided transcription.



20-20566.2493

THE COURT: Good morning. Please be seated.

All right. This is Cause No. 2012-592, Candace Louise Curtis versus Anita K. Brunsting and others.

So let me have an announcement. Is Ms. Curtis in the courtroom?

MS. CURTIS: Yes, Your Honor.

THE COURT: All right. And who is representing the defendants in the case?

MR. VIE: George Vie, Your Honor, for the defendants.

THE COURT: And I gather we have several parties present, correct?

MR. VIE: Yes, Your Honor.

THE COURT: Are these your clients or --

MR. VIE: Yes, Your Honor. Both the defendants are present.

THE COURT: Both defendants.

And who are the defendants other than -- I just show Anita Kay and Amy Ruth. I am sorry. I apologize. You are representing both?

MR. VIE: Yes, Your Honor.

THE COURT: Okay. Very good.

This is Ms. Curtis' application for a temporary restraining order. As you might recall, this case was initially dismissed by the Court with the understanding that,



20-20566.2494

or under the understanding that it could not proceed in federal court but must proceed in state court.

The circuit court disagreed with me, and it's back; and now we are charged to proceed forward in this case.

So what I would like to do is, first of all, have Ms. Curtis stand and give me a kind of a factual setting background for what it is that she is seeking, then tell me what she is seeking and see what testimony, if any, we need in order to accomplish that.

So why don't you go ahead take the floor, Ms. Curtis, and tell us how this got started and where we are today.

MS. CURTIS: This got started by my parents, Elmer and Nelva Brunsting, putting together a Brunsting family living trust in 1996 dividing their estate among the five children beneficiaries.

THE COURT: And I see there are the only three children represented. Are there other children that are not included?

MS. CURTIS: Yes, sir. My sister Carole and my brother Carl.

THE COURT: Okay. C-a-r-o-l?

MS. CURTIS: C-a-r-o-l-e and Carl, C-a-r-l.

THE COURT: Well, that C went a long way.

MS. CURTIS: C, C, C and then A, A.

THE COURT: Went a long way in the family, didn't it?

MS. CURTIS: Yes.

THE COURT: Go ahead please.

MS. CURTIS: So, my father passed away in 2009 in April and --

THE COURT: And would you tell us his name for the record.

MS. CURTIS: Elmer H. Brunsting.

THE COURT: All right.

MS. CURTIS: And in July of 2010 my brother Carl became stricken with encephalitis. And it's a very serious disease. He was in the hospital for several months, part of that time in a coma. And my brother was originally appointed the executor of my parent's estate.

THE COURT: Your brother would be Carl?

MS. CURTIS: Carl. And also a successor/co-trustee of the Brunsting Family Living Trust and any resulting trusts.

In approximately 2007, my mother sent an e-mail to me and asked me if I would mind becoming co-trustee with my brother Carl because my sister Amy was unstable; and she was wondering if I would mind coming to Houston whenever necessary to take care of these things. And I agreed. And that was the last I heard of it.



20-20566.2496

Since that time I have received a document, which is the last, first and only amendment that my father and mother both signed to the family living trust appointing Carl and Candace as successor/co-trustees.

THE COURT: Okay. So as it stands now, it is Carl and Candace who would be the co-trustees of the trust?

MS. CURTIS: Yes, Your Honor, yes.

And after my brother became ill, my youngest sister Anita took the opportunity to begin seize control of the trust. She immediately, within three weeks after he became ill --

THE COURT: When did this happen?

MS. CURTIS: In July of 2010.

THE COURT: 2010. He became apparently incapacitated or unable to?

MS. CURTIS: Yes. He was in a coma for several weeks.

THE COURT: Is he still in a coma?

MS. CURTIS: No. He's back at home and doing very well.

THE COURT: Okay. Very good. Go ahead.

MS. CURTIS: And has been.

THE COURT: I will be asking questions of him.

MS. CURTIS: And so, because of things that are just simply judgmental and ugly, my sister began to try to wrest

control of the trust so that my brother could not have anything whatsoever to do with it. She took his name off the safe deposit box which, according to my father's handwritten letter from 1999, contained all of the information about the family trust, and then some papers were caused to be drawn up. One was a qualified beneficiary designation.

THE COURT: I'm sorry. Was a what?

MS. CURTIS: A qualified beneficiary designation.

THE COURT: All right.

MS. CURTIS: And several other papers were drawn up on August 25th, 2010.

There was no notice given to any of the beneficiaries about this qualified beneficiary designation that was to be prepared and signed. And the only way that I found out about it was to ask my sister Anita for copies of trust documents for me to review for a phone conference that had been called by the trust attorneys that was supposed to include my mother and all of her children. My brother Carl was never notified of this phone conference.

THE COURT: Was he at the time still in a coma or incapacitated?

MS. CURTIS: No, sir. He was not in a coma, but he was still in the hospital.

THE COURT: Okay.

MS. CURTIS: And my mother also was not in on the

phone call.

So we had the conference call, and they were definitely absent; and the conference call apparently was called to discuss proposed changes to the trust, when in fact the changes had already been made; and as it boiled down to the end and various parties hung up, they were going to try to have my mother declared incompetent because she said that she did not sign the qualified beneficiary designation and that in fact what the qualified beneficiary designation said was not true.

THE COURT: Let me ask you a question before we go forward. What was the purpose -- what did the beneficiaries receive and how were funds, as you understand it, disbursed from the trust prior to this August 25th 2010. How was the trust to be administered?

MS. CURTIS: The trust was to be divided into five personal asset trusts; and I believe that each personal asset trust would have a trustee, but I do not think it was the beneficiary.

THE COURT: Was that to recognize the five children?

MS. CURTIS: Yes.

THE COURT: How was your mother to benefit from this? Was she to get some proceeds out of the funds?

MS. CURTIS: My mother was to benefit from all of the trusts until she passed way.

THE COURT: Okay. And then these five trusts would --

MS. CURTIS: Whatever was remaining would be divided five equal ways.

THE COURT: Surely.

And then your mother died when?

MS. CURTIS: 11-11-11.

THE COURT: Oh, is that right?

And at that time your father was already deceased?

MS. CURTIS: Yes, Your Honor.

THE COURT: So this telephone conference occurred sometime in August of 2010, just about 14 months prior to her death?

MS. CURTIS: It was in October --

THE COURT: October.

MS. CURTIS: -- of 2010.

THE COURT: About 12 months then, 12 or 13 months prior to her death.

And so go ahead and pick up there.

MS. CURTIS: So, anyway, after the phone conference there was really nothing I could do about anything as far as I could tell; and so, things were relatively quiet until in approximately March of 2011 my sister Anita called and said, "oh, we found some Exxon stock that wasn't in the trust; and

so, some of it will be gifted, and then the rest of it, the trust attorneys are going to figure out how to get it into the trust."

And so I received 160 shares of that stock. And I was in conversation with sister Carole and was told that she had received some, but she didn't know how much it was because she hasn't opened the envelope.

THE COURT: Was it your understanding that the 160 shares that you received would have been your one-fifth share? Is that the way it was to be --

MS. CURTIS: That's kind of the way I thought about it. Not necessarily my one-fifth share, but that each of us should receive a like amount.

THE COURT: Sure.

All right. Go ahead.

MS. CURTIS: Unbeknownst to me, my sister Carole received 1,300 plus shares and my sister Amy received over 1,000 shares.

I received 160, Anita received 160; but Anita, as power of attorney beneficiary and trustee, having taken over from my mother in December of 2010, was conflicted and not allowed to accept gifts. So she excused it many months after the fact as being a loan, but she's also not allowed to take loans from --

THE COURT: So was she the person doing the

disbursing of these shares?

MS. CURTIS: Yes, Your Honor, she was.

THE COURT: And she disbursed them in the manner, as you understand it, the way you just described it, giving a couple thousand shares to two of your sisters together?

MS. CURTIS: Uh-huh.

THE COURT: I said "together" meaning added together, and then 160 to you. And what happened, if anything, to do with Carl's share?

MS. CURTIS: He got nothing.

THE COURT: All right. Okay. Go ahead.

MS. CURTIS: So my brother has filed a lawsuit in --

THE COURT: Probate court?

MS. CURTIS: -- state court and also in probate. It's not a lawsuit, but he has filed from probate as defendant executor. And he has gotten pages and pages and pages of information from my sisters in another lawsuit that it was a pre-suit request for depositions to get information in case they were going to file suit.

And they got pages and pages and boxes of information that was not shared with me until March 28th just recently, and this paper here was in some of the documents that they shared with me.

THE COURT: What is the title of it?

MS. CURTIS: This is a computer share. It's a.

Transfer form. And this is page two of three pages of the transfer form.

THE COURT: Transfer form relating to?

MS. CURTIS: The Exxon/Mobil stock.

THE COURT: Okay.

MS. CURTIS: And so, at the top of the page my sister Anita's 160 shares, and the bottom of the page is my 160 shares.

There is two signatures at the bottom of the page. One is on a W-9 portion, and the other is on, my understanding that the money would be reinvested in the account. These signatures are not my signatures; they're forgeries.

THE COURT: Uh-huh.

MS. CURTIS: I would not have seen these if I had not had this shared with me by my brother.

THE COURT: And you didn't authorize anyone to make those signatures for you?

MS. CURTIS: No, I did not. And I have filed a Securities & Exchange Commission complaint as of last week about this.

THE COURT: All right.

MS. CURTIS: And I have not heard anything from them since that time.

I also have two different --

THE COURT: Well, let me ask you before you go further. What did you understand to be the access in the trust or the total trust as opposed to the individual five trusts, let's say? What did you understand the gross assets to be? Is that what you set forth in your petition as being the assets.

In 2010, you show -- I don't know if you have your petition there with you, but you showed in 2010 there was Chevron/Texaco, Exxon/Mobil, Edward Jones and a total of $554,000 more or less in the -- I gather is this in the decedent's account.

MS. CURTIS: Actually, this is my Request For Injunction.

THE COURT: Yes, page 3.

MS. CURTIS: Those are just the net changes.

THE COURT: These are what you're calling losses then?

MS. CURTIS: Yes.

THE COURT: So what is the total of the estate? How many? Several million dollars?

MS. CURTIS: The farm itself is close to $3 million, and everything else when my father passed away was about a million-and-a-half.

THE COURT: So, it's increased in value to about --

MS. CURTIS: By virtue of the farm.

THE COURT: F-a-r-m, farm?

MS. CURTIS: Yes, family farm in Iowa.

THE COURT: That was sold?

MS. CURTIS: No, it was not.

THE COURT: What's on the farm that's increasing these prices? What are they harvesting?

MS. CURTIS: Corn and soybean.

THE COURT: Is that for profit or just simply --

MS. CURTIS: To my understanding we have a lease with the farmer.

THE COURT: Okay. And so lease itself pays a certain amount of money annually or however.

MS. CURTIS: Yes.

THE COURT: Those assets or that money goes into the estate?

MS. CURTIS: I believe so.

THE COURT: And that accounts for some of the increase, as you understand them?

MS. CURTIS: Yes.

THE COURT: All right. So at this point in time, "this point in time" being 2012, there has been a total of 338 or 339,000 in assets removed from the estate, and there is still approximately, as far as you know, three-plus million dollars in the estate?

MS. CURTIS: Yes, Your Honor.

THE COURT: Now, I want to try to close this out just a little bit by asking you: After you received these documents, I gather -- and when you weren't receiving them, obviously, because I recall you filed a suit, and one of the issues was getting your hands on these documents, and you were not able to get those documents until recently, as I understand it?

MS. CURTIS: The first time I received any information was in April of 2012, yes.

THE COURT: Okay.

And since you received those documents, has the fact that you received those documents confirmed what you believe to be improper practices on the part of your, I gather, on the part of your sister Anita?

MS. CURTIS: Yes, Your Honor.

THE COURT: Is she handling this alone?

MS. CURTIS: To my knowledge she is.

THE COURT: All right. So it's between her and however her lawyers are handling this that you are concerned about?

MS. CURTIS: I assume.

THE COURT: And your brother has a ongoing suit presently ongoing?

MS. CURTIS: Yes, Your Honor.

THE COURT: And what is the status as you understand

of that suit, as to how long has it been pending and what is status of that suit?

MS. CURTIS: I'm not exactly sure of the dates of how long it's been pending. I think since sometime in February of 2013.

THE COURT: Okay. So several months, but not very long.

MS. CURTIS: Right.

THE COURT: And is he able to get up and about?

MS. CURTIS: Yes.

THE COURT: Where is he now?

MS. CURTIS: At home, I would assume.

THE COURT: And have you communicated with him regarding what his approach is?

MS. CURTIS: Yes, Your Honor. I have.

THE COURT: And, of course, you have not joined his lawsuit?

MS. CURTIS: No, I have not.

THE COURT: And he has not joined in your lawsuit?

MS. CURTIS: No, he has not.

THE COURT: Does he have an attorney?

MS. CURTIS: Yes, Your Honor, he has.

THE COURT: Okay. I gather you now know that some state court, some county court or probate court, someone did something, I gather, to give Anita some authority that you

did not know she had. Is that what you have come to the knowledge of?

MS. CURTIS: I have come into the knowledge that the purported successor/co-trustees are in fact imposters because the documents that made them successor/co-trustees have digital alterations on them; they have anomalies on the signature pages. I have two different signature pages for the qualified beneficiary designation that were sent to me on two different occasions.

THE COURT: Now, whose signatures would be necessary from your perspective to permit her to go forward? This qualified beneficiary designee, this was supposed to be Anita now?

MS. CURTIS: It was supposed to divide the estate into five different personal asset trusts. Carole, Amy and Anita were going to be trustees.

THE COURT: This was a part of you-all's discussion on the telephone conference as to how this was supposed to work?

MS. CURTIS: Well, I wanted to know how it would put into place in the first place because I never received any notice that this was being contemplated.

THE COURT: Okay.

MS. CURTIS: And come to find out months after the papers were allegedly signed by my mother, my personal asset

trust and my brother Carl's were put under the control of Amy and Anita.

THE COURT: On what authority or what basis.

MS. CURTIS: I don't know. I don't know.

THE COURT: Okay.

And what happens then or what is happening to those assets?

MS. CURTIS: They're spending them.

THE COURT: Okay. She, Anita, has authority and can spend those proceeds --

MS. CURTIS: Yes, Your Honor.

THE COURT: -- based upon what? Is she considering herself the qualified beneficiary designee or something?

MS. CURTIS: She is considering herself a successor/co-trustee.

THE COURT: Successor/co-trustee.

MS. CURTIS: In place of my mother. She did most of the theft while my mother was still alive when she was acting with my mothers power of attorney. My mother supposedly resigned as trustee on December 21st, 2010, and my sister accepted successor/trustee. And my sister's also a beneficiary, so she's got a conflict of interest there.

THE COURT: So since 2010 you are not aware of, I gather you're saying you're not aware of the division of the estate at least designating your portion as being your full

one-fifth of the estate?

MS. CURTIS: I have never received a notice.

THE COURT: You are not aware that that has been done. In other words, you don't know that that has been done?

MS. CURTIS: No, I do not.

THE COURT: And you're not in charge of that, those assets?

MS. CURTIS: That's correct.

THE COURT: And so here's my question: What is it that you're seeking by this lawsuit?

MS. CURTIS: I am seeking that my sister and those who have received unfair distributions to return the money.

THE COURT: Okay.

MS. CURTIS: I would like them to pay back all of the interest that was lost on the securities that were cashed in during that 15 months and spent, diverted to other things.

THE COURT: All right.

MS. CURTIS: And I would like it to be divided five ways and for the five beneficiaries to go their separate ways.

THE COURT: And what have you been told, if anything, even today, if anything, that has prevented this from happening?

MS. CURTIS: I have been told nothing.

THE COURT: And you've talked with their counsel, have you not?

MS. CURTIS: Yes, I have.

THE COURT: And did you ask him about these questions or did you put these questions to him?

MS. CURTIS: No, I did not.

THE COURT: What were you asking? What was the nature of what you all were trying to accomplish as far as this injunction is concerned?

MS. CURTIS: We were trying to come up with a reason why we would not go forward with the injunction hearing. And I had five or six other alternative ways of resolving this. And he left the room to speak to his clients, and they would not agree to them.

THE COURT: What are you seeking now? What are those ways that you are seeking, and what is it that you want to happen here today?

MS. CURTIS: I wanted to have an independent trustee appointed.

THE COURT: All right. And that was refused.

Okay. What else?

MS. CURTIS: I wanted to know who, if any, special co-trustee was appointed as per this qualified beneficiary designation.

THE COURT: I'm sorry. Say that again.

MS. CURTIS: There was provision in the qualified beneficiary designation for a special co-trustee or a trust protector; and so, I suggested that maybe the trust protector take it over as the trustee.

THE COURT: All right. Okay.

MS. CURTIS: And the other reason was just similar to that. The Court could appoint an independent trustee who the defendants would have to obtain approval for any of their actions.

The Court could enjoin the trustees from acting without approval of the Court or express written approval from all five beneficiaries.

The Court could enjoin trustee from acting unless and until they can show they're in possession of authentic documents by submitting the documents purportedly signed on August 25, 2010 and December 21st, 2010 for a forensic analysis because the copies that we have have all been digitally altered and the signatures are fake.

THE COURT: Okay.

MS. CURTIS: I also asked originally if I could please know the identification and contact information for the trust protector, and I was told that the provisions for the trust protector were at section such and such in the qualified beneficiary designation, but I didn't get a straight answer.

THE COURT: So there is a document called "qualified beneficiary designation"?

MS. CURTIS: Yes, Your Honor.

THE COURT: And you do or do not have a copy of that?

MS. CURTIS: I do have a copy of it but not with me.

THE COURT: And you have been told that in -- when were you told this, today? When were you told where this provision about the special protector or co-trustee protector was located?

MS. CURTIS: In early 2012.

THE COURT: And you were told where to find it?

MS. CURTIS: I was told where to find the provisions, but I asked for the identity.

THE COURT: Okay. The identity of that person has not been given to you?

MS. CURTIS: That is correct, or if there even is.

THE COURT: If there is such a person.

All right. So that's what you're seeking in terms of your request for benefit -- for the injunction today; is that correct?

MS. CURTIS: Yes, Your Honor. I'm seeking that we stop the bleeding until we can get to the bottom of it.

THE COURT: Have you received any funds from the trust since 2010? I'm talking about since the death of your

mother.

MS. CURTIS: No, Your Honor. I have not.

THE COURT: You have made it known to -- have you communicated with your sister -- that's Anita, I believe -- about that?

MS. CURTIS: I am not allowed to speak to Anita --

THE COURT: Why not?

MS. CURTIS: Except through her attorneys.

THE COURT: Well, that's untrue. That's your sister.

MS. CURTIS: Well, that's the way I feel about it, but I'm told I'm not allowed to speak to them, and they won't talk to me.

THE COURT: Who told you this? Who told you this, that you can't contact her?

MS. CURTIS: I inferred that from --

THE COURT: Did she tell you that, is what I am asking?

MS. CURTIS: No. She didn't tell me that because she hasn't spoken to me.

THE COURT: Well, have you tried to speak to her?

MS. CURTIS: Yes, Your Honor, I have.

THE COURT: What happens when you try to speak to her?

MS. CURTIS: I call. She doesn't answer. I leave a

voice mail, she doesn't call me back.

The same thing happened with my other sister Amy. I called and left a voice mail. She did not return my call. This was more than a year ago.

THE COURT: So they refuse to speak to you about this is what you are saying?

MS. CURTIS: Yes, Your Honor.

THE COURT: Go ahead and have a seat. Thank you.

Counsel.

MR. VIE: Yes, Your Honor.

THE COURT: Why can't you come to some accommodation?

MR. VIE: Here's the situation. I just want to give you a little bit of background so that you understand in terms of the exhibits I put before you.

THE COURT: I don't have any exhibits yet. Well, some paper put up here.

Oh, the list. I see.

MR. VIEW: Yes, sir.

THE COURT: I haven't read these.

MR. VIE: Just to provide some assistance in answering your question, Your Honor. Exhibit 1 is a 60-or-so page document. That is the family trust document.

THE COURT: All right.

MR. VIE: And on page 1 of the document it says that

her father and mother had created a trust, it's an irrevocable trustee, and that the initial trustee shall be Anita Kay. So, Anita is the trustee under this document.

Because you heard a lot about this qualified beneficiary designation.

THE COURT: No. I heard about the co-trustees.

MR. VIE: So I wanted the Court to understand that this document --

THE COURT: Let me ask so we don't go down a rabbit trail. Was there a point in time when Carl was the co-trustee?

MR. VIE: I'm sorry?

THE COURT: Was there a time when Carl, the brother, was the co-trustee?

MR. VIE: I don't know if that -- I don't know with respect to this document if that's correct or not.

I understand that at one point there was a communication from the mother where she considered other family members serving in her role. But the documents that I have given you, the second exhibit that I have given you is where with respect to the mother's living trust while she was alive, she decided to have Anita appointed as her successor trustee instead, and then they created this certificate of trust.

THE COURT: That would have been relative to the

entirety of the irrevocable trust or was it simply her portion of the assets?

MR. VIE: It was with respect to the living trust that was created when she --

THE COURT: No, no, no. Here's what I am saying. The father is now deceased.

MR. VIE: Yes.

THE COURT: His wife entered into a irrevocable trust, and either he leaves all of you that in the trust to her benefit or his share goes into some other, goes into a trust for the children at that point.

So what happened?

MR. VIE: The father and mother created the irrevocable trust, which I have identified as Exhibit 1.

THE COURT: Okay.

MR. VIE: When the father died, his assets went into this living trust where their mother had assets to the living -- there was a sub trust created, a successor trust and a decedent's trust. The mother had that.

THE COURT: So she has all of the assets at that point?

MR. VIE: Yes. And the mother was able to make gifts and did make gifts to a number of the family members. So when the plaintiff was referencing the $13,000 gift that she received and the others, these were gifts that her mother

while alive had directed. And my client Anita, as the successor trustee under this appointment, Exhibit 2, would make those transactions occur. But these were gifts from the mother.

And then the mother dies, and this irrevocable trust --

THE COURT: And did the mother die, according to what Ms. Curtis is saying, in December more or less, I guess?

MR. VIE: November of 2010, Your Honor.

THE COURT: November of 2010, okay.

MS. CURTIS: 2011.

THE COURT: 2011.

MR. VIE: 11-11-2011.

THE COURT: Right.

MR. VIE: After that point, then Anita as trustee prepares a schedule of the estate, the context of the mother, and that money was going into the family trust; and that's one of the exhibits that she's attached.

THE COURT: Well, wait a minute. What money is going into the family trust? Because now this trust, the trust that exists that is handling all this is the mother's living trust, right?

MR. VIE: No, Your Honor. When she died, the living trust no longer exists.

THE COURT: Oh, obviously.

But before that, all of the assets were going into the living trust for the mother.

MR. VIE: Right.

THE COURT: And now the mother dies in November of 2011, and then what happens?

MR. VIE: Then we have the family trust, and there is created again a sub trust of a survivor's trust and the decedent's trust.

THE COURT: And the family trust now reverts back to the irrevocable trust?

MR. VIE: Yes, Your Honor.

THE COURT: And in the irrevocable trust or in that trust there is a provision that says how those, how that trust is to be divided into five distinct trusts for the children?

MR. VIE: My understanding is that there is a document under this complicated plan by which each of the individual beneficiaries, the five children, the four daughters and the son, they would have these asset trusts. Those trusts have not been created.

THE COURT: Well, I am asking whether or not as a part of the -- as to your understanding, you have read it, is that a part of what the family trust required as far as you know? You said there's a document like it's some separate thing.

MR. VIE: Well, there's a -- I understand, Your Honor.

It's a rather long document. I understand and agree we are that the conclusion of this trust now at this point is to divide the assets to the five beneficiaries, and then each of their assets go into these asset trusts.

THE COURT: Separate and distinct from each other and for the benefit of each of the designated beneficiaries.

MR. VIE: Yes.

And as the plaintiff suggested, I believe the situation is that her trust, for example, she is not a trustee. One of her siblings is the trustee.

THE COURT: Even after it's divided off and given to her?

MR. VIE: Yes. And in these asset trusts, other members --

THE COURT: So someone who has a trust, like Anita herself, would have her own separate and distinct assets?

MR. VIE: Yes, sir.

THE COURT: And she'd be in charge of her own assets?

MR. VIE: No, no. There would be -- somebody else would be the trustee.

THE COURT: Of all of these five trusts?

MR. VIE: Yes -- no, of each.

THE COURT: Who is "someone else?" I mean --

MR. VIE: Well, for example, Carl's could be Anita and Amy's could be Carole.

THE COURT: But the documents say how this happened, though.

MR. VIE: These trusts have not been created yet. There has been no distribution.

THE COURT: I understand that. You are telling me that, but I am trying to find out whether or not the creation of these trusts require these beneficiaries to have someone else in charge of their money.

MR. VIE: That is my understanding. And she can correct me if I am wrong, and my clients can correct me as the trustees if I'm wrong.

THE COURT: So Anita -- somebody would be in charge of Anita's?

MR. VIE: Yes. That's right.

THE COURT: And then somebody else would be -- and Anita would be in charge of somebody else's?

MR. VIE: That's my understanding.

THE COURT: And these kids -- and they're not kids anymore, but these five siblings would be at each other's throats for the rest of their lives because --

MR. VIE: No. They'd each have their own --

THE COURT: Well, no. They got them, but they're

not in charge of it, is what I understand.

MR. VIE: All right.

THE COURT: That's what I am trying to say. In other words, I'd have to call my sister to get my money.

MR. VIE: What I know about the asset revocable -- the asset trust is they have not been created yet.

As the Court heard, there are two lawsuits. There is this lawsuit and there is her brother's lawsuit. We are not parties to her brother's lawsuit. Her brother's lawsuit is brought in his capacity as the executor of his father's and mother's estates. It's in Harris County District Court. We're not parties to it.

THE COURT: Well that would be either the product of a will being probated --

MR. VIE: Yes, sir.

THE COURT: -- or it would be the product of an intestate proceeding. Which is it?

MR. VIE: The will has been probated.

THE COURT: So there is a will probate separate and apart from the trust?

MR. VIE: Yes, Your Honor.

THE COURT: And how does that overlay on the trust since all of the assets are in the trust?

MR. VIE: Well, I don't know that it overlays; but what I am trying to suggest to the Court is: One, since the

mother died, there has been no distributions to anyone, not --

THE COURT: I get that. I am trying to figure out --

MR. VIE: Since you haven't seen the distribution, I wanted the Court to understand that no one has.

THE COURT: But somebody got some money out of it or there has been a loss in value to the trust itself.

MR. VIE: She says that the stock that was invested with the brokerage houses may have lost money, is one of the things that she suggested in her motion.

THE COURT: Right.

MR. VIE: My point was to suggest that there has been no distributions since the mother died from the trust that Anita is the trustee for to anyone.

THE COURT: And you said the one that Anita is in charge of. What is Anita in charge of?

MR. VIE: Exhibit 1.

THE COURT: Okay. The entirety?

MR. VIE: Yes, sir.

THE COURT: That's what I am trying to get to.

MR. VIE: Yes.

THE COURT: Okay.

MR. VIE: And it's unlikely there will be any distributions until both this suit is resolved and her

brother's suit that he brought.

THE COURT: Well, this suit might resolve it. That's not their concern.

But what I am trying to find out is whether or not in the -- the question I was trying to get back was in the Carl's suit, I guess in probate court, whether or not that suit, which did not come up in the responses in the way that I understood it, whether or not that suit that impact whether or not this Court should be proceeding with this trust.

MR. VIE: No, Your Honor.

THE COURT: So it's separate and apart since the probate's completed.

MR. VIE: The probate has been filed. The suit is brought by him in his capacity as executor.

THE COURT: Is he without bond and independent?

MS. CURTIS: Yes.

MR. VIE: He's an independent executor. He is bringing the suit against the attorneys.

THE COURT: So he doesn't need to do anything else other than file it and do this accounting and all of that and then do whatever the will tells him to do.

MR. VIE: The litigation that he has brought is against the attorneys that created these trusts.

THE COURT: That's not even -- that's separate and

distinct from this lawsuit.

MR. VIE: Okay.

THE COURT: And it's separate and distinct from the estates because that's a malpractice lawsuit.

MR. VIE: Yes, sir.

THE COURT: Okay. So I am not concerned about that at all.

I was trying to make sure when he brought his suit, he was not simply arguing that somehow Anita had finagled her way into this position and she had squandered certain assets and then we've got these parallel lawsuits.

MR. VIE: I understand, Your Honor. And that was my point as well was to let you know that we are not parties to that litigation, it's not a claim in that litigation as the claims are --

THE COURT: And neither is the plaintiff here a party to that litigation.

MR. VIE: That is correct, Your Honor.

THE COURT: Okay.

So, the only suit that's pending dealing with the assets of these parent's estate is this lawsuit.

MR. VIE: Yes, Your Honor.

THE COURT: All right.

So what the plaintiff is saying on page 3 of her petition having to do with the December dates of 10, 12

and so on and what she considered to be "losses of the estate" are losses that I gather are decreases in assets that would be attributable to movement in the market.

MR. VIE: That is the specific. And, Your Honor, you are referring to the complaint or to the motion that has been filed for temporary relief?

THE COURT: I'm looking at the motion right now. That should be Instrument No. 35.

MR. VIE: Yes. With respect to that, there is an argument being made there that there has been a loss and it is the result of the investment of the securities.

THE COURT: You made a comment earlier that until the other lawsuit and this lawsuit is resolved. That lawsuit has nothing at all to do with the resolution of this estate.

MR. VIE: Well, I --

THE COURT: I'm telling you that.

MR. VIE: Okay.

THE COURT: There is nothing that should -- there is nothing going on in Carl's suit that prevents these parties from following what they have been instructed to follow in the trust document.

MR. VIE: Okay. I understand if that's the Court's direction.

THE COURT: Is there something that I am missing?

MR. VIE: Not that I am aware of, Your Honor.

THE COURT: That's a malpractice suit. And they get some money out of it, either he gets it or maybe he distributes it among his brothers and sisters, but it doesn't have anything to do with the distribution of this estate.

MR. VIE: My understanding -- the reason that I understood the case to be differently is that I understood that the purpose of the litigation that he had brought in state court was claiming that the attorneys who created these trusts had done so improperly so that we were in a situation in which we are here before this Court, and the Court is suggesting we should wind this thing up and distribute to all the beneficiaries.

THE COURT: It's going to be wound up. It's going to be wound up in this court.

Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where we are sitting around churning the time out and the parties are charging out of that lawsuit, defense of that lawsuit, which you are not doing, apparently, unless -- are you the lawyer that created the trust?

MR. VIE: No, Your Honor.

THE COURT: So that's a separate law firm.

MR. VIE: Yes, Your Honor.

THE COURT: Yeah. So there is no reason for you to

be or your firm to be involved in the expenditure of that, of monies out of that lawsuit.

MR. VIE: And we aren't, Your Honor.

THE COURT: And there is no reason for Ms. Curtis to be concerned about spending money out of her assets for that lawsuit.

MR. VIE: Understand.

THE COURT: So, you can distribute what you got whether you get some more or not. It doesn't require -- this is not a probate where you got to gather everything together because everything is together.

MR. VIE: Okay.

THE COURT: The entire estate is together.

MR. VIE: Yes, Your Honor.

THE COURT: And if there is a lawsuit, and it's questionable whether or not Curtis has a lawsuit or not because he wasn't the creator and the payor for that creation of that trust.

So, the point I am making is, obviously he had no contractual relationship with the firm, and it's going to be seriously flawed -- seriously difficult for him to sue for malpractice when he wasn't -- when there is no attorney/client relationship.

MR. VIE: Understood, Your Honor.

THE COURT: So, the point I'm getting to here is



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under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.

MR. VIE: Yes, Your Honor.

THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.

MR. VIE: I understand that.

THE COURT: So, what is it then that prevents these parties from right now settling this suit?

MR. VIE: From settling it?

THE COURT: Yes. All they got to do is distribute the assets.

MR. VIE: Two things, Your Honor. And it's just my observation, because obviously the Court does not have to agree with me.

THE COURT: Sure.

MR. VIE: I provided the underlying documents that support the schedule that the plaintiff has attached to this motion for temporary relief. I have given her yesterday, in response to her request for production, some 5,000 pages.

She has told me that she wants to examine those, all of those underlying documents, stock transfers, checks and everything else.

You have heard from the plaintiff that she believes this very instrument is false.

THE COURT: "This very instrument" meaning the family trust?

MR. VIE: Family trust. That it's a forgery or that documents have been forged.

And I have offered, in response to the request for production, to make the originals, which I understand the trust attorney, those attorneys in the other lawsuit, to make those available for inspection and copying so that she can see them and satisfy herself that the underlying trust is in fact a legal and appropriate trust.

THE COURT: Okay.

MR. VIE: So that was one of the --

THE COURT: And that the signatures have not been forged or at least they're original signatures.

MR. VIE: Yes. In other words, one problem of trying to settle the disposition of the trust today is that the plaintiff disputes the accuracy of the accounting and the accuracy and legitimacy of the trust.

THE COURT: Right.

MR. VIE: And so, that was one issue.

The second issue, respectfully, is that I understood that given that the Harris County litigation contested the accuracy and validity of the trust, that again there was a risk of inconsistent positions if we were to treat the trust as valid and fund this while they litigated over in Harris County.

THE COURT: They don't have jurisdiction over there. I do. That's what the circuit court has told me. And that's the part that you said I might disagree; and you're right, I do.

I would not sit here and wait on somebody Harris County to figure out whether or not they have jurisdiction over an issue, which they do, but they don't have jurisdiction of the assets.

MR. VIE: I wasn't thinking as much of the jurisdiction, Your Honor, as I was thinking of the risk of inconsistent judgments. In other words --

THE COURT: Not if I get it resolved, there won't be any inconsistent to resolve.

If they get it resolved, then it probably won't be inconsistent because I'm obligated and then obliged to follow at least theoretically the findings of any court of competent jurisdiction.

MR. VIE: Yes, Your Honor.

And the third issue, which I don't think would

give the Court pause but is something I thought of, is the fact that all the beneficiaries are not parties to this litigation.

THE COURT: That won't bother me at all because I do have authority and jurisdiction over the person who you tell me has the duty and the responsibility to act.

MR. VIEW: So those are my --

THE COURT: That's it.

So, I want this resolved within 90 days. And if I have to appoint a trustee or somebody to handle this and get it done, I'll do it. It will cost the estate. And if I find that there has been mischief, it is going to cost individuals. And that will be a separate and distinct hearing.

So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke.

MR. VIE: Yes, Your Honor.

THE COURT: Who is doing the accounting in this process? Has anybody put their arms around the assets and made any accounting at all?

MR. VIE: There is a CPA in Iowa that prepares the

tax returns each and every year for the estate, and we are getting --

THE COURT: How they get in Iowa? Is that where the family was from originally?

MR. VIE: The parents, yes, Your Honor. And the farm, as you heard, is in Iowa.

THE COURT: Okay.

MR. VIEW: And so, there is a CPA who has been involved throughout this period and files the trust income tax returns, and he is available.

MS. CURTIS: I object to that.

THE COURT: Hold on.

Go ahead.

MR. VIE: I think I have answered the Court's question.

THE COURT: Yes.

MR. VIEW: And would have the most, would have the best familiarity beyond --

THE COURT: How much money does he generally charge for his annual -- I guess he does his annual filings of reports. Is this something that's pretty cursory or --

MR. VIEW: I'm sorry. And there is a distinction. The documents that are attached as the schedule in that accounting that are attached to the motion that has been filed for injunctive relief, temporary schedules.

THE COURT: Those were prepared?

MR. VIE: By the defendant, by Anita in her capacity as trustee.

THE COURT: Okay.

MR. VIEW: I was responding to the Court's question in terms of who's the best person that could get their hands around it and that type of thing.

The CPA in Iowa obviously has to know all of the information available to the trust so that he can file the tax returns. He also pays and makes sure that the profits --

THE COURT: Then that might not be a good thing for me because I don't have jurisdiction over him.

MR. VIE: Okay.

THE COURT: But what I wanted to know was whether or not there was a person here locally, since I believe the defendants are here locally. They don't have a local CPA who is in charge of the estate.

MR. VIE: That's correct, Your Honor.

THE COURT: That would be Anita herself.

And then as far as the tax returns and all that annually which goes on, whether you got money or not, that would be done by the accountant in --

MR. VIE: Sioux City, Iowa.

THE COURT: Yeah, in Iowa.

And excuse me. What were you about to say? You disagree with what, Ms. Curtis?

MS. CURTIS: I disagree with allowing Rick Rickers, who is --

THE COURT: Is that the attorney?

MS. CURTIS: -- our cousin. He's the accountant in Iowa.

THE COURT: He's your cousin?

MS. CURTIS: He's our cousin.

THE COURT: Okay.

MS. CURTIS: He is also apparently the manager of the farm, and he began to file the tax returns --

THE COURT: I've already said probably enough to give you some pause, to allay those concerns. But these are other reasons why he should not be doing accounting. He has a conflict of interest.

MS. CURTIS: One reason why he should not be doing the accounting is because I have reason to believe that the farm lease, taking it away from the buyers, who were my father's very close friends, was notarized with a signature that was not my father's. I have not been able to look at that yet. I only have emails that purport that, but I would like to get copies of those.

THE COURT: Let me address a couple of things.

First of all, when we don't have information,

we can imagine a lot of things that may or may not be true, Okay?

MS. CURTIS: Yes.

THE COURT: That could be. I mean, all kind of thoughts and ideas go through our head when they don't have the information.

Here's what this Court cannot do. This Court cannot chase after each of your concerns. You have got enough money, you can hire anybody you want to do any kind of investigation you want done.

What I intend to do based upon the mandate from the circuit court is to try to address the concerns that you have. And they just can't be accusations, and I don't have any interest -- when I say I don't have any interest, I have an interest in outcomes, but I don't have an interest in the case so that I'm supposed to be doing things that would accomplish something for you except upon your filed documents. It's in your best interest, and I think I talked to you on the phone conference --

MR. VIE: Yes.

THE COURT: -- with both of you on the phone as well, that really this is not a matter that you should be trying to handle yourself. You should hire an attorney to do it for you, or at least part of it for you.

Now, I believe that it's in the Court's best

interest to preserve the assets of the estate and to bring to a point a going-forward process that this Court appoint someone to do an accounting of the assets and then make that accounting to the Court.

Now, you don't have to agree with me, but it's going to be an accounting of what the assets are. Whether something has been taken or mismanaged or mishandled is not going to be a part -- that's not the kind of accounting that's going to go on here.

What is, and that is what's invested, where it's invested and how it's invested is going to be the Court's concern. Once that accounting is in place, the question is whether or not the Court is going to be required or whether or not Ms. Brunsting will go forward in her capacity or not.

If she fails, then the Court will direct or put someone else in that position to do that, to move into this area or division so that the assets can be distributed or whatever beneficiaries. That's where I am in this case, and that's where the circuit court I believe has me. So I think it's in all of our best interest to appreciate this process.

In light of that, the Court is of the opinion that there are no expenditures that should be made unless they're made upon the approval of the Court. So, in other words, if Mr., up in Utah --

MR. VIEW: Iowa.

MS. CURTIS: Rickers in Iowa.

THE COURT: Mr. Rickers needs to pay the farmer. We used to call those sharecroppers sort of. It's a kind of a sharecropper thing where someone comes in farms the land and you get a percentage of it. If Mr. Rickers and the sharecroppers and others need to pay out bills and things, they should be petitioning the Court for that. That's where we are now.

We're at a point where I'm going to have to take charge in order to make sure that what I am doing has sanctity and has, well, trust going forward. What I am going to do is simply to try to make sure that the parties are all going to have equal standing and footing in this process. So that's part of what I am going to do. I'm going to enter an injunction in that regard.

Now, anybody who claims they want to bill the estate for something, whether it's lawyers or not, I am concerned about whether or not your bill should be paid by the estate because of this circumstance.

MR. VIE: I understand.

THE COURT: If the parties are going to agree, if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who

will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate.

It would not include Curtis because I am not going to be involved in the litigation of whether or not this is a good trust or not. I'm going to presume that it's a good trust, and I am going to go forward from there. If Curtis proves otherwise, he can get that money from the lawyers, and that would be certainly to his advantage or benefit.

MS. CURTIS: Are you talking about my brother Carl?

THE COURT: Yes. I said Curtis. I meant Carl. I apologize. You can see I'm struggling here.

MS. CURTIS: Too many C's.

MR. VIE: For the record, is it 90 days, Your Honor?

THE COURT: Yeah. I said we should try to wrap this up in 90 days, but I believe that if I appoint -- and you can suggest someone. I don't know if you know someone. Just give me a couple names. If not, I will designate someone to do this and enter an order to that effect.

It may be that because of the lack of trust that it may not need to be, unless both of you are designating somebody that you can agree upon, it may be better for me to have some person independent of the sides unless you all can agree upon the person or firm that should take care of this business.

MR. VIE: So we will get together and try to arrive at an agreed CPA that could provide the accounting the Court requests.

THE COURT: Sure. And we have a lot of them here in Houston just like we got -- I don't know anybody in California, but I want somebody I have got some jurisdiction over.

MR. VIEW: So if we're unable to do so we'll notify the Court we were unable to reach an agreement?

THE COURT: Sure. And you need to do that by the end of the week.

MR. VIEW: Yes, Your Honor.

THE COURT: You are going to be here what, today?

MS. CURTIS: I leave at 4:00 o'clock.

THE COURT: 4:00 o'clock today. Well, then you need to talk fast and see if you all can agree. Maybe you should talk over lunch. That way you can kind of size each other up. Eating together sometimes brings out good things.

And so, if you will do that by the end of the week, I will then prepare an order entering a temporary retraining order against the expenditure of any funds. Notice will be not just to you but to you in terms of Anita because I think she holds the purse in this situation. If there is any money to be paid to anybody up in Utah or anyplace else, she would be person who would authorize it or

do it.

The accountant isn't do it, as I understand it, right?

MR. VIE: No. He is just preparing the necessary documents.

THE COURT: Right. So the purse strings here in Houston, she can certainly prepare through you whatever documents are necessary for parties to be paid.

MR. VIEW: Yes, Your Honor.

THE COURT: And then hopefully that report can get done in 30 or 40 days, and then we can have a hearing. If there is some dispute about summary areas of the report, we can have a hearing about that. If there is a memorandum or recommendation as relates to how to go forward with this "asset trust," that is the distribution, we can do that.

If the parties can reach an accommodation as to how those assets ought to be dealt with, how silent a trust and they all sign off on it, we can do that. It's just a matter of how you want to do it. The trust is not going to control unless you want it to control at this point.

MR. VIE: Yes, Your Honor.

THE COURT: Under the circumstances, it seems to me there's going to be a continuous bickering and mistrust.

Anything else?

MS. CURTIS: No, Your Honor.

MR. VIEW: No, Your Honor.

THE COURT: Let me have Ms. Anita Brunsting come forward.

Good morning. Did you drop something on your foot?

MS. BRUNSTING: I broke my foot.

THE COURT: Raise your right hand.

Do you solemnly swear or affirm that any testimony you will give in this case will be the truth, the whole truth, nothing but the truth so help you God?

MS. BRUNSTING: I swear.

THE COURT: You've heard the discussion here in the courtroom, have you not?

MS. BRUNSTING: (Indicating in the affirmative.)

THE COURT: And I know that you have got counsel, and you can speak with him about the implications and concerns that the Court has about making sure that the assets are accounted for. And you certainly can work through him on any matters that you need to address to the Court. And, of course, counsel understands that he is to communicate both with the Court and with Ms. Curtis on any matters that he is presenting to the Court.

Is there any question about anything I have said -- I don't mean disagreement because you can certainly disagree with me about anything -- but is there any question

that you might have about anything I've said that you need me to answer, or certainly you have your attorney present.

MS. BRUNSTING: I need the trust account to pay. I've got the forms from the CPA. Can I move forward on that?

THE COURT: I think you should probably file a short motion and simply serve a copy of it on opposing counsel, Ms. Curtis, and forward it with a short order to me, and that wouldn't be a problem. This should be based upon the tax forms.

MR. VIE: Yes, sir.

And in terms of notice to the Court -- I'm sorry, not notice to the Court, the Court directing notice, do I notify the other beneficiaries?

THE COURT: Absolutely.

MR. VIE: Okay.

THE COURT: Even though they're not a party, they are beneficiaries and we should keep them in the loop.

MR. VIEW: I just wanted to bring that up.

THE COURT: Yeah. Should be in the loop because it doesn't make sense for us to have to go back and pull them forward a month.

MR. VIE: I will prepare appropriate submissions for payments that I would like. If the Court will approve it, then the trustee will make the payments.

THE COURT: Are these to be paid on or before April

15th or is there another cycle?

MS. BRUNSTING: No, by April 15th.

THE COURT: All right. So either they will get to me on Thursday or whatever, and I'll sign off on them, on the motion and the order, and that shouldn't be a problem.

You are not going to have to liquidate any assets to deal with that, are you?

MS. BRUNSTING: No. We have a checking account with enough that I can pay it.

THE COURT: Right.

MS. BRUNSTING: What about any incoming? The farm is rented, so we get a check twice a year.

THE COURT: Your function and role is to make those deposits as they come in.

MS. BRUNSTING: So I can continue to deposit them?

THE COURT: Continue depositing. All I am trying to do is control the outgo. What comes in as an expense is what counsel needs to see, and they have a proper and appropriate motion.

And if these things come in -- if this is a once a month kind of sit down and write out the bills kind of thing, then that's the way he should probably handle it. At some point just sit down and you prepare a list of things that you need to have done and certainly provide the forms or whatever you need.

MR. VIE: Yes, Your Honor.

MS. BRUNSTING: Okay.

THE COURT: All right. Thank you very much.

All right, counsel. That's all I have. And I'll prepare an order and get it out perhaps by tomorrow afternoon. There should not and in my opinion will not need to be a bond posted. These are parties of equal status as it relates to the assets, so no bond is going to be required.

I think, Ms. Curtis, you need to follow my advice. At some point consider getting an attorney, someone you trust to work with you, all right.

Okay. Thank you very much.

MR. VIE: Thank you, Your Honor.

(Conclusion of Proceedings)

CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 53 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 9th day of April, 2013.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 5th day of August, A.D., 2013.

_____
Fred Warner, CSR
Official Court Reporter

# EXHIBIT 5

**MIME-Version:** 1.0
**Content-Type:** multipart/mixed; boundary="----=_Part_483675_1625879494.1443134736376"

On Monday, June 15, 2015 3:40 PM, Candace Curtis <occurtis@sbcglobal.net> wrote:

Anita and Amy have a fiduciary **obligation** to provide **ALL** of the beneficiaries with the same information regarding trust income and expenses, on a regular basis. **IT IS THEIR DUTY TO ACCOUNT,** and to keep us advised of our beneficial interests, yet they have failed to properly do so for more than 4 and a half years.

Judge Butts' September 4, 2014 order states that the trustees:

"- provide all parties with notice of their intent to pay all federal income taxes... within five business days of the receipt of the amount of taxes due along with all documentation received from the accountant of the amount of such taxes and provide all parties with copies of all tax returns to be filed... and all invoices form the accountant related to the preparation of federal and state income tax returns...; and provide all parties with copies of the checks paid within five business days of the date of payment and a copy of all executed documents filed with the checks;"

Your flagrant disrespect of the federal injunction, calling it questionable, and Anita's willful violation of the injunction is contemptible, to say the least.

None of the criteria of Judge Butts' order has been met.

Please provide the backup for the 2014 Decedent's Trust Form 1041. Line 14 - Attorney, accountant, and return preparer fees, in the amount of $16,831, needs to be supported in more detail, as does the capital gain on line 4.

Please send copies of all bank and brokerage statements for 2014. It is possible these were forwarded earlier to prior counsel, but I don't have them.

The payment to Kroese & Kroese P.C. for the "farm lease" (BRUNSTING005519) was unauthorized and a violation of the injunction.

Amy and Anita's failure to negotiate the EE Bonds before they reached the point where they "may not be reissued or replaced" cannot be excused. The assertion that they did not know about them, when they themselves disclosed their existence in their April 9, 2013 CD, simply won't cut it. On August 13, 2013, in response to their objection to the Report of Master, at item 4, I identify the missing EE Bonds as known assets of the trust that the trustees did not account for. On September 3, 2013, at a hearing on the Report of Master, during Mr. West's testimony, he mentioned his curiosity as to the whereabouts of said bonds. A check with the Treasury Department website revealed how easy it is to have the bonds replaced or reissued when they have been lost, or stolen (as the case may be). One need only submit the documentation as listed on the attached letter I received from the Treasury Department, dated October 8, 2014. I do not possess this documentation, the trustees are supposed to have these instruments.

This failure equates to approximately $6,500.00 in lost value of the trust assets. Whether it is irresponsible, reckless, careless, negligent, or intentional, is inconsequential in the face of the blatant refusal of the trustees to properly protect and account for these assets. It is not even a little amusing that three years after Anita allegedly became trustee, that she should claim

ignorance as to the trusts' ownership interest in those bonds or that after more than 2 years of attempting to get them to account for the bonds it is apparently the plaintiff's fault for not consenting to the trustees' cashing of bonds not even in their possession.

This electronic communication shall stand as a demand for a full, true, and complete accounting, certified as such, in conformance with the Texas Property Code and the common law.

It is also my final informal demand for the fiduciary disclosure, which the trustees full well know is the property of all five beneficiaries, and I do not have to pay them anything to meet their fiduciary obligations. Let's start with the July 1, 2008 appointment that you assert has already been disclosed.

Candace L. Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

Attachments:

| | |
|---|---|
| 10082014 EE Bond Treasury Response Letter to candy.pdf | 4.4 MB |

# EXHIBIT 6

# GRIFFIN & MATTHEWS

*Attorneys at Law*
**1155 Dairy Ashford, Suite 300**
**Houston, Texas 77079**
**(281) 870-1124**
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## FACSIMILE TRANSMISSION

| | | | | | |
|---|---|---|---|---|---|
| **To:** | Bobbie Bayless<br>Darlene Payne Smith<br>Bradley Featherston | **Fax:** | 713.522.2218<br>713.658.1921<br>281.759.3214 | **Phone:** | 713.522.2224<br>713.752.8640<br>281.759.3213 |
| **From:** | Neal E. Spielman | **Pages:** | 29 including this cover page | **Date:** | 6/24/2015 |
| **Re:** | Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.*; In Probate Court No. Four (4) of Harris County, Texas | | | | |

## PLEASE DELIVER AS SOON AS POSSIBLE

- Amy Brunsting's Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production (with Verification)

**THIS FACSIMILE TRANSMISSION (AND/OR THE DOCUMENTS ACCOMPANYING IT) IS LEGALLY PRIVILEGED AND CONFIDENTIAL INFORMATION WHICH IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE AND MAY CONTAIN INFORMATION BELONGING TO THE SENDER WHICH IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE. If the reader of this message is not the intended recipient, you are hereby notified that any use, dissemination, distribution or reproduction of this message is strictly prohibited. If you have received this message in error, please immediately notify the sender by telephone.**

# GRIFFIN & MATTHEWS
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(409) 832-6006
FAX: (409) 832-1000

June 24, 2015

Ms. Candace Louise Curtis
218 Landana Street
American Canyon, California 94503

***Via C.M.R.R.R.***
***7014 0150 0001 5384 0078***

RE: Cause No. 412,249-401; *Carl Brunsting, et. al. v. Anita Brunsting, et. al.*; In Probate Court No. Four (4) of Harris County, Texas

Dear Ms. Curtis:

In accordance with the Texas Rules of Civil Procedure, enclosed please find my client's Objections, Answers and Responses to the written interrogatories and requests for production recently issued. My client's verification is also enclosed.

Very truly yours,

Griffin & Matthews

By: _____
Neal E. Spielman

NES:mf
Enclosures
cc: Ms. Bobbie G. Bayless
Bayless & Stokes
***Via Facsimile: 713.522.2218***

Ms. Darlene Payne Smith
Crain, Caton & James
***Via Facsimile: 713.425.7945***

Mr. Bradley E. Featherston
The Mendel Law Firm, L.P.
***Via Facsimile: 281.759.3214***

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 |

**AMY RUTH BRUNSTING'S**
**OBJECTIONS, ANSWERS AND RESPONSES TO CANDACE LOUISE CURTIS'S**
**WRITTEN INTERROGATORIES AND REQUESTS FOR PRODUCTION**

*TO: Candace Louise Curtis, Pro Se, – 218 Landana Street, American Canyon, California 94503*

Amy Ruth Brunsting, serves these Objections, Answers and Responses to Candace Louise Curtis' Written Interrogatories and Request for Production in accordance with the Texas Rules of Civil Procedure.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: _____

NEAL E. SPIELMAN
Texas State Bar No. 00794678
nspielman@grifmatlaw.com
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124 - Phone
281.870.1647 - Facsimile

*ATTORNEYS FOR DEFENDANT, AMY RUTH BRUNSTING*

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 24th day of June 2015, to the following in the manner set forth below:

Candace Louise Curtis – Pro Se:

Candace Louise Curtis
218 Landana Street
American Canyon, California 94503
***Via C.M.R.R.R. 7014 0150 0001 5384 0078***

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
***Via Facsimile: 713.522.2218***

Attorneys for Carole Ann Brunsting:

Darlene Payne Smith
Alec B. Covey
Crain, Caton & James
Five Houston Center
1401 McKinney, 17TH Floor
Houston, Texas 77010
***Via Facsimile: 713.425.7945***

Attorneys for Anita Kay Brunsting:

Bradley E. Featherston
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
***Via Facsimile: 281.759.3214***

NEAL E. SPIELMAN

## OBJECTIONS, ANSWERS & RESPONSES

Amy Brunsting ("Amy" or "Respondent") objects to the interrogatories and requests for production issued by Candace Louise Curtis ("Candace") to the extent they are, by Candace's own admission, first made pursuant to "fiduciary obligations" allegedly owed to her. If, via the trust documents, Candace actually has the right to inquire into the topics covered in her interrogatories and requests for production, then that right is subject to other provisions in the trust documents requiring her to pay costs associated with responding, which she has not done. As a result, Amy's purported obligation to address these issues with Candace has not yet been triggered, and will not trigger until, at least, all necessary costs have been paid.

To the extent Candace's interrogatories and requests for production are issued pursuant to the Texas Rules of Civil Procedure, Amy's objections, answers and responses are as follows:

**Interrogatory No. 1** *(Really, Interrogatories 1-4)*

(a) Regarding the Affidavit in Support of Removal of Lis Pendens, Sworn to and signed by you on March 6, 2012, at Item 5 you state:

> *"As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston."*

**With respect to this statement:**

i. **Has a Personal Asset Trust been set up for?**

1. **Candace Louise Curtis**
2. **Carole Ann Brunsting**
3. **Carl Henry Brunsting**
4. **Amy Ruth Brunsting**
5. **Anita Kay Brunsting**

**If the answer to any of 1 - 5 is yes, please state when and how each personal asset trust was "set up", how and from what assets each was funded. Please explain also the dispositive provisions for the personal asset trusts and the instruments from which each article was derived. Please also explain what administrative provisions were used to "set up" the personal asset trusts and identify the instrument(s) from which those provisions were derived.**

**If the answer to any of 1 - 5 is no, please explain the process for the creation of the personal asset trust(s) and itemize, with a particularity, the causes for your failure to establish said trust(s).**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Personal Asset Trusts have not been established. This is a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

(b) At item 10 you state:

*"The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the Lis Pendens so the sale can be consummated, for the benefit of all of the heirs".*

**The house sold more than 3 years ago, what benefit has any heir received from the sale of the house?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is vague, confusing, premature, misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The proceeds from the sale of the house have been deposited in an interest-bearing account where they will remain pending resolution of the various legal proceedings initiated by Carl and Candace

(c) At item 3 in your Affidavit in Support of Removal of Lis Pendens, dated March 6, 2012, you state:

*"The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance."*

With respect to this statement:

**Our father died April 1, 2009. At the time of his death the named successor co-trustees, as per the 2007 Amendment, were Carl and Candace. "Our parents" removed your name as successor co-trustee with the 2007 Amendment, and my name remained as a successor co-trustee with Carl. What instruments created between the 2007 Amendment and our father's death indicate: "our parents did not feel she was competent to handle her own inheritance"?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

All of them. Taken in their totality, the documents evidence our parents changing attitudes and confidence in Candace and Carl's respective abilities to properly care for themselves, manage money, make reasonable decisions, avoid negative influences in the form of spouses and/or significant others, etc.

**Interrogatory No. 2** *(Really, Interrogatories 5-8)*

In your Verified Answer to Plaintiff Carl Brunsting's Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, filed May 13, 2013, you state:

> *"AMY RUTH BRUNSTING F/F/A AMY RUTH TSCHIRHART is not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Amy Ruth Brunsting Asset Trust because such trusts have not been created and therefore do not contain any trust property."*

Section 3(A)(A) at page 5 of the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment" states:

> *A. Establishment of the Personal Asset Trust:*
>
> *A Personal Asset Trust shall be created for a beneficiary of the Trust when, under any other provision of this Trust Agreement, a distribution of the Trust Estate specified to be made to said beneficiary's Personal Asset Trust first occurs.*

Pursuant to Article X Section "A" of the family trust, distributions were specified to be made to the five personal asset trusts at the death of the Surviving Founder.

> *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:*

That event occurred on November 11, 2011.

(a) **What clause in what trust instrument allows the trustees to ignore the dispositive provisions of Article X (compelling establishment of personal asset trusts) and to continue acting as trustees for the Survivor's and Decedent's trusts well beyond the period of time necessary to settle those trusts?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Further, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part.

(b) **Did the trustees ever have any intention of funding individual asset trusts? If yes, when, for whom, in what proportions, and based upon what criteria?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

(c) **Did the trustees ever intend to render full, true, and complete accounts? If yes, why have proper accounts not been rendered?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. Further, it seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons. Additionally, it is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Upon becoming co-trustee, my intent was to follow my mother's wishes as expressed in the documents drafted for her by her attorneys, at her request. Subsequently, the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl have prejudiced my ability to do so.

(d) **Which of the ten purposes for establishing personal asset trusts, expressed in the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", were considered in the decision not to express and fund personal asset trusts?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The document speaks for itself relative to the Trustor's intent. This notwithstanding, the Personal Asset Trusts have not been established as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. If, as and

when formed, they will be formed according to the applicable trust documents and with the assistance of the appropriate professionals, as determined by the co-trustees.

**Interrogatory No. 3** *(Really, Interrogatories 9-10)*

You communicated with Frost Bank by email on January 24, 2012 "about the management of the trust accounts for my brother Carl and my sister Candy". Your email states "A copy of the trust is attached". The only attachment was the August 25, 2010 "Qualified beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement".

(a) **Is it your opinion that the 8/25/2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" constitutes the complete trust agreement from which the personal asset trusts are to be created?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is confusing, misleading and capable of causing jury confusion. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

(b) **What was the reason why Frost Bank declined the management of the trust accounts for Carl and Candy?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is multifarious, consisting of more than one discrete sub-part. It is vague, confusing, misleading and capable of causing jury confusion. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

My understanding is that Frost Bank declined as a result of real property being located outside the State of Texas. Whether there were other or different reasons, I cannot say.

**Interrogatory No.4** *(Really, Interrogatories 11-15)*

In 2011, you, Ann, and Jack each received distributions in the form of Exxon and Chevron securities.

(a) **Were you involved in the decision to distribute those assets? If yes, what trust distribution standard was utilized and what facts were considered in relation to those standards as that criteria relates to each of the five Brunsting beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The Exxon and Chevron securities were received while my mother was still alive. They were presented as gifts. I was not involved in mother's decision.

(b) **Were you aware that those distributions were not equal?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Yes, I was aware that the gift I received was not the same amount as the gifts received by Ann and Jack. However, to my knowledge, the amounts received by Ann and Jack were equal in amount to similar gifts received by mother's other grandchildren

(c) **Were you aware that Carl received no stock or other assets of any kind at that time?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe this is a true statement. I believe, at or around this time, Carl was receiving monies from mother directly and/or via mother's payment of bills, invoices or other expenses.

(d) **Were you involved in the decision making process in labeling those distributions as gifts?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. Further, it is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I do not believe that any monies, securities, etc. given out by mother while she was alive were distributions; but, no, I was not involved in any "decision" of this sort.

(e) **Was any specific trust property directed to be distributed by the 8/25/2010 exercise of the Article III Qualified Beneficiary Designation? If yes; what was the specific property, to who**

**was the specific property directed to be distributed, when, in what proportions and according to what criteria?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It is vague and confusing. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

I was not a co-trustee until after mother died in November 2011, so I was not involved in anything that occurred up until that time, and Candace's lawsuit began approximately 3 months later. As to specific trust property and its distribution, the documents speak for themselves.

**Interrogatory No. 5** *(Really, Interrogatories 16-26)*

As co-trustee, regarding the exercise of "Sole and Absolute Discretion" in recent opposition to a distribution to Candace Curtis:

**(a) What are, and how did the trustees interpret, the particular distribution standards contained in "the trust"?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

**(b) What is the trustee's process for making discretionary distribution decisions?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or

obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(c) **What does the trustee require when asked to consider other resources and establish the beneficiary's standard of living?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

(d) **Does the trust require a beneficiary to waive their right of privacy as a condition of receiving a beneficial interest? If so, identify the controlling provisions and the instrument(s) that contain those provisions.**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to standards stated therein. Otherwise, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

**(e) Does the trustee work with distribution advisors? If so, who and when? If not, why not?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. It seeks information that is more appropriately requested or obtained from a person or persons over whom Respondent has no control. Respondent can only respond for herself, and is not empowered to speak for other third persons.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> My ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl.

**(f) What types of distributions would the trustees like a beneficiary to receive?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

**(g) For what purposes can the beneficiary request a distribution from the trust?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> The documents speak for themselves relative to distribution standards stated therein.

**(h) When would the trustees like distributions to be made and in what priority?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

**(i) What circumstances should or should not exist prior to a distribution from "the trust"?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein. Further, my ability to act as a co-trustee has been prejudiced, hampered and otherwise restricted as a result of the various lawsuits that have been filed by Carl and Candace, as well as the injunction previously requested by Candace and Carl. Resolution of these lawsuits could serve as a means by which it might be determined "when" (and to whom) distributions may be made.

**(j) Who should be involved in the decision making process?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious, consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein.

**(k) What factors does the decision-maker measure in determining the beneficiary's need for a distribution?**

**Answer:**

Objection. Respondent objects to this Request as phrased. It is harassing, inflammatory, prejudicial, assumes facts not in evidence, is misleading and capable of causing jury confusion. It is multifarious,

consisting of more than one discrete sub-part. It seeks to require the Respondent to interpret legal documents and render legal conclusions. Additionally it is premature in the sense that Carl and Candace may no longer be beneficiaries as a result of the lawsuits they have filed.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

The documents speak for themselves relative to distribution standards stated therein.

Respondent invokes all rights and remedies associated with instances of offensive discovery abuse, including without limitation, a request for a protective order. This request is occasioned, in part, by Candace Louise Curtis' abuse of the Texas Rules of Civil Procedure and her violation of "discrete sub-part" standards and restrictions. Candace Louise Curtis has issued more interrogatories than she is permitted to issue under the Rules. Until her interrogatories are re-drafted to remedy the violation, or pending further instructions from the Court, additional objections to the remaining interrogatories are reserved, as are additional factual answers.

**(l) What facts were relied upon in your determination to oppose distributions to Candace?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 6** *(Really, Interrogatories 27-29)*

On March 8, 2011, Anita sent an email to you, Candy, and Carole in which she said:

> *"I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care."*

**(a) Did you meet with Candace Freed to discuss any trust business prior to the death of Nelva Brunsting? If yes, provide the dates and explain the purposes for each of those meetings.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) How much were you involved with Anita's efforts to convince Nelva to alter the terms of the trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) **How much was Carole involved with Anita's efforts to convince Nelva to alter the terms of the trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No.7** ***(Really, Interrogatories 30-31)***

Instruments are alleged to have been signed by Nelva Brunsting on August 25, 2010.

(a) **Were you involved in discussions involving the creation or signing of the August 25, 2010 trust amendment instrument(s)? If yes, explain the circumstances leading up to the creation of the instrument.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 8** ***(Really, Interrogatories 32-33)***

Instruments are alleged to have been signed by Nelva Brunsting on December 21, 2010.

(a) **Were you involved in the preparatory discussions? If yes, please explain the circumstances leading up to the creation of the December 21, 2010 instruments.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **Were you personally present when those documents were signed? If yes, please identify the location where they were signed and provide the names and contact information for everyone who was personally present when those instruments were signed.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 9** *(Really, Interrogatories 34-37)*

Pursuant to the Provisions of the 2005 Restatement, Administration of the Decedent's trust in Article IX:

**(a) Did Nelva have the authority to remove the trustees of the Decedent's Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) Did the exercise of the Qualified Beneficiary Designation and Testamentary Power of Appointment, dated 8/25/2010, appoint specific property to any specified beneficiary or beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) Did the Limited Testamentary Power of Appointment, dated 812512010, direct distributions of principal of the Decedent's Trust in a manner that discharged the surviving Founder's legal obligations to any beneficiary of the Decedent's Trust? If yes, please explain with a specificity as it affects each of the five Brunsting heirs/beneficiaries.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(d) If Nelva discharged her legal obligations to a beneficiary of the Decedent's Trust, what beneficiary(s) and to what extent did Nelva discharge her legal obligations to those beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 10** *(Really, Interrogatories 38-41)*

Please refer to George Vie's July 15, 2013 letter to the Special Master and Attachment 1 to these interrogatories when considering the following questions. Note that Attachment 1 is a summary of your Schedule F, plus distributions to beneficiaries from the Edward Jones account during the 10-year period covered by the schedule, also including the $100,000.00 distribution Anita received in 2005 to pay off her house.

Your letter states that:

> *"Numerous gifts were given to the older Brunsting children (Carl, Candace and Carole); Candace's sons, Kevan Curtis and Andy Curtis (currently in their m id-3 Os); and Carl's*

*daughter, Marta Brunsting Huntsman (prior to Mr. Brunsting's death) to assist with their college, business and/or wedding expenses."*

Attachment 1 demonstrates that during the 10-year period of the schedule, approximately 46% of the distributions went to Candy, Carole, Carl, Kevan and Andy, with the balance of approximately 54% going to you, Anita and your respective children. Nothing was noted to have been received by Marta during the 10-year period.

(a) **Please state with specificity the dates and amounts of all gifts given to the older beneficiaries and the source of the information in support of these alleged transactions, as claimed by you in your July 15, 2013 letter of intended influence addressed to the Special Master.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **Our Dad died April 1, 2009. The only noted transactions labeled as gifts to Kevan and Andy Curtis are dated October 2, 2009. Please state with specificity the dates and amounts of all other alleged gifts given to Kevan, Andy, or Marta between 2001 and April 1, 2009, the source of the information in support of these transactions, and the reason why these transactions were not listed on any schedules. If none say none.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

In general the July 15, 2013 letter to the Master attempts to provide explanation for the accelerated dissipation of trust assets while our Mother was still alive. These take-my-word-for it assertions have not been supported by Generally Accepted Accounting Principles (GAAP) in any disclosures. The recap of distributions, or gifts if you want to call them that, reflected on Attachment 1, clearly shows an inequity.

(c) **Were you involved in the decision making process for any of those distributions? If yes, explain.**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) **In your July 15, 2013 letter to the Master you claim "Defendants are individuals, not financial professionals." Did you hire financial professionals to assist you in meeting the obligations commensurate with your fiduciary duties? If yes, who, when, and what did they do? If not, why not?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 11** *(Really, Interrogatories 42-56)*

Regarding the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement"

(a) **What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **What changes to the administrative provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) **What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) **What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article III power?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(e) **What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(f) **What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(g) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(h) What changes to the dispositive provisions of the Survivor's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(i) What changes to the dispositive provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(j) What changes to the administrative provisions of the Survivor's Trust (Article VIII) were affected by the 8/25/2010 exercise of the Article VIII LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(k) What changes to the administrative provisions of the Decedent's Trust were affected by the 8/25/2010 exercise of the Article IX LTPA?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(l) Has the Brunsting Family Trust ever been amended or revoked by a court of competent jurisdiction?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(m) **Has the Elmer H. Brunsting Irrevocable Decedent's trust ever been amended or revoked by a court of competent jurisdiction?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(n) **Was any specific trust property directed to be distributed by the 8125/2010 exercise of the Article VIII Limited Testamentary Power of Appointment? If yes, what was the specific property; to who was the specific property directed to be distributed; when, in what proportions; and, according to what criteria?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(o) **What specific trust property was directed to be distributed by the 8/25/2010 exercise of the Article IX limited testamentary power? According to what standard was it to be distributed, when, how and to whom was it to be distributed?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 12** *(Really, Interrogatories 57-65)*

With respect to the August 25, 2010 QBD "Section B. Trustor's Intent in Establishing Personal Asset Trusts,"

Intention 1. To protect and conserve trust principal

EE Bonds have long been known to exist, yet have never been included in the list of assets of the trust, or accounted for by the trustees. This was brought to your attention at the hearing in connection with the Report of Master in July 2013. Anita received a letter from the Treasury dated December 4, 2014, referring to "your recent transaction and/or inquiry", which says the search "identified the unredeemed bonds described on the enclosed list". It goes on to state "The Department of the Treasury requires the properly completed forms be submitted in order to process the claims." A check with the Treasury Department gave a total value of the bonds as approximately $6,452.64. A statement at the end of the Bond List received as an attachment to the correspondence says: "***If there are any bonds marked with an asterisk, they are within one month of their final maturity and may not be reissued or replaced."** All bonds on the list are marked with an asterisk.

(a) **Why was your inquiry made more than one year after you were noticed of the existence of those EE Bonds?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(b) What claim(s), if any, were requested to be processed?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**(c) Were the properly completed forms subsequently submitted? If no, why not? If yes, what were the results and why have the transaction records not been disclosed to Plaintiff(s)?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 2. To eliminate and reduce income taxes, generation skipping transfer taxes and estate and death taxes on trust assets and on assets in the estate of the beneficiary

The Decedent's Trust has received farm income every year, which has not been distributed since 2012. Consequently the decedent's trust owed hefty income taxes each year.

**(a) Why have those taxes not been reduced by distributions of farm income to personal asset trusts for the five beneficiaries? What advice have you obtained or been given regarding income taxes paid by the trusts, if any?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 3. To benefit and provide for the financial needs of the beneficiary and his or her descendants;

**(a) In what way have you respected this intention?**
Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Answer:**

Intention 5 To invest in non-consumables, such as a principal residence, in order to provide the beneficiary with the liberal use and enjoyment of such property, without charge, rather than make a distribution of trust assets to the beneficiary or purchase them in the name of the beneficiary. It is the Trustor's desire in this regard that the beneficiary, to the extent possible, use his or her own resources to pay for living expenses and consumables in order to reduce the size of such beneficiary's estate subject to estate taxes and claims of third parties;

**(a) In what way have you considered the needs and resources of beneficiary Candace Curtis in your distribution considerations?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **What facts did you rely upon in evaluating the needs and personal resources of beneficiary Candace Curtis in your distribution considerations?**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

Intention 6. To invest in reasonable business ventures, including business start-ups, where the beneficiary is a principal or otherwise involved in such ventures or start-ups;

(a) **What inquiry did you make in effort to determine the existence of business ventures or start-ups that beneficiary Candace Curtis may be involved in as a part of your distribution considerations?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **In your determination not to fund individual asset trusts what facts were considered in relation to any of the remaining expressed intentions for such actions?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 13** *(Really, Interrogatories 66-69)*

The Bates stamped documents included in Plaintiffs document production P6-P155,"My Trustee Manual". Chapter 2, P19-P22 is titled "BEFORE GETTING STARTED: A FEW IMPORTANT "DO'S AND DON'TS".

Please review pages 2-1 through 2-4 of My Trustee Handbook and answer the following questions with specificity:

(a) **Which of the eight "Do's" have you done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **Which of the eight "Do's" have you not done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) **Which of the nine "Do Not's" have you done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) **Which of the nine "Do Not's" have you not done?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 14** *(Really, Interrogatories 70-75)*

In establishing Personal Asset Trusts for the beneficiaries

(a) **Describe the steps you have taken to honor the provisions at Page 6 Item C of the August 25, 2010 QBD regarding PERSONAL ASSET TRUST PROVISIONS, as those provisions relate to the personal asset trusts for each of the five Brunsting beneficiaries?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **What dispositive and administrative provisions flow to the personal asset trusts from the Decedent's Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(c) **What dispositive and administrative provisions flow to the personal asset trusts from the Survivor's Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(d) **When the dispositive provisions of the Decedent's Trust and those of the amended Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(e) **When the administrative provisions of the Decedent's Trust and those of the Survivor's Trusts are in direct conflict, what provisions of which instrument are controlling? Why?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(f) **Describe the steps you have taken to honor the provisions of Article X, Section B (l)(a)(i) of the Brunsting Family Trust?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

**Interrogatory No. 15** *(Really, Interrogatories 76-77)*

Accounts and Accounting

(a) **How can you create personal asset trusts and fulfill the purposes of the trust without a full, true, and complete statutory accounting?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

(b) **When and how did the acting trustees inform the beneficiaries regarding their beneficial interests?**

**Answer:**

Objection. Respondent objects to this Request as it exceeds the number of permissible interrogatories allowed by the Texas Rules of Civil Procedure.

## OBJECTIONS AND RESPONSES

**Request for Production No. 1**

Schedule F - Purports to be a partial gifting reconciliation from Elmer and Nelva Brunsting from 2001, as developed from checking transactions. Please provide any bank statements beginning January 1, 2001 through the present that have not already been provided.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 2**

Please provide any Edward Jones statements beginning January 1, 2001 through the present that have not already been provided.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 3**

Please provide a true and correct copy of the "Appointment of Successor Trustees" dated July 1, 2008 referenced in such instruments as the Certificates of Trust bearing Bates Stamps P6783, V&F 000004; P6784, V&F 000005 and P6785, V &F 000006.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 4**

Please provide a true and correct copy of the "Agreement" signed by Nelva Brunsting establishing the rate of trustee compensation claimed in the April 2012 spreadsheets and July 2013 Master's report. Please also include a copy of any letters of notice of change in trustee compensation, along with proofs of certified mailing to beneficiaries, as required by the Texas property statutes.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

> Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 5**

Please provide any and all parole evidence indicating Nelva's knowledge of and direct participation in discussions related to "changes to the trust" specifically in regard to the instruments dated August 25, 2010, and those dated December 21, 2010.

**Response:**

Objection. Respondent objects to this Request as duplicative of requests previously issued to one or more other parties to the subject litigation. It is harassing and an abuse of the discovery process for various reasons, including but not limited to its effort to obtain materials that have already been produced by other parties to the subject litigation. Additionally, it is premature and potentially in violation of the rights of one or more other parties to this litigation in the sense that it seeks information that the Requesting Party may no longer be entitled to receive (if she ever was). It is also overbroad in scope and duration of request. Further, it seeks information, which – if it exists – is in the hands of third parties over whom Respondent has no control.

Subject to the foregoing and without waving the foregoing objections, Respondent states:

Please refer to Anita Brunsting's responses to the same Request, which is incorporated by reference as if fully restated herein.

**Request for Production No. 6**

Please provide copies of all supporting documentation upon which 2014 taxes were calculated and paid in regard to any Brunsting related trust(s).

**Response:**

Materials responsive to this Request have previously been provided by Anita Brunsting directly and/or through counsel. Additional responsive materials are in the process of being accumulated and will likewise be provided by Anita Brunsting directly and/or through counsel.

## VERIFICATION

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned notary, on this day personally appeared AMY RUTH BRUNSTING, the affiant, whose identity is known to me. After I administered an oath, affiant testified as follows:

My name is Amy Ruth Brunsting, and I am over 18 years of age, of sound mind and capable of making this verification. I have read answers to the interrogatories issued to me by Candace Louise Curtis. Unless otherwise noted in the content of the answers, the facts stated are within my personal knowledge and are true and correct.

Amy Brunsting
Printed Name: Amy Brunsting
Date: 6-19-15

Sworn to and subscribed before me by Amy Brunsting on the 19 day of June, 2015.

KIMBERLY A JOHNESE
Notary Public, State of Texas
My Commission Expires
NOVEMBER 16, 2016

Kimberly A Johnese
Notary Public in and for the State of Texas

# EXHIBIT 7

**Subject:** Fw: Mediation Preparation
**From:** Candace Curtis <occurtis@sbcglobal.net>
**Date:** 6/17/2016 11:27 AM
**To:** Rik Munson <blowintough@att.net>

On Wednesday, March 30, 2016 8:01 PM, Candace Curtis <occurtis@sbcglobal.net> wrote:

Dear Anita and Amy,

I find it hard to imagine what we will be mediating without information about the assets.

I have attached an Excel spreadsheet created using the information in the supplemental production dated June 25, 2015 (bates 5671-5813). Once you receive the March 2016 bank and brokerage statements it should be simple enough for you to fill in the blanks (highlighted in blue) and return it.

The Report of Master reflects $96,740.01 in farm rental income from October 5, 2012 through March 5, 2013. Please fill in the farm rental income detail from March 6, 2013 through March 30, 2016 on the spreadsheet.

I am particularly concerned about four (4) accounts which had dividend income in 2014, yet I have been unable to find any statements for these accounts.

The Master's Report lists dividend income for Chevron account 9415:

| | |
|---|---|
| 9/9/11 | $465.04 |
| 12/9/11 | 487.02 |
| 3/9/12 | 490.82 |
| 6/11/12 | 549.72 |
| 9/10/12 | 554.60 |
| 12/10/12 | 4.36 |

It appears that the bulk of the account was liquidated between September 10 and December 10, 2012. 2014 TOTAL dividends were $21.53.

Where did that money go??????? Please provide ALL of the account statements for this account.

The remaining three 1099s for which there is no backup (that I can find) in the records are:

Chevron 9407
Chevron 7657
MetLife 6968

I did find that on 12/12/14 Metlife put $33.25 in B of A account 3523. What exactly is that for? If it is an annuity, what are the terms?

Please provide the March 2016 statements for the two Chevron accounts (9407 and 7657).

# EXHIBIT 8

**Candace Louise Curtis**
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

April 16, 2016

To Anita Brunsting and Amy Brunsting and their Counsel of Record:

Please take note that Candace Louise Curtis v Anita Brunsting and Amy Brunsting, et al. (Curtis v Brunsting) is a distinctly separate suit from the claims filed by Carl Brunsting, whether individually or on behalf of the estate of Nelva Brunsting.

Curtis v Brunsting began in the federal Court 11 months before the estate's claims were filed in the Harris County District Court January 29, 2013, and 14 months prior to the claims filed in the Harris County Probate Court April 9, 2013.

Curtis v Brunsting came to the Harris County Probate Court under a remand order obtained by defendants as part of a stipulated agreement. The remand order is on file with the Probate Court accepted without qualification or reservation. The order in pertinent part reads:

> *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 15th day of May, 2014.*

Defendants and their Counsel are advised that they are in violation of the federal injunction and orders issued April 9, 2013 by The Honorable Judge Kenneth Hoyt, United States District Court Judge for the Southern District of Texas, and in violation of other specific orders issued by Judge Hoyt in the course of the federal litigation as reflected in the transcripts of the federal hearings on file with the Probate Court.

The "federal and state rules impose a duty of candor, good faith and fair dealing on attorneys representing clients in the courts and in the matter at issue this notice is required by Fed. R. Civ. P. 11(b).

Counsel is further advised that violation of a federal injunction is a very serious matter and may be treated as a mere civil contempt, but may also result in criminal sanctions under Title 18 of the United States Code, depending upon the severity of the violations.

The violations I am looking at are extremely serious and involve continued refusal to act and continued misapplications of valuable consideration in direct violation of a federal injunction not to mention the law of the Brunsting trust(s).

Counsel and their clients have willfully violated federal Court orders, including but not limited to an order for disclosures of information to Plaintiffs and all the other beneficiaries. The Court also entered an order that paying Defendants' attorney's fees is not a liability of the trust

and that attorneys can only be paid from the trust by the mutual agreement of all the beneficiaries. My consent has neither been requested, nor has it been given, nor have I received complete disclosures of the information ordered by the federal Court.

Counsel and their clients are also reminded that the remand from the federal to the state court was the product of a multi-faceted arrangement in which Defendants and their counsel agreed to honor the federal court injunction and the orders entered as if there had been no remand.

Plaintiff Curtis respectfully requests that counsel advise as to how it would remedy its multitude of ethical violations within 21 days, as provided by Rule 11(b). The rest of this message is contained in those rules.

Please see attached Rule 11(b) Motion for Sanctions with Points and Authorities.

Sincerely,

Candace L. Curtis

United States District Court
Southern District of Texas
FILED
AUG 10 2016
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis<br>Plaintiff | § | |
| v | § | Civil Action No. 4:12-cv-00592 |
| Anita Kay Brunsting, et al<br>Defendants | § | |

**PLAINTIFF'S NOTICE OF RELATED CASE (Local Rule 5.2)**

Civil Action No. 4:16-cv-01969 currently pending before the Honorable Judge Alfred H. Bennett is closely related to Civil Action 4:12-cv-00592.

A Rule 60 F.R.C.P. motion is pending before the Honorable Judge Kenneth Hoyt in the above referenced action, that is also relevant in Civil Action No. 4:16-cv-01969. All of the Parties to the above titled action are hereby noticed that these cases and events are closely related and the findings of fact and conclusions of law in the civil breach of fiduciary 4:12-cv-00592 will have a direct bearing on the civil RICO 4:16-cv-01969 action.

8/8/16

Candace Louise Curtis Date
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

United States District Court
Southern District of Texas
FILED
AUG 10 2016
David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis<br>Plaintiff | §<br>§<br>§ | |
| v | § | Civil Action No. 4:12-cv-00592 |
| Anita Kay Brunsting, et al<br>Defendants | §<br>§<br>§ | |

**PLAINTIFF CANDACE LOUISE CURTIS'**
**MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING.**

As the Pro se Plaintiff in the above-captioned matter, I respectfully ask the Court for permission to participate in electronic case filing ("e-filing") in this case. I hereby affirm that:

1. I have reviewed the requirements for e-filing and agree to abide by them.

2. I understand that once I register for e-filing, I will receive notices and documents only by email in this case and not by regular mail.

3. I have regular access to the technical requirements necessary to e-file successfully:

    a. A computer with internet access;

    b. An email account on a daily basis to receive notifications from the Court and notices from the e-filing system.

    c. A scanner to convert documents that are only in paper format into electronic files;

    d. A printer or copier to create required paper copies such as chambers copies;

    e. A word-processing program to create documents; and

    f. A pdf reader and a pdf writer to convert word processing documents into pdf format, the only electronic format in which documents can be e-filed.

Date: 8/8/2016

Respectfully submitted,

Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis,<br>Plaintiff | §<br>§ | |
| v | § | Civil Action 4:12-cv-00592 |
| Anita Brunsting, et al<br>Defendants | §<br>§ | |

**Certificate of Service**

I hereby certify that a true and correct copy of the following documents was deposited in the U.S. mail with postage fully prepaid on the 8th day of August 2016, via U.S.P.S. Priority Mail addressed as follows:

1. Motion for Rule 60 Relief, Documents 115-119 in Case 4:12-cv-00592 filed TXSD 2016-08-03.
2. Application for CM/ECF access
3. Notice of Related Case filing

Darlene Payne Smith
1401 McKinney, 17TH Floor
Houston, Texas 77010

Attorneys for Albert Vacek Jr.
and Candace Kunz-Freed
Corey Reed
Thompson Coe
One Riverway, Suite 1700
Houston, Texas 77056

Attorney for Anita Brunsting
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The Mendel Law Firm, L.P.
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Houston, TX 77079

Jason Ostrom
Ostrom Morris, PLLC
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Houston, Texas 77057

Bobbie G. Bayless
2931 Ferndale
Houston, Texas 77098

Gregory Lester
955 N Dairy Ashford Rd # 220
Houston, TX 77079

Bernard Lyle Mathews III
2000 S. Dairy Ashford Rd, Suite 520
Houston, Texas 77077



20-20566.2588

Attorney for Amy Brunsting
Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

Attorneys for Christine Riddle Butts and Clarinda Comstock
Laura Beckman Hedge Assistant County Attorney
1019 Congress, 15th Floor
Houston, Texas 77002
Via email at Laura.Hedge@cao.hctx.net

Jill Willard Young
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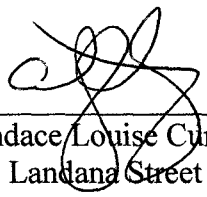
Bradley E. Featherston
Featherdston Tran P.L.L.C.
20333 State Highway 249 suite 200
Houston, Texas 77070

Tony Baiamonte III
1608 Victor Street
Houston, TX 77019



Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis<br>Plaintiff, | § | Civil Action No. 4:12-cv-00592 |
| | § | |
| | § | [PROPOSED] ORDER GRANTING |
| v | § | MOTION FOR PERMISSION FOR |
| | § | ELECTRONIC CASE FILING |
| Anita Kay Brunsting, et al<br>Defendants | § | |
| | § | DATE: |
| | § | TIME: |
| | § | COURTROOM: |
| | § | JUDGE: |

The Court has considered the Motion for Permission for Electronic Case Filing. Finding that good cause exists, the Motion is GRANTED.

IT IS SO ORDERED

DATED: _____ _____

United States District Judge

United States District Court
Southern District of Texas
**ENTERED**
March 09, 2017
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER**

Pending before the Court is the plaintiff's Motion for Access to the Court's Electronic Filing System (Dkt. No. 122). The Court, having considered the plaintiff's motion, together with the Court file and the applicable law, determines that the motion should be denied. Accordingly, it is hereby ORDERED that the plaintiff's Motion for Access to the Court's Electronic Filing System is **DENIED**.

It is so **ORDERED**.

SIGNED on this 9th day of March, 2017.

Kenneth M. Hoyt
United States District Judge



20-20566.2591

United States Courts
Southern District of Texas
FILED

MAR 20 2019

David J. Bradley, Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis<br>Plaintiff, | § | |
| | § | Civil Action NO. 4:12-CV-592 |
| v. | § | The Honorable Kenneth Hoyt |
| Anita Brunsting and Amy Brunsting<br>Defendants | § | |

---

APPLICATION FOR ORDERS TO SHOW CAUSE WHY DEFENDANTS AND THEIR COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF THIS COURT'S INJUNCTIVE ORDERS

To the Honorable Judge Kenneth Hoyt,

Petitioner herein, Candace Louise Curtis (Curtis), a California Resident, filed a breach of fiduciary suit into this Court on February 27, 2012, under diversity jurisdiction, seeking disclosures and accounting. A hearing was had on Curtis' application for preliminary injunction on April 9, 2013.[1]

**THE INJUNCTION**

The Court issued injunctive constraints verbally at the conclusion of the hearing, wherein the Court stated "for all with ears to hear" that this matter would be cleared up in 90 days.

[1] Transcript April 9, 2013 Hearing (Exhibit 1)

*Findings of Fact and Conclusions of Law and Order after Hearing* [Doc 45] were published on April 19, 2013.[2] Nearly six years later, this preliminary injunction is the only substantive finding of fact and conclusion of law after hearing ever published by any court in this case.

In the Order for Preliminary Injunction this Court found:

a. that Curtis had sued her sisters Anita and Amy Brunsting for Breach of fiduciary for failure to disclose trust instruments and failure to provide an accounting;
b. that Curtis was a beneficiary of the trust;
c. that Anita and Amy are trustees for the trust;
d. that Anita and Amy as co-trustees owed fiduciary obligations to Curtis;
e. that Anita and Amy had failed to disclose unprotected trust instruments;
f. that Anita claimed to have occupied the office as sole trustee as of December 2010;
g. that Anita had failed to establish proper books and records; failed to provide a proper accounting, and failed to establish and fund individual share accounts as required by the trust instruments:

*"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". In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit*

[2] 2013-04-19 Case 4-12-cv-592 Doc 45 Preliminary Federal Injunction filed in this Court (2015-02-06 Case 412249 PBT-2015-42743 Ostrom Notice of filing of injunction and report of master)

> *of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.*

Those are all the facts necessary to find breach of fiduciary and all that was remaining at that juncture was remedy.

**Stage of the Proceedings**

Pro se Petitioner filed a simple breach of fiduciary lawsuit under diversity jurisdiction to enforce her beneficial interests in an inter vivos trust. Plaintiff later retained Texas attorney Jason Ostrom, whereupon Plaintiffs' lawsuit was remanded to Harris County Probate Court No. 4 (May of 2014) [Doc 112] with the injunction in full force and effect "throughout the controversy between these parties".

In Harris County Probate Court Four (4), Plaintiff Curtis was listed as a Defendant of the later filed plaintiff that was alleged to have polluted diversity and whose lawsuit Curtis cause was to be consolidated with and where Plaintiff's lawsuit was converted into estate of Nelva Brunsting 412249-402 and consolidated with estate of Nelva Brunsting 412249-401.

Defendants, while ignoring the Courts injunctive Orders, have made perpetual threats involving a no-contest clause while evading substantive resolution and attempting to redirect to mediations.

Defendant Amy Brunsting filed an affidavit in this Court, [Doc 10-1] on March 6, 2012, claiming individual trusts had already been "*set up, as is the case for Candace*" and this Courts injunctive order Commands the funding of those trust accounts. Nine years have passed and there is no evidence that the Trustees have established separate trusts for each beneficiary, "as required under the Trust", nor is there any evidence that income received for the benefit of the beneficiary has been deposited appropriately in an account for the beneficiary, even though this Court found the trust required such action and despite the fact that this court Ordered the trustees to do what the Court had already found the trust required.

Defendants have been paying excess taxes due to their refusal to fund these trusts and paying professional fees without notice or hearings or court approval and Plaintiff is asking this court to enforce the injunction.

**Standard of Review**

Inherent sanctions are subject to review only under the "rather differential abuse-of-discretion standard applicable under Rule 11."[3] The United States Supreme Court has held that federal judges have a license to sanction lawyers and litigants virtually at will and without regard to any limitations in the rules and statutes.[4] A court enforces its pretrial injunctive relief through the exercise of its

[3] *Chambers, Chambers v. NASCO, Inc.*, 501 U.S. at 55.
[4] *Chambers v. NASCO, Inc.*, 501 U.S. 501 U.S. 32 (1991*). ID* at 46

contempt authority. "The Supreme Court has consistently stated that the power to punish contempt is part and parcel of the judicial power."[5]

Courts have both statutory and inherent authority to enforce their orders through contempt.[6] In the Order remanding Curtis v Brunsting to Harris County Probate Court Four, this Court specifically retained jurisdiction to enforce its injunctive Order. The imposition of Rule 11 sanctions has been upheld even after a subsequent determination that the court lacked subject matter jurisdiction,[7] which is **not** the case here.

Far from treating this Court's Order with obedience and respect, Defendants have disparagingly acted as if the affirmative command to make mandatory distributions of income in the preliminary injunction can simply be ignored. Defendants' attempt to defeat the purpose of the Court's Order and to further their presumed litigation strategy of No-Contest-Clause-Based intimidation, is an affront to the dignity and authority of this Honorable Court.

> *"If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." Gompers v. Buck Stove & Range Co., 221 u.s. 418, 450 (1911).*

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[5] United States v. Griffin, 84 F.3d 820, 828 (7th Cir. 1996).
[6] 28 U.S.C.S. §§ 401–402; Fed. R. Crim. P. 42; Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y, 774 F.3d 935, 944 (9th Cir. 2014). *Also see* Wagstaffe Prac. Guide: Fed. Civ. Proc. Before Trial § 31-XXXII(B).
[7] Willy v. Coastal Corp., 112 S. Ct. 1076 (1992)

Any act designed to taint the course of justice may be considered a contempt of court. Accordingly, the Court should hold Defendants and their Counsel in contempt, pursuant to Rules §65(d)(2)(A), §65(d)(2)(B) and §65(d)(2)(C) Federal Rules of Civil Procedure.

**Relief Requested**

Plaintiff prays the Court Order Defendants and their Counsel to appear and give any legal reason why this Court should not find them in contempt of the Courts Injunctive Order.

Petitioner would like the affirmative Order in the Preliminary Injunction Enforced and would like to see Anita and Amy Brunsting learn to respect the dignity and authority of this Court and the beneficial interests and fiduciary obligations bound to the office they are in hostile possession of.

Plaintiff asks the Court to punish these Respondents for Obstruction of Court Orders, and for any other monetary, compensatory, punitive, coercive or remedial remedy and any further relief that may be provided by law or equity including but not limited to the incarceration of these contemnors.

Subscribed and sworn on this 20 day of March 2019.

Respectfully Submitted

3/20/2019
Date

Candace Louise Curtis

**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 20 day of March 2019.

Personal Service @ 201 Caroline St. Houston
ON Counsel

Candace Louise Curtis

Amy Brunsting
C/O her Counsel Neal E. Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
nspielman@grifmatlaw.com

Anita Brunsting
C/O her Counsel Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
steve@mendellawfirm.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**MEMORANDUM AND ORDER**
**PRELIMINARY INJUNCTION**

## I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

## II. BACKGROUND

### *A. Procedural Background*

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a



20-20566.2599

recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

***B. Contentions of the Parties***

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,



20-20566.2600

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

## III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway,* 489 F.2d at 572-73.

## IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document



20-20566.2601

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

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.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.



