

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Daniel B. Dorn, in his capacity as the Parent and Natural
Guardian of E.D., R.D. and Y.D, Appellant.

v.

Paul S. Cohen and Susan Cohen, Individually and in their
capacity as the Co-Conservators of the person of Abbie
Ilene Dorn, a protected person and ward, and in their
capacity as Co-Trustees of the Abbie Dorn Special Needs
Trust, Respondents.

Paul S. Cohen, M.D and Susan Cohen, Respondents,

v.

E.D., R.D., and Y.D., The Living Issue of
Abbie Ilene Dorn, and the South Carolina Department
of Health and Human Services, Respondents below,

Of whom E.D., R.D., and Y.D., The Living
Issue of Abbie Ilene Dorn are the Appellants,

and

the South Carolina Department of Health and Human
Services is a Respondent.

In Re: The Abbie Dorn Special Needs Trust.

Appellate Case No. 2015-000659

The Honorable Deadra L. Jefferson
Horry County
Trial Court Case No. 2013CP2608152, 2013CP2608139,
2014CP2601691, 2014CP260174

RECORD ON APPEAL
VOLUME I

RECEIVED

NOV 30 2015

SC Court of Appeals

John A. Massalon
Christy Ford Allen
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
callen@wmalawfirm.net
Attorneys for All Appellants

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
(843) 577-6531
dan@slotchiverlaw.com
Attorneys for Appellant
Daniel B. Dorn, In His Capacity as
the Parent and Natural
Guardian of E.D., R.D., and Y.D.

Reese R. Boyd, III, Esquire
Bret H. Davis, Esquire
Davis & Boyd, LLC
1110 London Street, Ste. 201
P.O. Box 15358 (29587)
Myrtle Beach, South Carolina 29577
(843) 839-9800
reese@boydgoldfinch.com
bdavis@davislawfirm.us
Attorneys for Respondents
Paul S. Cohen and Susan Cohen

Virginia Lee Moore, Esquire
Moore, Johnson & Saranti
P.O. Box 14737
Surfside Beach, SC 29587
(843) 650-9757
moore@grandstrandlawyers.com
Attorneys for and Guardian
Ad Litem for Abbie Ilene Dorn

Lynette Rogers Hedgepath, Esquire
The Hedgepath Law Firm, PA
207 Beaty Street
Conway, South Carolina 29526
(843) 488-3161
lynette@sccoast.net
Court Appointed Attorney
for Abbie Ilene Dorn

John Kachmarsky, Esquire
Law Office of John Kachmarsky
171 Church Street, Suite 330
Charleston, South Carolina 29401
(843) 720-3724
johnk@jktaxlaw.com
Court Appointed Attorney
and Guardian Ad Litem for
E.D., R.D. and Y.D., The Living
Issue of Abbie Ilene Dorn

Shealy B. Reibold, Esquire
The South Carolina Department
of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202
Attorney for The South
Carolina Department of
Health and Human Services

INDEX
RECORD ON APPEAL
VOLUME I

Order of Transfer of Jurisdiction, April 24, 2008.....	3
Order Appointing V. Lee Moore as Guardian Ad