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In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. **However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account.** However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge



20-20566.2603

**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

| | | |
|---|---|---|
| **IN RE:** | § | |
| | § | |
| **CANDACE LOUISE CURTIS** | § | **CIVIL ACTION NO. 4:12-CV-592** |
| **Plaintiff** | § | |
| | § | |
| **VS.** | § | |
| | § | |
| **ANITA KAY BRUNSTING, et al,** | § | |
| **Defendants** | § | |

# REPORT OF MASTER

# ACCOUNTING OF INCOME/RECEIPTS AND EXPENSES/DISTRIBUTIONS OF THE BRUNSTING FAMILY LIVING TRUST FOR THE PERIOD DECEMBER 21, 2010 THROUGH May 31, 2013

**Report of William G. West, CPA**
**William G. West, P.C.**

**Dated July 31, 2013**

# REPORT OF ACCOUNTING OF INCOME/RECEIPTS AND EXPENSES/DISTRIBUTIONS OF THE BRUNSTING FAMILY LIVING TRUST

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**Exhibits**


1. Statement of Income/Receipts and Expenses/Distributions for the period December 21, 2010 through May 31, 2013
2. Detail of Accounts for the period December 21, 2010 through May 31, 2013
3. Stock Distribution Analysis

## I. Introduction

On February 27, 2012, Candace Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas, alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress, alleging that the Brunsting Defendants acting as trustees for their parents' trust, failed to notice her of actions affecting her beneficial interests, refused to provide copies of non-protected trust instruments and refused to account for trust assets, or to report on any other acts of administration. On March 8, 2012, Plaintiff's complaint was dismissed under the probate exception to federal diversity jurisdiction. The Plaintiff filed a notice of appeal. On January 30, 2013, the Fifth Circuit Court of Appeals reversed the dismissal. On April 19, 2013, the District Court issued a memorandum and order for preliminary injunction. In the order, the Court ordered the appointment of an independent firm or accountant to gather the financial records of the trust and provide an accounting of the income and expenses of the trust since December 21, 2010. The defendants were ordered to cooperate with the accountant in the process. On May 9, 2013, the Court ordered the appointment of William G. West as master to perform an accounting. Though the injunction order was signed in April, the master received substantial records through May 31, 2013, and has used that date as the ending date for the report. Therefore, the report covers the time period of December 21, 2010, through May 31, 2013, except for any periods for which information was not received as noted later in this report.



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## II. Time Line of Records Received

On or about April 18, 2013, the accounting firm of William G. West, P.C., C.P.A. ("West") was contacted by the court concerning the preparation of the report contained herein since the parties to the suit had not mutually agreed upon the selection of an accountant. After discussing the case with the Judge and a conflict check, West agreed to accept the appointment. West then instructed his attorney to draft and prepare an order appointing him as master to perform an accounting of the income and expenses of the trust since December 21, 2010. This order was signed on May 9, 2013. Shortly thereafter, West reviewed the court docket and read certain pleadings filed in the case. On May 22, 2013, West contacted the attorney for the defendants, Mr. George Vie ("Vie"), to schedule a meeting to discuss the records and the collection of them. On May 29, 2013, West went to Vie's office for the meeting. At the meeting West was given a box of paper records containing bank statements, brokerage statements, statements for dividend reinvestment accounts and tax returns. He was also given a CD which were said to contain pdf copies of most of these records. **West was also given a listing of records being turned over and those statements missing or not yet obtained.** West was told the missing records were in the process of being obtained. West also requested copies of any electronic accounting or bookkeeping files the defendants may have for the trust. Subsequently, on or about June 4, 2013, **West was emailed some Quicken accounting program files** which he was able to successfully download and open in order to review. On or about June 6, 2013, West received additional records from Vie. **During this time West contacted the plaintiff to discuss the case with her and request copies of any records of the trust she may have in her possession.** Towards the end of June, West



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contacted Vie for an update on the status of the receipt of missing records which had yet to be produced. Additional records were promised in the near future. On or about July 1st West received emails from the plaintiff containing pdf copies of various records. West found, that for the most part, he had these records already from Vie (the plaintiff had told West beforehand that most of the records she had, in fact, came from the defendants' attorney, except some her brother had given her). **On July 5th Vie sent additional records to West (and pdf copies of same on CD). After review of these records received on July 5th, West sent an email to Vie inquiring as to when additional records would be received. West specifically addressed his concern that there were many bank disbursements for which he had no copies of cancelled checks or paid bill invoices to document said disbursements. On July 15, 2013, West sent another email addressing this same issue and received a letter from Vie in explanation of certain distributions. On July 24, 2013, Vie forwarded several more missing bank statements.** Up until the submittal date of this report, West communicated with Vie for clarification on certain deposits or disbursements.

## III. Work Performed by Accountants

Upon receipt of the first batch of records from Vie, West had his staff reconcile the paper records received with those in pdf on the CD and with the scheduled listing of records turned over and those not yet turned over. When the Quicken files were received and opened, they were download, reviewed and converted into excel spreadsheets for use by West's staff. **It is West's opinion that the Quicken files kept by the defendant(s) were more for use as an electronic checkbook to keep bank balances as opposed to a more fully integrated bookkeeping system.** To some extent the Quicken files did serve as



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an outline for the subsequent work done by West. West set up a client account in QuickBooks to serve as an accounting database to compile the income and expense report for the trust. Once the chart of accounts was set up, all of the cash receipt and cash disbursement activity reflected on the Quicken files and bank statements were entered into QuickBooks. Some of the disbursements Pfrom the bank accounts did not have cancelled checks associated with the bank statements. A great many disbursements did not have support to document them reflecting the recipient, what was being paid for and the like. West had to rely on descriptions he found in the Quicken records, bank statements or elsewhere in the documents given to him. West has also relied on information/explanations supplied to him in a letter by the defendants' attorney dated July 15, 2013. In summary, West was not given unrelated third party documentation for many of the disbursements run through the bank accounts. The entry of these receipts and disbursements was extremely time consuming; Approximately a thousand entries were made into the QuickBooks database in order to record them. These entries were made only after reviewing related documents provided and ascertaining how best to record the entries. Additionally, paid bills or invoices, if present for reviewing, were compared to the bank disbursements.

West was also given brokerage account statements for three Edward Jones accounts and twelve dividend reinvestment accounts for either Chevron or ExxonMobil. West's staff had to do a reconciliation of monthly or quarterly reports for each account and/or transfers between them. This activity was entered via journal entries. The entry of these stock type accounts was also extremely time consuming, approximately five hundred entries were made into the QuickBooks database in order to record them after a careful

review and analysis of the respective account statements covering a two and a half year time frame. Numerous work papers were prepared to analyze: 1. transfers between accounts; 2. stock dividends reinvested; and, 3. stocks which were either sold or distributed.

West has used his best judgment in classifying the receipts and disbursements into account categories on the income and expense report. **West requested that the defendants provide him with all the accounting information of the trust(s) and he is relying upon the belief they have complied and there are no other available records to be turned over.** West has relied on the information given to him and interpreted as best he could. West reserves the right to amend the report as needed as new and additional information becomes available.

## IV. Summary of Accounts Reviewed

For the purposes of this Report, the following bank and stock accounts activity for the applicable periods have been recorded for the preparation of the income and expense report contained herein:

Bank of America account # [redacted]-1143

Bank of America account # [redacted]-3523

Bank of America account # [redacted]-8577

Bank of America account # [redacted]-9546

Bank of America account # [redacted]-6643

Bank of America account # [redacted]-3536

Edward Jones account # [redacted]5-1-6



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Edward Jones account # [redacted]6-1-9

Edward Jones account # [redacted]9-1-8

Chevron dividend reinvestment account (Bank of New York)

Chevron dividend reinvestment account # C[redacted]9415

Chevron dividend reinvestment account # C[redacted]9407

Chevron dividend reinvestment account # C[redacted]9423

John Deere dividend reinvestment account

ExxonMobil dividend reinvestment account # C[redacted]0102

ExxonMobil dividend reinvestment account # C[redacted]6261

ExxonMobil dividend reinvestment account # C[redacted]6287

ExxonMobil dividend reinvestment account # C[redacted]7769

ExxonMobil dividend reinvestment account # C[redacted]7777

ExxonMobil dividend reinvestment account # C[redacted]3319

ExxonMobil dividend reinvestment account # C[redacted]3301

## V. Report Exceptions and Missing Documents

In our review, we noted that we did not receive copies of approximately thirteen checks. We relied upon other information provided by the defendants to reflect the payee and categorize the type of expense incurred. We were supplied with a limited number of paid bills and invoices supporting many of the disbursements and payments made. Again we relied on the various types of information provided to us to categorize the type of expense paid. We did not receive monthly statements for payments made on a Bank of America credit card. These payments are reflected in summary on the report (Exhibit 1) and also in

the detail of accounts (Exhibit 2). The categorization of these payments can be amended should the statements and supporting documents be received.

The following account statements were not received and the activity for the periods has not been recorded in the report:

Bank of America checking accounting #[redacted]-9546, 12/14/2011 to 5/31/13.

Edward Jones account #[redacted]5-1-6, 4/26/2013 to 5/31/2013.

Chevron dividend reinvestment account #[redacted]9423 12/31/2011 to 5/31/2013

ExxonMobil dividend reinvestment account #[redacted]6287 9/30/2012 to 5/31/2013

John Deere dividend reinvestment account (summary provided, but no monthly reports)

Met Life dividend reinvestment account (summary provided, but no monthly reports)

**VI. Stock Distributed/Dividend Reinvestment Account Information**

During the period, a number of Dividend Reinvestment Accounts ("DRP") were maintained. The information we received included accounts with Chevron Corporation ("CVX") shares, Exxon/Mobil Corporation ("XOM") shares, Deere and Company ("DE") shares and MetLife Inc ("MET") shares. When shares were distributed to the beneficiaries or parties in interest, the transaction was accounted for on the QuickBooks database at the fair market value at the time of the distribution or transfer. The fair market value was determined from historical records of stock prices at the close of the date of the transaction. These amounts may or may not be the actual amounts realized by the individuals receiving the stock. Please refer to Exhibit 3 in relation to this section.

At the beginning of the review period, there were 1,292.2088 shares of CVX and 4,010.20048 shares of XOM according to the records we received. According to account information provided to us 95 shares of MET were attributable to the estate and 9.5807 shares of DE were never transferred to the Nelva Brunsting Survivor's Trust.

During the review period, 675 shares of CVX were transferred as follows:

Anita Brunsting received 135 shares
Ann Brunsting UGMA received 135 shares
Jack Brunsting UGMA received 135 shares
Katie Riley UGMA received 135 shares
Luke Riley received 135 shares.

During the review period, 2,675 shares of XOM were transferred as follows:

Amy Brunsting received 1,120 shares
Carole Brunsting received 1,325 shares
Anita Brunsting received 160 shares
Candy Curtis received 160 shares.

Dividends were reinvested in stocks purchased at the fair market values at the time of the transactions as follows:

CVX shares purchased were 84.83095
XOM shares purchased were 60.51429
DE shares purchased were 0.04946

Partial shares were sold as follows:

XOM shares sold were 0.79847
DE shares sold were 0.9117

612 CVX shares were maintained in an account not under control of Anita Brunsting at the beginning of the review period, but were eventually transferred into the main CVX DRP account. A final accounting of 37.131 shares of CVX stock could not be determined since reports after 12/31/2011 were unavailable for one of the DRP accounts.

4.42786 shares of XOM were unaccounted for because reports after 9/30/2012 were unavailable from one of the DRP accounts.

95 shares of MET were attributed to the trust information, however the only reports reflecting information on these shares were dated late in the review period and did not show whether the shares were available to the estate at the beginning of the period.

Only 0.04946 shares of DE were attributed to the estate at the end of the period. No reports reflected the balance as of the beginning of the period and 8.669 shares were not accounted for during the period.

At the end of the review period, 1,276.88344 shares of CVX, 1,300.25643 shares of XOM, 0.04946 shares of DE and 95 shares of MET were available to the trust.

**VII. Comments on Certain Accounts**

In the Income/Receipts section of the report there are accounts titled *Long Term Capital Gains– Funds and Short Term Capital Gains– Funds*. These amounts do not represent sales made by the Trust, per se, but rather sales of securities made by stock or bond funds held in the Trust accounts and then passed on to the Trust.

In the Expense/Distributions section of the report there is an account titled *Cash/Check to Family Members*. This account represents cash, checks, electronic fund transfers paid or sent to family members or payments made for the benefit of family members, as best as West could ascertain. In Exhibit 2, the detail of accounts, there is a



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listing of the payments found that fit this account category. In the information provided to West, *many* of the payments are noted as *reimbursement* to family members for expenses (trustee fees, legal fees, repairs, work performed, etc.) incurred on behalf of the trust and are noted as such in the memo section of the detail of accounts. Also the July 15, 2013, letter from Vie in explanation of certain distributions is referenced here in regard to certain distributions. It is important to note this section lists distributions out of bank accounts to or for the benefit of family members. It does not list distributions of stock which are listed separately in the last section of the Statement of Income/Receipts and Expenses/Distributions and the related Section VI above and in Exhibit 3.

An account titled *Payments to Credit Cards* is included in the Expense/Distributions section of the report. This account reflects payments made on credit cards for which we could not find supporting documentation *or* ascertain how the amounts should be allocated to other Expense/Disbursement accounts. Section V above addresses Bank of America credit card payments and lack of statements and supporting documents. There were also payments to a Bluebonnet credit card account (also referenced as "Cardmember Services" in information given to us), for which we were given monthly statements and some supporting documentation. Due to the general lack of supporting documents for these payments they have been placed into this account.

**VIII. Summation**

In this case I have been asked to prepare an accounting to help the Court consider the issues in dispute. I have undertaken an analysis of the books and records provided to me. It



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is my belief that all my requests for information from the various parties were reasonable and that I **made it clear I wanted all available records.** This report has been based on all records received to date. The report can be amended should additional records be received if so directed by the Court. This report has been made in good faith.

Respectfully submitted on this 31st day of July, 2013.

**William G. West**

William G. West

12345 Jones Rd., Suite 120
Houston, TX 77070

# EXHIBIT 1

# Brunsting Family Living Trust

## Statement of Income/Receipts & Expenses/Disbursements

### December 21, 2010 through May 31, 2013

| | |
|---|---|
| **Income/Receipts** | |
| **Farm/Rental Income** | $127,790.41 |
| **Investment Income** | |
| **Dividend Income** | 28,321.46 |
| **Interest Income** | 3,085.05 |
| **Long Term Capital Gains - Funds** | 1,047.31 |
| **Short Term Capital Gains- Funds** | 489.10 |
| **Stock Sales less Broker Fees** | 183,662.79 |
| **Total Investment Income** | 216,605.71 |
| **Miscellaneous Income** | 6,460.73 |
| **Pension Income** | 8,303.58 |
| **Proceeds from Sale of Home** | 433,392.05 |
| **Social Security Income** | 17,800.00 |
| **Tax Refunds** | 19,816.87 |
| **Total Income/Receipts** | 830,169.35 |
| **Expenses/Disbursements** | |
| **Automobile Expense** | 2,965.76 |
| **Bank & Brokerage Charges** | 8,540.62 |
| **Checks/Cash to Family Members** | 108,924.91 |
| **Dues and Subscriptions** | 278.47 |
| **Food/Dining/Groceries** | 5,958.67 |
| **Funeral** | 3,556.29 |
| **Household** | 1,237.20 |
| **Insurance Expense** | 4,737.88 |
| **Lawn Care** | 1,262.00 |
| **Legal Fees** | 36,312.44 |
| **Medical Expenses** | |
| **In Home Care** | 119,232.61 |
| **Medical Supplies** | 65.47 |
| **Medical Expenses - Other** | 2,568.98 |
| **Total Medical Expenses** | 121,867.06 |
| **Miscellaneous Expenses** | 6,753.72 |
| **Office Supplies** | 63.70 |
| **Payments to Credit Cards** | |
| **Bank of America Credit Cards** | 14,042.99 |
| **Bluebonnet Credit Union Cred Cd** | 11,986.96 |
| **Total Payments to Credit Cards** | 26,029.95 |


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**Brunsting Family Living Trust**

# Statement of Income/Receipts & Expenses/Disbursements

**December 21, 2010 through May 31, 2013**

| | |
|---|---|
| **Personal Care** | 798.14 |
| **Pet Care** | |
| **Pet Food and Supplies** | 69.68 |
| **Veterinary Expenses** | 1,976.24 |
| **Total Pet Care** | 2,045.92 |
| **Postage** | 78.15 |
| **Professional Fees** | 7,563.86 |
| **Repairs and Maintenance** | 783.31 |
| **Supplies** | 29.83 |
| **Taxes** | |
| **Taxes - Federal** | 53,416.00 |
| **Taxes - Property** | 9,811.99 |
| **Taxes - State** | 4,793.00 |
| **Total Taxes** | 68,020.99 |
| **Telephone Expense** | 4,519.17 |
| **Utilities** | |
| **Cable TV** | 776.41 |
| **Electricity** | 2,259.90 |
| **Gas** | 942.66 |
| **Water** | 2,537.22 |
| **Total Utilities** | 6,516.19 |
| **Total Expenses/Disbursements** | 418,844.23 |
| **Net of Income/Receipts & Expenses/Disbursements** | 411,325.12 |
| **Less Stock Distributed to Family Members** | |
| **Value of Stock Transferred Out** | 298,976.80 |
| **Net of Income/Receipts & Expenses/Disbursements Less Value of Stock Distributed** | **$112,348.32** |


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# EXHIBIT 2

# Brunsting Family Living Trust
## Detail of Accounts
### 12/21/2010-05/31/2013

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| **Ordinary Income/Expense** | | | | | | | |
| **Income** | | | | | | | |
| **Farm/Rental Income** | | | | | | | |
| General Journal | 3/1/2011 | EJ20120458 | | Invest inc - Farm | Nelva | 15,540.40 | 15,540.40 |
| General Journal | 9/29/2011 | EJ20120476 | | Farm inc - invest inc | Nelva | 15,510.00 | 31,050.40 |
| General Journal | 10/5/2012 | EJ20120442 | | Farm Rent | Elmer | 26,437.50 | 57,487.90 |
| General Journal | 1/11/2013 | EJ20120437 | | Farm Rent | Elmer | 13,902.51 | 71,390.41 |
| General Journal | 3/2/2013 | EJ20120450 | | Farm Rent | Elmer | 29,962.50 | 101,352.91 |
| General Journal | 3/5/2013 | EJ20120438 | | Farm Rent | Elmer | 26,437.50 | 127,790.41 |
| Total Farm/Rental Income | | | | | | 127,790.41 | 127,790.41 |
| **Investment Income** | | | | | | | |
| **Dividend Income** | | | | | | | |
| General Journal | 12/21/2010 | EJ20101223 | | Dividends on Capital Income Builder Fund A | Survivor | 60.19 | 60.19 |
| General Journal | 12/22/2010 | EJ20101212 | | Dividends on Dodge & Cox Intl Stock Fund | Elmer | 368.36 | 428.55 |
| General Journal | 12/22/2010 | EJ20101212 | | Dividends on Dodge & Cox Income Fund | Elmer | 325.77 | 754.32 |
| General Journal | 12/27/2010 | EJ20101213 | | Dividend on Investment Co of America Cl F1 | Elmer | 112.43 | 866.75 |
| General Journal | 12/27/2010 | EJ20101213 | | Dividend on Pioneer Fund Cl Y | Elmer | 62.73 | 929.48 |
| General Journal | 12/28/2010 | EJ20101214 | | Dividend on New World Fund Cl F1 | Elmer | 77.32 | 1,006.80 |
| General Journal | 12/30/2010 | EJ20101215 | | Dividend on Oppnhmr Cmd Strat Ttl Rtn Cl Y | Elmer | 200.58 | 1,207.38 |
| General Journal | 12/31/2010 | EJ20101216 | | Dividend from Oppenheimer Intl Bond Fund Y | Elmer | 33.39 | 1,240.77 |
| General Journal | 12/31/2010 | EJ20101216 | | Dividend on Money Market | Elmer | 0.01 | 1,240.78 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in Fed Money Market Instl Cl | Elmer | 0.05 | 1,240.83 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in DWS Small Cap Value Fund Instl | Elmer | 4.39 | 1,245.22 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in ING Global Real Estate Fund I | Elmer | 146.39 | 1,391.61 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in JPMorgan Core Bond Fund | Elmer | 78.79 | 1,470.40 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in JP Morgan High Yield Fd | Elmer | 35.40 | 1,505.80 |
| General Journal | 1/3/2011 | EJ20110105 | | Dividends Reinvested in T Rowe Price New Inc Fd | Elmer | 73.83 | 1,579.63 |
| General Journal | 1/28/2011 | EJ20110128 | | Dividends on Dow Chemical Co | Survivor | 24.60 | 1,604.23 |
| General Journal | 1/31/2011 | EJ20110130 | | Dividends on Stryker Corp | Survivor | 33.51 | 1,637.74 |
| General Journal | 2/1/2011 | EJ 20110201 | | Dividends on Deere & Co Stk | Survivor | 573.65 | 2,211.39 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from JPMorgan Core Bond Fund | Elmer | 75.01 | 2,286.40 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from JPMorgan High Yield Fund | Elmer | 31.82 | 2,318.22 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from Oppenheimer Intl Bond Fund | Elmer | 26.65 | 2,344.87 |
| General Journal | 2/1/2011 | EJ20110201 | | Dividends from T Rowe Price New Income Fund | Elmer | 63.83 | 2,408.70 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on JPMorgan Core Bond Fund | Elmer | 73.22 | 2,481.92 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on JPMorgan High YieldFd | Elmer | 28.77 | 2,510.69 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 25.14 | 2,535.83 |
| General Journal | 3/1/2011 | EJ20110301 | | Dividends on T Rowe Price New Income Fund | Elmer | 66.69 | 2,602.52 |
| General Journal | 3/7/2011 | EJ20110304 | | Dividend on Investment Co of America Cl F1 | Elmer | 81.32 | 2,683.84 |
| General Journal | 3/10/2011 | EJ20110321 | | Dividends on Chevron Corp | Survivor | 66.96 | 2,750.80 |
| General Journal | 3/11/2011 | DR12110301 | | Dividends on Chevron Stock | Family | 930.39 | 3,681.19 |
| General Journal | 3/21/2011 | EJ20110322 | | Dividends on Capital Income Builder Fund A | Survivor | 40.69 | 3,721.88 |
| General Journal | 3/25/2011 | EJ20110307 | | Dividends on Columbia Mid Cap Value Fd Cl Z | Elmer | 5.86 | 3,727.74 |
| General Journal | 3/25/2011 | EJ20110307 | | Dividends on DWS Small Cap Value Fund Instl | Elmer | 29.55 | 3,757.29 |
| General Journal | 3/25/2011 | EJ20110307 | | Dividends on Pioneer Fund Cl Y | Elmer | 55.34 | 3,812.63 |
| General Journal | 3/28/2011 | EJ20110309 | | Dividends From Thornburg Invt Value Fd | Elmer | 4.67 | 3,817.30 |
| General Journal | 3/29/2011 | EJ20110310 | | Dividends from Dodge & Cox Income Fund | Elmer | 273.60 | 4,090.90 |
| General Journal | 3/30/2011 | EJ20110311 | | Dividends on T Rowe Price Equity Fd | Elmer | 68.64 | 4,159.54 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on JPMorgan Core Bond Fund | Elmer | 75.49 | 4,235.03 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on JPMorgan High Yield Fd | Elmer | 33.22 | 4,268.25 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on Oppenheimer Intl Bond Fund | Elmer | 26.87 | 4,295.12 |
| General Journal | 4/1/2011 | EJ20110401 | | Dividends on T Rowe Price New Income Fund | Elmer | 66.69 | 4,361.81 |
| General Journal | 4/4/2011 | EJ20110402 | | Dividends on ING Global Real Estate Fund I | Elmer | 54.86 | 4,416.67 |
| General Journal | 4/29/2011 | EJ20110425 | | Dividends on Stryker Corp | Survivor | 33.62 | 4,450.29 |
| General Journal | 4/29/2011 | EJ20110425 | | Dividends on Dow Chemical Corp | Survivor | 24.60 | 4,474.89 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on Deere & Co | Survivor | 435.05 | 4,909.94 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on JPMorgan Core Bond Fund | Elmer | 73.68 | 4,983.62 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 34.05 | 5,017.67 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 27.64 | 5,045.31 |
| General Journal | 5/2/2011 | EJ20110501 | | Dividends on T Rowe Price New Income Fund | Elmer | 72.37 | 5,117.68 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on JPMorgan Core Bond Fund | Elmer | 75.94 | 5,193.62 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on JPMorgan High Yield Fund | Elmer | 33.56 | 5,227.18 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on Oppenheimer Intl Bond Fund | Elmer | 26.54 | 5,253.72 |
| General Journal | 6/1/2011 | EJ20110601 | | Dividends on T Rowe Price New Income Fund | Elmer | 66.95 | 5,320.67 |
| General Journal | 6/10/2011 | EJ20110622 | | Dividend Reinvestment on XOM Stk 7777 | Survivor | 461.53 | 5,782.20 |
| General Journal | 6/10/2011 | EJ20110622 | | Dividend Reinvestment on CVX Stk | Nelva | 547.75 | 6,329.95 |
| General Journal | 6/10/2011 | EJ20110622 | | Dividend Reinvestment on CVX Stk 9415 | Elmer | 461.45 | 6,791.40 |
| General Journal | 6/13/2011 | EJ20110602 | | Dividends on Investment Co of America Cl F1 | Elmer | 81.34 | 6,872.74 |
| General Journal | 6/23/2011 | EJ20110603 | | Dividends on Columbia Mid Cap Value Fd Cl Z | Elmer | 13.58 | 6,886.32 |
| General Journal | 6/24/2011 | EJ20110605 | | Dividends on Pioneer Fund | Elmer | 70.20 | 6,956.52 |
| General Journal | 6/28/2011 | EJ20110608 | | Dividends on Dodge & Cox Income Fund | Elmer | 264.88 | 7,221.40 |
| General Journal | 6/29/2011 | EJ20110609 | | Dividends on T Rowe Price Equity Income Fd | Elmer | 83.36 | 7,304.76 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 71.68 | 7,376.44 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 30.38 | 7,406.82 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on Oppenheimer Intl Bond Fund | Elmer | 27.12 | 7,433.94 |
| General Journal | 7/1/2011 | EJ20110701 | | Dividends on T Rowe Price New Income Fund | Elmer | 70.47 | 7,504.41 |
| General Journal | 7/5/2011 | EJ20110702 | | Dividends on ING Global Real Estate Fund I | Elmer | 52.94 | 7,557.35 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on Deere & Co | Survivor | 254.20 | 7,811.55 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 69.82 | 7,881.37 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 31.82 | 7,913.19 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 27.92 | 7,941.11 |
| General Journal | 8/1/2011 | EJ20110801 | | Dividends on T Rowe Price New Income Fund | Elmer | 69.49 | 8,010.60 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 73.97 | 8,084.57 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 32.63 | 8,117.20 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 25.71 | 8,142.91 |
| General Journal | 9/1/2011 | EJ20110901 | | Dividends on T Rowe Price New Income Fund | Elmer | 70.82 | 8,213.73 |
| General Journal | 9/9/2011 | EJ20110136 | | Exxon Invest Inc | Survivor | 274.01 | 8,487.74 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 9/9/2011 | EJ20110921 | | Dividend Reinvestment of XOM Stk 7777 | Survivor | 313.80 | 8,801.54 |
| General Journal | 9/9/2011 | EJ20110921 | | Dividend Reinvestment of Chevron Stk | Nelva | 28.50 | 8,830.04 |
| General Journal | 9/9/2011 | EJ20110921 | | Dividend Reinvestment of Chevron Stk 9415 | Elmer | 465.04 | 9,295.08 |
| General Journal | 9/19/2011 | EJ20110904 | | Dividends on Investment Co of America Cl F1 | Elmer | 83.95 | 9,379.03 |
| General Journal | 9/23/2011 | EJ20110908 | | Dividend on Pioneer Fund Cl Y | Elmer | 78.19 | 9,457.22 |
| General Journal | 9/27/2011 | EJ20110907 | | Dividends on Columbia Mid Cap Value Fd Cl Z | Elmer | 14.76 | 9,471.98 |
| General Journal | 9/28/2011 | EJ20110909 | | Dividends on Dodge & Cox Income Fund | Elmer | 186.06 | 9,658.04 |
| General Journal | 9/29/2011 | EJ20110910 | | Dividends on T Rowe Price Equity Income Fd | Elmer | 88.37 | 9,746.41 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 42.25 | 9,788.66 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 28.14 | 9,816.80 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 26.16 | 9,842.96 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on Pimco Tot Ret Fd IV Inst Cl | Elmer | 2.25 | 9,845.21 |
| General Journal | 10/3/2011 | EJ20111001 | | Dividends on T Rowe Price New Income Fund | Elmer | 65.22 | 9,910.43 |
| General Journal | 10/4/2011 | EJ20111002 | | Dividends on ING Global Real Estate Fund I | Elmer | 49.75 | 9,960.18 |
| General Journal | 10/4/2011 | EJ20111002 | | Dividends on Loomis Sayles Invt Grade Bd Y | Elmer | 27.14 | 9,987.32 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on Deere & Co | Survivor | 254.20 | 10,241.52 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on JPMorgan Core Bond Fund Select | Elmer | 42.38 | 10,283.90 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on JPMorgan High Yield Fd Select | Elmer | 27.09 | 10,310.99 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on Oppenheimer Intl Bond Fund Y | Elmer | 22.68 | 10,333.67 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on Pimco Tot Ret Fd IV Inst Cl | Elmer | 10.42 | 10,344.09 |
| General Journal | 11/1/2011 | EJ20111101 | | Dividends on T Rowe Price New Income Fund | Elmer | 50.00 | 10,394.09 |
| General Journal | 11/2/2011 | EJ20111102 | | Dividends on Loomis Sayles Invt Grade Bd Y | Elmer | 28.43 | 10,422.52 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on JP Morgan Core Bond | Elmer | 40.15 | 10,462.67 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on JP Morgan High Yield | Elmer | 29.67 | 10,492.34 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on Oppenheimer Intl Bd | Elmer | 23.27 | 10,515.61 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on Pimco Total Return IV | Elmer | 13.84 | 10,529.45 |
| General Journal | 12/1/2011 | EJ20111212 | | Dividend on T Rowe Price New Income | Elmer | 50.92 | 10,580.37 |
| General Journal | 12/2/2011 | EJ20111213 | | Dividend on Loomis Sayles Inv Grade Bd | Elmer | 28.43 | 10,608.80 |
| General Journal | 12/9/2011 | EJ20110152 | | Exxon Div Income | Survivor | 274.01 | 10,882.81 |
| General Journal | 12/9/2011 | EJ20111215 | | Dividend on MFS Research International | Elmer | 335.71 | 11,218.52 |
| General Journal | 12/9/2011 | EJ20111221 | | Dividend Reinvestment of XOM Stk 7777 | Survivor | 315.83 | 11,534.35 |
| General Journal | 12/9/2011 | EJ20111221 | | Dividend Reinvestment of Chevron Stk | Nelva | 29.84 | 11,564.19 |
| General Journal | 12/9/2011 | EJ20111221 | | Dividend Reinvestment of Chevron Stk 9415 | Elmer | 487.02 | 12,051.21 |
| General Journal | 12/13/2011 | EJ20111216 | | Dividend on Columbia Mid Cap Value | Elmer | 26.01 | 12,077.22 |
| General Journal | 12/14/2011 | EJ20111217 | | Dividend on T Rowe Prce Equity Income | Elmer | 95.96 | 12,173.18 |
| General Journal | 12/20/2011 | EJ20111220 | | Dividend on DWS Small Cap Value | Elmer | 66.58 | 12,239.76 |
| General Journal | 12/21/2011 | EJ20111221 | | Dividend on Dodge & Cox Intl Stock | Elmer | 580.68 | 12,820.44 |
| General Journal | 12/21/2011 | EJ20111221 | | Dividend on Dodge & Cox Income | Elmer | 196.04 | 13,016.48 |
| General Journal | 12/22/2011 | EJ20111222 | | Dividend on Oppengeimer Common Strat Total Ret | Elmer | 285.22 | 13,301.70 |
| General Journal | 12/23/2011 | EJ20111223 | | Dividend on Investment Co of America | Elmer | 116.38 | 13,418.08 |
| General Journal | 12/23/2011 | EJ20111223 | | Dividend on Pioneer Fund | Elmer | 95.42 | 13,513.50 |
| General Journal | 12/27/2011 | EJ20111224 | | Dividend on Thornburg Value | Elmer | 7.84 | 13,521.34 |
| General Journal | 12/28/2011 | EJ20111225 | | Dividend on Loomis Sayles Inv Grade Bd | Elmer | 67.05 | 13,588.39 |
| General Journal | 12/28/2011 | EJ20111225 | | Dividend on New World | Elmer | 73.75 | 13,662.14 |
| General Journal | 12/30/2011 | EJ20111226 | | Dividend on Oppenheimer Intl Bd | Elmer | 118.46 | 13,780.60 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Morgan Fed Money Mkt | Elmer | 0.03 | 13,780.63 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on ING Global Real Estate | Elmer | 39.90 | 13,820.53 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Morgan Core Bond | Elmer | 41.21 | 13,861.74 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Morgan High Yield | Elmer | 30.00 | 13,891.74 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on JP Pimco Total Return IV | Elmer | 13.97 | 13,905.71 |
| General Journal | 1/3/2012 | EJ20120102 | | Dividends on T Rowe Price New Income | Elmer | 57.12 | 13,962.83 |
| General Journal | 1/10/2012 | EJ20120104 | | Dividends on Pimco Total Return IV | Elmer | 2.85 | 13,965.68 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on JPMorgan Core Bond Select Cl | Elmer | 37.79 | 14,003.47 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on JPMorgan High Yield Select Cl | Elmer | 25.27 | 14,028.74 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on Oppenheimer Intle Bd | Elmer | 25.02 | 14,053.76 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on Pimco Total Return IV INst Cl | Elmer | 15.86 | 14,069.62 |
| General Journal | 2/1/2012 | EJ20120201 | | Dividends on T Rowe Price New Income | Elmer | 47.63 | 14,117.25 |
| General Journal | 2/2/2012 | EJ20120202 | | Dividends on Loomis Sayles Inv Grade Bd Y | Elmer | 27.89 | 14,145.14 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on JP Morgan Core Bond Select Cl | Elmer | 36.71 | 14,181.85 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on JP Morgan High Yield Select Cl | Elmer | 27.26 | 14,209.11 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on Oppenheimer Intl Bd | Elmer | 23.99 | 14,233.10 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on Pimco Total Return IV Inst Cl | Elmer | 17.35 | 14,250.45 |
| General Journal | 3/1/2012 | EJ20120301 | | Dividends on T Rowe Price New Income | Elmer | 49.53 | 14,299.98 |
| General Journal | 3/2/2012 | EJ20120302 | | Dividends on Loomis Sayles Inv Grade Bd Y | Elmer | 27.36 | 14,327.34 |
| General Journal | 3/7/2012 | EJ20110154 | | Exxon div income | Survivor | 274.01 | 14,601.35 |
| General Journal | 3/9/2012 | EJ20120321 | | Dividend Reinvestment of XOM Stk 7777 | Survivor | 317.68 | 14,919.03 |
| General Journal | 3/9/2012 | EJ20120321 | | Dividend Reinvestment of CVX Stk 9415 | Survivor | 490.82 | 15,409.85 |
| General Journal | 3/15/2012 | EJ20120304 | | Dividends on Investment Co of America | Elmer | 78.17 | 15,488.02 |
| General Journal | 3/23/2012 | EJ20120305 | | Dividends on Pioneer Fund | Elmer | 77.25 | 15,565.27 |
| General Journal | 3/26/2012 | EJ20120306 | | Dividends on Columbia Mid Cap Value | Elmer | 10.25 | 15,575.52 |
| General Journal | 3/28/2012 | EJ20120307 | | Dividends on Dodge & Cox Income | Elmer | 189.13 | 15,764.65 |
| General Journal | 3/28/2012 | EJ20120307 | | Dividends on T Rowe Price Equity | Elmer | 93.48 | 15,858.13 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on JP Morgan Core Bond | Elmer | 37.99 | 15,896.12 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on JP Morgan High Yield | Elmer | 28.66 | 15,924.78 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on Oppenheimer Intl Bd | Elmer | 27.30 | 15,952.08 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on Pimco Total Return IV | Elmer | 17.89 | 15,969.97 |
| General Journal | 4/2/2012 | EJ20120401 | | Dividends on T Rowe Price New Income | Elmer | 51.76 | 16,021.73 |
| General Journal | 4/3/2012 | EJ20120402 | | Dividends on ING Global Real Estate | Elmer | 42.05 | 16,063.78 |
| General Journal | 4/3/2012 | EJ20120402 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.75 | 16,091.53 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on JP Morgan Core Bond | Elmer | 34.52 | 16,126.05 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on JP Morgan High Yield | Elmer | 23.81 | 16,149.86 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on Oppenheimer Intl Bd | Elmer | 22.93 | 16,172.79 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on Pimco Total Return IV | Elmer | 14.59 | 16,187.38 |
| General Journal | 5/1/2012 | EJ20120501 | | Dividends on T Rowe Price New Income | Elmer | 47.45 | 16,234.83 |
| General Journal | 5/2/2012 | EJ20120502 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.39 | 16,262.22 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on JP Morgan Core Bond | Elmer | 33.99 | 16,296.21 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 57.74 | 16,353.95 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on Oppenheimer Intl Bd | Elmer | 24.63 | 16,378.58 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on Pimco Total Return IV | Elmer | 15.12 | 16,393.70 |
| General Journal | 6/1/2012 | EJ20120601 | | Dividends on T Rowe Price New Income | Elmer | 50.82 | 16,444.52 |
| General Journal | 6/4/2012 | EJ20120602 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.34 | 16,471.86 |
| General Journal | 6/11/2012 | EJ20120604 | | Dividends on Investment Co of America | Elmer | 52.65 | 16,524.51 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in XOM Stk 7769 | Elmer | 332.31 | 16,856.82 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in XOM Stk 7777 | Survivor | 387.38 | 17,244.20 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in CVX Stk 9415 | Elmer | 549.72 | 17,793.92 |
| General Journal | 6/11/2012 | EJ20120621 | | Dividends Reinvested in CVX Stk 9407 | Elmer | 101.37 | 17,895.29 |
| General Journal | 6/18/2012 | EJ20120605 | | Dividends on Capital World Growth & Income | Elmer | 147.46 | 18,042.75 |
| General Journal | 6/22/2012 | EJ20120606 | | Dividends on Pioneer Fund | Elmer | 53.57 | 18,096.32 |
| General Journal | 6/25/2012 | EJ20120607 | | Dividends on Columbia Mid Cap Value | Elmer | 31.55 | 18,127.87 |
| General Journal | 6/27/2012 | EJ20120609 | | Dividends on Capital World Bond | Elmer | 30.40 | 18,158.27 |
| General Journal | 6/27/2012 | EJ20120609 | | Dividends on Dodg & Cox Income | Elmer | 128.94 | 18,287.21 |
| General Journal | 6/28/2012 | EJ20120610 | | Dividends on T Rowe Price Equity Income | Elmer | 96.35 | 18,383.56 |
| General Journal | 6/29/2012 | EJ20120611 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 58.09 | 18,441.65 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on JP Morgan Core Bond | Elmer | 32.90 | 18,474.55 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.05 | 18,491.60 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on Pimco Total Return IV | Elmer | 14.25 | 18,505.85 |
| General Journal | 7/2/2012 | EJ20120701 | | Dividends on T Rowe Price New Income | Elmer | 46.81 | 18,552.66 |
| General Journal | 7/3/2012 | EJ20120702 | | Dividends on ING Global Real Estate | Elmer | 51.95 | 18,604.61 |
| General Journal | 7/3/2012 | EJ20120702 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.87 | 18,631.48 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on JPMorgan Fed Mon Mkt | Elmer | 0.04 | 18,631.52 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on JPMorgan Core Bond | Elmer | 35.33 | 18,666.85 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 58.45 | 18,725.30 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on Oppenheimer Intl Bd | Elmer | 16.06 | 18,741.36 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on Pimco Total Return IV | Elmer | 11.10 | 18,752.46 |
| General Journal | 8/1/2012 | EJ20120801 | | Dividends on T Rowe Price New Income | Elmer | 42.96 | 18,795.42 |
| General Journal | 8/2/2012 | EJ20120802 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.14 | 18,822.56 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on JP Morgan Core Bond | Elmer | 33.06 | 18,855.62 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 58.81 | 18,914.43 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on Oppenheimer Intl Bd | Elmer | 18.18 | 18,932.61 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on Pimco Total Return IV | Elmer | 11.75 | 18,944.36 |
| General Journal | 9/4/2012 | EJ20120901 | | Dividends on T Rowe Price New Income | Elmer | 46.82 | 18,991.18 |
| General Journal | 9/5/2012 | EJ20120902 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.89 | 19,019.07 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in XOM Stk 7769 | Elmer | 334.71 | 19,353.78 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in XOM Stk 7777 | Survivor | 390.17 | 19,743.95 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in CVX Stk 9415 | Elmer | 554.60 | 20,298.55 |
| General Journal | 9/10/2012 | EJ20120921 | | Dividend Reinvestment in CVX Stk 9407 | Elmer | 114.44 | 20,412.99 |
| General Journal | 9/17/2012 | EJ20120904 | | Dividends on Investment Co of America | Elmer | 52.67 | 20,465.66 |
| General Journal | 9/21/2012 | EJ20120905 | | Dividends on Pioneer Fund | Elmer | 50.19 | 20,515.85 |
| General Journal | 9/24/2012 | EJ20120906 | | Dividends on Capital World Growth & Income | Elmer | 57.95 | 20,573.80 |
| General Journal | 9/26/2012 | EJ20120908 | | Dividends on Columbia Mid Cap Value | Elmer | 40.07 | 20,613.87 |
| General Journal | 9/26/2012 | EJ20120908 | | Dividends on Dodge & Cox Income | Elmer | 124.92 | 20,738.79 |
| General Journal | 9/27/2012 | EJ20120909 | | Dividends on T Rowe Price Equity Income | Elmer | 89.99 | 20,828.78 |
| General Journal | 9/28/2012 | EJ20120910 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 59.16 | 20,887.94 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on JP Morgan Core Bond | Elmer | 31.95 | 20,919.89 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on Oppenheimer Intl Bd | Elmer | 13.87 | 20,933.76 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on Pimco Total Return IV | Elmer | 9.14 | 20,942.90 |
| General Journal | 10/1/2012 | EJ20121001 | | Dividends on T Rowe Price New Income | Elmer | 36.25 | 20,979.15 |
| General Journal | 10/2/2012 | EJ20121002 | | Dividends on ING Global Real Estate | Elmer | 46.97 | 21,026.12 |
| General Journal | 10/2/2012 | EJ20121002 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.30 | 21,052.42 |
| General Journal | 10/9/2012 | EJ20121004 | | Dividends on Capital World Bond | Elmer | 23.09 | 21,075.51 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on JP Morgan Core Bond | Elmer | 30.84 | 21,106.35 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 59.51 | 21,165.86 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.63 | 21,183.49 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on Pimco Total Return IV | Elmer | 12.79 | 21,196.28 |
| General Journal | 11/1/2012 | EJ20121101 | | Dividends on T Rowe Price New Income | Elmer | 40.84 | 21,237.12 |
| General Journal | 11/2/2012 | EJ20121102 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.21 | 21,263.33 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on JP Morgan Core Bond | Elmer | 30.90 | 21,294.23 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 59.87 | 21,354.10 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.62 | 21,371.72 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on Pimco Total Return IV | Elmer | 13.77 | 21,385.49 |
| General Journal | 12/3/2012 | EJ20121201 | | Dividends on T Rowe Price New Income | Elmer | 42.81 | 21,428.30 |
| General Journal | 12/4/2012 | EJ20121202 | | Dividends on Loomis Sales Inv Grade Bd | Elmer | 26.84 | 21,455.14 |
| General Journal | 12/4/2012 | EJ20121202 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 60.23 | 21,515.37 |
| General Journal | 12/7/2012 | EJ20121204 | | Dividends on Blackrock Cap App | Elmer | 45.22 | 21,560.59 |
| General Journal | 12/7/2012 | EJ20121204 | | Dividends on Oppenheimer Rising Divid Fd Y | Elmer | 57.90 | 21,618.49 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment XOM Stk 6261 | Elmer | 334.71 | 21,953.20 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment XOM Stk 3301 | Nelva | 390.17 | 22,343.37 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment CVX Stk 9415 | Elmer | 4.36 | 22,347.73 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment CVX Stk 9407 | Elmer | 4.35 | 22,352.08 |
| General Journal | 12/10/2012 | EJ20121221 | | Dividend Reinvestment CVX Stk 9423 | Elmer | 1,110.22 | 23,462.30 |
| General Journal | 12/12/2012 | EJ20121206 | | Dividends on MFS Research International | Elmer | 316.70 | 23,779.00 |
| General Journal | 12/14/2012 | EJ20121208 | | Dividends on Columbia Mid Cap Value | Elmer | 33.89 | 23,812.89 |
| General Journal | 12/14/2012 | EJ20121208 | | Dividends on T Rowe Price Equity Income | Elmer | 111.31 | 23,924.20 |
| General Journal | 12/17/2012 | EJ20121209 | | Dividends on Capital World Growth & Income | Elmer | 97.20 | 24,021.40 |
| General Journal | 12/17/2012 | EJ20121209 | | Dividends on Fidelity New Insights | Elmer | 13.61 | 24,035.01 |
| General Journal | 12/20/2012 | EJ20121210 | | Dividends on Dodge & Cox Intl Stock | Elmer | 303.81 | 24,338.82 |
| General Journal | 12/20/2012 | EJ20121210 | | Dividends on DWS Small Cap Value | Elmer | 75.04 | 24,413.86 |
| General Journal | 12/20/2012 | EJ20121210 | | Dividends on Dodge & Cox Income | Elmer | 109.20 | 24,523.06 |
| General Journal | 12/21/2012 | EJ20121211 | | Dividends on Capital World Bond | Elmer | 31.56 | 24,554.62 |
| General Journal | 12/24/2012 | EJ20121212 | | Dividends on Investment Co of America | Elmer | 137.47 | 24,692.09 |
| General Journal | 12/24/2012 | EJ20121212 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 75.83 | 24,767.92 |
| General Journal | 12/27/2012 | EJ20121213 | | Dividends on New World | Elmer | 110.57 | 24,878.49 |
| General Journal | 12/28/2012 | EJ20121214 | | Dividends on Oppenheimer Rising Divid Fd Y | Elmer | 43.70 | 24,922.19 |
| General Journal | 12/28/2012 | EJ20121214 | | Dividends on Pimco Total Return IV | Elmer | 65.59 | 24,987.78 |
| General Journal | 12/31/2012 | EJ20121215 | | Dividends on Oppenheimer Intl Bd | Elmer | 15.74 | 25,003.52 |
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on ING Global Real Estate | Elmer | 201.20 | 25,204.72 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on JP Morgan Core Bond | Elmer | 36.97 | 25,241.69 |
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on Pimco Total Return IV | Elmer | 10.56 | 25,252.25 |
| General Journal | 1/2/2013 | EJ20130101 | | Dividends on T Rowe Price New Income | Elmer | 38.09 | 25,290.34 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on JP Morgan Core Bond | Elmer | 28.70 | 25,319.04 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 60.59 | 25,379.63 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.37 | 25,397.00 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on Pimco Total Return IV | Elmer | 8.54 | 25,405.54 |
| General Journal | 2/1/2013 | EJ20130201 | | Dividends on T Rowe Price New Income | Elmer | 35.87 | 25,441.41 |
| General Journal | 2/4/2013 | EJ20130202 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.43 | 25,467.84 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on JP Morgan Core Bond | Elmer | 29.95 | 25,497.79 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 60.95 | 25,558.74 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on Oppenheimer Intl Bd | Elmer | 16.53 | 25,575.27 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on Pimco Total Return IV | Elmer | 9.68 | 25,584.95 |
| General Journal | 3/1/2013 | EJ20130301 | | Dividends on T Rowe Price New Income | Elmer | 37.06 | 25,622.01 |
| General Journal | 3/4/2013 | EJ20130302 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.61 | 25,649.62 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on XOM Stk 3319 | Elmer | 1.72 | 25,651.34 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on XOM Stk 6261 | Elmer | 336.88 | 25,988.22 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on XOM Stk 3301 | Nelva | 392.70 | 26,380.92 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on CVX Stk 9415 | Elmer | 4.41 | 26,385.33 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on CVX Stk 9407 | Elmer | 4.39 | 26,389.72 |
| General Journal | 3/11/2013 | EJ20130321 | | Dividend Reimbursement on CVX Stk 9423 | Elmer | 1,122.04 | 27,511.76 |
| General Journal | 3/14/2013 | EJ20130304 | | Dividends on Investment Co of America | Elmer | 53.50 | 27,565.26 |
| General Journal | 3/18/2013 | EJ20130305 | | Dividends on Capital World Growth & Income | Elmer | 61.70 | 27,626.96 |
| General Journal | 3/22/2013 | EJ20130307 | | Dividends on DWS Small Cap Value | Elmer | 42.72 | 27,669.68 |
| General Journal | 3/25/2013 | EJ20130308 | | Dividends on Columbia Mid Cap Value | Elmer | 25.46 | 27,695.14 |
| General Journal | 3/27/2013 | EJ20130309 | | Dividends on Capital World Bond | Elmer | 23.47 | 27,718.61 |
| General Journal | 3/27/2013 | EJ20130309 | | Dividends on Dodge & Cox Income | Elmer | 111.08 | 27,829.69 |
| General Journal | 3/27/2013 | EJ20130309 | | Dividends on T Rowe Price Equity Income | Elmer | 77.55 | 27,907.24 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on JP Morgan Core Bond | Elmer | 30.02 | 27,937.26 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 61.31 | 27,998.57 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.62 | 28,016.19 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on Pimco Total Return IV | Elmer | 12.00 | 28,028.19 |
| General Journal | 4/1/2013 | EJ20130401 | | Dividends on T Rowe Price New Income | Elmer | 37.30 | 28,065.49 |
| General Journal | 4/2/2013 | EJ20130402 | | Dividends on ING Global Real Estate | Elmer | 40.72 | 28,106.21 |
| General Journal | 4/2/2013 | EJ20130402 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 27.34 | 28,133.55 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on JP Morgan Core Bond | Elmer | 30.08 | 28,163.63 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on Mainstay High Yield Corp Bd | Elmer | 61.67 | 28,225.30 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on Oppenheimer Intl Bd | Elmer | 17.94 | 28,243.24 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on Pimco Total Return IV | Elmer | 13.27 | 28,256.51 |
| General Journal | 5/1/2013 | EJ20130501 | | Dividends on T Rowe Price New Income | Elmer | 38.30 | 28,294.81 |
| General Journal | 5/2/2013 | EJ20130502 | | Dividends on Loomis Sayles Inv Grade Bd | Elmer | 26.65 | 28,321.46 |
| Total Dividend Income | | | | | | 28,321.46 | 28,321.46 |
| **Interest Income** | | | | | | | |
| General Journal | 12/27/2010 | EJ 20101202 | | Interest on VK Bld Amer Bonds | Survivor | 67.90 | 67.90 |
| General Journal | 12/27/2010 | EJ 20101202 | | Interest on Invsco Bld Amer Bds | Survivor | 23.70 | 91.60 |
| General Journal | 12/31/2010 | EJ 20101203 | | Interest for December | Survivor | 0.03 | 91.63 |
| General Journal | 1/20/2011 | EJ 20110102 | | Interest on Toyota Moter Cr Corp | Survivor | 25.00 | 116.63 |
| General Journal | 1/25/2011 | EJ 20110103 | | Interest on VK Bld Amer Bonds | Survivor | 67.90 | 184.53 |
| General Journal | 1/25/2011 | EJ 20110103 | | Interest on VK Bld Amer Bonds | Survivor | 51.00 | 235.53 |
| General Journal | 2/22/2011 | EJ 20110204 | | Interest on Toyota Motor Cr Corp | Survivor | 25.00 | 260.53 |
| General Journal | 2/22/2011 | EJ 20110204 | | Interest on Money Market Fund | Survivor | 0.01 | 260.54 |
| General Journal | 2/25/2011 | EJ 20110205 | | Interest on VK Bld Amer Bonds Incm | Survivor | 68.04 | 328.58 |
| General Journal | 2/25/2011 | EJ 20110205 | | Interest on Invsco Bld Amer Bonds Incm | Survivor | 50.90 | 379.48 |
| General Journal | 3/15/2011 | EJ 20110301 | | Interest on GMAC Smartnotes | Survivor | 317.25 | 696.73 |
| General Journal | 3/21/2011 | EJ 20110302 | | Interest on Toyota Motor Cr Corp | Survivor | 25.00 | 721.73 |
| General Journal | 3/25/2011 | EJ 20110303 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.90 | 789.63 |
| General Journal | 3/25/2011 | EJ 20110303 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 51.00 | 840.63 |
| General Journal | 4/14/2011 | EJ 20110402 | | Accrued Int - Sale of Toyota Motor Cr Corp | Survivor | 20.00 | 860.63 |
| General Journal | 4/14/2011 | EJ 20110402 | | Accrued Interest Sale of GMAC SmartNotes | Survivor | 51.11 | 911.74 |
| General Journal | 4/15/2011 | EJ20110421 | | Interest on GE Capital Corp Internotes | Survivor | 333.13 | 1,244.87 |
| General Journal | 4/20/2011 | EJ 20110403 | | Proceeds from Sale of In Fin Auth Rev Parkview Hlth | Survivor | 387.29 | 1,632.16 |
| General Journal | 4/25/2011 | EJ 20110404 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.76 | 1,699.92 |
| General Journal | 4/25/2011 | EJ 20110404 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 50.90 | 1,750.82 |
| General Journal | 5/13/2011 | EJ20110521 | | Sell GE Capital Corp Internotes | Survivor | 51.82 | 1,802.64 |
| General Journal | 5/13/2011 | EJ20110521 | | Sell GMAC Smartnotes | Survivor | 277.50 | 2,080.14 |
| General Journal | 5/23/2011 | EJ20110523 | | Interest on Money Market Funds | Survivor | 0.93 | 2,081.07 |
| General Journal | 5/25/2011 | EJ20110502 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.76 | 2,148.83 |
| General Journal | 5/25/2011 | EJ20110502 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 51.00 | 2,199.83 |
| General Journal | 6/21/2011 | EJ20110621 | | Interest on Money Market Funds | Survivor | 0.30 | 2,200.13 |
| General Journal | 6/27/2011 | EJ20110604 | | Interest on VK Bld Amer Bonds | Survivor | 67.90 | 2,268.03 |
| General Journal | 6/27/2011 | EJ20110604 | | Interest on Invsco Bld Amer Bds | Survivor | 50.90 | 2,318.93 |
| General Journal | 7/25/2011 | EJ20110701 | | Interest on VK Bld Amer Bonds | Survivor | 67.76 | 2,386.69 |
| General Journal | 7/25/2011 | EJ20110701 | | Interest on VK Bld Amer Bonds | Survivor | 51.00 | 2,437.69 |
| General Journal | 8/1/2011 | EJ20110801 | | Interest on VK Bld Amer Bonds Incm | Survivor | 67.76 | 2,505.45 |
| General Journal | 8/1/2011 | EJ20110801 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 50.90 | 2,556.35 |
| General Journal | 9/26/2011 | EJ20110901 | | Interest on VK Bld Amer Bonds Incm | Survivor | 68.04 | 2,624.39 |
| General Journal | 9/26/2011 | EJ20110901 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 50.90 | 2,675.29 |
| General Journal | 10/13/2011 | EJ20111001 | | Accrued Inerest in Sale of VK Bld Amer Bonds | Survivor | 6.72 | 2,682.01 |
| General Journal | 10/25/2011 | EJ20111002 | | Interest in VK Bld Amer Bonds Incm | Survivor | 67.90 | 2,749.91 |
| General Journal | 10/25/2011 | EJ20111002 | | Interest in Invsco Bld Amer Bds Incm | Survivor | 51.10 | 2,801.01 |
| General Journal | 11/16/2011 | EJ20111103 | | Proceeds from Sale of Invsco Bld Amer Bds | Survivor | 10.20 | 2,811.21 |
| General Journal | 11/21/2011 | EJ20111105 | | Interest on Money Market Funds | Survivor | 0.05 | 2,811.26 |
| General Journal | 11/25/2011 | EJ20111106 | | Interest on Invsco Bld Amer Bds Incm | Survivor | 51.00 | 2,862.26 |
| General Journal | 10/10/2012 | EJ20120422 | | Interest income | Survivor | 0.27 | 2,862.53 |
| General Journal | 10/12/2012 | EJ20120443 | | Interest Earned | Elmer | 1.17 | 2,863.70 |
| Deposit | 10/23/2012 | | | October Interest | Survivor | 17.34 | 2,881.04 |
| General Journal | 11/7/2012 | EJ20120424 | | Interest inc | Survivor | 5.72 | 2,886.76 |



20-20566.2624

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 11/9/2012 | EJ20120445 | | Interest inc | Elmer | 1.08 | 2,887.84 |
| Deposit | 11/21/2012 | | | November interest | Survivor | 26.47 | 2,914.31 |
| General Journal | 12/7/2012 | EJ20120425 | | Interest inc | Survivor | 6.13 | 2,920.44 |
| General Journal | 12/11/2012 | EJ20120446 | | Interest Earned | Elmer | 1.23 | 2,921.67 |
| Deposit | 12/20/2012 | | | December Interest | Survivor | 20.08 | 2,941.75 |
| General Journal | 1/9/2013 | EJ20120427 | | Interest inc | Survivor | 6.75 | 2,948.50 |
| General Journal | 1/11/2013 | EJ20120447 | | Interest Earned | Elmer | 1.19 | 2,949.69 |
| Deposit | 1/23/2013 | | | January Interest | Survivor | 23.32 | 2,973.01 |
| General Journal | 2/6/2013 | EJ20120428 | | Interest inc | Survivor | 5.74 | 2,978.75 |
| General Journal | 2/8/2013 | EJ20120448 | | Interest Earned | Elmer | 1.08 | 2,979.83 |
| Deposit | 2/20/2013 | | | February Interest | Survivor | 19.23 | 2,999.06 |
| General Journal | 3/8/2013 | EJ20120430 | | Interest Earned | Survivor | 6.15 | 3,005.21 |
| General Journal | 3/12/2013 | EJ20120449 | | Interest Earned | Elmer | 1.66 | 3,006.87 |
| Deposit | 3/21/2013 | | | March Interest | Survivor | 19.91 | 3,026.78 |
| General Journal | 4/9/2013 | EJ20120432 | | Interest Earned | Survivor | 6.55 | 3,033.33 |
| General Journal | 4/11/2013 | EJ20120452 | | Interest Earned | Elmer | 1.77 | 3,035.10 |
| Deposit | 4/22/2013 | | | April Interest | Survivor | 21.98 | 3,057.08 |
| General Journal | 5/9/2013 | EJ20120433 | | Interest Earned | Survivor | 5.90 | 3,062.98 |
| General Journal | 5/13/2013 | EJ20120453 | | Interest Earned | Elmer | 1.46 | 3,064.44 |
| Deposit | 5/22/2013 | | | May Interest | Survivor | 20.61 | 3,085.05 |
| Total Interest Income | | | | | | 3,085.05 | 3,085.05 |
| **Long Term Capital Gains - Funds** | | | | | | | |
| General Journal | 12/31/2010 | EJ20101216 | | LTCG from Oppenheimer Intl Bond Fund Y | Elmer | 75.11 | 75.11 |
| General Journal | 12/8/2011 | EJ20111214 | | LTCG on T Rowe Price New Income | Elmer | 77.13 | 152.24 |
| General Journal | 12/16/2011 | EJ20111218 | | LTCG on JP Morgan Core Bond | Elmer | 26.07 | 178.31 |
| General Journal | 12/16/2011 | EJ20111218 | | LTCG on JP Morgan High Yield | Elmer | 58.93 | 237.24 |
| General Journal | 12/19/2011 | EJ20111219 | | LTCG on Credit Suisse Comm Ret Strat | Elmer | 6.24 | 243.48 |
| General Journal | 12/20/2011 | EJ20111220 | | LTCG on DWS Small Cap Value | Elmer | 42.21 | 285.69 |
| General Journal | 12/28/2011 | EJ20111225 | | LTCG on Loomis Sayles Inv Grade Bd | Elmer | 47.77 | 333.46 |
| General Journal | 6/26/2012 | EJ20120608 | | LTCG on Baron Small Cap | Elmer | 2.48 | 335.94 |
| General Journal | 11/30/2012 | EJ20121104 | | LTCG on Baron Small Cap | Elmer | 152.76 | 488.70 |
| General Journal | 12/10/2012 | EJ20121205 | | LTCG on T Rowe Price New Income | Elmer | 85.71 | 574.41 |
| General Journal | 12/13/2012 | EJ20121207 | | LTCG on Pimco Total Return IV | Elmer | 26.80 | 601.21 |
| General Journal | 12/14/2012 | EJ20121208 | | LTCG on JP Morgan Core Bond | Elmer | 16.83 | 618.04 |
| General Journal | 12/20/2012 | EJ20121210 | | LTCG on DWS Small Cap Value | Elmer | 76.86 | 694.90 |
| General Journal | 12/21/2012 | EJ20121211 | | LTCG on Capital World Bond | Elmer | 41.81 | 736.71 |
| General Journal | 12/24/2012 | EJ20121212 | | LTCG on Investment Co of America | Elmer | 176.84 | 913.55 |
| General Journal | 12/24/2012 | EJ20121212 | | LTCG on Loomis Sayles Inv Grade Bd | Elmer | 62.90 | 976.45 |
| General Journal | 12/31/2012 | EJ20121215 | | LTCG on Oppenheimer Intl Bd | Elmer | 31.01 | 1,007.46 |
| General Journal | 3/22/2013 | EJ20130307 | | LTCG on DWS Small Cap Value | Elmer | 39.85 | 1,047.31 |
| Total Long Term Capital Gains - Funds | | | | | | 1,047.31 | 1,047.31 |
| **Short Term Capital Gains- Funds** | | | | | | | |
| General Journal | 1/24/2011 | EJ20110107 | | STCG on Fidelity New Insights Fd Instl | Elmer | 1.98 | 1.98 |
| General Journal | 2/14/2011 | EJ20110204 | | STCG on Fidelity New Insights Fd Instl | Elmer | 22.38 | 24.36 |
| General Journal | 12/8/2011 | EJ20111214 | | STCG on T Rowe Price New Income | Elmer | 38.56 | 62.92 |
| General Journal | 12/16/2011 | EJ20111218 | | STCG on JP Morgan High Yield | Elmer | 36.12 | 99.04 |
| General Journal | 12/28/2011 | EJ20111225 | | STCG on Loomis Sayles Inv Grade Bd | Elmer | 16.95 | 115.99 |
| General Journal | 12/10/2012 | EJ20121205 | | STCG on T Rowe Price New Income | Elmer | 68.57 | 184.56 |
| General Journal | 12/13/2012 | EJ20121207 | | STCG on Pimco Total Return IV | Elmer | 173.87 | 358.43 |
| General Journal | 12/14/2012 | EJ20121208 | | STCG on JP Morgan Core Bond | Elmer | 1.54 | 359.97 |
| General Journal | 12/17/2012 | EJ20121209 | | STCG on Fidelity New Insights | Elmer | 86.18 | 446.15 |
| General Journal | 12/20/2012 | EJ20121210 | | STCG on DWS Small Cap Value | Elmer | 14.89 | 461.04 |
| General Journal | 12/21/2012 | EJ20121211 | | STCG on Capital World Bond | Elmer | 22.74 | 483.78 |
| General Journal | 12/24/2012 | EJ20121212 | | STCG on Loomis Sayles Inv Grade Bd | Elmer | 5.32 | 489.10 |
| Total Short Term Capital Gains- Funds | | | | | | 489.10 | 489.10 |
| **Stock Sales less Broker Fees** | | | | | | | |
| **General Journal** | **1/4/2011** | **EJ 20110101** | | **Sale of Deere & Co Stock** | **Survivor** | **10,082.45** | **10,082.45** |
| General Journal | 1/4/2011 | EJ 20110101 | | Commission on Sale of Deere & Co Stock | Survivor | -208.11 | 9,874.34 |
| General Journal | 1/4/2011 | EJ 20110101 | | Transaction Fee on Sale of Deere & Co Stock | Survivor | -4.95 | 9,869.39 |
| General Journal | 2/8/2011 | EJ 20110202 | | Sell 275 Shares Deere & Co | Survivor | 25,563.45 | 35,432.84 |
| General Journal | 2/8/2011 | EJ 20110202 | | Commission on Sale of 275 Shares Deere & Co | Survivor | -460.63 | 34,972.21 |
| General Journal | 2/8/2011 | EJ 20110202 | | Transaction Fee on Sale of 275 Shares Deere & Co | Survivor | -4.95 | 34,967.26 |
| General Journal | 4/14/2011 | EJ 20110402 | | Principal Amt Sale of Toyota Motor Cr Corp | Survivor | 5,000.00 | 39,967.26 |
| General Journal | 4/14/2011 | EJ 20110402 | | Transaction Fee - Sale of Toyota Motor Cr Corp | Survivor | -4.95 | 39,962.31 |
| General Journal | 4/14/2011 | EJ 20110402 | | Principal Amt Sale of GMAC SmartNotes | Survivor | 8,730.00 | 48,692.31 |
| General Journal | 4/14/2011 | EJ 20110402 | | Transaction Fee - Sale of GMAC SmartNotes | Survivor | -4.95 | 48,687.36 |
| General Journal | 4/20/2011 | EJ 20110403 | | Proceeds from Sale of In Fin Auth Rev Parkview Hlth | Survivor | 14,824.35 | 63,511.71 |
| General Journal | 4/20/2011 | EJ 20110403 | | Transaction Fee from Sale of In Fin Auth Rev Parkview Hlth | Survivor | -4.95 | 63,506.76 |
| General Journal | 5/13/2011 | EJ20110521 | | Transaction Fee on Sale of GE Capital Corp Internotes | Survivor | -4.95 | 63,501.81 |
| General Journal | 5/13/2011 | EJ20110521 | | Transaction Fee on Sale of GMAC Smartnotes | Survivor | -4.95 | 63,496.86 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale Chevron Corp | Survivor | -199.66 | 63,297.20 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale Chevron Corp | Survivor | -4.95 | 63,292.25 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Stryker Corp | Survivor | -228.32 | 63,063.93 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Stryker Corp | Survivor | -4.95 | 63,058.98 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Dow Chemical | Survivor | -146.44 | 62,912.54 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Dow Chemical | Survivor | -4.95 | 62,907.59 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Gen Motors Warrants (WSA) | Survivor | -50.00 | 62,857.59 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Gen Motors Warrants (WSA) | Survivor | -4.95 | 62,852.64 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Gen Motors Warrants (WSB) | Survivor | -50.00 | 62,802.64 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Gen Motors Warrants (WSB) | Survivor | -4.95 | 62,797.69 |
| General Journal | 5/16/2011 | EJ20110522 | | Transaction Fee on Sale of Gen Motors Common | Survivor | -4.95 | 62,792.74 |
| General Journal | 5/16/2011 | EJ20110522 | | Commission on Sale of Gen Motors Common | Survivor | -50.00 | 62,742.74 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on GE Capital Corp Internotes | Survivor | -46.87 | 62,695.87 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on GMAC SmartNotes | Survivor | -272.55 | 62,423.32 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Chevron Corp (CVX) | Survivor | 204.61 | 62,627.93 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Dow Chemical (DOW) | Survivor | 151.39 | 62,779.32 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Gen Motors Warrants (WSA) | Survivor | 54.95 | 62,834.27 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Gen Motors Warrants (WSB) | Survivor | 54.95 | 62,889.22 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Gen Motors Co (GM) | Survivor | 54.95 | 62,944.17 |
| General Journal | 5/27/2011 | EJ20110524 | | Adjust Value on Stryker Corp (SYK) | Survivor | 233.27 | 63,177.44 |
| General Journal | 6/10/2011 | EJ20110601 | | Sales Price on Sale of 623 Sh Deere & Company | Survivor | 51,039.90 | 114,217.34 |
| General Journal | 6/10/2011 | EJ20110601 | | Commission on Sale of 623 Sh Deere & Company | Survivor | -643.86 | 113,573.48 |
| General Journal | 6/10/2011 | EJ20110601 | | Transaction Fee on Sale of 623 Sh Deere & Company | Survivor | -4.95 | 113,568.53 |
| General Journal | 6/10/2011 | EJ20110123 | | Exxon IDC000946776 Invest Inc | Survivor | 896.76 | 114,465.29 |
| General Journal | 7/28/2011 | EJ20110721 | | Redeem Gen Motors Co Warrant (WSB) | Survivor | 12.93 | 114,478.22 |
| General Journal | 7/28/2011 | EJ20110721 | | Redeem Gen Motors Co Warrant (WSA) | Survivor | 17.87 | 114,496.09 |
| General Journal | 7/28/2011 | EJ20110721 | | Redeem Gen Motors Co Common | Survivor | 0.37 | 114,496.46 |
| General Journal | 10/13/2011 | EJ20111001 | | Proceeds from Sale of VK Bld Amer Bonds | Survivor | 14,492.80 | 128,989.26 |
| General Journal | 10/26/2011 | EJ20111003 | | Sale Price in Sale of Deere & Co Stock | Survivor | 30,470.12 | 159,459.38 |
| General Journal | 10/26/2011 | EJ20111003 | | Commission in Sale of Deere & Co Stock | Survivor | -458.73 | 159,000.65 |
| General Journal | 10/26/2011 | EJ20111003 | | Transaction Fee in Sale of Deere & Co Stock | Survivor | -4.95 | 158,995.70 |
| General Journal | 10/28/2011 | EJ20111022 | | Redeem Gen Motors Warrant (WSB) | Survivor | 8.33 | 159,004.03 |
| General Journal | 10/28/2011 | EJ20111022 | | Redeem Gen Motors Warrant (WSA) | Survivor | 11.92 | 159,015.95 |
| General Journal | 10/28/2011 | EJ20111022 | | Redeem Gen Motors Common | Survivor | 19.85 | 159,035.80 |
| General Journal | 11/15/2011 | EJ20111102 | | Sale of Deere & Co Stock | Survivor | 14,381.25 | 173,417.05 |
| General Journal | 11/15/2011 | EJ20111102 | | Commission on Sale of Deere & Co Stock | Survivor | -266.15 | 173,150.90 |
| General Journal | 11/15/2011 | EJ20111102 | | Transacton Fee on Sale of Deere & Co Stock | Survivor | -4.95 | 173,145.95 |
| General Journal | 11/16/2011 | EJ20111103 | | Proceeds from Sale of Invsco Bld Amer Bds | Survivor | 10,508.70 | 183,654.65 |
| General Journal | 1/9/2012 | EJ20120121 | | Commission on Sale of Gen Motors Common | Survivor | -2.10 | 183,652.55 |
| General Journal | 1/9/2012 | EJ20120121 | | Transaction Fee on Sale of Gen Motors Common | Survivor | -4.95 | 183,647.60 |
| General Journal | 1/27/2012 | EJ20120122 | | Adjust Value on Gen Motors Common | Survivor | 7.02 | 183,654.62 |
| General Journal | 6/15/2012 | EJ20120621 | | Redeem Motors Liq Co Guc Tr Ben Int | Survivor | 8.17 | 183,662.79 |
| **Total Stock Sales less Broker Fees** | | | | | | **183,662.79** | **183,662.79** |
| Total Investment Income | | | | | | 216,605.71 | 216,605.71 |
| **Miscellaneous Income** | | | | | | | |
| Deposit | 12/31/2010 | | | Deposit | Nelva | 70.30 | 70.30 |
| General Journal | 3/11/2011 | EJ20120460 | | Invest inc | Nelva | 390.64 | 460.94 |
| General Journal | 4/11/2011 | EJ20120463 | | Online Banking Transfer from chking Acct 2839 | Nelva | 1,500.00 | 1,960.94 |
| General Journal | 6/9/2011 | EJ20110122 | | Invest Inc | Survivor | 4.18 | 1,965.12 |
| General Journal | 6/28/2011 | EJ20120471 | | Invest inc. | Nelva | 725.64 | 2,690.76 |
| General Journal | 8/18/2011 | EJ20120473 | | Invest inc | Nelva | 702.72 | 3,393.48 |
| General Journal | 9/19/2011 | EJ20120475 | | Invest inc | Nelva | 507.76 | 3,901.24 |
| General Journal | 11/9/2011 | EJ20110147 | | Invest Inc | Survivor | 30.40 | 3,931.64 |
| General Journal | 1/3/2012 | EJ20120436 | | Counter credit - invest inc | Elmer | 495.72 | 4,427.36 |
| General Journal | 3/7/2012 | EJ20110153 | | Other income | Survivor | 20.49 | 4,447.85 |
| General Journal | 3/13/2012 | EJ20120411 | | --Split-- | Survivor | 237.16 | 4,685.01 |
| General Journal | 4/16/2012 | EJ20120440 | | fed - Invest inc | Elmer | 383.45 | 5,068.46 |
| General Journal | 5/17/2012 | EJ20120418 | | Invest Income | Survivor | 30.40 | 5,098.86 |
| General Journal | 6/5/2012 | EJ20120419 | | Invest inc | Survivor | 71.04 | 5,169.90 |
| General Journal | 10/15/2012 | EJ20120444 | | Invest inc | Elmer | 57.86 | 5,227.76 |
| General Journal | 10/26/2012 | EJ20120423 | | Invest inc | Survivor | 24.04 | 5,251.80 |
| General Journal | 11/22/2012 | EJ20120435 | | Invest inc | Elmer | 381.32 | 5,633.12 |
| General Journal | 12/24/2012 | EJ20120426 | | Inv inc - Chevron and Metlife | Survivor | 104.26 | 5,737.38 |
| General Journal | 3/1/2013 | EJ20120429 | | Inv inc - John Deere | Survivor | 71.61 | 5,808.99 |
| General Journal | 3/13/2013 | EJ20120439 | | Other inc | Elmer | 495.72 | 6,304.71 |
| General Journal | 4/5/2013 | EJ20120431 | | Deposit --Split-- | Survivor | 54.22 | 6,358.93 |
| General Journal | 4/5/2013 | EJ20120451 | | Hull Co-op Invest inc | Elmer | 101.80 | 6,460.73 |
| Total Miscellaneous Income | | | | | | 6,460.73 | 6,460.73 |
| **Pension Income** | | | | | | | |
| Deposit | 12/31/2010 | | | Pension ID [redacted]9128 | Nelva | 594.41 | 594.41 |
| Deposit | 12/31/2010 | | | Minnesota Life Annuity | Nelva | 91.78 | 686.19 |
| General Journal | 1/31/2011 | BOA20110105 | | Net Pension Receipt | Survivor | 600.71 | 1,286.90 |
| General Journal | 2/2/2011 | BOA20110106 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 1,378.68 |
| General Journal | 2/28/2011 | BOA20110111 | | Benefits DES: Pension ID:[redacted]0518 | Survivor | 600.71 | 1,979.39 |
| General Journal | 3/1/2011 | BOA20110112 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 2,071.17 |
| General Journal | 3/31/2011 | BOA20110114 | | Benefits DES:Pension ID[redacted]0208 | Survivor | 600.71 | 2,671.88 |
| General Journal | 4/1/2011 | BOA20110115 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 2,763.66 |
| General Journal | 4/29/2011 | EJ20110110 | | Benefits DES:Pension ID[redacted]0518 | Survivor | 600.71 | 3,364.37 |
| General Journal | 4/29/2011 | EJ20110111 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 3,456.15 |
| General Journal | 5/31/2011 | EJ20110118 | | Benefits DES:Pension ID:[redacted]0508 | Survivor | 600.71 | 4,056.86 |
| General Journal | 6/1/2011 | EJ20110119 | | Minnesota Life DES: Annuity ID:0 | Survivor | 91.78 | 4,148.64 |
| General Journal | 6/30/2011 | EJ20110124 | | Benefits DES:Pension ID:[redacted]0218 | Survivor | 600.71 | 4,749.35 |
| General Journal | 7/1/2011 | EJ20110125 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 4,841.13 |
| General Journal | 7/29/2011 | EJ20110128 | | Benefits DES:Pension ID:[redacted]0528 | Survivor | 600.71 | 5,441.84 |
| General Journal | 8/1/2011 | EJ20110129 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 5,533.62 |
| General Journal | 8/31/2011 | EJ20110134 | | Benefits DES:Pension ID:[redacted]0168 | Survivor | 600.71 | 6,134.33 |
| General Journal | 9/1/2011 | EJ20110135 | | Minnesota Life DES: Annuity ID:0 | Survivor | 91.78 | 6,226.11 |
| General Journal | 9/30/2011 | EJ20110141 | | Minnesota Life DES: Annuity ID:0 | Survivor | 91.78 | 6,317.89 |
| General Journal | 9/30/2011 | EJ20110142 | | Benefits DES:Pension ID:[redacted]2468 | Survivor | 600.71 | 6,918.60 |
| General Journal | 10/31/2011 | EJ20110144 | | Benefits DES:Pension ID:[redacted]3478 | Survivor | 600.71 | 7,519.31 |
| General Journal | 11/1/2011 | EJ20110145 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 7,611.09 |
| General Journal | 11/1/2011 | EJ20110157 | | Minnesota Life Des:Annuity ID:0 | Survivor | 91.78 | 7,702.87 |
| General Journal | 11/30/2011 | EJ20110149 | | Benefits DES:Pension ID:[redacted]3368 | Survivor | 600.71 | 8,303.58 |
| Total Pension Income | | | | | | 8,303.58 | 8,303.58 |
| **Proceeds from Sale of Home** | | | | | | | |
| General Journal | 3/12/2012 | EJ20120408 | | Option fee for house - Other inc | Survivor | 100.00 | 100.00 |
| General Journal | 3/14/2012 | EJ20120413 | | Sale of house - Other income | Survivor | 433,129.32 | 433,229.32 |
| General Journal | 3/23/2012 | EJ20120414 | | Sale of house --Split-- | Survivor | 162.73 | 433,392.05 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Total Proceeds from Sale of Home | | | | | | 433,392.05 | 433,392.05 |
| **Social Security Income** | | | | | | | |
| General Journal | 2/3/2011 | EJ20120457 | | Soc Security ID:2 | Nelva | 1,780.00 | 1,780.00 |
| General Journal | 3/3/2011 | EJ20120459 | | Social Security | Nelva | 1,780.00 | 3,560.00 |
| General Journal | 4/1/2011 | EJ20120462 | | Social Security | Nelva | 1,780.00 | 5,340.00 |
| General Journal | 5/2/2011 | EJ20120464 | | Social Security | Nelva | 1,780.00 | 7,120.00 |
| General Journal | 6/3/2011 | EJ20120465 | | Social Security | Nelva | 1,780.00 | 8,900.00 |
| General Journal | 7/1/2011 | EJ20120469 | | Social Security | Nelva | 1,780.00 | 10,680.00 |
| General Journal | 8/3/2011 | EJ20120472 | | Social Security | Nelva | 1,780.00 | 12,460.00 |
| General Journal | 9/2/2011 | EJ20120474 | | Social Security | Nelva | 1,780.00 | 14,240.00 |
| General Journal | 10/3/2011 | EJ20120477 | | Social Security | Nelva | 1,780.00 | 16,020.00 |
| General Journal | 11/3/2011 | EJ20120478 | | Social Security | Nelva | 1,780.00 | 17,800.00 |
| Total Social Security Income | | | | | | 17,800.00 | 17,800.00 |
| **Tax Refunds** | | | | | | | |
| General Journal | 1/3/2011 | BOA20110101 | | US Treasury 310 DES | Survivor | 1,780.00 | 1,780.00 |
| General Journal | 1/11/2012 | EJ20110159 | | Tax Refund | Survivor | 6,215.87 | 7,995.87 |
| General Journal | 4/16/2012 | EJ20120441 | | Federal tax refund | Elmer | 6,913.00 | 14,908.87 |
| General Journal | 4/25/2012 | EJ20120416 | | Federal Tax Refund | Survivor | 4,908.00 | 19,816.87 |
| Total Tax Refunds | | | | | | 19,816.87 | 19,816.87 |
| Total Income | | | | | | 830,169.35 | 830,169.35 |
| **Expense** | | | | | | | |
| **Automobile Expense** | | | | | | | |
| Check | 1/18/2011 | EFT | Exxon Mobil | Auto:Fuel | Nelva | 20.93 | 20.93 |
| Check | 1/27/2011 | EFT | Chevron | Fuel | Nelva | 20.86 | 41.79 |
| Check | 1/31/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 62.86 |
| Check | 2/8/2011 | EFT | Exxon Mobil | Fuel | Nelva | 20.06 | 82.92 |
| Check | 2/9/2011 | EFT | Nnt Hare Repai | Auto Service | Nelva | 574.65 | 657.57 |
| Check | 2/10/2011 | EFT | Exxon Mobil | Fuel | Nelva | 10.67 | 668.24 |
| Check | 2/14/2011 | EFT | Chevron | Fuel | Nelva | 20.10 | 688.34 |
| Check | 2/23/2011 | EFT | Exxon Mobil | Fuel | Nelva | 20.36 | 708.70 |
| Check | 3/2/2011 | EFT | Exxon Mobil | Fuel | Nelva | 21.69 | 730.39 |
| Check | 3/7/2011 | EFT | Chevron | Fuel | Nelva | 22.98 | 753.37 |
| Check | 3/14/2011 | EFT | Chevron | Fuel | Nelva | 22.20 | 775.57 |
| Check | 3/14/2011 | EFT | Exxon Mobil | Fuel | Nelva | 22.20 | 797.77 |
| Check | 3/21/2011 | EFT | Chevron | Fuel | Nelva | 21.50 | 819.27 |
| Check | 3/21/2011 | EFT | Chevron | Fuel | Nelva | 24.55 | 843.82 |
| Check | 3/23/2011 | EFT | Chevron | Fuel | Nelva | 24.66 | 868.48 |
| Check | 3/28/2011 | EFT | Chevron | Fuel | Nelva | 21.76 | 890.24 |
| Check | 3/29/2011 | EFT | Chevron | Fuel | Nelva | 22.76 | 913.00 |
| Check | 4/1/2011 | EFT | Chevron | Fuel | Nelva | 24.65 | 937.65 |
| Check | 4/8/2011 | EFT | Exxon Mobil | Fuel | Nelva | 54.60 | 992.25 |
| Check | 4/14/2011 | EFT | Chevron | Fuel | Nelva | 21.02 | 1,013.27 |
| Check | 4/18/2011 | EFT | Chevron | Fuel | Nelva | 23.88 | 1,037.15 |
| Check | 4/18/2011 | EFT | Exxon Mobil | Fuel | Nelva | 22.51 | 1,059.66 |
| Check | 4/25/2011 | EFT | Fastop | Fuel | Nelva | 2.90 | 1,062.56 |
| Check | 4/25/2011 | EFT | Fastop | Fuel | Nelva | 50.84 | 1,113.40 |
| Check | 4/25/2011 | EFT | Exxon Mobil | Fuel | Nelva | 59.02 | 1,172.42 |
| Check | 4/25/2011 | EFT | Chevron | Fuel | Nelva | 14.05 | 1,186.47 |
| Check | 5/3/2011 | EFT | Exxon Mobil | Fuel | Nelva | 28.78 | 1,215.25 |
| Check | 5/6/2011 | EFT | Exxon Mobil | Fuel | Nelva | 23.63 | 1,238.88 |
| Check | 5/9/2011 | EFT | Exxon Mobil | Fuel | Nelva | 27.80 | 1,266.68 |
| Check | 5/9/2011 | EFT | Chevron | Fuel | Nelva | 28.76 | 1,295.44 |
| Check | 5/16/2011 | EFT | Chevron | Fuel | Nelva | 29.32 | 1,324.76 |
| Check | 5/16/2011 | EFT | Exxon Mobil | Fuel | Nelva | 24.64 | 1,349.40 |
| Check | 5/20/2011 | EFT | Chevron | | Nelva | 23.73 | 1,373.13 |
| Check | 5/23/2011 | EFT | Chevron | Fuel | Nelva | 24.40 | 1,397.53 |
| Check | 5/23/2011 | EFT | Chevron | Fuel | Nelva | 2.90 | 1,400.43 |
| Check | 5/24/2011 | EFT | Chevron | Fuel | Nelva | 23.33 | 1,423.76 |
| Check | 5/25/2011 | EFT | TX Med Ctr Garage | Parking | Nelva | 6.00 | 1,429.76 |
| Check | 5/26/2011 | EFT | TX Med Ctr Garage | parking | Nelva | 6.00 | 1,435.76 |
| Check | 5/27/2011 | EFT | TX Med Ctr Garage | parking | Nelva | 5.00 | 1,440.76 |
| Check | 5/31/2011 | EFT | TX Med Ctr Garage | parking | Nelva | 6.00 | 1,446.76 |
| Check | 5/31/2011 | EFT | Chevron | Fuel | Nelva | 24.48 | 1,471.24 |
| Check | 5/31/2011 | EFT | TX Med Ctr Garage | parking | Nelva | 2.00 | 1,473.24 |
| Check | 6/3/2011 | EFT | Chevron | Fuel | Nelva | 24.00 | 1,497.24 |
| Check | 6/6/2011 | EFT | Exxon Mobil | Fuel | Nelva | 43.12 | 1,540.36 |
| Check | 6/7/2011 | EFT | Chevron | Fuel | Nelva | 22.92 | 1,563.28 |
| Check | 6/8/2011 | EFT | Exxon Mobil | Fuel | Nelva | 22.08 | 1,585.36 |
| Check | 6/13/2011 | EFT | Exxon Mobil | Fuel | Nelva | 23.84 | 1,609.20 |
| Check | 6/14/2011 | EFT | Exxon Mobil | Fuel | Nelva | 29.37 | 1,638.57 |
| Check | 6/15/2011 | EFT | Chevron | Fuel | Nelva | 26.47 | 1,665.04 |
| Check | 6/20/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.60 | 1,690.64 |
| Check | 6/21/2011 | EFT | Chevron | Fuel | Nelva | 26.58 | 1,717.22 |
| Check | 6/27/2011 | EFT | Chevron | Fuel | Nelva | 25.13 | 1,742.35 |
| Check | 6/28/2011 | EFT | Chevron | Fuel | Nelva | 22.70 | 1,765.05 |
| Check | 7/1/2011 | EFT | Chevron | Fuel | Nelva | 26.25 | 1,791.30 |
| Check | 7/5/2011 | EFT | Shell | Fuel | Nelva | 23.05 | 1,814.35 |
| Check | 7/5/2011 | EFT | Chevron | Fuel | Nelva | 26.86 | 1,841.21 |
| Check | 7/8/2011 | EFT | Chevron | Fuel | Nelva | 25.68 | 1,866.89 |
| Check | 7/11/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 1,887.96 |
| Check | 7/13/2011 | EFT | Chevron | Fuel | Nelva | 23.37 | 1,911.33 |
| Check | 7/18/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.35 | 1,936.68 |
| Check | 7/19/2011 | EFT | Chevron | Fuel | Nelva | 30.18 | 1,966.86 |
| Check | 7/20/2011 | EFT | Chevron | Fuel | Nelva | 24.10 | 1,990.96 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 7/25/2011 | EFT | Chevron | Fuel | Nelva | 26.07 | 2,017.03 |
| Check | 7/27/2011 | EFT | Chevron | Fuel | Nelva | 24.45 | 2,041.48 |
| Check | 8/1/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.68 | 2,067.16 |
| Check | 8/1/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 2,088.23 |
| Check | 8/2/2011 | EFT | Chevron | Fuel | Nelva | 20.62 | 2,108.85 |
| Check | 8/8/2011 | EFT | Chevron | Fuel | Nelva | 25.37 | 2,134.22 |
| Check | 8/9/2011 | EFT | Chevron | Fuel | Nelva | 26.27 | 2,160.49 |
| Check | 8/10/2011 | EFT | Exxon Mobil | Fuel | Nelva | 25.53 | 2,186.02 |
| Check | 8/15/2011 | EFT | Chevron | Fuel | Nelva | 25.41 | 2,211.43 |
| Check | 8/17/2011 | EFT | Chevron | Fuel | Nelva | 26.21 | 2,237.64 |
| Check | 8/22/2011 | EFT | Chevron | Fuel | Nelva | 25.52 | 2,263.16 |
| Check | 8/23/2011 | EFT | Chevron | Fuel | Nelva | 22.25 | 2,285.41 |
| Check | 8/25/2011 | EFT | Chevron | Fuel | Nelva | 15.14 | 2,300.55 |
| Check | 8/29/2011 | EFT | Chevron | Fuel | Nelva | 20.14 | 2,320.69 |
| Check | 8/31/2011 | EFT | Chevron | Fuel | Nelva | 20.16 | 2,340.85 |
| Check | 9/6/2011 | EFT | Chevron | Fuel | Nelva | 21.50 | 2,362.35 |
| Check | 9/6/2011 | EFT | Chevron | Fuel | Nelva | 16.07 | 2,378.42 |
| Check | 9/6/2011 | EFT | Chevron | Fuel | Nelva | 14.34 | 2,392.76 |
| Check | 9/7/2011 | EFT | Chevron | Fuel | Nelva | 21.15 | 2,413.91 |
| Check | 9/13/2011 | EFT | Exxon Mobil | Fuel | Nelva | 23.96 | 2,437.87 |
| Check | 9/15/2011 | EFT | Chevron | Fuel | Nelva | 20.57 | 2,458.44 |
| Check | 9/19/2011 | EFT | Chevron | Fuel | Nelva | 20.23 | 2,478.67 |
| Check | 9/22/2011 | EFT | Chevron | Fuel | Nelva | 23.31 | 2,501.98 |
| Check | 9/27/2011 | EFT | Chevron | Fuel | Nelva | 25.07 | 2,527.05 |
| Check | 9/30/2011 | EFT | Chevron | Fuel | Nelva | 23.30 | 2,550.35 |
| Check | 10/3/2011 | EFT | Chevron | Fuel | Nelva | 25.22 | 2,575.57 |
| Check | 10/5/2011 | EFT | Exxon Mobil | Fuel | Nelva | 20.11 | 2,595.68 |
| Check | 10/6/2011 | EFT | Chevron | Fuel | Nelva | 20.52 | 2,616.20 |
| Check | 10/11/2011 | EFT | Chevron | Fuel | Nelva | 21.07 | 2,637.27 |
| Check | 10/12/2011 | EFT | Chevron | Fuel | Nelva | 22.02 | 2,659.29 |
| Check | 10/12/2011 | EFT | Exxon Mobil | Fuel | Nelva | 2.14 | 2,661.43 |
| Check | 10/14/2011 | EFT | Chevron | Fuel | Nelva | 24.70 | 2,686.13 |
| Check | 10/17/2011 | EFT | Chevron | fuel | Nelva | 21.07 | 2,707.20 |
| Check | 10/17/2011 | EFT | Chevron | Fuel | Nelva | 20.92 | 2,728.12 |
| Check | 10/19/2011 | ET\FT | Chevron | Fuel | Nelva | 21.78 | 2,749.90 |
| Check | 10/26/2011 | eft | Exxon Mobil | fUEL | Nelva | 20.25 | 2,770.15 |
| Check | 10/27/2011 | EFT | Chevron | Fuel | Nelva | 20.99 | 2,791.14 |
| Check | 10/31/2011 | EFT | Chevron | Fuel | Nelva | 22.72 | 2,813.86 |
| Check | 10/31/2011 | EFT | Chevron | Fuel | Nelva | 21.06 | 2,834.92 |
| Check | 11/2/2011 | EFT | Chevron | Fuel | Nelva | 20.90 | 2,855.82 |
| Check | 11/4/2011 | EFT | Chevron | Fuel | Nelva | 19.91 | 2,875.73 |
| Check | 11/7/2011 | EFT | Chevron | Fuel | Nelva | 22.79 | 2,898.52 |
| Check | 11/9/2011 | EFT | Chevron | Fuel | Nelva | 20.41 | 2,918.93 |
| Check | 11/14/2011 | eft | Chevron | fUEL | Nelva | 25.76 | 2,944.69 |
| Check | 11/14/2011 | eft | Chevron | Fuel | Nelva | 21.07 | 2,965.76 |
| Total Automobile Expense | | | | | | 2,965.76 | 2,965.76 |
| **Bank & Brokerage Charges** | | | | | | | |
| Check | 12/23/2010 | EFT | Bank of America | External Transfer Fee | Nelva | 3.00 | 3.00 |
| General Journal | 12/28/2010 | EJ20101214 | | Offset Admin Fee | Elmer | -13.88 | -10.88 |
| Check | 12/30/2010 | EFT | Bank of America | Check Order | Nelva | 27.00 | 16.12 |
| General Journal | 1/6/2011 | EJ20110106 | | Advisory Solutions Program Fee | Elmer | 305.91 | 322.03 |
| Check | 1/13/2011 | EFT | Bank of America | Check Order | Nelva | 26.00 | 348.03 |
| Check | 1/19/2011 | EFT | Bank of America | NSF Returned Item Fee for Activity | Nelva | 35.00 | 383.03 |
| Check | 1/19/2011 | EFT | Bank of America | NSF Overdraft Item Fee For Activity | Nelva | 35.00 | 418.03 |
| Check | 1/19/2011 | EFT | Bank of America | NSF: Returned Item Fee for Activity | Nelva | 35.00 | 453.03 |
| Check | 1/20/2011 | EFT | Bank of America | External Transfer Fee | Survivor | 3.00 | 456.03 |
| General Journal | 1/27/2011 | EJ20110108 | | Offset of Admin Fee | Elmer | -12.41 | 443.62 |
| General Journal | 1/27/2011 | EJ20120456 | | Fee Refund Nbkhuz8 - Reimbursement | Nelva | -105.00 | 338.62 |
| General Journal | 2/4/2011 | EJ20110203 | | Redeem JPM Fed Money Market Instl Cl | Elmer | 297.60 | 636.22 |
| General Journal | 2/23/2011 | EJ20110205 | | Fee Offset Less Admin Fee | Elmer | -11.67 | 624.55 |
| General Journal | 3/4/2011 | EJ20110303 | | Redeem JPM Fed Money Market Inst | Elmer | 273.03 | 897.58 |
| General Journal | 3/11/2011 | DR12110301 | | Svc Fee on Reinvestment of Dividends on Chevron Stock | Family | 3.00 | 900.58 |
| General Journal | 3/23/2011 | EJ20110306 | | Fee Offset Less Admin Fee | Elmer | -13.01 | 887.57 |
| General Journal | 4/5/2011 | EJ20110403 | | Redeem JPM Fed Money Market Instl Cl | Elmer | 300.68 | 1,188.25 |
| General Journal | 4/21/2011 | EJ20110404 | | Fee Offset Less Admin Fee | Elmer | -11.70 | 1,176.55 |
| General Journal | 5/5/2011 | EJ20110502 | | Redeem JPM Fed Money Market Instl | Elmer | 295.92 | 1,472.47 |
| General Journal | 5/17/2011 | EJ20110503 | | Fee Offset Less Admin Fee | Elmer | -12.12 | 1,460.35 |
| General Journal | 6/1/2011 | EJ20110602 | | Minimum Balance Fee | Survivor | 3.00 | 1,463.35 |
| General Journal | 6/1/2011 | EJ20110601 | | Redeem JPM Fed Money Market Instl Cl | Elmer | 305.34 | 1,768.69 |
| Check | 6/14/2011 | EFT | Bank of America | External Transfer Fee - 3 Day bank charge | Survivor | 3.00 | 1,771.69 |
| General Journal | 6/22/2011 | EJ20110604 | | Fee Offset Less Admin Fee | Elmer | -11.59 | 1,760.10 |
| Check | 6/23/2011 | EFT | Bank of America | Check order fee | Nelva | 23.00 | 1,783.10 |
| General Journal | 7/8/2011 | EJ20110703 | | Redeemed JPM Fed Money Market Instl Cl | Elmer | 288.60 | 2,071.70 |
| Check | 7/20/2011 | EFT | Bank of America | Safebox Fee | Survivor | 8.00 | 2,079.70 |
| General Journal | 7/26/2011 | EJ20110704 | | Fee Offset Less Admin Fee | Elmer | -12.20 | 2,067.50 |
| Check | 7/27/2011 | EFT | Bank of America | External transfer fee - 3 Day | Survivor | 3.00 | 2,070.50 |
| General Journal | 8/4/2011 | EJ20110802 | | Redeemed JPM Fed Money Market Instl Cl | Elmer | 302.09 | 2,372.59 |
| General Journal | 8/25/2011 | EJ20110803 | | Fee Offset Less Admin Fee | Elmer | -11.67 | 2,360.92 |
| General Journal | 9/7/2011 | EJ20110902 | | Redeemed JPM Fed Money Market Instl C | Elmer | 279.62 | 2,640.54 |
| General Journal | 9/22/2011 | EJ20110906 | | Fee Offset Less Admin Fee | Elmer | -13.30 | 2,627.24 |
| General Journal | 10/6/2011 | EJ20111003 | | Redeemed JPM Fed Money Market Instl Cl | Elmer | 260.78 | 2,888.02 |
| General Journal | 10/25/2011 | EJ20111005 | | Fee Offset Less Admin Fee | Elmer | -14.31 | 2,873.71 |
| General Journal | 11/1/2011 | EJ20110145 | | Minnesota Life DES:Annuity ID:0 | Survivor | 91.78 | 2,965.49 |
| Check | 11/3/2011 | EFT | Bank of America | check order | Nelva | 23.00 | 2,988.49 |
| General Journal | 11/4/2011 | EJ20111103 | | Redeemed JPM Fed Money Market Instl Cl | Elmer | 264.30 | 3,252.79 |
| Check | 11/7/2011 | EFT | Bank of America | Wire transfer fee | Survivor | 25.00 | 3,277.79 |
| Check | 11/7/2011 | EFT | Bank of America | Wire transfer fee | Survivor | 25.00 | 3,302.79 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 11/8/2011 | eft | Bank of America | External transfer fee - 3 Day | Survivor | 3.00 | 3,305.79 |
| Check | 11/9/2011 | EFT | Bank of America | TX Tlr payment to Sdb 2575 banking | Survivor | 25.00 | 3,330.79 |
| General Journal | 11/10/2011 | EJ20110148 | | Safe Deposit Box Rent Refund Fde | Survivor | -82.00 | 3,248.79 |
| Check | 11/14/2011 | EFT | Bank of America | Safe box fee | Survivor | 135.00 | 3,383.79 |
| General Journal | 11/18/2011 | EJ20111104 | | Estate Service Fee | Survivor | 100.00 | 3,483.79 |
| General Journal | 11/21/2011 | EJ20111105 | | Wire Transfer Fee | Survivor | 25.00 | 3,508.79 |
| Check | 11/21/2011 | EFT | Bank of America | wire transfer fee | Survivor | 12.00 | 3,520.79 |
| General Journal | 11/22/2011 | EJ20111104 | | Fee Offset Less Admin Fee | Elmer | -13.47 | 3,507.32 |
| Check | 12/1/2011 | Debit | Bank of America-Brun... | Check order | Survivor | 26.00 | 3,533.32 |
| General Journal | 12/9/2011 | EJ20111211 | | Estate Valuation Fee | Survivor | 50.00 | 3,583.32 |
| General Journal | 12/23/2011 | EJ20111223 | | Fee Offset Less Admin Fee | Elmer | -13.85 | 3,569.47 |
| General Journal | 12/31/2011 | EJ20111204 | | Redeem JPMorgan Fed Money Market Istl Cl | Elmer | 256.62 | 3,826.09 |
| General Journal | 1/6/2012 | EJ20120103 | | Redeemed JP Morgan Fed Mon Mkt | Elmer | 264.78 | 4,090.87 |
| Check | 1/11/2012 | EFT | Bank of America | | Elmer | 14.00 | 4,104.87 |
| General Journal | 1/19/2012 | EJ20120105 | | Fee Offset Less Admin Fee | Elmer | -13.09 | 4,091.78 |
| General Journal | 2/3/2012 | EJ20120203 | | Redeemed JP Morgan Fed Mon Mkt Insti Cl | Elmer | 269.92 | 4,361.70 |
| General Journal | 2/24/2012 | EJ20120204 | | Fee Offset Less Admin Fee | Elmer | -12.21 | 4,349.49 |
| General Journal | 2/28/2012 | EJ20120221 | | Annual Service Fee | Survivor | 40.00 | 4,389.49 |
| Check | 3/5/2012 | TXFR | Bank of America | External transfer fee - 3 day | Survivor | 3.00 | 4,392.49 |
| General Journal | 3/6/2012 | EJ20120303 | | Redeem JP Morgan Fed Mon Mkt Instl Cl | Elmer | 260.41 | 4,652.90 |
| Check | 3/15/2012 | EFT | Bank of America | | Elmer | 31.00 | 4,683.90 |
| Check | 3/16/2012 | EFT | Bank of America | Returned Irem Chargeback Fee | Survivor | 12.00 | 4,695.90 |
| Check | 3/16/2012 | EFT | Bank of America | Returned Item Chargeback - Met Life dupl check | Survivor | 70.30 | 4,766.20 |
| General Journal | 3/28/2012 | EJ20120307 | | Fee Offset Less Admin Fee | Elmer | -12.62 | 4,753.58 |
| General Journal | 4/5/2012 | EJ20120403 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 283.77 | 5,037.35 |
| General Journal | 4/20/2012 | EJ20120404 | | Fee Offset Less Admin Fee | Elmer | -11.53 | 5,025.82 |
| General Journal | 5/4/2012 | EJ20120503 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 272.29 | 5,298.11 |
| General Journal | 5/30/2012 | EJ20120506 | | Fee Offset Less Admin Fee | Elmer | -11.98 | 5,286.13 |
| General Journal | 6/5/2012 | EJ20120603 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 272.55 | 5,558.68 |
| General Journal | 6/25/2012 | EJ20120607 | | Fee Offset Les Admin Fee | Elmer | -12.29 | 5,546.39 |
| General Journal | 7/6/2012 | EJ20120703 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 259.71 | 5,806.10 |
| Check | 7/17/2012 | EFT | Bank of America | External transfer fee - 3 Day | Survivor | 3.00 | 5,809.10 |
| General Journal | 7/27/2012 | EJ20120704 | | Fee Offset Less Admin Fee | Elmer | -16.56 | 5,792.54 |
| General Journal | 8/3/2012 | EJ20120803 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 275.06 | 6,067.60 |
| General Journal | 8/23/2012 | EJ20120804 | | Fee Offset Less Admin Fee | Elmer | -16.69 | 6,050.91 |
| General Journal | 9/7/2012 | EJ20120903 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 281.37 | 6,332.28 |
| General Journal | 9/25/2012 | EJ20120907 | | Fee Offset Less Admin Fee | Elmer | -16.75 | 6,315.53 |
| General Journal | 10/4/2012 | EJ20121003 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 278.62 | 6,594.15 |
| General Journal | 10/24/2012 | EJ20121006 | | Fee Offset Less Admin Fee | Elmer | -17.20 | 6,576.95 |
| General Journal | 11/6/2012 | EJ20121103 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 288.03 | 6,864.98 |
| General Journal | 11/30/2012 | EJ20121104 | | Fee Offset Less Admin Fee | Elmer | -17.01 | 6,847.97 |
| General Journal | 12/6/2012 | EJ20121203 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 275.75 | 7,123.72 |
| General Journal | 12/21/2012 | EJ20121211 | | Fee Offset Less Admin Fee | Elmer | -17.22 | 7,106.50 |
| General Journal | 1/7/2013 | EJ20130102 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 290.80 | 7,397.30 |
| General Journal | 1/25/2013 | EJ20130104 | | Fee Offset Less Admin Fee | Elmer | -16.98 | 7,380.32 |
| General Journal | 2/5/2013 | EJ20130203 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 299.80 | 7,680.12 |
| General Journal | 2/22/2013 | EJ20130204 | | Fee Offset Less Admin Fee | Elmer | -17.22 | 7,662.90 |
| General Journal | 2/28/2013 | EJ20130222 | | Annual Fee | Survivor | 40.00 | 7,702.90 |
| General Journal | 3/7/2013 | EJ20130303 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 273.58 | 7,976.48 |
| General Journal | 3/19/2013 | EJ20130306 | | Fee Offset Less Admin Fee | Elmer | -18.33 | 7,958.15 |
| General Journal | 4/9/2013 | EJ20130403 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 306.53 | 8,264.68 |
| General Journal | 4/18/2013 | EJ20130404 | | Fee Offset Less Admin Fee | Elmer | -17.32 | 8,247.36 |
| Check | 4/30/2013 | EFT | Bank of America | Monthly Fee | Nelva | 12.00 | 8,259.36 |
| General Journal | 5/7/2013 | EJ20130503 | | Redeem JP Morgan Fed Mon Mkt | Elmer | 298.51 | 8,557.87 |
| General Journal | 5/28/2013 | EJ20130504 | | Fee Offset Less Admin Fee | Elmer | -17.25 | 8,540.62 |
| *Total Bank & Brokerage Charges* | | | | | | 8,540.62 | 8,540.62 |
| **Checks/Cash to Family Members** | | | | | | | |
| Check | 12/21/2010 | 6849 | Amy Brunsting Tschir... | Christmas Gifts | Nelva | 200.00 | 200.00 |
| Check | 12/21/2010 | EFT | Amy Brunsting Tschir... | Transfer Confirmation #6403973884 | Nelva | 7,000.00 | 7,200.00 |
| Check | 12/31/2010 | ATM | Cash | TX Tr Cash Withdrawal at Banking Center Town and Country | Nelva | 25.00 | 7,225.00 |
| Check | 1/12/2011 | ATM | Cash | ATM 01/11 #000007185 | Nelva | 40.00 | 7,265.00 |
| Check | 1/19/2011 | EFT | Amy Tschirhart | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 6,000.00 | 13,265.00 |
| Check | 1/25/2011 | ATM | Cash | ATM - Cash 01/25 #000006811 | Nelva | 10.00 | 13,275.00 |
| Check | 1/25/2011 | 115 | Cash | CAsh | Nelva | 100.00 | 13,375.00 |
| Check | 2/22/2011 | 140 | Cash | Cash | Nelva | 100.00 | 13,475.00 |
| Check | 3/14/2011 | 149 | Candace Curtis | | Nelva | 25.00 | 13,500.00 |
| Check | 3/20/2011 | 7007 | Amy Brunsing | Reimbursement for supplies | Survivor | 40.00 | 13,540.00 |
| Check | 4/7/2011 | EFT | Candace Curtis | Gifts Given/ref acct 2272/ties to G Vie letter/sch's dated 7/15/13 | Survivor | 3,000.00 | 16,540.00 |
| Check | 4/21/2011 | EFT | Best uy | Tino phone | Nelva | 376.38 | 16,916.38 |
| Check | 5/10/2011 | 7014 | TDECU | Luke Truck, ties to G Vie letter/sch's dated 7/15/13 | Survivor | 5,443.22 | 22,359.60 |
| Check | 5/27/2011 | 7016 | The Victoria Col | Luke college -in lieu of Anita Trustee fee per G Vie letter | Survivor | 461.00 | 22,820.60 |
| Check | 6/2/2011 | EFT | Iowa 529 | Kt college - Ach DES:Contribution ID:0000 | Survivor | 500.00 | 23,320.60 |
| Check | 6/3/2011 | EFT | Am-Honda | For Katie DES:PMT ID:000001032223 ties to G Vie letter/sch's ... | Survivor | 5,750.51 | 29,071.11 |
| Check | 6/6/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPAY ID:11... | Survivor | 2,358.75 | 31,429.86 |
| Check | 6/8/2011 | TXFR | Candace Curtis | Candy Curtis to ckg ...2272 ties to G Vie letter/sch's dated 7/15... | Survivor | 2,000.00 | 33,429.86 |
| Check | 6/13/2011 | TXFR | Amy Tschirhart | Reimbursement - Supplies to fix house | Survivor | 100.00 | 33,529.86 |
| Check | 6/23/2011 | 240 | Luke Riley | Household yard work | Nelva | 25.00 | 33,554.86 |
| Check | 6/27/2011 | EFT | Bank of America Cre... | in lieu of Anita Trustee fee as per G Vie letter $ amt. transposed... | Survivor | 2,364.34 | 35,919.20 |
| Check | 7/6/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPAY ID:114... | Survivor | 2,976.35 | 38,895.55 |
| Check | 7/15/2011 | EFT | Bank of America Cre... | Cr Card pymt in lieu of Trustee fee Anita, G Vie letter and Trust ... | Survivor | 7,242.83 | 46,138.38 |
| Check | 7/18/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letterDES:EPAY ID:115... | Survivor | 1,998.19 | 48,136.57 |
| Check | 7/26/2011 | EFT | Amy Tschirhart | Reimbursement supplies to fix house | Survivor | 100.00 | 48,236.57 |
| Check | 8/24/2011 | EFT | Candace Curtis | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 50,236.57 |
| Check | 8/24/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 75.00 | 50,311.57 |
| Check | 8/25/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 15.00 | 50,326.57 |
| Check | 8/25/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 15.00 | 50,341.57 |
| Check | 8/26/2011 | EFT | UTSA Admissions | Luke college - Education | Survivor | 575.00 | 50,916.57 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 9/6/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:117... | Survivor | 999.04 | 51,915.61 |
| Check | 9/7/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 125.00 | 52,040.61 |
| Check | 9/8/2011 | EFT | Candace Curtis | to chk 2839 | Nelva | 550.00 | 52,590.61 |
| Check | 9/23/2011 | EFT | Bank of America Cre... | in lieu of Anita Trustee fee as per G Vie letter date on his sch 9/7 | Survivor | 4,767.36 | 57,357.97 |
| Check | 10/4/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:119... | Survivor | 2,390.35 | 59,748.32 |
| Check | 10/5/2011 | EFT | Candace Curtis | to chk 2839`` | Nelva | 500.00 | 60,248.32 |
| Check | 10/18/2011 | 356 | Nelva Brunsting | Cash | Nelva | 50.00 | 60,298.32 |
| Check | 10/19/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID:120... | Survivor | 2,033.30 | 62,331.62 |
| Check | 10/21/2011 | 7032 | Vehs Bankd Boosters | Katy band | Survivor | 280.00 | 62,611.62 |
| Check | 10/26/2011 | EFT | Candace Curtis | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 64,611.62 |
| Check | 11/1/2011 | TXFR | Luke Riley | Luke College ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 66,611.62 |
| Check | 11/3/2011 | EFT | Bank of America Cre... | in lieu of Anita Trustee fee as per G Vie letter his sch had 10/6 d... | Survivor | 102.52 | 66,714.14 |
| **Check** | **11/7/2011** | **EFT** | **Anita Brunsting** | **Legal fees Wire Type:Wire Out Date:111107 T to anita for futu...** | **Survivor** | **10,000.00** | **76,714.14** |
| **Check** | **11/7/2011** | **EFT** | **Amy Brunsing** | **Legal fees Wire TyoeL Wire Out Date:111107 T to amy for f...** | **Survivor** | **10,000.00** | **86,714.14** |
| Check | 11/7/2011 | EFT | Amy Tschirhart | Reimbursement - for supplies to fix house | Survivor | 1,000.00 | 87,714.14 |
| Check | 11/8/2011 | EFT | Chase Credit Card | in lieu of Anita Trustee fee as per G Vie letter DES:EPay ID: 121... | Survivor | 3,274.51 | 90,988.65 |
| Check | 11/10/2011 | EFT | Candace Curtis | ties to G Vie letter/sch's dated 7/15/13 | Survivor | 2,000.00 | 92,988.65 |
| Check | 1/25/2012 | 111 | Amy Brunsing | Reimbursement - moving/repair expenses | Survivor | 425.94 | 93,414.59 |
| **Check** | **2/27/2012** | **TXFR** | **Carole Brunsting** | **Reimbursement - leveling house** | **Survivor** | **10,000.00** | **103,414.59** |
| Check | 3/2/2012 | TXFR | Amy Brunsing | Reimbursement trust expenses | Survivor | 841.45 | 104,256.04 |
| Check | 3/2/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 2,537.50 | 106,793.54 |
| **Check** | **3/5/2012** | **TXFR** | **Carole Brunsting** | **Reimbursement - leveling house** | **Survivor** | **10,000.00** | **116,793.54** |
| Check | 3/6/2012 | TXFR | Carole Brunsting | Reimbursement - leveling house | Survivor | 3,117.50 | 119,911.04 |
| **General Journal** | **3/13/2012** | **EJ20120410** | **Amy Brunsting** | **Reimbursement** | **Survivor** | **-10,000.00** | **109,911.04** |
| **General Journal** | **3/13/2012** | **EJ20120412** | **Anita Brunsting** | **Reimbursement** | **Survivor** | **-10,040.00** | **99,871.04** |
| Check | 4/16/2012 | 122 | Candace Curtis | Remainder of Life Ins Trust - Other Income | Survivor | 60.00 | 99,931.04 |
| Check | 4/16/2012 | 123 | Carl Brunsting | Remainder of Life Ins Trust | Survivor | 60.00 | 99,991.04 |
| Check | 4/16/2012 | 124 | Amy Brunsing | Remainder of Life Ins Trust - Other Inc | Survivor | 60.00 | 100,051.04 |
| Check | 4/16/2012 | 125 | Carole Brunsting | Remainder of Life Ins Trust - Other Inc | Survivor | 60.00 | 100,111.04 |
| Check | 4/16/2012 | 127 | Anita Brunsting | Remainder of Life Ins Trust - Other Inc | Survivor | 44.65 | 100,155.69 |
| Check | 4/20/2012 | EFT | Carole Brunsting | Moving Expenses Reimbursement | Survivor | 1,563.50 | 101,719.19 |
| **Check** | **4/25/2012** | **131** | **Anita Brunsting** | **Legal fees Reimbursement for Retainer to Chip Mathews** | **Survivor** | **5,000.00** | **106,719.19** |
| Check | 4/25/2012 | 130 | Anita Brunsting | Reimbursement for UPS to mail boxes to S Mills | Survivor | 102.11 | 106,821.30 |
| Check | 5/16/2012 | 101 | Anita Brunsting | Reimbursement for 1/2 farm tax | Elmer | 1,679.43 | 108,500.73 |
| Check | 7/16/2012 | TXFR | Amy Brunsing | Trust expenses - Reimbursement | Survivor | 353.43 | 108,854.16 |
| Check | 9/10/2012 | 139 | Anita Brunsting | Reimburse postage | Survivor | 61.75 | 108,915.91 |
| Check | 9/10/2012 | 140 | Anita Brunsting | Stamps reimbursement | Survivor | 9.00 | 108,924.91 |
| Total Checks/Cash to Family Members | | | | | | 108,924.91 | 108,924.91 |
| **Dues and Subscriptions** | | | | | | | |
| Check | 3/15/2011 | 154 | Birds and Blooms | | Nelva | 10.00 | 10.00 |
| Check | 4/25/2011 | 187 | Doon Press | | Nelva | 26.50 | 36.50 |
| Check | 8/17/2011 | 294 | Houston Chronicle | | Nelva | 138.00 | 174.50 |
| Check | 8/18/2011 | 292 | Time Magazine | | Nelva | 20.00 | 194.50 |
| Check | 9/21/2011 | 322 | Iowa Outdoors | | Nelva | 15.00 | 209.50 |
| Check | 9/10/2012 | 137 | Houston Chronicle | final payment - subscription | Survivor | 68.97 | 278.47 |
| Total Dues and Subscriptions | | | | | | 278.47 | 278.47 |
| **Food/Dining/Groceries** | | | | | | | |
| Check | 12/21/2010 | 6848 | Randalls | | Nelva | 60.51 | 60.51 |
| Check | 1/10/2011 | EFT | Randalls | 01/09 #000555055 | Nelva | 234.97 | 295.48 |
| Check | 1/18/2011 | EFT | Kroger | | Nelva | 32.33 | 327.81 |
| Check | 1/24/2011 | EFT | Randalls | 01/23 #000635058 | Nelva | 35.89 | 363.70 |
| Check | 1/24/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 366.99 |
| Check | 1/31/2011 | EFT | Randalls | | Nelva | 51.87 | 418.86 |
| Check | 1/31/2011 | EFT | Randalls | | Nelva | 47.24 | 466.10 |
| Check | 1/31/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 469.39 |
| Check | 2/7/2011 | EFT | Randalls | | Nelva | 71.64 | 541.03 |
| Check | 2/14/2011 | EFT` | Randalls | | Nelva | 23.68 | 564.71 |
| Check | 2/14/2011 | EFT | Randalls | | Nelva | 76.92 | 641.63 |
| Check | 2/18/2011 | EFT | Kroger | | Nelva | 27.33 | 668.96 |
| Check | 2/22/2011 | EFT | Subway | Dining | Nelva | 3.25 | 672.21 |
| Check | 2/22/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 5.83 | 678.04 |
| Check | 2/22/2011 | EFT | Randalls | | Nelva | 47.02 | 725.06 |
| Check | 2/22/2011 | EFT | Wal-Mart | | Nelva | 46.27 | 771.33 |
| Check | 2/22/2011 | EFT | Randalls | | Nelva | 8.68 | 780.01 |
| Check | 2/22/2011 | EFT | Walgreens | | Nelva | 28.12 | 808.13 |
| Check | 2/24/2011 | EFT | Randalls | | Nelva | 24.39 | 832.52 |
| Check | 3/7/2011 | EFT | Randalls | | Nelva | 24.30 | 856.82 |
| Check | 3/7/2011 | EFT | Chick-fil-a #0103 | | Nelva | 3.29 | 860.11 |
| Check | 3/7/2011 | EFT | Randalls | | Nelva | 9.77 | 869.88 |
| Check | 3/7/2011 | eft | Wal-Mart | | Nelva | 11.89 | 881.77 |
| General Journal | 3/7/2011 | EJ20120461 | | DEBIT 1943 | Nelva | -6.48 | 875.29 |
| Check | 3/8/2011 | eft | Subway | | Nelva | 3.25 | 878.54 |
| Check | 3/14/2011 | EFT | Randalls | | Nelva | 29.21 | 907.75 |
| Check | 3/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 14.16 | 921.91 |
| Check | 3/14/2011 | EFT | Randalls | | Nelva | 13.23 | 935.14 |
| Check | 3/14/2011 | EFT | Taco Cabana | Dining | Nelva | 6.48 | 941.62 |
| Check | 3/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 944.91 |
| Check | 3/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 1.83 | 946.74 |
| Check | 3/14/2011 | EEFT | Taco Cabana | Dining | Nelva | 8.63 | 955.37 |
| Check | 3/16/2011 | EFT | Randalls | | Nelva | 60.94 | 1,016.31 |
| Check | 3/16/2011 | EFT | Randalls | | Nelva | 12.44 | 1,028.75 |
| Check | 3/18/2011 | EFT | Randalls | | Nelva | 69.77 | 1,098.52 |
| Check | 3/21/2011 | EFT | Taco Cabana | Dining | Nelva | 22.68 | 1,121.20 |
| Check | 3/21/2011 | EFT | Taco Cabana | Dining | Nelva | 23.77 | 1,144.97 |
| Check | 3/21/2011 | EFT | Wal-Mart | | Nelva | 114.67 | 1,259.64 |
| Check | 3/21/2011 | EFT | Randalls | | Nelva | 18.37 | 1,278.01 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 3/21/2011 | EFT | Randalls | | Nelva | 13.11 | 1,291.12 |
| Check | 3/28/2011 | EFT | Randalls | | Nelva | 36.05 | 1,327.17 |
| Check | 3/29/2011 | EFT | Subway | Dining | Nelva | 4.33 | 1,331.50 |
| Check | 3/30/2011 | EFT | Randalls | | Nelva | 8.85 | 1,340.35 |
| Check | 4/4/2011 | EFT | Wal-Mart | | Nelva | 37.28 | 1,377.63 |
| Check | 4/4/2011 | EFT | Randalls | | Nelva | 34.54 | 1,412.17 |
| Check | 4/4/2011 | EFT | Randalls | | Nelva | 52.52 | 1,464.69 |
| Check | 4/5/2011 | EFT | Subway | Dining | Nelva | 3.25 | 1,467.94 |
| Check | 4/6/2011 | EFT | Randalls | | Nelva | 34.97 | 1,502.91 |
| Check | 4/8/2011 | EFT | Randalls | | Nelva | 15.87 | 1,518.78 |
| Check | 4/11/2011 | EFT | Subway | Dining | Nelva | 3.79 | 1,522.57 |
| Check | 4/11/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 1.83 | 1,524.40 |
| Check | 4/11/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 1.83 | 1,526.23 |
| Check | 4/11/2011 | EFT | Randalls | | Nelva | 16.56 | 1,542.79 |
| Check | 4/11/2011 | EFT | Randalls | | Nelva | 51.94 | 1,594.73 |
| Check | 4/12/2011 | EFT | Subway | Dining | Nelva | 3.25 | 1,597.98 |
| Check | 4/12/2011 | EFT | Randalls | | Nelva | 34.69 | 1,632.67 |
| Check | 4/13/2011 | EFT | Randalls | | Nelva | 67.04 | 1,699.71 |
| Check | 4/14/2011 | EFT | Randalls | | Nelva | 24.03 | 1,723.74 |
| Check | 4/15/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 10.25 | 1,733.99 |
| Check | 4/18/2011 | EFT | Randalls | | Nelva | 26.45 | 1,760.44 |
| Check | 4/18/2011 | EFT | Randalls | | Nelva | 23.16 | 1,783.60 |
| Check | 4/18/2011 | EFT | Randalls | | Nelva | 17.30 | 1,800.90 |
| Check | 4/22/2011 | EFT | Randalls | | Nelva | 57.60 | 1,858.50 |
| Check | 4/25/2011 | EFT | Subway | Dining | Nelva | 3.79 | 1,862.29 |
| Check | 4/25/2011 | EFT | Subway | Dining | Nelva | 3.79 | 1,866.08 |
| Check | 4/25/2011 | EFT | Taco Cabana | Dining | Nelva | 22.68 | 1,888.76 |
| Check | 4/25/2011 | EFT | Randalls | | Nelva | 86.07 | 1,974.83 |
| Check | 5/2/2011 | EFT | Randalls | | Nelva | 140.07 | 2,114.90 |
| Check | 5/3/2011 | EFT | Randalls | | Nelva | 36.75 | 2,151.65 |
| Check | 5/6/2011 | EFT | Randalls | | Nelva | 17.30 | 2,168.95 |
| Check | 5/9/2011 | EFT | Randalls | | Nelva | 33.74 | 2,202.69 |
| Check | 5/9/2011 | EFT | Randalls | | Nelva | 55.52 | 2,258.21 |
| Check | 5/11/2011 | EFT | Randalls | | Nelva | 10.39 | 2,268.60 |
| Check | 5/16/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 2,271.89 |
| Check | 5/16/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 2,275.18 |
| Check | 5/18/2011 | EFT | Randalls | | Nelva | 42.56 | 2,317.74 |
| Check | 5/20/2011 | EFT | Randalls | | Nelva | 21.87 | 2,339.61 |
| Check | 5/23/2011 | EFT | Randalls | | Nelva | 57.35 | 2,396.96 |
| Check | 5/25/2011 | EFT | Randalls | Dining | Nelva | 43.52 | 2,440.48 |
| Check | 5/31/2011 | EFT | Randalls | | Nelva | 31.71 | 2,472.19 |
| Check | 6/3/2011 | EFT | Randalls | | Nelva | 23.46 | 2,495.65 |
| Check | 6/6/2011 | EFT | Kroger | | Nelva | 32.17 | 2,527.82 |
| Check | 6/6/2011 | EFT | Randalls | | Nelva | 23.97 | 2,551.79 |
| Check | 6/6/2011 | EFT | Randalls | | Nelva | 20.00 | 2,571.79 |
| Check | 6/6/2011 | EFT | Fastop | Dining | Nelva | 4.25 | 2,576.04 |
| Check | 6/13/2011 | EFT | McDonald's | Dining | Nelva | 13.46 | 2,589.50 |
| Check | 6/13/2011 | EFT | Kroger | | Nelva | 3.05 | 2,592.55 |
| Check | 6/13/2011 | EFT | Randalls | | Nelva | 43.77 | 2,636.32 |
| Check | 6/13/2011 | EFT | Randalls | | Nelva | 54.05 | 2,690.37 |
| Check | 6/14/2011 | EFT | McDonald's | Dining | Nelva | 2.17 | 2,692.54 |
| Check | 6/20/2011 | EFT | Randalls | | Nelva | 24.19 | 2,716.73 |
| Check | 6/24/2011 | EFT | Randalls | | Nelva | 41.68 | 2,758.41 |
| Check | 6/28/2011 | EFT | Randalls | | Nelva | 50.83 | 2,809.24 |
| Check | 7/1/2011 | EFT | Randalls | | Nelva | 18.92 | 2,828.16 |
| Check | 7/5/2011 | EFT | Randalls | | Nelva | 25.61 | 2,853.77 |
| Check | 7/5/2011 | EFT | Randalls | | Nelva | 34.05 | 2,887.82 |
| Check | 7/6/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 5.13 | 2,892.95 |
| Check | 7/8/2011 | EFT | Randalls | | Nelva | 46.61 | 2,939.56 |
| Check | 7/11/2011 | EFT | Randalls | | Nelva | 52.99 | 2,992.55 |
| Check | 7/11/2011 | EFT | McDonald's | Dining | Nelva | 2.48 | 2,995.03 |
| Check | 7/11/2011 | EFT | Randalls | | Nelva | 29.80 | 3,024.83 |
| Check | 7/18/2011 | EFT | Randalls | | Nelva | 35.41 | 3,060.24 |
| Check | 7/18/2011 | EFT | Randalls | | Nelva | 25.14 | 3,085.38 |
| Check | 7/18/2011 | EFT | Wal-Mart | | Nelva | 260.73 | 3,346.11 |
| Check | 7/21/2011 | EFT | Randalls | | Nelva | 45.34 | 3,391.45 |
| Check | 7/25/2011 | EFT | Randalls | | Nelva | 43.38 | 3,434.83 |
| Check | 7/25/2011 | EFT | Randalls | | Nelva | 60.57 | 3,495.40 |
| Check | 7/25/2011 | EFT | Kolache Factory | Dining | Nelva | 3.76 | 3,499.16 |
| Check | 7/28/2011 | EFT | Randalls | | Nelva | 31.23 | 3,530.39 |
| Check | 7/28/2011 | EFT | Randalls | | Nelva | 26.20 | 3,556.59 |
| Check | 7/29/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 1.83 | 3,558.42 |
| Check | 8/1/2011 | EFT | Randalls | | Nelva | 47.94 | 3,606.36 |
| Check | 8/1/2011 | EFT | Walgreens | | Nelva | 20.99 | 3,627.35 |
| Check | 8/1/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 3,630.64 |
| Check | 8/2/2011 | EFT | Randalls | | Nelva | 29.74 | 3,660.38 |
| Check | 8/4/2011 | EFT | McDonald's | Dining | Nelva | 2.17 | 3,662.55 |
| Check | 8/5/2011 | EFT | Randalls | | Nelva | 24.92 | 3,687.47 |
| Check | 8/8/2011 | EFT | Randalls | | Nelva | 30.29 | 3,717.76 |
| Check | 8/8/2011 | EFT | Randalls | 08/06 | Nelva | 57.90 | 3,775.66 |
| Check | 8/10/2011 | EFT | Randalls | | Nelva | 21.76 | 3,797.42 |
| Check | 8/15/2011 | EFT | Randalls | | Nelva | 58.34 | 3,855.76 |
| Check | 8/15/2011 | EFT | Randalls | | Nelva | 46.75 | 3,902.51 |
| Check | 8/17/2011 | EFT | HEB | | Nelva | 34.39 | 3,936.90 |
| Check | 8/17/2011 | EFT | HEB | | Nelva | 19.77 | 3,956.67 |
| Check | 8/22/2011 | EFT | Randalls | | Nelva | 39.52 | 3,996.19 |
| Check | 8/22/2011 | EFT | Randalls | | Nelva | 44.99 | 4,041.18 |
| Check | 8/24/2011 | EFT | Randalls | | Nelva | 44.36 | 4,085.54 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 8/24/2011 | EFT | Randalls | | Nelva | 28.74 | 4,114.28 |
| Check | 8/25/2011 | EFT | Randalls | | Nelva | 18.33 | 4,132.61 |
| Check | 8/29/2011 | EFT | Randalls | | Nelva | 36.15 | 4,168.76 |
| Check | 9/2/2011 | EFT | Randalls | | Nelva | 21.71 | 4,190.47 |
| Check | 9/6/2011 | EFT | Randalls | | Nelva | 33.12 | 4,223.59 |
| Check | 9/6/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 4,226.88 |
| Check | 9/6/2011 | EFT | Randalls | | Nelva | 68.27 | 4,295.15 |
| Check | 9/7/2011 | EFT | Randalls | | Nelva | 50.29 | 4,345.44 |
| Check | 9/8/2011 | EFT | Randalls | | Nelva | 14.60 | 4,360.04 |
| Check | 9/9/2011 | EFT | Chick-fil-a #0103 | | Nelva | 3.29 | 4,363.33 |
| Check | 9/12/2011 | EFT | Randalls | | Nelva | 92.24 | 4,455.57 |
| Check | 9/12/2011 | EFT | Randalls | | Nelva | 20.00 | 4,475.57 |
| Check | 9/19/2011 | EFT | Randalls | | Nelva | 42.84 | 4,518.41 |
| Check | 9/23/2011 | EFT | Walgreens | | Nelva | 11.99 | 4,530.40 |
| Check | 9/26/2011 | EFT | Wal-Mart | | Nelva | 133.75 | 4,664.15 |
| Check | 9/26/2011 | EFT | Randalls | | Nelva | 23.57 | 4,687.72 |
| Check | 9/28/2011 | EFT | Randalls | | Nelva | 14.06 | 4,701.78 |
| Check | 9/28/2011 | EFT | Randalls | | Nelva | 18.90 | 4,720.68 |
| Check | 9/30/2011 | EFT | Randalls | | Nelva | 28.77 | 4,749.45 |
| Check | 9/30/2011 | EFT | Randalls | | Nelva | 19.06 | 4,768.51 |
| Check | 10/3/2011 | EFT | Wal-Mart | | Nelva | 55.92 | 4,824.43 |
| Check | 10/3/2011 | EFT | Randalls | | Nelva | 32.16 | 4,856.59 |
| Check | 10/3/2011 | EFT | HEB | | Nelva | 20.75 | 4,877.34 |
| Check | 10/3/2011 | EFT | Randalls | | Nelva | 8.95 | 4,886.29 |
| Check | 10/4/2011 | EFT | Randalls | | Nelva | 38.92 | 4,925.21 |
| Check | 10/7/2011 | EFT | Randalls | | Nelva | 39.04 | 4,964.25 |
| Check | 10/11/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 4,967.54 |
| Check | 10/11/2011 | EFT | Randalls | | Nelva | 26.50 | 4,994.04 |
| Check | 10/11/2011 | EFT | Randalls | | Nelva | 14.06 | 5,008.10 |
| Check | 10/12/2011 | ET | Randalls | | Nelva | 25.47 | 5,033.57 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 65.96 | 5,099.53 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 45.32 | 5,144.85 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 28.98 | 5,173.83 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 28.05 | 5,201.88 |
| Check | 10/17/2011 | EFT | Randalls | | Nelva | 17.30 | 5,219.18 |
| Check | 10/17/2011 | EFT | McDonald's | Dining | Nelva | 6.26 | 5,225.44 |
| Check | 10/19/2011 | EFT | Randalls | | Nelva | 27.71 | 5,253.15 |
| Check | 10/20/2011 | EFT | Chick-fil-a #0103 | dINING | Nelva | 3.29 | 5,256.44 |
| Check | 10/21/2011 | eft | Randalls | | Nelva | 7.61 | 5,264.05 |
| Check | 10/21/2011 | eft | Chick-fil-a #0103 | dINING | Nelva | 3.29 | 5,267.34 |
| Check | 10/24/2011 | EFT | Randalls | | Nelva | 41.88 | 5,309.22 |
| Check | 10/24/2011 | eft | Chick-fil-a #0103 | dINING | Nelva | 3.29 | 5,312.51 |
| Check | 10/25/2011 | eft | Randalls | | Nelva | 52.17 | 5,364.68 |
| Check | 10/26/2011 | eft | Randalls | | Nelva | 42.23 | 5,406.91 |
| Check | 10/26/2011 | EFT | Subway | Dining | Nelva | 14.70 | 5,421.61 |
| Check | 10/31/2011 | EFT | Randalls | | Nelva | 94.10 | 5,515.71 |
| Check | 10/31/2011 | EFT | Randalls | | Nelva | 20.33 | 5,536.04 |
| Check | 10/31/2011 | EFT | Randalls | | Nelva | 6.90 | 5,542.94 |
| Check | 11/1/2011 | EFT | Randalls | | Nelva | 33.16 | 5,576.10 |
| Check | 11/2/2011 | EFT | Randalls | Fuel | Nelva | 25.78 | 5,601.88 |
| Check | 11/4/2011 | EFT | Randalls | | Nelva | 10.00 | 5,611.88 |
| Check | 11/4/2011 | EFT | Randalls | | Nelva | 53.01 | 5,664.89 |
| Check | 11/7/2011 | EFT | Au Bon Pain-memo | Dining | Nelva | 3.94 | 5,668.83 |
| Check | 11/7/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 5,672.12 |
| Check | 11/7/2011 | EFT | McDonald's | Dining | Nelva | 1.08 | 5,673.20 |
| Check | 11/7/2011 | EFT | Randalls | | Nelva | 33.51 | 5,706.71 |
| Check | 11/7/2011 | EFT | Randalls | | Nelva | 34.35 | 5,741.06 |
| Check | 11/8/2011 | EFT | Randalls | | Nelva | 17.84 | 5,758.90 |
| Check | 11/8/2011 | EFT | McDonald's | Dining | Nelva | 6.70 | 5,765.60 |
| Check | 11/8/2011 | EFT | Randalls | | Nelva | 48.45 | 5,814.05 |
| Check | 11/9/2011 | EFT | HEB | | Nelva | 43.40 | 5,857.45 |
| Check | 11/14/2011 | eft | Randalls | | Nelva | 32.71 | 5,890.16 |
| Check | 11/14/2011 | eft | Randalls | | Nelva | 30.92 | 5,921.08 |
| Check | 11/14/2011 | eft | Randalls | | Nelva | 22.41 | 5,943.49 |
| Check | 11/14/2011 | EFT | McDonald's | Dining | Nelva | 8.60 | 5,952.09 |
| Check | 11/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 5,955.38 |
| Check | 11/14/2011 | EFT | Chick-fil-a #0103 | Dining | Nelva | 3.29 | 5,958.67 |
| Total Food/Dining/Groceries | | | | | | 5,958.67 | 5,958.67 |
| **Funeral** | | | | | | | |
| Check | 11/12/2011 | 7033 | Memorial Oaks | | Survivor | 1,595.00 | 1,595.00 |
| Check | 11/14/2011 | 7035 | Memorial Oaks | | Survivor | 1,511.29 | 3,106.29 |
| Check | 11/15/2011 | 7036 | Memorial Oaks | Organist | Survivor | 150.00 | 3,256.29 |
| Check | 11/15/2011 | 7037 | Bob Johnson | pastor | Survivor | 300.00 | 3,556.29 |
| **Total Funeral** | | | | | | **3,556.29** | **3,556.29** |
| **Household** | | | | | | | |
| Check | 1/20/2011 | 111 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 70.00 |
| Check | 2/11/2011 | 125 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 140.00 |
| Check | 2/18/2011 | 161 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 210.00 |
| Check | 2/22/2011 | EFT | Southwest Fertilizer | | Nelva | 8.73 | 218.73 |
| Check | 2/28/2011 | EFT | Southwest Fertilizer | | Nelva | 59.73 | 278.46 |
| Check | 2/28/2011 | EFT | Radio Shack | | Nelva | 94.13 | 372.59 |
| Check | 3/1/2011 | EFT | Home Depot | | Nelva | 20.55 | 393.14 |
| Check | 3/25/2011 | 169 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 463.14 |
| Check | 3/28/2011 | EFT | Southwest Fertilizer | | Nelva | 13.39 | 476.53 |
| Check | 4/6/2011 | EFT | Southwest Fertilizer | | Nelva | 9.73 | 486.26 |
| Check | 4/8/2011 | 179 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 556.26 |



20-20566.2632

# Brunsting Family Living Trust
## Detail of Accounts
### 12/21/2010-05/31/2013

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 4/18/2011 | EFT | Sou The Home | 04/16 #000457501 | Nelva | 22.83 | 579.09 |
| Check | 4/25/2011 | 196 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 649.09 |
| Check | 5/3/2011 | EFT | Southwest Fertilizer | | Nelva | 21.98 | 671.07 |
| Check | 5/9/2011 | 210 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 741.07 |
| Check | 5/23/2011 | 221 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 811.07 |
| Check | 6/3/2011 | 237 | Mrs. Gutierrez | Cleaning | Nelva | 70.00 | 881.07 |
| Check | 6/27/2011 | EFT | Sou The Home | | Nelva | 161.36 | 1,042.43 |
| Check | 7/26/2011 | EFT | Southwest Fertilizer | Garden | Nelva | 25.88 | 1,068.31 |
| Check | 8/11/2011 | 300 | Maria Vaquera | Cleaning | Nelva | 50.00 | 1,118.31 |
| Check | 9/13/2011 | EFT | Southwest Fertilizer | Garden | Nelva | 18.89 | 1,137.20 |
| Check | 9/26/2011 | 336 | Maria Vaquera | Cleaning | Nelva | 50.00 | 1,187.20 |
| Check | 10/6/2011 | 345 | Maria Vaquera | Cleaning | Nelva | 50.00 | 1,237.20 |
| Total Household | | | | | | 1,237.20 | 1,237.20 |
| **Insurance Expense** | | | | | | | |
| Check | 1/5/2011 | EFT | State Farm Insurance | | Survivor | 299.93 | 299.93 |
| Check | 2/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 299.93 | 599.86 |
| Check | 3/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 299.93 | 899.79 |
| Check | 4/4/2011 | EFT | State Farm Insurance | PPD | Survivor | 301.36 | 1,201.15 |
| Check | 5/3/2011 | EFT | State Farm Insurance | | Survivor | 300.62 | 1,501.77 |
| Check | 6/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 300.62 | 1,802.39 |
| Check | 7/5/2011 | EFT | State Farm Insurance | PPD | Survivor | 300.62 | 2,103.01 |
| Check | 8/2/2011 | EFT | State Farm Insurance | | Survivor | 300.62 | 2,403.63 |
| Check | 9/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 2,693.67 |
| Check | 10/4/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 2,983.71 |
| Check | 11/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 3,273.75 |
| Check | 12/2/2011 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 3,563.79 |
| Check | 1/5/2012 | EFT | State Farm Insurance | PPF | Survivor | 290.04 | 3,853.83 |
| Check | 2/2/2012 | EFT | State Farm Insurance | PPD | Survivor | 290.04 | 4,143.87 |
| Check | 3/2/2012 | EFT | State Farm Insurance | PPD | Survivor | 292.79 | 4,436.66 |
| Check | 4/3/2012 | EFT | State Farm Insurance | PPD | Survivor | 301.22 | 4,737.88 |
| Total Insurance Expense | | | | | | 4,737.88 | 4,737.88 |
| **Lawn Care** | | | | | | | |
| Check | 2/14/2011 | 133 | Mr. Phan Chan | Household | Nelva | 100.00 | 100.00 |
| Check | 3/11/2011 | 157 | Mr. Phan Chan | Household | Nelva | 100.00 | 200.00 |
| Check | 3/21/2011 | 160 | Nicolas | Yard work | Nelva | 52.00 | 252.00 |
| Check | 4/15/2011 | 190 | Mr. Phan Chan | mowing | Nelva | 100.00 | 352.00 |
| Check | 5/20/2011 | 222 | Mr. Phan Chan | mowing | Nelva | 100.00 | 452.00 |
| Check | 5/24/2011 | 226 | Fernando | yard work Home repair | Nelva | 35.00 | 487.00 |
| Check | 6/27/2011 | 255 | Mr. Phan Chan | mowing | Nelva | 125.00 | 612.00 |
| Check | 7/25/2011 | 280 | Mr. Phan Chan | mowing | Nelva | 125.00 | 737.00 |
| Check | 9/23/2011 | 337 | Mr. Phan Chan | Household | Nelva | 225.00 | 962.00 |
| Check | 10/21/2011 | 361 | Mr. Phan Chan | Household | Nelva | 100.00 | 1,062.00 |
| Check | 12/23/2011 | 105 | Mr. Phan Chan | 13630 Pinerock | Survivor | 200.00 | 1,262.00 |
| Total Lawn Care | | | | | | 1,262.00 | 1,262.00 |
| **Legal Fees** | | | | | | | |
| **Check** | **1/19/2011** | **7003** | **Vacek & Freed PLLC** | | **Survivor** | **880.15** | **880.15** |
| **Check** | **3/17/2011** | **7006** | **Vacek & Freed PLLC** | **Legal Fees** | **Survivor** | **340.00** | **1,220.15** |
| **Check** | **6/2/2011** | **7015** | **Vacek & Freed PLLC** | | **Survivor** | **575.59** | **1,795.74** |
| **Check** | **8/5/2011** | **7025** | **Vacek & Freed PLLC** | **Retainer** | **Survivor** | **1,000.00** | **2,795.74** |
| Check | 10/12/2011 | 7030 | DeKoster & DeKoster | farm contract | Survivor | 100.00 | 2,895.74 |
| **Check** | **12/20/2011** | **101** | **Vacek & Freed PLLC** | **Retainer** | **Survivor** | **4,500.00** | 7,395.74 |
| Check | 1/3/2012 | 110 | Herb Jamison | House appraisal | Survivor | 450.00 | 7,845.74 |
| **Check** | **4/20/2012** | **128** | **Mills Shirley LLP** | **Suit** | **Survivor** | **10,000.00** | **17,845.74** |
| **Check** | **4/20/2012** | **129** | **Bernard Mathews** | | **Survivor** | **1,029.60** | **18,875.34** |
| **Check** | **7/18/2012** | **135** | **Mills Shirley LLP** | | **Survivor** | **17,000.00** | **35,875.34** |
| **Check** | **3/21/2013** | **142** | **Mills Shirley LLP** | | **Survivor** | **437.10** | **36,312.44** |
| **Check** | **4/2/2013** | **143** | **Mills Shirley LLP** | **George vie Candy's suit** | **Survivor** | **10,000.00** | **46,312.44** |
| General Journal | 5/31/2013 | EJ20120434 | | From Mills Shirley - Reimbursement | Survivor | -10,000.00 | 36,312.44 |
| Total Legal Fees | | | | | | 36,312.44 | 36,312.44 |
| **Medical Expenses** | | | | | | | |
| **In Home Care** | | | | | | | |
| Check | 12/29/2010 | 6851 | Tino | Faustiino Vaquera, Jr | Nelva | 1,245.00 | 1,245.00 |
| Check | 12/29/2010 | 6852 | Michael Brooks | | Nelva | 855.00 | 2,100.00 |
| Check | 1/4/2011 | 6853 | Robert Cantu | | Survivor | 736.00 | 2,836.00 |
| Check | 1/7/2011 | 91 | Michael Brooks | | Nelva | 585.00 | 3,421.00 |
| Check | 1/10/2011 | 92 | Tino | | Nelva | 1,413.14 | 4,834.14 |
| Check | 1/11/2011 | 93 | Robert Cantu | | Nelva | 605.00 | 5,439.14 |
| Check | 1/13/2011 | 102 | Michael Brooks | | Nelva | 585.00 | 6,024.14 |
| Check | 1/18/2011 | 101 | Tino | | Nelva | 1,065.00 | 7,089.14 |
| Check | 1/18/2011 | 110 | Robert Cantu | | Nelva | 810.00 | 7,899.14 |
| General Journal | 1/19/2011 | EJ20120455 | | Return of Posted Check / Item (Robert Cantu | Nelva | -810.00 | 7,089.14 |
| Check | 1/21/2011 | 112 | Tino | | Nelva | 1,619.00 | 8,708.14 |
| Check | 1/21/2011 | 113 | Robert Cantu | | Nelva | 888.00 | 9,596.14 |
| Check | 1/24/2011 | 114 | Robert Cantu | | Nelva | 1,083.91 | 10,680.05 |
| Check | 1/27/2011 | 116 | Tino | | Nelva | 906.55 | 11,586.60 |
| Check | 1/28/2011 | 120 | Robert Cantu | | Nelva | 856.93 | 12,443.53 |
| Check | 2/1/2011 | 121 | Tino | | Nelva | 1,249.00 | 13,692.53 |
| Check | 2/1/2011 | 144 | Robert Cantu | | Nelva | 801.80 | 14,494.33 |
| Check | 2/2/2011 | 122 | Robert Cantu | | Nelva | 460.00 | 14,954.33 |
| Check | 2/4/2011 | 124 | Tino | | Nelva | 842.00 | 15,796.33 |
| Check | 2/7/2011 | 126 | Robert Cantu | | Nelva | 807.00 | 16,603.33 |
| Check | 2/11/2011 | 130 | Tino | | Nelva | 1,166.00 | 17,769.33 |
| Check | 2/11/2011 | 131 | Robert Cantu | | Nelva | 637.41 | 18,406.74 |
| Check | 2/14/2011 | 135 | Robert Cantu | | Nelva | 430.00 | 18,836.74 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 2/17/2011 | 138 | Tino | | Nelva | 1,454.42 | 20,291.16 |
| Check | 2/18/2011 | 136 | Robert Cantu | | Nelva | 771.23 | 21,062.39 |
| Check | 2/22/2011 | 162 | Tino | | Nelva | 1,067.57 | 22,129.96 |
| Check | 2/25/2011 | 141 | Tino | | Nelva | 826.72 | 22,956.68 |
| Check | 2/25/2011 | 143 | Robert Cantu | | Nelva | 510.00 | 23,466.68 |
| Check | 3/4/2011 | 146 | Robert Cantu | | Nelva | 538.68 | 24,005.36 |
| Check | 3/7/2011 | 148 | Tino | | Nelva | 1,704.19 | 25,709.55 |
| Check | 3/10/2011 | 155 | Michael Brooks | | Nelva | 285.00 | 25,994.55 |
| Check | 3/10/2011 | 156 | Robert Cantu | | Nelva | 1,045.67 | 27,040.22 |
| Check | 3/14/2011 | 158 | Tino | | Nelva | 1,253.02 | 28,293.24 |
| Check | 3/16/2011 | 159 | Michael Brooks | | Nelva | 55.00 | 28,348.24 |
| Check | 3/18/2011 | 163 | Robert Cantu | | Nelva | 289.78 | 28,638.02 |
| Check | 3/21/2011 | 164 | Tino | | Nelva | 1,248.70 | 29,886.72 |
| Check | 3/21/2011 | 165 | Michael Brooks | | Nelva | 367.50 | 30,254.22 |
| Check | 3/21/2011 | 166 | Robert Cantu | | Nelva | 360.00 | 30,614.22 |
| Check | 3/23/2011 | 167 | Michael Brooks | | Nelva | 67.50 | 30,681.72 |
| Check | 3/24/2011 | 168 | Robert Cantu | | Nelva | 490.86 | 31,172.58 |
| Check | 3/24/2011 | 170 | Tino | | Nelva | 50.00 | 31,222.58 |
| Check | 3/25/2011 | 172 | Tino | | Nelva | 1,636.77 | 32,859.35 |
| Check | 3/28/2011 | 173 | Michael Brooks | | Nelva | 65.00 | 32,924.35 |
| Check | 3/28/2011 | 174 | Robert Cantu | | Nelva | 701.91 | 33,626.26 |
| Check | 4/1/2011 | 175 | Tino | | Nelva | 1,689.00 | 35,315.26 |
| Check | 4/4/2011 | 177 | Robert Cantu | | Nelva | 1,303.48 | 36,618.74 |
| Check | 4/7/2011 | 178 | Michael Brooks | | Nelva | 184.00 | 36,802.74 |
| Check | 4/8/2011 | 180 | Tino | | Nelva | 1,475.00 | 38,277.74 |
| Check | 4/11/2011 | 181 | Robert Cantu | | Nelva | 1,042.10 | 39,319.84 |
| Check | 4/13/2011 | 185 | Michael Brooks | | Nelva | 75.00 | 39,394.84 |
| Check | 4/15/2011 | 189 | Michael Brooks | | Nelva | 91.00 | 39,485.84 |
| Check | 4/15/2011 | 191 | Tino | | Nelva | 1,704.81 | 41,190.65 |
| Check | 4/18/2011 | 192 | Michael Brooks | | Nelva | 195.00 | 41,385.65 |
| Check | 4/19/2011 | 194 | Michael Brooks | | Nelva | 216.50 | 41,602.15 |
| Check | 4/20/2011 | 195 | Michael Brooks | | Nelva | 75.00 | 41,677.15 |
| Check | 4/22/2011 | 197 | Michael Brooks | | Nelva | 202.00 | 41,879.15 |
| Check | 4/22/2011 | 198 | Tino | | Nelva | 2,156.83 | 44,035.98 |
| Check | 4/25/2011 | 199 | Robert Cantu | | Nelva | 215.00 | 44,250.98 |
| Check | 4/25/2011 | 200 | Michael Brooks | | Nelva | 300.00 | 44,550.98 |
| Check | 4/26/2011 | 202 | Shimeka Hughes | | Nelva | 1,080.00 | 45,630.98 |
| Check | 4/27/2011 | 203 | Michael Brooks | | Nelva | 60.00 | 45,690.98 |
| Check | 4/29/2011 | 204 | Robert Cantu | | Nelva | 645.00 | 46,335.98 |
| Check | 4/29/2011 | 205 | Michael Brooks | | Nelva | 90.00 | 46,425.98 |
| Check | 5/3/2011 | 208 | Robert Cantu | | Nelva | 202.50 | 46,628.48 |
| Check | 5/4/2011 | 207 | Tino | | Nelva | 1,721.11 | 48,349.59 |
| Check | 5/4/2011 | 209 | Michael Brooks | | Nelva | 270.00 | 48,619.59 |
| Check | 5/6/2011 | 211 | Tino | | Nelva | 743.00 | 49,362.59 |
| Check | 5/6/2011 | 212 | Michael Brooks | | Nelva | 67.50 | 49,430.09 |
| Check | 5/6/2011 | 213 | Robert Cantu | | Nelva | 225.00 | 49,655.09 |
| Check | 5/9/2011 | 214 | Robert Cantu | | Nelva | 902.30 | 50,557.39 |
| Check | 5/9/2011 | 215 | Michael Brooks | | Nelva | 202.00 | 50,759.39 |
| Check | 5/12/2011 | 216 | Michael Brooks | | Nelva | 45.00 | 50,804.39 |
| Check | 5/13/2011 | 217 | Tino | | Nelva | 1,320.53 | 52,124.92 |
| Check | 5/13/2011 | 218 | Robert Cantu | | Nelva | 255.00 | 52,379.92 |
| Check | 5/16/2011 | 219 | Robert Cantu | | Nelva | 868.81 | 53,248.73 |
| Check | 5/16/2011 | 220 | Michael Brooks | | Nelva | 217.50 | 53,466.23 |
| Check | 5/20/2011 | 223 | Tino | | Nelva | 1,483.53 | 54,949.76 |
| Check | 5/23/2011 | 227 | Robert Cantu | | Nelva | 1,026.00 | 55,975.76 |
| Check | 5/23/2011 | 228 | Michael Brooks | | Nelva | 207.00 | 56,182.76 |
| Check | 5/25/2011 | 229 | Michael Brooks | | Nelva | 219.50 | 56,402.26 |
| Check | 5/25/2011 | 231 | Michael Brooks | | Nelva | 227.50 | 56,629.76 |
| Check | 5/27/2011 | 232 | Tino | | Nelva | 1,621.50 | 58,251.26 |
| Check | 5/31/2011 | 235 | Robert Cantu | | Nelva | 796.86 | 59,048.12 |
| Check | 5/31/2011 | 236 | Katrina Harper | | Nelva | 360.00 | 59,408.12 |
| Check | 6/3/2011 | 239 | Tino | | Nelva | 1,215.36 | 60,623.48 |
| Check | 6/7/2011 | 241 | Robert Cantu | | Nelva | 1,115.00 | 61,738.48 |
| Check | 6/7/2011 | 242 | Katrina Harper | | Nelva | 360.00 | 62,098.48 |
| Check | 6/10/2011 | 243 | Tino | | Nelva | 1,110.00 | 63,208.48 |
| Check | 6/13/2011 | 244 | Robert Cantu | | Nelva | 720.00 | 63,928.48 |
| Check | 6/13/2011 | 246 | Katrina Harper | | Nelva | 600.00 | 64,528.48 |
| Check | 6/16/2011 | 247 | Daisy Harper | | Nelva | 720.00 | 65,248.48 |
| Check | 6/17/2011 | 248 | Robert Cantu | | Nelva | 930.00 | 66,178.48 |
| Check | 6/20/2011 | 250 | Katrina Harper | | Nelva | 870.00 | 67,048.48 |
| Check | 6/21/2011 | 249 | Daisy Harper | | Nelva | 40.00 | 67,088.48 |
| Check | 6/22/2011 | 252 | Cameo Caregivers | | Nelva | 68.00 | 67,156.48 |
| Check | 6/23/2011 | 256 | Tino | | Nelva | 1,170.00 | 68,326.48 |
| Check | 6/27/2011 | 257 | Robert Cantu | | Nelva | 926.19 | 69,252.67 |
| Check | 6/27/2011 | 258 | Katrina Harper | | Nelva | 360.00 | 69,612.67 |
| Check | 6/29/2011 | 259 | Tino | | Nelva | 1,121.65 | 70,734.32 |
| Check | 7/1/2011 | 263 | Robert Cantu | | Nelva | 930.00 | 71,664.32 |
| Check | 7/5/2011 | 265 | Katrina Harper | | Nelva | 450.00 | 72,114.32 |
| Check | 7/5/2011 | 266 | Robert Cantu | | Nelva | 60.00 | 72,174.32 |
| Check | 7/7/2011 | 269 | Tino | | Nelva | 1,166.70 | 73,341.02 |
| Check | 7/8/2011 | 270 | Robert Cantu | | Nelva | 915.00 | 74,256.02 |
| Check | 7/11/2011 | 271 | Katrina Harper | | Nelva | 465.00 | 74,721.02 |
| Check | 7/15/2011 | 273 | Robert Cantu | | Nelva | 720.00 | 75,441.02 |
| Check | 7/18/2011 | 274 | Katrina Harper | | Nelva | 673.50 | 76,114.52 |
| Check | 7/21/2011 | 275 | Tino | | Nelva | 1,172.66 | 77,287.18 |
| Check | 7/21/2011 | 276 | Tino | | Nelva | 100.00 | 77,387.18 |
| Check | 7/22/2011 | 272 | Tino | | Nelva | 1,300.06 | 78,687.24 |
| Check | 7/22/2011 | 278 | Robert Cantu | | Nelva | 165.00 | 78,852.24 |

# Brunsting Family Living Trust
## Detail of Accounts
12/21/2010-05/31/2013

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 7/22/2011 | 279 | Katrina Harper | | Nelva | 465.00 | 79,317.24 |
| Check | 7/25/2011 | 277 | Daisy Harper | | Nelva | 60.00 | 79,377.24 |
| Check | 7/25/2011 | 281 | Robert Cantu | | Nelva | 765.00 | 80,142.24 |
| Check | 7/28/2011 | 282 | Tino | | Nelva | 705.00 | 80,847.24 |
| Check | 8/1/2011 | 283 | Robert Cantu | | Nelva | 1,018.00 | 81,865.24 |
| Check | 8/1/2011 | 284 | Katrina Harper | | Nelva | 1,062.47 | 82,927.71 |
| Check | 8/4/2011 | 288 | Tino | | Nelva | 907.50 | 83,835.21 |
| Check | 8/8/2011 | 289 | Robert Cantu | | Nelva | 930.00 | 84,765.21 |
| Check | 8/9/2011 | 290 | Katrina Harper | | Nelva | 465.00 | 85,230.21 |
| Check | 8/11/2011 | 291 | Tino | | Nelva | 1,125.00 | 86,355.21 |
| Check | 8/15/2011 | 301 | Robert Cantu | | Nelva | 946.00 | 87,301.21 |
| Check | 8/15/2011 | 302 | Katrina Harper | | Nelva | 450.00 | 87,751.21 |
| Check | 8/18/2011 | 303 | Tino | | Nelva | 1,146.83 | 88,898.04 |
| Check | 8/19/2011 | 304 | Robert Cantu | | Nelva | 172.50 | 89,070.54 |
| Check | 8/19/2011 | 306 | Katrina Harper | | Nelva | 459.50 | 89,530.04 |
| Check | 8/22/2011 | 308 | Robert Cantu | | Nelva | 735.00 | 90,265.04 |
| Check | 8/24/2011 | 309 | Tino | | Nelva | 1,110.00 | 91,375.04 |
| Check | 8/29/2011 | 311 | Robert Cantu | | Nelva | 1,004.00 | 92,379.04 |
| Check | 8/30/2011 | 312 | Katrina Harper | | Nelva | 517.50 | 92,896.54 |
| Check | 9/1/2011 | 313 | Tino | | Nelva | 1,162.50 | 94,059.04 |
| Check | 9/6/2011 | 314 | Katrina Harper | | Nelva | 173.00 | 94,232.04 |
| Check | 9/6/2011 | 315 | Robert Cantu | | Nelva | 750.00 | 94,982.04 |
| Check | 9/6/2011 | 316 | Daisy Harper | | Nelva | 80.00 | 95,062.04 |
| Check | 9/6/2011 | 317 | Katrina Harper | | Nelva | 440.00 | 95,502.04 |
| Check | 9/8/2011 | 318 | Tino | | Nelva | 1,193.59 | 96,695.63 |
| Check | 9/12/2011 | 319 | Robert Cantu | | Nelva | 750.00 | 97,445.63 |
| Check | 9/13/2011 | 328 | Katrina Harper | | Nelva | 628.15 | 98,073.78 |
| Check | 9/15/2011 | 330 | Tino | | Nelva | 1,034.67 | 99,108.45 |
| Check | 9/19/2011 | 332 | Robert Cantu | | Nelva | 715.00 | 99,823.45 |
| Check | 9/20/2011 | 334 | Katrina Harper | | Nelva | 576.00 | 100,399.45 |
| Check | 9/22/2011 | 335 | Tino | | Nelva | 1,054.46 | 101,453.91 |
| Check | 9/26/2011 | 338 | Robert Cantu | | Nelva | 784.86 | 102,238.77 |
| Check | 9/27/2011 | 339 | Katrina Harper | | Nelva | 630.00 | 102,868.77 |
| Check | 9/29/2011 | 340 | Tino | | Nelva | 810.29 | 103,679.06 |
| Check | 10/3/2011 | 341 | Robert Cantu | | Nelva | 976.34 | 104,655.40 |
| Check | 10/4/2011 | 342 | Katrina Harper | | Nelva | 576.57 | 105,231.97 |
| Check | 10/6/2011 | 344 | Tino | | Nelva | 1,030.00 | 106,261.97 |
| Check | 10/7/2011 | 346 | Robert Cantu | | Nelva | 165.00 | 106,426.97 |
| Check | 10/11/2011 | 348 | Robert Cantu | | Nelva | 570.00 | 106,996.97 |
| Check | 10/11/2011 | 349 | Katrina Harper | | Nelva | 581.66 | 107,578.63 |
| Check | 10/11/2011 | 350 | Robert Cantu | | Nelva | 240.00 | 107,818.63 |
| Check | 10/14/2011 | 351 | Robert Cantu | | Nelva | 515.00 | 108,333.63 |
| Check | 10/17/2011 | 352 | Robert Cantu | | Nelva | 570.00 | 108,903.63 |
| Check | 10/18/2011 | 353 | Katrina Harper | | Nelva | 985.00 | 109,888.63 |
| Check | 10/19/2011 | 357 | Tino | | Nelva | 1,342.50 | 111,231.13 |
| Check | 10/21/2011 | 358 | Katrina Harper | | Nelva | 165.00 | 111,396.13 |
| Check | 10/24/2011 | 363 | Robert Cantu | | Nelva | 860.00 | 112,256.13 |
| Check | 10/25/2011 | 364 | Katrina Harper | | Nelva | 370.00 | 112,626.13 |
| Check | 10/26/2011 | 365 | Tino | | Nelva | 1,187.19 | 113,813.32 |
| Check | 10/31/2011 | CHK | Unknown payee | | Nelva | 793.00 | 114,606.32 |
| Check | 10/31/2011 | 366 | Katrina Harper | | Nelva | 165.00 | 114,771.32 |
| Check | 11/1/2011 | 375 | Katrina Harper | | Nelva | 540.00 | 115,311.32 |
| Check | 11/4/2011 | 376 | Tino | | Nelva | 1,235.29 | 116,546.61 |
| Check | 11/7/2011 | 377 | Robert Cantu | | Nelva | 885.00 | 117,431.61 |
| Check | 11/8/2011 | 401 | Katrina Harper | | Nelva | 360.00 | 117,791.61 |
| Check | 11/14/2011 | 431 | Latoya Harper | | Nelva | 90.00 | 117,881.61 |
| Check | 11/14/2011 | 432 | Katrina Harper | | Nelva | 810.00 | 118,691.61 |
| Check | 11/14/2011 | 433 | Robert Cantu | | Nelva | 541.00 | 119,232.61 |
| Total In Home Care | | | | | | 119,232.61 | 119,232.61 |
| **Medical Supplies** | | | | | | | |
| Check | 1/3/2011 | 6847 | Medical Aids | | Survivor | 32.48 | 32.48 |
| Check | 1/19/2011 | 104 | Duke Medical Equipm... | | Nelva | 2.54 | 35.02 |
| Check | 4/22/2011 | 184 | Duke Medical Equipm... | | Nelva | 17.75 | 52.77 |
| Check | 7/7/2011 | 7023 | Duke Medical Equipm... | | Survivor | 7.62 | 60.39 |
| Check | 7/7/2011 | 251 | Duke Medical Equipm... | Supplies | Nelva | 5.08 | 65.47 |
| Total Medical Supplies | | | | | | 65.47 | 65.47 |
| **Medical Expenses - Other** | | | | | | | |
| Check | 1/10/2011 | EFT | Walgreens | Food & Dining Groceries POS DEB 1943 01/03/11 00027165 | Nelva | 21.62 | 21.62 |
| Check | 1/18/2011 | 103 | Memorial City Hermann | | Nelva | 220.00 | 241.62 |
| Check | 1/19/2011 | 105 | Memorial Clinical Ass... | Doctor | Nelva | 8.02 | 249.64 |
| Check | 1/19/2011 | 108 | Radiology West | Doctor | Nelva | 1.23 | 250.87 |
| Check | 1/20/2011 | 106 | Memoria City Surgical... | Doctor | Nelva | 39.74 | 290.61 |
| Check | 2/2/2011 | 118 | Memorial Pathology C... | Doctor | Nelva | 7.10 | 297.71 |
| Check | 2/7/2011 | 117 | Rosewood Family Ph... | Doctor | Nelva | 65.00 | 362.71 |
| Check | 2/9/2011 | 127 | Schleicher Dental | Dentist | Nelva | 105.00 | 467.71 |
| Check | 2/17/2011 | 134 | Medical Chest Associ... | Doctor | Nelva | 15.01 | 482.72 |
| Check | 3/8/2011 | 151 | Memorial City Hermann | | Nelva | 181.58 | 664.30 |
| Check | 3/10/2011 | 150 | Radiology West | | Nelva | 5.37 | 669.67 |
| Check | 3/14/2011 | 153 | ACS Primary Care | | Nelva | 7.56 | 677.23 |
| Check | 4/18/2011 | 188 | ACS Primary Care | | Nelva | 7.23 | 684.46 |
| Check | 4/19/2011 | 183 | Medical Chest Associ... | Doctor | Nelva | 19.52 | 703.98 |
| Check | 4/22/2011 | 193 | Cardiologist Assoc of ... | | Nelva | 28.60 | 732.58 |
| Check | 6/23/2011 | 254 | Memorial Clinical Ass... | Doctor | Nelva | 5.76 | 738.34 |
| Check | 7/1/2011 | 260 | Schleicher Dental | Dental | Nelva | 143.00 | 881.34 |
| Check | 7/6/2011 | 7024 | Medical Chest Associ... | Medical: Doctor | Survivor | 4.12 | 885.46 |
| Check | 8/5/2011 | 285 | Dr. Achari | Doctor | Nelva | 24.98 | 910.44 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 8/15/2011 | 298 | memorial Hermann M... | | Nelva | 13.47 | 923.91 |
| Check | 8/16/2011 | 299 | ACS Primary Care | | Nelva | 7.23 | 931.14 |
| Check | 8/19/2011 | 297 | Azmat Khan MDPA | Doctor | Nelva | 10.13 | 941.27 |
| Check | 8/29/2011 | 310 | Legends Pharmacy | | Nelva | 42.00 | 983.27 |
| Check | 9/13/2011 | 323 | Dentex | Doctor | Nelva | 155.40 | 1,138.67 |
| Check | 9/13/2011 | 324 | Memorial City Hermann | | Nelva | 25.00 | 1,163.67 |
| Check | 9/16/2011 | 321 | ACS Primary Care | Doctor | Nelva | 6.87 | 1,170.54 |
| Check | 9/22/2011 | 327 | Memorial City Hermann | | Nelva | 59.77 | 1,230.31 |
| Check | 9/28/2011 | 320 | Dr. Khawaja | Doctor | Nelva | 28.04 | 1,258.35 |
| Check | 10/18/2011 | 355 | OC Pharmacy | Medicine | Nelva | 10.00 | 1,268.35 |
| Check | 10/19/2011 | 354 | Oncology Consultants | Doctor | Nelva | 22.48 | 1,290.83 |
| Check | 11/7/2011 | EFT | Mht Nutrit Svcs H | | Nelva | 8.12 | 1,298.95 |
| Check | 11/10/2011 | 371 | Dr. Achari | Doctor | Nelva | 29.30 | 1,328.25 |
| Check | 11/10/2011 | 372 | Northwoods Urology | Doctor | Nelva | 84.97 | 1,413.22 |
| Check | 11/14/2011 | 374 | Medical Chest Associ... | Doctor | Nelva | 34.42 | 1,447.64 |
| Check | 12/6/2011 | 7041 | Justin Alexander | for kt - reimburse Medical | Survivor | 40.00 | 1,487.64 |
| Check | 12/15/2011 | 103 | Memorial City Hermann | Doctor | Survivor | 41.72 | 1,529.36 |
| Check | 12/22/2011 | 107 | Kelsey-Seybold Clinic | Doctor | Survivor | 13.92 | 1,543.28 |
| Check | 12/22/2011 | 108 | Memorial City Hermann | Doctor | Survivor | 226.40 | 1,769.68 |
| Check | 12/22/2011 | 109 | ACS Primary Care | Doctor | Survivor | 6.87 | 1,776.55 |
| Check | 1/23/2012 | 113 | Northwoods Urology | Doctor | Survivor | 740.77 | 2,517.32 |
| Check | 2/24/2012 | 112 | Dr. Annie Uralil | Doctor | Survivor | 44.06 | 2,561.38 |
| Check | 4/16/2012 | 120 | Houston Progressive ... | Doctor | Survivor | 2.20 | 2,563.58 |
| Check | 4/16/2012 | 121 | Medical Chest Associ... | Doctor | Survivor | 5.40 | 2,568.98 |
| Total Medical Expenses - Other | | | | | | 2,568.98 | 2,568.98 |
| Total Medical Expenses | | | | | | 121,867.06 | 121,867.06 |
| **Miscellaneous Expenses** | | | | | | | |
| Check | 1/18/2011 | 107 | Hull Co-op | Misc | Nelva | 238.50 | 238.50 |
| Check | 11/14/2011 | WDRL | Withdrawal | NO INFORMATION GIVEN FOR THIS TRANSACTION AND BA... | Nelva | 6,500.00 | 6,738.50 |
| Check | 11/14/2011 | EFT | Houston Metro Ca | Misc | Nelva | 15.22 | 6,753.72 |
| Total Miscellaneous Expenses | | | | | | 6,753.72 | 6,753.72 |
| **Office Supplies** | | | | | | | |
| Check | 1/13/2011 | EFT | Bank of America | Check Order | Survivor | 15.00 | 15.00 |
| Check | 12/31/2012 | 141 | Office Depot | Printer Ink | Survivor | 48.70 | 63.70 |
| Total Office Supplies | | | | | | 63.70 | 63.70 |
| **Payments to Credit Cards** | | | | | | | |
| **Bank of America Credit Cards** | | | | | | | |
| Check | 2/1/2011 | EFT | Bank of America Cre... | | Nelva | 43.29 | 43.29 |
| Check | 3/1/2011 | EFT | Bank of America Cre... | Household | Survivor | 282.47 | 325.76 |
| Check | 3/18/2011 | EFT | Bank of America Cre... | | Nelva | 84.82 | 410.58 |
| Check | 4/1/2011 | EFT | Bank of America Cre... | Payment | Survivor | 38.00 | 448.58 |
| Check | 5/2/2011 | EFT | Bank of America Cre... | | Survivor | 2,967.61 | 3,416.19 |
| Check | 6/1/2011 | EFT | Bank of America Cre... | Credit card | Survivor | 6,355.65 | 9,771.84 |
| Check | 9/1/2011 | EFT | Bank of America Cre... | | Survivor | 3,256.32 | 13,028.16 |
| Check | 11/7/2011 | EFT | Bank of America Cre... | | Survivor | 323.88 | 13,352.04 |
| Check | 12/2/2011 | EFT | Bank of America Cre... | | Survivor | 359.79 | 13,711.83 |
| Check | 2/2/2012 | EFT | Bank of America Cre... | | Survivor | 269.84 | 13,981.67 |
| Check | 3/2/2012 | EFT | Bank of America Cre... | | Survivor | 61.32 | 14,042.99 |
| Total Bank of America Credit Cards | | | | | | 14,042.99 | 14,042.99 |
| **Bluebonnet Credit Union Cred Cd** | | | | | | | |
| Check | 1/18/2011 | EFT | Bank of America Cre... | Payment | Nelva | 725.00 | 725.00 |
| General Journal | 1/19/2011 | EJ20120455 | | Return of Posted Check / Item (R - BOA Cr Cd payment | Nelva | -725.00 | 0.00 |
| Check | 1/21/2011 | EFT | Bank of America Cre... | Payment | Nelva | 725.00 | 725.00 |
| Check | 3/14/2011 | 152 | Bluebonnet Credit Uni... | Credit card | Nelva | 3,248.57 | 3,973.57 |
| Check | 3/15/2011 | 312 | Cardmember Serv | Credit Card | Nelva | 111.00 | 4,084.57 |
| Check | 5/26/2011 | 225 | Bluebonnet Credit Uni... | Credit card | Nelva | 1,852.24 | 5,936.81 |
| Check | 5/27/2011 | EFT | Bluebonnet Credit Uni... | w/medical | Survivor | 1,864.49 | 7,801.30 |
| Check | 6/21/2011 | 9000 | Cardmember Serv | payment | Nelva | 195.00 | 7,996.30 |
| Check | 7/18/2011 | EFT | Bluebonnet Credit Uni... | w medical | Survivor | 175.47 | 8,171.77 |
| Check | 8/16/2011 | EFT | Bluebonnet Credit Uni... | with medical | Survivor | 1,172.08 | 9,343.85 |
| Check | 9/19/2011 | EFT | Bluebonnet Credit Uni... | w/medical | Survivor | 790.04 | 10,133.89 |
| Check | 10/18/2011 | EFT | Bluebonnet Credit Uni... | w/medical | Survivor | 687.84 | 10,821.73 |
| Check | 11/29/2011 | EFT | Bluebonnet Credit Uni... | includes medical | Survivor | 1,165.23 | 11,986.96 |
| Total Bluebonnet Credit Union Cred Cd | | | | | | 11,986.96 | 11,986.96 |
| Total Payments to Credit Cards | | | | | | 26,029.95 | 26,029.95 |
| **Personal Care** | | | | | | | |
| Check | 2/25/2011 | 139 | Silvana | Hair | Nelva | 52.00 | 52.00 |
| Check | 5/27/2011 | 230 | Silvana | hair | Nelva | 25.00 | 77.00 |
| Check | 6/13/2011 | EFT | Target | Shopping-Clothing | Nelva | 53.12 | 130.12 |
| Check | 6/13/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 125.93 | 256.05 |
| Check | 6/20/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 61.70 | 317.75 |
| Check | 6/20/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 251.94 | 569.69 |
| General Journal | 6/21/2011 | EJ20120468 | | ATM - Target - Shopping - Clothing | Nelva | -53.12 | 516.57 |
| Check | 6/21/2011 | EFT | Target | Shopping - Clothing | Nelva | 30.84 | 547.41 |
| General Journal | 7/11/2011 | EJ20120470 | | ATM JCPenney Shopping - Clothing | Nelva | -140.42 | 406.99 |
| Check | 7/11/2011 | EFT | Stein Mart | Shopping - Clothing | Nelva | 102.77 | 509.76 |
| Check | 7/11/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 80.05 | 589.81 |
| Check | 7/18/2011 | EFT | J C Penney | Shopping - Clothing | Nelva | 208.33 | 798.14 |
| Total Personal Care | | | | | | 798.14 | 798.14 |
| **Pet Care** | | | | | | | |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| **Pet Food and Supplies** | | | | | | | |
| Check | 2/28/2011 | EFT | Petsmart | Food & Dining:Groceries | Nelva | 36.79 | 36.79 |
| Check | 7/29/2011 | EFT | Petsmart | | Nelva | 32.89 | 69.68 |
| Total Pet Food and Supplies | | | | | | 69.68 | 69.68 |
| **Veterinary Expenses** | | | | | | | |
| Check | 5/23/2011 | EFT | Houston Veterinary | Carole covered healthcare worked pay when this acct was low - ... | Nelva | 1,019.72 | 1,019.72 |
| Check | 6/14/2011 | EFT | Houston Veterinary | Carole had to cover worker pay - Reimbursement | Nelva | 216.80 | 1,236.52 |
| General Journal | 6/15/2011 | EJ20120467 | | ATM - Checkcard 0612 Houston Veterinary | Nelva | -433.60 | 802.92 |
| Check | 9/19/2011 | EFT | Equine Sports Med | Carole covered worker pay - Reimbursement | Nelva | 812.50 | 1,615.42 |
| Check | 10/3/2011 | EFT | Greenway Animal C | Carole covered worker pay - Reimbursement | Nelva | 360.82 | 1,976.24 |
| Total Veterinary Expenses | | | | | | 1,976.24 | 1,976.24 |
| Total Pet Care | | | | | | 2,045.92 | 2,045.92 |
| **Postage** | | | | | | | |
| Check | 3/21/2012 | 118 | Postmaster | Estate tax info to Rich | Survivor | 14.80 | 14.80 |
| Check | 4/16/2012 | 126 | Postmaster | Mailing Cert Life Ins Checks | Survivor | 12.60 | 27.40 |
| Check | 6/27/2012 | 134 | Postmaster | Trust docs | Survivor | 29.19 | 56.59 |
| Check | 7/18/2012 | 136 | Postmaster | Papers to lawyer | Survivor | 15.45 | 72.04 |
| Check | 4/4/2013 | 144 | Postmaster | contract to g. vie | Survivor | 6.11 | 78.15 |
| Total Postage | | | | | | 78.15 | 78.15 |
| **Professional Fees** | | | | | | | |
| Check | 6/9/2011 | 7017 | Kroese & Kroese | Mom - Tax preparations | Survivor | 561.93 | 561.93 |
| Check | 6/9/2011 | 7018 | Kroese & Kroese | Decedents trust Tax preparation | Survivor | 1,123.87 | 1,685.80 |
| Check | 9/5/2011 | 7029 | Kroese & Kroese | farm lease Tax preparation | Survivor | 203.06 | 1,888.86 |
| Check | 10/20/2011 | 7031 | Kroese & Kroese | Tax preparation | Survivor | 700.00 | 2,588.86 |
| Check | 3/11/2012 | 116 | Kroese & Kroese | Farm appraisal/mgmt | Survivor | 2,175.00 | 4,763.86 |
| Check | 4/13/2012 | 119 | Kroese & Kroese | Tax preparation | Survivor | 1,050.00 | 5,813.86 |
| Check | 5/16/2012 | 102 | Kroese & Kroese | Accounting services | Elmer | 750.00 | 6,563.86 |
| Check | 5/16/2012 | 103 | Kroese & Kroese | Accounting services - farm contract and trust advice | Elmer | 1,000.00 | 7,563.86 |
| Total Professional Fees | | | | | | 7,563.86 | 7,563.86 |
| **Repairs and Maintenance** | | | | | | | |
| Check | 6/13/2011 | EFT | Sears | Home appliance repair | Nelva | 134.93 | 134.93 |
| Check | 8/16/2011 | 295 | P&M Air Conditioning | Home repair | Nelva | 148.38 | 283.31 |
| Check | 2/29/2012 | 115 | Durapier | Leveling house - home repair | Survivor | 500.00 | 783.31 |
| Total Repairs and Maintenance | | | | | | 783.31 | 783.31 |
| **Supplies** | | | | | | | |
| Check | 1/31/2011 | EFT | Lowe's | Garden | Nelva | 0.95 | 0.95 |
| Check | 2/22/2011 | EFT | Lowe's | Garden | Nelva | 22.99 | 23.94 |
| Check | 6/27/2011 | EFT | Lowe's | Garden | Nelva | 5.89 | 29.83 |
| Total Supplies | | | | | | 29.83 | 29.83 |
| **Taxes** | | | | | | | |
| **Taxes - Federal** | | | | | | | |
| Check | 1/25/2011 | 7001 | United States Treasury | 2010 Estimated Taxes | Survivor | 2,840.00 | 2,840.00 |
| Check | 4/15/2011 | 7010 | United States Treasury | Decedents trust 2010 tax | Survivor | 7,095.00 | 9,935.00 |
| Check | 4/15/2011 | 7011 | United States Treasury | Decedents trust 2011 tax qtr est | Survivor | 1,780.00 | 11,715.00 |
| Check | 4/15/2011 | 7012 | United States Treasury | Surv Trust 2011 tax qtr est | Survivor | 3,095.00 | 14,810.00 |
| Check | 4/15/2011 | 7013 | United States Treasury | Surv Trust 2010 tax | Survivor | 3,620.00 | 18,430.00 |
| Check | 6/9/2011 | 7020 | United States Treasury | Surv Trust 2010 tax qtrly Tax:Fed | Survivor | 3,620.00 | 22,050.00 |
| Check | 6/9/2011 | 7022 | United States Treasury | Dec Trust 2010 tax qtrly Tax:Fed | Survivor | 1,780.00 | 23,830.00 |
| Check | 9/5/2011 | 7027 | United States Treasury | Sept mom's trust pmt | Survivor | 2,100.00 | 25,930.00 |
| Check | 9/5/2011 | 7028 | United States Treasury | Sept dad's trust pmt | Survivor | 1,780.00 | 27,710.00 |
| Check | 12/15/2011 | 104 | United States Treasury | Tax:Fed | Survivor | 1,780.00 | 29,490.00 |
| Check | 4/4/2013 | 146 | United States Treasury | Tax:Fed | Survivor | 20.00 | 29,510.00 |
| Check | 4/14/2013 | 104 | United States Treasury | | Elmer | 23,906.00 | 53,416.00 |
| Total Taxes - Federal | | | | | | 53,416.00 | 53,416.00 |
| **Taxes - Property** | | | | | | | |
| Check | 1/19/2011 | 7004 | Tax Assessor-Collector | 098-560-000-0031 | Survivor | 1,112.87 | 1,112.87 |
| Check | 3/2/2011 | 145 | Wilchester West Fund | Tax:zzzzzz | Nelva | 365.23 | 1,478.10 |
| Check | 4/8/2011 | EFT | County Treasurer | DES: TAX ID: 971 farm | Survivor | 1,387.40 | 2,865.50 |
| Check | 6/9/2011 | 7019 | Wilchester West Fund | Tax:ZZZZZ 13630 Pinerock | Survivor | 327.00 | 3,192.50 |
| Check | 10/4/2011 | EFT | County Treasurer | DES:Tax ID:119 farm | Survivor | 1,598.40 | 4,790.90 |
| Check | 11/23/2011 | EFT | Spring Branch ISD | DES: checkpaymt Tax:ZZZZZZZZ | Survivor | 227.24 | 5,018.14 |
| Check | 12/15/2011 | 102 | Wilchester West Fund | Tax:zzzzzzzz 13630 Pinerock | Survivor | 359.00 | 5,377.14 |
| Check | 1/19/2012 | 114 | HC Property Tax | | Survivor | 1,285.05 | 6,662.19 |
| Check | 10/15/2012 | EFT | County Treasurer | DES: Tax ID: 166 | Elmer | 1,586.40 | 8,248.59 |
| Check | 3/18/2013 | EFT | County Treasurer | DES: Tax ID: 178 - Farm Tax | Elmer | 1,563.40 | 9,811.99 |
| Total Taxes - Property | | | | | | 9,811.99 | 9,811.99 |
| **Taxes -State** | | | | | | | |
| Check | 2/1/2011 | 7002 | State of Iowa Treasurer | | Survivor | 330.00 | 330.00 |
| Check | 6/9/2011 | 7021 | Treasurer State of Iowa | | Survivor | 47.00 | 377.00 |
| Check | 9/5/2011 | 7026 | Treasurer State of Iowa | mom | Survivor | 230.00 | 607.00 |
| General Journal | 4/23/2012 | EJ20120415 | | Deposit Iowa Tax Refund | Survivor | -690.00 | -83.00 |
| Check | 9/10/2012 | 138 | Treasurer State of Iowa | Amended taxes | Survivor | 79.00 | -4.00 |
| Check | 4/14/2013 | 105 | Treasurer State of Iowa | | Elmer | 4,797.00 | 4,793.00 |
| Total Taxes -State | | | | | | 4,793.00 | 4,793.00 |
| Total Taxes | | | | | | 68,020.99 | 68,020.99 |
| **Telephone Expense** | | | | | | | |
| Check | 1/24/2011 | EFT | Verizon | | Nelva | 106.42 | 106.42 |

# Brunsting Family Living Trust
## Detail of Accounts
12/21/2010-05/31/2013

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 1/27/2011 | EFT | AT&T | | Survivor | 68.68 | 175.10 |
| Check | 2/24/2011 | EFT | Verizon | | Nelva | 172.35 | 347.45 |
| Check | 2/28/2011 | 7008 | AT&T | (SBC-AR, KS,MO,OK,TX) B | Survivor | 76.39 | 423.84 |
| Check | 3/15/2011 | EFT | AT&T | (SBC-AR,KS,MO,OK,TX) B | Survivor | 70.42 | 494.26 |
| Check | 3/28/2011 | EFT | Verizon | | Nelva | 138.92 | 633.18 |
| Check | 4/21/2011 | EFT | Verizon | | Nelva | 72.88 | 706.06 |
| Check | 4/26/2011 | EFT | AT&T | (SBC-AR,KS,MO,OK,TS) B | Survivor | 176.85 | 882.91 |
| Check | 5/9/2011 | EFT | AT&T | | Survivor | 177.21 | 1,060.12 |
| Check | 5/27/2011 | EFT | AT&T | | Survivor | 95.73 | 1,155.85 |
| Check | 6/6/2011 | EFT | Verizon | | Nelva | 225.00 | 1,380.85 |
| Check | 6/9/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 154.09 | 1,534.94 |
| Check | 6/28/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) B | Survivor | 86.12 | 1,621.06 |
| Check | 7/5/2011 | EFT | Verizon | | Nelva | 282.03 | 1,903.09 |
| Check | 7/11/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 224.42 | 2,127.51 |
| Check | 7/27/2011 | EFT | AT&T | Bill(SBC-AR, KS, MO, OK, TX) B | Survivor | 82.16 | 2,209.67 |
| Check | 8/2/2011 | EFT | Verizon | | Nelva | 245.03 | 2,454.70 |
| Check | 8/10/2011 | EFT | AT&T | DES:Payment ID: 787780565AUS | Survivor | 170.89 | 2,625.59 |
| Check | 8/25/2011 | EFT | Verizon | | Nelva | 242.00 | 2,867.59 |
| Check | 8/26/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) bill payment | Survivor | 84.47 | 2,952.06 |
| Check | 9/12/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 168.71 | 3,120.77 |
| Check | 9/23/2011 | EFT | Verizon | | Nelva | 137.66 | 3,258.43 |
| Check | 9/26/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) B | Survivor | 84.47 | 3,342.90 |
| Check | 10/11/2011 | EFT | AT&T | DES:Payment ID:787780565AUS | Survivor | 184.35 | 3,527.25 |
| Check | 11/1/2011 | EFT | Verizon | | Nelva | 189.54 | 3,716.79 |
| Check | 11/8/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK, TX) B | Survivor | 84.44 | 3,801.23 |
| Check | 11/10/2011 | EFT | AT&T | DES:Payment ID: 787780565AUS | Survivor | 168.24 | 3,969.47 |
| Check | 11/23/2011 | EFT | Verizon | | Nelva | 192.13 | 4,161.60 |
| Check | 12/5/2011 | EFT | AT&T | Bill (SBC-AR, KS, MO, OK,TX) B | Survivor | 90.82 | 4,252.42 |
| Check | 12/28/2011 | EFT | AT&T | Bill(SBC-AR,KS,MO,OK,TX) B | Survivor | 108.59 | 4,361.01 |
| Check | 1/31/2012 | EFT | AT&T | Bill (SBC-AR,KS,MO,OK,TX) B | Survivor | 86.00 | 4,447.01 |
| Check | 2/14/2012 | EFT | AT&T | Bill (SBC-AR,KS,MO,OK,TX) | Survivor | 72.16 | 4,519.17 |
| Total Telephone Expense | | | | | | 4,519.17 | 4,519.17 |
| **Utilities** | | | | | | | |
| **Cable TV** | | | | | | | |
| Check | 1/5/2011 | EFT | Comcast | | Survivor | 64.04 | 64.04 |
| Check | 1/27/2011 | EFT | Comcast | | Survivor | 59.77 | 123.81 |
| Check | 2/25/2011 | EFT | Comcast | | Survivor | 67.65 | 191.46 |
| Check | 3/23/2011 | EFT | Comcast | | Survivor | 63.71 | 255.17 |
| Check | 4/26/2011 | EFT | Comcast | | Survivor | 63.71 | 318.88 |
| Check | 4/26/2011 | EFT | Comcast | | Survivor | 63.71 | 382.59 |
| Check | 5/26/2011 | EFT | Comcast | | Survivor | 11.52 | 394.11 |
| Check | 5/31/2011 | EFT | Comcast | | Survivor | 11.52 | 405.63 |
| Check | 6/28/2011 | EFT | Comcast | Elmer H Brunsting | Survivor | 52.20 | 457.83 |
| Check | 7/28/2011 | EFT | Comcast | Elmer | Survivor | 63.72 | 521.55 |
| Check | 8/29/2011 | EFT | Comcast | | Survivor | 63.72 | 585.27 |
| Check | 9/28/2011 | EFT | Comcast | | Survivor | 63.72 | 648.99 |
| Check | 10/28/2011 | EFT | Comcast | | Survivor | 63.71 | 712.70 |
| Check | 11/29/2011 | EFT | Comcast | | Survivor | 63.71 | 776.41 |
| Total Cable TV | | | | | | 776.41 | 776.41 |
| **Electricity** | | | | | | | |
| Check | 1/21/2011 | EFT | Stream Energy of TX | | Survivor | 134.05 | 134.05 |
| Check | 2/18/2011 | EFT | Stream Energy of TX | Utilities: Gas & Electric | Survivor | 106.89 | 240.94 |
| Check | 3/15/2011 | EFT | Stream Energy of TX | | Survivor | 100.71 | 341.65 |
| Check | 4/18/2011 | EFT | Stream Energy of TX | | Survivor | 93.99 | 435.64 |
| Check | 5/19/2011 | EFT | Stream Energy of TX | | Survivor | 174.61 | 610.25 |
| Check | 6/17/2011 | EFT | Stream Energy of TX | Bill payment | Survivor | 217.04 | 827.29 |
| Check | 7/18/2011 | EFT | Stream Energy of TX | Bill payment | Survivor | 166.12 | 993.41 |
| Check | 8/17/2011 | EFT | Stream Energy of TX | bill payment | Survivor | 308.10 | 1,301.51 |
| Check | 9/16/2011 | EFT | Stream Energy of TX | bill payment | Survivor | 344.55 | 1,646.06 |
| Check | 10/17/2011 | EFT | Stream Energy of TX | | Survivor | 217.43 | 1,863.49 |
| Check | 11/15/2011 | EFT | Stream Energy of TX | payment | Survivor | 160.68 | 2,024.17 |
| Check | 12/28/2011 | eft | Stream Energy of TX | PAYMENT | Survivor | 81.95 | 2,106.12 |
| Check | 1/20/2012 | EFT | Stream Energy of TX | | Survivor | 59.96 | 2,166.08 |
| Check | 2/17/2012 | EFT | Stream Energy of TX | | Survivor | 19.10 | 2,185.18 |
| Check | 3/26/2012 | EFT | Stream Energy of TX | | Survivor | 39.19 | 2,224.37 |
| Check | 4/25/2012 | EFT | Stream Energy of TX | Payment | Survivor | 25.00 | 2,249.37 |
| Check | 6/7/2012 | 133 | Stream Energy of TX | | Survivor | 10.53 | 2,259.90 |
| Total Electricity | | | | | | 2,259.90 | 2,259.90 |
| **Gas** | | | | | | | |
| Check | 1/19/2011 | 7005 | Entex | | Survivor | 130.42 | 130.42 |
| Check | 4/18/2011 | EFT | Entex | PPD | Nelva | 323.62 | 454.04 |
| Check | 6/22/2011 | EFT | Entex | PPD | Nelva | 73.47 | 527.51 |
| Check | 8/15/2011 | 296 | Entex | | Nelva | 52.48 | 579.99 |
| Check | 9/14/2011 | 325 | Entex | | Nelva | 42.59 | 622.58 |
| Check | 11/23/2011 | EFT | Entex | PPD | Survivor | 65.66 | 688.24 |
| Check | 12/22/2011 | 106 | Centerpoint Energy | PPD | Survivor | 54.62 | 742.86 |
| Check | 3/11/2012 | 117 | Centerpoint Energy | PPD | Survivor | 158.09 | 900.95 |
| Check | 6/7/2012 | 132 | Entex | PPD | Survivor | 41.71 | 942.66 |
| Total Gas | | | | | | 942.66 | 942.66 |
| **Water** | | | | | | | |
| Check | 12/23/2010 | EFT | City of Houston Water | | Nelva | 52.74 | 52.74 |
| Check | 1/21/2011 | EFT | City of Houston Water | | Survivor | 80.94 | 133.68 |
| Check | 3/1/2011 | EFT | City of Houston Water | Water Bill | Survivor | 52.74 | 186.42 |
| Check | 4/4/2011 | EFT | City of Houston Water | | Survivor | 90.34 | 276.76 |

# Brunsting Family Living Trust
## Detail of Accounts
**12/21/2010-05/31/2013**

| Type | Date | Num | Name | Memo | Class | Amount | Balance |
|---|---|---|---|---|---|---|---|
| Check | 5/11/2011 | eft | City of Houston Water | WATER BILL | Survivor | 99.74 | 376.50 |
| Check | 6/9/2011 | EFT | City of Houston Water | DES: Water bill I | Survivor | 130.35 | 506.85 |
| Check | 6/22/2011 | 7710 | Electchk | Bcf - 14411 We 06/ Westh, Houston, TX #000032384 | Survivor | 314.57 | 821.42 |
| Check | 7/11/2011 | EFT | City of Houston Water | DES:Water bill I | Survivor | 282.51 | 1,103.93 |
| Check | 8/8/2011 | EFT | City of Houston Water | DES: water bill I | Survivor | 277.78 | 1,381.71 |
| Check | 9/8/2011 | EFT | City of Houston Water | DES:water bill I | Survivor | 265.10 | 1,646.81 |
| Check | 10/12/2011 | EFT | City of Houston Water | DES:water bill I | Survivor | 227.06 | 1,873.87 |
| Check | 11/10/2011 | EFT | City of Houston Water | DES: water bill I | Survivor | 201.70 | 2,075.57 |
| Check | 12/9/2011 | EFT | City of Houston Water | DES:Water bill I | Survivor | 252.42 | 2,327.99 |
| Check | 1/9/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 115.49 | 2,443.48 |
| Check | 2/13/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 47.13 | 2,490.61 |
| Check | 3/19/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 20.42 | 2,511.03 |
| Check | 4/12/2012 | EFT | City of Houston Water | DES:Water bill I | Survivor | 26.19 | 2,537.22 |
| Total Water | | | | | | 2,537.22 | 2,537.22 |
| Total Utilities | | | | | | 6,516.19 | 6,516.19 |
| Total Expense | | | | | | 418,844.23 | 418,844.23 |
| Net Ordinary Income | | | | | | 411,325.12 | 411,325.12 |
| **Other Income/Expense** | | | | | | | |
| **Other Expense** | | | | | | | |
| **FMV of Stocks Transferred Out** | | | | | | | |
| General Journal | 5/11/2011 | EJ20110522 | | Distribute 1,120 Sh Exxon Stock to Amy Brunsting | Survivor | 90,854.40 | 90,854.40 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 1,325 Sh Exxon to Carole Brunsting | Elmer | 110,597.75 | 201,452.15 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 160 Sh Exxon to Candy Curtis | Survivor | 13,355.20 | 214,807.35 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 160 Sh Exxon to Anita Brunsting | Survivor | 13,355.20 | 228,162.55 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Ann Brunsting | Nelva | 14,162.85 | 242,325.40 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Anita Brunsting | Nelva | 14,162.85 | 256,488.25 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Jack Brunsting | Nelva | 14,162.85 | 270,651.10 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Katie Riley | Nelva | 14,162.85 | 284,813.95 |
| General Journal | 6/15/2011 | EJ20110621 | | Distribute 135 Sh Chevron to Luke Riley | Nelva | 14,162.85 | 298,976.80 |
| **Total FMV of Stocks Transferred Out** | | | | | | 298,976.80 | 298,976.80 |
| Total Other Expense | | | | | | 298,976.80 | 298,976.80 |
| Net Other Income | | | | | | -298,976.80 | -298,976.80 |
| **Net Income** | | | | | | 112,348.32 | 112,348.32 |

# EXHIBIT 3

Curtis V Brunsting

**Stock Distribution Analysis**

Exhibit 3

| Approximate | Exxon/Mobil | | Chevron Corporation | | Totals | |
|---|---|---|---|---|---|---|
| Date | Shares | Value | Shares | Value | Shares | Value |
| **Amy Brunsting** | | | | | | |
| 5/11/2011 | 1,120.00000 | 90,854.40 | | | 1,120.00000 | 90,854.40 |
| **Carole Brunsting** | | | | | | |
| 6/15/2011 | 1,325.00000 | 110,597.75 | | | 1,325.00000 | 110,597.75 |
| **Candy Curtis** | | | | | | |
| 6/15/2011 | 160.00000 | 13,355.20 | | | 160.00000 | 13,355.20 |
| **Ann Brunsting** | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| **Jack Brunsting** | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| **Katie Riley** | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| **Luke Riley** | | | | | | |
| 6/15/2011 | | | 135.00000 | 14,162.85 | 135.00000 | 14,162.85 |
| **Anita Brunsting** | | | | | | |
| 6/15/2011 | 160.00000 | 13,355.20 | 135.00000 | 14,162.85 | 295.00000 | 27,518.05 |
| Totals | 2,765.00000 | 228,162.55 | 675.00000 | 70,814.25 | 3,440.00000 | 298,976.80 |
| Recap by Date | | | | | | |
| 5/11/2011 | 1,120.00000 | 90,854.40 | | | 1,120.00000 | 90,854.40 |
| 6/15/2011 | 1,325.00000 | 110,597.75 | | | 1,325.00000 | 110,597.75 |
| 6/15/2011 | 320.00000 | 26,710.40 | 675.00000 | 70,814.25 | 995.00000 | 97,524.65 |
| | 2,765.00000 | 228,162.55 | 675.00000 | 70,814.25 | 3,440.00000 | 298,976.80 |

DATA-ENTRY
PICK UP THIS DATE

FILED
2/6/2015 10:56:10 AM
Stan Stanart
County Clerk
Harris County

PROBATE COURT 4

02102015:0838:P0134

CAUSE NO. 412,249

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

## NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER

TO THE HONORABLE PROBATE COURT:

COMES NOW, Plaintiff, Candace Louis Curtis, and files certified copies of an Injunction and Report of Master and would show the Court as follows:

1.

Plaintiff originally filed her Original Petition in the United States District Court for the Souther District of Texas, Houston Division, under Civil Action No. 4:12-CV-592. On April 19, 2013, the United States District Court entered a Memorandum and Order Preliminary Injunction in which it found that Anita Kay Brunsting and Amy Ruth Brunsting as Trustees had failed to act in accordance with the duties required by the Trust and enjoined them from disbursing any funds from any Trust accounts without prior permission of the court. *See* Ex. A, Memorandum and Order Preliminary Injunction. In that same order, the court determined to appoint an independent firm or account to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. *See* Ex A, Memorandum and Order Preliminary Injunction. Ultimately court appointed CPA William G. West filed his Report of Master dated July 31, 2013. *See* Ex. B, Report of Master.

2.

On May 15, 2014, the United States District Court entered an order transferring Civil Action 4:12-CV-00592 into Harris County Probate Court Number Four, Cause Number 412,249. *See* Ex.

Case 4:12-cv-00592 Document 124 Filed on 03/20/19 in TXSD Page 52 of 65

# RE: Brunsting - 2017 1st Qtr Accounting Summary

From: Stephen A. Mendel (steve@mendellawfirm.com)

To: cbrunsting@sbcglobal.net; occurtis@sbcglobal.net; nspielman@grifmatlaw.com

Cc: tim@mendellawfirm.com; nancy@mendellawfirm.com

Date: Friday, May 12, 2017, 2:20 PM PDT

Carole:

You should hire an attorney, so he or she can explain to you the procedural status of the two federal cases, as well as the probate court case, and why your interruption, as listed below, is in error.

Have a nice weekend.

Very truly yours,

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

steve@mendellawfirm.com

CONFIDENTIAL INFORMATION: The information contained in this e-mail from The Mendel Law Firm, L.P., is confidential, privileged, and protected from disclosure. Such information is intended only for the use by the individual(s) or entity named on the above recipient list. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone.

20-20566.2643

Case 4:12-cv-00592 Document 124 Filed on 03/20/19 in TXSD Page 33 of 65

**From:** Carole Brunsting [mailto:cbrunsting@sbcglobal.net]
**Sent:** Friday, May 12, 2017 3:55 PM
**To:** Stephen A. Mendel; 'Candace Curtis'; 'Neal Spielman'
**Cc:** Timothy J. Jadloski; NM/MLF
**Subject:** Re: Brunsting - 2017 1st Qtr Accounting Summary

Stephen

I wanted to follow up with you on the distribution of my inheritance. I provided a copy of the injunction that was signed by Judge Hoyt stating that any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. Because has not been done according to what was signed by Judge Hoyt, the trust has been forced to pay taxes of $99K because the money was not distributed as ordered. Please let me know when my account will be funded according to the injunction signed by Federal Court Judge Hoyt.

Also, I wanted to point out that I have asked for but not yet received a list of the incurred debt that you made reference to or monies owed from family members.

Per Article X of the First Amendment to the Brunsting Family Living Trust:

Section A. Outstanding Indebtedness of a Beneficiary

Upon the death of the surviving Founder, any amount due and owing by Anita Kay Riley which is secured by a lien against real property shall be forgiven and such amount shall constitute a portion of the trust share of Anita Kay Riley, as set forth in the Sections of this Article which follow.

According to the statement above I believe this to mean that the $100,000 that was given to Anita by our parents to pay off her house is now considered a portion of her trust share. If you need a copy Article X I can forward one to you.

I look forward to hearing from you.

Carole

On Tuesday, May 2, 2017 6:58 PM, Stephen A. Mendel <steve@mendellawfirm.com> wrote:

To All:

We forward for your files the accounting summary through the 1ST Quarter 2017.

20-20566.2644

Very truly yours,

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

steve@mendellawfirm.com

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| | § | CIVIL ACTION NO. H-12-CV-592 |
| | § | |
| vs. | § | |
| | § | |
| ANITA KAY BRUNSTING, and | § | |
| AMY RUTH BRUNSTING | § | |
| | § | |
| | § | |

**AFFIDAVIT IN SUPPORT OF REMOVAL OF LIS PENDENS**

STATE OF TEXAS §
§
COUNTY OF Comal §

Before me, the undersigned authority, appeared Amy Ruth Brunsting who after being duly sworn by me did state:

1. My name is Amy Ruth Brunsting. I am over 18 years of age, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. This case involves the allegations of my sister, Candace Louise Curtis, who is disgruntled with the amount of information and accounting I and my sister have provided to her while acting in our capacity as Co-Successor Trustees of the Brunsting Family Living Trust.

3. The contentions of Candace are totally meritless, and I believe have more to do with the disappointment she feels in the fact that our parents did not feel she was competent to handle her own inheritance. She began issuing threats and demands within weeks after our mother died, and before we have had a chance to evaluate the proper handling of assets in the estate, including the largest asset, a farm in Iowa.

4. Her various complaints will be addressed in some greater detail if this court believes it has jurisdiction over the administration of a living trust. However, of immediate concern is the potential chilling effect that Candace filing of a *lis pendens* may have on the sale of our parent's residential homestead, which is scheduled to close on March 9, 2012.

5. As Co-Trustees, my sister and I have determined that it is impractical to give each of the five heirs, or the trusts set up for their benefit (as is the case for Candace), an undivided share of a house in Houston. We therefore have prepared and offered the house for sale. None of the heirs

have objected to this plan, including Candace. Our authority to sell is contained in Article IX, Section C of the Brunsting Family Living Trust. The specific provision regarding real estate appears on page 9-5 of the document under the heading of "Real Estate" and this section can be viewed in the copy of the trust supplied by Candace as an exhibit to her Complaint.

6. We first obtained an appraisal of the property. This is attached hereto as Exhibit "A". This appraisal, dated in January of this year, placed the fair market value of the property at $410,000. We listed the property for $469,000 and were fortunate enough to attract a buyer, Brett C. McCarroll, who offered $469,000. The contract for this sale is attached as Exhibit "B". Although originally scheduled to close in February, the closing has been moved to this Friday, March 9.

7. As further evidence of the fair value of the proposed sale, I attach the Harris County Appraisal District tax appraisal, showing the taxable value of the property to be approximately $270,000.

8. We have attempted to provide Candace with enough information to evaluate her position in the trust administration, and have sent her preliminary spreadsheets with a listing of assets and liabilities, as best we have been able to determine in the short time since our mother's death on November 11, 2011. She is not satisfied with the information we have provided and has stated her objective of tying up the administration of the estate until she gets a response that satisfies her. She is the only one of the five heirs who has taken this position, and as can be gleaned from her lengthy, and mostly inaccurate unsworn statement, filed with the complaint, relates to her animosity towards the two of us in the manner we attempted to aid our mother in the final months of her life.

9. If this sale is not consummated on the scheduled closing date, we have no assurance that the buyer will await the resolution of Candace's complaints and the sale will, in all likelihood, be lost. This will result in further expense to the trust estate for maintenance and upkeep to the property without any appreciation in the value. The house was originally shown for sale fully furnished. It is now empty. It's "buyer appeal" has been diminished and this could also jeopardize future sale prospects if this sale is lost.

10. The sale of the house is important for the trust estate, and should not be endangered simply because Candace is mad. We are asking the court to lift the lis pendens so the sale can be consummated, for the benefit of all of the heirs.

Amy Ruth Brunsting
AMY RUTH BRUNSTING

Sworn to and signed before me by Amy Ruth Brunsting, on this 6th day of March, 2012.

Notary Public in and for the State of Texas

TERESA SIMMONS
MY COMMISSION EXPIRES
September 7, 2014

Church of Christ
1665 Business Loop 35 S.
New Braunfels, TX 78130

**Subject:** Fw: 412249-401 Estate Of Nelva Brunsting
**From:** Candace Curtis <occurtis@sbcglobal.net>
**Date:** 10/12/2018 10:31 AM
**To:** Rik Munson <blowintough@att.net>
**X-Account-Key:** account1
**X-UIDL:** AArPigpdPxqLW8DaZwpUiBOvxLk
**X-Mozilla-Status:** 0001
**X-Mozilla-Status2:** 00000000
**X-Apparently-To:** blowintough@att.net; Fri, 12 Oct 2018 17:31:19 +0000
**Return-Path:** <occurtis@sbcglobal.net>
**Received-SPF:** none (domain of sbcglobal.net does not designate permitted sender hosts)
**X-YMailISG:** SmJY_JEWLDvRJtnjbM4diR3r1neCpPGHQFn1DGT.76PwSqlH
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**Received:** from sonic303-24.consmr.mail.ne1.yahoo.com (sonic303-24.consmr.mail.ne1.yahoo.com [
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Fri, 12 Oct 2018 10:31:18 -0700
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**Received:** from sonic.gate.mail.ne1.yahoo.com by sonic303.consmr.mail.ne1.yahoo.com with HTTP;
**Reply-To:** Candace Curtis <occurtis@sbcglobal.net>
**Message-ID:** <1018211077.257240.1539365472047@mail.yahoo.com>
**In-Reply-To:** <00b801d46250$964188d0$c2c49a70$@grifmatlaw.com>
**References:** <f439c4b810284d228df22829b8446d3e@NN-DC-LW-MAIL07.naturalnetworks.us>
<00b801d46250$964188d0$c2c49a70$@grifmatlaw.com>
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**X-Mailer:** WebService/1.1.12605 YahooMailNeo Mozilla/5.0 (Windows NT 6.1; WOW64; rv:62.0)
**Content-Length:** 43265

----- Forwarded Message -----
**From:** Neal Spielman <nspielman@grifmatlaw.com>
**To:** 'Steve Mendel' <steve@mendellawfirm.com>; '"Comstock, Clarinda (Probate Courts)"' <Clarinda.Comstock@prob.hctx.net>; 'Bobbie Bayless' <bayless@baylessstokes.com>; 'Carole Brunsting' <cbrunsting@sbcglobal.net>; 'Candace Curtis' <occurtis@sbcglobal.net>
**Cc:** Neal Spielman <nspielman@grifmatlaw.com>
**Sent:** Friday, October 12, 2018 10:25 AM
**Subject:** RE: 412249-401 Estate Of Nelva Brunsting

Dear Judge Comstock –

I am following up on Steve Mendel's e-mail below in light of other responses to your e-mail of 10/8/18, particularly the e-mails of 10/10/18 from Carole Brunsting and 10/11/18 from

Bobbie Bayless (on behalf of Carl Brunsting).

First, there appears to be some confusion as to whether any party to this action is contesting Nelva Brunsting's capacity at the time she executed various documents, including without limitation: the Appointment of Successor Trustee and the Resignation of December 21, 2010; the Qualified Beneficiary Designation/Exercise of Power of Appointment dated June 15, 2010; and the Qualified Beneficiary Designation/Exercise of Power of Appointment dated August 25, 2010. This issue might be resolved if each party were ordered to stipulate in a writing filed with the Court, that Nelva Brunsting's capacity is or is not an issue.

Second, there appears to be some effort to disregard or discredit the content of the Report of Temporary Administrator Pending Contest. There is too much to be captured in e-mail about the problems this would create. However, one area of concern stems from the content set forth on Page 7 of the Report (No Contest Clause Provisions). Significantly, the Report concludes (a) "**in both documents** [*the August 25, 2010 Qualified Beneficiary Designation/Exercise of Power of Appointment* ***and*** *the January 12, 2005 Restatement of Brunsting Family Living Trust*] **the provision is well written"** and (b) "**[a] decision by the Court upholding either no contest provision might resolve all other issues.**"

Considering the content of the two no-contest clauses and the Report's observations about them, it becomes clear that the first issue to be considered before any other is the enforceability of the no-contest clauses. If claims asserted by Carl Brunsting and/or Candace Curtis trigger one or both no-contest clauses, then each has effectively "disinherited" themselves, and none of their claims or pleadings, including without limitation those presented by Carl Brunsting in his Motion for Summary Judgment and/or those presented by Candace Curtis in her First Amended Plea in Abatement are properly before the Court.

Until the no-contest clause issues are resolved, none of their Motions, Pleas, claims, etc. should be considered.

For things to proceed in this fashion, a Docket Control Order remains necessary and the discovery referenced by Mr. Mendel must proceed so that the parties can present arguments for or against the no-contest clause(s), whether based on issues of capacity or enforceability. Then and only then will it be proper to consider issues such as those raised by Carl Brunsting and Candace Curtis (and even then, only if the no-contest clauses are not enforceable for one reason or another).

I appreciate the Court's consideration of the issues raised above.

Very truly yours,
Neal E. Spielman
Griffin & Matthews

1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281-870-1124 - telephone
281-870-1647 - telefax
nspielman@grifmatlaw.com
*Please take a moment to visit our website at* **www.grifmatlaw.com**

**********

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*If you are not one of the addressees on this e-mail, the information contained in this e-mail is not intended for you, and please delete this e-mail immediately.*

**********

**From:** Steve Mendel [mailto:steve@mendellawfirm.com]
**Sent:** Tuesday, October 09, 2018 2:37 PM
**To:** Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net>; Bobbie Bayless <bayless@baylessstokes.com>; nspielman@grifmatlaw.com; Carole Brunsting <cbrunsting@sbcglobal.net>; Candace Curtis <occurtis@sbcglobal.net>
**Subject:** 412249-401 Estate Of Nelva Brunsting

Dear Judge Comstock:

As you may recall, our office represents Co-Trustee Anita Brunsting, and Neal Spielman represents Co-Trustee Amy Brunsting. This correspondence represents a joint response as between myself and Mr. Spielman, on behalf of our respective clients.

First, the Co-Trustees want an oral hearing regarding Carl Brunsting's motion

for summary judgment.

Second, we would remind the court that it was discussed at the last hearing that certain discovery was important, including, but not limited to, evidence as to capacity and the academics of why the QBD was created, enforceable, and does not violate the trust provisions that predate the QBD, as referenced in Carl Brunsting's motion.

In this regard, we believe the following discovery needs to occur before Carl Brunsting's motion is set for an oral hearing:

1. Depose Candice Kuntz-Freed, and/or appropriate representatives of Vacek & Freed.

2. Greg Lester, the temporary administrator. However, if the parties will agree that Mr. Lester's report is admissible, then we see no need to depose Mr. Lester at this time. By admissible we mean, a waiver of all objections as to authenticity and hearsay. Notwithstanding the admissibility of the report, every party reserves the right to challenge, in whole or in part, the opinions and/or conclusions set forth in Mr. Lester's report.

3. Candace Curtis, who asserts that Nelva Brunsting lacked capacity.

4. Carole Brunsting who we understand had a reasonable degree of interaction with Nelva Brunsting and would have facts that relate to the capacity issue.

While there is other discovery that may be appropriate as to the foregoing issues, at present we believe the foregoing depositions are the minimum necessary to be completed before there is a hearing on Carl Brunsting's motion.

Further, we do not see any of the proposed dates as allowing sufficient time to complete the foregoing depositions. We, therefore, urge the court to issue a docket control order as to the entirety of the case, or at least an order that the foregoing named witnesses make themselves available for deposition between now and November 30, 2018.

Last, but not least, we will be filing motions that include, but are not necessarily

be limited to:

A. Obtain two different types of appraisals for the Iowa farm. One appraisal is for the value of the farm without regard to any division of the farm. The other appraisal would seek values if the farm was divided as equally as possible among the beneficiaries. The appraisals would assist with settlement negotiations among the parties.

B. Allocation of funds to pay for court reporters and videographers for the foregoing depositions.

Very truly yours,
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
steve@mendellawfirm.com

CONFIDENTIAL INFORMATION: The information contained in this e-mail from The Mendel Law Firm, L.P., is confidential, privileged, and protected from disclosure. Such information is intended only for the use by the individual(s) or entity named on the above recipient list. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us by telephone.

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**From:** Steve Mendel
**Sent:** Tuesday, October 09, 2018 1:52 PM
**To:** 'Bobbie Bayless'; Comstock, Clarinda (Probate Courts); nspielman@grifmatlaw.com; Carole Brunsting; Candace Curtis
**Subject:** RE: 412249-401 Estate Of Nelva Brunsting

Judge Comstock:

Mr. Spielman and I will be sending a joint response within the hour.

Very truly yours,

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
steve@mendellawfirm.com

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**From:** Bobbie Bayless [mailto:bayless@baylessstokes.com]
**Sent:** Tuesday, October 09, 2018 12:50 PM
**To:** Comstock, Clarinda (Probate Courts); Steve Mendel; nspielman@grifmatlaw.com; Carole Brunsting; Candace Curtis
**Subject:** RE: 412249-401 Estate Of Nelva Brunsting

As far as I am concerned, the Court can consider my Motion for Partial Summary Judgment without further argument. It is a pretty straightforward motion, so I am willing to allow the court to proceed without a further hearing.

***Bobbie G. Bayless***
***BAYLESS & STOKES***
***2931 Ferndale***
***Houston, TX 77098***
***713.522.2224***
***713.522.2218 (fax)***
bayless@baylessstokes.com

---

**From:** Comstock, Clarinda (Probate Courts) [mailto:Clarinda.Comstock@prob.hctx.net]
**Sent:** Monday, October 08, 2018 3:53 PM
**To:** Steve Mendel; Bobbie Bayless; nspielman@grifmatlaw.com; Carole Brunsting; Candace Curtis
**Subject:** 412249-401 Estate Of Nelva Brunsting

Judge Butts believes she is ready to consider the Motion for Summary Judgment which was continued at the last hearing.
Although a hearing on a motion for summary judgment is not required, she would like to give the parties the opportunity for oral argument, if desired.
The following dates may be available for an oral hearing on this Motion, assuming a courtroom can be made available:

Oct. 24th at 11am
Oct. 29th at 2:30pm
Nov. 19th at 2:30pm

Please respond to this email no later than the end of the day Thursday, Oct. 11th to advise whether you wish to have an oral hearing of the Motion for Partial Summary Judgment.
An oral hearing will be set on one of these dates should any party request a hearing.
If an agreement cannot be reached as to a hearing date by this Thursday, a date will be set by the court.
If no one requests a hearing by this Thursday, Judge Butts will rule without a hearing.

Regards,

Clarinda Comstock
Associate Judge
Harris County Probate Court 4
Clarinda.comstock@prob.hctx.net
832-927-1404

United States Courts
Southern District of Texas
FILED
APR 15 2019
David J. Bradley, Clerk of Court

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis | § | |
| Plaintiff | § | |
| | § | |
| vs. | § | |
| | § | Civil Action No. 4:12-cv-592 |
| | § | |
| Anita Brunsting | § | |
| Amy Brunsting | § | |
| Does 1-99 | § | |
| Defendants | § | |

**AFFIDAVIT OF CANDACE LOUISE CURTIS IN SUPPORT OF APPLICATION FOR ORDERS TO SHOW CAUSE**

To the Honorable Kenneth Hoyt,

1. I came before this Honorable Court on February 27, 2012, with valid concerns over the threat of theft of my beneficial interest in an inter vivos trust created by my parents Elmer and Nelva Brunsting. I was seeking fiduciary disclosures and accounting and was suffering from emotional trauma over what had transpired that compelled me to seek judicial remedy.

2. I knew nothing of law at the time and so I told everything I knew or thought I knew in that initial complaint, sworn to under penalty of perjury and verified by California Jurat [Doc 1].

3. I continue to stand behind all of my claims. Of particular note are the mentions of illegal wiretap recordings [Doc 1 p.19 para 3] the drafting of illicit instruments and a no-contest clause disinheritance scheme, [Doc 1 P.20 para 4] all of which reared their ugly heads after the case had left this Honorable Court.

**The Injunction**

4. This Court issued a preliminary injunction on April 19, 2013. At conclusion of the April 9, 2013 hearing the Court issued the Injunction with constraints delivered verbally. Findings of Fact, Conclusions of Law and Order after Hearing were published on April 19, 2013. [Doc 45]



20-20566.2657

5. In the Injunctive Order the Court found that I had sued my sisters Anita and Amy Brunsting for breach of fiduciary, for failure to disclose trust instruments and failure to provide an accounting. The Court then found that I was a beneficiary of the trust created by our parents and that my sisters Anita and Amy were trustees and owed me fiduciary obligations.

6. The Court further found that Anita had failed to disclose unprotected trust instruments; failed to establish proper books and records; failed to provide a proper accounting; and failed to establish separate trusts for each of the five beneficiaries as required by the trust instruments.

> *"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".*

7. The Court also appointed a Special Master to perform an accounting of trust income and disbursements beginning when Anita first occupied the office of trustee.

8. Amy and Anita were enjoined from spending trust money without Court approval and were ordered to fund the trust accounts for the beneficiaries with trust income, as required by the trust.

9. My dearest friend and companion Rik Munson helped me draft the initial federal petition but suffered a medical emergency in late 2013 resulting in coma. In October 2013, I appeared in this Court without having had an opportunity to be briefed and was completely lost.

10. I was directed by the Court to obtain the assistance of counsel and had the extreme misfortune of retaining Houston Attorney Jason Ostrom. Without my knowledge and consent Ostrom petitioned the court for leave to amend my complaint in order to pollute diversity and obtained a remand to Harris County Probate Court No. 4. Moreover, Ostrom not only polluted diversity but raised claims allegedly belonging to my mother's estate that I had no standing to raise.

11. It should be noted here that on April 10, 2013 my sisters' attorney, George Vie III, noticed the court that a related state court suit [Doc 41] had been filed in Harris County Probate Court No. 4 naming everyone in the federal court case as defendants, <u>including me</u>.

12. In Probate Court No. 4 the suit was assigned Case No. 412249-402. [*Candace Louise Curtis vs. Anita and Amy Brunsting and Does 1-100* ***No 412249-402***]. After that Ostrom adopted the pleading caption "Estate of Nelva Brunsting No. 412249-402" and abandoned my lawsuit altogether.

13. My brother Carl Brunsting resigned the office of executor on February 19, 2015. On March 3, 2015, with the office of executor vacant, Ostrom, along with Probate Court Judge Christine Butts and all the other attorneys, signed an agreed Order to "Consolidate" "Estate of Nelva Brunsting 412249-402" with "Estate of Nelva Brunsting 412249-401", thus dissolving my separate and distinct lawsuit in its entirety. Ostrom acted without my knowledge and consent and this does not comport with any rules governing consolidation. This was a conversion. I was named a defendant in 401 (see [Doc 41])

14. I am not the executor for any estate nor am I a devisee or legatee of any estate. I am a third party to an A/B family trust contract created by my parents that specifically identifies my four siblings and I as third parties whom that contract was intended to benefit. The Brunsting Family Trust is not an asset of the estate of our parents and I have my own separate and distinct right of claims.

15. Upon discovering these acts, I immediately dismissed Jason Ostrom and did my best to act in good faith, but soon discovered that -402 had been closed and I was not even allowed to file into my own case. I later discovered the 402 file had been reopened and that the version of the order consolidating the cases ***had been*** removed from the docket.[1]

**The Remand Order and Recent Disclosures**

16. The remand order binds the state court to all orders entered in the federal court throughout the controversy among these parties. However, the instant this case landed in probate court all of that went out the window.

17. Although the case was remanded to Harris County Probate Court Number Four (4) in May 2015, this Court's Order for Preliminary Injunction [Doc 45] is the only substantive finding of fact and conclusion of law after hearing ever issued in **any** court.

18. On March 19, 2019, seven years after I initially filed suit, I was boarding a plane for Houston for a March 20, 2019 deposition of one of the attorneys that double crossed my parents, when I received a message with attached "supplemental productions" totaling 143 pages.

---

[1] It should be noted here that after a new judge was elected to Probate Court 4, beginning January 2019, the consolidation agreement was found rolling around in a drawer by the new clerk and returned to the docket, whereupon the Court ruled the consolidation agreement valid because it was signed by my supposed representative and ancillary case -402 was again ordered closed. Why in the world would I have wanted this non-probate case in Harris County Probate Court after having obtained a unanimous opinion from the Fifth Circuit Court of Appeals that my breach of fiduciary lawsuit was not a probate matter and that the trust is not the estate?

**Fraud Upon This Court**

19. From the onset, when my sisters first appeared in this Court, they were represented by Attorney Bernard Lisle Mathews III, (Mathews) also referred to as Chip or litigation attorney in the law firm notes.

20. These newest disclosures appear to indicate that Bernard Mathews was a staff attorney and Candace Kunz-Freed's counterpart at Vacek & Freed P.L.L.C., the trust and estate plan firm that betrayed my parents and ruptured the family trust.

**Perjured Affidavit**

21. On March 6, 2012 Bernard Mathews filed an affidavit, verified by Amy, claiming that personal asset trusts had been setup "*as is the case for Candace*" [Doc 10-1].

22. The March 19, 2019 disclosures contain a Vacek & Freed case note entry by Candace Freed that reads as follows:

> *Phone call from Litigation Counsel requested verification of continuing to set up the personal asset trusts. answer was yes, may want to hold off on Candy's since she has filed suit. There appears to be no problem with the trusts themselves just who will be in charge of it. Discussed with CHIP the issues relating to SMJ that the court felt took it out of his realm. Handling Lis pendens action first and handle the rest later. Dismissal perhaps. Advised him that Checks in the mail from the client. He has not stopped working on it.*

23. Yes, there is a problem with the trust instruments themselves.

24. Moreover, not only did Mathews appear using a "Green and Mathews" letterhead to conceal his egregious conflict of interest as a staff attorney with Vacek & Freed, but he filed a knowingly false affidavit into this Court while simultaneously saying just the opposite behind the Court's back. That affidavit was untrue then and has remained untrue despite this Court's injunctive order [Doc 45] commanding specific performance that would make it true.

**A Passive Aggressive Approach to Fiduciary Theft**

**The No Accounting - No Disclosure - No-Contest Clause Machination**

25. For my sisters to make threats of disinheritance while ignoring this Court's Injunctive Order is a crime. Unfortunately it is not their only crime. Knowing the only remedy available to a beneficiary for dealing with a rogue fiduciary is to bring an action for judicial relief, and after having attained hostile possession of the office of trustee, Anita and Amy refused or otherwise failed to provide an accounting, failed to produce unprotected trust documents, [Doc 45] and began making verbal threats that I was going to be disinherited for "challenging the trust", when all I was doing was exercising my rights to information as an income beneficiary. Anita and Amy made it clear from the onset that they intended to claim Carl and I violated a no-contest clause by bringing judicial action.

26. The mere notion that a beneficiary who is forced to invoke the law to protect beneficial interests violates a no-contest clause, is a counter-dilemma similar to that presented by Protagoras v. Euathlus. Under this theory, complaining about fiduciary theft of property interests would be a forfeiture of those interests, which is a result indistinguishable from doing nothing in response to the overt theft of property. I identified this fiduciary theft plot in my original complaint. [Doc 1 P.20 para 4]

27. That my sisters and their attorneys would even make such a claim is the utmost betrayal of the fiduciary duty of undivided loyalty and demonstrative of the depth and breadth of their abject moral bankruptcy.

**Life Changing Events**

28. My Mother's passing was very painful for me. Amy and Anita concealed the place where she was in hospice, depriving us both of the opportunity to say goodbye.

29. My sister Carole's house was damaged in Hurricane Harvey and she had to obtain a FEMA loan to make repairs, which are ongoing to this day. Carole was named a defendant in the probate court suit because of 100k in Exxon stock improperly transferred to her by Anita, which Carole will not touch for fear of reprisal, not to mention suffering serious tax consequences due to the manner in which it was transferred.

30. Once I found myself in the probate court, I was threatened continuously by my sisters' third set of attorneys, while this Court's preliminary injunction and remand Order have been disrespected and ignored. My character has been maligned and I have been subjected to ridicule causing further emotional distress. I have continued to suffer financial injury by traveling to Houston on numerous occasions, only to experience evasion games designed with attrition in mind.

31. After thirty-six years of marriage my husband unexpectedly left the home without even voicing any discontent, leaving me with a financial responsibility we once shared. When I was forced to rent my home, Rik opened his heart and his home to me, and my youngest son Andy, who is a single father. The greatest joy in my life, my three year old grandson Andrew Jr. (AJ), also came to live with us.

32. The worst tragedy in my life was the unexpected loss of my son Kevan last Thanksgiving. For the last ten years Kevan, a self-employed dental technician, had been an insulin dependent diabetic, suffering numerous hospitalizations and surgeries due to blood infections.

33. When Kevan was no longer able to work, I could stretch my finances no further and was helpless to even assist him with the basic necessities of life. His grandparents would have been the first to step forward but they had already passed away and my sisters' lack of honesty and integrity were instrumental in creating and perpetuating my financial hardships. I want them in prison.

34. I did not even inform them of the death of their nephew, my sister Carole did. Anita and Amy both called me, after years of no communication, and offered to help me financially. I told Anita that I would accept some of my property but that she had to give the same to everyone else. That ended the conversation and that was the last I heard of any intent to distribute.

35. I turned 66 on March 12, 2019. I am still working despite well laid plans to retire and enjoy my golden years and my grandson. Those plans included the expectancy that our parents had promised.

**Conclusion**

36. I filed suit and came to Texas to get what belonged to me but that is no longer enough. The people responsible for this charade have no excuse to offer that the law will tolerate or that I will accept. When our father was declared non compos mentis in June of 2008, no changes could be made to the trust under its own terms.

37. None-the-less Vacek & Freed attorney Candace Kunz-Freed (Freed) and Vacek staff attorney Bernard Lisle Mathews III immediately went to work to dismantle my parents trust plan, generating a series of illicit instruments beginning July 1, 2008. These improperly drafted changes put Vacek & Freeds' new clients, my sisters Anita and Amy, in the position of co-trustees, without resort to a court of competent jurisdiction.

38. Our mother and father had jointly removed both Amy and Anita from the list of successor trustees, to prevent exactly what has happened, and our Mother had no individual power to alter or amend that A/B contract.

39. I am the de jure trustee under the last agreement signed by both of our parents and seven years after our mother's death on November 11, 2011, I have received a total of absolutely nothing of my share of the trust property.

40. At a deposition my diminished capacity brother Carl testified that he has given his attorney Bobbie G. Bayless $250,000 in fees. Carl has received nothing of his inheritance and my sister Carole has received no benefit from her equitable property interests either.

41. The recent disclosures of non-privileged records show that Anita was constantly calling Vacek & Freed about making changes to our parents' trust contract while our mother was still alive. These disclosures also show an engagement letter between Vacek & Freed and Anita, while Nelva was still their client. If this is not a breach of the fiduciary duty of undivided loyalty that Vacek & Freed owed to our parents, what is it?

42. They also show that Anita continued to talk about making changes to "The Trust" even after mother died. Moreover, Anita emailed Freed asking if she could comingle the life insurance proceeds from the irrevocable life insurance trust with mother's Survivors Trust bank Account. The reason she gave was to avoid issuing large checks to each beneficiary which, in addition to the secret comingling and self-dealing revealed by the Report of the Special Master, would indicate that Anita also intended to keep more of those proceeds for herself.

43. While Anita and Amy's attorneys have been making disinheritance threats and evading remedy, they have made it abundantly clear off the record, that the only way this case is going to be resolved is by mediation in which the first order of business will be the extraction of attorneys' fees from the trust res.

44. Defendants have violated this Court's Order for Preliminary Injunction and trampled the unanimous opinion of the Honorable Justices of the Fifth Circuit Court of Appeals, and the conditions precedent to the Order for Remand that all rulings entered in the federal courts be binding as res judicata on the state court "throughout the controversy between these parties".

**Remedy Requested**

45. I am asking that this Court's preliminary injunction be enforced, that my sisters both be incarcerated, and that their attorneys be disgorged of their single minded motivation for interfering with the resolution of this case.

46. This affidavit is based upon personal knowledge that is supported by self-authenticating disclosures, admissions, and the record, and are herein sworn to be true pursuant to F.R.C.P. §11 and Title 18 United States Code §1001 and all other applicable provisions of state and federal law.

Respectfully submitted this 12th day of April 2019

Candace Louise Curtis

**CERTIFICATE OF SERVICE** SEE THE ATTACHMENT

I hereby certify that a true and correct copy of the foregoing instrument was placed in the United States Mail with postage fully prepaid on the 12th day of April 2019, addressed as follows:

Amy Brunsting
C\O Neal Spielman Esq.
Griffin and Mathews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

Anita Brunsting
C/O Stephen Mendel Esq.
The Mendel Law Firm
1155 Dairy Ashford, Suite 104
Houston, Texas 77079

Neal Spielman Esq.
Griffin and Mathews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

Stephen Mendel Esq.
The Mendel Law Firm
1155 Dairy Ashford, Suite 104
Houston, Texas 77079

# CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Napa }

On 04/19/2019 before me, ARVIND K. NISCHAL NOTARY PUBLIC
(Here insert name and title of the officer)

personally appeared CANDACE LOUISE CURTIS,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he~~/she/~~they~~ executed the same in ~~his~~/her/~~their~~ authorized capacity~~(ies)~~, and that by ~~his~~/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public Signature (Notary Public Seal)

ARVIND K NISCHAL
Notary Public – California
Napa County
Commission # 2224801
My Comm. Expires Jan 6, 2022

## ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages ____ Document Date____

CAPACITY CLAIMED BY THE SIGNER

- ☐ Individual (s)
- ☐ Corporate Officer

(Title)

- ☐ Partner(s)
- ☐ Attorney-in-Fact
- ☐ Trustee(s)
- ☐ Other ____

## INSTRUCTIONS FOR COMPLETING THIS FORM

*This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.*

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he~~/she/~~they,~~ is /~~are~~ ) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
  - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
  - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.



20-20566.2665

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis<br>Plaintiffs, | § | |
| | § | Civil Action NO. 4:12-CV-592 |
| v. | § | The Honorable Kenneth Hoyt |
| Anita Brunsting and Amy Brunsting<br>Defendants | § | ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT |

Upon the Affidavit of Plaintiff Candace Louise Curtis, sworn to the 12th day of April 2019, and upon the copy of the Memorandum and Order for Preliminary Injunction Issued by this Court on the 19th day of April 2013, annexed hereto;

**Neal Spielman,** you are Ordered to appear before this Court with your client Amy Brunsting, on the _____ day of _____ 2019, to give any legal reason why this court should not find you guilty of aiding and abetting your client's contempt and punish you for willfully disobeying its orders, as set forth in the attached affidavit of facts constituting contempt, and require you to pay for the benefit of the moving party, sanctions including but not limited to the attorney fees and travel costs of this proceeding.

It is SO ORDERED

_____ _____

Date

Honorable Kenneth Hoyt
United Stated District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis<br>Plaintiffs, | § | |
| | § | Civil Action NO. 4:12-CV-592 |
| v. | § | The Honorable Kenneth Hoyt |
| Anita Brunsting and Amy Brunsting<br>Defendants | § | ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT |

Upon the Affidavit of Plaintiff Candace Louise Curtis, sworn to the 12th day of April 2019, and upon the copy of the Memorandum and Order for Preliminary Injunction Issued by this Court on the 19th day of April 2013, annexed hereto;

**Stephen Mendel,** you are Ordered to personally appear before this Court with your client Anita Brunsting, on the _____ day of _____ 2019, to give any legal reason why this court should not find you guilty of aiding and abetting your client's contempt and punish you for willfully disobeying its orders, as set forth in the attached affidavit of facts constituting contempt, and require you to pay for the benefit of the moving party, sanctions including but not limited to the attorney fees and travel costs of this proceeding.

It is SO ORDERED

_____ _____

Date

Honorable Kenneth Hoyt
United Stated District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis<br>Plaintiffs, | § | |
| | § | Civil Action NO. 4:12-CV-592 |
| v. | § | The Honorable Kenneth Hoyt |
| Anita Brunsting and Amy Brunsting<br>Defendants | § | ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT |

Upon the Affidavit of Plaintiff Candace Louise Curtis, sworn to the 12th day of April 2019, and upon the copy of the Memorandum and Order for Preliminary Injunction Issued by this Court on the 19th day of April 2013, annexed hereto;

**Amy Brunsting,** you are Ordered to personally appear before this Court on the _____ day of _____ 2019, to give any legal reason why this court should not find you guilty of contempt, punish you for willfully disobeying its orders, as set forth in the attached affidavit of facts constituting contempt, and require you to pay for the benefit of the moving party, sanctions including but not limited to the attorney fees and travel costs of this proceeding.

It is SO ORDERED

_____ _____

Date

Honorable Kenneth Hoyt
United Stated District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis<br>Plaintiffs, | § | |
| | § | Civil Action NO. 4:12-CV-592 |
| v. | § | The Honorable Kenneth Hoyt |
| Anita Brunsting and Amy Brunsting<br>Defendants | § | ORDER TO SHOW CAUSE WHY DEFENDANT SHOULD NOT BE HELD IN CONTEMPT OF COURT |

Upon the Affidavit of Plaintiff Candace Louise Curtis, sworn to the 12th day of April 2019, and upon the copy of the Memorandum and Order for Preliminary Injunction Issued by this Court on the 19th day of April 2013, annexed hereto;

**Anita Brunsting,** you are Ordered to personally appear before this Court on the _____ day of _____ 2019, to give any legal reason why this court should not find you guilty of contempt, punish you for willfully disobeying its orders, as set forth in the attached affidavit of facts constituting contempt, and require you to pay for the benefit of the moving party, sanctions including but not limited to the attorney fees and travel costs of this proceeding.

It is SO ORDERED

_____ _____

Date

Honorable Kenneth Hoyt
United Stated District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**NOTICE OF SETTING**

The parties are hereby notified that a status conference regarding plaintiff's motion to show cause (Dkt. No. 124) is set for **May 8, 2019 at 9:15 a.m.** and will be handled as a telephone conference. The parties are directed to contact the Court at the number provided in order to participate in the conference call.

Conference number: **713-250-5126**

Conference ID: **45126#**

Conference Password: **13579#**

Date: April 23, 2019

DAVID BRADLEY, CLERK

By: C. Horace, Case Manager to
Judge Kenneth M. Hoyt



20-20566.2670

United States District Court
Southern District of Texas
**ENTERED**
May 09, 2019
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE HELD ON May 8, 2019 at 9:15 AM**

Appearances: Candace Curtis (*pro se*)
(Court Reporter: J. Sanchez)
(No appearance by the defendants)

The following rulings were made:

Before the Court is the *pro se* plaintiff's, Candace Curtis, motion for an order directed to certain defendants to show cause why they should not be held in contempt for violating the Court's Preliminary Injunction entered on April 19, 2013.

The Court is of the opinion that, having transferred the case to the Harris County Probate Court, it no longer has jurisdiction of the case. Therefore, the relief requested is Denied.

It is so ORDERED.

SIGNED on this 8th day of May, 2019.

Kenneth M. Hoyt
United States District Judge



20-20566.2671

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**EX PARTE MOTION FOR RELIEF**

## I. MOTION

Plaintiff Candace Louise Curtis (Curtis) respectfully moves this honorable Court, pursuant to Fed. R. Civ. P. 60(b)(6), (Rule 60(b)(6)) and Fed. R. Civ. P. 60(d)(3), (Rule 60(d)(3)) praying for relief from this Court's order of July 22, 2014, remanding the above captioned matter to Harris County Probate Court #4.

## II. JURISDICTION

"On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for any reason that justifies relief", Fed. R. Civ. P. 60(b)(6). The type of relief provided by Rule 60(b) does not involve the "review" proscribed by 28 U.S.C. §1447(d).

## III. GROUND FOR PETITION

The ground for this petition is fraud upon the court. Fraud upon the court is ground for relief under the residual clause of the rule and must be raised within a "reasonable time" after entry

of the judgment, FED. R. Civ. P. 60(b)(6); Wilson, 873 F.2d at 872, citing Rozier, 573 F.2d at 1338, but a saving clause in Rule 60(b) provides: "This rule does not limit the power of a court to entertain an independent action . . . to set aside a judgment for fraud upon the court." See Dausuel v. Dausuel, 90 U.S.App.D.C. 275, 195 F.2d 774 (1952).” Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 n. 1 (5th Cir. 1978) A federal Court always retains the inherent jurisdiction to vindicate its dignity and authority.

## IV. PETITIONER’S BURDEN

"[In] order to set aside a judgment or order because of fraud upon the court under Rule 60(b) . . . it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision." England v. Doyle, supra, 281 F.2d at 309. See also United States v. Standard Oil Co. of Calif.,73 F.R.D. 612, 615 (N.D.Cal. 1977). Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978).

> *Brown v. Bilek, C.A. No. H-09-2193, at *21-22 (S.D. Tex. Aug. 20, 2009) (“Rule 60(b) provides an extraordinary remedy because it can weaken the principle of finality and "the desire for a judicial process that is predictable." Carter v. Fenner, 136 F.3d 1000, 1007 (5th Cir. 1998) (quoting Bailey v. Ryan Stevedoring Company, Inc., 894 F.2d 157, 160 (5th Cir. 1990). Rule 60(b) relief based on fraud upon the court is reserved for only "the most egregious misconduct." Wilson v. Johns — Manville Sales Corp., 873 F.2d 869, 872 (5th Cir. 1998). Fraud upon the court is a narrow concept that should include only those types of fraud that do, or attempt to, defile the court itself," or frauds that are "perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. Kerwit Medical Products, Inc. v. N. H. Instruments, Inc., 616 F.2d 833, 837 (5th Cir. 1980). In First National Bank v. Lustig, 96 F.3d 1554 (5th Cir. 1996), this Court further described the kinds of conduct that could constitute a fraud on the court:*
> *To describe fraud on the court, it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision. Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court. Less egregious misconduct, such*

> *as nondisclosure to the court of facts allegedly pertinent to the matter before it will not ordinarily rise to the level of fraud on the court.*
> *Id. at 1573 (internal quotation marks and citations omitted). The very first test for fraud on the court under Rule 60 is "whether the action in question prevented a party from fully and fairly litigating its case." Id.")*

The misconduct upon which this petition for relief is based is not merely an unconscionable plan preventing Petitioner from fully and fairly litigating her case, but a willful and callous scheme designed to improperly influence the court in its decision, and exactly the type of egregious misconduct by an officer of this court as will constitute a fraud on the court warranting relief within the meaning of Rule 60(b)(3).

## V. STANDARD OF REVIEW

RULE 60: Decisions on Rule 60 motions are reviewed for abuse of discretion. "A district court abuses its discretion if it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence." Kennedy v. Texas Utilities, 179 F.3d 258, 265 (5th Cir. 1999) (quoting Esmark Apparel, Inc. v. James, 10 F.3d 1156, 1163 (5th Cir. 1994)).

In general, an abuse of discretion occurs when a relevant factor that should have been given significant weight is not considered, (2) an irrelevant or improper factor is considered and given significant weight, or (3) all proper factors, and no improper ones, are considered, but the trial court commits clear error of judgment in weighing those factors. The phrase "abuse of discretion" means that the court has a range of choices, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law. The trial court is thus given a "zone of choice within which [it] may go either way."

CLEARLY ERRONEOUS: Petitioner bears the burden of establishing substantial evidence. This Court's view of the evidence is reviewed for clear error. "Review under the clearly erroneous standard is significantly deferential." Concrete Pipe and Prods. v. Construction Laborers Pension Trust, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court's findings unless it is left with the "definite and firm conviction that a mistake has been committed." Inwood Laboratories, Inc. v. Ives Laboratories, Inc., 456 U.S. 844, 855 (1982).

SUBJECT MATTER JURISDICTION: Subject matter jurisdiction is reviewed de novo. Pillow v. Bechtel Const., Inc., 201 F.3d 1348, 1351 (11th Cir. 2000).

**NATURE AND STAGE OF THE PROCEEDING**

Pro se Petitioner Candace Louise Curtis (Curtis) filed the above titled breach of fiduciary action in this court on February 27, 2012, in order to compel required accounting and fiduciary disclosures. The matter was dismissed sua sponte under the probate exception to federal diversity jurisdiction [Doc 14] then reversed by the Circuit Court [No. 12-20164] and remanded to this Court for further proceedings. Curtis v Brunsting 704 F.3d 406 (Jan 9, 2013).

On January 29, 2013, while Plaintiff Curtis' action was in transit between the Fifth Circuit and the Southern District of Texas, Attorney Bobbie G. Bayless (TBA No. 01940600) filed legal malpractice claims against the late Settlors' estate planning attorneys in Harris County District Court 164 [No. 2013-05455] styled:

> *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting*
> *Vs.*
> *Candace Kunz-Freed and Vacek & Freed, PLLC f/k/a/ the Vacek Law Firm*

Upon returning to the Southern District of Texas, Plaintiff Curtis renewed her earlier application for a preliminary injunction and hearing was had April 9, 2013. Also on April 9, 2013, Attorney Bobbie G. Bayless filed claims in Harris County Probate Court (No. 412249-401) styled:

> *"Carl Henry Brunsting 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 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"*

## VI. THIS COURT'S PRELIMINARY INJUNCTION [DOC 45]

This Court announced the decision to issue the injunction at the April 9 hearing and published the order on April 19, 2013. The preliminary injunction established the existence of a fiduciary relationship between Plaintiff and Defendants, that Defendants owed fiduciary duties to Plaintiff and that Defendants had failed to perform fiduciary duties owed to Plaintiff.

The Report of a Special Master, appointed by this Court [Doc 62] to create books and records of accounts, revealed both injury to the Plaintiff and benefit to Defendants, thus establishing the fourth and final element of a breach of trust cause of action.

## VII. ATTORNEY OSTROM - FRAUD UPON THE COURT

**Procuring an Order for Remand under False Pretext**

In late 2013 Plaintiff Curtis retained Houston attorney Jason Bradley Ostrom (TBA #24027710) (Ostrom) made his appearance on January 6, 2014 [Doc 95]. Ostrom never followed his client's instructions, never sent copies of pleadings and did not respond to efforts to communicate. Plaintiff Curtis was forced to keep up with Ostrom's activities by data mining and monitoring the dockets.

Ostrom manipulated the administrative side of this Court to evade the judicial side by filing an unopposed motion [Doc 107] seeking to amend Plaintiff Curtis' complaint to add Carl Brunsting as an involuntary plaintiff, [Doc 108 ln 4] thus polluting diversity. Ostrom's professed purpose was to consolidate Plaintiff Curtis' case with state court Plaintiff Carl Brunsting's case pending in the probate court, "*in order to provide complete relief to the parties*". Ostrom thus obtained an order remanding Plaintiff Curtis' cause to Harris County Probate Court #4 [Doc 112]. It should be noted that remand is a post removal statute (28 U.S. Code § 1447). Plaintiff Curtis had never been in a state court in Texas and this case was not removed to the federal court from a probate court.

**Failure to Serve Citation**

Ostrom's amended complaint [Doc 108] portends to have added Petitioner's brother, Carl Brunsting, as an involuntary plaintiff thus polluting diversity and depriving this Court of subject matter jurisdiction. The amended complaint also stated that "*it is anticipated Carl will waive service of summons*".

Examination of the Clerk's record in this Court reveals that a summons to involuntary Plaintiff Carl Brunsting was never issued and no proof or waiver of service of citation was ever perfected and made a part of this Court's record.

**Colorable Transfer and Criminal Conversion**

Ostrom never had the docket of this Court prepared for certification to the state court. Instead, Ostrom filed a motion in the probate court asking to enter a transfer order, not as the above captioned cause but as "*Estate of Nelva Brunsting 412249-401*" (Exhibit A). Cause Number 412249-401 is the case brought by *Carl Henry Brunsting Individually and as Independent Executor of the Estates of Elmer H Brunsting and Nelva E Brunsting*. Plaintiff Curtis was named a nominal defendant in that cause. (Exhibit B)

Moreover, the motion for remand was granted by this Court on May 15, 2014, but a docket entry for the case was not created in the probate court until February 15, 2015, nine months later. The cause was also styled "*Estate of Nelva Brunsting No. 412249-402*".

On February 19, 2015, four days after the ancillary case was opened, Carl Brunsting resigned as independent executor due to lack of capacity.

> *"the estate is an "indispensable party" to any proceeding in the probate court. The estate's presence is required for the determination of any proceeding that is ancillary or pendent to an estate." Goodman v. Summit at West Rim, Ltd., 952 S.W.2d 930, 933 (Tex. App. 1997) Smith's Inc. v. Sheffield No. 03-02-00109-CV (Tex. App. Jan. 30, 2003), Johnson v. Johnson, No. 04-19-00500-CV (Tex. App. Jan. 15, 2020)*

March 9, 2015, with the office of executor vacant, the 412249-402 file was closed under the auspice of an agreed order to consolidate "*Estate of Nelva Brunsting 412249-402*" with "*Estate of Nelva Brunsting 412249-401*". (Exhibit C)

This agreed order completed the apparent disappearance of "federal Plaintiff Curtis" and completed her conversion into "probate court Defendant Curtis", a "nominal" defendant of Carl individually and a "nominal" defendant of the Estate of Nelva Brunsting.

Plaintiff terminated Ostrom when data mining revealed the conversion agreement. Unfortunately, the damage had already been done. Plaintiff was left without a pending lawsuit and everything that followed was a game of attrition, obstruction, evasion, intimidation, and abuse, but nothing that could be legitimately called litigation. Ostrom did not surrender the file when terminated and an examination of the docket reveals that he never even bothered to file an appearance in the state court.

## VIII. CONCLUSION

Carl Brunsting is a cross plaintiff, not a co-plaintiff. Citation to involuntary Plaintiff Carl Brunsting was not issued, served or waived. An involuntary plaintiff was not added to the above styled action and diversity was not polluted. The record was never certified for transfer to the state court, was never transferred to the state court and was never received by the state court. Candace Louise Curtis vs. Anita and Amy Brunsting No. 4:12-cv-592 never left this court as a matter of law or as a matter of fact.

November 11, 2019 marked the eighth year since the passing of the last Settlor, when rights in property vested equally in each of the five beneficiaries, and the eighth consecutive year that not one dime has been distributed to any income beneficiary of the Brunsting trusts.

February 27, 2020 marked eight years since trust beneficiary Candace Curtis filed suit against Anita and Amy Brunsting in the Southern District of Texas seeking required accounting

and mandatory fiduciary disclosures in order to obtain information about her beneficial interest in an inter vivos trust.

February 19, 2020 marked the fifth consecutive year that the office of independent executor for the Estate of Nelva Brunsting has been vacant. There has been no personal representative for either estate for more than five years and it is not debatable that without an estate there have been no proceedings in the probate court since before Petitioner terminated Ostrom in March of 2015.

May 22, 2020 marked the sixth year since Attorney Jason Ostrom had Candace Curtis' **non-probate matter** transferred from the Southern District of Texas to Probate Court #4 and the end of the sixth year in Probate Court #4 without an evidentiary hearing to resolve even one substantive issue relating to the trust.

The Circuit Court in No. 12-20164 held the trust property in question to be non-estate property before any state court cases were filed, and held this case (*Candace Louise Curtis vs. Anita and Amy Brunsting 4:12-cv-592)* to be outside the probate exception to federal diversity jurisdiction, *Curtis v Brunsting 704 F.3d 406* (Jan. 2013).

April 9, 2020 marked the seventh anniversary of the filing of Ancillary Matter 412249-401 in probate court #4 and the seventh year in which no dispositive issue has been determined in that Court beginning with:

a. What are the instruments that created the trust the estate poured over into at the death of Nelva Brunsting November 11, 2011?
b. Who are the trustees?

c. What affirmative obligations does the trustee owe the beneficiary in relation to the trust property?

d. Have the trustees performed those obligations?

April 19, 2020 marked the seventh consecutive year in which the portion of this Court's preliminary injunction commanding that income be deposited into an "*appropriate account for the beneficiary*" has been ignored.

On April 12, 2019 Plaintiff sought remedy in this Court, seeking to enforce this Court's injunctive order [Doc 124]. The Court denied the petition for remedy [Doc 127] stating:

> *"The Court is of the opinion that, having transferred the case to the Harris County Probate Court, it no longer has jurisdiction of the case. Therefore, the relief requested is Denied."*

Plaintiff/Petitioner has been trapped in a procedural purgatory and a substantive Hades where she has been subjected to threats, (Exhibit D) sanctions for seeking to enforce this Court's injunction in this Court, (Exhibit E) and where her property has been held hostage to Defendants' attorney fee ransom demands, while Defendants defalcate, flout accountability and disrespectfully ignore this Court's injunctive Order [Doc 45].

At the injunction hearing April 9, 2013, this Court stated at page 40:

*THE COURT: "That's it.*
*So, I want this resolved within 90 days. And if I have to appoint a trustee or somebody to handle this and get it done, I'll do it. It will cost the estate. And if I find that there has been mischief, it is going to cost individuals. And that will be a separate and distinct hearing.*
*So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that*

*this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke"*

Not only was that more than seven years ago, but that is exactly the kind of case attorneys Jason Ostrom (TBA #24027710), Bobbie G. Bayless (TBA 01940600) , Stephen Mendel (TBA#13930650), Neal Spielman (TBA#00794678) and others have worked in concert to make of it, under the label "*Estate of Nelva Brunsting*".

Notwithstanding Petitioner having been sanctioned by the state court for seeking to have this Court's injunction enforced in this Court, (Exhibits F and G) Petitioner herein renews her March 20, 2019 Application for Orders to Show Cause with Motion for Sanctions, [Doc 124] incorporated herein by reference, because this Court is the only court of competent jurisdiction in which Plaintiff Curtis has a docketed action.

This Court's Plaintiff, Candace Curtis, does not have a cause in probate court #4. There have been no dispositive rulings on any relevant substantive issue, favorable or otherwise, in any court but this Court. Those determinations established the law of the case and are entitled to full faith and credit.

For the above stated reasons Petitioner prays this Honorable Court will vacate and set aside the first Amended Complaint filed by Attorney Ostrom [Doc 108], vacate the Order approving Ostrom's Motion for Remand [Doc 112], and restore the above styled cause to the active docket.

Respectfully submitted, July 15, 2020

Candice Schwager

Candice Leonard Schwager

**PROOF OF SERVICE**

Pursuant to Fed. R. Civ. P. 5(a)(1)(D) an ex parte pleading may be heard without notice to opposing parties.

Candice Schwager

Candice Leonard Schwager

FILED
5/28/2014 5:40:59 PM
Stan Stanart
County Clerk
Harris County

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CAUSE NO. 412,249401

PROBATE COURT 4

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

06052014:0759:P0097

## 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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06052014:0759:P0098

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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, 17th 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

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06052014:0759:P0100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**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.

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Exhibit A

06052014:0759:P0101

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 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge

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06052014:0759:P0102

CAUSE NO. 412,249-401

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| IN RE: ESTATE OF | § | IN THE PROBATE COURT |
| | § | |
| NELVA E. BRUNSTING, | § | NUMBER FOUR (4) OF |
| | § | |
| DECEASED | § | 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 Butts
JUDGE PRESIDING

FILED
2014 JUN -4 AM 10:35
COUNTY CLERK
HARRIS COUNTY, TEXAS

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06052014:0759:P0105

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

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# Probate

**Case Number** 412249 **Court** 4 **Status** -All

**File Date (From)** MM/DD/YYYY **File Date (To)** MM/DD/YYYY SEARCH CLEAR

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**Party** **Attorney** **Company**

**Last Name** **First Name** **Middle Name**

**File Date (From)** MM/DD/YYYY **File Date (To)** MM/DD/YYYY SEARCH CLEAR

10 Record(s) Found.

| Case | File Date | Type Desc | Subtype | Style | Status | Judge | Court | View All |
|---|---|---|---|---|---|---|---|---|
| 412249-401 | 04/09/2013 | ANCILLARY (LAWSUITS CASES) - CONVERSION | | NELVA E. BRUNSTING, DECEASED | Open | JAMES HORWITZ | 4 | Parties |

**FIRST 1 2 LAST**

| Role | Party | Attorney |
|---|---|---|
| Other | Neal E Spielman<br>1155 DAIRY ASHFORD SUITE 300<br>HOUSTON TX 77079 | |
| Other | BOBBIE G. BAYLESS<br>2931 FERNDALE STREET<br>HOUSTON TX 77098 | |
| Deceased | NELVA E BRUNSTING | |
| Plaintiff | CARL HENRY BRUNSTIING | |

20-20566.2691

| | | |
|---|---|---|
| Defendant | ANITA KAY BRUNSTING | MCCUTCHEN, MAUREEN K.<br>Mills Shirley, LLP<br>2228 Mechanic Street, 400 Washington Building<br>P. O. Box 1943<br>Galveston TX 77553<br>Phone 409-761-4023<br>Fax 409-763-2879 |
| Defendant | AMY RUTH BRUNSTING | |
| Defendant | CAROLE ANN BRUNSTING | WALSH, LORI A.<br>P.O. Box 2113<br>Mont Belvieu TX 77580<br>Phone 832-729-8461<br>Fax 832-201-0618 |
| Defendant | CANDACE LOUISE CURTIS | SAIN THORNTON, NICOLE K.<br>5020 MONTROSE BLVD, SUITE 310<br>HOUSTON TX 77006<br>Phone 713-863-8891<br>Fax 713-863-1051 |
| Other | BRAD FEATHERSTON<br>1155 DAIRY ASHFORD<br>SUITE 104<br>HOUSTON TX 77079 | MENDEL , STEPHEN A.<br>1155 DAIRY ASHFORD<br>SUITE 104<br>HOUSTON TX 77079<br>Phone 281-759-3213<br>Fax 281-759-3214 |
| Respondent | CANDACE L KUNZ-FREED | REED, CORY S<br>ONE RIVERWAY<br>STE 1400<br>HOUSTON TX 77056<br>Phone 713-403-8200<br>Fax 713-403-8299 |

FILED
3/5/2015 3:21:27 PM
Stan Stanart
County Clerk
Harris County

20150308015 : Pg0002

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PROBATE COURT 4

CAUSE NO. 412,249 - 401

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

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CAUSE NO. 412,249 - 402

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| IN RE: ESTATE OF | § | IN THE PROBATE COURT |
| | § | |
| NELVA E. BRUNSTING, | § | NUMBER FOUR (4) OF |
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| 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.

Christine Butts
JUDGE PRESIDING

03092015:0815:P0003

APPROVED AS TO FORM:

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BY: _____

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03092015:0815:P0004

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NO. 412,249-**401**

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| CARL HENRY BRUNSTING, et al | § | |
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| ANITA KAY BRUNSTING, et al | § | |

**AMY BRUNSTING'S & ANITA BRUNSTING'S ORIGINAL COUNTERCLAIM**

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY BRUNSTING ("Amy") and ANITA BRUNSTING ("Anita") (collectively "Co-Trustees") have been sued individually and in various capacities by their sister, Candace Louise Curtis ("Curtis") and their brother, Carl Henry Brunsting ("Carl"), each of whom has amended and/or supplemented their petitions on numerous prior occasions.

In light of the numerous amended and/or supplemental petitions filed by Curtis and Carl, Co-Trustees file these Original Counterclaims, individually and in various identified capacities, including without limitation, as Co-Trustees of The Restatement of The Brunsting Family Living Trust (the "Brunsting Family Living Trust").

Each allegation, assertion, claim or cause of action made by Amy and/or Anita in this Original Counterclaim is in addition to and/or in the alternative to any other allegation, assertion, claim or cause of action made by them in this Original Counterclaim.

## I. BACKGROUND FACTS

The Brunsting Family Living Trust was created by Elmer Henry Brunsting and Nelva Erleen Brunsting (together, "Founders" or "Trustors" and each a "Founder" or "Trustor"), on or about October 10, 1996. Over time, additional documents pertaining to The Brunsting Family Living Trust were executed by one or both of the Founders, including without limitation, a Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement executed by Nelva E. Brunsting on or about June 15, 2010 (the "June 2010 QBD"), and another Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement executed by Nelva E. Brunsting on or about on August 25, 2010 (the "August 2010 QBD"). Elmer Henry Brunsting was not a party to either document, as he died on April 1, 2009.

Through the Brunsting Family Living Trust and the August 2010 QBD, the Founders set out a number of different terms, conditions and instructions to be implemented and followed by the trustees and beneficiaries. Included among these terms, conditions and instructions were rules intended for the "protection of beneficial interests", including without limitation rules dictating that the Founders' instructions were not to be contested.

This "no-contest" language appears in both the Brunsting Family Living Trust **and** the August 2010 QBD, and was included because the Founders did not want to burden the trust with the costs of a litigated proceeding to resolve questions of law or fact, unless originated by a trustee or with a trustee's written permission. The penalty for those who violated the no-contest provision was the forfeiture of any amounts the violator is or may have been entitled to receive. In such an event, a violator's interest would pass as if the violator(s) had predeceased the Founders.

The Founders identified certain specific acts which, if taken, would trigger a forfeiture. Prohibited acts include but are not limited to originating (or causing to be instituted) a judicial proceeding:

- To construe or contest the trust(s);
- To resolve any claim or controversy in the nature of reimbursement;
- Seeking to impress a constructive or resulting trust;
- Alleging any theory, which if assumed as true, would enlarge (or originate) a claimant's interest in the trust or the Founder's Estates;
- Unsuccessfully challenging the appointment of any person named as a Trustee or unsuccessfully seeking the removal of any person acting as a Trustee;
- Objecting to any action taken or proposed to be taken in good faith by the Trustee, if such action is determined to have been taken in good faith;
- Objecting to any construction or interpretation of the trust, or any amendment to it, and such objection is later adjudicated to be an invalid objection; and/or
- In any other manner contesting the trust or any amendment to it, including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence or otherwise, or in any other manner attacking or seeking to impair or invalidate the trust or any amendment, or any of their provisions.

The Founders further expressed their intentions regarding application and enforcement of these prohibited acts by including other instructions and conditions in the Brunsting Family Living Trust and/or the August 2010 QBD. These other instructions and conditions include but are not limited to:

- Application of the forfeiture penalty even if it is determined that the judicial proceeding was initiated in good faith, with probable cause;
- Application of the forfeiture penalty even if is determined that the judicial proceeding was initiated to do nothing more than construe the application of the no-contest provision;
- Cautioning a trustee against settling any contest, attack or attempt to interfere with the Founders' estate plan; and

- Requesting that the Court take into account the Trustor's firm belief that no person contesting or attacking the Trustor's estate plan should take or receive any benefit from the estate.

Against the backdrop of these forfeiture provisions, Curtis and Carl each elected to proceed with the origination of their respective judicial proceedings. By way of summary, but not limitation, Carl and Curtis' respective claims have included/currently include:

| **Carl's Claims** | **Curtis's Claims** |
|---|---|
| (1) Construction of Trust and Suit for Declaratory Judgment;<br>(2) Demand for Trust Accounting;<br>(3) Breach of Fiduciary Duties;<br>(4) Conversion;<br>(5) Negligence;<br>(6) Tortious Interference with Inheritance;<br>(7) Constructive Trust;<br>(8) Civil Conspiracy;<br>(9) Fraudulent Concealment;<br>(10) Liability of Beneficiaries;<br>(11) Removal of Trustees;<br>(12) Receivership Over Trust;<br>(13) Self-Dealing;<br>(14) Criminal Wiretap Claim;<br>(15) Civil Wiretap Act;<br>(16) Invasion of Privacy and Intrusion on Seclusion; and<br>(17) Request for Injunctive Relief. | (1) Breach of Fiduciary Obligation;<br>(2) Extrinsic Fraud;<br>(3) Constructive Fraud;<br>(4) Intentional Infliction of Emotional Distress;<br>(5) Breach of Fiduciary Duty;<br>(6) Fraud;<br>(7) Money Had and Received;<br>(8) Conversion;<br>(9) Tortious Interference with Inheritance Rights;<br>(10) Declaratory Judgment Action;<br>(11) Demand for Accounting;<br>(12) Unjust Enrichment; and<br>(13) Conspiracy. |
| Declarations Sought by Carl:<br>• 8/25/10 QBD *in terrorem* clause void.<br>• Construe validity, terms, responsibilities and obligations of documents signed by Elmer and Nelva.<br>• That Carl's actions do not violate *in terrorem* clause (if valid).<br>• That Carl's actions are done in good faith, so *in terrorem* not triggered. | Declarations Sought by Curtis:<br>• "Modification Documents" (June 2010 QBD, August 2010 QBD and Exercise of Testamentary Power of Appointment) are not valid.<br>• *In terrorem* clause not capable of enforcement. |

## II. CLAIMS AND CAUSES OF ACTION

Beginning with the filing of their respective original petitions/complaints, both Curtis and Carl have asserted (and/or continue to assert) claims and causes of action, or otherwise taken action through the filing of various motions, objections and/or responses/replies which violate the Founders' restrictions and trigger the forfeiture provisions. Once triggered, a prior or subsequent amendment of their pleadings does not and cannot "untrigger" the forfeiture. Consistent with the Founders' wishes and cautions, the Co-Trustees assert that:

- one or more of the causes of action asserted and/or declarations sought by Carl trigger the forfeiture provisions;
- one or more of the causes of action asserted and/or declarations sought by Curtis trigger the forfeiture provisions;
- one or more of the motions, responses, and/or replies filed by Carl trigger the forfeiture provisions;
- one or more of the motions, responses, and/or replies filed by Curtis trigger the forfeiture provisions;
- Carl did not have just cause to bring the action, and it was not brought in good faith;
- Curtis did not have just cause to bring the action, and it was not brought in good faith;
- Carl has forfeited his interest, and thus his interest passes as if he has predeceased the Founders;
- Curtis has forfeited her interest, and thus her interest passes as if she has predeceased the Founders;
- 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;
- 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;

and/or

- 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.

As a more specific example, but not by way of limitation, in his First Amended Petition for Declaratory Judgment, Carl "*seeks declaratory relief construing the...terms...[of the] Family Trust.*" The Brunsting Family Living Trust specifically prohibits an action to construe or contest the trust. Carl also seeks to impose a constructive trust, another claim that is specifically prohibited by Brunsting Family Living Trust.

Likewise, as a non-exclusive/non-limiting example, Curtis also seeks a declaration by the Court construing the terms of the Brunsting Family Living Trust, including, in particular, a finding that the QBDs affecting the terms of the Brunsting Family Living Trust are invalid. Curtis' requests violate the Brunsting Family Living Trust's terms.

Consistent with the Founders' wishes and cautions, the Co-Trustees request that the Court enter one or more declarations setting forth and confirming all or any of the Co-Trustees' assertions above. The Co-Trustees further seek a recovery/reimbursement of all attorney's fees, expenses and court costs associated with this matter, whether in accordance with the terms of the Brunsting Family Living Trust; in accordance with the Declaratory Judgment Act; as a sanctions/penalty for actions taken in bad faith, in equity, or otherwise.

## III. PRAYER

Co-Trustees, Amy Brunsting and Anita Brunsting, pray that the Court declare:

A. Carl and Curtis have taken actions that trigger the forfeiture provisions;

B. Carl and Curtis' actions in triggering the forfeiture provisions were without just cause and were not in good faith;

C. The forfeiture provisions are enforceable and applicable in this case;

D. By their actions, Carl and Curtis have forfeited their interests in the trust as though they had predeceased the Founders;

E. All expenses, including attorney's fees, incurred 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.

F. Co-Trustees be reimbursed their reasonable attorneys' fees and court costs;

G. Co-Trustees recover prejudgment and post-judgment interest as allowed by law.

H. Co-Trustees receive such other and further relief, general and special, legal and equitable, to which they may be entitled.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: _____

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THE MENDEL LAW FIRM, L.P.

BY: Stephen A. Mendel /by permission @

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*ATTORNEYS FOR ANITA BRUNSTING*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 4th day of November 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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NEAL E. SPIELMAN

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**AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT**

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY BRUNSTING ("Amy") files this Motion for Sanctions and/or Contempt (the "Motion") due to the conduct of Candace Louise Curtis ("Curtis"). For reasons discussed herein, Amy requests that this Court find Curtis in civil contempt and/or sanction Curtis appropriately.

## I.

## INTRODUCTION

Curtis is in contempt of this Court's Order Denying Pleas and Motions filed by Candace Curtis dated February 14, 2019. Curtis has ignored this Court's findings and orders as to her meritless jurisdictional arguments.

Curtis' dogged pursuit of these meritless claims, both before and after entry of the Order Denying Pleas and Motions filed by Candace Curtis, reveals a disrespect for judicial authority; evidences an intent to exacerbate an already emotionally-charged matter; and continues a pattern of behavior that is either intentionally designed to harass, to waste Estate/Trust assets, and/or is recklessly pursued without regard to the law or the facts.

Most recently, despite this Court's determination that subject matter jurisdiction is proper in Harris County Probate Court No. 4, Curtis filed documents in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592, a matter confirmed as having been closed, remanded and terminated. The net impact of Curtis' contempt, for which she should be sanctioned, is an otherwise avoidable increase in time and expense associated with the matter, to say nothing of the years-long delays caused by her contemptable conduct.

## II.

## DESCRIPTION OF CURTIS' CONTEMPTUOUS AND SANCTIONABLE ACTS

The Order Denying Pleas and Motions filed by Candace Curtis expressly states that Harris County Probate Court No. 4 has subject matter jurisdiction over the Estates of Elmer and Nelva Brunsting, as well as the assets contributed to the Trust(s) related to those Estates. Further, the Order Denying Pleas and Motions filed by Candace Curtis makes it equally clear that no other court has dominant jurisdiction regarding claims related to these Estates.[1] The Court will recall that Curtis's own filings requested and resulted in the remand of the federal court proceeding to Probate Court No. 4.

More than thirty (30) days has passed since entry of the Order Denying Pleas and Motions filed by Candace Curtis, and Curtis took no action relative to it while the Court had plenary power. Instead on March 20, 2019 and again on or about April 12, 2019, Curtis filed the following documents in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592:

- Application for Orders to Show Cause Why Defendants and Their Counsel Should Not Be Held in Contempt of This Court's Injunctive Orders; and

[1] See Exhibit 1 (Order Denying Pleas and Motions filed by Candace Curtis)

- Affidavit of Candace Louise Curtis in Support of Application for Orders to Show Cause.

The filing of these materials is direct evidence of Curtis' contempt. She should be found in contempt and sanctioned for her conduct.

This conduct is far from the first or only instance of Curtis' disregard for and disrespect of the judiciary. Three examples, among many, include:

1. On May 16, 2017, the Honorable Alfred H. Bennett issued a 7-page Order dismissing the Federal RICO case previously discussed with this Court as frivolous and meritless. In doing so, Judge Bennett afforded Curtis (and Rik Munson) the "benefit of the doubt" allowing them to escape financial responsibility (via sanction) for the trouble caused. However, Judge Bennett contemporaneously cautioned them against "additional meritless filings."[2] With flagrant disregard to Judge Bennett's instruction, Curtis and Munson proceeded to appeal his Order. The Court of Appeals subsequently affirmed Judge Bennett's Order, noting again that Curtis/Munson's allegations and efforts to pursue the matter were fantastical, nonsensical, frivolous and implausible.[3]

2. On October 3, 2013, prior to the remand to Probate Court No. 4, the Honorable Kenneth M. Hoyt issued an Order recognizing that Curtis' failure to employ counsel hinders necessary discourse and prevents parties from fulfilling their responsibilities, and directing her to retain counsel.[4] This Order prompted Curtis' retention of Jason Ostrum. However, in direct contravention of Judge Hoyt's Order, Curtis fired Mr. Ostrum shortly after the case was remanded.

3. Between August 17, 2018 and October 19, 2018, Curtis filed the Pleas in Abatement and Plea to the Jurisdiction that this Court denied via its Order Denying Pleas and Motions filed by Candace Curtis. Each of those filings was inconsistent with the May 2014 Motion to Remand Curtis filed in Case No. 4:12-CV-592 and in violation of both Judge Hoyt's Order Granting Plaintiff's Motion to Remand (dated May 15, 2014) and this Court's June 3, 2014 Order of Transfer in which this Court ordered that the pleadings and orders filed and entered in the Case No. 4:12-CV-59 are "*transferred to this Court to be held under Cause Number 412,249-401.*"

Throughout all three legal proceedings to which she is, or has been a party, Curtis has exhibited a pattern of ill-advised, unwise and contemptuous conduct, all of which occurred during

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[2] See Exhibit 2 (Order – Document 91 in Civil Action 4:16-CV-1969).
[3] See Exhibit 3.
[4] See Exhibit 4 (Order – Document 87 in Civil Action 4:12-CV-592).

the course of and as a result of her *pro se* status. At best, she fails to comprehend the legal process (as suggested by both Judge Hoyt and Judge Bennett). At worst, she is engaged in a calculated plan to delay, harass and unnecessarily increase costs, fees and expenses incurred by her siblings. In either instance, she seemingly fails to understand and has certainly yet to be shown that this conduct has consequences. It is well-past time that this message be sent.

## III.

## REQUEST FOR CONTEMPT AND/OR SANCTIONS

### A. Civil Contempt

Contempt of court is an appropriate means to enforce a court's civil order. V.T.C.A., C.P. &R., § 31.002(c). *Ex Parte Johnson*, 654 S.W.2d 415 (Tex. 1983). The contempt powers of the court are generally addressed by V.T.C.A., Government Code § 21.002. That section allows a court to punish a contemnor by a fine of not more than $500 and/or confinement to the county jail for not more than six months. The purpose of civil contempt is remedial and coercive in nature. A judgment of civil contempt exerts the judicial authority of the court to persuade the contemnor to obey some order of the court where such obedience will benefit an opposing litigant. *Ex Parte Werblud*, 536 S.W.2d 542, 545 (Tex. 1976).

For the reasons discussed herein, Amy requests that the Court find that Curtis violated its Order Denying Pleas and Motions filed by Candace Curtis via her filings of March 20, 2019 and April 12, 2019 in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592. Amy requests that Curtis be fined in the maximum amount available at law ($500.00), and that she continue to be held in contempt of court until such fine is paid.

**B. Sanctions**

Most sanctions are imposed under the authority of a specific statute or rule that permits a court to order sanctions. However, sanctions may also be imposed via a court's inherent power. *See In re Bennet*, 960 S.W.2d 35, 40 (Tex. 1997); *see also Remington Arms Co. v. Caldwell*, 850 S.W.2d 167, 172 (Tex. 1993). This power allows a court to impose sanctions for abuses of the judicial process not covered by rule or statute, or as necessary to aid in exercise of jurisdiction, administration of justice, and preservation its independence and integrity.

Amy requests that this Court sanction Curtis, whether on its own initiative and/or under CPRC §9.012, CPRC §10.004 and/or TRCP 13. As detailed above, Curtis has engaged in conduct that has no proper purpose. Rather, her conduct evidences an intent to harass, delay and increase the costs of litigation. Even if Curtis attempts to evade the consequence of her conduct as a result of her *pro se* status, as other courts have allowed her to do to our current detriment, her conduct is at least negligent and/or founded in poor judgment.

For the reasons discussed herein, Amy requests that the Court sanction Curtis in one or more of the following ways: (1) Enjoin Curtis from making further filings in Case No. 4:12-CV-592; (2) Order that Curtis pay a monetary penalty to the Court; and/or (3) Order that Curtis pay Amy (and/or the Trust) all or any portion the Court deems appropriate of the total amount of attorney's fees incurred and/or anticipated as a result of the conduct described in this Motion.[5]

**IV.**

**PRAYER**

For these reasons addressed above, Amy Brunsting requests that the Court set this Motion for hearing, and enter all necessary and proper relief related to the issues addressed herein.

[5] See Exhibit 5 (Affidavit of Neal E. Spielman)

Additionally, Amy Brunsting prays for such other and further relief (general and special, legal and equitable) to which she may be entitled, collectively, individually or in any of her representative capacities.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: _____

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*ATTORNEYS FOR AMY BRUNSTING*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 15th day of May 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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NEAL E. SPIELMAN

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| v. | § | |
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**ORDER REGARDING**
**AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT**

On the 28th day of June 2019, the Court considered Amy Brunsting's Motion for Sanctions and/or Contempt (the "Motion") pertaining to the conduct of Candace Louise Curtis ("Curtis"). In considering the Motion, the Court also considered Curtis' response of June 11, 2019, entitled "Response to the Fiduciary's Application for the Beneficiary to be Held in Contempt for Seeking to Enforce the Injunction Commanding the Trustee to Perform a Fiduciary Duty Owed to the Beneficiary with Petition for Partial Summary or Declaratory Judgment" ("Curtis's Response"). The Court also heard oral argument from the parties.

After considering the Motion, Curtis's Response and oral argument, the Court FINDS that it has jurisdiction of this proceeding; that the Motion has MERIT and is in all respects proper and sufficient; that Curtis was properly served and received proper notice of the proceeding; and that the Motion should be and is GRANTED. Therefore:

1. The Court FURTHER FINDS and ORDERS that Curtis is in CONTEMPT of the Court's Order of February 14, 2019 for the reasons presented in the Motion, including without limitation, via her March 20, 2019 and April 12, 2019 filings in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592, a matter confirmed as having been closed, remanded and terminated;

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 Program, Registry No. 28190 at 201 Caroline, 8th Floor, Room 800 Houston TX 77002 on or before the 1st day of September 2019;

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 1st 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 30th day of July 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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NEAL E. SPIELMAN

REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. _____

| | | |
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| 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

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VOLUME 1
(AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT)

June 28, 2019


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20-20566.2718

June 28, 2019

PROCEEDINGS:

THE COURT: Hello. Please be seated.

I'm going to call Case Number 412249-401, In The Estate of Nelva E. Brunsting, Deceased.

When we get Ms. Curtis on the phone, I'll have each counsel and pro se party stand, identify yourself, and who you represent.

(Calling Ms. Candace Curtis on telephone)

MS. CANDACE CURTIS: This is Candace.

THE COURT: Hi, ma'am. This is James Horwitz; I'm the judge in Harris County Probate Court 4.

MS. CANDACE CURTIS: Yes, sir.

THE COURT: We are on the record, and we're just now starting; so, I'm going to have each counsel stand and identify themselves and who they represent.

MS. CANDACE CURTIS: Thank you.

MR. SPIELMAN: Good afternoon, Judge, my name is Neal Spielman, and I represent Amy Brunsting.

THE COURT: All right.

MR. JADLOSKI: My name is Timothy Jadloski --

MS. CANDACE CURTIS: Excuse me. Can you turn that up a little bit 'cause I can't hear anything

going on in the background.

THE COURT: All right. I'll try to have somebody that's more technical than me do this.

JUDGE COMSTOCK: Turning up the volume on this device increases your volume, Ms. Curtis, but it doesn't increase the volume of the attorneys in the courtroom; do you guys want to approach?

THE COURT: Yeah, y'all can come on up.

All right. Counsel, why don't we start over, okay.

MR. SPIELMAN: Judge, my name is Neal Spielman; I represent Amy Brunsting.

MR. JADLOSKI: Your Honor, my name is Timothy Jadloski, and I represent Anita Brunsting.

MR. REED: Cory Reed; I represent Candace Vacek in the 403 case.

MS. BAYLESS: Bobby Bayless; I represent Carl Brunsting.

MS. CAROLE BRUNSTING: And Carole Brunsting; I'm pro se.

THE COURT: Okay. So, we have a motion for sanctions and/or contempt filed by counsel for Amy Brunsting.

MR. SPIELMAN: That's correct, Judge; and Candace Curtis is on the phone as a pro se party,

correct?

THE COURT: Right. So, Ms. Curtis?

MS. CANDACE CURTIS: Yes.

THE COURT: I would like you to raise your right hand and be sworn by the court clerk, please.

MR. CANDACE CURTIS: All right.

(Ms. Candace Curtis is sworn)

MS. CANDACE CURTIS: I do.

THE COURT: All right. Counsel, would you like to proceed with your motion?

MOTION FOR SANCTIONS

ARGUMENT BY MR. SPIELMAN:

MR. SPIELMAN: Yes, thank you, Judge.

Essentially, Judge, we're here on a motion for sanctions and contempt stemming from your recent -- the Court's recent order of February the 14th of 2019. By way of review, Your Honor, that order was entered following some pleadings that were filed by my office on Amy Brunsting's behalf that were connected to a series of five different pleadings that had been previously filed by Ms. Curtis. The sum and substance of those pleadings had to do with the suggestion or the argument that this Court did not have jurisdiction over the case that we're dealing with. And as you may recall, Judge, part of what led to your order being signed in February

was the discussion about how the case came to be in this courtroom from the federal court - Judge Hoyt's court - pursuant to a motion to remand and an order of remand that was signed by Judge Hoyt. The motion itself was submitted by Ms. Curtis and her lawyer at the time - Jason Ostrom. This Court then --

THE COURT: Is that the order dated March 16th, 2015 - an agreed order to consolidate cases?

MR. SPIELMAN: I did not bring that part of the file with me, so I can't speak to the specific dates.

THE COURT: It's the -- it's in your -- it's in my order denying plea and motion filed by Ms. Curtis that I signed on February 14th, 2019. So, I believe that's correct. Go ahead.

MR. SPIELMAN: Okay. Yeah.

And so then Judge Butts - prior to you taking the bench - Judge Butts signed her own order basically accepting the transfer. I do not recall, as I stand here today, whether that was done of the Court's own accord or if that was done in response to a motion filed by Ms. Curtis/Mr. Ostrom; but either way - you have the order from Judge Hoyt and then you have the order from Judge Butts bringing that federal court case into state court at Ms. Curtis' request; and yet, even

so, we had these five different pleadings and such suggesting that this Court didn't have jurisdiction.

Your Honor may also recall that in and around the same time period at other hearings we were having, Ms. Curtis wasn't appearing, and there was some discussion in the courtroom - not putting words into anybody's mouth - but there was some discussion in the courtroom as to whether or not Ms. Curtis wasn't appearing at these hearings because she did not think this Court had jurisdiction, and we talked about the importance of getting everybody to the table, so to speak, and that was the motivating factor for doing everything that I did so that we had everybody in the right place and we could recognize that the whole debate about who had jurisdiction wasn't even really one that should have been going on in any case.

So, fastforward to your order, Judge, February 14th - you issued your order - sort of confirming all of the things that we just said; and yet, even so, subsequent to that - on March the 20th and then again on April the 12th, this is all in 2019 - Ms. Curtis filed two more pleadings or documents into Judge Hoyt's federal court under the same cause of action that had been transferred. So --

THE COURT: Is that the cause of action

entering in what four numbers?

MR. SPIELMAN: The --

THE COURT: Is that the 592?

MR. SPIELMAN: That is -- yeah. Yes, I think so. Yes, the 592. So, those documents were the application for orders to show cause why Defendants and their counsel should not be held in contempt of this Court's injunctive order. That was one document that was filed. And then the second document that was filed later was affidavit of Candace Louise Curtis in support of application for orders to show cause. So, those were the two documents that were filed into the federal court case that had been closed and terminated prior to and then confirmed again by your order.

THE COURT: And, Counsel, is that case that ends in 592 in which she filed on April 12th, 2019, and March 20th, 2019 - the same case number in which Judge Hoyt had signed a agreed order to consolidate, and that case was moved to probate court?

MR. SPIELMAN: Yes, Your Honor.

THE COURT: Same case?

MR. SPIELMAN: Yes, sir.

THE COURT: Okay. Go ahead.

MR. SPIELMAN: Okay. And so, those actions right there - the March 20th and the April 12th

filing - are the ones that were taken subsequent to your February 14th, 2019 order, and those two actions are the ones that I am saying are the contemptuous actions relative to what's been going on in this court and the effort that was put forth to get everybody here and get any confusion that might have existed - legitimate or otherwise - resolved.

And so, that's really the sum and the substance of the conduct that we're here to talk about, Judge.

It's my position that - with regard to the contempt and the request for sanctions - that none of the conduct that was exhibited by Ms. Curtis with respect to the five pleadings that led up to your order or the two documents subsequent to your order were proper, necessary, merit, full, had merit, and should have ever been pursued because of the fact - like we talked about earlier - because of the orders from Judge Hoyt sending it over here and the order from Judge Butts accepting it, it was well known to everybody - and again, at Ms. Curtis' request - that we be here in this court for the remainder of the litigation.

And, you know, I spent a lot of time and effort to help get this properly positioned so that we could start moving forward and making progress with the

development of the case - like I said before - trying to get everybody that wanted to be at the table to the table; and now, Judge, what I'm trying to do here is to extend the analogy a little bit in a tortured fashion is - now that everybody's at the table, let's make sure we're all eating with the right fork. I just feel like -- I said it would be a tortured analogy.

I feel like this case, from inception, has been burdened by a lot of the conduct of Ms. Curtis and the delays that she's caused and the pleadings that she's filed and there's never been an opportunity - by this Court, at least - to call her out on that to say there is a proper way of conducting business; just because you are a pro se party does not excuse you from understanding how the process works and from following that process. It has cost the parties' time. It is going to cost the estate money. If it's not going to cost the estate money, it's certainly going to cost my client money, and it's time to send the message to Ms. Curtis that there are consequences to the decisions that she makes when she disregards this Court's order or pursues ill-timed, poorly-thought-out, or other conduct that's just contrary to the way we are to conduct ourselves in a litigation.

Judge, you would not let me speak to Ms.

Bayless or write things about Ms. Bayless of the nature that Ms. Curtis is writing about the lawyers. You would not reward Mr. Reed for filing frivolous pleadings attacking jurisdiction time and again, you know, if he were to do something like that because we, as the attorneys, we know what conduct we're held to. We know what standards we're held to, and we know how to apply and understand and perceive your rulings and the rules of court; and Ms. Curtis has never been taught that lesson.

One of the things that I pointed to in the motion, Judge, is that this is not the first time that this has come up. Yes, it's the first time that anybody has really stood up and presented it in this courtroom, but you can see from the history, you know, Judge Hoyt recognized there was a problem with Ms. Curtis' conduct, and he recognized, in an order, that it was hampering the ability for the case to proceed forward, and it was hampering the parties from fulfilling their responsibilities. His order is not specific on which parties, but I think the presumption could be Amy and Anita as the co-trustees.

Nevertheless, Judge - Judge Hoyt saw the problem with Ms. Curtis' behavior as so extreme that he ordered her to get legal counsel, and that's the order,



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Exhibit 4, that I put in my motion. She did follow Judge Hoyt's order for about as long as it took for them to come back into this court.

Shortly after the case was transferred and accepted by Judge Butts, her counsel, Mr. Jason Ostrom, was fired by Ms. Curtis, and she resumed this conduct of wildly using the wrong court, filing ill-conceived motions, doing the two things that Judge Hoyt warned her against or wrote about which was hindering necessary discourse and preventing the parties from fulfilling their responsibilities.

For the longest period of time, we spent our time stuck in a different federal court proceeding because of an ill-timed, poorly-conceived, frivolous lawsuit. That is also referenced in my motion. That was what Judge Bennett said about Ms. Curtis' RICO case; and not only did Judge Bennett say that, but then the Fifth Circuit Court of Appeals said that.

So, we have now three courts highlighting the problems that we are seeing and experiencing here in this court with Ms. Curtis and her behavior.

And I guess, Judge, my point in all this is that it's time to send a message to Ms. Curtis, and I think that message is going to be best understood by her in the form of a contempt, a sanction, and a monetary

penalty and fee, and that's why I wrote the motion the way I did; and that's why I submitted my affidavit in support of the attorney's fees that I have incurred on Ms. Bruns -- on Amy's behalf dating back to the original five filings all the way through to today's hearing.

THE COURT: Mr. Spielman, who was the federal judge in this 592 case, do you remember?

MR. SPIELMAN: The 592 was Judge Hoyt, I believe.

THE COURT: All right. And he is the one that closed the federal -- this 592 case, granted the Plaintiff's motion to remand in the order of transfer and to have all of this brought back under our current case number; is that correct?

MR. SPIELMAN: Well, Judge Hoyt granted Plaintiff's motion to remand and then the order of transfer that you just mentioned was the document signed by Judge Butts in this court. But, other than that, yes.

THE COURT: All right. So, without going into the merits of her application for orders to show cause -- well, let me ask you this.

What has happened in federal court since this was filed in March and April of this year?

MR. SPIELMAN: Well, that's an interesting



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question, Judge, because what happened there is, apparently, the Court called her -- those pleadings, those federal court filings, to hearing. I did not get notice of that from the Court. I received an email from Ric Munson - who is connected to Ms. Curtis - the evening before. By the time I got to the office and saw that email, the hearing had already transpired. I don't want to speak for Mr. Mendel and Mr. Jadloski, but I don't believe they received Mr. Munson's email at all. So, I cannot say specifically what was discussed during the telephonic conference, but I am aware that --

THE COURT: You say "telephonic conference" - what do you mean?

MR. SPIELMAN: The Court had a telephonic conference with Ms. Curtis. We were all instructed, apparently, to call in rather than show up.

THE COURT: Okay.

MR. SPIELMAN: And, you know, I regret not bringing it with me. I know I printed it out. There is a docket sheet entry from that proceeding, and I know we're on the record so I don't want to misquote, so I will say that I'm just sort of going from memory, words to the effect of - we're not going any further because I already closed this X years ago.

THE COURT: All right. And have you

subsequently researched that to make sure that's the finding of that court?

MR. SPIELMAN: I have -- I am -- I can 100 percent say yes, I have; I can 90 percent say I printed it out; I can 100 percent say I can get that to you or go and print it out if that's something you would like to look at.

THE COURT: And, Counsel, do you have anything to add to that?

MR. JADLOSKI: Other than that I support the motion, no, Your Honor, I don't.

THE COURT: But any information about what the federal court did in reference to this application other than to say this matter's been closed?

MR. JADLOSKI: I have nothing else to add, Your Honor, except that I can confirm - yeah, we did not get notice of the hearing.

THE COURT: Counsel, do you have anything?

MR. REED: Yes, Your Honor.

If you look at every time when Ms. Curtis has filed any of these pleadings in the federal court - next to when you get the email notice - notification of a filing - it says, specifically, "case closed" and then it will have the filing information. So, the federal court, their notation in their system is - "case

closed".

THE COURT: All right. Ms. Bayless, do you have any information to add?

MS. BAYLESS: No. I mean, I agree with what Mr. Reed just said, you know, it would show up as "closed".

THE COURT: All right. So, what are you seeking today, Mr. Spielman?

MR. SPIELMAN: I'm seeking an order of contempt based off of her - Ms. Curtis' - violation of your February 19 -- your February 14th, 2019, order and that contempt can take whatever form this Court desires from the 500-dollar civil max penalty to just an order saying that you're in contempt for not following my order.

I'm also seeking, as a sanction, the attorney's fees that were incurred by my client while I took the actions that I described in my affidavit dating back from the first of the five filings through standing here today. And the only thing I will say about that affidavit is that in it, there is a portion where I estimated the amount of time that I would spend between the date of the filing of this motion and today's hearing - I estimated that as five hours. I have not spent five hours. I would -- if we had to round up, I

would say two hours from 1.7 or something of that nature.

THE COURT: In your affidavit for attorney's fees, you're seeking attorney's fees for work done going back to the receipt and review of the pleas in abatement and the plea to the jurisdiction?

MR. SPIELMAN: Correct. And the reason I'm doing that, Judge, is because, you'll remember - I made no such request at the time even though it was pretty obvious from the history of the file and Ms. Curtis' own actions that none of those five documents should have been filed by then; but at that time, it was more important for me to get us all on the same page than it was to argue about sanctions and fees. That changed in my mind when Ms. Curtis then filed her next two documents. And since the rules allow for us to seek sanctions retroactively while the case is pending, I felt like the best way to send the message was to go all the way back to the beginning.

THE COURT: In your responses to the plea in abatement and plea and the jurisdiction - which I don't have in front of me - did you request attorney's fees?

MR. SPIELMAN: I did not.

THE COURT: All right.

MR. SPIELMAN: And, in fact, Judge, I don't know that I've -- I don't know that the documents that I would have filed would have been styled as a response per se because I -- what was it... I think it was motion for -- whatever I called it. I didn't call it a "response" because we were doing more than just the response. But you'll remember, Judge, I think that -- I know what I called it - motion for clarification --

THE COURT: Motion for clarification and to dismiss.

MR. SPIELMAN: Right. And then within the context of Ms. Curtis' response and our reply, we brought up the issue of these five pleadings, was brought up, and that's what allowed Your Honor to dispose of them in your order.

THE COURT: How much time do think you've spent on this particular matter?

MR. SPIELMAN: As far as drafting?

THE COURT: Including this hearing today.

MR. SPIELMAN: We could -- well, let -- we could call it five hours.

THE COURT: I think you just said you hadn't spent --

MR. SPIELMAN: Well, I thought you were asking me -- you're asking me from the time I filed the

motion through today how much time I did spend?

THE COURT: Well, on this matter. I assume that you spent time before you filed the motion.

MR. SPIELMAN: Correct. I may have misinterpreted your question from day one which was the -- which would have been receipt and review of the --

THE COURT: March 20th.

MR. SPIELMAN: August 20 -- so between August 20th, '18 and October 2018 which is when Ms. Curtis started the plea in abatement process.

THE COURT: I apologize for not being clear. What I'm curious about is -- I understand that sanctions can go retroactive; what I was curious about is the very first time you got notice of Ms. Curtis filing something in federal court was, I assume, March of 2019 in the latest round she did --

MR. SPIELMAN: I understand.

THE COURT: -- from that time until today, approximately, what was the file?

MR. SPIELMAN: Judge, that's what I was saying. If we want to call it five hours, just the preparation of this motion, the receipt of Ms. Curtis' response, the preparation for the hearing and the appearance here at the hearing, we could call that five

hours.

THE COURT: All right. And I believe you also requested in addition or in the alternative to further -- Ms. Curtis from making further filings in the federal court?

MR. SPIELMAN: That's correct, Judge; I would hope that although Ms. Curtis had been on the phone with Judge Hoyt and got that ruling or that instruction from him that maybe the injunction wouldn't be necessary. But, sure, yes. I mean, I do think, I do think as many times as we need to say that the case is closed, do not file anything in it, I mean, certainly if past predicts the future, it can't hurt to have an injunction to that effect.

THE COURT: All right. Anything further, Counsel?

MR. SPIELMAN: No, thank you, Judge. Thank you for indulging me.

THE COURT: Ms. Curtis?

MS. CANDACE CURTIS: Yes, Your Honor.

THE COURT: Would you like to respond, please?

ARGUMENT BY MS. CANDANCE CURTIS:

MS. CANDACE CURTIS: I've answered Mr. Spielman in writing; so, my position is a matter of



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record. And also, for the record, no one has even replied to my pleading in this court.

THE COURT: Do you recall having a telephone hearing with Judge Hoyt in federal court in reference to --

MS. CANDACE CURTIS: Yes, Your Honor, and I prefaced the conversation with the fact that it was an ex parte communication, and he simply corrected my misunderstanding in which I thought the judge who had issued an injunctive order would be the one to uphold the order, and he informed me that that was incorrect and that when he issued the remand order, it says in there that "It's further ordered that all orders rendered by this Court shall carry the same force and effect during the remand that they would have if the remand had not been ordered." And this injunctive order was filed in the probate court on February 6th, 2015, along with the report of master.

THE COURT: So, did you understand from Judge Hoyt that you were not to file anything further in that federal court case ending in 592?

MS. CANDACE CURTIS: What he said was, "mandamus."

THE COURT: I apologize, I couldn't understand.



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MS. CANDACE CURTIS: What he suggested was "mandamus."

MR. SPIELMAN: Maybe she's trying to say "mandamus"?

MS. CANDACE CURTIS: Mandamus. Okay. Excuse me.

THE COURT: Did he tell you that that 592 case was closed and all matters were transferred to the probate court?

MS. CANDACE CURTIS: Yes, Your Honor, he did.

THE COURT: All right. So, with that understanding, do you know not to file anything further in the Federal Case 592?

MS. CANDACE CURTIS: Yes, Your Honor, I do.

COURT'S RULING:

THE COURT: All right. I'm going to take this matter under advisement, and I will -- if you want to issue -- send me a proposed order, Mr. Spielman.

Ms. Curtis, if you have a proposed order you want to send to me - you're welcome to do that as well; and I'll review the record, argument of counsel, I'll reread your pleading, Ms. Curtis, as well as the statement that you've told me what Judge Hoyt told you,

and I'll get back with everybody.

MR. SPIELMAN: Your Honor, one point, I'm sorry.

First of all, I apologize if I did not send in an order. That is a mistake on my part. I will get you what you've asked for.

Number two is - would the Court -- like I said, I'm almost positive there is some kind of either a docket entry or a written order of some sort from Judge Hoyt following the telephonic conference in 2019. I'm happy to confirm that and send that in or if I'm wrong, I will send an email that says --

THE COURT: That's fine. But admission of a party opponent, she's acknowledged that the judge told her not to file anything else.

MR. SPIELMAN: And then the third thing, just for clarification purposes. I guess I'm wondering if Ms. Curtis would confirm for the Court, and for us, that what she wants you to read in response to all of this is the document that she filed that's got a pretty long title: Response To Fiduciary's Application For The Beneficiary To Be Held In Contempt For Seeking To Enforce The Injunction Commanding The Trustee To Perform Fiduciary Duty Owed To The Beneficiary Petition For Partial Summary Or Declaratory Judgment.



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If that's the document that she's referring to, then I think we have all sorts of problems depending on what the Court is going to do with this after the Court reviews it.

THE COURT: Well, that's the document you wanted me to review, right, Ms. Curtis?

MS. CANDACE CURTIS: Yes, Your Honor, it is.

THE COURT: All right. I've looked at it once. I'll be glad to look at it again. And at this time, I'm going to end this hearing, and y'all are excused. I'll be back in touch. Please provide me with proposed orders.

MR. REED: Your Honor, real quick before we end this hearing.

We previously came down - I know this isn't before you, but since we're all here, I wanted some guidance on how you want to handle this in the future - on a request for a representative of the estate to be appointed for my 403 case, and I know we got some subsequent orders after that hearing, but none of them touched on that.

THE COURT: Who is your client, again?

MR. REED: I'm in the 403 case - the malpractice part. And so, my client is, frankly, in



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limbo until this Court appoints somebody in charge of the estate. And so, we've had several hearings on this so far with no orders; and frankly, it's probably the biggest issue for my client because I can't proceed forward or backwards or any way without someone.

THE COURT: And if I understand it right, your client was the representative of the estate; he has resigned.

MS. BAYLESS: Right.

THE COURT: And your two clients want to be that or one of them wants to be that.

MR. SPIELMAN: I think "wants to" might be a strong term. I think the substance of it goes like this, Judge:

Carl Brunsting was the executor of the estate and filed the lawsuit against the law firm in that capacity because he was the executor of the estate under the Will. When he resigned, the Will then says that my client, Amy, is next, and then Ms. Curtis is underneath her. There are, then, the competing applications between Amy and Ms. Curtis about taking over the role of Mr. Brunsting.

THE COURT: As successor executor?

MR. SPIELMAN: As successor executor.

Somewhere in this process, we have also

brought up the question of whether or not that lawsuit is an asset of the estate because if that lawsuit is an asset of the estate, then it's really part of the Trust which means it's now Amy and Anita as the current co-trustees - that would be the people with the ability to do what Mr. Reed is so desperately looking for which is - negotiate some way out of that for his client and then --

MS. CANDACE CURTIS: I believe that is correct --

MR. SPIELMAN: I'm sorry?

THE COURT: Yes, Ms. Curtis?

MS. CANDACE CURTIS: I believe that Mr. Spielman is correct.

THE COURT: Thank you.

MR. SPIELMAN: Then I'm going to stop talking.

MR. REED: Well, that's a first.

THE COURT: And if I remember from our previous hearings, you don't want to be the representative.

MS. CAROLE BRUNSTING: I did want to be the rep --

THE COURT: Oh, you do. But other people object to that; is that right?



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MR. SPIELMAN: I don't know that any people officially objected, but I don't think that's -- that's certainly not what Mom and Dad wanted when they wrote their documents, and I don't think it would be productive --

MS. CAROLE BRUNSTING: I have the --

MR. SPIELMAN: -- in large part because --

THE COURT: I'm sorry, ma'am?

MS. CANDACE CURTIS: It think it's a little presumptuous, Mr. Spielman, for you to say what Mom and Dad wanted.

THE COURT: Ms. Curtis, Ms. Curtis let me swear in your sister if I could.

(Ms. Carole Brunsting sworn)

MS. CAROLE BRUNSTING: I believe he made a comment at one time that if I had supported my siblings that they agreed that I could take over that role, that was something to consider.

THE COURT: And this is to take over as the successor executor?

MR. SPIELMAN: I believe that's --

THE COURT: Is that what we're talking about?

MR. REED: I'm not sure that it's that

exact position; I think it would be -- I'm a little unfamiliar with the probate world, but what I understand it to be is a representative of the estate. So, if it's a successor --

THE COURT: I mean, she's not named in the Will; so, if we did that, it would have to be in some administrator status.

MS. CAROLE BRUNSTING: This is something we've been talking about this for years and years and years. It's something I would really like to go ahead and make the decision so I --

THE COURT: Is that motion before the Court? Not today, but is it, generally, before the Court?

MR. REED: It hasn't. Well, it's been vaguely pled in various motions, and that's why --

THE COURT: Well, if y'all want to, you know, if somebody wants to bring it to the Court, you know, and --

MR. REED: The problem is --

THE COURT: -- have a hearing on it, we can do that. I'm not going to do it today, I can tell you that.

MR. SPIELMAN: I don't think there's any motion by Carole Brunsting seeking to take --

MS. CAROLE BRUNSTING: I can file a motion if I need to.

MR. SPIELMAN: And we can deal with that at that time.

THE COURT: And the -- between y'all, you can't reach a settlement? Have you tried to reach a settlement on an appointment of a person?

MR. SPIELMAN: I mean, the closest that we've gotten to anything was just now when Ms. Curtis said she agreed with me about what would happen if it was, in fact, an asset of the estate - it would belong in the Trust. So, that's, of course, the other question is - if that's the correct analysis, then there really isn't a need for an executor of the estate because I think the thing that everybody would agree on is that but for that lawsuit, there is nothing else as an asset of the estate; anything else, is in the Trust. And so, if that's where that lawsuit belongs --

THE COURT: Then we have a continuing argument over who's the proper trustee of the Trust; is that correct?

MR. SPIELMAN: Because of the qualified beneficiary designations and the power of -- I'll butcher the terms --

THE COURT: That's the substance of the



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malpractice lawsuit, is it?

MR. SPIELMAN: Correct.

THE COURT: She did some work to appoint somebody - your clients - as co-trustees and somebody thinks that's not correct; and hence, we go forward on that one.

MR. SPIELMAN: And we just finished the deposition of the drafter of those documents - Ms. Freed - yesterday here at the courthouse. Thanks everyone for their hospitality. And now I think we have, at least I do, I have a much better clearer and validating understanding of why Amy and Anita are, in fact, properly named. I suspect Ms. Bayless would disagree but that is also not for --

MS. BAYLESS: You're right.

MR. SPIELMAN: -- for today's proceeding.

MR. REED: And from my standpoint, that's a battle between the siblings. My client has been sued for the last seven years and wants to move forward with defending her name in this lawsuit, and she can't until this court appoints somebody to be the plaintiff of that lawsuit.

MS. BAYLESS: I'll bring one other point.

I think it will behoove everyone to try to settle everything; although, that sounds ambitious, I

understand. But I just learned today there was to be an appraisal of the Iowa farm property which was supposed to facilitate some discussions about settlement; and apparently, that hasn't been initiated yet. I don't know if you have an estimate of how long it's going to take, but I don't know if we would have the information to do that right now if we wanted to be particularly productive.

THE COURT: Well, and I remember this case. It reminded me of a Chinese finger puzzle - once you put your finger in it, you can't get your finger out.

MS. BAYLESS: Wacamole-kind-of.

THE COURT: Well, if y'all want to try to find somebody that you can agree on to be either a successor executor or a administrator --

MS. BAYLESS: Temporary administrator.

THE COURT: -- which would be a title that somebody who isn't named as an executor would have to utilize - I'm all for it. If y'all can't get an agreement on it, then I think we do need to get somebody appointed, and the Court can use its inherent power to get that accomplished if y'all can't agree among yourselves. I think it's time for y'all to - like an old truck driver said - shift or get off the lot, you



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know.

MR. SPIELMAN: Is that exactly what he said, Your Honor?

MR. JADLOSKI: Judge, if I might ask just a point of clarification.

You said you'd like to see us get someone appointed. As Mr. Spielman explained earlier - there's the possibility that we don't need someone appointed if it's an as -- are we saying that someone becomes the person that whether it be ...

THE COURT: You know, if that person is representing the estate, they may help make the determination of whether it's an asset of the estate or not. I mean, I think what happens in cases like this is everybody tries to put pieces of it in their mouth and swallow the whole thing and we choke on it. And I think we're better off just going ahead and swallowing a little piece first. And let's, you know, if somebody wants to bring something forward to me, I'll be glad to deal with it; otherwise, see if you guys can actually get somebody - and this includes you, of course, Ms. Curtis - because you are second in the pecking order on successor executors. Let's see what we can get done. I mean, I'm glad to work with y'all on that.

MR. SPIELMAN: Judge, just thinking aloud

real quick. So, I would not suggest him at this point because of some things, but your approach right now is very similar to what Judge Comstock and Judge Butts did or what was maybe their intention in naming Mr. Lester at one point to do some work as - and I always butcher his position - temporary administrator or something along those lines.

But, you know, we've heard a lot so far in some of the commentary of the siblings themselves that the attorneys making the decisions and the Courts making the decisions. We didn't know Elmer and Nelva. We don't know their family other than as the lawyers. I'm wondering out loud, without having spoken to my client about it, if the siblings might know of a family friend, somebody that they all trust, somebody that knew Elmer and Nelva, if there might be - rather than Frost Bank who is going to charge a crazy amount of money to do this - if there might be a family friend that might garner some confidence and some agreement amongst the siblings if they had ideas to submit possible names. I certainly wouldn't mind asking my client to do something like that if there was such a person and potentially even recommending that we let such a person do this if they were inclined to do so.

MS. CAROLE BRUNSTING: And I realize I'm



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pro se, but I've done a lot of work and I've really done my best to contact my siblings and I really believe that left on their own to make the decision and not be influenced by their attorneys, that they would agree that - because I've stayed so involved, I've attended every single hearing, I've been involved as much as I possibly can - that I would be the logical choice; and I do realize I would have to have legal counsel which I've already -- I already know the legal counsel that I would retain.

THE COURT: Well, today is beyond the power of the Court to just, you know, snap my fingers and say that, but it's something to consider. I'm going to ask y'all to work seriously to try and come up with something and someone, and if you can't make an agreement, then let's have a hearing on that, and I'll appoint somebody.

MS. CAROLE BRUNSTING: I have one other concern is - every time we appoint an outside party, it ends up costing the Trust, in my opinion, quite a bit of money, and it also causes a delay because they want six months to a year and then we're delayed again where I know that I can get started immediately.

THE COURT: Well --

MS. CAROLE BRUNSTING: So, I can file a



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motion --

THE COURT: All right.

MS. CAROLE BRUNSTING: -- to do that.

THE COURT: All right. Y'all are excused. Thank you, Ms. Curtis. I'm going to disconnect.

MS. CANDACE CURTIS: Thank you.

THE COURT: Bye-bye.

Y'all have a good weekend.

MR. SPIELMAN: Thank you.

* * * * *

The State of Texas )
County of Harris )

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

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

I further certify that the total cost for the preparation of this Reporter's Record is $240.50. and was paid by Ms. Candace Curtis.

WITNESS MY OFFICIAL HAND this the 18th day of July, 2019.

/s/ Hipolita G. Lopez
HIPOLITA G. LOPEZ, Texas CSR #6298
Expiration Date: 12-31-20
Official Court Reporter
Probate Court Number Four
Harris County, Texas
201 Caroline, 7th Fl.
Houston, Texas 77002

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**MEMORANDUM AND ORDER**

**INTRODUCTION**

Before the court is an ex parte petition for relief from an order of this Court pursuant to Federal Rule of Civil Procedure 60(b).

**PROCEDURAL BACKGROUND**

Petitioner filed the above matter on February 27, 2012 under federal diversity jurisdiction. After numerous proceedings in this Court the pro se plaintiff retained the assistance of local attorney Jason Bradley Ostrom (Ostrom). On May 9, 2014, Ostrom filed an unopposed motion for leave to file a first amended petition [Doc 107], a first amended petition [Doc 108] and an unopposed motion for remand to the state probate court [Doc 109].

On May 15, 2014 this Court issued an Order [Doc 111] granting the motion for leave to file first amended petition [Doc 107], and an Order [Doc 112] granting the unopposed motion for remand [Doc 109].



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**GROUND FOR RELIEF**

**A. FRAUD UPON THE COURT**

To establish fraud on the court, it is necessary to show an unconscionable plan or scheme designed to improperly influence the court in its decision. *First National Bank of Louisville v. Lustig, 96 F.3d 1554, 1573* (5th Cir. 1996) (quoting Rozier, 573 F.2d at 1338) (internal quotation marks and citation omitted).

**B. COMMON LAW FRAUD**

Under Texas law the elements of a common law fraud claim are: (1) that a material representation was made; (2) the representation was false; (3) when the representation was made, the speaker knew it was false or made it recklessly without any knowledge of the truth and as a positive assertion; (4) the speaker made the representation with the intent that the other party should act upon it; (5) the party acted in reliance on the representation; and (6) the party thereby suffered injury. Law v. Ocwen Loan Servicing, LLC, CIVIL ACTION No. H-16-2675, at *3 (S.D. Tex. Mar. 28, 2017) (“"a party must state with particularity the circumstances constituting fraud." Fed. R. Civ. P. 9(b)”

**LEGAL AND FACTUAL ANALYSIS**

Petitioner alleges that the motion to amend her complaint and the motion for remand were not for the purposes stated by counsel, “*to afford complete relief to the*

*parties"*, but to remove the case from this Court for purposes of perpetrating a complete fraud on the Brunsting trust beneficiaries, to interfere with this Court's proceedings, and to render all of Petitioner's favorable federal court rulings nugatory.

**CONCLUSION AND ORDER**

If everything Petitioner says is true, she will have shown an unconscionable plan or scheme designed to improperly influence the court in its decision, sufficient to warrant relief under Rule 60(b). However, the only question necessary to resolve this petition is whether or not diversity has, in fact, been polluted. The Court determines that it has not.

The Clerk's record reflects failure of counsel to complete service of citation within the 120 day limit prescribed by Fed. R. Civ. P. 4(m) and, as state court Plaintiff Carl Brunsting was never properly made an involuntary party plaintiff to this Court's proceedings, diversity has not been polluted. Therefore, the Order granting the Motion for Remand [Doc 112] is void as a matter of law. Further, the record reflects failure of counsel to cause the record to be certified for transfer to the state court and, thus, no transfer was perfected.

Petitioner's request for Rule 60(b) relief is in all things GRANTED.

The Order [Doc 111] granting the motion for leave to file first amended petition [Doc 107] is vacated and the motion denied. The First Amended Petition [Doc 108] is thus vacated, set aside and held for naught. The Order [Doc 112] granting the motion for remand [Doc 109] is vacated and the motion for remand to the state court is denied.

The Clerk is instructed to restore this matter to the active docket.

It is so Ordered on this _____ day of July 2020.

Kenneth M. Hoyt
United States District Judge

# UNITED STATES DISTRICT COURT

for the

Southern District of Texas

Candace Louise Curtis
*Plaintiff*
v.
Anita Kay Brunsting, et al.
*Defendant*

Case No. 4:12-CV-592

## APPEARANCE OF COUNSEL

To: The clerk of court and all parties of record

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for:

Candace Louise Curtis

Date: July 17, 2020

Candice L. Schwager
*Attorney's signature*

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n/a
*FAX number*

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | |
| | § | |
| VS. | § | Civil Action No. 4:12-cv-00592 |
| | § | |
| ANITA KAY BRUNSTING, ET, AL. | § | |

**CO-TRUSTEES' RESPONSE TO EX PARTE MOTION FOR RELIEF**

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**INTRODUCTION**

1. Plaintiff's Ex Parte Motion for Relief [Doc.128] (the "Ex Parte Motion") must be denied. It represents the latest in a long line of abuses of and attacks on jurisdictional decisions, justices, court reporters, court appointees, attorneys, siblings and the judicial system. Its content does not justify relief under Federal Rule of Civil Procedure 60.

2. In filing the Ex Parte Motion, Plaintiff proves once again that which this Court has previously recognized, namely that her conduct hinders necessary discourse and "*prevents the parties from fulfilling their responsibilities to the Court, i.e., to manage and process all pretrial matters necessary to a resolution of this case.*"[1] Likewise, her Ex Parte Motion evokes memories of both The Honorable Alfred H Bennett's commentary regarding her filing of frivolous claims and his caution against additional meritless filings, as well as the Fifth Circuit's affirmation of Judge Bennett's Order via its own *de novo* review and opinion that Plaintiff's claims are "*fantastical and often nonsensical*" (see Section I(C)(2)(b), below).

3. As this Court most recently recognized on May 8, 2019, it no longer has jurisdiction of this matter due to the transfer to Harris County Probate Court.[2] Plaintiff's Ex Parte Motion does not support a change of this position.

**I. Nature and Stage of Proceeding.**

This case was dismissed in May 2014 via transfer/remand to Harris County Probate Court Number Four. Plaintiff has filed an untimely, unsupportable Ex Parte Motion, which is before the Court.

[1] Exhibit 1 – [Doc. 87]
[2] Exhibit 2 – [Doc. 127]

## II. Issues and Standard of Review.

Plaintiff seeks relief under Federal Rule of Civil Procedure 60. More specifically, Plaintiff alleges that six years ago, her own (former) attorney committed a Fraud Upon the Court. The Ex Parte Motion may be reviewed under an abuse of discretion standard.

## III. Summary of the Argument.

Dismissal of Plaintiff's Ex Parte Motion seeking Rule 60 relief is proper because (1) it was not timely filed; (2) the complained of issues do not constitute a Fraud Upon the Court; (2) the alleged fraud has already been determined by other federal courts to be frivolous, "fantastical and often nonsensical"; and (3) Plaintiff's efforts to secure relief under Rule 60 are merely an alternate means of "forum shopping" her previously unsuccessful jurisdictional arguments.

## ARGUMENT

## I. Plaintiff's Ex Parte Motion was not timely filed, and must be denied.

Plaintiff's Ex Parte Motion was not timely filed, and must be denied. The Ex Parte Motion is based upon an alleged Fraud Upon the Court. Via *In re Golf 255, Inc.*, the 7th Circuit considered the question of what type of fraud would allow for Rule 60 relief based on Fraud Upon the Court allegations many years after the relief was entered. In considering the issue, the Court opined:

> …. a motion to set aside a judgment on the ground of fraud on the court has no deadline. It must therefore be defined narrowly lest it "become an open sesame to collateral attacks, unlimited as to the time within which they can be made by virtue of the express provision in Rule 60(b) [now 60(d)] on this matter, on civil judgments." *Oxford Clothes XX, Inc. v. Expeditors Int'l of Washington, Inc.*, 127 F.3d 574, 578 (7th Cir.1997); see also *Drobny v. Commissioner, supra*, 113 F.3d at 678. The question is, how narrowly? To answer this question we need to consider what kind of fraud ought to be a ground for setting aside a judgment perhaps many years after it was entered. **The answer is the kind of fraud that ordinarily couldn't be discovered, despite diligent inquiry, within a year**, and in some cases within many years—**cases in which there are no grounds for suspicion and the fraud comes to light serendipitously.** Examples are bribery of a judge or exertion of other undue influence on him, jury tampering, and fraudulent submissions by a lawyer for one of the parties in a judicial proceeding, such as tendering documents he knows to be forged or testimony he knows to be perjured.

> See *Oxxford Clothes XX, Inc. v. Expeditors Int'l of Washington, Inc., supra,* 127 F.3d at 578; *In re Whitney–Forbes, Inc.,* 770 F.2d 692, 698 (7th Cir.1985); *Baltia Air Lines, Inc. v. Transaction Management, Inc.,* 98 F.3d 640, 642–43 (D.C.Cir.1996); *Root Refining Co. v. Universal Oil Products Co.,* 169 F.2d 514, 534–35 (3d Cir.1948); 12 *Moore's Federal Practice, supra,* § 60.21[4], pp. 60–56 to 60–59.

*In re Golf 255, Inc.*, 652 F.3d 806, 809 (7th Cir. 2011)[Emphasis Added].

In describing the alleged Fraud Upon the Court, Plaintiff contends that (a) her own (former) attorney, Jason Ostrom, manipulated this Court in order to add parties and cause her claims to be transferred to Harris County Probate Court No. 4; and (b) that Mr. Ostrom "*never followed his client's instructions, never sent copies of pleadings and did not respond to efforts to communicate.*" [Doc. 128 at Page 6].

The Court will recall that Plaintiff retained Mr. Ostrom based on this Court's Order of October 3, 2013. As expressed in the Court's Order:

> Finally, the Court is of the view that the **plaintiff's failure to employ counsel hinders the necessary discourse between the plaintiff and the defendants and further prevents the parties from fulfilling their responsibilities to the Court, i.e., to manage and process all pretrial matters necessary to a resolution of this case.** Therefore, the Court Directs that the plaintiff employ counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. [Doc. 87; Emphasis Added].

Plaintiff's allegations against Mr. Ostrom are unsubstantiated by evidence of any kind. Notwithstanding questions as to whether any alleged evidence would be considered admissible or "readily controvertible," Plaintiff fails to attach an affidavit, verification or documents in support of these very serious allegations. Nevertheless, based in part on the content of the Ex Parte Motion and in part on a Docket Report generated on August 11, 2020,[3] it appears that the complained of filings include one or more of the following:

> Doc. 107 Unopposed Motion for Leave to File First Amended Petition, filed May 9, 2014;

[3] See Exhibit 3 - Docket Report.

Doc. 108 First Amended Complaint, filed May 9, 2014; and/or

Doc. 109 Unopposed Motion to Remand, filed May 9, 2014.

These filings resulted in the Court's entry of its Orders of **May 15, 2014**. [Doc. 111 and Doc. 112]. The latter Order [Doc. 112] resulted in the transfer of Plaintiff's claims to Harris County Probate Court No. 4. As written within this Order [Doc. 112]:

> 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….
>
> 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.

As will be discussed in greater detail below, Plaintiff's complaints do not constitute a Fraud Upon the Court. However, even if they were, Plaintiff's Ex Parte Motion was not timely filed. The alleged fraudulent acts occurred in May 2014. Plaintiff's Ex Parte Motion was filed **six years later**, on July 17, 2020. Based on *In re Golf 255, Inc.*, for the Ex Parte Motion to be considered timely filed, the complained of fraudulent acts (*i.e.*, the transfer of her claims from this Court to Probate Court Number Four) must have remained undiscovered through the present day. The Ex Parte Motion must be denied because Plaintiff cannot establish that the alleged fraud was unknown to her through the present day or that her Ex Parte Motion was filed within a reasonable amount of time.

**A. Plaintiff had knowledge of (or a means to discover) the transfer in 2014, as it was occurring**.

Upon closer inspection, the Ex Parte Motion lacks any allegation that Plaintiff was unaware of Mr. Ostrom's filing of Docs. 107 – 109, or the resultant transfer/remand to Probate Court Number Four via Doc 112. To the contrary, Plaintiff alleges that she "*was forced to keep up with Ostrom's activities by data mining and monitoring the dockets*." [Doc. 128 at Page 6]. These data mining and monitoring endeavors support the presumption that Plaintiff knew about the transfer as it was occurring, or immediately thereafter and/or that it was readily discoverable by her. Had these actions been taken without her consent, or if she truly believed these actions were fraudulent, she either knew of them as they occurred – or by her own admission – had the skills and wherewithal to discover them in May 2014 or immediately thereafter.

**B. Plaintiff had knowledge of (or a means to discover) that the transfer had occurred throughout 2014 and 2015, while represented by Ostrom**.

After this Court entered the transfer/remand order [Doc. 112], a series of filings and other actions occurred in Probate Court Number Four. Individually or collectively these filings and other actions allowed Plaintiff to discover the alleged fraud and take timely action. While by no means an exhaustive list of filings and actions, the following developments are a matter of public record:

| | |
|---|---|
| May 28, 2014 | Plaintiff, through Ostrom, files her Motion to Enter Transfer Order. |
| June 3, 2014 | Probate Court Number Four executes Order of Transfer. |
| October 20, 2014 | Plaintiff, through Ostrom, files Plaintiff's Motion for Distribution of Trust Funds. |
| February 6, 2015 | Plaintiff, through Ostrom, files her Notice of Filing of Plaintiff's Original Petition (including Doc. 1 and Doc. 112 from this Court). |
| February 6, 2015 | Plaintiff, through Ostrom, files her Notice of Filing of Plaintiff's First Amended Petition (including Doc. 108 from this Court). |

February 6, 2015 — Plaintiff, through Ostrom, files her Notice of Filing of Injunction and Report of Master (including Docs. 45 and 62 from this Court).

February 25, 2015 — Plaintiff, through Ostrom, files Plaintiff's Second Amended Petition.

Once again, Plaintiff never actually alleges that she had no notice of, or did not consent to Mr. Ostrom's filing of the above-identified items. Based on her acknowledged data mining and monitoring endeavors, it is apparent that she knew of or could have discovered their filing. Further to this point, it is readily apparent that she became aware of the transfer/remand at some point prior to March 28, 2015. This is known via the combination of the Ex Parte Motion [Doc. 128 at Page 8 (*Plaintiff terminated Ostrom when data mining revealed the conversion agreement*)] and her Notice of Substitution of Counsel of Record and Appearance, filed in Probate Court Number Four, on March 28, 2015.[4]

By her own admission, Plaintiff was aware of the alleged fraud by March 2015 at the latest. Despite this knowledge, Plaintiff did not file her Ex Parte Motion until July 2020. She has neither timely nor diligently pursued her asserted rights under Rule 60. As such, her Motion should be denied.

**C. Plaintiff definitely had knowledge of the transfer in 2016, and her allegations of "fraud" by Ostrom have already been denied.**

Plaintiff remained a Pro Se Plaintiff from March 2015 through November 2019. For over four (4) years, Plaintiff was in violation of this Court's Order of October 3, 2013 requiring her to retain counsel.[5]

1. Plaintiff actively and willingly participated in the Probate Court proceedings.

[4] Exhibit 5 - Notice of Substitution of Counsel of Record and Appearance
[5] Exhibit 1 – [Doc. 87].

During this time, Plaintiff actively and willingly participated in the litigation, failing to pursue her Fraud Upon the Court allegations despite full knowledge that the matter had been transferred/remanded from this Court to Probate Court Number Four. In addition to her in-person and/or telephonic participation in hearings and a fact witness deposition, examples of her *pro se* participation include but are not limited to:

| | |
|---|---|
| April 18, 2015 | Plaintiff filed her Affidavit of Fact Documenting Succession as Personal Representative of the Estates of Elmer H. Brunsting and Nelva E. Brunsting. |
| June 18, 2015 | Plaintiff and counsel for Plaintiff's brother, Carl Brunsting file their Stipulation and Rule 11 Agreement Concerning Motion to Show Authority. |
| January 25, 2016 | Plaintiff filed her Verified Motion for Partial Summary Judgment with Concurrent Petitions for Declaratory Judgment. |
| February 9, 2016 | Plaintiff filed her Motion to Transfer Cause from District Court to Probate Court #4. |
| August 17, 2018 | Plaintiff files her Plea in Abatement. |
| September 4, 2018 | Plaintiff files her Addendum to Pleas in Abatement in Reply to Stephen Mendel. |
| October 8, 2018 | Plaintiff files her Nominal Defendant's Verified First Amended Plea in Abatement. |
| October 19, 2018 | Plaintiff files her Plea to the Jurisdiction. |
| February 5, 2019 | Plaintiff files her Response to Notice of Hearing, Motion for Clarification and to Dismiss; Special Exceptions, Motion in Limine and Memorandum of Points and Authorities in Support. |

2. There is no doubt that Plaintiff had knowledge of the transfer by April 2016, and unsuccessfully pursued her fraud allegations against Ostrom from June 2016 through July 2018.

*a. There is no doubt that Plaintiff had knowledge of the transfer by April 2016.*

There is no doubt that Plaintiff had knowledge of the transfer by April 2016. On or about April 16, 2016, Plaintiff wrote a letter to Co-Trustees and the counsel. While replete with inaccurate statements of fact and law and disputed by the Co-Trustees, the letter does confirm Plaintiff's knowledge of the transfer and Probate Court Number Four's control over her claims. In relevant part she wrote:

> Curtis v. Brunsting came to the Harris County Probate Court under a remand order obtained by defendants as part of a stipulated agreement. The remand order is on file with the Probate Court accepted without qualification or reservation. The order in pertinent part reads:
>
> > 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.[6]

Via her letter, Curtis confirms that she had knowledge of all issues she now cast as a Fraud Upon the Court in April 2016. Despite this knowledge, she still failed to pursue her claim for Rule 60 relief until July 2020.

*b. Plaintiff unsuccessfully pursued her **same** fraud allegations against Ostrom (and others) from June 2016 through July 2018*

As further evidence of Plaintiff's knowledge in 2016, this Court should consider another lawsuit initiated by Plaintiff as a pro se plaintiff. Specifically, Plaintiff filed a 62-page Verified Complaint for Damages naming more than fifteen individuals - including judges, attorneys, court appointees, co-trustees and a court reporter as defendants, alleging (among other things), violations of the Racketeer Influenced Corrupt Organization Act ("RICO"), the commission of common law fraud and breaches of fiduciary duties. [7]

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[6] Exhibit 6 - Curtis correspondence of April 16, 2016.

[7] Civil Action No. 4:16-CV- 1969; *Candace Louise Curtis; Rik Wayne Munson v. Candace Kunz-Freed; Albert Vacek, Jr.; Bernard Lyle Matthews, III; Neal Spielman; Bradley Featherston; Stephen A. Mendel; Darlene Payne Smith; Jason Ostrom; Gregory Lester; Jill Willard Young; Christine Riddle Butts; Clarinda Comstock; Toni Biamonte; Bobbie Bayless; Anita Brunsting; Amy Brunsting; Does 1-99*; In the United States District Court, Southern District of Texas – Houston Division.

In support of her claims, Plaintiff alleged that these defendants, including Ostrom, were part of a supposed cabal known as the Harris County Tomb Raiders/Probate Mafia. According to Plaintiff, the Harris County Tomb Raiders/Probate Mafia is an alleged secret society of probate practitioners, court personnel, probate judges and other elected officials who engage in "poser advocacy" through political aspiration, judicial favors, campaign contributions, bribes and kickback, cronyism and "Good Ole Boy" networking.[8]

As noted, Ostrom was identified as a defendant in Plaintiff's Verified Complaint for Damages. Like most, if not all other Defendants, Ostrom sought a dismissal of Plaintiff's claims via Federal Rule of Civil Procedure 12(B)(6). In response to Ostrom's efforts, Plaintiff filed her Answer to Defendant Jason Ostrom's Federal Rule of Civil Procedure 12(B)(6) Motion to Dismiss. In it she writes:

> 17. Immediately upon appearing as Plaintiff Curtis' representative in the federal lawsuit, Curtis v. Brunsting 4:12-cv-592, Defendant Jason Ostrom arranged a remand to the Harris County Probate Court to consolidate Plaintiff Candace Curtis' lawsuit with that of her brother Plaintiff Carl Brunsting, (Dkt 26-1) allegedly to afford complete relief to the parties.[9]
>
> 44. Every one of the Brunsting beneficiaries has been injured by the fraud perpetrated on the federal and state courts, upon the Brunsting family and upon Plaintiffs by these Defendants.[10]
>
> 45. Jason Ostrom was instrumental to the plot to treat the Brunsting Trusts as if they were a probate assets and his feigned ignorance of the legal precedents set by pro se Curtis in this extended Brunsting Trusts litigation, is in direct conflict with his fiduciary obligation to know.[11]
>
> 52. Defendant Jason Ostrom told the Honorable Judge Kenneth Hoyt in his application for approval of his First Amended Complaint that the purpose for a remand to state court was to consolidate with Plaintiff Carl Brunsting in order to afford complete relief to the parties.[12]

[8] See Exhibit 7 - Excerpts from Verified Complaint for Damages [Doc. 1 in Civil Action No. 4:16-CV-1969].
[9] See Exhibit 8 - [Doc. 85 in Civil Action No. 4:16-CV-1969 at Page 4].
[10] See Exhibit 8 - [Doc. 85 in Civil Action No. 4:16-CV-1969 at Page 10].
[11] See Exhibit 8 - [Doc. 85 in Civil Action No. 4:16-CV-1969 at Page 10].
[12] See Exhibit 8 - [Doc. 85 in Civil Action No. 4:16-CV-1969 at Page 11].

> 53. Defendant Ostrom deprived Plaintiff Curtis of a federal judicial forum and access to the only Court of competent jurisdiction under false pretexts, by presenting unopposed motions to amend Plaintiff Curtis' federal complaint and to remand to Harris County Probate Court.[13]

It is patently clear that Plaintiff had knowledge of the alleged fraud during the course of her pursuit of her Probate Mafia litigation. Her allegations against Ostrom are virtually identical to those she now presents in her Ex Parte Motion. Her fraud allegations have been twice-denied.

On May 16, 2017, the Honorable Alfred H. Bennett issued an Order dismissing Plaintiff's claims with prejudice. Judge Bennett's Order specifically included Ostrom's Motion to Dismiss as well as Plaintiff's Response.[14] Judge Bennett dismissed all of Plaintiff's claims in their entirety. He also showed mercy to Plaintiff relative to a request for sanctions that had also been filed. In his Order, Judge Bennett wrote:

> The Court will therefore give Plaintiffs, as pro se litigants, the benefit of the doubt, and credit their filing of this lawsuit to their misunderstanding of applicable legal rules. Accordingly, the Court denies Young's Motion for Sanctions. That being said, **Plaintiffs should now realize that all claims brought in this litigation – or any new claims related to the subject matter of Plaintiffs' Complaint – lack merit, and cannot be brought to this, or any other court, without a clear understanding that Plaintiffs are bringing a frivolous claim.**[15]

Of course Plaintiff ignored Judge Bennett, as she has ignored so many other federal and state court justices, and proceeded to appeal Judge Bennett's decisions to the Fifth Circuit. The Fifth Circuit affirmed Judge Bennett's Order, noting:

> Plaintiffs' appeal focuses on the dismissal of their RICO claim. They set forth the elements of that offense and attempt to address each one. **But the factual allegations they use to support those elements are mostly, as the district court put it, "fantastical" and often nonsensical.** We agree with the district court that **the allegations are frivolous and certainly do not rise to the level of plausibility that the law requires**.[16]

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[13] See Exhibit 8 - [Doc. 85 in Civil Action No. 4:16-CV-1969 at Page 11].
[14] See Exhibit 9 - [Doc. 91 in Civil Action No. 4:16-CV-1969].
[15] See Exhibit 9 - [Doc. 91 in Civil Action No. 4:16-CV-1969 at Page 7 – Emphasis Added].
[16] See Exhibit 10 - [Doc. 103 in Civil Action No. 4:16-CV-1969 at Page 2 – Emphasis Added].

Plaintiff's second stint as a *pro se* plaintiff proved to be as much a hindrance to the development and resolution of this dispute as her first. Nevertheless, she willingly and knowingly participated in two litigations having full knowledge of the facts she now presents to this Court in support of her claims for Rule 60 relief. Those facts, particular as they relate to her fraud allegations have been considered and dismissed with prejudice. Because the circumstances she contends support her Fraud Upon the Court claim have already been adjudged as fantastical, nonsensical and frivolous, the Ex Parte Motion is not timely and must be denied.

## II. The May 2014 transfer/remand does not constitute a Fraud Upon the Court; it is not a "grave miscarriage of justice" and does not impact the integrity of the judicial process.

The May 2014 transfer/remand does not constitute a Fraud Upon the Court; it is not a "grave miscarriage of justice" and it does not impact the integrity of the judicial process. There is no basis for granting the Ex Parte Motion, even if timely filed.

To establish fraud on the court, " 'it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision.' " *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir.1978) (quoting *England v. Doyle*, 281 F.2d 304, 309 (9th Cir.1960)). Fraud on the court, if established, constitutes a grave miscarriage of justice and may serve as the foundation of a Rule 60(b) independent action. *Rozier* 573 F.2d at 1338).

The standard for Fraud Upon the Court is demanding: "Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court." *Rozier*, 573 F.2d at 1338 (citing to *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944)). Where the wrong is only between the parties and there has been no direct assault on the integrity of the judicial process itself, the

federal courts have refused to invoke the doctrine of fraud on the court. *See*, 11 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* §2870 at 416 (2d. ed. 1987).

Fraud Upon the Court requires a "scheme by which the integrity of the judicial process has been fraudulently subverted by a deliberately planned scheme in a manner **involving 'far more than an injury to a single litigant.'** " *Addington v. Farmer's Elevator Mutual Insurance*, 650 F.2d 663, 668 (5th Cir.1981) (quoting *Hazel-Atlas Glass*, 322 U.S. 238, 245-46, 64 S.Ct. 997, 1002, 88 L.Ed. 1250 (1944) **[Emphasis Added]**. Considering this, the May 2014 transfer/remand does not constitute a Fraud Upon the Court and the Ex Parte Motion must be denied.

**1. Plaintiff fails to identify how or why the transfer constitutes a grave miscarriage of justice.**

Admittedly, Plaintiff's Ex Parte Motion is difficult to navigate. While Plaintiff suggests that "*Ostrom's professed purpose was to consolidate Plaintiff Curtis' case with state court Plaintiff Carl Brunsting's case pending in probate court…*," [Doc. 128 at Page 6], her Ex Parte Motion never actually explains (convincingly or otherwise) how this purpose constitutes a grave miscarriage of justice or subverts the integrity of the judicial process.

Further, the Ex Parte Motion fails to address either of the two justifications for the transfer/remand, as identified by the Court. Via its Order of May 15, 2014 [Doc. 112], this Court based the transfer on:

> 1. Plaintiff's efforts to name additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, and Carole Ann Brunsting, which destroys diversity jurisdiction; and
>
> 2. The existence of questions of law and fact similar to those currently pending in Harris County Probate Court Number Four and the possibility of inconsistent judgments if these questions of law and fact are not decided simultaneously.

*a. The addition of parties does not subvert the integrity of the judicial process.*

Regarding the addition of parties, Plaintiff fails to explain how or in what way the inclusion of Carl Brunsting or Carole Brunsting as additional necessary parties was incorrect, let alone how doing so subverts the integrity of the judicial process. Further to this point, Plaintiff also fails to explain how Ostrom's successful effort to join additional parties differs from Plaintiff's own unsuccessful effort to do the very same thing while she was *pro se*.[17]

*b. The avoidance of inconsistent judgments preserves the integrity of the judicial process.*

As to the second basis for transferring/remanding the case, the Ex Parte Motion is silent. Plaintiff does not address the importance of avoiding inconsistent judgments, because she cannot. The dispute between Plaintiff, the Co-Trustees and their other siblings involves the Brunsting Family Living Trust. Plaintiff's original causes of action included:

(1) Breach of Fiduciary Obligation;
(2) Extrinsic Fraud;
(3) Constructive Fraud; and
(4) Intentional Infliction of Emotional Distress.

Via Plaintiff's Second Amended Petition, as filed in Probate Court Number Four, Plaintiff's claims have evolved to include:

(1) Breach of Fiduciary Duty;
(2) Fraud;
(3) Constructive Fraud;
(4) Money Had and Received;
(5) Conversion;
(6) Tortious Interference with Inheritance Rights;
(7) Declaratory Judgment Action;
(8) Unjust Enrichment;
(9) Conspiracy; and
(10) Demand for Accounting.

[17] See Exhibit 3 – Docket Report; Entries pertaining to Doc. 48 and Doc. 57.

Plaintiff's brother, Carl, acting for himself and as independent executor of the Estates of Nelva E. Brunsting and of Elmer H. Brunsting has also filed suit against his siblings. Taken as a whole, Carl's original and supplemental claims/causes of action/requests for relief include:

(1) Construction of Trust and Suit for Declaratory Judgment;
(2) Demand for Trust Accounting;
(3) Breach of Fiduciary Duties;
(4) Conversion;
(5) Negligence;
(6) Tortious Interference with Inheritance;
(7) Constructive Trust;
(8) Civil Conspiracy;
(9) Fraudulent Concealment;
(10) Liability of Beneficiaries;
(11) Removal of Trustees;
(12) Receivership Over Trust;
(13) Self-Dealing;
(14) Criminal Wiretap Claim;
(15) Civil Wiretap Act;
(16) Invasion of Privacy and Intrusion on Seclusion; and
(17) Request for Injunctive Relief.

The similarities between the asserted causes of action cannot be ignored. They are proof positive of the existence of similar questions of law and fact and the possibility of inconsistent judgments but for the transfer/remand. Both the Plaintiff's and Carl Brunsting's cases involve, among other things: (1) attacks on the enforceability of the trust documents; (2) claims of fiduciary breaches; and (3) challenges to the Co-Trustees status as such. As a basis for proceeding with the transfer/remand, avoiding inconsistent judgments does not subvert the integrity of the judicial process, rather, it preserves it.

**2. Plaintiff's issues, even if legitimate, involve a single litigant, not global judicial process.**

A true Fraud Upon the Court claim requires the identification of issues that negatively impact the integrity of the judicial process in a far broader way then just that involving a single litigant. If Plaintiff's allegations that Ostrom "*never followed his client's instructions, never sent*

*copies of pleadings and did not respond to efforts to communicate.*" [Doc. 128 at Page 6] are true, those allegations only speak to a conflict between Plaintiff and Ostrom. They do not rise to the level of requiring Rule 60 relief.

**3. Plaintiff's issues, even if legitimate, do not evidence a legitimate injury and are at best, *de minimis* or harmless error**

Similarly, Plaintiff fails to identify an actual, legitimate injury sustained as a result of the transfer/remand. Though she may wish it otherwise, all of her claims and causes of action against the Co-Trustees (and others) are currently pending in Probate Court Number Four. Plaintiff has not been injured by the transfer/remand. The Ex Parte Motion must be denied.

Additionally, those issues raised by Plaintiff in the Ex Parte Motion, if legitimate at all, are *de minimis* and curable, and/or harmless. None of the identified issues rise to the level of constitute a grave miscarriage of justice.

*a. Plaintiff's "remand as a post-removal statute" argument fails.*

Plaintiff complains of the use of the term "remand" by Ostrom and the Court. In regard to the Motion to Remand [Doc. 109] and the Order granting the remand [Doc. 112], it appears that the terms is used more colloquially, as something of a synonym for the word "transfer, rather than in the more traditional context of removal/remand procedure. However, even if used in the traditional context and even if Plainitff is correct that it is improper to do so, the error is harmless. If "remand" was not procedurally proper, as Plaintiff suggests, the same purposes noted in the Order could have been accomplished by a dismissal of this federal court action and the refiling of a "new" lawsuit in Probate Court Number Four. Co-Trustees cannot speak to the reasons why Ostrom choose to use the term "remand" to effectuate the transfer, but it does appear that doing so saved time and money. By proceeding in this manner, Plaintiff did not have to incur the time and expense associated with filing fees, process servers and service.

*b. Plaintiff's "failure to serve citation" argument fails.*

Plaintiff's "failure to serve citation" argument fails for similar reasons. By having the case "remanded" directly into Probate Court Number Four, it appears that formal service of process was not necessary. On information and belief all of Ostrom's filings in Probate Court Number Four were served on the parties through their counsel in accordance with Texas Rule of Civil Procedure 21a. On information and belief, there have been no objections regarding service by either of the "new parties" both of whom had already appeared in Probate Court Number Four, and remain parties to this day.

*c. Plaintiff's "colorable transfer and criminal conversion" arguments fail.*

While difficult to follow, Plaintiff's positon appears to be that this Court's full record has not been transferred into Probate Court Number Four. To the extent required, this is an issue that could have been and can be easily cured by Plaintiff. Failing to do so, but then using that failure to manufacture and support Fraud Upon the Court claim does not reflect a miscarriage of justice or assault on judicial integrity.

Moreover, Plaintiff's allegation that her case "disappeared" also rings false. While there may be some confusion in the record, there is no doubt that Plaintiff's claims are currently "live" in Probate Court Number Four. Plaintiff's complaints in this regard also seem to include her absence in the style of the case. This issue can easily be resolved by requesting that Probate Court Number Four re-align or re-caption the case. Plaintiff's complaints in this regard are more administrative than anything else, and can also be easily cured. Again, they certainly do not support her claims of a miscarriage of justice.

**III. Plaintiff should not be rewarded for "forum shopping" her jurisdictional arguments**.

Considering the totality of Plaintiff's filings, in this and other Courts (consider Plaintiff's "RICO" case and see below), it becomes obvious that the true intent of the Ex Parte Motion is not to champion the cause of "judicial integrity" but rather to secure a return to federal court by any means necessary. The Ex Parte Motion is simply the latest in a line of attacks on Probate Court Number Four's jurisdiction. In fact, Plaintiff has been sanctioned once, and found in contempt of court twice for her continued disregard of the Orders issued in Probate Court Number Four.

As is apparent from the types of claims and causes of action asserted by Plaintiff (and her brother, Carl), the Brunsting Family Limited Trust is at the heart of this dispute. This fact has been previously identified by this Court.[18] A statutory probate court, such as Probate Court Number Four, has jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts. *See*, Trust (Property) Code §115.001(a)(d). In short, Probate Court Number Four has jurisdiction over Plaintiff's claims, as well as whether Carl Brunsting's claims, in any of their current or former capacities.

Nevertheless, on multiple occasions, Plaintiff has sought to challenge Probate Court Number Four's jurisdiction over her claims. Plaintiff's challenges include, but are not limited to: Plaintiff's Plea in Abatement, her Addendum to Pleas in Abatement in Reply to Stephen Mendel, Nominal Defendant's Verified First Amended Plea in Abatement, her Plea to the Jurisdiction, and her Response to Notice of Hearing, Motion for Clarification and to Dismiss; Special Exceptions, Motion in Limine and Memorandum of Points and Authorities in Support.

[18] Exhibit 1 – [Doc. 87] (In principle, the plaintiff seeks to examine and copy the "original" signatures on the Trust documents and to remove the defendants in their capacities as a result of their failure to comply with the plaintiff's discovery requests).

Each and everyone one of these filings was denied on February 14, 2019. Probate Court Number Four found that it has subject matter jurisdiction over the Trusts, and that no other court has dominant jurisdiction. All of Plaintiff's above-identified challenges were found to lack merit, and were denied.[19]

Despite Probate Court Number Four's February 2019 Order, Plaintiff proceeded to file pleadings in this Court. Plaintiff's filings in this Court [Doc. 124] and [Doc. 125] were found to be in violation of Probate Court Number Four's February 14, 2019 Order. On July 23, 2019, Plaintiff was found in contempt of court and sanctioned. Additionally, Probate Court Number Fourt denied all other relief sought by Plaintiff via her Response to the Fiduciary's Application for the Beneficiary to be Held in Contempt for Seeking to Enforce the Injunction Commanding the Trustee to Perform a Fiduciary Duty Owed to the Beneficiary with Petition for Partial Summary or Declaratory Judgment.[20]

The documents that prompted Probate Court Number Four's order on the Motion for Sanctions and/or Contempt are the same documents that this Court denied on May 8, 2019, due to an absence of jurisdiction.[21] On December 12, 2019, Probate Court Number Four found Plaintiff in contempt of its July 23, 2019 Order Regarding Amy Brunsting's Motion for Sanctions and Contempt.[22]

Despite Probate Court Number Four's finding of dominant jurisdiction, despite this Court recognizing that it lacked jurisdiction, and despite two separate findings of contempt being entered against her, Plaintiff has still proceeded to initiate three (3) additional proceedings which directly or indirectly challenge the prior jurisdictional rulings. These proceedings include:

[19] Exhibit 11 - Order Denying Pleas and Motions filed by Candace Curtis.
[20] Exhibit 12 - Order Regarding Amy Brunsting's Motion for Sanctions and/or Contempt.
[21] Exhibit 2 – [Doc. 127]
[22] Exhibit 13 - Order Granting Amy Brunsting's Motion for Second Contempt and Additional Sanctions.

1. Cause No. 412,249-404 initiated by Candace Curtis, consisting of her Statutory Bill of Review (challenging, among others, various jurisdictional rulings by Probate Court Number Four);

2. Cause No. 2020-35401 currently pending in the 151st Judicial District Court of Harris County, Texas (pertaining to Candace Curtis' efforts to domesticate the Preliminary Injunction [Doc.45] as an alleged foreign judgment, despite Probate Court Number Four's authority over the Preliminary Injunction via the remand [Doc. 112], as previously acknowledged by Plaintiff)[23]; and.

3. This Ex Parte Motion, filed on July 17, 2020, seeking to set aside the Order of Remand [Doc. 112], despite the same fraud allegations being asserted and denied.[24]

Plaintiff's continued and repetitive attacks on jurisdiction have needlessly delayed resolution of this dispute, caused tens of thousands of dollars in fees to be incurred, and unnecessarily complicated an already intense litigation. Plaintiff should not be rewarded for doing so.

## IV. In denying the Ex Parte Motion, this Court should consider using its inherent powers to issue one or more directives to Plaintiff, in the hopes of moving this dispute forward towards resolution in Probate Court Number Four.

The Co-Trustees recognize that because the Ex Parte Motion was untimely filed, is without merit and constitutes an impermissible attack on Probate Court Number Four's jurisdiction, this Court may simply elect to deny the Ex Parte Motion and restate its previous posture, as articulated most recently on May 8, 2019, when it noted that it longer has jurisdiction of this matter due to the transfer to Harris County Probate Court.[25] However, in considering the Ex Parte Motion and this

[23] See for example, but not by way of limitation, Exhibit 6 - Curtis correspondence of April 16, 2016
[24] See Exhibit 14 - [Doc. 91 in Civil Action No. 4:16-CV-1969 at Page 7 – Emphasis Added].
[25] Exhibit 2 – [Doc. 127].

Response, the Court may find itself inclined to use its inherent powers in a way that does not conflict with its ceding of jurisdiction to Probate Court Number Four via the transfer.

Throughout the course of the multiple lawsuits Plaintiff has pursued/is pursing in regard to the Brunsting Family Limited Trust, among the issues focused on by Plaintiff are (a) the transfer of jurisdiction to Probate Court Number Four; and (b) the Co-Trustees' alleged breach of the Court's Preliminary Injunction [Doc. 45]. Central to these issues appear to be (a) Plaintiff's over-emphasis on the use of the word "remand" and (b) Plaintiff's belief that, via the Preliminary Injunction, the Co-Trustees were ordered to make distributions to the various Trust beneficiaries.

Given that this Court authored the two orders [Doc. 112] and [Doc. 45], it might be helpful to the parties and to Probate Court Number Four for this Court to comment on these issues. Whether by directive, order, instruction or other means, this Court may wish to assist the judicial process by addressing one or more of the following issues:

1. Whether use of the term "remand" was synonymous with a general use of the word "transfer" or with its more common use in the context of removal and remand procedure;

2. Whether the transfer to Probate Court Number Four was based only on Plaintiff's inclusion of additional parties, or also to avoid the possibility of conflicting judgments;

3. Whether this Court will validate and/or adopt Probate Court Number Four's Order of February 14, 2019, at least on the issue of dominant jurisdiction; and/or

4. Whether the Preliminary Injunction intended for distributions of trust income to be made to potential beneficiaries prior to final resolution of the disputes between the parties, or whether trust income was merely to be deposited into an account/a Trust account and held/protected in an escrow-like fashion pending final resolution of the disputes between the parties.

**CONCLUSION**

The Co-Trustess request that Plaintiff's Ex Parte Motion seeking Rule 60 relief be dismissed for one or more of the following reasons:

- Plaintiff's Ex Parte Motion was not timely filed because:
  - Plaintiff had knowledge of (or a means to discover) the transfer in 2014, as it was occurring;
  - Plaintiff had knowledge of (or a means to discover) that the transfer had occurred throughout 2014 and 2015, while represented by Ostrom; and/or
  - Plaintiff had knowledge of the transfer in 2016, and her allegations of "fraud" by Ostrom have already been denied;
- The May 2014 transfer/remand does not constitute a Fraud Upon the Court; it is not a "grave miscarriage of justice" and does not impact the integrity of the judicial process; and/or
- Plaintiff's efforts to secure relief under Rule 60 are merely an alternate means of "forum shopping" her jurisdictional arguments.

Additionally, in denying the Ex Parte Motion, this Court should consider using its inherent powers to issue one or more directives (or similar) to Plaintiff, in the hopes of moving this dispute forward towards resolution in Probate Court Number Four.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: /s/ *Neal E. Spielman*

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*ATTORNEYS FOR ANITA BRUNSTING*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on the 13th day of August 2020, a true and correct copy of the above and foregoing document was electronically filed with the United States District Court for the Southern District of Texas to be served via electronic means by the clerk though the ECF system on the person(s) listed below and/or was provided to same in the manner stated below:

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Candice L. Schwager
Schwager Law Firm
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BY: /s/ *Neal E. Spielman*
NEAL E. SPIELMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER**

Before the Court is the plaintiff's, Candace Louise Curtis, motion for an order to show cause and application for contempt against the defendants, Anita Kay Brunsting and Amy Ruth Brunsting, trustee and co-trustee of the Brunsting Family Living Trust. In principle, the plaintiff seeks to examine and copy the "original" signatures on the Trust documents and to remove the defendants in their capacities as a result of their failure to comply with the plaintiff's discovery requests.

The Court is satisfied that the injunction entered in this case preserves the assets of the Trust Estate. The Court is further satisfied that copies of all documents requested by the plaintiff have been produced. However, the plaintiff has failed to inspect the original documents that the defendants have made available to the plaintiff.

Finally, the Court is of the view that the plaintiff's failure to employ counsel hinders the necessary discourse between the plaintiff and the defendants and further prevents the parties from fulfilling their responsibilities to the Court, *i.e.*, to manage and process all pretrial matters necessary to a resolution of this case. Therefore, the Court Directs that the plaintiff employ

counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. The plaintiff's motion is Denied without prejudice.

It is so Ordered.

SIGNED on this 3rd day of October, 2013.

Kenneth M. Hoyt
United States District Judge

United States District Court
Southern District of Texas
**ENTERED**
May 09, 2019
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE HELD ON May 8, 2019 at 9:15 AM**

Appearances: Candace Curtis (*pro se*)
(Court Reporter: J. Sanchez)
(No appearance by the defendants)

The following rulings were made:

Before the Court is the *pro se* plaintiff's, Candace Curtis, motion for an order directed to certain defendants to show cause why they should not be held in contempt for violating the Court's Preliminary Injunction entered on April 19, 2013.

The Court is of the opinion that, having transferred the case to the Harris County Probate Court, it no longer has jurisdiction of the case. Therefore, the relief requested is Denied.

It is so ORDERED.

SIGNED on this 8th day of May, 2019.

Kenneth M. Hoyt
United States District Judge



20-20566.2785

CLOSED,REMANDED

# U.S. District Court
# SOUTHERN DISTRICT OF TEXAS (Houston)
# CIVIL DOCKET FOR CASE #: 4:12-cv-00592

Candace Louise Curtis v. Anita Kay Brunsting et al **Case remanded to Harris County Probate Court No. 4.**
Assigned to: Judge Kenneth M. Hoyt
Cause: 28:1332 Diversity-Fraud

Date Filed: 02/27/2012
Date Terminated: 05/15/2014
Jury Demand: Plaintiff
Nature of Suit: 370 Other Fraud
Jurisdiction: Diversity

**Special Master**

**William West**
*Accountant*

represented by **Timothy Aaron Million**
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600 Travis Street
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713-525-6221
Fax: 713-647-6884
Email: tim.million@huschblackwell.com
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Candace Louise Curtis**

represented by **Candice Lee Schwager**
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*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**Plaintiff**

**Carl Brunsting**
*Necessary Party and Involuntary Plaintiff*

represented by **Carl Brunsting**
PRO SE

V.

20-20566.2786

**Defendant**

**Anita Kay Brunsting**

represented by **Bernard Lilse Mathews , III**
Green and Mathews LLP
14550 Torrey Chase Blvd
Suite 245
Houston, TX 77014
281-580-8100
Fax: 281-580-8104
Email: texlawyer@gmail.com
*TERMINATED: 02/20/2013*
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**George William Vie , III**
Feldman and Feldman P.C.
3355 West Alabama
Suite 1220
Houston, TX 770098
713-986.9471
Fax: 713-986-9472
Email: george.vie@feldman.law
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**Defendant**

**Amy Ruth Brunsting**

represented by **Bernard Lilse Mathews , III**
(See above for address)
*TERMINATED: 02/20/2013*
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**George William Vie , III**
(See above for address)
*LEAD ATTORNEY*
*ATTORNEY TO BE NOTICED*

**Defendant**

**Does 1-100**

**Defendant**

**Carole Ann Brunsting**

**Defendant**

**Candace L. Kunz-freed**

**Defendant**

**Albert E. Vacek Jr.**

**Defendant**

**Vacek & Freed, PLLC**

**Defendant**

20-20566.2787

**The Vacek Law Firm PLLC**

**Defendant**

**Bernard Lilse Mathews III**

| Date Filed | # | Docket Text |
|---|---|---|
| 02/27/2012 | 1 | PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY AND PERMANENT INJUNCTION against Amy Ruth Brungsting, Anita Kay Brunsting (Filing fee $ 350) filed by Candace Louise Curtis. (Attachments: # 1 Continuation, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation)(dterrell, ) Modified on 2/27/2012 (dterrell, ). (Entered: 02/27/2012) |
| 02/27/2012 | 2 | PROPOSED ORDER Injunctinctive Order Temporary Restraining Order, Asset Freeze, Production of Documents and Records, Appointment of Receiver, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 3 | INITIAL DISCLOSURES by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 4 | REQUEST for Production of Documents from Anita Kay Brunsting and Amy Ruth Brunsting by Candace Louise Curtis, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 5 | NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | 6 | NOTICE by Candace Louise Curtis, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | | Civil Filing fee re: 1 Complaint,, : $350.00, receipt number CC003143, filed. (dterrell, ) (Entered: 02/27/2012) |
| 02/27/2012 | | Summons Issued as to Amy Ruth Brunsting, Anita Kay Brunsting, filed.(dterrell, ) (Entered: 02/27/2012) |
| 02/28/2012 | 7 | ORDER for Initial Pretrial and Scheduling Conference by Telephone and Order to Disclose Interested Persons. Counsel who filed or removed the action is responsible for placing the conference call and insuring that all parties are on the line. The call shall be placed to (713)250-5613. Telephone Conference set for 5/29/2012 at 09:30 AM by telephone before Judge Kenneth M. Hoyt.(Signed by Judge Kenneth M. Hoyt) Parties notified.(ckrus, ) (Entered: 02/28/2012) |
| 03/01/2012 | 8 | ORDER denying the application for a temporary restraining order and for injunction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/01/2012) |
| 03/05/2012 | 9 | Letter from Rik Munson re: serving copies on parties, filed. (Attachments: # 1 cover letter) (saustin, ) (Entered: 03/05/2012) |
| 03/06/2012 | 10 | EMERGENCY MOTION by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Attachments: # 1 Affidavit Affidavit of Amy Brunsting, # 2 Exhibit Property Appraisal, # 3 Exhibit Sale Contract, # 4 Exhibit Tax Appraisal, # 5 Supplement Request for Hearing, # 6 Proposed Order Proposed Order)(Mathews, Bernard) (Entered: 03/06/2012) |
| 03/06/2012 | 11 | Corrected MOTION Removal of Lis Pendens by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/27/2012. (Mathews, Bernard) (Entered: 03/06/2012) |

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| 03/06/2012 | 12 | NOTICE of Setting. Parties notified. Telephone Conference set for 3/7/2012 at 11:00 AM by telephone before Judge Kenneth M. Hoyt, filed. The call shall be placed to (713)250-5613. (chorace) (Entered: 03/06/2012) |
| 03/08/2012 | 13 | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on 3/7/12 Appearances: Candace L. Curtis, pro se, Bernard Lilse Mathews, III.. The Court will, sua sponte, dismiss the pltf's case by separate order for lack of jurisdiction. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012) |
| 03/08/2012 | 14 | ORDER OF DISMISSAL *(Sua Sponte)* re: 10 EMERGENCY MOTION, 11 Corrected MOTION Removal of Lis Pendens. The Court lacks jurisdiction and this case is dismissed. To the extent that a *lis pendens* has been filed among the papers in federal Court in this case, it is cancelled and held for naught. (Signed by Judge Kenneth M. Hoyt) Parties notified.(dpalacios, ) (Entered: 03/08/2012) |
| 03/09/2012 | 15 | Plaintiff's Answer to 11 Corrected MOTION Removal of Lis Pendens filed by Candace Louise Curtis. (pyebernetsky, ) (Entered: 03/12/2012) |
| 03/12/2012 | 16 | NOTICE OF APPEAL to US Court of Appeals for the Fifth Circuit re: 14 Order of Dismissal, by Candace Louise Curtis (Filing fee $ 455), filed.(mlothmann) (Entered: 03/12/2012) |
| 03/16/2012 | 17 | Notice of Assignment of USCA No. 12-20164 re: 16 Notice of Appeal, filed.(sguevara, ) (Entered: 03/16/2012) |
| 03/26/2012 | 18 | Notice of the Filing of an Appeal. DKT13 transcript order form was not mailed to appellant. Fee status: Not Paid. The following Notice of Appeal and related motions are pending in the District Court: 16 Notice of Appeal, filed. (Attachments: # 1 Order Dismissal, # 2 Notice of Appeal, # 3 Docket sheet, # 4 Motion IFP)(lfilmore, ) (Entered: 03/26/2012) |
| 03/30/2012 | | USCA Appeal Fees received $ 455, receipt number HOU022939 re: 16 Notice of Appeal, filed.(klove, ) (Entered: 03/30/2012) |
| 04/12/2012 | 19 | Form 22 TRANSCRIPT ORDER FORM by Candace Louise Curtis. Transcript is unnecessary for appeal purposes. This order form relates to the following: 16 Notice of Appeal, filed.(mlothmann) (Entered: 04/16/2012) |
| 04/26/2012 | | The Electronic record on appeal has now been certified to the Fifth Circuit Court of Appeals re: 16 Notice of Appeal USCA No. 12-20164, filed.(blacy, ) (Entered: 04/26/2012) |
| 08/16/2012 | 20 | Transmittal Letter on Appeal Certified re: 16 Notice of Appeal. A paper copy of the electronic record is being transmitted to the Fifth Circuit Court of Appeals in 3 volumes. (USCA No. 12-20164), filed.(hler, ) (Additional attachment(s) added on 8/17/2012: # 1 UPS Tracking #) (hler, ). (Entered: 08/16/2012) |
| 08/20/2012 | 21 | Transmittal Letter on Appeal Certified re: 16 Notice of Appeal. CDs containing the electronic record are being sent to Bernard Lilse Mathews, III, filed.(hler, ) (hler, ). (Entered: 08/20/2012) |
| 02/05/2013 | 22 | JUDGMENT of USCA for the Fifth Circuit re: 16 Notice of Appeal ; USCA No. 12-20164. The judgment of the District Court is REVERSED, and the cause is REMANDED to the District Court for further proceedings in accordance with the opinion of the Court. Case reopened on 2/5/2013, filed.(jdav, ) (Entered: 02/05/2013) |
| 02/05/2013 | 23 | Court of Appeals for the Fifth Circuit LETTER advising the record/original papers/exhibits are to be returned (USCA No. 12-20164), filed.(jdav, ) (Entered: 02/05/2013) |

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| 02/05/2013 | 24 | OPINION of USCA for the Fifth Circuit re: 16 Notice of Appeal ; USCA No. 12-20164. The district court's dismissal of the case is REVERSED and the case is REMANDED for further proceedings. REVERSED AND REMANDED., filed.(jdav, ) (Entered: 02/05/2013) |
| 02/06/2013 | 25 | NOTICE of Setting. Parties notified. Status/Scheduling Telephone Conference set for 2/19/2013 at 08:45 AM before Judge Kenneth M. Hoyt, filed. (dpalacios, ) (Entered: 02/06/2013) |
| 02/17/2013 | 26 | NOTICE of Appearance by George W. Vie III on behalf of Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 02/17/2013) |
| 02/19/2013 | 27 | ORDER FOLLOWING TELEPHONE STATUS/SCHEDULING CONFERENCE held on February 19, 2013 at 8:45 a.m. Appearances: Candace Curtis, pro se, George Vie ETT: TBA. Jury trial. Joinder of Parties due by 4/30/2013 Pltf Expert Witness List due by 9/30/2013. Pltf Expert Report due by 9/30/2013. Deft Expert Witness List due by 10/30/2013. Deft Expert Report due by 10/30/2013. Discovery due by 12/30/2013. Dispositive Motion Filing due by 12/30/2013. Docket Call set for 3/3/2014 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt. The defendant's are to file an answer to the plaintiff's suit on or before March 4, 2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 02/19/2013) |
| 02/20/2013 | 28 | ORDER that George W. Vie III and the law firm of Mills Shirley L.L.P. are substituted as attorneys of record for Defendants in lieu of Bernard Lilse Mathews, III and the law firm of Green & Mathews, L.L.P.(Signed by Judge Kenneth M. Hoyt) Parties notified. (chorace) (Entered: 02/20/2013) |
| 03/01/2013 | 29 | ANSWER to 1 Complaint,, by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(Vie, George) (Entered: 03/01/2013) |
| 03/05/2013 | 30 | Court of Appeals LETTER advising Electronic record has been recycled (USCA No. 12-20164), filed.(smurdock, ) (Entered: 03/05/2013) |
| 03/11/2013 | 31 | CERTIFICATE OF INTERESTED PARTIES by Plaintiff, filed.(mmapps, ) (Entered: 03/11/2013) |
| 03/14/2013 | 32 | REPLY to 29 Answer to Complaint, filed by Candace Louise Curtis. (sclement, ) (Entered: 03/20/2013) |
| 03/14/2013 | 33 | CERTIFICATE OF SERVICE of 32 Reply by Candace Louise Curtis, filed.(sclement, ) (Entered: 03/20/2013) |
| 03/14/2013 | 34 | AFFIDAVIT of Candace Louise Curtis in Support of Application for Injunction, filed. (sclement, ) (Entered: 03/20/2013) |
| 03/14/2013 | 35 | Renewed Application for Ex Parte Temporary Restraining Order, and Asset Freeze, Temporary and Permanent Injunction by Candace Louise Curtis, filed. Motion Docket Date 4/4/2013. (sclement, ) (Additional attachment(s) added on 3/20/2013: # 1 Proposed Order) (sclement, ). (Entered: 03/20/2013) |
| 03/14/2013 | 36 | EXHIBITS re: 35 MOTION for Temporary Restraining Order by Candace Louise Curtis, filed.(sclement, ) (Entered: 03/20/2013) |
| 03/22/2013 | 37 | NOTICE of Setting as to 35 MOTION for Temporary Restraining Order. Parties notified. Injunction Hearing set for 4/9/2013 at 09:00 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 03/22/2013) |
| 03/29/2013 | | ***Plaintiff's email request to appear telephonically at the Injunction hearing set for April |

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| | | 9, 2013 at 9:00 a.m is Denied. Candace Curtis' appearance in person is required, filed. (chorace) (Entered: 03/29/2013) |
| 04/01/2013 | 38 | Letter from Rik Munson re: the mailing of a copy of Rule 11 motion, filed. (mmapps, ) (Entered: 04/02/2013) |
| 04/04/2013 | 39 | RESPONSE in Opposition to 35 MOTION for Temporary Restraining Order, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/04/2013) |
| 04/09/2013 | 40 | Minute Entry for proceedings held before Judge Kenneth M. Hoyt. PRELIMINARY INJUNCTION HEARING held on 4/9/2013. Witness: 10 Anita Kay Brunsting. Pursuant to the courtroom ruling as stated on the record, the parties shall work toward resloving this matter w/i 90 days, or the Court shall appoint an independent firm or accountant to gather financial records of the Trust. The parties shall submit a name of an agreed accountant w/i one week. Defendant's shall submit a motion for approval of payment of the Trust taxes. No bond is required at this time. Appearances:Candace Curtis. George William Vie, III.(Court Reporter: F. Warner), filed.(chorace, ) (Entered: 04/09/2013) |
| 04/09/2013 | 42 | Exhibit List by Amy Ruth Brunsting, Anita Kay Brunsting, filed.(chorace) (Entered: 04/11/2013) |
| 04/10/2013 | 41 | NOTICE *of filing of state court lawsuit against parties* by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/10/2013) |
| 04/11/2013 | 43 | MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/2/2013. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/11/2013) |
| 04/11/2013 | 44 | ORDER granting 43 Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/11/2013) |
| 04/19/2013 | 45 | MEMORANDUM AND ORDER PRELIMINARY INJUNCTION. The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/19/2013) |
| 04/19/2013 | 46 | NOTICE *of Agreed CPA Firm pursuant to Court's Order for Accounting* by Amy Ruth Brunsting, Anita Kay Brunsting, filed. (Vie, George) (Entered: 04/19/2013) |
| 04/29/2013 | 47 | ORDER. In light of the accusations in the pleadings and the Courts instructions, the Court is of the opinion that the best course forward is a Court appointed accountant who will be responsible to the Court. The Court, therefore, rejects the parties agreed notice as an appointment. An Order designating an accountant will be entered shortly.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) . (Entered: 04/29/2013) |
| 05/01/2013 | 48 | **STRICKEN Per # 57** Order. Plaintiff's First AMENDED complaint with jury demand against All Defendants filed by Candace Louise Curtis.(olindor, ) (Entered: 05/01/2013) |
| 05/01/2013 | 49 | MOTION for Joinder of Parties And Actions Demand For Show of Proof of Standing by Candace Louise Curtis, filed. Motion Docket Date 5/22/2013. (olindor) (Entered: 05/01/2013) |
| 05/01/2013 | 50 | Plaintiff's Verified AFFIDAVIT In Support of Amended Complaint And In Support of Application For Joinder Candace Louise Curtis, filed. (Attachments: # 1 Exhibit, # 2 Exhibit)(olindor) (Entered: 05/01/2013) |
| 05/01/2013 | 51 | NOTICE of lawsuit and request to waiver service by Candace Louise Curtis, filed. |

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| | | (ccarnew, ) (Entered: 05/08/2013) |
| 05/01/2013 | 52 | NOTICE of lawsuit and request to waive service by Candace Louise Curtis, filed. (ccarnew, ) (Entered: 05/08/2013) |
| 05/01/2013 | 53 | NOTICE of a Lawsuit and Request to Waive Service of a Summons by Candace Louise Curtis, filed. (isoto) (Entered: 05/08/2013) |
| 05/01/2013 | 54 | Notice of Lawuit and Request for Waiver of a Summons as to Bernard Lilse Mathews III sent on 4/28/13 by Candace Louise Curtis, filed.(dgonzalez) (Entered: 05/08/2013) |
| 05/09/2013 | 55 | ORDER Pursuant to federal Rule of Civil Procedure 53, Appointing William G. West as Master to Perform Accounting 47 .(Signed by Judge Kenneth M. Hoyt) Parties notified. (chorace) (Entered: 05/09/2013) |
| 05/21/2013 | 56 | RESPONSE in Opposition to 49 MOTION for Joinder, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 05/21/2013) |
| 05/22/2013 | 57 | ORDER denying 49 Motion for Joinder of Parties and Actions and Motion to Amend Complaint. The Amended Complaint 48 was filed w/o leave of Court and is therefore STRICKEN from the record.(Signed by Judge Kenneth M. Hoyt) Parties notified. (chorace) (Entered: 05/22/2013) |
| 06/06/2013 | 58 | MOTION for Approval of Disbursement by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 6/27/2013. (Attachments: # 1 Appendix Exhibits 1 and 2, # 2 Proposed Order)(Vie, George) (Entered: 06/06/2013) |
| 06/10/2013 | 59 | ORDER granting 58 Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(kpicota) (Entered: 06/10/2013) |
| 07/15/2013 | 60 | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on July 15, 2013 at 8:15 a.m. Appearances: William G. West (Accountant). Pursuant to phone conference, the Court conferred with Mr. West concerning his report due at the end of the month. Upon receipt, a hearing date will be set to address any concerns of the parties. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 07/15/2013) |
| 08/05/2013 | 61 | ORDER. Before the Court is the report of the Court-appointed accountant for the Brunsting Family Living Trust for the period December 21, 2010 through May 31, 2013. Objections to the report and the accountants invoice shall be filed on or before August 27, 2013. Miscellaneous Hearing set for 9/3/2013 at 01:30 PM at Courtroom 11A before Judge Kenneth M. Hoyt(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/05/2013) |
| 08/08/2013 | 62 | NOTICE - *Report of Master - Accounting of Income/Receipts and Expenses/Distributions of the Brunsting Family Living Trust for the Period December 21, 2010 Through May 31, 2013* re: 55 Order, 61 Order, by William West, filed. (Million, Timothy) (Entered: 08/08/2013) |
| 08/08/2013 | 63 | Sealed Event, filed. (Entered: 08/08/2013) |
| 08/26/2013 | 64 | MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/16/2013. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 08/26/2013) |
| 08/27/2013 | 65 | MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013 by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 9/17/2013. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 08/27/2013) |
| 08/27/2013 | 66 | ORDER granting 64 Defendant's Motion for Approval of Disbursements to Pay Property |


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| | | Tax Bills.(Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana) (Entered: 08/27/2013) |
| 08/27/2013 | 67 | RESPONSE *to Report of Master*, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Appendix Tab 1, # 2 Appendix Tab 2)(Vie, George) (Entered: 08/27/2013) |
| 08/28/2013 | 68 | ORDER for Expedited Response; Motion-related deadline set re: 65 MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013. Response to Motion due by 9/3/2013.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 08/28/2013) |
| 08/29/2013 | 69 | RESPONSE to 62 Notice - Report of Master, filed by Candace Louise Curtis. (Attachments: # 1 Proposed Order, # 2 Proposed Order). (CD filed in Clerks Office.) (sscotch, ) (Entered: 08/29/2013) |
| 08/29/2013 | 70 | This document is a duplicate of DE 69 ; this entry was made for case management purposes. Plaintiff's Response to the Report of Master and Applications for Orders by Candace Louise Curtis, filed. (CD filed in Clerks Office). Motion Docket Date 9/19/2013. (Attachments: # 1 Proposed Order, # 2 Proposed Order)(sscotch, ) (Entered: 08/29/2013) |
| 08/30/2013 | 71 | PROPOSED ORDER re: 67 Response, filed.(Vie, George) (Entered: 08/30/2013) |
| 09/03/2013 | 72 | OBJECTIONS to 65 MOTION for Approval of Renewal of Farm Lease under Existing Terms on August 31, 2013, filed by Candace Louise Curtis. (mmapps, ) (Entered: 09/03/2013) |
| 09/03/2013 | 73 | OBJECTIONS to 62 Notice (Other), Defendants Motion for Orders to Recommit Matters to Master for Consideration, filed by Candace Louise Curtis. (mmapps, ) (Entered: 09/03/2013) |
| 09/03/2013 | 74 | Plaintiff's Ex Parte Motion for Order to Show Cause and Application for Judgment of Civil Contempt by Candace Louise Curtis, filed. Modified on 9/3/2013 (chorace). (Entered: 09/03/2013) |
| 09/03/2013 | 75 | Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MISCELLANEOUS HEARING held on 9/3/2013. There were no objection's by the parties to the Master's Report. Invoices are Ordered to be paid. Any and all pending motions not ruled on are DENIED. Appearances:Candace Louise Curtis, Maureen McCutchen, William Potter, George William Vie, III, Timothy Aaron Million.(Court Reporter: S. Carlisle), filed. (chorace) (Entered: 09/03/2013) |
| 09/03/2013 | 76 | NOTICE of Setting as to 74 MOTION for Order to Show Cause. Parties notified. Motion Hearing set for 10/2/2013 at 11:30 AM in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/03/2013) |
| 09/03/2013 | 77 | ORDER granting Approval of Disbursements to Special Master & Special Master's Attorney. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013) |
| 09/03/2013 | 78 | ORDER granting 65 Motion for Approval and Renewal of Farm Lease.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 09/03/2013) |
| 09/18/2013 | 79 | TRANSCRIPT re: TRO Hearing held on April 9, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber FWarner. Release of Transcript Restriction set for 12/17/2013., filed. (fwarner, ) (Entered: 09/18/2013) |
| 09/19/2013 | 80 | Notice of Filing of Official Transcript as to 79 Transcript. Party notified, filed. (dhansen, |

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| | | 4) (Entered: 09/19/2013) |
| 09/23/2013 | 81 | NOTICE of Resetting. Parties notified. Motion Hearing reset for 10/2/2013 at 09:00 AM (TIME CHANGE ONLY) in Courtroom 11A before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 09/23/2013) |
| 09/23/2013 | 82 | RESPONSE in Opposition to 74 MOTION for Order to Show Cause, filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Appendix)(Vie, George) (Entered: 09/23/2013) |
| 09/23/2013 | 83 | PROPOSED ORDER re: 82 Response in Opposition to Motion, filed.(Vie, George) (Entered: 09/23/2013) |
| 09/27/2013 | 84 | TRANSCRIPT re: Hearing held on September 3, 2013 before Judge Kenneth M. Hoyt. Court Reporter/Transcriber S. Carlisle. Release of Transcript Restriction set for 12/26/2013., filed. (scarlisle) (Entered: 09/27/2013) |
| 09/30/2013 | 85 | Notice of Filing of Official Transcript as to 84 Transcript. Party notified, filed. (dhansen, 4) (Entered: 09/30/2013) |
| 10/02/2013 | 86 | Minute Entry for proceedings held before Judge Kenneth M. Hoyt. MOTION HEARING held on 10/2/2013. Argument heard. Order to follow. Appearances:Candace Louise Curtis, Maureen Kuzik McCuchen. George William Vie, III.(Court Reporter: M. Malone), filed.(chorace) (Entered: 10/02/2013) |
| 10/03/2013 | 87 | ORDER denying 74 Motion for Order to Show Cause and Application for Judgment of Civil Contempt. The Court directs that the plaintiff employ counsel within 60 days so that the case may proceed according to the rules of discovery and evidence. (Signed by Judge Kenneth M. Hoyt) Parties notified.(rosaldana, 4) (Entered: 10/03/2013) |
| 11/08/2013 | 88 | MOTION for Approval of Disbursement to pay invoice by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 11/29/2013. (Attachments: # 1 Appendix Invoice, # 2 Proposed Order)(Vie, George) (Entered: 11/08/2013) |
| 11/12/2013 | 89 | ORDER granting 88 Motion for Approval of Disbursement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 11/12/2013) |
| 12/05/2013 | 90 | PLAINTIFF'S MOTION for Approval of Disbursement to pay fee retainer by Candace Louise Curtis, filed. Motion Docket Date 12/26/2013. (Attachments: # 1 Proposed Order) (sbejarano, 1) (Entered: 12/06/2013) |
| 12/12/2013 | 91 | NOTICE of Setting as to 90 MOTION for Approval of disbursement to pay fee retainer. Parties notified. Telephone Conference set for 12/18/2013 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 12/12/2013) |
| 12/18/2013 | 92 | RESPONSE to 90 MOTION for Approval of disbursement to pay fee retainer filed by Amy Ruth Brunsting, Anita Kay Brunsting. (Attachments: # 1 Proposed Order )(Vie, George) (Entered: 12/18/2013) |
| 12/18/2013 | 94 | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on December 18, 2013 at 8:30 a.m. Appearances: Candace Curtis Curtis, Jason Ostrom, George Vie, III. Pursuant to phone conference, the parties agree to seek and agree upon an accommodation that satisfies the plaintiffs request for a disbursement for attorneys fees, if they can do so. The Court sanctions this process and sets December 30, 2013 as the deadline for filing any agreement.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/06/2014) |
| 12/30/2013 | 93 | Agreed PROPOSED ORDER re: 90 MOTION for Approval of disbursement to pay fee retainer, filed. (Attachments: # 1 Proposed Order Agreed proposed order)(Vie, George) |

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| | | (Entered: 12/30/2013) |
| 01/06/2014 | 95 | NOTICE of Appearance by Jason B. Ostrom on behalf of Jason Ostrom, filed. (Ostrom, Jason) (Entered: 01/06/2014) |
| 01/06/2014 | 96 | AGREED ORDER granting Approval of Disbursements. (Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 01/07/2014) |
| 02/24/2014 | 97 | NOTICE of Setting. Parties notified. Telephone Conference set for 2/28/2014 at 08:30 AM by telephone before Judge Kenneth M. Hoyt, filed. (chorace) (Entered: 02/24/2014) |
| 02/28/2014 | 98 | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on February 28, 2014 at 8:30 a.m. Appearances: Jason B. Ostrom, George William Vie, III. Pursuant to phone conference conducted this day, the plaintiff, who determines that additional parties and claims may be necessary for a complete resolution of the case, also fears loss of diversity jurisdiction on the part of the Court. In this regard, and with an eye toward resolving these concerns, the plaintiff is to report the nature and extent of this progress to the Court on or before March 30, 2014. Docket call is cancelled.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/02/2014) |
| 03/08/2014 | 99 | MOTION for Approval of Disbursements to Pay Property Tax Bills by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 3/31/2014. (Attachments: # 1 Appendix Exhibit A, # 2 Proposed Order)(Vie, George) (Entered: 03/08/2014) |
| 03/10/2014 | 100 | Order Granting Defendants Motion for Approval of Disbursements to Pay Property Tax Bills 99 Motion for Approval.(Signed by Judge Kenneth M. Hoyt) Parties notified. (sclement, 4) (Entered: 03/10/2014) |
| 03/26/2014 | 101 | MOTION for Approval of Tax Payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 4/16/2014. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 03/26/2014) |
| 03/27/2014 | 102 | ORDER granting 101 Motion for Approval of Tax Payments.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 03/27/2014) |
| 04/15/2014 | 103 | MOTION for Approval of quarterly estimated income tax payments by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/6/2014. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/15/2014) |
| 04/16/2014 | 104 | ORDER granting 103 Motion for Approval of Quarterly Estimated Income Tax Payments. (Signed by Judge Kenneth M. Hoyt) Parties notified. (rosaldana, 4) (Entered: 04/16/2014) |
| 04/22/2014 | 105 | MOTION for Approval of Disbursements by Amy Ruth Brunsting, Anita Kay Brunsting, filed. Motion Docket Date 5/13/2014. (Attachments: # 1 Proposed Order)(Vie, George) (Entered: 04/22/2014) |
| 04/22/2014 | 106 | ORDER granting 105 Motion for Approval of Disbursements.(Signed by Judge Kenneth M. Hoyt) Parties notified.(chorace) (Entered: 04/22/2014) |
| 05/09/2014 | 107 | Unopposed MOTION for Leave to File First Amended Petition by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Attachments: # 1 Exhibit Exhibit A) (Ostrom, Jason) (Entered: 05/09/2014) |
| 05/09/2014 | 108 | First AMENDED Complaint with Jury Demand against Amy Ruth Brunsting, Anita Kay Brunsting, Does 1-100 filed by Candace Louise Curtis.(Ostrom, Jason) (Entered: 05/09/2014) |
| 05/09/2014 | 109 | Unopposed MOTION to Remand by Candace Louise Curtis, filed. Motion Docket Date 5/30/2014. (Ostrom, Jason) (Entered: 05/09/2014) |

| | | |
|---|---|---|
| 05/12/2014 | 110 | Unopposed PROPOSED ORDER *Granting Motion for Leave to File First Amended Petion* re: 107 Unopposed MOTION for Leave to File First Amended Petition, filed. (Ostrom, Jason) (Entered: 05/12/2014) |
| 05/15/2014 | 111 | ORDER granting 107 Motion for Leave to File First Amended Petition.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014) |
| 05/15/2014 | 112 | ORDER granting 109 Motion to Remand to Harris County Probate Court No. 4.(Signed by Judge Kenneth M. Hoyt) Parties notified.(glyons, 4) (Entered: 05/15/2014) |
| 07/25/2016 | 113 | MOTION for Permission for Electronic Case Filing by Candace Louise Curtis, filed. Motion Docket Date 8/15/2016. (Attachments: # 1 Letter, # 2 Proposed Order)(chorace) (Entered: 07/28/2016) |
| 07/29/2016 | 114 | ORDER denying 113 Motion for Permission for Electronic Case Filing..(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 07/29/2016) |
| 08/03/2016 | 115 | Plaintiff Candace Louise Curtis' Motion for Relief from Order Pursuant to Fed. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6) and Fed. R. Civ. P. 60(d)(3) by Candace Louise Curtis, filed. Motion Docket Date 8/24/2016. (Attachments: # 1 Proposed Order)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/03/2016 | 117 | Other EXHIBITS re: 115 MOTION., filed. (Attachments: # 1 Continuation of Exhibits, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/03/2016 | 118 | Other EXHIBITS re: 115 MOTION by Candace Louise Curtis., filed. (Attachments: # 1 Exhibits Continue, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation, # 11 Continuation, # 12 Continuation, # 13 Continuation, # 14 Continuation)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/03/2016 | 119 | Other EXHIBITS re: 115 MOTION by Candace Louise Curtis., filed. (Attachments: # 1 Exhibits Continue, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/05/2016 | 116 | Other EXHIBITS re: 115 MOTION., filed. (Attachments: # 1 Exhibits, # 2 Continuation, # 3 Continuation, # 4 Continuation, # 5 Continuation, # 6 Continuation, # 7 Continuation, # 8 Continuation, # 9 Continuation, # 10 Continuation)(dgonzalez, 5) (Entered: 08/05/2016) |
| 08/05/2016 | 120 | Plaintiff Candance Louise Curtis Motion for Sanctions With Points and Authorities Preliminary Statement by Candace Louise Curtis, filed. Motion Docket Date 8/26/2016. (Attachments: # 1 Exhibit Transcript, # 2 Exhibit)(mxperez, 5) (Entered: 08/09/2016) |
| 08/10/2016 | 121 | PLAINTIFF'S NOTICE OF RELATED CASE (Local Rule 5.2) by Candace Louise Curtis, filed. (szellers, 7) (Entered: 08/11/2016) |
| 08/10/2016 | 122 | PLAINTIFF CANDACE LOUISE CURTIS' MOTION FOR PERMISSION FOR ELECTRONIC CASE FILING by Candace Louise Curtis, filed. Motion Docket Date 8/31/2016. (Attachments: # 1 Proposed Order)(szellers, 7) (Entered: 08/11/2016) |
| 03/09/2017 | 123 | ORDER denying 122 Motion or Access to the Courts Electronic Filing System.(Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 03/09/2017) |
| 03/20/2019 | 124 | MOTION for Order to Show Cause Why Defendants and Their Counsel Should not be Held in Contempt of this Court's Injunctive Orders by Candace Louise Curtis, filed. |

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|---|---|---|
| | | Motion Docket Date 4/10/2019. (sguevara, 4) (Entered: 03/20/2019) |
| 04/15/2019 | 125 | AFFIDAVIT of Candace Louise Curtis in Support re: 124 MOTION for Order to Show Cause as to Held in Contempt of this Court's Injunctive Orders, filed. (Attachments: # 1 Proposed Order)(dwilkerson, 3) (Entered: 04/16/2019) |
| 04/23/2019 | 126 | NOTICE of Setting as to 124 MOTION for Order to Show Cause as to Held in Contempt of this Court's Injunctive Orders. Parties notified. Telephone Conference set for 5/8/2019 at 09:15 AM before Judge Kenneth M Hoyt, filed. (On "Meet-Me" Line) (chorace) (Entered: 04/24/2019) |
| 05/08/2019 | 127 | ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE held on May 8, 2019 at 9:15 a.m. Appearances: Candace Curtis (pro se). (Court Reporter: J. Sanchez) Before the Court is the pro se plaintiffs, Candace Curtis, motion for an order directed to certain defendants to show cause why they should not be held in contempt for violating the Courts Preliminary Injunction entered on April 19, 2013. The Court is of the opinion that, having transferred the case to the Harris County Probate Court, it no longer has jurisdiction of the case. Therefore, the relief requested is Denied. (Signed by Judge Kenneth M Hoyt) Parties notified.(chorace) (Entered: 05/09/2019) |
| 07/17/2020 | 128 | Ex Parte MOTION for Relief from Judgment by Candace Louise Curtis, filed. Motion Docket Date 8/7/2020. (Attachments: # 1 Exhibit Exhibit A, # 2 Exhibit Exhibit B, # 3 Exhibit Exhibit C, # 4 Exhibit Exhibit D, # 5 Exhibit Exhibit E, # 6 Exhibit Exhibit F, # 7 Exhibit G)(Schwager, Candice) (Entered: 07/17/2020) |
| 07/17/2020 | 129 | Ex Parte PROPOSED ORDER *on Rule 60 motion for relief* re: 128 Ex Parte MOTION for Relief from Judgment, filed.(Schwager, Candice) (Entered: 07/17/2020) |
| 07/17/2020 | 130 | NOTICE of Appearance by Candice Leonard Schwager on behalf of Candace Louise Curtis, filed. (Schwager, Candice) (Entered: 07/17/2020) |

**PACER Service Center**

**Transaction Receipt**

08/11/2020 09:20:01

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|---|---|---|---|
| **PACER Login:** | nealspielman:5866922:0 | **Client Code:** | Brunsting |
| **Description:** | Docket Report | **Search Criteria:** | 4:12-cv-00592 |
| **Billable Pages:** | 10 | **Cost:** | 1.00 |

20-20566.2797

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**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.



20-20566.2798

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 15th day of May, 2014.

Kenneth M. Hoyt
United States District Judge



20-20566.2799

**Cause Nos. 412,248; 412,249; 412,249-401; 412,249-402**

| | | |
|---|---|---|
| In Re: ESTATES OF | § | IN THE PROBATE COURT |
| | § | |
| Elmer H. Brunsting, | § | NUMBER FOUR (4) OF |
| | § | |
| DECEASED | § | HARRIS COUNTY, TEXAS |
| | § | |
| Nelva E. Brunsting, | § | |
| | § | |
| DECEASED | § | |

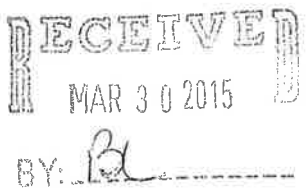
**NOTICE OF SUBSTITUTION OF COUNSEL OF RECORD AND APPEARANCE**

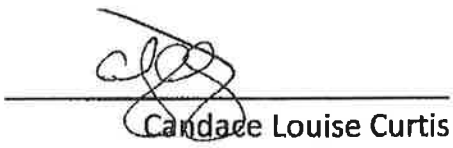
TO THE HONORABLE PROBATE COURT:

Please take notice that undersigned PLAINTIFF, CANDACE LOUISE CURTIS, pro se, substitutes and appears as Counsel of Record on behalf of self, replacing Jason Ostrom, Ostrom/Morris, and Ostrom/Sain in the above-captioned Cause Number(s). All pleadings and notices in this matter should be served on the undersigned.

Respectfully submitted,

Saturday, March 28, 2015



Candace Louise Curtis
Pro se Counsel of Record
218 Landana Street
American Canyon, CA 94503
occurtis@sbcglobal.net

**Certificate of Service:**

I hereby certify that a true and correct copy of the foregoing instrument was served via U.S. Mail in accordance with Texas Rule of Civil Procedure 21a on the following on the 28th day of March, 2015, with courtesy notice via Email:

| | |
|---|---|
| Jason B. Ostrom<br>Ostrom/Sain, LLP<br>5020 Montrose Blvd., Suite 310<br>Houston, TX 77006<br>jason@ostromsain.com<br><br>Jason B. Ostrom/R. Keith Morris, III<br>Ostrommorris, PLLC<br>6363 Woodway, Suite 300<br>Houston, TX 77057<br>Jason@ostrommorris.com<br>Keith@ostrommorris.com<br><br>Bobbie G. Bayless<br>Bayless and Stokes<br>2931 Ferndale<br>Houston, TX 77098<br>bayless@baylessstokes.com<br>Counsel for Carl Henry Brunsting | Darlene Payne Smith<br>Crain, Caton and James<br>1401 McKinney, 17th Floor<br>Houston, TX 77010<br>dsmith@craincaton.com<br>Counsel for Carole Ann Brunsting<br><br>Bradley E. Featherston<br>The Mendel Law Firm, LP<br>1155 Dairy Ashford, Suite 104<br>Houston, TX 77079<br>brad@mendellawfirm.com<br>Counsel for Anita Kay Brunsting<br><br>Neal E. Spielman<br>Griffin & Matthews<br>1155 Dairy Ashford, Suite 300<br>Houston, TX 77079<br>nspielman@grifmatlaw.com<br>Counsel for Amy Ruth Brunsting |

Saturday, March 28, 2015

Candace Louise Curtis
Pro se Counsel of Record
218 Landana Street
American Canyon, CA 94503
occurtis@sbcglobal.net

RECEIVED APR 19 2016

**Candace Louise Curtis**
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

April 16, 2016

To Anita Brunsting and Amy Brunsting and their Counsel of Record:

Please take note that Candace Louise Curtis v Anita Brunsting and Amy Brunsting, et al. (Curtis v Brunsting) is a distinctly separate suit from the claims filed by Carl Brunsting, whether individually or on behalf of the estate of Nelva Brunsting.

Curtis v Brunsting began in the federal Court 11 months before the estate's claims were filed in the Harris County District Court January 29, 2013, and 14 months prior to the claims filed in the Harris County Probate Court April 9, 2013.

Curtis v Brunsting came to the Harris County Probate Court under a remand order obtained by defendants as part of a stipulated agreement. The remand order is on file with the Probate Court accepted without qualification or reservation. The order in pertinent part reads:

> *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 15th day of May, 2014.*

Defendants and their Counsel are advised that they are in violation of the federal injunction and orders issued April 9, 2013 by The Honorable Judge Kenneth Hoyt, United States District Court Judge for the Southern District of Texas, and in violation of other specific orders issued by Judge Hoyt in the course of the federal litigation as reflected in the transcripts of the federal hearings on file with the Probate Court.

The "federal and state rules impose a duty of candor, good faith and fair dealing on attorneys representing clients in the courts and in the matter at issue this notice is required by Fed. R. Civ. P. 11(b).

Counsel is further advised that violation of a federal injunction is a very serious matter and may be treated as a mere civil contempt, but may also result in criminal sanctions under Title 18 of the United States Code, depending upon the severity of the violations.

The violations I am looking at are extremely serious and involve continued refusal to act and continued misapplications of valuable consideration in direct violation of a federal injunction not to mention the law of the Brunsting trust(s).

Counsel and their clients have willfully violated federal Court orders, including but not limited to an order for disclosures of information to Plaintiffs and all the other beneficiaries. The Court also entered an order that paying Defendants' attorney's fees is not a liability of the trust

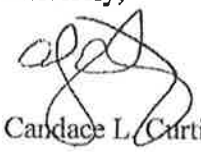
and that attorneys can only be paid from the trust by the mutual agreement of all the beneficiaries. My consent has neither been requested, nor has it been given, nor have I received complete disclosures of the information ordered by the federal Court.

Counsel and their clients are also reminded that the remand from the federal to the state court was the product of a multi-faceted arrangement in which Defendants and their counsel agreed to honor the federal court injunction and the orders entered as if there had been no remand.

Plaintiff Curtis respectfully requests that counsel advise as to how it would remedy its multitude of ethical violations within 21 days, as provided by Rule 11(b). The rest of this message is contained in those rules.

Please see attached Rule 11(b) Motion for Sanctions with Points and Authorities.

Sincerely,



Candace L. Curtis

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis<br>Rik Wayne Munson<br>Private Attorneys General Plaintiffs | § | |
| vs. | § | Civil Action No._____ |
| Candace Kunz-Freed<br>Albert Vacek, Jr.<br>Bernard Lyle Mathews III<br>Neal Spielman<br>Bradley Featherston<br>Stephen A. Mendel<br>Darlene Payne Smith<br>Jason Ostrom<br>Gregory Lester<br>Jill Willard Young<br>Christine Riddle Butts<br>Clarinda Comstock<br>Toni Biamonte<br>Bobbie Bayless<br>Anita Brunsting<br>Amy Brunsting<br>Does 1-99<br>Defendants in their individual capacities | § | United States Courts<br>Southern District of Texas<br>FILED<br>JUL 05 2016<br>David J. Bradley, Clerk of Court<br>Demand for Jury Trial |

## VERIFIED COMPLAINT FOR DAMAGES

1. 18 U.S.C. §1962 (c) Violations of the Racketeer Influenced Corrupt Organization Act involving multiple predicate acts that include both spoke and hub, and chain conspiracies.
2. 18 U.S.C. §1962 (d) Conspiracy to violate 18 U.S.C. §1962 (c)
3. 42 U.S.C. §1983 Substantive Due Process State Actor Conspiracy Against Civil Rights;
4. 42 U.S.C. §1985 Conspiracy to Deny Equal Protection of Law;
5. 18 U.S.C. §242 Conspiracy to deprive plaintiff of impartial forum;
6. Breach of Fiduciary to the Public Trust;
7. In Concert Aiding and Abetting Breach of Fiduciary both Public and Private;
8. In Concert Aiding and Abetting Misapplication of Fiduciary; and,
9. The right of claims provided at 42 U.S.C. §1988(a), 18 U.S.C. §1964 (c) and Rule 10b-5 Securities Exchange act of 1934 (17 C.F.R. §240.10b-5) and the right of private claims implied therefrom.

*This lawsuit raises concerns affecting the public interest*

**MacIntyre, McCulluch, Stanfied & Young LLP**

51. The MacIntyre, McCulluch, Stanfied & Young L.L.P Law firm constituted an "enterprise," as defined in Title 18, United States Code, Section 1961(4) a legal entity associated with Harris County Probate Court, an enterprise engaged in, and the activities of which affected interstate and foreign commerce.

52. Defendant Jill Willard Young was employed by or associated with the MacIntyre, McCulluch, Stanfied & Young LLP law firm.

## V. Enterprise in Fact Association

53. Plaintiffs incorporate by reference herein all allegations set forth above and below, and by this reference incorporate the same herein and makes each a part hereof as though fully set forth.

54. At all times material to this complaint:

55. Defendants Candace Kuntz-Freed, Albert Vacek Jr., Neal Spielman, Bradley Featherston, Stephen A. Mendel, Darlene Payne Smith, Jason Ostrom, Gregory Lester, Jill Willard Young, and Bobbie Bayless, were attorneys and officers of the Court practicing in the Harris County Probate Court, a legal entity, which was engaged in, and the activities of which affected interstate and foreign commerce in the Southern District of Texas and elsewhere within the Jurisdiction of the Court and were thus state actors within the meaning of 42 U.S.C. §1983 and 18 U.S.C. §1951, liable in their individual capacities.

56. At various times material to this complaint Defendants Candace Kuntz-Freed, Albert Vacek Jr., Neal Spielman, Bradley Featherston, Stephen A. Mendel, Darlene Payne Smith, Jason Ostrom, Gregory Lester, Jill Willard Young, Christine Riddle Butts, Clarinda Comstock, and Bobbie Bayless, were persons associated together in fact for the common purpose

of carrying out an ongoing criminal enterprise, as described in this Complaint; namely, through a multi-faceted campaign of lies, fraud, threats and official corruption in furtherance of a conspiracy involving a pattern of racketeering activity, constituting various "enterprise in fact associations" as defined in Title 18 United States Code Section 1961(4), which engaged in, and the activities of which affected interstate and foreign commerce. (See Boyle v. United States, 129 S. Ct. 2237, (2009)).

**Harris County Tomb Raiders a.k.a. The Probate Mafia**

57. At all times material to this complaint the "Harris County Tomb Raiders" (HCTR) was a secret society of persons, both known and unknown to Plaintiffs, associated together in fact for the common purpose of carrying out an ongoing criminal theft enterprise, as described in this Complaint; namely, through a multi-faceted campaign of lies, fraud, threats, and official corruption in furtherance of a conspiracy involving a pattern of racketeering activity as hereinafter more fully appears.

58. All Public Actor Defendants are believed to be regular participants in this secret society.

**CLAIM 2**
**The Racketeering Conspiracy 18 U.S.C. 1962(C)**

59. From various unknown dates, and continuing thereafter up to and including July 2008, and continuing thereafter up to and including March 9, 2016 and continuing thereafter, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, the Defendants: Candace Kuntz-Freed, Albert Vacek Jr., Bernard Lyle Mathews III, Neal Spielman, Bradley Featherston, Stephen A. Mendel, Darlene Payne Smith, Jason Ostrom, Gregory Lester, Jill Willard Young, Christine Riddle Butts, Clarinda Comstock, Toni Biamonte, Bobbie Bayless, Anita Brunsting, and Amy Brunsting, together with others known and unknown to Plaintiffs,



20-20566.2806

Harris County Probate Court, an enterprise, which engaged in, and the activities of which affected interstate and foreign commerce, to judicially kidnap and rob the elderly, our most vulnerable citizens, of their freedom, dignity, fundamental human and civil rights and property accumulated throughout a lifetime, often also robbing heirs and beneficiaries of familial relations and inheritance expectancies.

72. It was part of the racketeering conspiracy that Defendants would commit violations of constitutionally protected rights under the disguise of a statutory scheme.

73. It was understood that each conspirator would participate in the commission of at least two acts of racketeering activity in the conduct of the affairs of the enterprise, as part of the racketeering conspiracy.

74. It was also a part of the racketeering conspiracy that Defendants, acting in concert, both individually and severally, would and did promote, conceal, and otherwise protect the purposes of the racketeering activity from possible criminal investigation and prosecution as hereinafter more fully appears.

**VI. Purposes of the Racketeering Activity**

75. Plaintiffs incorporate by reference herein all allegations set forth above and below, and by this reference incorporate the same herein and makes each a part hereof as though fully set forth and alleges that:

76. From an unknown date and continuing thereafter up to and including the specific events complained of herein, these Defendants, in concert with persons both known and unknown to Plaintiffs, individually and severally, conspired to participate and did participate in an organized criminal consortium for the purpose of actively redirecting trust, estate and other

third party property into the state probate courts, where Defendants operate to convert third party property to their own unjust self-enrichment.

77. It was a purpose of the racketeering activity that Defendants, acting in concert, both individually and severally, would and did loot assets held by private trusts and estates against the will of the victims, family members, and friends, through the use of guardianship protection statutes and other schemes.

78. It was a purpose for the racketeering activity that trust and estate plan attorneys acting in concert with other attorneys and with persons both known and unknown to Plaintiffs, would and did exploit the elders of our society for the purpose of syphoning off the assets of our eldest and most vulnerable citizens through the aforementioned schemes and artifices, as exemplified herein and elsewhere in the public domain and as hereinafter more fully appears.

79. The purpose for the racketeering activity was to facilitate the looting of wealth, also known as **Involuntary Redistribution of Assets** (IRA) from its rightful owners, for the unjust enrichment of attorneys and other legal professionals operating out of state probate courts, including but not limited to Harris County Probate Court No. 4 and these co-conspirator Defendants.

80. The specific quid pro quo method of profit sharing is unknown to Plaintiffs but appears to include political aspiration, judicial favors, campaign contributions, bribes and kickbacks, cronyism and "Good Ole Boy" networking.

81. The conclusion that there is a reciprocal stream-of-benefits necessarily flows from the facts of the in-concert illegal activities of the co-conspirators, as exemplified herein.

82. Based upon personal knowledge and upon information and belief Plaintiffs allege that:

83. The above enumerated "RICO Defendants" unlawfully, knowingly and willfully combined, conspired, confederated and agreed together and with others to violate 18 U.S.C. §1962(c) as described herein, in violation of 18 U.S.C. § 1962(d).

84. Upon information and belief, Each RICO Defendant knew about and agreed to facilitate the Enterprise's scheme to obtain property from Plaintiff and others, and to participate, directly or indirectly, in the conduct, management, or operation of the Enterprise's affairs through a pattern of racketeering activity in violation of 18 U.S.C. §1962(c).

85. The RICO Defendants knew that they were engaged in a conspiracy to commit the predicate acts, and they knew that the predicate acts were part of such racketeering activity, and that the participation and agreement of each of them was necessary to allow the commission of this pattern of racketeering activity. This conduct constitutes a conspiracy to violate 18 U.S.C. § 1962(c), in violation of 18 U.S.C. §1962(d).

86. Each of the above named RICO Defendants conducted or participated, directly or indirectly, in the conduct, management, or operation of the Enterprise's affairs through a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961 (5) and in violation of 18 U.S.C. § 1962(c) & (d), to wit:

**Commercial Purpose**

87. The constituent members comprising each ENTERPRISE are engaged in a concerted campaign to extort, defraud, trick, deceive and corruptly persuade their client victims (probate court litigants) to exercise proprietary control over, and extract maximum value from,

the target trust and/or estate, in much the same way a bankruptcy trustee operates to control a bankruptcy estate.

88. Further, in unfairly protecting their commercial purposes, each ENTERPRISE operative works with the others to harass, threaten, abuse, denigrate, impugn, threaten, and intimidate litigants, competitors, critics, reformers, and others.

89. The various ENTERPRISES operate as a "cabal", a semi-private, sometimes secret, informal affiliation of entities with public presence and identity that is wholly or partially inaccurate and misleading as to the true goals, affiliations, and processes of the cabal.

90. The ENTERPRISES achieve their respective purposes by collusion among operators and affiliates, who in their COMMERCIAL SPEECH represent to their clients that the relationships among the members are in compliance with legal and ethical PROFESSIONAL DUTIES when they, in fact, are not.

91. Funded by fraudulent exploitation of the parties, ENTERPRISE operators and affiliates engage in bribery, exchanging value, emoluments, patronage, nepotism, and/or kickback schemes within their networks to assure system-wide "cash flow" and continued viability and vitality of the ENTERPRISES.

92. ENTERPRISES refuse such cooperation with non-affiliates, thereby baring potential competitors. These bars include fraudulently manipulated referrals, representations, certifications, nepotism, illegal antitrust tactics, and manufactured pitfalls to support the pervasive "who you know" method the cabal uses in defiance of the rule of law.

93. Probate Mafia operators, like the attorney Defendants here, regularly breach one or more of their PROFESSIONAL DUTIES of loyalty, zealous advocacy, fiduciary

responsibility, and professional competence through one or more "false flag" frauds to induce, deprive, or deceive clients and other litigants not schooled in the law. These "False Flag" maneuvers involve one or more COMMERCIAL SPEECH misrepresentations to unsophisticated layperson parties, thereby depriving them of the benefits of legitimate legal professional services and perpetrating fraud upon the Court.

94. Probate Mafia operatives have developed numerous pernicious tools to maximize their benefits from the wealth redistribution. A prominent artifice is the "independent" appointee that appears in virtually every case.

95. Probate Mafia schemes and artifices also include such practices as Poser Advocacy. "Poser Advocacy" is the practice and sale of what appears to be the practice of law to inexperienced parties. Attorneys engaging in poser advocacy act to appeal to their client's emotions, greed, or other untoward ends to generate fees, with no beneficial legal work performed.

96. Poser Advocates write angry letters, exchange worthless formwork discovery, and repeatedly file baseless amendments and motions with no hope of productive benefit, for the sole purpose of generating a bill.

97. In the more sophisticated commercial legal marketplace poser advocacy is not tolerated, as clients insist upon, and attorneys abide by, legitimate practice and ethical standards.

98. Because of the unique nature of the clients and market, Probate Mafia members like these are generally able to pass off Poser Advocacy as if it was real legal work. It is not.

99. In the Probate Mafia enterprise scheme of things the familial wealth hijacker represents an exploitation opportunity and, as such, receives special attention.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| Curtis, et al | § | |
| Plaintiffs | § | |
| | § | Civil Action No. 4:16-cv-01969 |
| v | § | |
| | § | The Honorable Alfred Bennett |
| Kunz-Freed, et al | § | |
| Defendants | § | |

**PLAINTIFF'S ANSWER TO DEFENDANT JASON OSTROM'S FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6) MOTION TO DISMISS**

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## I. Nature and Stage of the Proceedings

1. Plaintiffs brought the above titled action pursuant to 18 U.S.C. §1964(c) alleging Racketeer Influenced Corrupt Organization Act violations of 18 U.S.C. §1962(c) and 18 U.S.C. §1962(d), both individually and as private attorneys general on behalf of the public trust, on July 5, 2016 in the Southern District of Texas.

2. On October 31, 2016, Defendant Jason Ostrom filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt 78).

## II. Contextual Summary

3. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas.

4. Other beneficiaries of the trusts include Plaintiff Curtis' siblings: Carl Brunsting, Carole Brunsting, and Defendants Amy Brunsting and Anita Brunsting. (Dkt 33-1, 33-2 and 33-3)

5. Neither Plaintiff Curtis nor any of her siblings is an heir to, and none has inheritance expectancy, from the "Brunsting Estates" (Dkt 41-3 and 41-4)[1].

## III. History of "The Trust"

6. In 1996 Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust for their benefit, for the benefit of their five primary issue, as well as for their remaindermen grandchildren and great grandchildren. (Dkt 34-1)

7. The Brunstings restated their Trust in 2005 (Dkt 33-2) removing Anita Brunsting as successor trustee and appointing Carl and Amy Brunsting as successor co-trustees, and naming Candace Curtis as alternate.

8. The Brunstings amended their restatement in 2007 (Dkt 33-3), to remove Amy Brunsting as a successor co-trustee, appointing Candace in her place, and naming Frost Bank as the alternate. It would appear from this sequence of events that Elmer and Nelva sought to prevent what has since occurred.

9. Elmer Brunsting was declared incompetent in June 2008 and on July 1, 2008 the first illicit successor trustee appointment to the Brunsting Trust was apparently drafted and notarized by Candace Kunz-Freed, claiming a change in jointly selected successor trustees had been made by Nelva Brunsting alone. (Exhibit 1) That instrument portends to have placed Anita Brunsting back in a trustee position.

10. Elmer Brunsting passed on April 1, 2009. At the death of Elmer Brunsting the inter vivos "family" trust became irrevocable and its assets were divided between an irrevocable decedent's trust and a revocable survivor's trust (Dkt 34-2 Articles III & VII).

[1] See *Curtis v Brunsting* 704 F.3d 406 regarding the Brunsting inter vivos Trusts

11. First named successor co-trustee Carl Brunsting fell ill with encephalitis on or about July 3, 2010 and by August 25, 2010 the extortion instrument[2] had been drafted and notarized by Candace Freed, naming Anita and Amy Brunsting successor co-trustees.

## IV. A History of the Litigation

12. Candace Curtis v Anita and Amy Brunsting is a breach of fiduciary action seeking accounting and disclosures, filed in the Southern District of Texas on February 27, 2012, (Exhibit 2) and was dismissed under the Probate exception to federal diversity jurisdiction March 8, 2012. Plaintiff Curtis filed a timely notice of appeal.

13. On March 9, 2012 Defendant Bobbie Bayless filed a Petition to take depositions before suit in the Harris County District Court styled, "In Re: Carl Henry Brunsting. (Exhibit 3)

14. On January 9, 2013 the Fifth Circuit issued a unanimous opinion with Order for Reverse and Remand published *Curtis v Brunsting 704 F.3d 406* (Dkt 34-4).

15. On January 29, 2013 Defendant Bobbie Bayless filed a suit in the Harris County District Court against Defendants Vacek & Freed, in the name of the "Estate of Nelva Brunsting" raising only trust related issues. (Dkt 34-5)

16. In late 2013 Plaintiff Curtis enlisted the assistance of Houston Attorney Jason Ostrom.

17. Immediately upon appearing as Plaintiff Curtis' representative in the federal lawsuit, Curtis v Brunsting 4:12-cv-592, Defendant Jason Ostrom arranged a remand to the Harris County Probate Court to consolidate Plaintiff Candace Curtis' lawsuit with that of her brother Plaintiff Carl Brunsting, (Dkt 26-1) allegedly to afford complete relief to the parties.

18. It should be noted that Ostrom amended Curtis' federal complaint to add Carl Henry Brunsting as an "Involuntary Plaintiff", in order to pollute diversity so he could perfect a remand

[2] The alleged August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment Under Living Trust Agreement" a.k.a. 8/25/2010 QBD.

to state court to consolidate the first filed Plaintiff, Candace Curtis, with later filed state court Plaintiff Carl Brunsting, where federal plaintiff Curtis was named a Defendant only. (Dkt 34-7) (see also Dkt 57-1 and 57-2)

19. Defendant Ostrom thereafter abandoned "Plaintiff Curtis" and "Curtis v Brunsting" in the probate court record, pleading only under the heading of "Estate of Nelva Brunsting" (Exhibits 4 and 5 attached).

## V. Statement of the Issues

1. Plaintiffs have not adequately pleaded the necessary predicate acts;
2. The plaintiffs have not stated a RICO claim under section 1962(c);
3. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b);
4. Plaintiffs have failed to plead reliance in connection with their fraud related claims;
5. Plaintiffs failed to plead a cognizable RICO enterprise;
6. Plaintiffs enterprise allegations are too vague and conclusory
7. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.

## VI. The Argument

20. The RICO complaint articulates, with specificity, more than 40 events, each of which is listed as a RICO predicate act at 18 U.S.C. §1961(1) and each Defendant is accused of in-concert aiding and abetting. It is unnecessary for Plaintiffs to plead that each defendant personally committed two or more predicate acts.

> *To be convicted of conspiracy to violate RICO under § 1962(d), the conspirator need not himself have committed or agreed to commit the two or more predicate acts, such as bribery, requisite for a substantive RICO offense under § 1962(c). Section 1962(d)-which forbids "any person to conspire to violate" § 1962(c)-is even more comprehensive than the general conspiracy provision applicable to federal crimes, § 371, since it contains no requirement of an overt or specific act to effect the conspiracy's object. Presuming Congress intended the "to conspire" phrase to have its ordinary meaning under the criminal law, see Morissette v. United States, 342 U. S. 246, 263, well-established principles and contemporary understanding demonstrate that, although a conspirator must intend to further an*

> *endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, it suffices that he adopt the goal of furthering or facilitating the criminal endeavor, and he need not agree to undertake all of the acts necessary for the crime's completion. Salinas' contrary interpretation of § 1962(c) violates the foregoing principles and is refuted by Bannon v. United States, 156 U. S. 464, 469. Its acceptance, moreover, is not required by the rule of lenity, see United States v. Shabani, 513 U. S. 10, 17. Even if Salinas did not accept or agree to accept two bribes, there was ample evidence that the sheriff committed at least two predicate acts when he accepted numerous bribes and that Salinas knew about and agreed to facilitate the scheme, and this is sufficient to support Salinas' conviction under § 1962(d). Pp. 61-66. United States v Salinas 654 F.2d 319*

21. It is also only necessary to show the defendant associated with the criminal venture, purposefully participated in the criminal activity, and sought by his actions to make the venture successful. *United States v. Landerman*, 109 F.3d 1053, 1068 n.22 (5th Cir. 1997). Jason Ostrom's conduct inarguably meets and exceeds this criterion.

22. A defendant associates with a criminal venture if he shares in the criminal intent of the principal, and the defendant participates in criminal activity if he has acted in some affirmative manner designed to aid the venture. *Landerman*, 109 F.3d at 1068 n.22. The level of participation may be of relatively slight moment. *Leos-Quijada*, 107 F.3d at 794. Also, it does not take much evidence to satisfy the facilitation element once the defendant's knowledge of the unlawful purpose is established. *United States v. Bennett*, 75 F.3d 40, 45 (1st Cir. 1996).[3]

23. Jason Ostrom's overt acts clearly intended to convert the Brunsting trusts into assets of a probate estate by masquerading Curtis v Brunsting behind an "estate" label.

## VII. Res Judicata and Collateral Estoppel

### 1. <u>The Brunsting Trusts are not a Probate Matter</u>

24. The Brunsting Trusts are not assets belonging to the Estates of Elmer or Nelva Brunsting and are not subject to probate administration.

[3] US Attorneys' Criminal Resource Manual CRM 2474

25. That finding of fact and conclusion of law was settled by the Justices of the Fifth Circuit Court of Appeals[4] when Plaintiff Curtis' original petition survived the probate exception to federal diversity jurisdiction.

26. Moreover, the "Estate" inventory (Dkt 41-7) approved March 27, 2013, contains only an old car and the claims pending against Vacek and Freed in the Harris County District Court and was followed immediately by two drop orders. (Dkt 41-5 and 6).

27. The Fifth Circuit Court of Appeals on review held that Curtis v Brunsting was a matter relating only to an inter vivos trust not in the custody of a state court, that the assets in the inter vivos trust were not assets belonging to any "Estate" and were not subject to probate administration. (Dkt 34-4)

28. Defendant Ostrom, (Dkt 78) like Defendants Vacek & Freed (Dkt 19 and 20), Bobbie Bayless (Dkt 23), Jill Willard Young (Dkts 25, 38), Anita Brunsting (Dkt 30) Amy Brunsting (Dkt 35), Steven Mendel/Bradley Featherston (Dkt 36), Neal Spielman (Dkt 39 and 40), Christine Riddle Butts, Clarinda Comstock and Tony Baiamonte (Dkt 53), claim the Racketeer Influenced Corrupt Organization Act action before this Honorable Court arises from a "Probate Case" or "Probate Matter". However, the so called "Probate Matter" does not speak to anything but the Brunsting Trusts.

29. The Fifth Circuit found that Plaintiff Curtis' federal lawsuit was exclusively related to the Brunsting inter vivos Trusts, that those trusts were not in the custody of any state court, that trust assets were not property of any estate and that even though the wills had been since filed and there was an ongoing probate of the estate, the assets in an inter vivos trust are not property

[4] Curtis v. Brunsting 704 F.3d 406

belonging to an estate and would not be subject to probate administration. Jason Ostrom's remand to state court did not change that.

30. The Circuit Court also noted that the only heir to the Estates of Elmer and Nelva Brunsting was the Brunsting Trust.

31. The Circuit Court also reiterated the long standing doctrine of custodia legis, citing to the United States Supreme Court in Marshall v. Marshall[5] for the proposition that no court can assume in rem jurisdiction over a res in the custody of another court. (Dkt 34-4)

32. Two actions were filed in state courts subsequent to Curtis reverse and remand back to the federal Court. Both state court suits were brought in the name of the "Estate of Elmer and Nelva Brunsting" and both suits raised only claims relating to the Brunsting trusts, then in the custody of a federal Court.

33. Federal Plaintiff Curtis is not an heir to any estate and neither are the other trust beneficiaries. The trust is the only heir to any estate and alleged trespass against the trust is against the named beneficiaries, not against any estate. Plaintiff Curtis is a real party in interest in the Brunsting Trusts, but not in any estate.

34. Defendant Ostrom admits to causing the case of Curtis v Brunsting 5:12-cv-592 to be remanded to Harris County Probate Court. However, Mr. Ostrom characterizes the remand as *"remanding the case **back** to Harris County Probate Number 4"*, (Dkt 78 Page 4 of 24 unnumbered paragraph 7), as if to imply Plaintiff Curtis was some kind of escapee being returned to the custody of Harris County Probate Number 4, when Plaintiff Curtis had never been to Harris County Probate Court and had no claims pending there.

[5] 547 U.S. 293, 126 S. Ct. 1735, 164 L. Ed. 2d 480 (2006).

35. Plaintiff Curtis retained Defendant Jason Ostrom in the federal court matter under the letterhead of Ostrom/Sain. After effecting a remand to state probate court Ostrom pled exclusively under the heading "Estate of Nelva Brunsting", which Plaintiff Curtis' lawsuit is not.

## VIII. Sufficiency of the Pleadings

36. Defendant Ostrom claims Plaintiffs fail to plead a cognizable RICO claim, enterprise, fraud based acts, reliance or proximate cause.

37. Such assertions can only be ground upon an unfamiliar view of the law, as surely Defendant cannot honestly plead ignorance of his acts or the facts when his proclaimed station requires him to be knowledgeable of the records and pleadings in the cases he claims to be an attorney in.

38. Plaintiffs more than adequately plead Harris County Probate Court as both the RICO enterprise and a victim of the racketeering activity.

39. In *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 164 (2001), the Supreme Court stated:

> *The Court has held that RICO both protects a legitimate "enterprise" from those who would use unlawful acts to* ***victimize*** *it, United States v. Turkette, 452 U.S. 576, 591 (1981), and also protects the public from those who would unlawfully use an "enterprise" (whether legitimate or illegitimate) as a "vehicle" through which "unlawful . . . activity is committed," National Organization for Women, Inc., 510 U.S. [249,] 259 (1994).*

40. Plaintiffs plead cognizable predicate acts with the necessary particularity and Plaintiffs plead acts demonstrative of conspiracy and of aiding and abetting with more particularity in each reply to motions to dismiss.

41. This Probate Bully Mob of RICO Defendants fully intended to trap the Brunsting siblings in a cycle of vacuous paper exchanges to maximize attorney billing profits while resolving

absolutely nothing on the public record, in order to protect the racketeering activity from discovery and investigation by legitimate law enforcement resources.

42. Each of the "RICO Defendants" aided and abetted the conspiracy in violation of 18 U.S.C. §§2 and 1962(d) and now come before this Honorable Court claiming their attempt to bust the Brunsting trusts for their own personal gain is a bitter sibling dispute over the administration of their parents' estate. Nothing could be further from the truth.

43. While real damages are difficult to calculate without fiduciary disclosures, the additional injury resulting from five years of improperly motivated "litigation" posturing, directly and proximately caused by these Defendants illicit conduct, are tangible, concrete, calculable and a matter of public record.

44. Every one of the Brunsting beneficiaries has been injured by the fraud perpetrated on the federal and state courts, upon the Brunsting family and upon Plaintiffs by these Defendants.

45. Jason Ostrom was instrumental in the plot to treat the Brunsting Trusts as if they were a probate asset and his feigned ignorance of the legal precedents set by pro se Curtis in this extended Brunsting Trusts litigation, is in direct conflict with his fiduciary obligation to know.

46. Defendant Jason Ostrom's feigned ignorance of law and fact are not defenses.

47. Defendant Ostrom also makes dubious statements regarding Plaintiff Munson's participation in protecting Plaintiff Curtis' property interest and those of the Brunsting trusts.

48. That participation is common knowledge and a matter of public record.

49. The name Rik Munson appears for the first time at Docket entry 9 in Curtis' original federal lawsuit and appears a total of ten times in the Official record on Appeal to the Fifth Circuit in 2012. (CA No. 12-20164)

## IX. Amendment and Adoption by Reference

50. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and Federal Rule of Civil Procedure 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1), the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Replies to Defendants Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, this reply, the replies yet unfiled and the attached exhibits as if fully expressed therein;

51. Plaintiffs further adopt and incorporate by reference all of the Defendants' Motions and pleadings and the claims stated therein, as exhibits in support of Plaintiffs' Complaint, as if originally attached thereto, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, 84 and those yet unfiled as if fully attached as exhibits thereto.

## X. Conclusion

52. Defendant Jason Ostrom told the Honorable Judge Kenneth Hoyt in his application for approval of his First Amended Complaint that the purpose for a remand to state court was to consolidate with Plaintiff Carl Brunsting in order to afford complete relief to the parties.

53. Defendant Ostrom deprived Plaintiff Curtis of a federal judicial forum and access to the only Court of competent jurisdiction under false pretexts, by presenting unopposed motions to amend Plaintiff Curtis' federal complaint and to remand to Harris County Probate Court.

54. The Brunsting Trusts are the only heir to the "Estates of Elmer and Nelva Brunsting". Trust assets are not property belonging to the "Estates", and are not subject to probate administration, yet each of these Defendants insist this RICO lawsuit arises out of a dispute between siblings over inheritance expectancies and the administration of an estate and others

have pled Plaintiffs are disgruntled litigants seeking vengeance for being on the losing end of fully litigated state court determinations.

55. For the last five years, these Defendants have each participated in denying Plaintiff Curtis and each of the Brunsting siblings the enjoyment of their parents' benevolence. Each has engaged in gaming the judicial process, posing as advocates, to maximize fees and resolve nothing, while holding resolution of the Brunsting trusts hostage under a probate administration pretext.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) Motion to Dismiss filed by Defendant Jason Ostrom October 31, 2016, (Dkt 78) and hold this Defendant to answer.

Respectfully submitted,

November 18, 2016

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on November 18, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

United States District Court
Southern District of Texas
**ENTERED**
May 16, 2017
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:16-CV-1969 |
| | § | |
| CANDACE KUNZ-FREED, *et al*, | § | |
| | § | |
| Defendants. | § | |

**ORDER**

Before the Court are Defendants Candace Kunz-Freed and Albert Vacek Jr.'s (collectively, "V&F") Motion to Dismiss for Failure to State a Claim (Doc. #19), V&F's Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. #20), Defendant Bobbie G. Bayless's ("Bayless") Motion to Dismiss (Doc. #23), Defendant Jill Willard Young's ("Young") Motion to Dismiss (Doc. #25), Defendant Anita Brunsting's ("Anita") Motion to Dismiss for Plaintiffs' Failure to State a Claim (Doc. #30), Defendant Amy Brunsting's ("Amy") Motion to Dismiss (Doc. #35), Defendants Stephen A. Mendel and Bradley E. Featherston's (collectively, "Mendel & Featherston") Motion to Dismiss (Doc. #36), Defendant Neal Spielman's ("Spielman") Motion to Dismiss (Doc. #39), Spielman's Motion to Dismiss Based on Lack of Subject Matter Jurisdiction (Doc. #40), Defendants Judge Christine Riddle Butts, Judge Clarinda Comstock, and Tony Baiamonte's (collectively, "Harris County Defendants") Motion to Dismiss (Doc. #53), Defendant Jason Ostrom's ("Ostrom") Motion to Dismiss (Doc. #78), Defendant Bernard Lilse Mathews, III's ("Mathews") Motion to Dismiss (Doc. #81), Defendants Gregory Lester's ("Lester") Motion to Dismiss (Doc. #83), Defendant Darlene Payne Smith's ("Smith") Motion to Dismiss (Doc. #84), Plaintiffs' Responses to said Motions (Docs. ##33, 34, 41, 45, 57, 62, 69, 85, 86, 87, 89), and various Defendants' Replies to Plaintiffs' Responses (Docs. #55, 63, 90).

Also before the Court are Young's Motion for Sanctions (Doc. #72), Plaintiffs' Motion for Consolidation (Doc. #43), Plaintiffs' Second Motion for Consolidation (Doc. #61), Young's Response in Opposition to Plaintiffs' Motions for Consolidation (Doc. #70), and Harris County Defendants' Response to Plaintiffs' Motions for Consolidation (Doc. #79).

Having considered the arguments and the applicable law, the Court grants V&F's Motion to Dismiss for Failure to State a Claim (Doc. #19), Bayless's Motion to Dismiss (Doc. #23), Young's Motion to Dismiss (Doc. #25), Anita's Motion to Dismiss (Doc. #30), Amy's Motion to Dismiss (Doc. #35), Mendel & Featherston's Motion to Dismiss (Doc. #36), Spielman's Motion to Dismiss (Doc. #39), Harris County Defendants' Motion to Dissmiss (Doc. #53), Ostrom's Motion to Dismiss (Doc. #78), Mathews' Motion to Dismiss (Doc. #81), Lester's Motion to Dismiss (Doc. #83), and Smith's Motion to Dismiss (Doc. #84). As such, Plaintiffs' Motions for Consolidation are denied as moot. The Court also denies Young's Motion for Sanctions.

## I. Background

Plaintiffs' Complaint appears to relate to a probate matter in Harris County Probate Court No. 4, which the Plaintiffs generically call "Curtis v. Brunsting." Specifically, Plaintiffs assert almost fifty "claims" against more than fifteen defendants—including eleven lawyers, two judges, and one court reporter. These purported "claims" consist of fantastical allegations that some or all of the Defendants are members of a secret society and "cabal" known as the "Harris County Tomb Raiders," or "The Probate Mafia." Plaintiffs' claims rest on the assertion that this purported shadow organization engages in "poser advocacy" as an "exploitation opportunity" to "hijack" "familial wealth." And, as far as the Court can tell, this "poser advocacy" allegedly occurred in the matter of "Curtis v. Brunsting."

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## II. Legal Standard

"Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief.'" *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 1964–65 (2007). In considering a 12(b)(6) motion to dismiss a complaint, courts generally must accept the factual allegations contained in the complaint as true. *Kaiser Aluminum & Chem. Sales, Inc. v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982).

The court does not look beyond the face of the pleadings in determining whether the plaintiff has stated a claim under Rule 12(b)(6). *Spivey v. Robertson*, 197 F.3d 772, 774 (5th Cir. 1999). "[A] complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, [but] a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 127 S. Ct. at 1964–65 (*citing Sanjuan v. Am. Bd. of Psychiatry & Neurology, Inc.*, 40 F.3d 247, 251 (7th Cir. 1994)) (citations omitted). And, "[f]actual allegations must be enough to raise a right to relief above the speculative level." *Twombly*, 127 S. Ct. at 1965. The supporting facts must be plausible—enough to raise a reasonable expectation that discovery will reveal further supporting evidence. *Id.* at 1959.

"A document filed pro se is 'to be liberally construed,' . . . and 'a pro se complaint, however inartfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.'" *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007). Nevertheless, the requirement of liberal construction does not mean that the court can ignore a clear failure in the pleadings to allege facts that set forth a claim currently cognizable in a federal district court. *Weller v. Dep't of Soc. Servs.*, 901 F.2d 387, 390-91 (4th Cir. 1990).

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## III. Analysis

### A. Failure to State a Claim

Plaintiffs' Complaint, even when liberally construed, completely fails to plead anything close to a plausible claim for relief against any of the alleged Defendants. In fact, Plaintiffs' allegations cannot be characterized as anything more than fanciful, fantastic, and delusional. Plaintiffs' allegations consist entirely of outlandish and conclusory factual assertions accompanied by a formulaic recitation of the elements of numerous causes of action unsupported by the alleged facts. Further, most of Plaintiffs alleged "claims" are either based on statutes that do not create a private cause of action, or simply do not exist under Texas or Federal law.

In regards to Plaintiffs' alleged RICO claim, Plaintiffs fail to plead any facts establishing they have standing under § 1964(c) to assert civil RICO claims against any of the Defendants because Plaintiffs fail to plead facts showing a recognizable injury to their business or property caused by the alleged RICO violations. *See* 18 U.S.C. § 1964(c) ("[a]ny person injured in his business or property by reason of a violation of [RICO] may sue"); *Allstate Inc. Co. V. Plambeck*, 802 F.3d 665, 676 (5th Cir. 2015) (*citing Bridge v. Phoenix Bond & Indemn. Co.*, 553 U.S. 639, 654 (2008)) (stating that to plead standing a plaintiff "must show that the [RICO] violation was a but-for and proximate cause of the injury"). Plaintiffs have also failed to plead any facts establishing a plausible claim that any of the Defendants engaged in a "racketeering activity" sufficient to trigger the RICO statute. Accordingly, Plaintiffs' RICO claim fails as a matter of law.

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As Plaintiffs' Complaint is completely devoid of any well-pleaded facts establishing a single plausible claim for relief against any of the named Defendants, the Court grants V&F's, Bayless's, Young's, Anita's, Amy's, Mendel & Featherston's, Spielman's, Ostrom's, Mathews',



20-20566.2828

Lester's, and Smith's Motions to Dismiss for Failure to State a Claim.

### B. Immunity

#### i. Attorney Immunity

Under Texas law, "attorneys are immune from civil liability to non-clients 'for actions taken in connection with representing a client in litigation.'" *Cantey Hanger, LLP v. Byrd*, 467 S.W.3d 477, 481 (Tex. 2015) (quoting *Alpert v. Crain, Caton & James, P.C.*, 178 S.W.3d 398, 405 (Tex. App.—Houston [1st Dist.] 2005, pet. denied)). Plaintiffs' allegations against Defendants Young, Smith, Bayless, Spielman, Mendel & Featherston, and Mathews' ("Attorney Immunity Defendants"), at best, assert wrongdoing based solely on actions taken during the representation of a client in litigation. Such claims are clearly barred by attorney immunity. Accordingly, all of the Attorney Immunity Defendants' Motions to Dismiss are also granted on this ground.

#### ii. Judicial Immunity

Judicial Immunity entitles judges to absolute immunity from suit for acts undertaken in their judicial capacity, even if they are done maliciously or corruptly. *Price v. Porter*, 351 F. Spp'x 925, 927 (5th Cir. 2009) (citing *Mireles v. Waco*, 502 U.S. 9, 10 (1991)). The sole exception is when a plaintiff alleges that a judge acted without jurisdiction or in a nonjudicial role. *Id.* Here, the allegations against Judges Butts and Comstock concern only actions taken in their judicial capacity. Accordingly, Judicial Immunity completely forecloses Plaintiffs' claims against Judge Butts and Judge Comstock.[1]

Case 4:19-cv-00592 Document 131-9 Filed on 08/13/20 in TXSD Page 5 of 7

[1] In regards to Tony Baiamonte, a contract court reporter that was hired to steno-graphically record a single hearing in a probate proceeding, there are simply no factual allegations made against him within the complaint. Accordingly, it is difficult to determine whether immunity applies. Regardless, without any factual assertions as to Mr. Baiamonte, the Plaintiffs fail to



20-20566.2829

C. **Frivolous Complaint**

As laid out above, Plaintiffs' allegations are frivolous because Plaintiffs have completely failed to allege any facts supporting the delusional scenario articulated in their Complaint, much less facts giving rise to a plausible claim for relief.

"District Courts have the inherent authority to dismiss a pro se litigant's frivolous or malicious complaint sua sponte even when the plaintiff has paid the required filing fee." *Fitzgerald v. First East Seventh Street Tenants*, 221 F.3d 362, 363–64 (2d Cir. 2000); *Pillay v. INS*, 45 F.3d 14, 16–17 (2d Cir. 1995); *Holman v. Wooten*, No. 4:09–1634–CWH, 2010 WL 691263, at *2 (D.S.C. Feb.24, 2010); *Larrimore v. Bank of New York Mellon*, No. 4:09–1647–TLW–TER, 2009 WL 4920776, at *2 (S.D.N.Y. Dec. 11, 2009); *McCracken v. Natale*, No. 04 Civ. 5456, 2008 WL 5274317 (E.D.N.Y. Dec.17, 2008). The Supreme Court, while never having directly ruled on the matter, has also stated (albeit in dicta) that federal courts have the inherent power to dismiss frivolous lawsuits. *See Mallard v. United States District Court for the Southern District of Iowa*, 490 U.S. 296, 307–308, 109 S.Ct. 1814, 104 L.Ed.2d 318 (1989) ("Statutory provisions may simply codify existing rights or powers. Section 1915(d), for example, authorizes courts to dismiss a 'frivolous or malicious' action, but there is little doubt they would have power to do so even in the absence of this statutory provision.").

As Plaintiffs' allegations are undeniably legally insufficient to create a plausible claim, they are clearly frivolous (and borderline malicious). Along with Plaintiffs' absolute failure to plead a plausible claim for relief, most of the defendants are also entitled to attorney, judicial, or qualified immunity. Accordingly, Plaintiffs' claims are also dismissed via this Court's inherit ability to dismiss frivolous complaints.

Case 4:12-cv-00592 Document 131-9 Filed on 08/13/20 in TXSD Page 6 of 7

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state a plausible claim against him. Accordingly, Harris County Defendants' Motion to Dismiss is also granted on that ground.



20-20566.2830

### D. Sanctions

Plaintiffs' passionate pleas to this Court during the December 15, 2016 Motion Hearing suggest that Ms. Curtis and Mr. Munson do not understand the legal shortcomings of their Complaint. The Court will therefore give Plaintiffs, as pro se litigants, the benefit of the doubt, and credit their filing of this lawsuit to their misunderstanding of applicable legal rules. Accordingly, the Court denies Young's Motion for Sanctions. That being said, Plaintiffs should now realize that all claims brought in this litigation—or any new claims relating to the subject matter of Plaintiffs' Complaint—lack merit, and cannot be brought to this, or any other court, without a clear understanding that Plaintiffs are bringing a frivolous claim. Accordingly, the Court cautions Plaintiffs from additional meritless filings.

## IV. Conclusion

For the foregoing reasons, Defendants' Motions to Dismiss are GRANTED, Young's Motion for Sanctions is DENIED, Plaintiffs' Motions for Consolidation are DENIED as moot, and all of Plaintiffs' claims are DISMISSED WITH PREJUDICE.

It is so ORDERED.

MAY 16 2017

Date

The Honorable Alfred H. Bennett
United States District Judge

Case 4:12-cv-00592 Document 131-9 Filed on 08/13/20 in TXSD Page 7 of 7



20-20566.2831

# IN THE UNITED STATES COURT OF APPEALS
# FOR THE FIFTH CIRCUIT

No. 17-20360

United States Court of Appeals
Fifth Circuit
FILED
June 6, 2018
Lyle W. Cayce
Clerk

CANDACE LOUISE CURTIS; RIK WAYNE MUNSON,

Plaintiffs - Appellants

v.

CANDACE KUNZ-FREED; ALBERT VACEK, JR.; BERNARD LYLE MATTHEWS, III; NEAL SPIELMAN; BRADLEY FEATHERSTON; STEPHEN A. MENDEL; DARLENE PAYNE SMITH; JASON OSTROM; GREGORY LESTER; JILL WILLARD YOUNG; CHRISTINE RIDDLE BUTTS; CLARINDA COMSTOCK; TONI BIAMONTE; BOBBIE BAYLESS; ANITA BRUNSTING; AMY BRUNSTING; DOES 1-99,

Defendants - Appellees

United States District Court
Southern District of Texas
FILED
JUN 28 2018
David J. Bradley, Clerk of Court

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:16-CV-1969

Before HIGGINBOTHAM, DENNIS, and COSTA, Circuit Judges.

PER CURIAM:*

Candace Louis Curtis and Rik Wayne Munson sued more than fifteen individuals – the judges, attorneys, court officials, and parties from a probate proceeding in Harris County – alleging that the defendants collectively

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

violated RICO, committed common law fraud, and breached their fiduciary duties. Plaintiffs contend that defendants are part of the "Harris County Tomb Raiders a.k.a Probate Mafia," which it alleges is a secret society of probate practitioners, court personnel, probate judges, and other elected officials who are running a "criminal theft enterprise" and "organized criminal consortium," designed to "judicially kidnap and rob the elderly" and other heirs and beneficiaries of their "familial relations and inheritance expectations." The district court dismissed all claims based on a number of often overlapping grounds: (1) judicial immunity, (2) attorney immunity, (3) failure to state a claim, and (4) the court's inherent power to dismiss frivolous complaints.

We review de novo a district court's dismissal under Rule 12(b)(6). *Chhim v. Univ. of Tex. at Austin*, 836 F.3d 467, 469 (5th Cir. 2016). Plaintiffs' appeal focuses on the dismissal of their RICO claim. They set forth the elements of that offense and attempt to address each one. But the factual allegations they use to support those elements are mostly, as the district court put it, "fantastical" and often nonsensical. We agree with the district court that the allegations are frivolous and certainly do not rise to the level of plausibility that the law requires.

AFFIRMED.

**No. 412,249-401**

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

**ORDER DENYING PLEAS AND MOTIONS FILED BY CANDACE CURTIS**

On this day, the Court considers the following pleadings filed by Candace Louise Curtis:

| | |
|---|---|
| 8/17/2018 | "Plea in Abatement" |
| 9/4/2018 | "Addendum to Pleas in Abatement in Reply to Stephen Mendel" |
| 10/8/2018 | "Nominal Defendant's Verified First Amended Plea in Abatement" |
| 10/19/2018 | "Plea to the Jurisdiction" |
| 2/5/2019 | "Plaintiff Curtis' Response to Notice of Hearing, Motion for Clarification and to Dismiss; Special Exceptions, Motion in Limine and Memorandum of Points and Authorities in Support" |

The Court, after considering the pleadings on file related to:

1) Civil Action No. 4:12-cv-00592 pending in the U.S. District Court for the Southern District of Texas, which was remanded to Harris County Probate Court No. 4 at the request of Candace Curtis, resulting in the U.S. District Court case being closed, remanded and terminated;

2) Cause No. 412,249-402, pending in Harris County Probate Court No. 4, into which the above-referenced U.S. District Court case was transferred on February 9, 2015, and in which Candace Curtis, by and through her counsel, signed an Agreed Docket Control Order and the March 16, 2015 Agreed Order to Consolidate Cases;

3) Cause No. 412,249-401, pending in Harris County Probate Court No. 4, initiated on April 10, 2013, and through which claims have been asserted by Carl Henry Brunsting,

individually and as Independent Executor of the Estate of Elmer H. Brunsting and Nelva E. Brunsting, naming all beneficiaries of the Estate, and counterclaims asserted by Carole Brunsting against Carl Brunsting, as Executor; and

4) Cause No. 2013-05455, filed by Carl Brunsting, as Executor of the Estate of Nelva Brunsting, in the 164th Judicial District Court of Harris County, Texas on January 29, 2013 against Candace Kuntz-Freed and Vacek & Freed as the only defendants (the "District Court Case"), which claims are the subject of a separate Order on Motion to Transfer District Court Proceedings to Probate Court No. 4 signed on even date herewith,

finds that subject matter jurisdiction is proper in Harris County Probate Court No. 4 with regard to the Estates of Nelva and Elmer Brunsting as well as the assets contributed to Trusts related to those Estates. The Court also finds that no other court has dominant jurisdiction regarding claims related to these Estates. Therefore, the Pleas in Abatement, the Plea to the Jurisdiction and all other relief requested by the pleadings first enumerated in this Order, filed by Candace Curtis, lack merit and should be, in all things, DENIED.

Signed on the 14 day of February, 2019.

HONORABLE JAMES HORWITZ
PRESIDING JUDGE

PROBATE COURT #4

NO. 412,249-401

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| 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 REGARDING**
**AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT**

On the 28th day of June 2019, the Court considered Amy Brunsting's Motion for Sanctions and/or Contempt (the "Motion") pertaining to the conduct of Candace Louise Curtis ("Curtis"). In considering the Motion, the Court also considered Curtis' response of June 11, 2019, entitled "Response to the Fiduciary's Application for the Beneficiary to be Held in Contempt for Seeking to Enforce the Injunction Commanding the Trustee to Perform a Fiduciary Duty Owed to the Beneficiary with Petition for Partial Summary or Declaratory Judgment" ("Curtis's Response"). The Court also heard oral argument from the parties.

After considering the Motion, Curtis's Response and oral argument, the Court FINDS that it has jurisdiction of this proceeding; that the Motion has MERIT and is in all respects proper and sufficient; that Curtis was properly served and received proper notice of the proceeding; and that the Motion should be and is GRANTED. Therefore:

1. The Court FURTHER FINDS and ORDERS that Curtis is in CONTEMPT of the Court's Order of February 14, 2019 for the reasons presented in the Motion, including without limitation, via her March 20, 2019 and April 12, 2019 filings in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592, a matter confirmed as having been closed, remanded and terminated;

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 Program, Registry No. 28190 at 201 Caroline, 8th Floor, Room 800 Houston TX 77002 on or before the 1st day of September 2019;

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 1st 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

FILED
2019 JUL 23 PM 3:23
COUNTY CLERK
HARRIS COUNTY, TEXAS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 31st day of July 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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Candace Louise Curtis – Pro Se:

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Carole Ann Brunsting – Pro Se:

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Attorneys for Anita Kay Brunsting:

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Houston, Texas 77079
***Via E-Mail: steve@mendellawfirm.com***
***tim@mendellawfirm.com***

NEAL E. SPIELMAN

PROBATE COURT #4

Harris County - County Probate Court No. 4

NO. 412,249-401

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| 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**
**AMY BRUNSTING'S MOTION FOR SECOND CONTEMPT**
**AND ADDITIONAL SANCTIONS**

On the 12th day of December 2019, the Court considered Amy Brunsting's Motion for Second Contempt and Additional Sanctions (the "Motion") pertaining to the conduct of Candace Louise Curtis ("Curtis"). The Court also considered Curtis' response (if one) and entertained oral argument.

After considering the Motion, Curtis's Response (if one) and oral argument, the Court FINDS that it has jurisdiction of this proceeding; that the Motion has MERIT and is in all respects proper and sufficient; that Curtis was properly served and received proper notice of the proceeding; and that the Motion should be and is GRANTED. Therefore:

1. The Court FURTHER FINDS and ORDERS that Curtis is in CONTEMPT of the Order Regarding Amy Brunsting's Motion for Sanctions and/or Contempt of July 23, 2019 for the reasons presented in the Motion;

2. The Court FURTHER ORDERS, ADJUDGES and DECREES that as punishment for this second contempt, Candace Curtis is fined the sum of **$500.00**, payable to Diane Trautman, Harris County Clerk, Indigent Bond Program, Registry No. 28190 at 201 Caroline St. 8th Floor, Room 800 Houston TX 77002 on or before the 15th day of January, ~~2019~~ 2020;

3. ~~In light of the issues presented in the Motion and the Court's finding of a second contempt by Curtis, 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, the Court strikes any and all affirmative claims for relief asserted by Curtis against any party in this matter, and dismisses all such claims. The affirmative claims to which this ruling applies include, but are not limited to the claims set forth in Curtis' live pleading – Plaintiffs' Second Amended Petition of January 27, 2015 (and/or any supplemented or subsequently amended version thereof).

4. The Court, 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 $7,505.00 to Amy Brunsting in care of her attorneys – Griffin & Matthews – at 1155 Dairy Ashford, Suite 300, Houston, Texas 77079 on or before the ____ day of _____, 2019.

SIGNED ON THIS THE 12 DAY OF December, 2019.

JUDGE PRESIDING

FILED
2019 DEC 12 PM 4:03
COUNTY CLERK
HARRIS COUNTY, TEXAS

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 5th day of November 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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***Via E-Mail: steve@mendellawfirm.com***

NEAL E. SPIELMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, | § | |
| | § | |
| Plaintiff, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-592 |
| | § | |
| ANITA KAY BRUNSTING, *et al*, | § | |
| | § | |
| Defendants. | § | |

**MEMORANDUM AND ORDER**
**PRELIMINARY INJUNCTION**

## I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

## II. BACKGROUND

### *A. Procedural Background*

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a



20-20566.2842

recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

***B. Contentions of the Parties***

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

## III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

## IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.[1] At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

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.

[1] It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| CANDACE LOUISE CURTIS | § | |
| | § | |
| VS. | § | Civil Action No. 4:12-cv-00592 |
| | § | |
| ANITA KAY BRUNSTING, ET, AL. | § | |

**ORDER DENYING PLAINTIFF'S EX PARTE MOTION FOR RELIEF**

After considering Plaintiff's Ex Parte Motion for Relief and Co-Trustees' Response to Ex Parte Motion for Relief and taking judicial notice of its file in this cause the Court has determined that Plaintiff's Ex Parte Motion for Relief lacks merit, while the arguments and analysis presented in Co-Trustees' Response to Ex Parte Motion for Relief are reasonably made, accurate, persuasive, and meritorious. Accordingly, the Court FINDS and ORDERS that:

1. Plaintiff's Ex Parte Motion for Relief was not timely filed because:

   a. Plaintiff had knowledge of (or a means to discover) the complained of activities in 2014, as those activities were occurring;

   b. Plaintiff had knowledge of (or a means to discover) the complained of activities throughout 2014 and 2015, while represented by counsel; and/or

   c. Plaintiff had knowledge of the complained of activities in 2016;

   and did not pursue her claims for Rule 60 relief within a reasonable time.

2. The complained of actions as described in the Ex Parte Motion for Relief, including this Court's May 2014 transfer/remand [Doc. 112], do not constitute a Fraud Upon the Court as the complained of actions do not reveal the existence of a "grave miscarriage of justice" and do not impact the integrity of the judicial process, and further have already been addressed via Civil Action No. 4:16-cv-01969 and determined to be frivolous, "fantastical" and "often nonsensical."

3. Plaintiff's Ex Parte Motion for Relief is presented as a means of "forum shopping" her jurisdictional arguments, as previously addressed and denied in Probate Court Number Four of Harris County, Texas in Cause No. 412,249-401.

4. The transfer/remand of Plaintiff's claims to Probate Court Number Four [Doc. 112] was within this Court's powers and authority, not only due to Plaintiff's inclusion of additional parties, but also to avoid the possibility of conflicting judgments; that the use of the term "remand" was synonymous with a general use of the word "transfer"; or, alternatively, constitutes harmless error as the same result could have occurred via other means, methods, procedures and mechanisms.

5. This Court ceded jurisdiction of Plaintiff's claims and its Orders, including without limitation the Orders represented by Doc. 45 and Doc. 87, to Probate Court Number Four of Harris County, Texas, via Doc. 112.

6. The Preliminary Injunction issued by this Court [Doc. 45] is to be enforced in Probate Court Number Four of Harris County, Texas, as determined in the sole and absolute discretion of Probate Court Number Four of Harris County, Texas, and which determination may include modification or termination of the Preliminary Injunction, as determined in the sole and absolute discretion of Probate Court Number Four of Harris County, Texas, is not a "final judgment" of this Court, and did not require or contemplate the distribution of trust income to beneficiaries prior to the final resolution of the disputes between the parties.

7. Plaintiff is specifically instructed not to file any further or additional pleadings, motions, affidavits, orders or other documents into this closed, terminated matter, or Plaintiff shall be subject to sanctions for doing so.

8. Plaintiff's Ex Parte Motion for Relief is, in all ways and manners and to the fullest extent allowed by law, DENIED.

SIGNED on the _____ day of _____ 2020.

_____
PRESIDING JUDGE

APPROVED AND ENTRY REQUESTED:

GRIFFIN & MATTHEWS

BY: /s/ *Neal E. Spielman*

Texas State Bar No. 00794678
Federal Bar No. 23816
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281.870.1124 – telephone
281.870.1647 - facsimile
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*ATTORNEYS FOR AMY BRUNSTING*

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F: 281-759-3214
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*ATTORNEYS FOR ANITA BRUNSTING*

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

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| CANDACE LOUISE CURTIS | § | |
| Plaintiff, | § | Civil Action 4-12-cv-00592 |
| | § | |
| v | § | Emergency Motion to Reopen Docket |
| | § | |
| ANITA KAY BRUNSTING | § | |
| Does 1-100 | § | |
| AMY RUTH BRUNSTING | § | |
| Defendants | § | |

EMERGENCY MOTION TO REOPEN DOCKET

Plaintiff, Candace L. Curtis, (Curtis) respectfully moves this Court to reopen the above captioned matter. The immediate Granting of this Motion is crucial, as hereinafter more fully appears.

JURISDICTION

This case never left this Court. Every jurisdictional argument raised by Defendants was decided in Candace Curtis' favor by the Fifth Circuit Court of Appeals in 2013, when they unanimously held the case to be outside the probate exception, Curtis v. Brunsting 704 F.3d 406. Nothing substantive has occurred that would remove the subject matter jurisdiction of this Court.

Plaintiff's former counsel created the appearance that this case was remanded when it was not possible legally and thus, did not in fact occur. There is no statutory authority to "transfer" a case from a federal to a state court. Remand is only possible where a case was previously removed.[1] This was an original proceeding having never been filed in a state court and this fact makes remand

[1] Lincoln Prop. Co. v. Roche, 546 U.S. 81, 91 (2005)

legally impossible, Cochran v. Smith & Nephew, Inc., No. 16-1121, at *8 (C.D. Ill. Sep. 15, 2016), Lincoln Prop. Co. v. Roche, 546 U.S. 81, 91 (2005).[2]

Although this case appears administratively closed, neither remand nor transfer occurred, and the case is still pending in this Court.

This court does not need to look beyond its own docket to decide whether to provide the relief requested. Fed. R. Civ. P. 4(b) states that the clerk must sign, seal, and issue a properly completed summons to the plaintiff for service on the defendant. Fed. R. Civ. P. 4(c)(1) requires a copy of the complaint with service of summons be made upon the party within the time allowed by Fed. R. Civ. P. 4(m). This Court's record is conclusive. No service of summons was made on the involuntary Plaintiff, diversity was not polluted, the record was never certified for transfer to any other tribunal and the case never left this Court.

## NATURE AND STAGE OF THE PROCEEDINGS

This lawsuit began when trustees refused or otherwise failed to account. On February 27, 2012 Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of emotional distress, claiming that Defendants, acting as trustees, failed to notice her of any actions affecting her beneficial interests and refused to provide copies of non-protected trust instruments and accountings for the trust assets, or to report on any other acts of administration.

[2] "Dismissal without prejudice the appropriate remedy here because there is no mechanism by which to transfer the case to state court. This case was not removed from state to federal court and so the case cannot be remanded." Emrit v. Watts, Guerra, L.L.P., Civil Action No. SA-13-CV-00473-XR, at *5 n.6 (W.D. Tex. Aug. 13, 2014)

The matter was dismissed sua sponte under the probate exception March 8, 2012, then reversed and remanded for further proceedings by the Circuit Court January 9, 2013, having been held to be outside the probate exception to federal diversity jurisdiction.[3] This Court issued a preliminary Injunction [Doc 45] orally, at hearing April 9, 2013, and published a memorandum April 19, 2013 [Doc 45]. On the same day as the injunction hearing was held, Carl Brunsting filed similar tort claims in the probate court, naming federal Plaintiff Curtis a nominal Defendant in Harris County Probate Court 4 No. 412,249-401.

After the injunction was issued the Court appointed a Special Master under Rule 53 [Doc 55]. The Report of the Special Master [Doc 62] showed there had been no accountings performed in preparation for final distributions and that there had been improprieties with the assets.

## STANDARD OF REVIEW

"[a] trial court abuses its discretion when it bases its decision on an erroneous view of the law or a clearly erroneous assessment of the evidence." *United States v. Caldwell*, 586 F.3d 338, 341 (5th Cir. 2009). Findings of fact are reviewed under the "clearly erroneous" standard. Questions of law are reviewed de novo.

> *"It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court." Fed.R.Civ.P. 52(a). Questions of law are reviewed de novo" Mowbray v. Cameron County, 274 F.3d 269, 279 (5th Cir. 2001) Under the rule, of course, we subject the district court's findings of fact to a deferential standard of review — we will not "set aside [findings of fact] unless clearly erroneous." Fed.R.Civ.P. 52(a). This translates into a need for findings, however, that "`provide a sufficiently definite predicate for proper appellate review.'" Westwego Citizens for Better Gov't v. City of Westwego, 872 F.2d 1201, 1203 (5th Cir. 1989) (citations omitted). Indeed, "when the trial court's decision turns in part upon factual determinations," findings of fact are crucial to a court of appeals engaging in the process of review. Texas Extrusion, 836 F.2d at*

[3] Curtis v. Brunsting 704 F.3d 406

> *220. A prior opinion of this Court eloquently captures our view of the interplay between the roles of the district and appellate courts:*
> *Fact finding is the trial court's province. . . . We do remain responsible, however, for the ultimate justness of trial determinations drawn before us. Since this is so, we must know the basis of the trial court's decisions: `this Court cannot be left to second-guess the factual basis for the district court's conclusion.' . . . Review is our responsibility, and we cannot review bare conclusions. . . . In short, our duty to respect the trial court's factual determinations gives rise to a reciprocal one on its part to tell us the reasons for them. . . . [A] mere statement of result — cannot stand. Chaiffetz v. Robertson Research Holding, Ltd., 798 F.2d 731, 734-35 (5th Cir. 1986) (emphasis in original) (citations omitted). Quite simply, a district court's failure to detail its findings or the evidentiary basis for its findings "negates our ability to apply the clearly erroneous standard of review." Lopez, 807 F.2d at 434. Rule 52(a) also obligates the district court to "state separately" its conclusions of law. We do not minimize the district court's task of detailing its conclusions of law. Courts of appeal subject a district court's conclusions of law to a de novo review — we are not constrained by the deferential standard of reviewing only for clear error. Despite this distinction, the duty of the district court to "state separately its conclusions of law thereon" becomes particularly important when the case, like this one, involves complex legal issues. For when the district court carefully enunciates and explains its resolution of questions of law, we know that it has thoughtfully and diligently decided the legal issues. Moreover, the preparation of sufficiently complete conclusions of law augments our comprehension of the legal issues on appeal. We must understand not only the factual, but also the legal reasoning of the district court to enable us to conduct a "just, orderly review of the rights of the parties before us." Browning v. Kramer, 931 F.2d 340, 344 (5th Cir. 1991). Chandler v. City of Dallas, 958 F.2d 85, 89 (5th Cir. 1992*

ISSUES

**Fraud upon the Court**

The Rule 60(b) Motion for relief is based on Fraud upon the Court that can be shown by the record alone. All other issues are strictly jurisdictional and were decided in Plaintiff's favor by the Fifth Circuit Court of Appeals in 2013. After the Report of Special Master, Plaintiff retained the assistance of Houston Attorney Jason Ostrom (Ostrom). Ostrom immediately enacted a fraud on the administrative side of the court to obtain an unopposed Order for Remand to the state probate court from which it had not been removed[4]. No statute authorizes a federal court to transfer

[4] 28 U.S.C. § 1441 Removal

a case to a state probate court. An agreement between parties requires the signature of each party and both parties did not sign the agreed Order for remand. Even if it had been legally possible, required procedures were not completed and a remand did not happen.

DEFENDANTS ANSWER

Defendants respond that: 1) the request for relief is untimely 2) the complained of actions [Doc. 112] do not constitute a fraud upon the court as the complained of actions do not reveal the existence of a "grave miscarriage of justice" and do not impact the integrity of the judicial process, and 3) the complained of actions have already been addressed via Civil Action No. 4:16-cv-01969 and determined to be frivolous, "fantastical" and "often nonsensical" and that 4) the Rule 60 Motion for relief was presented as a means of "forum shopping" jurisdictional arguments that had been previously addressed and denied in Probate Court Number Four of Harris County, Texas in Cause No. 412,249-401.

Defendants further argue 5) The transfer/remand of Plaintiff's claims to Probate Court Number Four [Doc. 112] was within this Court's powers and authority, not only due to Plaintiff's inclusion of additional parties, but also to avoid the possibility of conflicting judgments; and 6) that the use of the term "remand" was synonymous with a general use of the word "transfer"; or, alternatively, constitutes harmless error, as the same result could have occurred via other means, methods, procedures and mechanisms.

ARGUMENTS

**1) Untimely**

Defendants' argument that the plea for relief is untimely is the equivalent of the argument that orders void on their face can become valid by the passage of time. Orders void on their face do not become valid by the passage of time.

> *"Absent extraordinary circumstances the mere passage of time cannot convert an absolutely void judgment into a valid one. This is one reason for our having held that there is no time limit on Rule 60(b)(4) motions, and that the doctrine of laches has no effect." Jackson v. FIE Corp., 302 F.3d 515, 523 (5th Cir. 2002) and "[T]here seems to be universal agreement that laches [in bringing a* Rule 60(b)(4) *motion] cannot cure a void judgment, and no court has denied relief under* Rule 60(b)(4) *because of delay."Bludworth Bond, 841 F.2d at 649 n. 6*

**2) Fraud upon the Court**

While an examination of the docket record of this Court does show a docket closed, because the case was remanded to Harris County Probate Court #4, an examination of the probate docket record fails to reveal a proper arrival and a return to this Court's docket fails to show a proper departure.

What the federal docket does show is that an unopposed order to amend a complaint to pollute diversity, to obtain an order for remand, of a case never removed, was only signed by one party, was administratively obtained under false pretenses, and, the procedure required to complete the process was simply abandoned once the order was signed.

The probate docket shows Ostrom filing pleadings in the probate court without filing a Notice of Appearance, a nine month delay between the remand order (May 9, 2014) [Doc 109] and the creation of ancillary file 412,249-402 (Feb 9, 2015) [Exhibit 1], with a mere twenty-two days more to the signing of an "Agreed Order to Consolidate" [Exhibit 2], Estate of Nelva Brunsting 412,249-402 with Estate of Nelva Brunsting 412,249-401 and closing the twenty two day old ancillary file 412,249-402.

Immediately upon discovering the "Agreed Order to Consolidate Cases",[5] Plaintiff Curtis fired Ostrom and filed a substitution, [Doc 131-5] without realizing that she was filing a substitution for someone who had not filed an appearance.

[5] Via data mining (Plaintiff was never informed before the fact)

Soon thereafter the signed "Agreed Order to Consolidate Cases" disappeared from the Docket and first filed Plaintiff Candace Curtis was left without a judicial forum. The probate court docket does not now, nor has it ever shown Candace L. Curtis as a plaintiff [Exhibit 3]. It should also be noted the independent executor resigned due to lack of capacity February 19, 2015, six days after ancillary file 412,249-402 was opened and there was no one representing Estate of Nelva Brunsting when this agreed order to consolidate was signed. None of this is subject to debate and none of it is barred from the eyes of scrutiny by Rooker-Feldman.

**3) Rooker-Feldman**

The activities described above [see also Doc 115], a "grave miscarriage of justice" impacting the integrity of the judicial process within the meaning of 28 U.S.C. § 1927 and 42 U.S.C. § 1983, are generally shielded from scrutiny by the federal courts under the Rooker-Feldman Doctrine, but no fully litigated state court proceedings exist for review as of the date of this filing and this Court remains with jurisdiction over the trustees and the non-probate assets by specific mandate of the Fifth Circuit in this case.

**The Missing Lawsuit**

Shortly after Curtis filed a blanket substitution to replace Ostrom, [Doc 131-5] the signed "Agreed Order to Consolidate Cases" disappeared from the record and was replaced with an order unsigned and ancillary file 412,249-402 was closed. When a new Judge took office in January 2019 the signed "Agreed Order to Consolidate Cases" was made an issue [Exhibit 4] and the associate judge in the probate court took the position the consolidation never happened. Thereafter Attorney Bobbie Bayless became involved [Exhibit 5] and the "Agreed Order to Consolidate Cases" was found rolling around in a drawer by the new clerk [Exhibit 6].

Defendants downplay the significance of a complete breakdown in the protocols and comment "*Plaintiff's allegation that her case "disappeared" also rings false*".[6]

Present Counsel filed an appearance on behalf of "interested person" Candace Curtis on or about October 19, 2019, only to discover that her client's lawsuit, as styled above, could not be located as an ancillary case in the probate court records. Counsel was puzzled as to how to style her pleadings, which lead to the investigation revealing these anomalies.

Although Ostrom and his associate, Nicole Sain-Thornton, filed pleadings in the probate court, including a "Plaintiff's Second Amended Complaint"[7], nominal defendant Candace L. Curtis has never had a complaint in the probate court to amend in the first instance, and, neither Ostrom nor Sain-Thornton filed notices of appearance in the probate court. Thus, all of the actions taken by Ostrom and Sain-Thornton in the probate court in the name of Candace Curtis were performed without agency standing.

All of this reveals a "grave miscarriage of justice" impacting the integrity of the judicial process. Federal Plaintiff Candace L. Curtis does not have a lawsuit in the probate court and has no business being in a probate court, *Curtis v. Brunsting 704 F.3d 406*.

**Remand and Synonymous**

Defendants argue that Remand was within this Court's powers and, is "*synonymous with general use of the word "transfer"; or, alternatively, constitutes harmless error as the same result could have occurred via other means*". Defendants provide no supporting authority for this proposition because none exists.

6 Case 4:12-cv-00592 Document 131 Filed on 08/13/20 in TXSD Page 19 of 25. This is a violation of 18 U.S.C. § 1001.
7 January 27, 2015

The reason Roman jurists referred to their Law as Lex is because its propositions were constructed entirely with linguistic terms, issuing originally from the tongue in speech. Thus, legal propositions are composed of nouns and verbs, adjectives and adverbs etc. in a subject-predicate syntax and are among the few sciences allowed to be explained in this way, with the proviso that said terms must always issue in accordance with First Principles requiring universal application. Contemporary English in Law employs terms that are nouns in one syntax and verbs in another. Failure to maintain awareness of the distinctions reduces our Law to a muddle of nonsense.

Trust is just such a term, being noun in one syntax and verb in another, while also being the description of a relationship involving obligations of the trustee owed to the beneficiary in relation to the rights of the beneficiary in the thing held in trust, a.k.a. the corpus or res.

> *As the Fifth Circuit recently observed, "Americold involved a Maryland Real Estate Investment Trust, nominally a trust but in reality an unincorporated business entity recognized by statute. For traditional trusts, the Americold court held that 'when a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes.'" Hometown 2006-1 1925 Valley View, L.L.C. v. Prime Income Asset Mgmt., L.L.C., 847 F.3d 302, 306-07 (5th Cir. 2017). The Fifth Circuit explained, "Traditionally, a trust was not considered a distinct legal entity, but a 'fiduciary relationship' between multiple people." Id. at n.17 (citing Americold, 136 S. Ct. at 1016). Further, "[t]rusts do not have 'members,' rather a trust exists where a settlor transfers title of property to a trustee to hold in trust for the benefit of beneficiaries." Id. at n.17, Lewis v. Deutsche Bank Nat'l Tr. Co., CIVIL ACTION No. 3:16-CV-133, at *5 n.3 (S.D. Tex. Apr. 13, 2017)*

**Remand and Transfer**

Remand, 28 U.S.C. § 1367(c) or § 1447, and transfer, 28 U.S.C. § 1407, are not synonymous. As previously stated, 28 U.S. Code § 1447 is a post removal statute and by way of example “Section 1447(e) allows joinder and remand to state court if, **after removal**, "the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction". 28 U.S.C. § 1447(e). ” *Doleac v. Michalson*, 264 F.3d 470, 475 (5th Cir. 2001).

28 U.S.C. Section 1447(d) states that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise," but the Supreme Court has held that this prohibition applies only when an order of remand is based on one of the grounds specified in section 1447(c): lack of subject matter jurisdiction or a defect in removal procedure, *see Schexnayder v. Entergy La., Inc.*, 394 F.3d 280, 283 (5th Cir. 2004) (citing *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711-12, 116 S.Ct. 1712, 135 L.Ed.2d 1 (1996)).

The fact that Ostrom selected the term remand suggests his intention was that the federal court would decline to review such an order a priori and was thus intending a deception. It appears that Ostrom did deceive the Court into thinking it had no authority to review the "order for remand" [Doc 131-2] when in fact remand never happened.

**4) Defendants argue that similar results may have been obtainable by other means.**

There are "sharp distinctions between remands authorized by § 1447(c)" and remands authorized by § 1367(c). A discretionary remand pursuant to section 1367(c) is reviewable on appeal for abuse of discretion. *See Regan*, 524 F.3d at 631. *Brookshire Bros. v. Dayco Products*, 554 F.3d 595, 598-99 (5th Cir. 2009). This case was never removed from a state court, § 1441, and had nowhere to be returned to under § 1447.

> *28 U.S.C. § 1407 "was meant to `assure uniform and expeditious treatment in the pretrial procedures in multidistrict litigation among federal Districts " and that "[w]ithout it, `conflicting pretrial discovery demands for documents and witnesses' might `disrupt the functions of the Federal courts' as they nearly had in the electrical equipment company cases.") (quoting H.R. Rep. No. 1130, 90th Cong., 2d Sess. 1 (1968), reprinted in 1968 U.S.C.C.A.N. 1898, 1899). In re Clients, 482 F.3d 835, 837 n.3 (5th Cir. 2007)*

**Adding an Involuntary Plaintiff is disfavored**

> *The law generally disfavors forced joinder of a party as a plaintiff with whatever procedural handicaps that normally entails. Under our adversary system the general rule is that only the party who initiates the lawsuit should be saddled with*

> *the procedural burdens of a plaintiff. For that reason, absent the "proper case" exception, where there is an obligation to join as a plaintiff, the preferred method is to designate and serve involuntary parties as defendants, regardless of their appropriate interest alignment. See generally Wright Miller, 7 Federal Practice and Procedure § 1605 and cases cited therein. Although the scope of the involuntary plaintiff exception might possibly warrant broader treatment than it currently receives, we do not believe that joinder as a Rule 19(a) "involuntary plaintiff" is appropriate in this case, where Goller is (a) under no pre-existing obligation to join Eikel and Davey's suit, and (b) amenable to the court's process as a defendant. Eikel v. States Marine Lines, Inc., 473 F.2d 959, 962 (5th Cir. 1973)*

The fact that procedures were not followed and the requirements of the rules never met, should be sufficient to conclude that the things claimed by Defendants to have occurred, did not occur as a matter of black letter law. There was no pollution of diversity and there was no remand, only fraud upon the Court and a grave miscarriage of justice, impacting the integrity of the judicial process by deliberate poisoning.

**5) Defendants argue that the alleged fraud has already been determined by other federal courts to be frivolous, "fantastical and often nonsensical"**

For this proposition Defendants point to S.D.T.X. No. 4:16-cv-1969, an honest services fraud case, 18 U.S.C. § 1346, brought under the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. § 1961-1968, citing illegal wiretapping[8], extortion[9], conversion,[10] and fraud. Plaintiff Curtis filed the civil RICO complaint [Doc 131-7] when it was obvious where the state probate court was headed. Having read the horror stories of previous visitors to that arena, she filed her

[8] First mentioned in the original complaint filed in this court Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 19 of 28 Para 4 and arising as explained in [Doc 115]

[9] Referring to instruments claiming to alter or amend irrevocable trusts and containing the heinous in Terrorem clause with the corruption of blood provisions and license to steal. Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 20 of 28 Para 4 – The in Terrrorem

[10] Referencing the agreement to convert the above titled cause into "estate of Nelva Brunsting 412249-402" and then into "estate of Nelva Brunsting 412249-401" [Doc 128-1] the event Defendants argue does not represent the disappearance of Plaintiff Curtis federal lawsuit.

federal complaint **without** any fully litigated state court determinations, because she could not buy a substantive evidentiary hearing in Probate Court No. 4.

The Fifth Circuit unanimously held jurisdiction in this case to be in this Court in 2013.[11] There are thirty-two cases citing Curtis v Brunsting 704 F.3d 406, all 100% positive, and yet that opinion has been regarded as equally frivolous and trivial by the Defendants and made unavailable to the Appellant that obtained the favorable opinion by the very Court where the Fifth Circuit confirmed the case did not belong. Plaintiff has been sanctioned twice for filing frivolous pleadings, apparently for using the case style above in a court where it is not, and for seeking relief in this Court. [Doc 131-12 & 131-13]

RICO is the most difficult claim to plead in both state and federal courts and most are dismissed for failure to state a claim. In Curtis et al., vs. Kunz-Freed et al SDTX No. 4:16-cv-1969 the District Court dismissed all claims based on a number of often overlapping grounds that included (1) judicial immunity, (2) attorney immunity, (3) failure to state a claim, and (4) the court's inherent power to dismiss frivolous complaints. All those practicing in probate court know, **or should know**, a pour-over-will avoids probate. In the RICO case all Defendants pled the probate exception:

> *Probate Case: Gregory Lester Doc 83 p.1, Darlene Payne Smith Doc 84 p.9, 10, 13, 14, 16, 17, Jason Ostrom Doc 78 p.1, County Attorneys for Judges Butts & Comstock Doc 53, p2, 16, 30, Steven Mendel Doc 36 p2, 6, Amy Brunsting Doc 35, p.1 (Ghost written), Anita Brunsting Doc 30 p.1, Probate Proceeding County Attorneys for Judges Butts & Comstock Doc 53, p3, 4, 7, 15, 29, Vacek & Freed Doc 20, p.4, 6, 7, Bobbie G. Bayless, Doc 23, p.2, 3, Neal Spielman Doc 40, p.3, Darlene Payne Smith Doc 84, p.8, 10, Probate Matter; County Attorneys for Judges Butts & Comstock Doc 53, p.18 - Doc 79 p.9, 10, 13, 14, 16, 17; Neal Spielman Doc39, p1, 2 - Doc 40, p.1, 2, 3; Jill Young Doc 25, p.3*

[11] Curtis v Brunsting 704. F.3d 406 (2013)

Jill Willard Young also pled Rooker-Feldman[12] in direct violation of 18 U.S.C. § 1001:

> *"In reality, their Complaint is a bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court"*

Plaintiff continues to stand on the same fact claims today, four years later, as stated herein and as stated then in Case 4:16-cv-01969 and Documents 1 and 115 in this Court 4:12-cv-592. Not one issue has been resolved since leaving this court, beginning with what are the valid trust instruments, who are the trustees and what are the affirmative fiduciary duties, if any, and have any of those affirmative fiduciary duties been performed?

Defendants claim to be the trustees but have followed none of the instruments they cling to and have performed no affirmative fiduciary duties. The Brunsting trust is ruptured, dry, passive and naked, being held hostage for a ransom called fees [Exhibit 6], with a demand for capitulation that has escalated to in Terrorem proportions, despite the fact that in a dry trust both legal and equitable title merge in the beneficiary and the trustees' only authority is to transfer the assets to, or as instructed by, the beneficiary[13]. The law does not embrace any of Defendant's conduct nor is it shielded from the eyes of legitimate justice by Rooker-Feldman Doctrines, probate exceptions, latches or limitations.

**6) Defendants argue (3) Plaintiff's efforts to secure relief under Rule 60 are merely an alternate means of "forum shopping" her previously unsuccessful jurisdictional arguments.**

Plaintiff prevailed on her jurisdictional argument in the Fifth Circuit in 2013, Curtis v Brunsting 704 F.3d 406. The probate exception has already been held not to apply in this case. If

[12] Case 4:16-cv-01969 Document 25 Filed in TXSD on 09/15/16 Page 1 of 17
[13] Rife v. Kerr, 513 S.W.3d 601 (Tex. App. 2016); IN RE GOFF, 812 F.2d 931 (5th Cir. 1987); In re Deer, No. 06-02460-NPO, ADV. PROC. 07-00060-NPO (Bankr. S.D. Miss. Mar. 14, 2008)

Defendants were unhappy with the result they obtained, they chose not to pursue certiorari to the Supreme Court. When named as Defendants in the probate court on the same day this Court issued a preliminary injunction, Defendants chose to remain in the state court and now come before this court with the same argument they lost in the Circuit Court in this case and attempt to continue their fraudulent manufacture of a vexatious litigant label by mischaracterizing Plaintiff's pleadings and blending concepts in an effort to legitimize the fraud Ostrom perpetrated on this Court.

The disrespectful tone of Defendant's answer [Doc 131] demonstrates the type of glaring and undeserved hostility Plaintiff Curtis has suffered at the hands of the fiduciary Defendants' attorneys for far too long. The obligations of a trustee under Texas law is "one of the highest fiduciary duties recognized by law"[14] These Defendants and their counsel have shown egregious disrespect for the legal and moral obligations of a fiduciary and the commands of this Court, to a degree that is intolerable.[15]

Even the comment that Remand and Transfer are generally synonymous and arrive at the same destination regardless of how they are used to construct a legal proposition is quite troubling, when this Court made it clear at the injunction hearing that this case was not going to be one of those cases that drag on for years and "*where the attorneys walk away with all the money and the parties walk away broke*". The respite Plaintiff Curtis had in probate court is too much like the ones we see on television. Property claims subject to in rem proceedings, in the instance of the pour-over mandate of an uncontested will, become proceedings in equity, whether by breach of fiduciary or in combination with those of other torts, thus forcing questions of jurisdiction out of probate rem and placing them before a court competent to take unbiased cognizance of fact and

[14] In re Enron Corp. Securities, Derivative "ERISA", 284 F. Supp. 2d 511 (S.D. Tex. 2003) "The Restatement (Second) of Trusts §§ 184, 184" In re Enron Corp. Securities, Derivative "ERISA", 284 F. Supp. 2d 511, 126 (S.D. Tex. 2003)
[15] "Our government teaches the whole people by its example. If the government becomes the law breaker, it breeds contempt for law, it invites every man to become a law unto himself, it invites anarchy." Louis D. Brandeis

law issues in personam, brought by parties in interest, with standing to pursue lawful remedy. When a trustee fails to act for such purposes, legal and equitable titles merge in the beneficiary, a concept that flows from the statute of uses of 1535. Defendants are in wrongful possession of Plaintiff's property and have shown their true intentions are theft, just as Plaintiff Curtis stated in her original 2012 complaint [Doc 1, P. 20].

**Compulsory Counter Claims**

On November 4, 2019, after eight years of abuse at the hands of these Defendants and their absolute refusal to perform a single affirmative fiduciary obligation, Defendants launched their in Terrorem clause scheme[16] in Probate Court 4, by filing what they called "Original Counter Claims" accusing Candace of violating the no-contest clause in the 8/25/2010 QBD/TPA (containing corruption of blood), citing the actions taken by Ostrom and his associate, Nicole Sain-Thornton, in the probate court, where neither Ostrom nor Sain-Thornton filed notice of appearance in compliance with the rules of agency.

CONCLUSION

The action before the Court is not a probate matter, probate case or probate proceeding, but a tort action exclusively related to interference with property rights and the intentional infliction of emotional distress resulting from her sisters' intention to steal her share of the family trust, Curtis v Brunsting 704 F.3d 406 (Jan 2013).

Since the May 2014 deceptive removal of her cause, no substantive issues have been properly heard. Not a single finding of fact or evidenced conclusion of law or even witness

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testimony is found in the record. By the time the repeated insults and bullying had evolved to a scheme to sanction her as a vexatious litigant, Curtis secured counsel.

Upon sufficient reading, Counsel found that Curtis had no case in probate court, had no avenue to remedy by appeal, yet whose property was being held for an attorney fees ransom. Counsel is compelled to abstain from further participation in Probate Court No. 4 and pursue just remedy in the only Court of competent jurisdiction available.

In view of current on-going machinations by defendants in Probate Court 4, Counsel would urge this Court to take judicial notice of the attached exhibits and act precipitously to prevent further injury, which appears to Counsel to be imminent, absent said requested action to reopen this case.

**Jurisdiction is in this Court**

No involuntary plaintiff was served with summons. Diversity was not polluted. The record was not transferred. The above styled cause, *Candace Louise Curtis vs. Anita Brunsting, Does 1-100, Amy Ruth Brunsting* is not now nor has it ever been in a state probate court, nor has any state probate court docket sheet ever identified federal Plaintiff Curtis as a Plaintiff.

Defendants insist this Court has no business enforcing the preliminary injunction issued by this Court, [Doc 45] while Defendants have squandered more than $147,000 in tax liabilities alone, as a direct result of their absolute refusal to distribute income to the five income beneficiaries as commanded in the preliminary injunction. In a desperate attempt to get these Defendants to recognize the authority of this Court, Plaintiff registered the injunction as a foreign judgment in the Harris County District Court which, in and of itself is merely a notice that makes the judgment enforceable within the state but asks for no specific relief. Defendants use this registration as if it were a new lawsuit in effort to add another arrow to their vexatious litigant quiver. Their reaction

was to file a motion to transfer, original answer and motion for sanctions so insolent and insulting to the dignity and authority of this Honorable Court, they must be included in this brief [Exhibits 7, 8].

> *"Given the history of Plaintiff's ill-advised, ill-conceived, contemptuous and sanctionable conduct in connection with and/or related to the Trust, including antics that have been described by other Justices as "fantastical", "nonsensical", "frivolous" and "implausible"* [1]*, the omission of "venue" facts and allegations is likely due to Plaintiff's historically-confirmed practice of filing pleadings in violation of Sections 9.012, 10.004 of the Texas Civil Practice and Remedies Code and/or Rule 13 of the Texas Rules of Civil Procedure,"*

All of this raises the issue of 28 U.S.C. § 1927 sanctions. Even after having been directed by this Court to make real, by depositing income, the claims in Defendant Amy Brunsting's March 6, 2012 affidavit, [Doc 10-1] that personal asset trusts had been set up for the beneficiary, no division into shares has ever occurred and the total economic losses resulting from the shenanigans described to date are difficult to quantify because they are so overwhelming.

## RELIEF SOUGHT

First filed Plaintiff Candace L. Curtis respectfully moves this Court to reopen the above cause for further proceedings without further delay and to issue Orders to the Defendants to appear and show cause why they should not be held in contempt and sanctioned accordingly.

## CERTIFICATE OF CONFERENCE

Plaintiff/Petitioner has conferred with opposing counsel and they are adamantly opposed to this Court continuing where it left off six years ago. Defendants and their counsel would prefer to hold Plaintiff's property hostage until Plaintiff capitulates to their fee demands or they get a disinheritance decree against the beneficiary for demanding the surrender of property in which the Defendant trustees are in wrongful possession.

PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of this instrument was electronically filed with the United States District Court for the Southern District of Texas to be served via electronic means by the clerk though the ECF system as follows:

Respectfully submitted

Candice Schwager

| | | |
|---|---|---|
| Candace Louise Curtis<br>*Added: 02/27/2012*<br>*(Plaintiff)* | represented by | **Candice Lee Schwager**<br>Schwager Law Firm<br>2210 Village Dale Ave<br>Houston, TX 77059<br>United States<br>832-315-8489<br>713-456-2453 (fax)<br>schwagerlawfirm@live.com<br>*Assigned: 07/17/2020*<br>*LEAD ATTORNEY*<br>*ATTORNEY TO BE NOTICED* |
| Anita Kay Brunsting<br>*Added: 02/27/2012*<br>*(Defendant)* | represented by | Stephen A Mendel<br>The Mendel Law Firm L.P.<br>1155 Dairy Ashford<br>Ste 104<br>Houston, TX 77079<br>281-759-3213<br>281-759-3214 (fax)<br>steve@mendellawfirm.com<br>*Assigned: 08/13/2020*<br>*ATTORNEY TO BE NOTICED* |
| Amy Ruth Brunsting<br>Added: 02/27/2012<br>(Defendant) | represented by | Stephen A Mendel<br>The Mendel Law Firm L.P.<br>1155 Dairy Ashford<br>Ste 104<br>Houston, TX 77079<br>281-759-3213<br>281-759-3214 (fax)<br>steve@mendellawfirm.com<br>*Assigned: 08/13/2020*<br>*ATTORNEY TO BE NOTICED* |

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>Plaintiff, | § | Civil Action 4-12-cv-00592 |
| v | § | Petitioner's Declaration in Support of |
| ANITA KAY BRUNSTING<br>Does 1-100<br>AMY RUTH BRUNSTING<br>Defendants | § | Emergency Motion to Reopen Docket<br><br>28 U.S.C. § 1746[1] |

PETIONER CANDACE L. CURTIS' AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION TO REOPEN DOCKET

The undersigned does herein declare and state as follows:

My name is Candace Louise Curtis. I am beyond the age of majority and reside in Napa County, California. I suffer no legal disabilities and have personal knowledge of the facts set forth herein, and, if called as a witness, could testify completely thereto.

I declare and state under penalty of perjury that, to the best of my knowledge and belief, the information presented herein is true, correct, accurate and complete and that the statements of fact contained in my Rule 60 Motion [Doc 128] and in my Emergency Motion to Reopen the Docket are also true and correct and based upon personal knowledge.

With my signature below, I verify and reaffirm under penalty of perjury that all of the fact allegations previously made by me before this Honorable Court are true and correct as stated.

Respectfully submitted,

Candace L. Curtis August 23, 2020

[1] Although an unsworn affidavit is incompetent to raise a fact issue precluding summary judgment, the statutory exception in 28 U.S.C. § 1746 permits unsworn declarations to substitute for an affidavit if made "under penalty of perjury" and verified as "true and correct."




Welcome RikMunson STAN STANART Logout | Edit Profile | Change Password

Courts Property Records Personal Records Other

# Probate - November 1837 to present

Case Number: 412249-402 Search

Clear

Images available from Jan. 1, 2008 to Present

26 Event Record(s) Found.

Probate - reflect(s) filings accepted through 2016-09-09

Party Name Attorney Last Name First - No Punctuation Search

File Date (From): MM/DD/YYYY (To): MM/DD/YYYY

| Case | Court | File Date | Commenced By | Status | Nature | Style | Location | View All |
|---|---|---|---|---|---|---|---|---|
| 412249 | 4 | 04/02/2012 | Orignal Will | Closed Case | Deposit of Will with NO Application | NELVA E BRUNSTING | | Parties |
| 412249-401 | 4 | 04/09/2013 | Application | OPEN | Declaratory Judgement (Indep.) | NELVA E. BRUNSTING, DECEASED | | Parties |
| 412249-402 | 4 | 02/09/2015 | Petition | OPEN | Motion Pertaining to Lawsuits | | | Parties |

20-20566.2869

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | | | | Only (Indep.) | | | |

| Case | File Date | Event | Comments | Pgs | Document ID |
|---|---|---|---|---|---|
| 412249-402 | 02/09/2015 | Case Initiated - Petition | | 0 | |
| 412249-402 | 02/09/2015 | Motion Pertaining to Lawsuits Only (Indep.) | NOTICE OF FILING OF PLAINTIFF'S ORIGINAL PETITION | 601 | PBT-2015-47608 |
| 412249-402 | 02/09/2015 | Receipts | RECEIPT #1166739 CHARGED $182.00 FOR ENVELOPE #4075218 | 1 | PBT-2015-47611 |
| 412249-402 | 02/09/2015 | Misc. Notice | NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTERFILED PREVIOUSLY ON 2/6/15 | 51 | PBT-2015-47630 |
| 412249-402 | 02/09/2015 | Receipts | RECEIPT# 1166586 CHARGED $27.00 FOR ENVELOPE NUMBER 40506979 | 1 | PBT-2015-47634 |
| 412249-402 | 02/10/2015 | Amended | NOTICE OF FILING OF PLAINTIFFS FIRST AMENDED PETITION | 12 | PBT-2015-47716 |
| 412249-402 | 02/10/2015 | ELECTRONIC FILING FEE | | 0 | |
| 412249-402 | 02/11/2015 | ELECTRONIC FILING FEE | | 0 | |
| 412249-402 | 02/11/2015 | Notice of Hearing | | 2 | PBT-2015-48491 |
| 412249-402 | 02/11/2015 | Receipt# 1167156 generated for the amount of $ 2.00 | | 0 | |
| 412249-402 | 02/12/2015 | ELECTRONIC FILING FEE | | 0 | |
| 412249-402 | 02/12/2015 | Demand for a Jury | | 0 | |
| 412249-402 | 02/12/2015 | Amended | PLAINTIFF'S SECOND AMENDED PETITION | 8 | PBT-2015-49977 |
| 412249-402 | 02/12/2015 | Misc. Notice | NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER | 51 | PBT-2015-50259 |

20-20566.2870

| Case | File Date | Event | Comments | Pgs | Document ID |
|---|---|---|---|---|---|
| 412249-402 | 02/12/2015 | ELECTRONIC FILING FEE | | 0 | |
| 412249-402 | 02/12/2015 | Receipt# 1167371 generated for the amount of $ 2.00 | | 0 | |
| 412249-402 | 02/12/2015 | ELECTRONIC FILING FEE | | 0 | |
| 412249-402 | 02/12/2015 | Application for Continuance | | 5 | PBT-2015-50464 |
| 412249-402 | 02/13/2015 | Receipt# 1167788 generated for the amount of $ 4.00 | | 0 | |
| 412249-402 | 02/13/2015 | Receipt# 1167789 generated for the amount of $ 25.00 | | 0 | |
| 412249-402 | 02/13/2015 | Receipt# 1167800 generated for the amount of $ 24.00 | | 0 | |
| 412249-402 | 02/13/2015 | ELECTRONIC FILING FEE | | 0 | |
| 412249-402 | 02/13/2015 | Receipt# 1168038 generated for the amount of $ 2.00 | | 0 | |
| 412249-402 | 02/17/2015 | ELECTRONIC FILING FEE | | 0 | |

| Case | File Date | Event | Comments | Pgs | Document ID |
|---|---|---|---|---|---|
| 412249-402 | 02/17/2015 | Misc. Notice | CHANGE OF NAME AND ADDRESS | 2 | PBT-2015-56703 |
| 412249-402 | 02/18/2015 | Receipt# 1168909 generated for the amount of $ 2.00 | | 0 | |

20-20566.2872

FILED
3/5/2015 3:21:27 PM
Stan Stanart
County Clerk
Harris County

DATA ENTRY
PICK UP THIS DATE

20150308015 : Pg0002

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.

Christine Butts
JUDGE PRESIDING

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
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Houston, Texas 77057
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Candace Curtis

BY: _____

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2931 Ferndale
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713.522.2224
713.522.2218 (Facsimile)

Attorney for Drina Brunsting, Attorney in Fact
for Carl Brunsting

BY: _____

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(TBA #18643525)
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713.752.8640
713.425.7945 (Facsimile)

Attorney for Carole Brunsting

03092015:0815:P0004

APPROVED AS TO FORM:

ostrommorris, PLLC

BY: _____

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jason@ostrommorris.com
R. KEITH MORRIS, III
(TBA #24032879)
keith@ostrommorris.com
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713.863.8891
713.863.1051 (Facsimile)

Attorneys for Candace Curtis

BY: _____

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713.522.2224
713.522.2218 (Facsimile)

Attorney for Drina Brunsting, Attorney in Fact
for Carl Brunsting

BY: _____

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713.425.7945 (Facsimile)

Attorney for Carole Brunsting

03092015:0815:P0005

BY: _____

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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

**Subject:** Fw: [Ext] Fw: Case 412249-401
**From:** Candace Curtis <occurtis@sbcglobal.net>
**Date:** 1/28/2019, 12:09 PM
**To:** Rik Munson <blowintough@att.net>
**X-Account-Key:** account1
**X-UIDL:** AOTJtu1ipL7CXE9heQWRyJhb4WU
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**X-Mozilla-Status2:** 00000000
**X-Apparently-To:** blowintough@att.net; Mon, 28 Jan 2019 20:09:29 +0000
**Return-Path:** <occurtis@sbcglobal.net>
**Received-SPF:** none (domain of sbcglobal.net does not designate permitted sender hosts)
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**Message-ID:** <1675116006.2539264.1548706161818@mail.yahoo.com>
**In-Reply-To:** <DB7PR04MB4204B4992310D3936E95998E90960@DB7PR04MB4204.eurprd04.pr
**References:** <1476604750.2191235.1546550194181.ref@mail.yahoo.com> <1476604750.2191235.1
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**X-Mailer:** WebService/1.1.13027 YMailNorrin Mozilla/5.0 (Windows NT 6.3; Win64; x64; rv:64.0)
**Content-Length:** 14906

----- Forwarded Message -----
**From:** Carole Brunsting <CBrunsting@cameron.slb.com>
**To:** occurtis@sbcglobal.net <occurtis@sbcglobal.net>
**Sent:** Monday, January 28, 2019, 10:58:32 AM PST
**Subject:** FW: [Ext] Fw: Case 412249-401

On Friday, January 4, 2019, 11:16:04 AM CST, Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net> wrote:

Dear Ms. Brunsting,

Of course I remember you and I appreciate any efforts to resolve this case.

I apologize for the delay in response. I needed time to review the record to answer your question.

The -402 was initially established 2/7/2015 by Candace Curtis/Jason Ostrom with the filing of a Notice of Filing of Original Petition from the Federal District Court upon remand by that court.

In the -402, no motion for consolidation appears to be of record.

The unsigned order you emailed was filed in the -401 on 3/5/2015 as an Agreed Order to Consolidate Cases.

Although this was an agreed order, there was no application to consolidate the cases filed of record.

I cannot explain why this agreed order was not signed at that time.

Often orders that are filed without a motion attached were not circulated to the court and, at that time, we had a different filing system.

So, the answer to your question is no, that order does not appear to have been signed, therefore the cases were not ordered to be consolidated.

If you need additional information, please do not hesitate to contact me.

Regards,

Clarinda Comstock

Associate Judge

Harris County Probate Court 4

Clarinda.comstock@prob.hctx.net

832-927-1404

Schlumberger-Private

**From:** Carole Brunsting <cbrunsting@sbcglobal.net>
**Sent:** Thursday, January 3, 2019 3:17 PM
**To:** Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net>
**Subject:** Case 412249-401

Judge Comstock,

I am a Pro Se litigant in Case-No 412249-401 and have never missed a hearing. This case has been in Probate Court 4 for many years.

The issue I am writing to you about today is regarding the consolidation of cases 412249-402 and 412249-401. Did Judge Butts ever sign off on this consolidation? I am attaching a copy of the unsigned document that I found online. Could you please provide me the information that I would need to show that either this case was consolidated or not consolidated.

Thank you so much for your help and please let me know if you need any other information.

Regards,

Carole Brunsting

**Subject:** Re: Fw: 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases
**From:** Rik Munson <blowintough@att.net>
**Date:** 1/28/2019, 10:11 AM
**To:** Candace Curtis <occurtis@sbcglobal.net>
**X-Mozilla-Status:** 0001
**X-Mozilla-Status2:** 00800000
**References:** <7FC97DF7232FCD4D89C264D7C8A73F530F0DB0AE@SVPITCXMX06.hc.hctx.ne
<CY4PR20MB1991F5A1110110A32BC4A26BA09B0@CY4PR20MB1991.namprd20.prod.outlook
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<1164552120.2425491.1548698717809@mail.yahoo.com>
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**User-Agent:** Mozilla/5.0 (Windows NT 6.1; WOW64; rv:60.0) Gecko/20100101 Thunderbird/60.4.0
**MIME-Version:** 1.0
**In-Reply-To:** <1164552120.2425491.1548698717809@mail.yahoo.com>
**Content-Type:** multipart/mixed; boundary="------------7461511273681F0FB6C619C2"
**Content-Language:** en-US

On 1/28/2019 10:05 AM, Candace Curtis wrote:

> ----- Forwarded Message -----
> **From:** Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net>
> **To:** Bobbie Bayless <bayless@baylessstokes.com>; Carole Brunsting <cbrunsting@sbcglobal.net>; nspielman@grifmatlaw.com <nspielman@grifmatlaw.com>; Foley, Zandra <zfoley@thompsoncoe.com>; Candace Curtis <occurtis@sbcglobal.net>; Reed, Cory <CReed@thompsoncoe.com>; Steve Mendel <steve@mendellawfirm.com>
> **Sent:** Monday, January 28, 2019, 9:38:27 AM PST
> **Subject:** RE: 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases
>
> Our clerk just informed me that the order was in the paper file, but had not been scanned.
>
> She has arranged for scanning and it should be available on line soon.
>
> Thank you for bringing this to my attention and apologies for any inconvenience.
>
> Regards,
>
> Clarinda Comstock

20-20566.2882

Associate Judge

Harris County Probate Court 4

Clarinda.comstock@prob.hctx.net

832-927-1404

---

**From:** Comstock, Clarinda (Probate Courts)
**Sent:** Friday, January 25, 2019 5:01 PM
**To:** 'Bobbie Bayless' <bayless@baylessstokes.com>
**Subject:** RE: 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases

Thank you. I have asked our Clerk to investigate the whereabouts of the original order. I will let you know as soon as I know something more.

Thank you for bringing this back around to my attention.

Regards,

Clarinda Comstock

Associate Judge

Harris County Probate Court 4

Clarinda.comstock@prob.hctx.net

832-927-1404

---

**From:** Bobbie Bayless <bayless@baylessstokes.com>
**Sent:** Friday, January 25, 2019 3:40 PM
**To:** Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net>
**Subject:** FW: 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases

Judge Comstock—In trying to figure out what might have happened to this consolidation order, I ran across this email where you circulated it to the parties. I thought it might help if you are trying to locate it.

---

**From:** Comstock, Clarinda (Probate Courts) [mailto:Clarinda.Comstock@prob.hctx.net]
**Sent:** Monday, March 16, 2015 1:57 PM
**To:** Jason Ostrom; Bobbie Bayless; Darlene Smith; brad@mendellawfirm.com; nspielman@grifmatlaw.com
**Subject:** 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases

Attached is the signed Order to Consolidate Cases in this matter into the -401.

Clarinda Comstock

Associate Judge

Harris County Probate Court Four

7th Floor, 201 Caroline

Houston, TX 77002

713-368-6767

--
Rik Munson
probatemafia.com
Exposing color of law organized crime

Attachments:

| | |
|---|---|
| 2015-03-05 Case 412249-401 PBT-2015-76288 Agreed Order to Consolidate cases.pdf | 376 KB |

**Subject:** RESPONSE FROM AN ATTORNEY

**From:** Carole Brunsting (cbrunsting@sbcglobal.net)

**To:** occurtis@sbcglobal.net;

**Date:** Thursday, December 29, 2016 6:56 AM

Dear Ms. Brunsting:

As you know, our firm represents your sister, Anita Brunsting, in her capacity as co-trustee of the trust. We are sending this response to you on the assumption that you continue to represent yourself, as we are not aware of any attorney taking over your representation since you separated from the Crain Caton law firm.

We received your request for a distribution and the request is denied. The reasons for denial include, but are not limited to, your articulated reasons are insufficient, Ms. Curtis's allegations in the probate litigation, and the estate's need to maintain liquidity for incurred debt.

We understand that you believe the probate court ordered that distributions be made for the reasons that you claimed. We are unaware of such an order. If you believe the probate court issued such a ruling, then please provide a copy of same.

Best wishes.

Very truly yours,
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
steve@mendellawfirm.com

7/6/2020 2:33 PM
Marilyn Burgess - District Clerk Harris County
Envelope No. 44268530
By: Devanshi Patel
Filed: 7/6/2020 2:33 PM

CAUSE NO. 2020-35401

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | § | IN THE DISTRICT COURT OF |
| | § | |
| VS. | § | HARRIS COUNTY, TEXAS |
| | § | |
| ANITA KAY BRUNSTING AND | § | |
| AMY RUTH BRUNSTING | § | 151st JUDICIAL DISTRICT |

**MOTION TO TRANSFER, ORIGINAL ANSWER AND MOTION FOR CONTEMPT AND SANCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, AMY RUTH BRUNSTING and ANITA KAY BRUNSTING (who, while apparently sued in their individual capacities, are actually the co-trustees of The Brunsting Family Living Trust, which itself is the subject of several proceedings currently pending in Probate Court No. 4 of Harris County, Texas), and file this, their Motion to Transfer, Original Answer and Motion for Contempt and Sanctions. In support, Defendants would show unto this Court the following:

## I. PREFATORY STATEMENT

The Houston 14th Court of Appeals decided that venue statutes apply to the Texas Civil Practice and Remedies Code's Uniform Enforcement of Foreign Judgments Act ("UEFJA"). *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 741-42 (Tex. App.–Houston [14th Dist.] 2008, pet. denied). In fact, it was determined that a motion to transfer venue can be filed as soon as a foreign judgment is ***properly filed*** in a Texas Court. *See Cantu,* 251 S.W.3d at 741. [Emphasis Added].

Meanwhile, our well-established "due order of pleading" rules require a defendant to file a motion to transfer venue after a special appearance (if any) and before or along with any other pleading or motion. Tex. R. Civ. P. 86(1), 120a(1); *see Massey v. Columbus State Bank*, 35 S.W.3d 697, 700 (Tex. App.–Houston [1st Dist.] 2000, pet. denied.). Therefore, it would appear that before

a defendant can address issues indicating that an alleged foreign judgment has been ***improperly filed*** in a Texas Court, the defendant must, out of an abundance of caution, first proceed with a motion to transfer venue.

In following this presumed order of pleadings, it is not Defendants intent to admit or waive, nor should they be construed as admitting or waiving, that the alleged "foreign judgment" underlying Plaintiff's Petition to Enforce Foreign Judgment is actually a judgment (foreign or otherwise) and/or that it has been properly filed. Additionally, neither Defendant accepts, agrees or acknowledges Plaintiff's description of herself as a "judgment creditor" or her description of Defendants, whether in their individual or trustee capacities, as "judgment debtors."

## II. MOTION TO TRANSFER

Plaintiff's Petition to Enforce Foreign Judgment contains no facts or allegations that support "venue" in the District Courts of Harris County, Texas being proper. Given the history of Plaintiff's ill-advised, ill-conceived, contemptuous and sanctionable conduct in connection with and/or related to the Trust, including antics that have been described by other Justices as "fantastical", "nonsensical", "frivolous" and "implausible" [1], the omission of "venue" facts and allegations is likely due to Plaintiff's historically-confirmed practice of filing pleadings in violation of Sections 9.012, 10.004 of the Texas Civil Practice and Remedies Code and/or Rule 13 of the Texas Rules of Civil Procedure[2], and/or as something of a "collateral attack" on Probate Court No. 4's prior rulings regarding its jurisdiction of and over the Brunsting Family Limited Trust (and other) matters **currently pending** in Probate Court No. 4, including without limitation,

[1] See Exhibit 1 – Orders/Opinions from the United States District Court for the Southern District of Texas – Houston Division and from the United States Court of Appeals – 5th Circuit;
[2] See Exhibit 2 – Order Granting Motion for Contempt and Sanctions.

Probate Court No. 4's prior denial of Plaintiff's prior efforts to enforce the ***Preliminary Injunction*** Plaintiff seeks to domesticate.[3]

The alleged "foreign judgment" Plaintiff seeks to domesticate is a ***Preliminary Injunction*** issued in regard to the Brunsting Family Living Trust. It was issued in April 2013 when Plaintiff's trust-related claims and causes of action were pending in the United States District Court for the Southern District of Texas – Houston Division.[4] Those claims remained pending within the United States District Court systems until May 2014 when Plaintiff filed a Motion to Remand those claims to Probate Court No. 4 of Harris County Texas.[5]

Via the Motion to Remand, Plaintiff requested that the Court "*(a) remand this cause of action to Harris County Probate Court Number Four to be consolidated into Cause Number 412,249…*" because "*diversity jurisdiction will be destroyed via the First Amended Petition and because similar issues of fact and law are pending before Harris County Probate Court Number Four.*" The Court honored Plaintiff's request, signing an Order Granting Plaintiff's Motion to Remand on or about May 15, 2015. [6]

Thereafter, Plaintiff filed her Motion to Enter Transfer Order in Probate Court No. 4, and consistent with Plaintiff's request, Probate Court No. 4 subsequently signed an Order of Transfer accepting the Order Granting Plaintiff's Motion to Remand. In doing so, Probate Court No. 4 ordered that the pleadings and orders filed and entered in the remanded proceeding are "*transferred to this Court to be held under Cause Number 412,249-401.*" The transferred pleadings and orders

[3] Exhibit 3 – Order Denying Pleas and Motions filed by Candace Curtis
[4] Case No. 4:12-cv-00592; *Candace Louise Curtis vs. Anita Kay Brunsting, and Amy Ruth Brunsting, and Does 1-100*
[5] Exhibit 4 – Motion to Remand
[6] Exhibit 5 – Order Granting Plaintiff's Motion to Remand

include the ***Preliminary Injunction*** upon which Plaintiff's Petition to Enforce Foreign Judgment is based.

Following the remand and transfer, Plaintiff filed Plaintiff's Second Amended Petition in Probate Court No. 4. On information and belief, this remains her live pleading. Cause Number 412,249-401, as well as other matters involving or relating to the Brunsting Family Living Trust, remain open and pending on Probate Court No. 4's docket.

A statutory probate court, such as Probate Court No. 4, has ***exclusive*** jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts. *See,* Trust (Property) Code §115.001(d). [Emphasis Added]. Probate Court No. 4 has confirmed its jurisdiction over the Brunsting Family Living Trust and dismissed Plaintiff's various attacks on its jurisdiction. Plaintiff's conduct in this regard has been so egregious that she has been found in contempt of court and sanctioned.

Considering the above and foregoing, there are a variety of perspectives this Court may employ as a basis for transferring this matter to Probate Court No. 4, including without limitation:

- The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on a statutory probate court. (Trust (Property) Code §115.001(d));
- Venue of an action under Section 115.001 of the Trust Code is proper where the situs of administration of the trust is maintained, i.e., Probate Court No. 4. (Trust (Property) Code §115.002(b-1);
- Matters related to "probate proceedings" may be transferred to a statutory probate court from any other district, county or statutory court. Estates Code §34.001(a);
- A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy. Estates Code §32.001(b);
- Venue (of a trust proceeding) may be transferred for the convenience of the parties and witnesses. (Trust (Property) Code §115.002(d), (e);

- Determination of Plaintiff's Petition to Enforce Foreign Judgment by this Court would result in a violation of Texas' "one judgment" rule and/or result in unreasonable duplication or proliferation of litigation.

In light of the issues described above, Defendants respectfully request that Plaintiff's Petition to Enforce Foreign Judgment be transferred to Probate Court No. 4 (Cause No. 412,249-401.

## III. ORIGINAL ANSWER/MOTION TO VACATE

As authorized by Rule 92 of the Texas Rules of Civil Procedure, Defendants enter a general denial of the matters pled by Plaintiffs and respectfully requests the Court require Plaintiff to prove her charges, claims and allegations by a preponderance of the evidence, clear and convincing evidence, and/or in compliance with any other burden of proof/legal standard applicable to Plaintiff's Petition to Enforce Foreign Judgment (including without limitation, the UEFJA), as are or may be required by the Constitution and/or the laws of the State of Texas.

By way of further answer, and/or in the alternative to Defendants' Answer, to the extent it is now, or is ever in the future determined that Plaintiff has filed a final, valid and subsisting judgment, then it Defendants' intent that this filing, in its totality, be considered and construed as a Motion to Vacate and/or a Motion to Stay Enforcement pursuant to Section 35.006 of the Texas Civil Practice and Remedies Code.

## IV. MOTION FOR CONTEMPT AND SANCTIONS

### A. Civil Contempt

Contempt of court is an appropriate means to enforce a court's civil order. V.T.C.A., C.P. &R., § 31.002(c). *Ex Parte Johnson,* 654 S.W.2d 415 (Tex. 1983). The contempt powers of the court are generally addressed by V.T.C.A., Government Code § 21.002. That section allows a court to punish a contemnor by a fine of not more than $500 and/or confinement to the county jail

for not more than six months. The purpose of civil contempt is remedial and coercive in nature. A judgment of civil contempt exerts the judicial authority of the court to persuade the contemnor to obey some order of the court where such obedience will benefit an opposing litigant. *Ex Parte Werblud*, 536 S.W.2d 542, 545 (Tex. 1976).

For the reasons discussed herein, Defendants request that the Court find that Plaintiff has again violated Probate Court No. 4's Order Denying Pleas and Motions filed by Candace Curtis via this Petition to Enforce Foreign Judgment. Defendants request that Plaintiff be fined in the maximum amount available at law and that she continue to be held in contempt of court until such fine is paid.

**B. Sanctions**

Most sanctions are imposed under the authority of a specific statute or rule that permits a court to order sanctions. However, sanctions may also be imposed via a court's inherent power. *See In re Bennet*, 960 S.W.2d 35, 40 (Tex. 1997); *see also Remington Arms Co. v. Caldwell*, 850 S.W.2d 167, 172 (Tex. 1993). This power allows a court to impose sanctions for abuses of the judicial process not covered by rule or statute, or as necessary to aid in exercise of jurisdiction, administration of justice, and preservation its independence and integrity.

Based on the circumstances described above, Defendants request that this Court sanction Plaintiff and Plaintiff's counsel, whether on its own initiative and/or under CPRC §9.012, CPRC §10.004 and/or TRCP 13. Plaintiff, as condoned by Plaintiff's counsel, once again evidences an intent to harass, delay and increase the costs of litigation. Moreover, Plaintiff (and Plaintiff's counsel) have filed false, inaccurate pleadings and affidavits in an effort to mislead this Court, and in violation of the procedures and protocols set out in the UEFJA.

## V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants, AMY RUTH BRUNSTING and ANITA KAY BRUNSTING (who, while apparently sued in their individual capacities, are actually the co-trustees of The Brunsting Family Living Trust, which itself is the subject of several proceedings currently pending in Probate Court No. 4 of Harris County, Texas) request that the matters addressed herein be set for hearing, and after that hearing order that this matter is transferred to Probate Court No. 4; is vacated; is stayed; that Plaintiff is in contempt of court; and/or that Plaintiff and Plaintiff's counsel are sanctioned. Defendants also request that Defendants request that they be granted/awarded all other relief to which they may be entitled.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: /s/ *Neal E. Spielman*

NEAL E. SPIELMAN
Texas State Bar No. 00794678
nspielman@grifmatlaw.com
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124 - Phone
281.870.1647 - Facsimile

*ATTORNEYS FOR AMY BRUNSTING*

THE MENDEL LAW FIRM, L.P.

BY: /s/ *Stephen A. Mendel*

STEPHEN A. MENDEL
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O: 281-759-3213
F: 281-759-3214
E: steve@mendellawfirm.com

*ATTORNEYS FOR ANITA BRUNSTING*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 6th day of July 2020, to all counsel of record/pro se parties via E-file and/or direct e-mail.

Attorney for Candace Louise Curtis:

Candice L. Schwager
Schwager Law Firm
1417 Ramada Drive
Houston, Texas 77062
***Via E-Mail: candiceschwager@icloud.com***

Attorneys for Anita Kay Brunsting:

Steve Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
***Via E-Mail: steve@mendellawfirm.com***

BY: /s/ *Neal E. Spielman*
NEAL E. SPIELMAN

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 REGARDING**
**AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT**

On the 28th day of June 2019, the Court considered Amy Brunsting's Motion for Sanctions and/or Contempt (the "Motion") pertaining to the conduct of Candace Louise Curtis ("Curtis"). In considering the Motion, the Court also considered Curtis' response of June 11, 2019, entitled "Response to the Fiduciary's Application for the Beneficiary to be Held in Contempt for Seeking to Enforce the Injunction Commanding the Trustee to Perform a Fiduciary Duty Owed to the Beneficiary with Petition for Partial Summary or Declaratory Judgment" ("Curtis's Response"). The Court also heard oral argument from the parties.

After considering the Motion, Curtis's Response and oral argument, the Court FINDS that it has jurisdiction of this proceeding; that the Motion has MERIT and is in all respects proper and sufficient; that Curtis was properly served and received proper notice of the proceeding; and that the Motion should be and is GRANTED. Therefore:

1. The Court FURTHER FINDS and ORDERS that Curtis is in CONTEMPT of the Court's Order of February 14, 2019 for the reasons presented in the Motion, including without limitation, via her March 20, 2019 and April 12, 2019 filings in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592, a matter confirmed as having been closed, remanded and terminated;

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 Program, Registry No. 28190 at 201 Caroline, 8th Floor, Room 800 Houston TX 77002 on or before the 1st day of September 2019;

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 1st 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 31st 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:

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One Riverway, Suite 1400
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***Via E-Mail: creed@thompsoncoe.com***

Candace Louise Curtis – Pro Se:

Candace Louise Curtis
***Via E-Mail: occurtis@sbcglobal.net***

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
***Via E-Mail: bayless@baylessstokes.com***

Carole Ann Brunsting – Pro Se:

Carole Ann Brunsting
***Via E-Mail: cbrunsting@sbcglobal.net***

Attorneys for Anita Kay Brunsting:

Steve Mendel/Tim Jadloski
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1155 Dairy Ashford, Suite 104
Houston, Texas 77079
***Via E-Mail: steve@mendellawfirm.com***
***tim@mendellawfirm.com***

NEAL E. SPIELMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>and<br>CARL BRUNSTING,<br><br>Plaintiffs,<br>VS.<br><br>ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, *et al*,<br><br>Defendants. | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | CIVIL ACTION NO. 4:12-CV-00592 |

**NOTICE OF SETTING**

The parties are hereby notified that a status conference regarding the plaintiff's exparte motion for relief (Dkt. No. 128) is set for **September 10, 2020 at 9:00 a.m.** and will be handled as a telephone conference. The parties are directed to contact the Court at the number provided in order to participate in the conference call.

Conference number: **713-250-5126**

Conference ID: **45126#**

Conference Password: **13579#**

Date: September 3, 2020

DAVID BRADLEY, CLERK

By: C. Horace, Case Manager to
Judge Kenneth M. Hoyt



20-20566.2898

AO 435
(Rev. 04/18)

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

# TRANSCRIPT ORDER

*Please Read Instructions:*

**FOR COURT USE ONLY**

**DUE DATE:**

| | | | |
|---|---|---|---|
| 1. NAME<br>STEPHEN A. MENDEL | 2. PHONE NUMBER<br>(281) 759-3213 | 3. DATE<br>9/10/2020 | |
| 4. DELIVERY ADDRESS OR EMAIL<br>STEVE@MENDELLAWFIRM.COM | 5. CITY<br>HOUSTON | 6. STATE<br>TX | 7. ZIP CODE<br>77079 |
| 8. CASE NUMBER<br>4:12-CV-00592 | 9. JUDGE<br>KENNETH M. HOYT | DATES OF PROCEEDINGS<br>10. FROM 9/10/2020 | 11. TO 9/10/2020 |
| 12. CASE NAME<br>CURTIS V. ANITA & AMY BRUNSTING, ET AL. | | LOCATION OF PROCEEDINGS<br>13. CITY HOUSTON | 14. STATE TEXAS |

15. ORDER FOR

☐ APPEAL ☐ CRIMINAL ☐ CRIMINAL JUSTICE ACT ☐ BANKRUPTCY

☐ NON-APPEAL ☒ CIVIL ☐ IN FORMA PAUPERIS ☐ OTHER

16. TRANSCRIPT REQUESTED (Specify portion(s) and date(s) of proceeding(s) for which transcript is requested)

| PORTIONS | DATE(S) | PORTION(S) | DATE(S) |
|---|---|---|---|
| ☐ VOIR DIRE | | ☐ TESTIMONY (Specify Witness) | |
| ☐ OPENING STATEMENT (Plaintiff) | | | |
| ☐ OPENING STATEMENT (Defendant) | | | |
| ☐ CLOSING ARGUMENT (Plaintiff) | | ☐ PRE-TRIAL PROCEEDING (Spcy) | |
| ☐ CLOSING ARGUMENT (Defendant) | | | |
| ☐ OPINION OF COURT | | | |
| ☐ JURY INSTRUCTIONS | | ☒ OTHER (Specify) | |
| ☐ SENTENCING | | FULL TRANSCRIPTS | 09/10/2020 |
| ☐ BAIL HEARING | | REQUESTED | |

17. ORDER

| CATEGORY | ORIGINAL (Includes Certified Copy to Clerk for Records of the Court) | FIRST COPY | ADDITIONAL COPIES | NO. OF PAGES ESTIMATE | COSTS |
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| HOURLY | ☒ | ☐ | NO. OF COPIES | | |
| REALTIME | ☐ | ☐ | | | |

CERTIFICATION (18. & 19.)
By signing below, I certify that I will pay all charges (deposit plus additional).

ESTIMATE TOTAL 0.00

18. SIGNATURE

PROCESSED BY

19. DATE
9/10/2020

PHONE NUMBER

TRANSCRIPT TO BE PREPARED BY

COURT ADDRESS

| | DATE | BY |
|---|---|---|
| ORDER RECEIVED | | |
| DEPOSIT PAID | | |
| TRANSCRIPT ORDERED | | |
| TRANSCRIPT RECEIVED | | |
| ORDERING PARTY NOTIFIED TO PICK UP TRANSCRIPT | | |
| PARTY RECEIVED TRANSCRIPT | | |

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| DEPOSIT PAID | |
| TOTAL CHARGES | 0.00 |
| LESS DEPOSIT | 0.00 |
| TOTAL REFUNDED | |
| TOTAL DUE | 0.00 |

**DISTRIBUTION:** COURT COPY TRANSCRIPTION COPY ORDER RECEIPT ORDER COPY

20-20566.2899

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis, et al.

Plaintiff,

v.

Case No.: 4:12−cv−00592
Judge Kenneth M. Hoyt

Anita Kay Brunsting, et al.

Defendant.

# Official Transcript Filed

An official transcript has been filed. It may contain information protected from public disclosure by law. *See* E−Government Act of 2002, Fed. R. Civ. P. 5.2(a) or Fed. R. Crim. P. 49.1(a).

Ninety days after a transcript has been filed, it will be electronically available to the public on PACER. To comply with the rules on privacy, the parties must redact protected information before it is available on PACER.

If redaction is needed, the parties must file a statement listing the items to be redacted, with the transcript's docket number and the item's location by page and line. It must be filed within 21 days of the transcript being filed. A suggested form is at www.txs.uscourts.gov.

Only these portions of data may be visibile:

- Last four digits of a social security number or taxpayer identification number;
- Year of a person's birth;
- Initials of a minor's name;
- Last four digits of an account number; and
- City and state of a home address in criminal cases.

Additional redactions require a separate motion and court approval.

A party may view the transcript at the public terminals in the clerk's office or buy it through www.txs.uscourts.gov or by calling (713) 250−5500 . A party is only responsible for reviewing the:

- Opening and closing statements made for his party;
- Statements by his party;
- Testimony of witnesses called by his party; and
- Other parts ordered by the court.

Redaction is your responsibility. The court, clerk, court reporter, or transcriber will not review this transcript for compliance.

*David J. Bradley*, Clerk

United States District Court
Southern District of Texas
**ENTERED**
September 30, 2020
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS, *et al*, | § | |
| | § | |
| Plaintiffs, | § | |
| VS. | § | CIVIL ACTION NO. 4:12-CV-00592 |
| | § | |
| ANITA KAY BRUNSTING, AMY RUTH BRUNSTING, *et al*, | § | |
| | § | |
| | § | |
| Defendants. | § | |

**ORDER FOLLOWING TELEPHONE CONFERENCE**
**HELD ON September 10, 2020 at 9:00 AM**

Appearances: Jason Ostrom
Candice Lee Schwager
Candice Louise Curtis
Stephen A. Mendel
Neal Spielman
Carole Ann Brunsting
Amy R. Brunsting
Anita K. Brunsting
(Court Reporter: K. Metzger)

The following rulings were made:

Pursuant to phone conference conducted this day, the Court reopens this case for the limited purpose of considering the plaintiff's exparte motion for relief (Dkt. No. 128). This re-opening does not interfere of intervene in the matters pending or occurring in Probate Court No. 4 of Harris County, Texas.

It is so ORDERED.

SIGNED on this 10th day of September, 2020.

Kenneth M. Hoyt
United States District Judge



20-20566.2901

United States District Court
Southern District of Texas
**ENTERED**
September 30, 2020
David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS<br>and<br>CARL BRUNSTING,<br><br>Plaintiffs,<br>VS.<br><br>ANITA KAY BRUNSTING, AMY RUTH BRUNSTING and DOES 1-100, *et al*,<br><br><br><br>Defendants. | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | CIVIL ACTION NO. 4:12-CV-0592 |

**ORDER**

Before the Court is the plaintiff's, Candace Louise Curtis, *ex parte* motion for relief pursuant to Federal Rules of Civil Procedure, Rule 60(b)(6) and (d)(3). It is the plaintiff's position that the "judgment" to remand and/or close this case constituted an abuse of discretion and was clearly erroneous. *See Kennedy v. Texas Utilities*, 179 F.3d 258, 265 (5th Cir. 1999)(quotation omitted). The Court is of the opinion and holds that, while remand to the state court (Probate Court) was an incorrect method or mode for transmission, the order accomplished what was requested by the plaintiff [DE 109] and the Court now lacks jurisdiction.

The Court is also of the opinion that the plaintiff's *ex parte* motion for relief was not timely filed because:

a. the plaintiff had knowledge of (or a means to discover) the complained of activities in 2014, as those activities were occurring;

b. the plaintiff had knowledge of (or a means to discover) the complained of activities throughout 2014 and 2015, while represented by counsel;



20-20566.2902

c. the plaintiff had knowledge of the complained of activities in 2016; and did not pursue her claims for Rule 60 relief within a reasonable time;

d. the complained of actions as described in the Ex Parte Motion for Relief, including this Court's May 2014 transfer/remand [Doc. 112], do not constitute a Fraud Upon the Court as the complained of actions do not reveal the existence of a "grave miscarriage of justice" and do not impact the integrity of the judicial process, and further have already been addressed in Civil Action No. 4:16-cv-01969 and determined to be frivolous, "fantastical" and "often nonsensical";

e. the plaintiff's *ex parte* motion for relief is presented as a means of "forum hopping" her jurisdictional arguments, as previously addressed and denied in Probate Court Number Four of Harris County, Texas in Cause No. 412,249-401;

f. the transfer/remand of the plaintiff's claims to Probate Court Number Four [Doc. 112] was within this Court's powers and authority, not only due to the plaintiff's inclusion of additional parties, but also to avoid the possibility of conflicting judgments; that the use of the term "remand" was synonymous with a general use of the word "transfer"; or, alternatively, constitutes harmless error as the same result could have occurred by other means, methods, procedures and mechanisms;

g. this Court ceded jurisdiction of the plaintiff's claims and its Orders, including without limitation the Orders represented by Doc. 45 and Doc. 87, to Probate Court Number Four of Harris County, Texas; and

h. the preliminary injunction issued by this Court [Doc. 45] is to be enforced in Probate Court Number Four of Harris County, Texas, as determined in the sole and absolute discretion of Probate Court Number Four of Harris County, Texas, and which determination may include modification or termination as determined in the sole and absolute discretion of Probate Court Number Four of Harris County, Texas. It is not a "final judgment" of this Court, and did not require or contemplate the distribution of trust income to beneficiaries prior to the final resolution of the disputes between the parties.

It is, therefore, ORDERED that the plaintiff's *ex parte* motion is Denied.

It is so Ordered.

SIGNED on this 23rd day of September, 2020.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS, HOUSTON DIVISION

| | | |
|---|---|---|
| Candace Louise Curtis | § | No. 4:12-cv-592 |
| Plaintiff | § | |
| | § | |
| v | § | |
| | § | |
| Anita Kay Brunsting | § | |
| Amy Ruth Brunsting | § | |
| Defendants | § | |

**Notice of Appeal**

Parties are hereby noticed that the above named Plaintiff, Candace Louise Curtis, will appeal to the United States Court of Appeal for the Fifth Circuit, the September 23, 2020 District Court Order [Dkt 139] denying Rule 60 Motion [Dkt 128] to vacate a remand order [Dkt 112] void as a matter of law.

Candice Schwager

Candice Lee Schwager
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PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of this instrument was electronically filed with the United States District Court for the Southern District of Texas to be served via electronic means by the clerk though the ECF system as follows:

| | | |
|---|---|---|
| Respectfully submitted *Candace Louise Curtis*<br>*Added: 02/27/2012*<br>*(Plaintiff)* | represented by | Candice Lee Schwager Schwager Law Firm 2210 Village Dale Ave Houston, TX 77059 United States 832-315-8489 713-456-2453 (fax) schwagerlawfirm@live.com *Assigned: 07/17/2020 LEAD ATTORNEY ATTORNEY TO BE NOTICED* |
| Anita Kay Brunsting<br>*Added: 02/27/2012*<br>*(Defendant)* | represented by | Stephen A Mendel The Mendel Law Firm L.P. 1155 Dairy Ashford Ste 104 Houston, TX 77079 281-759-3213 281-759-3214 (fax) steve@mendellawfirm.com *Assigned: 08/13/2020 ATTORNEY TO BE NOTICED* |
| Amy Ruth Brunsting<br>Added: 02/27/2012<br>(*Defendant*) | represented by | Stephen A Mendel The Mendel Law Firm L.P. 1155 Dairy Ashford Ste 104 Houston, TX 77079 281-759-3213 281-759-3214 (fax) steve@mendellawfirm.com *Assigned: 08/13/2020 ATTORNEY TO BE NOTICED* |

Candice Schwager

**UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTRICT OF TEXAS**
**HOUSTON DIVISION**

Candace Louise Curtis, et al.

*versus*

Case Number: 4:12−cv−00592
Judge Kenneth M. Hoyt

Anita Kay Brunsting, et al.

# NOTICE OF THE FILING OF AN APPEAL

An appeal has been filed by Candace Louise Curtis. The following appeal and related motions are pending in the District Court:

Notice of Appeal − #140

If the appellant fails to comply with the following requirements, then the Clerk of Court will submit a certificate of noncompliance to the Fifth Circuit Court of Appeals.

**FILING FEE:**
A filing fee is required to proceed on appeal. If the filing fee has not already been paid, then it must be paid or a motion to proceed *in forma pauperis* must be filed, unless appellant is an United States government agency.

**TRANSCRIPTS:**
If hearings were held in this case and the transcripts were not already produced, then transcripts must be ordered. Pursuant to FRAP 10(b)(1), a transcript order form must be filed within 14 days of the filing of the notice of appeal. Under Fifth Circuit Rule 10, the appellant's order of the transcript must be made on a DKT−13 Transcript Order form. The DKT−13 must be filed regardless of whether there were hearings or transcripts needed. A link to the DKT−13 form and instructions for ordering transcripts are available on the court's website at www.txs.uscourts.gov/page/OrderingTranscripts.

If there were no hearings or no transcripts are needed, file the DKT−13 form with the appropriate box marked to indicate so. For cases where transcripts are needed, prepare a separate DKT−13 for each reporter from whom you are ordering transcripts. All transcripts for electronically recorded proceedings may be ordered on one form. Each form should indicate the exact dates of the proceedings to be transcribed by that reporter.

This case had hearings. Reporter(s): M. Malone.

**EXHIBITS:**
The Fifth Circuit requires exhibits admitted into evidence be included in the electronic record for transmission to the Fifth Circuit. Exhibits in the custody of the court will be electronically filed by court staff. Exhibits previously returned to the parties must be immediately electronically filed in this case by the attorney, using event Exhibits in the Trial Documents category in ECF.

Date: October 26, 2020.

David J. Bradley, Clerk

20-20566.2906

**TRANSCRIPT ORDER FORM (DKT-13) - READ INSTRUCTIONS ON LAST PAGE BEFORE COMPLETING**

District Court Southern District of Texas District Court Docket No. 4:12-cv-592

Short Case Title Candace Louise Curtis v Anita Kay Brunsting

**ONLY ONE COURT REPORTER PER FORM** Court Reporter Katherine Metzger

Date Notice of Appeal Filed in the District Court October 23,2020 Court of Appeals No. _____

**PART I.** (To be completed by party ordering transcript. Do not complete this form unless financial arrangements have been made, see instructions on page 2.)

FILED
NOV 09 2020
David J. Bradley, Clerk of Court

**A. Complete the Following:**

☐No hearings ☐Transcript is unnecessary for appeal purposes ☒Transcript is already on file in the Clerk's Office

**OR**

**Check all of the following that apply, include date of the proceeding.**

This is to order a transcript of the following proceedings: ☐Bail Hearing _____ ☐Voir Dire _____

☐Opening Statement of Plaintiff _____ ☐Opening Statement of Defendant _____

☐Closing Argument of Plaintiff _____ ☐Closing Argument of Defendant: _____

☐Opinion of court _____ ☐Jury Instructions _____ ☐Sentencing _____

Other proceedings not listed above:

| Hearing Date(s) | Proceeding | Judge/Magistrate |
|---|---|---|
| 09/10/2020 | Rule 60 Motion Hearing | Honorable Kenneth Hoyt |
| | | |
| | | |
| | | |

**Failure to specify in adequate detail those proceedings to be transcribed, or failure to make prompt satisfactory financial arrangements for transcript, are grounds for DISMISSAL OF APPEAL.**

**B. This is to certify satisfactory financial arrangements have been made. Method of Payment:**

☒Private Funds; ☐Criminal Justice Act Funds (**Enter Authorization-24 via eVoucher**);

☐Other IFP Funds; ☐Advance Payment Waived by Reporter; ☐U.S. Government Funds

☐Other _____

Signature _____ Date Transcript Ordered 11/04/2020

Print Name Candace L. Curtis Phone 925-759-9020

Counsel for pro se

Address 218 Landana St., American Canyon, CA 94503

Email of Attorney: occurtis@sbcglobal.net

**PART II. COURT REPORTER ACKNOWLEDGMENT** (To be completed by the court reporter and filed with the Court of Appeals within 10 days after receipt. Read instructions on page 2 before completing.)

| Date Transcript Order Received | Date Satisfactory Arrangements for Payment were Made | Estimated Completion Date | Estimated Number of Pages |
|---|---|---|---|
| | | | |

Payment arrangements have NOT been made or are incomplete.

Reason: ☐Deposit not received ☐Unable to contact ordering party ☐Awaiting creation of CJA 24 eVoucher

☐Other (Specify) _____

Date _____ Signature of Reporter _____ Tel. _____

Email of Reporter _____

**Part III. NOTIFICATION THAT TRANSCRIPT HAS BEEN FILED IN THE DISTRICT COURT** (To be completed by court reporter on date of filing transcript in the District Court. This completed form is to be-filed with the Court of Appeals.)

This is to certify that the transcript has been completed and filed at the District Court today.

Actual Number of Pages _____ Actual Number of Volumes _____

Date _____ Signature of Reporter _____

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | * | Civil No. H-12-592 |
| | * | |
| VERSUS | * | Houston, Texas |
| | * | April 9, 2013 |
| ANITA KAY BRUNSTING, et al | * | 9:50 a.m. |

TRO HEARING
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

For the Plaintiff:

Ms. Candace Louise Curtis
Pro Se
1215 Ulfinian Way
Martinez, California 94553

For the Defendants:

Mr. George William Vie, III
Mills Shirley LLP
1021 Main Street
Suite 1950
Houston, Texas 77002

Court Reporter:

Fred Warner
Official Court Reporter
515 Rusk Ave.
Houston, Texas 77002

Proceedings recorded by mechanical stenography, produced by computer aided transcription.

THE COURT: Good morning. Please be seated.

All right. This is Cause No. 2012-592, Candace Louise Curtis versus Anita K. Brunsting and others.

So let me have an announcement. Is Ms. Curtis in the courtroom?

MS. CURTIS: Yes, Your Honor.

THE COURT: All right. And who is representing the defendants in the case?

MR. VIE: George Vie, Your Honor, for the defendants.

THE COURT: And I gather we have several parties present, correct?

MR. VIE: Yes, Your Honor.

THE COURT: Are these your clients or --

MR. VIE: Yes, Your Honor. Both the defendants are present.

THE COURT: Both defendants.

And who are the defendants other than -- I just show Anita Kay and Amy Ruth. I am sorry. I apologize. You are representing both?

MR. VIE: Yes, Your Honor.

THE COURT: Okay. Very good.

This is Ms. Curtis' application for a temporary restraining order. As you might recall, this case was initially dismissed by the Court with the understanding that,

or under the understanding that it could not proceed in federal court but must proceed in state court.

The circuit court disagreed with me, and it's back; and now we are charged to proceed forward in this case.

So what I would like to do is, first of all, have Ms. Curtis stand and give me a kind of a factual setting background for what it is that she is seeking, then tell me what she is seeking and see what testimony, if any, we need in order to accomplish that.

So why don't you go ahead take the floor, Ms. Curtis, and tell us how this got started and where we are today.

MS. CURTIS: This got started by my parents, Elmer and Nelva Brunsting, putting together a Brunsting family living trust in 1996 dividing their estate among the five children beneficiaries.

THE COURT: And I see there are the only three children represented. Are there other children that are not included?

MS. CURTIS: Yes, sir. My sister Carole and my brother Carl.

THE COURT: Okay. C-a-r-o-l?

MS. CURTIS: C-a-r-o-l-e and Carl, C-a-r-l.

THE COURT: Well, that C went a long way.

MS. CURTIS: C, C, C and then A, A.

THE COURT: Went a long way in the family, didn't it?

MS. CURTIS: Yes.

THE COURT: Go ahead please.

MS. CURTIS: So, my father passed away in 2009 in April and --

THE COURT: And would you tell us his name for the record.

MS. CURTIS: Elmer H. Brunsting.

THE COURT: All right.

MS. CURTIS: And in July of 2010 my brother Carl became stricken with encephalitis. And it's a very serious disease. He was in the hospital for several months, part of that time in a coma. And my brother was originally appointed the executor of my parent's estate.

THE COURT: Your brother would be Carl?

MS. CURTIS: Carl. And also a successor/co-trustee of the Brunsting Family Living Trust and any resulting trusts.

In approximately 2007, my mother sent an e-mail to me and asked me if I would mind becoming co-trustee with my brother Carl because my sister Amy was unstable; and she was wondering if I would mind coming to Houston whenever necessary to take care of these things. And I agreed. And that was the last I heard of it.

Since that time I have received a document, which is the last, first and only amendment that my father and mother both signed to the family living trust appointing Carl and Candace as successor/co-trustees.

THE COURT: Okay. So as it stands now, it is Carl and Candace who would be the co-trustees of the trust?

MS. CURTIS: Yes, Your Honor, yes.

And after my brother became ill, my youngest sister Anita took the opportunity to begin seize control of the trust. She immediately, within three weeks after he became ill --

THE COURT: When did this happen?

MS. CURTIS: In July of 2010.

THE COURT: 2010. He became apparently incapacitated or unable to?

MS. CURTIS: Yes. He was in a coma for several weeks.

THE COURT: Is he still in a coma?

MS. CURTIS: No. He's back at home and doing very well.

THE COURT: Okay. Very good. Go ahead.

MS. CURTIS: And has been.

THE COURT: I will be asking questions of him.

MS. CURTIS: And so, because of things that are just simply judgmental and ugly, my sister began to try to wrest

control of the trust so that my brother could not have anything whatsoever to do with it. She took his name off the safe deposit box which, according to my father's handwritten letter from 1999, contained all of the information about the family trust, and then some papers were caused to be drawn up. One was a qualified beneficiary designation.

THE COURT: I'm sorry. Was a what?

MS. CURTIS: A qualified beneficiary designation.

THE COURT: All right.

MS. CURTIS: And several other papers were drawn up on August 25th, 2010.

There was no notice given to any of the beneficiaries about this qualified beneficiary designation that was to be prepared and signed. And the only way that I found out about it was to ask my sister Anita for copies of trust documents for me to review for a phone conference that had been called by the trust attorneys that was supposed to include my mother and all of her children. My brother Carl was never notified of this phone conference.

THE COURT: Was he at the time still in a coma or incapacitated?

MS. CURTIS: No, sir. He was not in a coma, but he was still in the hospital.

THE COURT: Okay.

MS. CURTIS: And my mother also was not in on the

phone call.

So we had the conference call, and they were definitely absent; and the conference call apparently was called to discuss proposed changes to the trust, when in fact the changes had already been made; and as it boiled down to the end and various parties hung up, they were going to try to have my mother declared incompetent because she said that she did not sign the qualified beneficiary designation and that in fact what the qualified beneficiary designation said was not true.

THE COURT: Let me ask you a question before we go forward. What was the purpose -- what did the beneficiaries receive and how were funds, as you understand it, disbursed from the trust prior to this August 25th 2010. How was the trust to be administered?

MS. CURTIS: The trust was to be divided into five personal asset trusts; and I believe that each personal asset trust would have a trustee, but I do not think it was the beneficiary.

THE COURT: Was that to recognize the five children?

MS. CURTIS: Yes.

THE COURT: How was your mother to benefit from this? Was she to get some proceeds out of the funds?

MS. CURTIS: My mother was to benefit from all of the trusts until she passed way.

THE COURT: Okay. And then these five trusts would --

MS. CURTIS: Whatever was remaining would be divided five equal ways.

THE COURT: Surely.

And then your mother died when?

MS. CURTIS: 11-11-11.

THE COURT: Oh, is that right?

And at that time your father was already deceased?

MS. CURTIS: Yes, Your Honor.

THE COURT: So this telephone conference occurred sometime in August of 2010, just about 14 months prior to her death?

MS. CURTIS: It was in October --

THE COURT: October.

MS. CURTIS: -- of 2010.

THE COURT: About 12 months then, 12 or 13 months prior to her death.

And so go ahead and pick up there.

MS. CURTIS: So, anyway, after the phone conference there was really nothing I could do about anything as far as I could tell; and so, things were relatively quiet until in approximately March of 2011 my sister Anita called and said, "oh, we found some Exxon stock that wasn't in the trust; and

so, some of it will be gifted, and then the rest of it, the trust attorneys are going to figure out how to get it into the trust."

And so I received 160 shares of that stock. And I was in conversation with sister Carole and was told that she had received some, but she didn't know how much it was because she hasn't opened the envelope.

THE COURT: Was it your understanding that the 160 shares that you received would have been your one-fifth share? Is that the way it was to be --

MS. CURTIS: That's kind of the way I thought about it. Not necessarily my one-fifth share, but that each of us should receive a like amount.

THE COURT: Sure.

All right. Go ahead.

MS. CURTIS: Unbeknownst to me, my sister Carole received 1,300 plus shares and my sister Amy received over 1,000 shares.

I received 160, Anita received 160; but Anita, as power of attorney beneficiary and trustee, having taken over from my mother in December of 2010, was conflicted and not allowed to accept gifts. So she excused it many months after the fact as being a loan, but she's also not allowed to take loans from --

THE COURT: So was she the person doing the

disbursing of these shares?

MS. CURTIS: Yes, Your Honor, she was.

THE COURT: And she disbursed them in the manner, as you understand it, the way you just described it, giving a couple thousand shares to two of your sisters together?

MS. CURTIS: Uh-huh.

THE COURT: I said "together" meaning added together, and then 160 to you. And what happened, if anything, to do with Carl's share?

MS. CURTIS: He got nothing.

THE COURT: All right. Okay. Go ahead.

MS. CURTIS: So my brother has filed a lawsuit in --

THE COURT: Probate court?

MS. CURTIS: -- state court and also in probate. It's not a lawsuit, but he has filed from probate as defendant executor. And he has gotten pages and pages and pages of information from my sisters in another lawsuit that it was a pre-suit request for depositions to get information in case they were going to file suit.

And they got pages and pages and boxes of information that was not shared with me until March 28th just recently, and this paper here was in some of the documents that they shared with me.

THE COURT: What is the title of it?

MS. CURTIS: This is a computer share. It's a.

Transfer form. And this is page two of three pages of the transfer form.

THE COURT: Transfer form relating to?

MS. CURTIS: The Exxon/Mobil stock.

THE COURT: Okay.

MS. CURTIS: And so, at the top of the page my sister Anita's 160 shares, and the bottom of the page is my 160 shares.

There is two signatures at the bottom of the page. One is on a W-9 portion, and the other is on, my understanding that the money would be reinvested in the account. These signatures are not my signatures; they're forgeries.

THE COURT: Uh-huh.

MS. CURTIS: I would not have seen these if I had not had this shared with me by my brother.

THE COURT: And you didn't authorize anyone to make those signatures for you?

MS. CURTIS: No, I did not. And I have filed a Securities & Exchange Commission complaint as of last week about this.

THE COURT: All right.

MS. CURTIS: And I have not heard anything from them since that time.

I also have two different --

THE COURT: Well, let me ask you before you go further. What did you understand to be the access in the trust or the total trust as opposed to the individual five trusts, let's say? What did you understand the gross assets to be? Is that what you set forth in your petition as being the assets.

In 2010, you show -- I don't know if you have your petition there with you, but you showed in 2010 there was Chevron/Texaco, Exxon/Mobil, Edward Jones and a total of $554,000 more or less in the -- I gather is this in the decedent's account.

MS. CURTIS: Actually, this is my Request For Injunction.

THE COURT: Yes, page 3.

MS. CURTIS: Those are just the net changes.

THE COURT: These are what you're calling losses then?

MS. CURTIS: Yes.

THE COURT: So what is the total of the estate? How many? Several million dollars?

MS. CURTIS: The farm itself is close to $3 million, and everything else when my father passed away was about a million-and-a-half.

THE COURT: So, it's increased in value to about --

MS. CURTIS: By virtue of the farm.

THE COURT: F-a-r-m, farm?

MS. CURTIS: Yes, family farm in Iowa.

THE COURT: That was sold?

MS. CURTIS: No, it was not.

THE COURT: What's on the farm that's increasing these prices? What are they harvesting?

MS. CURTIS: Corn and soybean.

THE COURT: Is that for profit or just simply --

MS. CURTIS: To my understanding we have a lease with the farmer.

THE COURT: Okay. And so lease itself pays a certain amount of money annually or however.

MS. CURTIS: Yes.

THE COURT: Those assets or that money goes into the estate?

MS. CURTIS: I believe so.

THE COURT: And that accounts for some of the increase, as you understand them?

MS. CURTIS: Yes.

THE COURT: All right. So at this point in time, "this point in time" being 2012, there has been a total of 338 or 339,000 in assets removed from the estate, and there is still approximately, as far as you know, three-plus million dollars in the estate?

MS. CURTIS: Yes, Your Honor.

THE COURT: Now, I want to try to close this out just a little bit by asking you: After you received these documents, I gather -- and when you weren't receiving them, obviously, because I recall you filed a suit, and one of the issues was getting your hands on these documents, and you were not able to get those documents until recently, as I understand it?

MS. CURTIS: The first time I received any information was in April of 2012, yes.

THE COURT: Okay.

And since you received those documents, has the fact that you received those documents confirmed what you believe to be improper practices on the part of your, I gather, on the part of your sister Anita?

MS. CURTIS: Yes, Your Honor.

THE COURT: Is she handling this alone?

MS. CURTIS: To my knowledge she is.

THE COURT: All right. So it's between her and however her lawyers are handling this that you are concerned about?

MS. CURTIS: I assume.

THE COURT: And your brother has a ongoing suit presently ongoing?

MS. CURTIS: Yes, Your Honor.

THE COURT: And what is the status as you understand

of that suit, as to how long has it been pending and what is status of that suit?

MS. CURTIS: I'm not exactly sure of the dates of how long it's been pending. I think since sometime in February of 2013.

THE COURT: Okay. So several months, but not very long.

MS. CURTIS: Right.

THE COURT: And is he able to get up and about?

MS. CURTIS: Yes.

THE COURT: Where is he now?

MS. CURTIS: At home, I would assume.

THE COURT: And have you communicated with him regarding what his approach is?

MS. CURTIS: Yes, Your Honor. I have.

THE COURT: And, of course, you have not joined his lawsuit?

MS. CURTIS: No, I have not.

THE COURT: And he has not joined in your lawsuit?

MS. CURTIS: No, he has not.

THE COURT: Does he have an attorney?

MS. CURTIS: Yes, Your Honor, he has.

THE COURT: Okay. I gather you now know that some state court, some county court or probate court, someone did something, I gather, to give Anita some authority that you

did not know she had. Is that what you have come to the knowledge of?

MS. CURTIS: I have come into the knowledge that the purported successor/co-trustees are in fact imposters because the documents that made them successor/co-trustees have digital alterations on them; they have anomalies on the signature pages. I have two different signature pages for the qualified beneficiary designation that were sent to me on two different occasions.

THE COURT: Now, whose signatures would be necessary from your perspective to permit her to go forward? This qualified beneficiary designee, this was supposed to be Anita now?

MS. CURTIS: It was supposed to divide the estate into five different personal asset trusts. Carole, Amy and Anita were going to be trustees.

THE COURT: This was a part of you-all's discussion on the telephone conference as to how this was supposed to work?

MS. CURTIS: Well, I wanted to know how it would put into place in the first place because I never received any notice that this was being contemplated.

THE COURT: Okay.

MS. CURTIS: And come to find out months after the papers were allegedly signed by my mother, my personal asset

trust and my brother Carl's were put under the control of Amy and Anita.

THE COURT: On what authority or what basis.

MS. CURTIS: I don't know. I don't know.

THE COURT: Okay.

And what happens then or what is happening to those assets?

MS. CURTIS: They're spending them.

THE COURT: Okay. She, Anita, has authority and can spend those proceeds --

MS. CURTIS: Yes, Your Honor.

THE COURT: -- based upon what? Is she considering herself the qualified beneficiary designee or something?

MS. CURTIS: She is considering herself a successor/co-trustee.

THE COURT: Successor/co-trustee.

MS. CURTIS: In place of my mother. She did most of the theft while my mother was still alive when she was acting with my mothers power of attorney. My mother supposedly resigned as trustee on December 21st, 2010, and my sister accepted successor/trustee. And my sister's also a beneficiary, so she's got a conflict of interest there.

THE COURT: So since 2010 you are not aware of, I gather you're saying you're not aware of the division of the estate at least designating your portion as being your full

one-fifth of the estate?

MS. CURTIS: I have never received a notice.

THE COURT: You are not aware that that has been done. In other words, you don't know that that has been done?

MS. CURTIS: No, I do not.

THE COURT: And you're not in charge of that, those assets?

MS. CURTIS: That's correct.

THE COURT: And so here's my question: What is it that you're seeking by this lawsuit?

MS. CURTIS: I am seeking that my sister and those who have received unfair distributions to return the money.

THE COURT: Okay.

MS. CURTIS: I would like them to pay back all of the interest that was lost on the securities that were cashed in during that 15 months and spent, diverted to other things.

THE COURT: All right.

MS. CURTIS: And I would like it to be divided five ways and for the five beneficiaries to go their separate ways.

THE COURT: And what have you been told, if anything, even today, if anything, that has prevented this from happening?

MS. CURTIS: I have been told nothing.

THE COURT: And you've talked with their counsel, have you not?

MS. CURTIS: Yes, I have.

THE COURT: And did you ask him about these questions or did you put these questions to him?

MS. CURTIS: No, I did not.

THE COURT: What were you asking? What was the nature of what you all were trying to accomplish as far as this injunction is concerned?

MS. CURTIS: We were trying to come up with a reason why we would not go forward with the injunction hearing. And I had five or six other alternative ways of resolving this. And he left the room to speak to his clients, and they would not agree to them.

THE COURT: What are you seeking now? What are those ways that you are seeking, and what is it that you want to happen here today?

MS. CURTIS: I wanted to have an independent trustee appointed.

THE COURT: All right. And that was refused.

Okay. What else?

MS. CURTIS: I wanted to know who, if any, special co-trustee was appointed as per this qualified beneficiary designation.

THE COURT: I'm sorry. Say that again.

MS. CURTIS: There was provision in the qualified beneficiary designation for a special co-trustee or a trust protector; and so, I suggested that maybe the trust protector take it over as the trustee.

THE COURT: All right. Okay.

MS. CURTIS: And the other reason was just similar to that. The Court could appoint an independent trustee who the defendants would have to obtain approval for any of their actions.

The Court could enjoin the trustees from acting without approval of the Court or express written approval from all five beneficiaries.

The Court could enjoin trustee from acting unless and until they can show they're in possession of authentic documents by submitting the documents purportedly signed on August 25, 2010 and December 21st, 2010 for a forensic analysis because the copies that we have have all been digitally altered and the signatures are fake.

THE COURT: Okay.

MS. CURTIS: I also asked originally if I could please know the identification and contact information for the trust protector, and I was told that the provisions for the trust protector were at section such and such in the qualified beneficiary designation, but I didn't get a straight answer.

THE COURT: So there is a document called "qualified beneficiary designation"?

MS. CURTIS: Yes, Your Honor.

THE COURT: And you do or do not have a copy of that?

MS. CURTIS: I do have a copy of it but not with me.

THE COURT: And you have been told that in -- when were you told this, today? When were you told where this provision about the special protector or co-trustee protector was located?

MS. CURTIS: In early 2012.

THE COURT: And you were told where to find it?

MS. CURTIS: I was told where to find the provisions, but I asked for the identity.

THE COURT: Okay. The identity of that person has not been given to you?

MS. CURTIS: That is correct, or if there even is.

THE COURT: If there is such a person.

All right. So that's what you're seeking in terms of your request for benefit -- for the injunction today; is that correct?

MS. CURTIS: Yes, Your Honor. I'm seeking that we stop the bleeding until we can get to the bottom of it.

THE COURT: Have you received any funds from the trust since 2010? I'm talking about since the death of your

mother.

MS. CURTIS: No, Your Honor. I have not.

THE COURT: You have made it known to -- have you communicated with your sister -- that's Anita, I believe -- about that?

MS. CURTIS: I am not allowed to speak to Anita --

THE COURT: Why not?

MS. CURTIS: Except through her attorneys.

THE COURT: Well, that's untrue. That's your sister.

MS. CURTIS: Well, that's the way I feel about it, but I'm told I'm not allowed to speak to them, and they won't talk to me.

THE COURT: Who told you this? Who told you this, that you can't contact her?

MS. CURTIS: I inferred that from --

THE COURT: Did she tell you that, is what I am asking?

MS. CURTIS: No. She didn't tell me that because she hasn't spoken to me.

THE COURT: Well, have you tried to speak to her?

MS. CURTIS: Yes, Your Honor, I have.

THE COURT: What happens when you try to speak to her?

MS. CURTIS: I call. She doesn't answer. I leave a

voice mail, she doesn't call me back.

The same thing happened with my other sister Amy. I called and left a voice mail. She did not return my call. This was more than a year ago.

THE COURT: So they refuse to speak to you about this is what you are saying?

MS. CURTIS: Yes, Your Honor.

THE COURT: Go ahead and have a seat. Thank you.

Counsel.

MR. VIE: Yes, Your Honor.

THE COURT: Why can't you come to some accommodation?

MR. VIE: Here's the situation. I just want to give you a little bit of background so that you understand in terms of the exhibits I put before you.

THE COURT: I don't have any exhibits yet. Well, some paper put up here.

Oh, the list. I see.

MR. VIEW: Yes, sir.

THE COURT: I haven't read these.

MR. VIE: Just to provide some assistance in answering your question, Your Honor. Exhibit 1 is a 60-or-so page document. That is the family trust document.

THE COURT: All right.

MR. VIE: And on page 1 of the document it says that

her father and mother had created a trust, it's an irrevocable trustee, and that the initial trustee shall be Anita Kay. So, Anita is the trustee under this document.

Because you heard a lot about this qualified beneficiary designation.

THE COURT: No. I heard about the co-trustees.

MR. VIE: So I wanted the Court to understand that this document --

THE COURT: Let me ask so we don't go down a rabbit trail. Was there a point in time when Carl was the co-trustee?

MR. VIE: I'm sorry?

THE COURT: Was there a time when Carl, the brother, was the co-trustee?

MR. VIE: I don't know if that -- I don't know with respect to this document if that's correct or not.

I understand that at one point there was a communication from the mother where she considered other family members serving in her role. But the documents that I have given you, the second exhibit that I have given you is where with respect to the mother's living trust while she was alive, she decided to have Anita appointed as her successor trustee instead, and then they created this certificate of trust.

THE COURT: That would have been relative to the

entirety of the irrevocable trust or was it simply her portion of the assets?

MR. VIE: It was with respect to the living trust that was created when she --

THE COURT: No, no, no. Here's what I am saying. The father is now deceased.

MR. VIE: Yes.

THE COURT: His wife entered into a irrevocable trust, and either he leaves all of you that in the trust to her benefit or his share goes into some other, goes into a trust for the children at that point.

So what happened?

MR. VIE: The father and mother created the irrevocable trust, which I have identified as Exhibit 1.

THE COURT: Okay.

MR. VIE: When the father died, his assets went into this living trust where their mother had assets to the living -- there was a sub trust created, a successor trust and a decedent's trust. The mother had that.

THE COURT: So she has all of the assets at that point?

MR. VIE: Yes. And the mother was able to make gifts and did make gifts to a number of the family members. So when the plaintiff was referencing the $13,000 gift that she received and the others, these were gifts that her mother

while alive had directed. And my client Anita, as the successor trustee under this appointment, Exhibit 2, would make those transactions occur. But these were gifts from the mother.

And then the mother dies, and this irrevocable trust --

THE COURT: And did the mother die, according to what Ms. Curtis is saying, in December more or less, I guess?

MR. VIE: November of 2010, Your Honor.

THE COURT: November of 2010, okay.

MS. CURTIS: 2011.

THE COURT: 2011.

MR. VIE: 11-11-2011.

THE COURT: Right.

MR. VIE: After that point, then Anita as trustee prepares a schedule of the estate, the context of the mother, and that money was going into the family trust; and that's one of the exhibits that she's attached.

THE COURT: Well, wait a minute. What money is going into the family trust? Because now this trust, the trust that exists that is handling all this is the mother's living trust, right?

MR. VIE: No, Your Honor. When she died, the living trust no longer exists.

THE COURT: Oh, obviously.

But before that, all of the assets were going into the living trust for the mother.

MR. VIE: Right.

THE COURT: And now the mother dies in November of 2011, and then what happens?

MR. VIE: Then we have the family trust, and there is created again a sub trust of a survivor's trust and the decedent's trust.

THE COURT: And the family trust now reverts back to the irrevocable trust?

MR. VIE: Yes, Your Honor.

THE COURT: And in the irrevocable trust or in that trust there is a provision that says how those, how that trust is to be divided into five distinct trusts for the children?

MR. VIE: My understanding is that there is a document under this complicated plan by which each of the individual beneficiaries, the five children, the four daughters and the son, they would have these asset trusts. Those trusts have not been created.

THE COURT: Well, I am asking whether or not as a part of the -- as to your understanding, you have read it, is that a part of what the family trust required as far as you know? You said there's a document like it's some separate thing.

MR. VIE: Well, there's a -- I understand, Your Honor.

It's a rather long document. I understand and agree we are that the conclusion of this trust now at this point is to divide the assets to the five beneficiaries, and then each of their assets go into these asset trusts.

THE COURT: Separate and distinct from each other and for the benefit of each of the designated beneficiaries.

MR. VIE: Yes.

And as the plaintiff suggested, I believe the situation is that her trust, for example, she is not a trustee. One of her siblings is the trustee.

THE COURT: Even after it's divided off and given to her?

MR. VIE: Yes. And in these asset trusts, other members --

THE COURT: So someone who has a trust, like Anita herself, would have her own separate and distinct assets?

MR. VIE: Yes, sir.

THE COURT: And she'd be in charge of her own assets?

MR. VIE: No, no. There would be -- somebody else would be the trustee.

THE COURT: Of all of these five trusts?

MR. VIE: Yes -- no, of each.

THE COURT: Who is "someone else?" I mean --

MR. VIE: Well, for example, Carl's could be Anita and Amy's could be Carole.

THE COURT: But the documents say how this happened, though.

MR. VIE: These trusts have not been created yet. There has been no distribution.

THE COURT: I understand that. You are telling me that, but I am trying to find out whether or not the creation of these trusts require these beneficiaries to have someone else in charge of their money.

MR. VIE: That is my understanding. And she can correct me if I am wrong, and my clients can correct me as the trustees if I'm wrong.

THE COURT: So Anita -- somebody would be in charge of Anita's?

MR. VIE: Yes. That's right.

THE COURT: And then somebody else would be -- and Anita would be in charge of somebody else's?

MR. VIE: That's my understanding.

THE COURT: And these kids -- and they're not kids anymore, but these five siblings would be at each other's throats for the rest of their lives because --

MR. VIE: No. They'd each have their own --

THE COURT: Well, no. They got them, but they're

not in charge of it, is what I understand.

MR. VIE: All right.

THE COURT: That's what I am trying to say. In other words, I'd have to call my sister to get my money.

MR. VIE: What I know about the asset revocable -- the asset trust is they have not been created yet.

As the Court heard, there are two lawsuits. There is this lawsuit and there is her brother's lawsuit. We are not parties to her brother's lawsuit. Her brother's lawsuit is brought in his capacity as the executor of his father's and mother's estates. It's in Harris County District Court. We're not parties to it.

THE COURT: Well that would be either the product of a will being probated --

MR. VIE: Yes, sir.

THE COURT: -- or it would be the product of an intestate proceeding. Which is it?

MR. VIE: The will has been probated.

THE COURT: So there is a will probate separate and apart from the trust?

MR. VIE: Yes, Your Honor.

THE COURT: And how does that overlay on the trust since all of the assets are in the trust?

MR. VIE: Well, I don't know that it overlays; but what I am trying to suggest to the Court is: One, since the

mother died, there has been no distributions to anyone, not --

THE COURT: I get that. I am trying to figure out --

MR. VIE: Since you haven't seen the distribution, I wanted the Court to understand that no one has.

THE COURT: But somebody got some money out of it or there has been a loss in value to the trust itself.

MR. VIE: She says that the stock that was invested with the brokerage houses may have lost money, is one of the things that she suggested in her motion.

THE COURT: Right.

MR. VIE: My point was to suggest that there has been no distributions since the mother died from the trust that Anita is the trustee for to anyone.

THE COURT: And you said the one that Anita is in charge of. What is Anita in charge of?

MR. VIE: Exhibit 1.

THE COURT: Okay. The entirety?

MR. VIE: Yes, sir.

THE COURT: That's what I am trying to get to.

MR. VIE: Yes.

THE COURT: Okay.

MR. VIE: And it's unlikely there will be any distributions until both this suit is resolved and her

brother's suit that he brought.

THE COURT: Well, this suit might resolve it. That's not their concern.

But what I am trying to find out is whether or not in the -- the question I was trying to get back was in the Carl's suit, I guess in probate court, whether or not that suit, which did not come up in the responses in the way that I understood it, whether or not that suit that impact whether or not this Court should be proceeding with this trust.

MR. VIE: No, Your Honor.

THE COURT: So it's separate and apart since the probate's completed.

MR. VIE: The probate has been filed. The suit is brought by him in his capacity as executor.

THE COURT: Is he without bond and independent?

MS. CURTIS: Yes.

MR. VIE: He's an independent executor. He is bringing the suit against the attorneys.

THE COURT: So he doesn't need to do anything else other than file it and do this accounting and all of that and then do whatever the will tells him to do.

MR. VIE: The litigation that he has brought is against the attorneys that created these trusts.

THE COURT: That's not even -- that's separate and

distinct from this lawsuit.

MR. VIE: Okay.

THE COURT: And it's separate and distinct from the estates because that's a malpractice lawsuit.

MR. VIE: Yes, sir.

THE COURT: Okay. So I am not concerned about that at all.

I was trying to make sure when he brought his suit, he was not simply arguing that somehow Anita had finagled her way into this position and she had squandered certain assets and then we've got these parallel lawsuits.

MR. VIE: I understand, Your Honor. And that was my point as well was to let you know that we are not parties to that litigation, it's not a claim in that litigation as the claims are --

THE COURT: And neither is the plaintiff here a party to that litigation.

MR. VIE: That is correct, Your Honor.

THE COURT: Okay.

So, the only suit that's pending dealing with the assets of these parent's estate is this lawsuit.

MR. VIE: Yes, Your Honor.

THE COURT: All right.

So what the plaintiff is saying on page 3 of her petition having to do with the December dates of 10, 12

and so on and what she considered to be "losses of the estate" are losses that I gather are decreases in assets that would be attributable to movement in the market.

MR. VIE: That is the specific. And, Your Honor, you are referring to the complaint or to the motion that has been filed for temporary relief?

THE COURT: I'm looking at the motion right now. That should be Instrument No. 35.

MR. VIE: Yes. With respect to that, there is an argument being made there that there has been a loss and it is the result of the investment of the securities.

THE COURT: You made a comment earlier that until the other lawsuit and this lawsuit is resolved. That lawsuit has nothing at all to do with the resolution of this estate.

MR. VIE: Well, I --

THE COURT: I'm telling you that.

MR. VIE: Okay.

THE COURT: There is nothing that should -- there is nothing going on in Carl's suit that prevents these parties from following what they have been instructed to follow in the trust document.

MR. VIE: Okay. I understand if that's the Court's direction.

THE COURT: Is there something that I am missing?

MR. VIE: Not that I am aware of, Your Honor.

THE COURT: That's a malpractice suit. And they get some money out of it, either he gets it or maybe he distributes it among his brothers and sisters, but it doesn't have anything to do with the distribution of this estate.

MR. VIE: My understanding -- the reason that I understood the case to be differently is that I understood that the purpose of the litigation that he had brought in state court was claiming that the attorneys who created these trusts had done so improperly so that we were in a situation in which we are here before this Court, and the Court is suggesting we should wind this thing up and distribute to all the beneficiaries.

THE COURT: It's going to be wound up. It's going to be wound up in this court.

Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where we are sitting around churning the time out and the parties are charging out of that lawsuit, defense of that lawsuit, which you are not doing, apparently, unless -- are you the lawyer that created the trust?

MR. VIE: No, Your Honor.

THE COURT: So that's a separate law firm.

MR. VIE: Yes, Your Honor.

THE COURT: Yeah. So there is no reason for you to

be or your firm to be involved in the expenditure of that, of monies out of that lawsuit.

MR. VIE: And we aren't, Your Honor.

THE COURT: And there is no reason for Ms. Curtis to be concerned about spending money out of her assets for that lawsuit.

MR. VIE: Understand.

THE COURT: So, you can distribute what you got whether you get some more or not. It doesn't require -- this is not a probate where you got to gather everything together because everything is together.

MR. VIE: Okay.

THE COURT: The entire estate is together.

MR. VIE: Yes, Your Honor.

THE COURT: And if there is a lawsuit, and it's questionable whether or not Curtis has a lawsuit or not because he wasn't the creator and the payor for that creation of that trust.

So, the point I am making is, obviously he had no contractual relationship with the firm, and it's going to be seriously flawed -- seriously difficult for him to sue for malpractice when he wasn't -- when there is no attorney/client relationship.

MR. VIE: Understood, Your Honor.

THE COURT: So, the point I'm getting to here is

under this trust that is situated here, what my plaintiff, Ms. Curtis, I believe is saying is that she is, these assets are not being distributed, and she's of the opinion that there is something untoward going on, whether that's true or not.

MR. VIE: Yes, Your Honor.

THE COURT: And that there is no reason why she should be standing out in the field trying to get information about this trust and the distribution of these assets when she is equally entitled to any and all information just like Anita or anybody else.

MR. VIE: I understand that.

THE COURT: So, what is it then that prevents these parties from right now settling this suit?

MR. VIE: From settling it?

THE COURT: Yes. All they got to do is distribute the assets.

MR. VIE: Two things, Your Honor. And it's just my observation, because obviously the Court does not have to agree with me.

THE COURT: Sure.

MR. VIE: I provided the underlying documents that support the schedule that the plaintiff has attached to this motion for temporary relief. I have given her yesterday, in response to her request for production, some 5,000 pages.

She has told me that she wants to examine those, all of those underlying documents, stock transfers, checks and everything else.

You have heard from the plaintiff that she believes this very instrument is false.

THE COURT: "This very instrument" meaning the family trust?

MR. VIE: Family trust. That it's a forgery or that documents have been forged.

And I have offered, in response to the request for production, to make the originals, which I understand the trust attorney, those attorneys in the other lawsuit, to make those available for inspection and copying so that she can see them and satisfy herself that the underlying trust is in fact a legal and appropriate trust.

THE COURT: Okay.

MR. VIE: So that was one of the --

THE COURT: And that the signatures have not been forged or at least they're original signatures.

MR. VIE: Yes. In other words, one problem of trying to settle the disposition of the trust today is that the plaintiff disputes the accuracy of the accounting and the accuracy and legitimacy of the trust.

THE COURT: Right.

MR. VIE: And so, that was one issue.

The second issue, respectfully, is that I understood that given that the Harris County litigation contested the accuracy and validity of the trust, that again there was a risk of inconsistent positions if we were to treat the trust as valid and fund this while they litigated over in Harris County.

THE COURT: They don't have jurisdiction over there. I do. That's what the circuit court has told me. And that's the part that you said I might disagree; and you're right, I do.

I would not sit here and wait on somebody Harris County to figure out whether or not they have jurisdiction over an issue, which they do, but they don't have jurisdiction of the assets.

MR. VIE: I wasn't thinking as much of the jurisdiction, Your Honor, as I was thinking of the risk of inconsistent judgments. In other words --

THE COURT: Not if I get it resolved, there won't be any inconsistent to resolve.

If they get it resolved, then it probably won't be inconsistent because I'm obligated and then obliged to follow at least theoretically the findings of any court of competent jurisdiction.

MR. VIE: Yes, Your Honor.

And the third issue, which I don't think would

give the Court pause but is something I thought of, is the fact that all the beneficiaries are not parties to this litigation.

THE COURT: That won't bother me at all because I do have authority and jurisdiction over the person who you tell me has the duty and the responsibility to act.

MR. VIEW: So those are my --

THE COURT: That's it.

So, I want this resolved within 90 days. And if I have to appoint a trustee or somebody to handle this and get it done, I'll do it. It will cost the estate. And if I find that there has been mischief, it is going to cost individuals. And that will be a separate and distinct hearing.

So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke.

MR. VIE: Yes, Your Honor.

THE COURT: Who is doing the accounting in this process? Has anybody put their arms around the assets and made any accounting at all?

MR. VIE: There is a CPA in Iowa that prepares the

tax returns each and every year for the estate, and we are getting --

THE COURT: How they get in Iowa? Is that where the family was from originally?

MR. VIE: The parents, yes, Your Honor. And the farm, as you heard, is in Iowa.

THE COURT: Okay.

MR. VIEW: And so, there is a CPA who has been involved throughout this period and files the trust income tax returns, and he is available.

MS. CURTIS: I object to that.

THE COURT: Hold on.

Go ahead.

MR. VIE: I think I have answered the Court's question.

THE COURT: Yes.

MR. VIEW: And would have the most, would have the best familiarity beyond --

THE COURT: How much money does he generally charge for his annual -- I guess he does his annual filings of reports. Is this something that's pretty cursory or --

MR. VIEW: I'm sorry. And there is a distinction. The documents that are attached as the schedule in that accounting that are attached to the motion that has been filed for injunctive relief, temporary schedules.

THE COURT: Those were prepared?

MR. VIE: By the defendant, by Anita in her capacity as trustee.

THE COURT: Okay.

MR. VIEW: I was responding to the Court's question in terms of who's the best person that could get their hands around it and that type of thing.

The CPA in Iowa obviously has to know all of the information available to the trust so that he can file the tax returns. He also pays and makes sure that the profits --

THE COURT: Then that might not be a good thing for me because I don't have jurisdiction over him.

MR. VIE: Okay.

THE COURT: But what I wanted to know was whether or not there was a person here locally, since I believe the defendants are here locally. They don't have a local CPA who is in charge of the estate.

MR. VIE: That's correct, Your Honor.

THE COURT: That would be Anita herself.

And then as far as the tax returns and all that annually which goes on, whether you got money or not, that would be done by the accountant in --

MR. VIE: Sioux City, Iowa.

THE COURT: Yeah, in Iowa.

And excuse me. What were you about to say? You disagree with what, Ms. Curtis?

MS. CURTIS: I disagree with allowing Rick Rickers, who is --

THE COURT: Is that the attorney?

MS. CURTIS: -- our cousin. He's the accountant in Iowa.

THE COURT: He's your cousin?

MS. CURTIS: He's our cousin.

THE COURT: Okay.

MS. CURTIS: He is also apparently the manager of the farm, and he began to file the tax returns --

THE COURT: I've already said probably enough to give you some pause, to allay those concerns. But these are other reasons why he should not be doing accounting. He has a conflict of interest.

MS. CURTIS: One reason why he should not be doing the accounting is because I have reason to believe that the farm lease, taking it away from the buyers, who were my father's very close friends, was notarized with a signature that was not my father's. I have not been able to look at that yet. I only have emails that purport that, but I would like to get copies of those.

THE COURT: Let me address a couple of things.

First of all, when we don't have information,

we can imagine a lot of things that may or may not be true, Okay?

MS. CURTIS: Yes.

THE COURT: That could be. I mean, all kind of thoughts and ideas go through our head when they don't have the information.

Here's what this Court cannot do. This Court cannot chase after each of your concerns. You have got enough money, you can hire anybody you want to do any kind of investigation you want done.

What I intend to do based upon the mandate from the circuit court is to try to address the concerns that you have. And they just can't be accusations, and I don't have any interest -- when I say I don't have any interest, I have an interest in outcomes, but I don't have an interest in the case so that I'm supposed to be doing things that would accomplish something for you except upon your filed documents. It's in your best interest, and I think I talked to you on the phone conference --

MR. VIE: Yes.

THE COURT: -- with both of you on the phone as well, that really this is not a matter that you should be trying to handle yourself. You should hire an attorney to do it for you, or at least part of it for you.

Now, I believe that it's in the Court's best

interest to preserve the assets of the estate and to bring to a point a going-forward process that this Court appoint someone to do an accounting of the assets and then make that accounting to the Court.

Now, you don't have to agree with me, but it's going to be an accounting of what the assets are. Whether something has been taken or mismanaged or mishandled is not going to be a part -- that's not the kind of accounting that's going to go on here.

What is, and that is what's invested, where it's invested and how it's invested is going to be the Court's concern. Once that accounting is in place, the question is whether or not the Court is going to be required or whether or not Ms. Brunsting will go forward in her capacity or not.

If she fails, then the Court will direct or put someone else in that position to do that, to move into this area or division so that the assets can be distributed or whatever beneficiaries. That's where I am in this case, and that's where the circuit court I believe has me. So I think it's in all of our best interest to appreciate this process.

In light of that, the Court is of the opinion that there are no expenditures that should be made unless they're made upon the approval of the Court. So, in other words, if Mr., up in Utah --

MR. VIEW: Iowa.

MS. CURTIS: Rickers in Iowa.

THE COURT: Mr. Rickers needs to pay the farmer. We used to call those sharecroppers sort of. It's a kind of a sharecropper thing where someone comes in farms the land and you get a percentage of it. If Mr. Rickers and the sharecroppers and others need to pay out bills and things, they should be petitioning the Court for that. That's where we are now.

We're at a point where I'm going to have to take charge in order to make sure that what I am doing has sanctity and has, well, trust going forward. What I am going to do is simply to try to make sure that the parties are all going to have equal standing and footing in this process. So that's part of what I am going to do. I'm going to enter an injunction in that regard.

Now, anybody who claims they want to bill the estate for something, whether it's lawyers or not, I am concerned about whether or not your bill should be paid by the estate because of this circumstance.

MR. VIE: I understand.

THE COURT: If the parties are going to agree, if the parties are going to come together and agree that your fee should be paid, then we should then move to a situation where we have a mediator in place or a designee in place who

will then make sure that if Ms. Curtis needs counsel, she can get that. That equally would be paid out of the estate.

It would not include Curtis because I am not going to be involved in the litigation of whether or not this is a good trust or not. I'm going to presume that it's a good trust, and I am going to go forward from there. If Curtis proves otherwise, he can get that money from the lawyers, and that would be certainly to his advantage or benefit.

MS. CURTIS: Are you talking about my brother Carl?

THE COURT: Yes. I said Curtis. I meant Carl. I apologize. You can see I'm struggling here.

MS. CURTIS: Too many C's.

MR. VIE: For the record, is it 90 days, Your Honor?

THE COURT: Yeah. I said we should try to wrap this up in 90 days, but I believe that if I appoint -- and you can suggest someone. I don't know if you know someone. Just give me a couple names. If not, I will designate someone to do this and enter an order to that effect.

It may be that because of the lack of trust that it may not need to be, unless both of you are designating somebody that you can agree upon, it may be better for me to have some person independent of the sides unless you all can agree upon the person or firm that should take care of this business.

MR. VIE: So we will get together and try to arrive at an agreed CPA that could provide the accounting the Court requests.

THE COURT: Sure. And we have a lot of them here in Houston just like we got -- I don't know anybody in California, but I want somebody I have got some jurisdiction over.

MR. VIEW: So if we're unable to do so we'll notify the Court we were unable to reach an agreement?

THE COURT: Sure. And you need to do that by the end of the week.

MR. VIEW: Yes, Your Honor.

THE COURT: You are going to be here what, today?

MS. CURTIS: I leave at 4:00 o'clock.

THE COURT: 4:00 o'clock today. Well, then you need to talk fast and see if you all can agree. Maybe you should talk over lunch. That way you can kind of size each other up. Eating together sometimes brings out good things.

And so, if you will do that by the end of the week, I will then prepare an order entering a temporary retraining order against the expenditure of any funds. Notice will be not just to you but to you in terms of Anita because I think she holds the purse in this situation. If there is any money to be paid to anybody up in Utah or anyplace else, she would be person who would authorize it or

do it.

The accountant isn't do it, as I understand it, right?

MR. VIE: No. He is just preparing the necessary documents.

THE COURT: Right. So the purse strings here in Houston, she can certainly prepare through you whatever documents are necessary for parties to be paid.

MR. VIEW: Yes, Your Honor.

THE COURT: And then hopefully that report can get done in 30 or 40 days, and then we can have a hearing. If there is some dispute about summary areas of the report, we can have a hearing about that. If there is a memorandum or recommendation as relates to how to go forward with this "asset trust," that is the distribution, we can do that.

If the parties can reach an accommodation as to how those assets ought to be dealt with, how silent a trust and they all sign off on it, we can do that. It's just a matter of how you want to do it. The trust is not going to control unless you want it to control at this point.

MR. VIE: Yes, Your Honor.

THE COURT: Under the circumstances, it seems to me there's going to be a continuous bickering and mistrust.

Anything else?

MS. CURTIS: No, Your Honor.

MR. VIEW: No, Your Honor.

THE COURT: Let me have Ms. Anita Brunsting come forward.

Good morning. Did you drop something on your foot?

MS. BRUNSTING: I broke my foot.

THE COURT: Raise your right hand.

Do you solemnly swear or affirm that any testimony you will give in this case will be the truth, the whole truth, nothing but the truth so help you God?

MS. BRUNSTING: I swear.

THE COURT: You've heard the discussion here in the courtroom, have you not?

MS. BRUNSTING: (Indicating in the affirmative.)

THE COURT: And I know that you have got counsel, and you can speak with him about the implications and concerns that the Court has about making sure that the assets are accounted for. And you certainly can work through him on any matters that you need to address to the Court. And, of course, counsel understands that he is to communicate both with the Court and with Ms. Curtis on any matters that he is presenting to the Court.

Is there any question about anything I have said -- I don't mean disagreement because you can certainly disagree with me about anything -- but is there any question

that you might have about anything I've said that you need me to answer, or certainly you have your attorney present.

MS. BRUNSTING: I need the trust account to pay. I've got the forms from the CPA. Can I move forward on that?

THE COURT: I think you should probably file a short motion and simply serve a copy of it on opposing counsel, Ms. Curtis, and forward it with a short order to me, and that wouldn't be a problem. This should be based upon the tax forms.

MR. VIE: Yes, sir.

And in terms of notice to the Court -- I'm sorry, not notice to the Court, the Court directing notice, do I notify the other beneficiaries?

THE COURT: Absolutely.

MR. VIE: Okay.

THE COURT: Even though they're not a party, they are beneficiaries and we should keep them in the loop.

MR. VIEW: I just wanted to bring that up.

THE COURT: Yeah. Should be in the loop because it doesn't make sense for us to have to go back and pull them forward a month.

MR. VIE: I will prepare appropriate submissions for payments that I would like. If the Court will approve it, then the trustee will make the payments.

THE COURT: Are these to be paid on or before April

15th or is there another cycle?

MS. BRUNSTING: No, by April 15th.

THE COURT: All right. So either they will get to me on Thursday or whatever, and I'll sign off on them, on the motion and the order, and that shouldn't be a problem.

You are not going to have to liquidate any assets to deal with that, are you?

MS. BRUNSTING: No. We have a checking account with enough that I can pay it.

THE COURT: Right.

MS. BRUNSTING: What about any incoming? The farm is rented, so we get a check twice a year.

THE COURT: Your function and role is to make those deposits as they come in.

MS. BRUNSTING: So I can continue to deposit them?

THE COURT: Continue depositing. All I am trying to do is control the outgo. What comes in as an expense is what counsel needs to see, and they have a proper and appropriate motion.

And if these things come in -- if this is a once a month kind of sit down and write out the bills kind of thing, then that's the way he should probably handle it. At some point just sit down and you prepare a list of things that you need to have done and certainly provide the forms or whatever you need.

MR. VIE: Yes, Your Honor.

MS. BRUNSTING: Okay.

THE COURT: All right. Thank you very much.

All right, counsel. That's all I have. And I'll prepare an order and get it out perhaps by tomorrow afternoon. There should not and in my opinion will not need to be a bond posted. These are parties of equal status as it relates to the assets, so no bond is going to be required.

I think, Ms. Curtis, you need to follow my advice. At some point consider getting an attorney, someone you trust to work with you, all right.

Okay. Thank you very much.

MR. VIE: Thank you, Your Honor.

(Conclusion of Proceedings)

CERTIFICATION

I, Fred Warner, Official Court Reporter for the United States District Court for the Southern District of Texas, Houston Division, do hereby certify that the foregoing pages 1 through 53 are a true and correct transcript of the proceedings had in the above-styled and numbered cause before the Honorable KENNETH M. HOYT, United States District Judge, on the 9th day of April, 2013.

WITNESS MY OFFICIAL HAND at my office in Houston, Harris County, Texas on this the 5th day of August, A.D., 2013.

_____
Fred Warner, CSR
Official Court Reporter

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUISE CURTIS | . | Civil Action |
| | . | No. H-12-592 |
| | . | |
| | . | |
| | . | |
| VS. | . | |
| | . | |
| | . | |
| ANITA KAY BRUNSTING, ET | . | SEPTEMBER 3, 2013 |
| AL. | . | HOUSTON, TEXAS |
| | . | 1:38 P.M. |
| | . | |

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

APPEARANCES:

| | |
|---|---|
| FOR PLAINTIFF: | MS. CANDACE LOUISE<br>Pro Se<br>1215 Ulfinian Way<br>Martinez, California 94553 |
| FOR DEFENDANTS: | MR. GEORGE WILLIAM VIE, III<br>MS. MAUREEN McCUTCHEN<br>Mills Shirley LLP<br>1021 Main Street<br>Suite 1950<br>Houston, Texas 77002 |

Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

APPEARANCES (Continued):

| | |
|---|---|
| FOR SPECIAL MASTER: | MR. TIMOTHY AARON MILLION<br>Munsch Hardt, et al.<br>700 Louisiana Street<br>Suite 4600<br>Houston, Texas 77002 |
| OFFICIAL COURT REPORTER: | MS. STEPHANIE KAY CARLISLE<br>U.S. District Court<br>515 Rusk, Suite 8016<br>Houston, Texas 77002<br>713.250.5157 |
| ALSO PRESENT: | Mr. William Arthur Potter |

* * *

**P R O C E E D I N G S**

(September 3, 2013)

THE COURT: This is Cause No. 2012-592, Candace Louise Curtis versus Anita Kay Brunsting and others. And Amy Ruth Brunsting. And I believe the law firm has been sued as well. I'm not sure if they have been served or not. In any event, let's see. Let's get an announcement here.

For the plaintiff, pro se, is that you, Ms. Curtis?

01:38:32PM MS. CURTIS: Yes, Your Honor.

THE COURT: And for the defendants?

MR. VIE: George Vie and Maureen Kuzik McCutchen for the defendants, Your Honor.

THE COURT: I'm sorry, say that again.

MR. VIE: George Vie and Ms. McCutchen for the defendants, Your Honor.

THE COURT: All right. And I have the special master here as well.

MR. WEST: Good afternoon, Your Honor. William

01:38:54PM West, special master.

THE COURT: And you have counsel with you?

MR. MILLION: Good afternoon, Your Honor. Timothy Million.

THE COURT: All right. And another gentleman?

01:39:06PM MR. WEST: Your Honor, this is my associate, William

A. Potter, P-O-T-T-E-R.

THE COURT: Okay. Very good. Let's see. We have the special master here as well, I gather, as the defendants, two of the defendants, the two sisters.

01:39:24PM I'm not sure. Are both of them serving as administrators or trustees of the estate?

MR. VIE: They are both co-trustees. Only Anita Brunsting is here today.

THE COURT: Any reason why Amy Ruth is not present?

01:39:44PM MR. VIE: Just because of employment obligations, sir.

THE COURT: Okay. I believe that's everyone that's participating.

We have this suit that was filed by Ms. Curtis 01:40:04PM back in 2012, in fact. I believe, Ms. Curtis, somewhere around February of 2012. That was pending for a period of time, and it was initially brought as a kind of truth in limine accounting. She mixed a lot of stuff together there.

And, of course, the one aspect of the case that 01:40:26PM this Court -- I said one aspect. One of the aspects of this case that the Court saw was first that there was diversity of citizenship, that she was a California resident, and the sisters were Texas residents.

And, secondly, that she was making allegations 01:40:44PM about an estate that appeared to be substantial sums of money,

or property, or both, were located, and that she was an heir, or at least felt that she was one of the heirs to the estate, and that she felt, I believe, at that time, that her sisters, who were co-trustees, were not properly managing the estate. I think that's, generally speaking, how this lawsuit developed.

01:41:09PM

So, in the process of conducting a couple of hearings, or at least -- I say hearings, opportunities for communication and dialogue, the Court set this matter for a hearing, and we had a hearing several months ago. Let's see if I can track that down. A telephone conference in July. I think it may have been the -- perhaps were the last communication we had. Proceeding here in the courtroom, for sure.

01:41:26PM

And the Court determined that a report, an accounting of income, receipts, and expenses, and disbursements would be appropriate, setting a time frame of December 21, 2010, through May 31st of 2013, and that that report should be filed. I would then conduct a hearing to determine not so much whether or not the accounting -- the report should be received, but to permit the master -- special master to answer questions from either side regarding the procedure and his findings, and then, also, for approval of his request for -- for pay.

01:42:08PM

01:42:31PM

And there, I believe, have been, since that

01:42:56PM

time, motions filed by the defense for, I believe, a renewal of a lease on the Iowa property. Objections to that and then other motions have been filed. So we will see how much, if not all of this, we can cover.

01:43:25PM So, Ms. Curtis, will you be -- besides the special master, is there anyone else in the courtroom you are going to need to call and have testify or ask questions of?

MS. CURTIS: No, Your Honor.

THE COURT: Okay. Sir, if you come forward, I will

01:43:41PM swear you in, and then you can take a seat over on my left.

Raise your right hand, please, sir.

(William West, witness, sworn.)

THE COURT: Please have a seat. And we can start with -- Ms. Curtis, we can start with you, if you have

01:44:07PM questions of the special master regarding -- you have a copy of his report, do you not?

MS. CURTIS: Yes, I do, Your Honor.

THE COURT: Okay. Why don't you move up closer to us there -- no, no, no. I mean, you can have a seat there, but I just wanted you to move up closer and bring the paperwork up closer.

All right. This is a formal proceeding, Ms. Curtis, so that when you are addressing the Court, you will need to stand and address the Court, and -- and I will be

01:44:44PM requiring that all of the questioning that is done as to any

witness should be done from the podium so it is easy for me to pay attention, for the lawyer and then the witness, and, of course, that same -- obviously, that same rule applies to counsel for the defense.

01:45:01PM If you would also bend that microphone down so that, when you are standing in that area and speaking to me, we will be able to hear you, and the court reporter can take your remarks.

All right. Are you ready -- you have a copy of

01:45:15PM the report, I believe you said.

MS. CURTIS: Yes, Your Honor.

THE COURT: Do you have some questions you want to ask of the witness? If so, you may do so at this time.

MS. CURTIS: No, Your Honor. I have no questions.

01:45:24PM THE COURT: You completely are, say, satisfied that you understand --

MS. CURTIS: I have no questions.

THE COURT: You just have no questions. All right.

Mr. Vie, do you have any questions you want to

01:45:33PM ask of this witness?

MR. VIE: Yes, Your Honor.

THE COURT: All right. Would you come to podium, sir.

Do you have a copy of your report with you? If

01:45:39PM not, let's get a copy of it to you. I think I have got some

copies here.

DIRECT EXAMINATION

BY MR. VIE:

*Q.* Good afternoon. I just have one or two questions just to clarify, as the Court said, the procedures under which the report was prepared.

On Exhibit 1 to the report --

*A.* Yes.

*Q.* -- you provided a statement of income, receipts, expenses, and disbursements for the period the Court directed; is that correct?

*A.* Yes, sir.

*Q.* In conclusion, on page 2 of that report, where you indicate, at the bottom, a net of income receipts and less value of stock distributed, if you could explain, what is that trying to capture?

*A.* This is trying to capture either -- during the time frame in question, either the receipts received or dividends in kind from the dividend distribution -- excuse me, dividend reinvestment accounts, less any amounts paid or any stock distributed.

*Q.* So this number at the bottom of page 2, the net of income number, this doesn't reflect actually the value of this estate?

It doesn't include the actual stock value that

remains in the estate?
A. Absolutely not. To do something like that you would need to get into something with a balance sheet -- and things of that nature.
01:47:40PM Q. What we are being provided here is more of a statement of money going out and money coming in?
A. Correct.
Q. The other exhibit, Exhibit -- the exhibit that relates to your recapturing the stock distributions that were made, is
01:48:04PM there an Exhibit 3?
Is that where that is located?
A. Yes.
Q. Stock distribution analysis?
A. Correct.
01:48:10PM Q. These are all -- these are all distributions that took place during the time that Ms. Brunsting was alive, correct?
A. From December 21st, 2010, to her demise.
Q. I understand.
Specifically, you did not find any evidence of
01:48:28PM any stock distributions that were made to anyone after the date that she died, the date of her death?
A. Correct.
THE COURT: Mr. Vie, what is the date of her death? Establish that.
BY MR. VIE:

Q. November 11, 2011?
A. Correct.
Q. So during the period of time that she was the beneficiary of the trust and had the right to direct gifts and payments --
01:48:52PM THE COURT: "She" being?
MR. VIE: Mrs. Brunsting, Nella Brunsting.
BY MR. VIE:
Q. The only transactions that you found for stock distribution, as you have noted in Exhibit 3, was at the time
01:49:03PM she was alive and could direct those distributions?
A. To the first part of your question, I don't think I have enough information to respond. But from all of the documents that we had and everything appeared to tie, these are the distributions out of those accounts in that time frame.
01:49:24PM Q. Thank you.
Could you -- in addition to the documents that we provided, you asked for and we provided a Quicken file, an electronic file?
A. Correct.
01:49:34PM Q. If you could explain to the Court what that file was, what you found in it, and how you used it.
A. That was an electronic accounting file that I asked for and that you had given me, and it was what I would generally term an electronic checkbook, which would show -- gave
01:50:00PM information about a date, an amount, and the payee.

*Q.* And what account the payment came from?

*A.* To a limited extent, yes.

*Q.* How were you able to use that, then, into what became the master's report?

01:50:16PM *A.* We used that in conjunction with the review of bank statements and other paper documents, brokerage firm account, information to create our database.

MR. VIE: No further questions.

THE COURT: I have a few, and this is to primarily 01:50:38PM supplement the record.

I want you to go back, Mr. West, and give us a general overview of what you did and -- and what these exhibits mean in terms of the income and expenses associated with this report.

01:51:00PM THE WITNESS: Yes, sir.

My report is comprised of an introduction where I gave some of the background of the complaint to a limited extent which has been addressed today. Then I gave a timeline of records received. I started that process with calling the 01:51:27PM defendants' attorney. I set up the meeting with him. We had a meeting within a week or ten days of my initial call.

I received, at his office, a number of paper files and a number of records on -- in electronic format in CD -- on CD's. I was also given a schedule of those documents 01:51:56PM that they were giving me and a list of documents that they

were not giving me, but which they were working towards obtaining.

THE COURT: Did you have the impression that this was a combination of records, some of which had been -- which were the, let's call it, original handwritten-type records, along with records that maybe had been prepared or were being prepared by the attorney for the defendant?

THE WITNESS: My broad answer to that is yes. Some were original documents that you could tell had come directly from the brokerage firm or a bank. Some were bank statements that appeared to have been downloaded over the Internet, which looked completely normal to me.

I have looked at literally thousands of documents of this nature over the years. Balances, account numbers, everything tied. I didn't think that anything had been created to be given to me.

THE COURT: By saying you were given a CD, what are you referring to?

THE WITNESS: A plastic disk.

THE COURT: I understand. What was contained on that?

THE WITNESS: Those were bank statements.

THE COURT: Downloaded from?

THE WITNESS: Yes, sir. For the most part, the paper documents -- they gave them to me, for the most part, in

paper format and electronic format.

THE COURT: But you didn't have the impression that this was a way that the records had been kept; this is just the way they had presented them?

01:53:40PM THE WITNESS: I can't tell if they were kept that way, but they had been compiled, and I think they have probably been compiled by counsel's staff.

THE COURT: All right.

THE WITNESS: As -- I received those approximately 01:54:00PM the first of June -- actually, there's some dates reflected in the report. About a month later I received a -- some more paper files and some more CD's with information on them that answered a number of -- submitted a number of the documents that had been missing on the first turnover of documents.

01:54:36PM As that was -- as that information was being processed from time to time, I had e-mails with defendants' counsel asking for particular questions or asking for more information to which, for the most part, he was able to respond, or if they weren't available, he -- he just told me 01:55:02PM so. So, I felt like he was trying to do the best he could.

THE COURT: At the end of the day, let's say sometime the latter part of July, when you had your hands full of the documents, did you have the impression that you had all of the documents that you needed to complete a proper and 01:55:29PM complete report?

THE WITNESS: For the most part, Your Honor. I listed in my report some accounts or statements that were not received. Defendants' counsel had explained why they were not received, or I believe there were a few things they were still trying to get. I conferred with my associate, who did a great deal of the work, you know, with my work and supervision. There were certain documents that we didn't have, but we did have some summary statements or some quarterly-type statements.

01:56:19PM I can't say for certain. I felt like we did have what we needed to present a good report. Not anything is a hundred percent right, but I felt like we didn't have any really big unexplained gaps in the things that we were given.

THE COURT: That pushes you over into the work

01:56:52PM performed area where you are now talking about.

So is there something else in that area that you need to bring to the Court's attention?

Basically that you received the documents -- I'm just following.

01:57:05PM THE WITNESS: Yes, sir. We felt like we had substantially all of the documents or a very high percentage, and I'm saying that from years of experience as an accountant. If I had really felt uncomfortable about anything, it would have been highlighted and really brought to the forefront.

01:57:40PM THE COURT: Whatever is necessary, you saw.

THE WITNESS: Yes.

THE COURT: In the summary of the accounts received, you show several bank accounts and several, let's call them, stock accounts or stock brokerage accounts, various investment accounts. I don't know if these are stocks or just simply accounts where you would invest money and they would purchase stock. The point is that these are -- appear to be a substantial number of accounts.

Are you of the opinion that these are all the accounts -- first of all, these are the accounts provided?

THE WITNESS: They were the ones provided. I think they were all that was provided. The plaintiff, in response, had raised the issue about some Treasury bills or Treasury bonds. I don't believe we saw any information in regards to them.

Now, technically, I would like to see the bonds. And technically, if it was something where they just sat there and interest was paid in a lump sum at a future date, and there was no income or cash income receipt activity during the period, then they be wouldn't reflected on here. But if it was an accrual-type income, then it should have been reflected.

THE COURT: So these accounts, as I understand it -- and you are distinguishing between the accounts that may be in existence but just have not reported income on an accrual

basis, but these accounts are reporting on a quarterly or annual basis income, and/or fees, or whatever else that might be reflected against the account.

THE WITNESS: Yes, Your Honor, all these accounts.

01:59:41PM THE COURT: For example, if there were Treasury -- are Treasury bonds, and they are paying whatever interest they are paying, that certainly could be -- that might be -- you don't have those, but that interest theoretically, I guess, could be applied back into the principal and, therefore, would 01:59:59PM not be reflected on a statement.

THE WITNESS: Correct.

THE COURT: Okay. Tell us a little bit about the report exceptions and the missing documents area there on page 6.

02:00:11PM THE WITNESS: These were -- as it is discussed here, there were some accounts that we did not have, or statements. In some cases, they were quarterly reports that were not -- the second quarterly reports were not available yet, or I was told they were not available yet in the latter part of July, 02:00:41PM which was quite often the case, but that they could be supplied, if needed.

There were a couple of other accounts where we may have been missing a monthly account or maybe an earlier quarterly account, but we had a latter period account where, 02:01:02PM for the most part, everything -- we could kind of trace our

way through the missing period. Again, I didn't see any great cause for alarm.

And then there were a number of things, disbursements, that we did not have documentation for, and those were explained to me that, for the most part, that they just didn't exist.

THE COURT: Okay. And these disbursements did not have -- did not have a paper backing. These would just be, let's say, for example, a check that might have been written for an amount of money, but there was no -- for your records there was no receipt or document indicating why that disbursement was being made. It might be reflected on the check itself.

THE WITNESS: Correct. We were able to go back to the pictures of check facsimiles and, you know, confirm that.

THE COURT: Okay. All right. Now, you've also listed on page 8 a number of outstanding shares. These reflect the transfers that you say were made before November 11th of 2011, I gather. And then other stocks, perhaps, that might have -- that might have been reinvested, or income that might have been reinvested.

Am I seeing that right?

THE WITNESS: Yes, sir.

THE COURT: Okay. All right. You make a statement on page 9, at the end of that section, that indicates that

there are certain stocks available.

Is that the total of all stocks outstanding shares that are part of the trust?

THE WITNESS: Yes, sir, to the best of my recollection.

THE COURT: Those are three different, I believe -- three different shares -- three different companies -- that might not be the proper term. How would you say it?

THE WITNESS: I think it was four -- Chevron, Exxon, John Deere, Deere Enterprises, and Metropolitan Life.

THE COURT: Okay. Those are the four. Okay. All right. And then you go on to make comments on certain accounts, and this is some of which you maybe already have stated having to do with the sale of certain securities and the disbursement. I'm not sure.

Is that what that is about?

THE WITNESS: Yes, sir.

THE COURT: One of the areas that you touched on earlier had to do with, for example, a check that may have been written to a family member that may or may not have had some document behind it. We are looking at the top of page 10, where is says, "Many of the payments were noted as reimbursements." These would be checks that would reflect reimbursement but not necessarily another check that showed the payment was made.

THE WITNESS: Correct. The check was written to the individual from the Quicken files. It would say reimbursement for -- automobile repairs type of thing. And on the Quicken files, it may have been in that automobile repair expense account. But for purposes of this report and the issues raised in the complaint, I felt that it was important -- it was important to make this some special category.

THE COURT: All right. Now, going to Exhibit 1, this is the summary statement, is it not?

I say summary statement. It's a statement of income, receipt and expenses. Behind that would be the exhibits. I say exhibits, would be other exhibits that would reflect the individual checks written and/or to whom they may have been written in Exhibit No. 2. And in Exhibit 3 would be the distribution analysis of the stock payments.

Is that what I'm having there?

THE WITNESS: Yes, sir.

THE COURT: All right. So, just let me take a look at this. It shows, I gather, that they had an opening -- a beginning opening of 127,000 -- almost $128,000 in farm income as a beginning item there.

THE WITNESS: Yes, sir. Farm rent during the time frame in question.

THE COURT: And, so, what you've done is you've accumulated all of the income from the farm for this period,

"this period" being the period that I requested that you do, the December 21, 2010 through May 31, 2013.

THE WITNESS: The deposits we identified for farm rental income.

02:06:38PM THE COURT: And that would be just a little over a two-year period, two years and a few months.

THE WITNESS: Yes, sir.

THE COURT: All right. In addition to that, you show dividend income, interest income.

02:06:52PM And by long-term capital gains and short term, are you reflecting there some income from Exxon or one of these companies?

THE WITNESS: No, sir. Actually the dividends from Exxon or Chevron would be in the dividend income amount.

02:07:13PM THE COURT: On Exhibit 3?

THE WITNESS: Excuse me.

THE COURT: Oh, I'm sorry, no, it would not be.

THE WITNESS: I'm sorry, Your Honor. Could you repeat your question.

02:07:22PM THE COURT: I was asking where did this long-term capital gains come from.

THE WITNESS: Oh, I'm sorry. The long-term capital gains and short-term capital gains, those were reported on the stock brokerage accounts. Those are called flow-through

02:07:38PM amounts from mutual funds and things of that nature.

THE COURT: And then the income of 183,000 is stock sale. That's the liquidation of the stock -- did that include the liquidation of stock before 11/11/11?

THE WITNESS: That was the liquidation of stocks during that time frame, other than the stocks that were disbursed in kind.

THE COURT: Okay. So this is a separate liquidation.

THE WITNESS: Yes, sir.

02:08:11PM THE COURT: Or a separate income, should I say. This is income.

THE WITNESS: It's stock liquidated.

THE COURT: This is income from the sale of certain other stocks that has now has been liquidated and it brings

02:08:22PM total income to about $216,600,000.

THE WITNESS: Yes, sir.

THE COURT: The miscellaneous income is just other income that -- what would that be, sort of like what?

THE WITNESS: To be honest, Your Honor, without

02:09:01PM looking at the underlying documents, I can't remember right now. But it was a number of small items that didn't fit one of these other accounts that are listed in Exhibit 1.

THE COURT: But it is reflected in the deposits of the account?

02:09:17PM THE WITNESS: Yes, sir.

THE COURT: The pension income, and I'm looking at Social Security income. Who is getting Social Security income to go into that account at this time?

I believe both the husband and the wife are deceased, right?

02:09:31PM

THE WITNESS: Mrs. Brunsting, she was alive for about 12 months.

THE COURT: You are right. Tax refunds, that would also be reflected. This is the sale proceeds from the house. That's all -- so we are talking about a total of 830-plus thousand dollars during this two years or two- to three-month period?

02:09:45PM

THE WITNESS: Yes, sir.

THE COURT: And then we're talking in the next section about expenses, medical care, in-house care, and medical care, and all of that coming to the 122,000, more or less.

02:09:55PM

THE WITNESS: Yes, sir.

THE COURT: The pet care and pet food and all of that, that doesn't have anything to do with the farm. This must be at the house, right?

02:10:22PM

THE WITNESS: Yes, sir.

THE COURT: Okay. And veterinarian expenses.

So we are talking about total expenditures of about half of what the income was, right?

02:10:41PM

THE WITNESS: Yes, sir.

THE COURT: And then you said net income, receipts, and expenses, disbursements.

How are you distinguishing that from total expenses and disbursements?

02:10:55PM

THE WITNESS: That's just the net of the total incoming receipts of 830,000 less the total expenses of 418.

THE COURT: Okay. And then you show the 298,000 in stock -- in stock transfer to family or whatever. This is a value of stock. This is the value beyond what was sold and became income.

02:11:20PM

THE WITNESS: Yes, sir.

THE COURT: So we are looking at -- right at almost 500 -- well, 300,000, basically, that was transferred directly, apparently, by the estate before -- before Ms. Brunsting died in November 11, 2011.

02:11:39PM

THE WITNESS: Yes, sir.

THE COURT: More or less.

THE WITNESS: In May and June of 2011.

THE COURT: What two or three numbers are you putting together to come to the 120,000 at the bottom?

02:11:56PM

THE WITNESS: 411,328 less 298,976 gets me to the 112,346.

THE COURT: All right. What you don't have or what didn't do and were not asked to do was to do an asset

02:12:19PM

liability --

THE WITNESS: Correct.

THE COURT: -- sheet.

Are there any other concerns or statement that you need to make regarding this report before -- before I ask you a question regarding your billing?

02:12:45PM

THE WITNESS: The one item is, after the filing of my report, there was a disbursement for $6500, which had been put into miscellaneous expenses because I had no backup for it.

02:13:19PM

THE COURT: It was a one-time payment of 6500?

THE WITNESS: Yes, sir.

THE COURT: Where is that reflected on page --

THE WITNESS: I'm sorry. Exhibit 1, page 1.

02:13:29PM

THE COURT: Page 1, Exhibit 1? All right.

THE WITNESS: Towards the bottom, Miscellaneous Expenses. That shows miscellaneous expenses $6753. $6500 of that amount should be reclassified to checks or cash to family members.

02:13:54PM

THE COURT: What you are calling miscellaneous expenses would be -- say that again. I'm sorry.

THE WITNESS: That miscellaneous expense, there was -- $6500 of that amount we found -- defendants' counsel confirmed for me, subsequent to the filing of the report, that

02:14:17PM

that was a distribution to a family member.

THE COURT: Okay. So this is not a part of the pre -- part of the distribution made by Ms. Brunsting before her death. This was expenses or monies that were paid to a particular family member -- a single family member or maybe two family numbers, whatever the number might be, that were made after that date?

THE WITNESS: Let me -- let me confirm that. That was subsequent to her demise.

THE COURT: What page are you looking at?

02:15:10PM THE WITNESS: On Exhibit 2, page 16.

THE COURT: Where it says --

THE WITNESS: About two-thirds or three-quarters of the way down the page, it says "Miscellaneous Expenses."

THE COURT: Page 16 did you say?

02:15:30PM THE WITNESS: Yes, sir. Exhibit 2.

THE COURT: Okay. Miscellaneous, and then it shows a total of something like... co-op and then withdrawal, and then Houston Metro, those together totaling 6753.72.

THE WITNESS: That middle entry on November 14th of

02:15:53PM $6500 should now be reclassified --

THE COURT: As disbursement?

THE WITNESS: -- as disbursement to family members.

THE COURT: As disbursement. You've got a code there of W-D-R-L. What does that mean to you?

02:16:12PM THE WITNESS: Withdrawal. This withdrawal on the

bank statement.

THE COURT: It is my lack of accounting acumen. It's not your fault. I'm trying to make sure I understand, so that if I have a question, I can ask you.

02:16:29PM Now, as it relates to your billing, it does not include an appearance here today, as I understand it, or the time that you have spent. You have already submitted a billing to the -- bill to the Court for payment, have you not?

THE WITNESS: That is correct.

02:16:43PM THE COURT: And except for whatever time has been spent since this submission, have you received any objections from either the plaintiff, Ms. Curtis, or from the defense concerning the payment of your expenses?

THE WITNESS: No, sir.

02:16:59PM THE COURT: Does your billing include the legal advice necessary that you received as well, or was it just separately an accounting function?

THE WITNESS: Mine was separately an accounting function, and I also submitted a separate invoice from my

02:17:18PM counsel.

THE COURT: Have you received any objections from either plaintiff or defendant in that regard?

THE DEFENDANT: No, sir.

THE COURT: Ms. Curtis. Anything else?

02:17:29PM MS. CURTIS: No.

THE COURT: Mr. Vie?

MR. VIE: Just one thing, Your Honor.

BY MR. VIE:

*Q.* Just to be clear, because the Court has asked about the timing of this last expense that you mentioned being reclassified.

*A.* Yes, sir.

*Q.* Okay. If I understand the miscellaneous expense, the check that is noted for the $6500, that is prior -- that's three days after Mrs. Nella's Brunsting's death?

*A.* Correct.

*Q.* Do you recall what the transaction was, the $6500 transaction?

*A.* I believe it was to Carol Brunsting. I feel confident about that. And I believe the -- the explanation that your firm gave me was that -- it was to be, I guess, used to help deal with some of her funeral expenses.

*Q.* Was the money redeposited at some point after that?

In other words, the money that had been taken out should there be some funeral expenses or other things necessary, would that money have been put back at some point?

THE COURT: Why don't you show him where you are talking about.

MR. VIE: Well, I understand where his reference was on page 16, where he highlights the miscellaneous expense of

6500.

THE COURT: I know, but how would he know whether or not it is put back unless you know where it is?

MR. VIE: If he has a corresponding entry for a deposit for 6500.

THE COURT: I see.

THE WITNESS: I don't recall one.

BY MR. VIE:

*Q.* If there was one, where are the costs like that reflected in the report?

*A.* It would probably be under a miscellaneous --

THE COURT: Keep your voice up, Mr. West.

THE WITNESS: I would think it should be under miscellaneous income, and I don't find it there. There's a possibility it could have always been misposted, but I would need to look through the ledger in total.

BY MR. VIE:

*Q.* Would you -- it was -- your understanding, it was represented to you it was not a gift; it was some expenses that were funds made available for funeral expenses?

*A.* That's what I was told.

MR. VIE: No further questions, Your Honor.

THE COURT: All right. Well, your understanding is based upon what counsel told you. It had nothing to do with and independent audit, right?

THE WITNESS: Yes.

THE COURT: You may step down, sir. Thank you very much.

All right. If there is no objection, I will ask -- no objection to the report and the invoice request of counsel for himself, as an accounting function, as well as advice of counsel, if there's no objection, I'm going to order that those be paid.

Any objection, Ms. Curtis?

02:20:30PM

02:20:51PM

MS. CURTIS: No, Your Honor.

THE COURT: Mr. Vie, speaking on behalf of your clients?

MR. VIE: No, Your Honor, no objection.

THE COURT: All right. Okay. All right. That's all we have. Thank you very much, and that will take care of it.

02:21:00PM

No, no, no. I'm sorry. All we have with accountants. If they want to leave, they can. There are some other motions we need to address.

02:21:14PM

MR. MILLION: Your Honor, would you like us to submit a proposed order?

THE COURT: Would you do that? It would make it a lot -- well, how about that, just happen to have it right there, right?

02:21:40PM

You shared this with -- the expense paperwork,

you shared the expense report and/or request for payment with both Ms. Curtis and with Mr. Vie?

MR. WEST: Yes, Your Honor.

THE COURT: All right. Ms. Curtis, you have some other -- well, I will start with you, Mr. Vie. I believe you have filed a motion that has drawn some -- you all want to be excused?

MR. MILLION: Yes, Your Honor. I do want to bring one other thing to the Court's attention.

THE COURT: Okay. Go ahead, sir.

MR. MILLION: In the pleadings that were filed by the plaintiff and defendant, there has been some indication that they are wanting additional work to be performed by the special master. And I know one of the proposed forms of order said you've got to do something within 10 days.

Just given the tax season issues with respect to corporate filings and such, any additional work that the special master might request to do, he is happy to do whatever the Court needs. However, he would need more than 10 days to be able to comply with that.

THE COURT: Yeah, I think I might have said this to both sides. If I did not, you will hear it now.

My purpose in asking Mr. West to come in was not to make him a person for them to utilize to do any of their work. He was working for the Court to bring some

matters to the Court's attention that would be too much contention between the parties for me to ask either side to present anything to me that I could, at least in good faith, at the time, rely upon as a way of making some determinations.

02:23:42PM So I wanted to find out where the income was and what had happened to it. Those were some of the allegations made by Ms. Curtis.

The function of doing other financial reports I think the parties should be able to handle and do themselves.

02:24:02PM And if they choose to employ someone to do it, they certainly will be able to do it. We have got fundamentals of stuff ready and in place for them to go ahead and get that done.

If there is some need, certainly, Mr. West may be asked do it. If so, it would be by the Court, not by the

02:24:20PM parties.

MR. MILLION: Thank you, Your Honor.

THE COURT: Thank you very much, gentlemen. Have a good day.

Ms. Curtis -- I'm sorry. Mr. Vie, you filed a

02:24:32PM motion to -- let me just get it out here -- a motion to -- request for the renewal of the farm lease, I believe. Let me see if I can find that document number.

I believe that's Instrument No. 65, filed about 10 days ago.

02:25:03PM MR. VIE: Yes, Your Honor.

THE COURT: And as I understand, Ms. Curtis, that you have reviewed that, and your objection is, essentially -- correct me if I am wrong -- that it is automatically renewed at this point because no objection was filed and no disapproval of that renewal occurred within the time frame that needed to be made.

Am I correct?

MS. CURTIS: Yes, Your Honor.

THE COURT: So in that regard, the objection is simply a matter of record as to how things are and the -- the renewal of the farm lease, while the Court might have the authority to cancel it, it is automatically renewed. It would take some affirmative action.

So why should I cancel it? Tell me why I should cancel it.

Is there any basis for me to cancel it at this point?

MS. CURTIS: The farm lease?

THE COURT: Yes, ma'am.

MS. CURTIS: No, Your Honor.

THE COURT: The motion will be granted unless there is something additional I need to know, Mr. Vie, about this before that occurs.

MR. VIE: No, Your Honor.

THE COURT: All right. I believe there was an order

entered, and I know there was one entered, but I believe the second order was entered for the payment of certain property taxes.

That has been taken care of, right?

02:26:28PM MR. VIE: Yes, Your Honor. You have already entered that.

THE COURT: All right. I have reviewed your responses to the report. It seems to me the next item, then, has to do with objection that you have made -- I'm trying to

02:26:40PM figure out what you meant, Ms. Curtis, by "recommit matter to master for consideration."

Tell me what you are talking about there. You filed this on September 3rd. This was filed, what, today?

MS. CURTIS: This was filed this morning.

02:27:04PM THE COURT: Wow. You are faster than the lawyers are. Where were you when you filed this?

MS. CURTIS: In the clerk's office.

THE COURT: All right. I didn't know if you were filing electronically or not.

02:27:16PM MS. CURTIS: I do not file electronically.

THE COURT: Well, you filed this motion -- or objections to defendants' motion for order to recommit matters to master for consideration.

Tell me what you are talking about there.

02:27:31PM MS. CURTIS: Well, there is a letter that Mr. Vie

provided to Mr. West in support of missing documents and other questions that the master had. It is dated July 15th, 2013. It was Appendix Tab 1 in Document No. 67 filed by the defendants, which is their response to the report of master.

02:28:02PM THE COURT: All right.

MS. CURTIS: And I am objecting to even spending another penny with the master when there is nothing substantive in here. This was all just excuses and explanations.

02:28:23PM THE COURT: You mean on the part of the defendants?

MS. CURTIS: The defendants, for missing records or how they categorized the expenses, which was not what the master was instructed to do. He was just instructed to list the income and the expenses that occurred for this period of

02:28:45PM time.

He did the best he could to categorize these things. He had questions, like about the 6500 in miscellaneous income. And he did not receive third-party receipts or original statements or any documentation. All the

02:29:04PM master received were excuses for these transactions, which is not the basis of the master's report. He was just asked to report on the income and expenses.

So I think this entire thing is just irrelevant and a waste of time.

02:29:25PM THE COURT: So your objection and -- your objection

there is to -- has to do with the statements being made in the defendants' report or request or statements to the master, and that no further work should be done by the master -- special master regarding these documents and these statements?

02:29:50PM MS. CURTIS: That is correct.

THE COURT: I think I've already cured that. I've just let him go.

What else did you have there? You filed, as well, I think a motion to show cause why a judgement of civil

02:30:09PM contempt should not be -- and I know they have not had a chance to respond to this. But that's also been filed before the Court. But is there anything else, other than that motion pending?

MS. CURTIS: I have not filed anything else, no,

02:30:26PM Your Honor.

THE COURT: All right. So, you are coming out of California, and I'm trying to find out how we -- how soon would you be ready and what evidence would you be presenting on this? Because I don't want to have you just coming back

02:30:41PM and forth, expense to you.

MS. CURTIS: I have a statement to make. I don't know if that will help.

THE COURT: I don't know if Mr. Vie is prepared to respond, but I will permit you to make your statement.

02:30:51PM MS. CURTIS: I don't expect a response. I just came

prepared with this statement.

THE COURT: Okay. Go right ahead, then.

MS. CURTIS: "The absent of immunity results in responsibilities for which there is no exemption. Since no one may be in legal relation with their self, trustees, de facto or de jure, encumbered with duties, and empowered to perform such duties are bound in a jural relation to the beneficiaries, which confers upon said beneficiaries specific rights which are well-known to the law.

02:31:03PM

02:31:23PM

"Among such rights is a distinct and calculable property interest in a complete and accurate accounting. Withholding such information, whether by failure or refusal, constitutes a palpable injury to a beneficiary evidenced by the resulting inability to cure and perfect their claim.

02:31:43PM

"Said failure to perform the duties of trustee endows the beneficiary with the legal powers to act against said trustees in order to lay claim to that which is [property] -- properly theirs and to which they are entitled.

"I object to the July 15th letter from

02:32:01PM

defendants to the master insofar as it contains excuses and explanations that are prejudicial, non-probative, and thus immaterial. The time for these explanations and excuses has long since passed. I would, however, offer the letter into evidence as an offer of proof that the omissions contained

02:32:24PM

therein establish evidence of facts that are clear, positive,

uncontradicted and of such nature they cannot rationally be disbelieved, and the Court is, therefore, compelled to conclude that those facts have been established as a matter of law.

02:32:36PM "Defendants admit that they failed to keep books and records, and, therefore, are incapable of providing a full, true and complete accounting. Further, defendants admit to self-dealing, commingling, and [applications] of -- misapplications of fiduciary attached to expressions of bias.

02:32:58PM "I would also like to offer defendants' response to plaintiff's request for disclosure and defendants' answer into evidence as an offer of proof that defendants refused to provide non-proprietary trust instruments and admit that they can provide no evidence of notices to the other

02:33:17PM co-beneficiaries of any of their acts from alleged changes to the trust, changes of trustees, changes in trustee compensation or any of their other proclaimed acts of trust administration.

"Plaintiff's claim for breach of fiduciary is

02:33:33PM ripe for summary judgment on the merits of these admissions and the accounting that supports the admissions. Plaintiff asks this Court for summary judgment on the claim for breach of fiduciary and asks that defendants be removed from conducting any further trust business.

02:33:48PM This is Texas Trust Code 113.082, Sections 4, 5

and 6(b). Plaintiff further moves that this Court bifurcate all the remaining issues, including questions of damages, until more necessary information can be obtained."

THE COURT: I saw attached to your motion what I believe to be a request for certain discovery.

That is certain information that you have wanted provided to you; is that right?

MS. CURTIS: It is information I wanted provided to me.

02:34:25PM THE COURT: All right. But once that information -- let's assume that that's what it is and that they are going to respond and give you certain information pursuant to your request, and now you have got the information, let's say.

02:34:34PM What is your next -- you are asking the Court, I gather, to have a hearing to determine whether or not the parties should be removed as trustees. You understand that would require the Court then appointing someone to serve as a trustee.

02:34:52PM MS. CURTIS: Yes, Your Honor.

THE COURT: And then the parties would then have to, then, present to the Court, I gather, the name -- the name or names of individuals who they believe -- whom they believe would be qualified to handle those -- those functions, and

02:35:08PM could not -- it would seem to me, because of the controversy,

it doesn't seem it could include you or another family member.

Do you see the problem there?

MS. CURTIS: I do understand.

THE COURT: So is that what you are asking the Court to do in your -- that's what I think I heard you say.

02:35:22PM

Is that right?

MS. CURTIS: Yes, that's correct.

THE COURT: Why haven't you gone on and hired a lawyer?

02:35:32PM

MS. CURTIS: Because these are things that -- these are things that I don't need an attorney for. I'm going --

THE COURT: I don't disagree that as a matter of course, you are entitled to what you are requesting. The problem is that you are not -- you are so far away from the

02:35:53PM

courthouse, and it creates some problems with the communication that -- when I say "communication," meaning if I want to have a hearing on something, you either have got to fly in here, or I have got to have you on the telephone. And I'm not really sure the telephone is a proper way to have

02:36:10PM

these types of proceedings.

If you had counsel, particularly local counsel, that's someone who could make motions and proceed to do discovery and all of that on your behalf. It seems to me that would be a much easier way to proceed. I'm just throwing that

02:36:28PM

out there for you.

However, under the rules of discovery, I'm not quite sure that the way that you have presented this is a way in which the defendants are required to respond. In other words, you have attached to your motion, your ex parte motion -- and I think you filed it under seal. I'm not sure why.

Why did you file it under seal?

MS. CURTIS: I just gave it to the clerk this morning.

THE COURT: Okay. So it doesn't really need to be under seal. There are no -- I don't think there are any -- we generally have things filed under seal that would -- where there may be some indication of information, family private information, confidential information, that should not be disclosed to the public. But this is a public proceeding, so there is nothing, I gather, as far as you know that --

MS. CURTIS: No, Your Honor.

THE COURT: -- would require that. I'm going to, then, have it removed from being under seal. I don't know if counsel has gotten a copy of it yet, but he would be able to access it. You should provide him a copy of it.

MS. CURTIS: I did.

THE COURT: Okay. Very good. But if you look at what you have got as p-68. Does that mean there's a p-67 someplace and a p-66?

MS. CURTIS: The p-67.

THE COURT: It's attached to the motion. That's what I am referring to. It's attached to your ex parte motion. It is a five-page document, demanding --

02:38:11PM MS. CURTIS: I have it. It was the only exhibit that I attached.

THE COURT: But this suggests there are 67 other exhibits out there somewhere, right?

MS. CURTIS: Yes. I have just continued adding

02:38:28PM exhibit numbers from the very beginning.

THE COURT: Okay. So some of these exhibits are attached to your original proceeding?

MS. CURTIS: Yes, Your Honor.

THE COURT: And all along there may have been some

02:38:38PM that were added to or attached to your motions, and you are now at number 68. That's what that is. Okay.

MS. CURTIS: Yes, Your Honor. And --

THE COURT: Have you read the rules, Federal Rules of Procedure related to discovery requests?

02:38:55PM MS. CURTIS: Yes, Your Honor. I have something to say about that, also.

THE COURT: Well, let me say my say first. And that is, this is not going to get.

MS. CURTIS: I understand.

02:39:04PM THE COURT: Go ahead and say your say.

MS. CURTIS: "The public policy considerations involved in a common law information demand pursuant to a fiduciary obligation are very different from those involved in a discovery request under Rules of Civil Procedure for the following reasons: If trustee is administering property, the trust estate that belongs to the beneficiaries of the trust. In other words, the beneficiaries hold equitable title to the trust estate.

"The trustee acting in his individual capacity usually has no personal interest whatsoever in the estate of the trust that he is administering. Consequently, the information requested does not belong to the trustee. In legal discovery requests, a party to a lawsuit is requesting proprietary information and documents that belong to another party. This is not the case with respect to equitable demands for information.

"The trustee of a trust holds the trust estate for the benefit of the trust beneficiaries who have an equitable interest in all information and documents. There is usually a financial disparity between the beneficiary who is using his personal financial resources to obtain information and the trustee who is using the estate of the trust to pay for the cost of his compliance with the information demand. In essence, the beneficiary is paying everyone's fees.

"This situation does not occur in legal

discovery requests where independent parties are involved in litigation. The beneficiary of a trust is the only person authorized to enforce the trust. It is not possible for him or her to perform this function without disclosure from the trustee regarding how the trust is being administered. Where, as here, the trustee is conflicted, the duty to disclose is even higher than that of ordinary corporate trustees.

"In discovery, under the rules the scope of discovery is whether the information sought appears reasonably calculated to lead to the discovery of admissible evidence. In common law disclosure, the scope of discovery is material facts known to the trustee that might affect the beneficiaries' rights.

"There is no law in place allowing formal objections to reasonable common law disclosure demand for information directed from a beneficiary to a trustee. Unlike interrogatories, there is no limitation on the number of demands for information that can be made on the trustee if the trustee breaches his duty to disclose his subject to all equitable remedies. Moreover, his breach is a factor in the award of legal fees in the overall case pursuant to Texas Trust Code 114.064."

I have been asking, first, nicely, then I made a common law demand in writing in late 2011, after my mother passed away. I made a statutory demand for the exact same

information I was entitled to in January of 2011. And to this day, I have gotten nothing but excuses and explanations for records and documents that I am entitled to as a beneficiary.

THE COURT: All right. Let me ask you, when you say you have gotten nothing, are you saying that you have received absolutely nothing from defendants or their attorneys?

MS. CURTIS: I have received nothing responsive.

THE COURT: So now there is an argument as to what responsive is, isn't it?

So here's what I am getting to. These kinds of disputes as to whether or not -- whatever you might have received -- and I don't even suggest that it's what you requested, but whatever the dispute is, these matters are matters that now are in this Court. And you are asking me to address them, and I'm in no position to address them because I don't have the documents before me that you do have.

And the way this request has to be made now is not in a common law fashion as you would do if you were writing a letter to a person and requesting. That simply sets you up to go to court and get a judge to enter an order that you be provided with the documentation that you believe you are entitled to. My job would then be to decide whether or not the information that you have requested is relevant or important to any issue in the case.

Because the point is, the bottom line here, in

my opinion, and it seems where you are headed, is that you are asking this Court to do one of several things, or maybe several things.

One, it sounds like you are asking the Court to remove the trustees and appoint a trustee. I think I heard you say that.

Second, it seemed to me you want the estate dispersed so that you have your share of the estate and it is not under the supervision and/or hands of your sisters.

And, third, you want your sisters or the trustees, whoever was acting as -- I think it was both of them, co-trustees, since November 11th of 2011, or whatever period of time. You want them to account to you, that, by accounting, I think I hear you saying you want them to reimburse you for what they have taken that doesn't belong to them, as a disbursement to them, assuming that that has occurred.

And it sounds to me like you are asking for attorney's fees that have not -- following through. And this would not come from the estate per se. It would come from them individually. That's what I understand I am hearing.

So, there are some documents that may be important or relevant to those kinds of requests, but everything wouldn't necessarily be. Whether or not -- for example, if you are looking for do you have certified copies

of letters, or whatever, that might have gone from this person to that person, that might not be relevant.

What is relevant, it seems to me, is that there is a money issue here, and it can be solved by accounting and
02:45:30PM disbursement. One of the things that the Court is going to have to get around to, it seems to me, because I'm not sure that you are going to do it voluntarily, or the parties or the defendants, is at some point an asset/liability statement has to be prepared and presented in this case. Otherwise, there's
02:45:50PM no way for the Court to know what the value of the estate is and/or what the -- what any disbursements might look like. I'm not sure that disbursement is the proper venue, but I am certain that that's part of what you are requesting.

Am I correct in some of that?

02:46:07PM MS. CURTIS: You are correct in almost 99 percent of that, but I would like to know where the EE bonds are.

THE COURT: The who?

MS. CURTIS: The EE Treasury bonds.

THE COURT: Here's my point. You can ask that, but
02:46:24PM you need to do it. You can ask for a revelation of these documents, these Treasury bonds, whatever else you think that's missing and have not been accounted for. And the reason, theoretically, at least in part, that they have not been accounted for is that they are not paying an interest as
02:46:45PM an income to the estate, necessarily. The interest,

apparently, is being accumulated in the bond itself. So you would have to cash the bond to get the principal and the interest. That may be an explanation for it.

You are entitled to know what those assets are, but you've got to ask for them. What I said to you was the way that you attached it to this motion is not the way that it should be done under the rules of discovery. So simply file your motion for requesting whatever it is that you are requesting discovery wise with counsel, Mr. Vie, who has the duty to either object to what you are requesting or to respond. Okay?

But I don't want it attached to your motion for an order to show cause because that's a different -- that's a different vehicle. This is discovery attached to something that it should not be attached to. So you need to file a separate discovery motion. All right? Or at least provide that -- file that request with Mr. Vie.

MS. CURTIS: Excuse me, Your Honor. But the reason I attached the demand for production of documents, this is a -- this has already been given to defendants. They have already responded to it.

THE COURT: Okay. Okay.

MS. CURTIS: And the reason that I attached it is because I still don't have the information that I need to be able to make a decision about anything having to do with my

beneficial interests.

THE COURT: So that's the basis for this application, for civil contempt.

MS. CURTIS: Yes, Your Honor.

02:48:30PM THE COURT: I see. Okay. Now, see, I don't know what's going on outside of the Court. So I apologize for being too far ahead of you in that respect, or behind you, whatever.

The point is that this application, then, would 02:48:44PM require the Court to conduct a hearing. They have a duty to respond and an opportunity to respond within a certain number of days. It would require a hearing, and, in my opinion, it would require a hearing here in open court so the record is made of whatever that proceeding is. So, there you have it. 02:49:05PM It is going to be -- I cannot let you participate by telephone.

MS. CURTIS: I understand.

THE COURT: Because you might need to be questioned, as well, under the proceeding. All right?

02:49:17PM So I will set a date for that, and Mr. Vie can respond within that time frame, and then we will see whether or not there's a hearing probably within the next 30, 40 days.

MS. CURTIS: Okay.

THE COURT: Anything else?

02:49:36PM MS. CURTIS: No, Your honor.

THE COURT: And you are still not going to get a lawyer, right?

MS. CURTIS: Not quite yet.

THE COURT: Okay.

02:49:44PM Mr. Vie, did you have anything that you needed to bring to the Court's attention?

MR. VIE: No, Your Honor.

THE COURT: So I will go ahead and set this matter for a hearing perhaps the 1st of October.

02:49:55PM Do we have a date that we can give them now?

Is October 1st too soon?

You haven't had a chance to respond yet. So, theoretically, you have got 21 days.

MR. VIE: I think it is on the docket for the -- I

02:50:19PM think the submission date is the 19th.

THE COURT: That's an automatic submission. I'm talking about a date for the hearing on the motion. You are going to be responding or -- or not, one way or the other. I would have to have a hearing before I could decide the motion.

02:50:35PM MR. VIE: Tuesday, the 1st?

THE COURT: Would that be fine?

MS. CURTIS: Your Honor, the nature of my work requires me to be in my office on Monday or Tuesday of any given week.

02:50:49PM THE COURT: What's a good day for you?

MS. CURTIS: Wednesday, Thursday or Friday. Any Wednesday, Thursday or Friday I will be here.

THE COURT: So if you have to travel, how are you going to get here on Wednesday if you have got to be in there on Tuesday?

02:51:01PM

MS. CURTIS: I can travel at night.

THE COURT: You can work that out.

MS. CURTIS: I will work that out.

THE COURT: So let's pick a Wednesday. October 2nd, how is that for you?

MR. VIE: No objection, Your Honor.

THE COURT: October 2nd. Is 11:30 a good time or is it better in the afternoon, Ms. Curtis?

MS. CURTIS: 11:30 is fine.

02:51:24PM

THE COURT: Is that fine with you, then, Mr. Vie?

MR. VIE: Yes, Your Honor.

THE COURT: 10/11, at 11:30 a.m. -- 10/2. 10/11 must be a holiday. 10/2. I apologize. October 2nd.

We are not going to send out an additional -- well, we might send a notice out, but don't wait on us to send you a notice. You might get a notice indicating that -- a reminder that this is occurring, and that would be the nature and extent of the -- so let me ask a couple of questions, Mr. Vie. And, I'm not sure, you might confer with your client there.

02:51:48PM

02:52:11PM

I just signed an order, and you know that is a fairly expensive -- I will deal with your order. I need to sign it.

Can we pull up his order on the motion for the lease?

02:52:21PM

I want to make sure that the funds are available to pay the attorney and the accountant before -- I don't want hear him call me and say, Judge, I haven't seen or heard anything.

02:52:37PM MR. VIE: They are available, Your Honor.

THE COURT: All right. Very good. I believe everything else that was requested for payment, the taxes, that's been taken care of.

MR. VIE: Yes, Your Honor.

02:52:47PM THE COURT: The only thing I need is your order here.

The Court has entered an order on that. I believe that's all that I have. Thank you very much, ladies and gentlemen.

02:53:35PM (Concluded.)

* * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled cause, to the best of my ability.

//s_____ 09/27/2013
Stephanie Kay Carlisle CSR, RPR Date

Official Court Reporter

## $

**$128,000** [1] - 19:20
**$216,600,000** [1] - 21:15
**$6500** [6] - 24:8, 24:17, 24:23, 25:20, 27:9, 27:12
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

| | | |
|---|---|---|
| CANDACE LOUIS CURTIS, et al | . | C.A. NO. H-12-592 |
| | . | HOUSTON, TEXAS |
| VS. | . | |
| | . | SEPTEMBER 10, 2020 |
| ANITA KAY BRUNSTING, et al | . | 9:00 A.M. to 10:10 A.M. |

TRANSCRIPT of TELEPHONE CONFERENCE
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

APPEARANCES: (All participants appearing by phone.)

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Proceedings recorded by mechanical stenography, transcript produced by computer-aided transcription.

APPEARANCES CONTINUED

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P R O C E E D I N G S

*THE COURT:* Good morning. This is Judge Ken Hoyt. Do I have parties on the line at this time?

*UNIDENTIFIED SPEAKER:* Yes. Good morning.

09:01:01 *MR. MENDEL:* Yes. Steve Mendel for Anita Brunsting.

*THE COURT:* Hold on just one second. Let me do -- let me start it this way: Who's on the line for the plaintiff?

*MS. CURTIS:* Candace Curtis.

*THE COURT:* All right. And just yourself, Ms. Curtis, 09:01:21 for the plaintiff?

*MS. CURTIS:* No. My attorney is going to be calling in just any second now.

*THE COURT:* Who's your -- who is your attorney?

*MS. CURTIS:* Candice Schwager.

09:01:38 *THE COURT:* Well, I've got Candace Louise Curtis, the plaintiff, right?

*MS. CURTIS:* Yes, sir. That's me.

*THE COURT:* And then you've got a lawyer, I believe, in Houston, Candice Lee Schwager. Is that the person you're 09:01:50 talking about?

*MS. CURTIS:* Yes, sir.

*THE COURT:* Okay. Let's see, that might be her joining us now. Is that Ms. Schwager joining us?

*MS. SCHWAGER:* Yes, sir.

09:02:01 *THE COURT:* Okay. You're representing Ms. Curtis in

this call; is that correct?

*MS. SCHWAGER:* Yes, Your Honor.

*THE COURT:* Okay. Very good. And I gather it's just the two of you on the line for the plaintiff, Ms. Curtis and then yourself as her attorney?

*MS. SCHWAGER:* I believe so. I believe she's on the line.

*THE COURT:* Yes, she's on the line.

*MS. CURTIS:* Yes, I'm here.

*THE COURT:* On representing the Brunsting -- which of the Brunstings -- is Anita Brunsting on the line or her counsel on the line?

*MR. MENDEL:* Counsel is on the line. My name is Steve Mendel, Your Honor. And Anita Brunsting might be dialing in.

*THE COURT:* Who else is on the line with you then, Mr. Mendel, if anyone?

*MR. MENDEL:* No one else is on the line with me.

*THE COURT:* Are you representing both Amy and Anita --

*(Simultaneous speaking, indiscernible.)*

*MR. MENDEL:* Mr. Neal Spielman -- Mr. Neal Spielman is on the line representing Amy Brunsting.

*MR. SPIELMAN:* That's correct, Judge. Good morning.

*THE COURT:* Yes. Let me make sure I've got -- let's see, what's your last name, sir?

*MR. SPIELMAN:* Spielman, S-p-i-e-l-m-a-n.

09:03:21 *THE COURT:* All right. Just yourself on the line for Ms. Amy Brunsting?

*MR. SPIELMAN:* Yes, sir.

*THE COURT:* Okay. Let's see. Let me just make sure, 09:03:29 because I've got to get my docket sheet straightened out here. I apologize. It is Stephen A. Mendel, is it, right?

*MR. MENDEL:* Yes, sir.

*THE COURT:* Okay. Very good. All right.

Let's see. Do we have others joining this call 09:03:50 or someone else just join us?

*MS. CAROLE BRUNSTING:* Yes. Yes. This is Carole Brunsting, pro se. I'm one of the beneficiaries.

*THE COURT:* Well, let's see. Ms. Brunsting, hold on just one second. You were sued, I gather, by the plaintiff in 09:04:15 this case? Is that your relationship to the case?

*MS. CAROLE BRUNSTING:* Correct.

*MS. SCHWAGER:* Your Honor, this is Candice Schwager. In this case Ms. Carole Brunsting is not yet a party. If we were to add a declaratory judgment, she would be brought in.

09:04:33 *THE COURT:* Well, I'm checking all the persons who are participating and trying to make sure their opposition is stated in the record. So I show her as a defendant. She may not have been served, but I show --

*MS. SCHWAGER:* Oh, okay.

09:04:43 *THE COURT:* -- her as a defendant along with a number

09:04:45 of other -- excuse me -- along with a number of other persons. But I want to make sure everyone who's on the line is accounted for. So, do we have others other than Ms. Carole Brunsting?

*UNIDENTIFIED SPEAKER:* Yes, sir. This --

09:04:58 *UNIDENTIFIED SPEAKER:* Your Honor --

*THE COURT REPORTER:* Judge, this is the court --

*THE COURT:* One at a time, please. I'm sorry. One at a time. I heard the voice of -- I thought it was Ms. Schwager speaking. Was that correct?

09:05:14 *MS. SCHWAGER:* No. No, sir.

*THE COURT:* Okay. Was Ms. Carole speaking?

*MS. CAROLE BRUNSTING:* No, it was not me.

*MS. ANITA BRUNSTING:* This is Anita Brunsting.

*THE COURT:* I'm hearing --

09:05:29 *UNIDENTIFIED SPEAKER:* Your Honor, Ms. Brunsting is on the line.

*THE COURT:* Ms. Brunsting -- Ms. Brunsting, I'm going to ask that any individual who joins certainly announce themselves as joining, but you will not be speaking if you have

09:05:39 counsel on the line. And I believe Ms. Anita -- I'm just going to call it that way, Ms. Anita, I believe your counsel is on the line, but I'm showing you as announcing present also. Okay?

*MS. ANITA BRUNSTING:* Okay. Thank you.

09:05:53 *THE COURT:* All right. Who else do we have on the

09:05:55 line? So far the parties, I show Ms. Curtis, Ms. Anita Brunsting. I show Ms. Carole Brunsting. And I show counsel, that is, Ms. Schwager for Ms. Curtis. I show Mr. Mendel, counsel for Ms. Anita. And I show Mr. Spielman for Ms. Amy.
09:06:22 Do we have other attorneys on the line?

*MR. OSTROM:* Your Honor, this is Jason Ostrom. I am no longer representing Ms. Curtis, but I received your e-mail notice and I felt it prudent to call in. I don't know if the Court needs me or wants me, but I -- since I got the notice, I
09:06:42 called in.

*THE COURT:* Spell your last name, please, sir.

*MR. OSTROM:* Ostrom, O-s-t-r-o-m.

*THE COURT:* All right. Very good.

Let me ask you, Ms. Schwager, is there any basis
09:07:02 for Mr. Ostrom to remain on the line as far as you're concerned?

*MS. SCHWAGER:* I don't believe so.

*THE COURT:* And does counsel for either of the Brunstings believe that he's necessary for this call?

09:07:15 *MR. SPIELMAN:* Judge, this is Neal Spielman. And it sort of depends, Your Honor, on what -- how you're going to conduct this call. Mr. Ostrom was Ms. Curtis's attorney at the time of the events that are being complained about and will be discussed in this hearing. So I guess if the Court might want
09:07:36 Mr. Ostrom's perspective, then he's necessary. If the Court

09:07:40 does not want him to participate, that, of course, is then your decision.

*THE COURT:* All right. I leave it to you to, Mr. Ostrom, whether or not you want to stay on, but I will not 09:07:53 permit you to participate in any debate or discussion that's going on unless there's a specific question that I might have. And the reason is that this is not a time for exchanges between client and a former attorney or between a current attorney and a former attorney representing the client. I'm speaking about 09:08:17 Ms. Curtis's situation. So if you choose to remain, I have no problem with that.

*MR. OSTROM:* I'll stay on for the Court's convenience, but I will remain silent unless the Court addresses anything towards me.

09:08:33 *THE COURT:* All right. Anyone else?

*(No response.)*

*THE COURT:* All right. Let me proceed in this manner, because I think for purposes -- because of the length of time that this matter has been in whatever state it's in, let's just 09:08:52 leave it at that, there have been a number of things that have happened that might bring all of us to a point that -- that the record needs to reflect it, I say, to some extent, how we got to this point.

My recollection is there was a suit filed by 09:09:10 Ms. Curtis wherein she sought injunctive relief. That relief

09:09:16 was granted in part; and at some point along the way, in May, let's say, of 2013, the Court appointed William G. West as master to perform an accounting. That was part of the relief that Ms. Curtis sought. Mr. West apparently performed that 09:09:39 accounting and made a report to the Court at some point in 2013 at a particular hearing.

There were objections to his report, but eventually that report, I believe, was adopted by the Court and we moved forward from that to disbursements along the way for 09:10:03 attorney's fees that were made to attorneys who were handling the probate matter or the matter in probate court.

Various miscellaneous hearings were involved, and I believe at one point Ms. Curtis filed a motion for attorney's fees herself and that matter was eventually granted in some 09:10:27 respect and I believe that was resolved.

There was an order granting approval of disbursements in May of 2013. There was an order granting renewal of the farm lease in 2013. All this happened in September of 2013. And then there was a motion to show cause 09:10:50 and an application for judgment of civil contempt filed by the parties -- or by one of -- by the plaintiff, and the Court -- and the Court denied that order in October of 2013 and granted the approval of other disbursements in November of 2013.

In 2013, in December there was a hearing where 09:11:12 Ms. Curtis and Mr. Ostrom and I believe there was a George Vie

09:11:19 involved in that time -- involved in a phone conference that -- where the Court was attempting to accommodate the parties at their request for disbursement of attorney's fees and all were involved. An agreed proposed order was approved for 09:11:39 disbursement of attorney's fee retainer, I believe that was for Mr. Ostrom, and that was in December of 2013.

Moving forward and then skipping along, in March of 2014 the Court entered an order granting the defendants' motion for approval of disbursements and these were 09:11:57 disbursements of funds that had been for services that had been rendered apparently.

In April of 2014 there was another order granting a quarterly estimate of income taxes due and that order granting that approval and the disbursement of payment of those 09:12:16 taxes was done in April of 2014.

So as this case has been moving -- or was moving along on the docket, it got to a point where in May of 2014 there was a motion to remand by Candace Curtis that was filed apparently by Mr. Ostrom as her attorney. The Court in May 09:12:41 granted that order to remand the case to probate court. Now, that order of remand becomes part of the objection now or at least renewed objection now raised by the plaintiff, by Ms. Curtis.

In May -- in August, should I say, Ms. Curtis 09:13:03 filed her own motion for relief. And it's my belief, and if

09:13:08 I'm incorrect, I can be corrected later, but it's my belief that it's somewhere between the May 2014 order -- motion and order granting the motion for remand in May -- in August of 2016 --

09:13:23 *(The host is exiting the conference. This conference will continue for 30 minutes.)*

*THE COURT:* -- 2014 to 2016, there was a release of -- I'm sorry. You're going to have to not talk.

And in 2015 there's an order granting this motion 09:13:38 to remand that I said that's in dispute. And, of course, a little over a year later -- two years later, in 2016, in August, the plaintiff sought relief on her own, I believe, not having counsel, but filing the documentation and papers herself.

09:13:58 From there the case simply languished, and the Court denied Ms. Candace access to the Court's docket, not because she couldn't get copies of things, but we denied you electronic filing and of the sort.

And then we get to what I believe to be the focus 09:14:19 of the plaintiff's matter now. There is now pending an emergency motion to reopen -- I'm sorry. Are we being joined or parties leaving? I don't have a problem with people leaving, but I want to know if someone else is joining the -- joining the discussion. I don't hear anyone.

09:15:01 *THE COURT REPORTER:* I'm sorry, Judge. This is the

09:15:01 court reporter. If people who aren't speaking, if they could mute their mic on their phone, it would be helpful. Because I heard it said the host was exiting the meeting, so.

*THE COURT:* Yeah. If you would mute your phone and 09:15:03 only unmute it when you're about to speak, that would keep the noise and the background noise down. Appreciate it. Thank you.

I think I was at the point where I was saying that the -- there was a motion -- Ms. Candace's motion for an 09:15:29 order directing certain plaintiffs to show cause that was filed back in May of 2019 and, of course, leading up to this emergency motion for relief from judgment that was filed in July of this year. And it's that motion for relief from judgment, that judgment referring, I gather, to the remand 09:15:53 order that the Court signed earlier that is the object of the plaintiff's motion at this time.

Before the Court then are not just the motion but the responses and apparently some proposed orders that have been filed and, of course, the question that the Court has at 09:16:15 this point and needs to have addressed without regard to whether or not the Court had the authority to remand the case, that issue is not, as far as I'm concerned, a viable issue, because the -- whether the Court had the authority to remand it, the parties -- the Court acted upon the plaintiff's motion 09:16:40 and if that had no effect, then the case has simply been in a

09:16:45 state of -- has been in a state of administrative closure all of this time, because the case -- the case has actually -- this case itself has actually been closed. And the point is that if that is the case and the matter has been litigated -- matters
09:17:02 have been litigated or could have been litigated in state court, the question is whether or not this Court should be picking up on a lawsuit that seems to have some -- and may have some impact on the probate court's proceeding.

So at this point let me ask -- let me ask
09:17:19 Ms. Schwager if she would tell me what it is that she thinks this emergency motion can accomplish in light of the proceedings, not just a closed case in federal court that you've asked me to reopen, but also based on whatever might be happening in probate court.

09:17:38 *MR. SPIELMAN:* Your Honor, this is Neal Spielman. Can I ask a question just to clarify the record?

*THE COURT:* I'm sorry. I'm sorry. I'm sorry. I did ask Ms. Schwager to speak to me.

*MR. SPIELMAN:* Okay.

09:17:51 *MS. SCHWAGER:* Thank you, Your Honor. What I would have hoped to accomplish is the exact thing that you wanted to accomplish when you issued the injunction. You stated that you wanted this case resolved in 90 days. Since this case has left your court, nothing has been resolved. There have been no
09:18:11 substantive rulings. We have not been given hearings on the

summary judgment.

Now the defendants are attempting to start harassing discovery. They've just noticed the deposition of my client, who is not a trustee, and there are no relevant facts that I see that could be discovered. But I -- there is no excuse for discovery starting seven years into a case.

At the time of the injunction, Amy Brunsting swore in an affidavit, in Document 10-1, that personal assets trust had been set up for the five beneficiaries. That was not true.

Also, you're directed that the income be -- the income required be deposited into appropriate accounts for the beneficiaries. That was not done. So $180,000 was incurred in federal income taxes.

We have tried everything possible to get resolution. We even filed your injunction, which Mr. Spielman referred to as questionably enforceable. So we filed it in the state district court under the Foreign Judgment Registration Act. And now he seeks to even have that transferred back to the probate court so that we can be stalled out for several more years. And the issue as to what --

*THE COURT:* Let me ask you -- let me interrupt you here and ask you, what is the status of the probate case?

*MS. SCHWAGER:* The status of the probate case is that the discovery has just begun. There is some briefing on the

09:19:58 QBD document as to whether it is viable. It's a document they're trying to use to disinherit my client. And that is the discovery that they're just beginning seven years into this case.

09:20:14 *THE COURT:* Isn't that a matter exclusively within the province of the probate court --

*MS. SCHWAGER:* No.

*THE COURT:* -- determining heirship and ownership and things of that sort? That's not a federal issue or matter, is

09:20:27 it?

*MS. SCHWAGER:* This is not a probate matter. The federal court has already ruled that. The Candace Curtis case is a trust case. It's a tort case. And it's been ruled by the Fifth Circuit to be not subject to probate exception. The case

09:20:44 that's in the probate court requires an estate for a trust to be in the probate court. The estate has been closed since 2015.

*THE COURT:* You mean the probate court has closed this case and the matter -- and the --

09:21:04 *MS. SCHWAGER:* Yes.

*THE COURT:* -- estate has not been distributed?

*MS. SCHWAGER:* Nothing has been distributed. The probate matter --

*THE COURT:* You said it was closed -- what's been --

09:21:12 what's been closed then?

09:21:14 *MS. SCHWAGER:* Okay. The probate matter was closed, but the probate, this is a pour-over will. So everything poured over into the trust. The court, they designated some ancillary cause numbers to the estate in --

09:21:42 *THE COURT REPORTER:* Judge, this is the court reporter. Excuse me. I'm having trouble understanding Ms. Schwager. I don't know if she's on a speaker phone, but it's difficult.

*MS. SCHWAGER:* No, I'm not. I'll speak slower.

09:21:42 *THE COURT REPORTER:* Thank you.

*MS. SCHWAGER:* Okay. There were ancillary dockets set up being the cause number dash 401 and dash 402. Suddenly, without my client's agreement, her case was consolidated into this, quote, estate that was no longer open and her claim

09:22:08 virtually disappeared. She became a defendant instead of a plaintiff.

*THE COURT:* When did this happen?

*MS. SCHWAGER:* This happened in 2015.

*THE COURT:* Okay.

09:22:22 *MS. SCHWAGER:* The reason this is --

*THE COURT:* All right. This was filed in 2015 -- I'm sorry. Since 2015, what you're saying is the issues that were raised in this court that I gather Mr. Ostrom wanted and the parties -- and I gather the plaintiff agreed to have

09:22:40 transferred and litigated in the probate proceedings have not

been litigated, have not been resolved?

*MS. SCHWAGER:* They have not been resolved, that's correct, Your Honor. And my -- if I can make a correction --

*THE COURT:* So let me -- let me just ask another question. What is the status of the trust? In other words, has Ms. Curtis received her trust fund -- the trust funds?

*MS. SCHWAGER:* No, trust funds at all.

*THE COURT:* Nobody has been -- none of this money has been disbursed? It's just been legal fees?

*MS. SCHWAGER:* I don't know if the legal fees have been paid out of it, because we don't have the most recent accounting, but there's been no money released to any beneficiary.

*THE COURT:* Well, there would be some documentation in the probate court if some money had -- orders had been entered approving payment of legal fees, wouldn't it?

*MS. SCHWAGER:* Yes, there would. So, Your Honor, there's none that I'm aware of.

*THE COURT:* Okay. All right. So let me ask another question. As it relates to the trust itself, what you're saying is that the -- is that the probate of the will simply poured the estate -- the proceeds of the estate into a trust, that trust was to be -- was to be set up in a way that it would disburse the moneys to the beneficiaries or the heirs and that --

09:24:07 *MS. SCHWAGER:* Correct.

*THE COURT:* -- has not been done is what you're saying?

*MS. SCHWAGER:* Correct.

09:24:12 *THE COURT:* How much money are we talking about, Ms. Schwager?

*MS. SCHWAGER:* We're talking about, about $3 million.

*THE COURT:* Okay. And why have you not been able to get an accounting from the trustee -- who is the trustee?

09:24:32 *MS. SCHWAGER:* Let me correct -- I have a -- I don't have a current accounting. I have some accounting from Mr. Mendel, but I don't have a current account --

*THE COURT:* Who's the trustee?

*MS. SCHWAGER:* The trustee's Anita and --

09:24:42 *THE COURT:* Who's the trustee?

*MS. SCHWAGER:* Anita and Amy Brunsting.

*THE COURT:* So you have not gotten any accounting for your client from these two, let's say, trustees since the trust has been so-called set up, in other words?

09:24:59 *MS. SCHWAGER:* No, I received some quarterly accountings here and there, but not a current accounting.

*THE COURT:* All right. So let me ask you, what is -- I don't show on my docket any -- an opinion from the Fifth Circuit. I'm not sure what happened there. But I see that you

09:25:17 or Ms. -- let me see. No, I guess it's the response filed by

09:25:21 the trustee show a Fifth Circuit opinion as attached to their documents, but I don't show the Fifth Circuit ever ruling -- let me go back. Oh, I see. It may have happened in the earlier part of the case.

09:25:39 *MS. SCHWAGER:* Yes, 2013.

*THE COURT:* Yeah, apparently so. Document No. 11, I gather, somewhere back in that space. So the Fifth Circuit has said, and what you are arguing is, that this case should be reopened so that that trust -- so that Ms. Curtis can proceed

09:25:58 with her claims against the -- against the trustees?

*MS. SCHWAGER:* Yes.

*THE COURT:* All right. Let me now hear then from Mr. Mendel.

*MR. MENDEL:* Well, on some of these points,

09:26:15 Mr. Spielman, maybe you want to go first and then I can supplement. Mr. Spielman prepared --

*THE COURT:* Well, here's what I'm asking. Let me ask it this way and then you all can decide who's going to answer. Who represents -- the two of you are representing the trustees

09:26:32 separately; is that right?

*MR. MENDEL:* Yes, sir.

*MR. SPIELMAN:* That's correct.

*THE COURT:* Why would you need two lawyers for one -- for a trust? So there are two trustees. Is there some

09:26:46 conflict between the two trustees?

09:26:50 *MR. SPIELMAN:* Your Honor, this Neal Spielman. You mentioned when you were going through the record an attorney named George Vie. George Vie represented the co-trustees together when the case was before you prior to the remand
09:27:04 transfer in 2014. My understanding is that when -- when that law firm, George Vie's law firm, I can't remember the name specifically, when they -- when it was transferred to the probate court, they advised Amy and Anita, that they had to withdraw due to a potential conflict, and they recommended that
09:27:27 each of them get their own attorney. And, so, Anita found her way to Mr. Mendel's office and Amy found her way to my office. And so that's the best that I can do to explain why they each have their own attorney, is that the prior counsel identified a potential conflict, if that answers your question.

09:27:52 *THE COURT:* Well, that answers the question of what the lawyers felt there was a conflict, but I'm not sure if he was pointing out a conflict between the two trustees or whether he was pointing to a conflict between his firm and the trustees. Do you know which?

09:28:08 *MR. SPIELMAN:* I do not know specifically which issue they gave --

*THE COURT:* Well, if there is -- yeah, if there's a conflict between the two trustees, then a court would have to remove the trustees and appoint someone who can go forward,
09:28:24 that would make sense. And I'm asking -- let me ask it this

09:28:28 way: Is it your view that there's any matter to be probated?

*MR. SPIELMAN:* Well, I think that's a bigger question, Judge. So with respect, I wanted to ask one question real quick. When you were going through the record and you said 09:28:44 that we're considering an emergency motion to reopen the docket right now, that in the Court's file was just recently filed on August the 28th. The hearing that we're here for references the ex parte motion for relief under Rule 60, which is Document 128. And I suppose we're talking about both of them 09:29:09 simultaneously, it seems. But I just wanted to make the Court aware that technically speaking our -- the co-trustees haven't technically yet responded to Document No. 133. But then, again, Document 133 to me at least reads mostly like a reply to the response we filed to Document 128. So, I'm just trying to 09:29:37 make sure that the record is clear about which documents we're talking about during this hearing, and so that was what I was trying to address with the Court earlier.

*THE COURT:* Well --

*MR. SPIELMAN:* And I apologize for interrupting.

09:29:52 *THE COURT:* No, I don't have a problem with that correction or acknowledgment of the record, but all the counsel know that I couldn't take -- I would not be able to take up that motion without reopening the case.

*MR. SPIELMAN:* Correct.

09:30:09 *THE COURT:* I would have to reopen the case in order

09:30:12 to address the motion and response that is before the Court, and I'm not prepared to address that on the record as we're going. I would address that on the papers. I was trying to make sure that the parties understood -- and I'm now speaking 09:30:27 about my own mind, that the parties understood. And in order for me to address the motion in response that is before me, I would really be resolving to some extent the motion to reopen the case, because I would have to reopen the case to do that.

And I wanted to know whether or not, secondly, 09:30:47 whether or not there is some basis in your response -- and I think, I've read through it, it seemed to say that this matter has long been over. It's long been transferred. But it does not address the merits of the case that was in federal court. It simply addresses what appears to be a matter that is closed 09:31:09 in the probate court, and that is, that the probate has probated the will and transferred or permitted the trustees to go forward with a trust, which no court, I don't believe, has any jurisdiction or authority over, in terms of the administration of it, except through the parties who are 09:31:29 litigants, and those are the parties that are before the Court.

So I'm trying to make sure that I understand or you -- definitely need the lawyers to understand what we're facing -- or what this Court is facing, and that is, apparently agreeing to remand the matter based on counsel's requests in a 09:31:51 situation where no remand was appropriate. And I believe that

09:31:56 the parties were going to file and to proceed in the probate court with their lawsuit and the probate court apparently felt that it had no jurisdiction or authority and has done nothing itself. I believe that's the status --

09:32:13 *MR. SPIELMAN:* Sorry, Judge, if I could --

*THE COURT:* Go ahead.

*MR. SPIELMAN:* -- jump in. That last part of what you said is not correct.

*THE COURT:* Who's speaking?

09:32:20 *MR. SPIELMAN:* This Neal Spielman again. Sorry.

*THE COURT:* Okay.

*MR. SPIELMAN:* That very last tagline of your sentence, that the probate court has said it doesn't have jurisdiction and has done nothing, that part is incorrect. In

09:32:32 fact, the probate court has the -- okay. Sorry. The probate court has actually issued an order specifically saying that it has jurisdiction over the trust and over the causes of action that are pending between and among the different Brunsting siblings. And that includes -- that includes one of the

09:32:53 siblings who's not present on this call, who is the brother, Carl Brunsting. He has -- he has individual claims against all four of his siblings. So that would be Ms. Curtis, Ms. Carole Brunsting; Amy Brunsting, my client; and Anita Brunsting.

Then Carole Brunsting in Probate Court 4 had

09:33:18 affirmative claims against some combination of the siblings,

09:33:22 but I don't recall off the top of my head.

The trust has claims against Ms. Curtis -- Ms. Curtis for sure and I believe, but cannot specifically recall if those claims are also asserted against Carl 09:33:41 Brunsting.

And then the trust itself as well as for the time being at least what's known as the estate of Nelva Brunsting has claims against the law firm that originally drafted the trust documents. That case has also been transferred into 09:33:59 Probate Court No. 4.

So, and I appreciate that I might be throwing a lot of information out at you, Judge. When Ms. Schwager mentioned that there were some ancillary matters open, there are actually -- there have been a total of four ancillary 09:34:15 matters open. There are now three.

And so the way that worked is this, Judge: The original probate court filing that was initiated by Carl Brunsting, which was a suit against Amy and Anita as the co-trustees, was initiated as -- with a 401 designation.

09:34:35 When Mr. Ostrom submitted to this Court, to this Court the motion to remand and that remand was granted and Ms. Curtis's case was transferred into the probate court, it was given the designation of a 402. After some time the 402 was consolidated into the 401. So those -- so Ms. Curtis's 09:35:01 claims are absolutely live and pending in Probate Court 4.

09:35:08 There's no question about that, in my mind at least.

The 403 proceeding is actually also initiated by Ms. Curtis through Ms. Schwager, I think, and it's a bill of review, that, among other things, challenges Probate Court 4's 09:35:30 denial of various attacks on its jurisdiction and entered an order saying that it has jurisdiction over claims against -- over the claims that are in the 401, which is -- which include Ms. Curtis's claims. And now there is -- I may have gotten that out of order actually.

09:35:52 The bill of review might be dash 404, because there's another proceeding, which is 403. That's the claim that every -- that certain parties have against the law firm that drafted the probate court document. So I may have gotten the designations wrong with respect to the 403 and the 404, but 09:36:17 either way I said them, those are two independent things that are also still pending in the probate court.

Judge, Ms. Schwager has suggested that the probate court has -- that they can't get any relief in the probate court. And, Your Honor, I have to say with -- at least 09:36:39 with respect to what Ms. Schwager said to you on the phone just today, which is that they have motions pending and are never given hearings, one of the issues that that statement raises is that in Probate Court No. 4, in probate court, you're not -- no one is given a hearing. You have -- unlike other 09:37:00 jurisdictions, other courts, you have to ask the court. The

court has its own specific procedure. That you have to contact the court to either ask for a submission or a hearing.

And to my knowledge at least, the reason the court isn't giving hearings to Ms. Schwager on behalf of her client or to Ms. Curtis when she was pro se is because it doesn't appear that notices of hearings or notice of submissions were ever asked for. It just looks like motions were filed and left there to sit. So, and I'll say this, Judge, every other party that has sought hearings from the court or submissions from the court have gotten them.

So, I think that to the extent that Ms. Curtis and Ms. Schwager think that the Court is ignoring them, I think that's a problem of their own making. I know that's not the most sensitive way to say it. But there are hearings that are currently -- there are issues that are currently being determined by Probate Court 4. The lawsuit is moving forward.

One of the things that Ms. Schwager left out when she talked about how long this case has been pending both in this -- when it was pending in this court and then while it's currently pending in the probate court, is one of the points that we mentioned in our response, that we lost several years --

*(You have five minutes remaining in this conference.)*

*MR. SPIELMAN:* Oh, okay.

*THE COURT:* Go ahead and proceed.

09:38:31 *MR. SPIELMAN:* We had several -- we lost several years of case development while we were sent into Judge Bennett's court and then the Fifth Circuit Court of Appeals on this idea that there was a RICO conspiracy by a probate mafia. And all 09:38:50 of the judges in Probate Court 4 and the court reporter were named as RICO defendants in that case. So the entire probate court case was shut down while Ms. Curtis, as a pro se party, pursued her RICO case with Judge Bennett and the Fifth Circuit.

So there's a lot more going on here than just 09:39:14 this case was initiated multiple years ago and nothing has happened. I don't know how far afield I've gone of answering your question. I know one of the things that the Court just mentioned that had some confusion was the idea of there not being accountings given, and Mr. Mendel can speak to that. But 09:39:36 there have been regular periodic accounting provided. I can admit that sometimes a party will send an e-mail saying, What's the status of the latest accounting, but to my knowledge, Mr. Mendel has been providing those accountings regularly. And he can speak to that better I can, if I've answered all of your 09:39:59 questions from me.

*THE COURT:* Thank you. Thank you very much.

Let me just interject a question here. Let me ask, is my administrative assistant still on the line? Elaine, are you still on the line? I'm concerned about the notice of a 09:40:21 five-minute shutoff, if this matter shuts off. Because the

Court has designated a period of time that these conferences can occur, and we'll have to perhaps reboot.

But let me just say -- ask this: Ms. Schwager, you are aware of these proceedings that have been reflected by Mr. Spielman, correct?

*MS. SCHWAGER:* I'm aware of the proceedings. He has not correctly stated them all, but I'm aware -- you asked him whether there was an estate to be probated, and he bypassed that question entirely.

*THE COURT:* Well, let me ask you this: What is that this Court would be doing if it were to reopen the case for purposes of some kind of hearing that is not already before the probate court?

*MS. SCHWAGER:* What this Court would be doing is --

*THE COURT:* Everything --

*MS. SCHWAGER:* Okay. Your Honor, yes --

*THE COURT:* I'm sorry. Everything that you're requesting me to do is also a request before the probate court, is it not?

*MS. SCHWAGER:* No, it's not. The hearings that are -- have just occurred require briefing on a QBD document and allow them to do a deposition. That is the only thing that has occurred. This case has stalled out for seven years. The beneficiaries have received nothing. In your opinion you indicated it would be resolved -- or you wanted it to be

09:41:51 resolved in 90 days. You warned counsel that this wasn't going to be a case where attorneys walk away with all the funds. We have mediated recently. There was some misconduct in the mediation, violating the one order that the judge gave. We 09:42:08 just cannot seem to get any traction.

We have called for hearings or sat on hearings. When we even get that, it's a status hearing. Status hearing, one more status hearing, where nothing happens. We want this case resolved, and that's what this Court --

09:42:25 *(You have one minute remaining on this conference.)*

*MS. SCHWAGER:* -- for us. The case has not --

*THE COURT:* All right.

*MS. SCHWAGER:* -- moved forward. There's no substantive rulings in the probate court.

09:42:36 *THE COURT:* All right. I think I've got a sense of what I need to do. I'm going to go back and read the documents on the motion that is pending and for purposes of reviewing and making some kind of order, I'm going to declare that the case has been reopened for purposes of review of that motion pending 09:42:55 and the response, and I will surely get something to you all regarding that matter within the next 10 or 15 days.

*MS. SCHWAGER:* Thank you.

*MR. SPIELMAN:* Your Honor --

*THE COURT:* Yes.

09:43:11 *THE COURT REPORTER:* Judge, who's speaking?

09:43:11 *MR. SPIELMAN:* This is Neal Spielman again. Judge, we have some issues that are pending with Probate Court No. 4, including an ordered deposition in California that is at the end of this month. Your --

09:43:25 *(The conference has ended. You will now be disconnected. Goodbye.)*

*THE COURT:* Let me just reacquaint ourselves with -- I apologize for that. I wasn't familiar with the shutoff. So I think I have the attorneys on the line, Ms. Schwager,

09:59:25 Mr. Mendel, and Mr. Spielman; is that correct?

*MR. SPIELMAN:* Yes, Your Honor.

*MR. MENDEL:* Yes, sir.

*MS. SCHWAGER:* Yes, sir.

*THE COURT:* And I believe at the time -- the court

09:59:37 reporter is on the line. I believe at the time, Mr. Spielman, you were making a statement regarding depositions and proceedings in the state of California and I wanted to complete that and try to round out this discussion so that I'm done with it in terms of --

09:59:51 *MR. SPIELMAN:* Yes.

*THE COURT:* -- lawyer discussions. Go ahead, sir.

*MR. SPIELMAN:* Yes, Your Honor. I appreciate that very much. The question that had immediately proceeded what I was saying was the question you had asked Ms. Schwager and her

10:00:05 response about whether there was anything that if you reopened

10:00:09 this federal court case was there anything that was going to be done that was different than what's currently pending in Probate Court No. 4, and I believe Ms. Schwager suggested to you that there was. And I wanted to make the record clear that 10:00:24 in my opinion, from my perspective, based on the record in Probate Court 4, all of Ms. Curtis's claims and causes of action are pending in Probate Court 4. The only thing you would be doing, Judge, is litigating what is currently being litigated in Probate Court 4.

10:00:41 Now, having said that, Your Honor, I heard that you were saying that you wanted -- that you were going to reopen the case for the limited purpose of considering the ex parte motion for relief and the broader reopening of the case and that you would have us an opinion in, I believe you 10:00:59 said, 10 to 14 days or something along those lines.

The issue that that raises, Judge, is that we are -- we are -- that Probate Court 4 had ordered Ms. Curtis to be deposed in her state of residence, California, and we have that noticed for later this month, and I wanted to -- I wanted 10:01:20 to get some clarification from you as to whether or not your limited reopening of the case is meant to forestall or in any way delay the continued development of probate court -- of the case in Probate Court No. 4.

*THE COURT:* No, that would not be my purpose, 10:01:41 obviously, and I don't intend to do that, because whatever that

10:01:45 deposition might reveal, that same testimony would be available if this case were to proceed in federal court. So it's not an issue of one or the other or interfering in a state order, and -- I shouldn't say state order, but state proceeding, where 10:02:03 the depositions and notices have already gone out, and that would not be my purpose. This is a very limited intervention, but I need to administratively open the case and not substantively. My administrative opening of the case is to determine whether or not based on the papers that have been 10:02:24 filed there's anything substantive that the Court needs to deal with that is not being dealt with in the probate court. And I would have to review the documents to see if there's any reason for the Court to intervene in the case or to -- because I think what is pending is an ex parte motion for relief filed by 10:02:44 Ms. Curtis in her individual capacity, as I recollect. And if that's the case --

*MS. SCHWAGER:* Yes.

*THE COURT:* -- then counsel has -- I gather -- I take that back. Ms. Schwager signed off on those pleadings. But I 10:03:00 think that is a matter that is before the Court and I need to consider that along with the response that is pending before the Court. That to some extent renders moot the issue of whether or not the matter should be -- whether or not there -- whether or not the Court should consider the ex parte or 10:03:19 emergency motion to reopen, not necessarily the substance of

10:03:23 that motion that's pending. So I wouldn't take up any matter that would interfere with the state court proceedings.

*MR. SPIELMAN:* Okay. And my second point of clarification or question, Judge, is that there were some 10:03:38 issues that were discussed during the earlier call that I think Mr. Mendel and I might have a different take on, and so I know that part of your rules, Your Honor, we would have needed the Court's permission to file a surreply. And I don't know that we're asking to file a surreply based off of the briefing 10:03:57 that's before the Court. But I'm wondering if the Court might want to receive anything else from the attorneys based on things that were discussed during the call.

*MR. MENDEL:* And, Judge, this is Mr. Mendel. I would like to add, the trustees would very much like to file 10:04:15 something based on what was discussed in this call, because the probate case is administratively closed but has -- but continues to hear things as they are filed, an example being a temporary administrator had his fee application approved and paid. And this notion that there's no accounting is just 10:04:38 false. They have current accountings through May 31st of 2020. It doesn't get any better than that. We typically update them every six months.

And the other thing is neither Mr. Spielman nor my firm have been paid a dime out of the trust, because it's 10:04:56 going to require a court order from Probate Court 4 -- Court 4

to get paid, and so there's -- we would like to have the opportunity to get a copy of the record so we can clarify a lot of false statements that were made here today.

*THE COURT:* Well, I'm not as concerned about the statements as I am when I go back and review your response to the ex parte motion for relief, and I believe that is a substantial response. So, I listen to what lawyers have to say, but I don't necessarily take up their arguments unless it -- unless it has something to do with the motion pending. And I think I was intending by my own movement here and statements, intending to expand this so I would have a greater and larger understanding of what the field looked like, and I think I've got that. So I'm not inviting any additional responses, because I think that once I go back and read the documents, I can determine if I need some additional response and I would request it at that time.

*MR. MENDEL:* Understood, Judge. Thank you.

*THE COURT:* So what has been said is certainly of record -- what is being said is certainly of record, but it does not control the documents as they've been signed -- in my opinion, it does not -- they do not impact the documents that have been -- that have been filed. All right?

*MR. MENDEL:* Okay. Thank you, Judge.

*THE COURT:* Finally, is there anything else, Ms. Schwager, before we shut it down?

10:06:34 *MS. SCHWAGER:* I just thought I would mention the one party that Mr. Spielman mentioned as having all of these proceedings. Carl Brunsting has been incapacitated since 2015. That was when he resigned as executor, and there's not been one 10:06:53 since. Because the law requires in Texas that the only thing that has to happen in the probate court with a pour-over will is the inventory has to be filed and approved, and that was done in 2013. So the file's been closed for a substantial amount of time and they keep appending claims to it as if it's 10:07:15 still there.

*MR. MENDEL:* It is still --

*THE COURT:* Well, I think --

*MR. MENDEL:* -- there, Your Honor. There's activity -- there's activity in that probate court, and I have 10:07:28 it up on the screen right now.

*MS. SCHWAGER:* I believe the Judge is trying to speak, Mr. Mendel.

*MR. MENDEL:* I'm sorry, Your Honor.

*THE COURT:* Well, I think that my thinking was just I 10:07:39 think that what you're complaining about, Ms. Schwager, is more akin to lawyer conduct than whether or not the court is engaged in some, let's say, sitting --

*MS. SCHWAGER:* Exactly.

*THE COURT:* -- and do nothing kind of thing. So I 10:07:56 don't know that that's an issue that this Court would even be

10:07:59 interested in addressing, because I think there are too many ways to address what you might be claiming as improper lawyer conduct or what you suggest it seems to me is some improper lawyer conduct. And I gather from what you're saying -- I have not seen that case involving Judge Bennett. I haven't read it. I know that it's attached, but I have not read the Circuit Court's opinion. But I relied upon the agreement of the parties back in 2015, I believe it is, when the parties agreed -- and when I say parties, I'm talking about Ms. Curtis and her attorney, that the matter would be transferred. At that time the appropriate proceeding would have been to administratively close it and/or dismiss it without prejudice so that the proceedings could be filed brand-new in the probate court. And I don't know how that was handled, but I believe that it's not in dispute that those proceedings -- the proceedings that were here in federal court are being -- are also filed in the state court pursuant to that order and the lawyers filed it in that probate court. So that was the purpose of my attempting to put these two matters in the same venue, so that they could be addressed. And, of course, whether that's right or wrong, the point is that that's where it is at that time. So let me shut down the conference.

*MS. SCHWAGER:* All right.

*THE COURT:* And I'm not inviting or looking forward to any additional papers on this regarding these issues. But if

10:09:38 there is a necessity, the Court will promptly notify you and be sure, I will state in my minutes and on the record now, that the proceeding that I am addressing is not intended to and cannot be used by any party as a basis to delay or defer
10:09:56 depositions and other proceedings under these county probate court proceedings. All right. Ladies and gentlemen --

*MS. SCHWAGER:* Sure. Yes.

*MR. SPIELMAN:* Thank you, Your Honor. That was very helpful.

10:10:08 *THE COURT:* -- y'all have a good day.

*MS. SCHWAGER:* Thank you, Your Honor.

*(Concluded at 10:10 a.m.)*

* * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above matter to the best of my ability and skill, and that any indiscernible designations are because of audio interference that precluded me from understanding the words spoken.

/s/ Kathy L. Metzger 9-12-2020
Kathy L. Metzger Date
Official Court Reporter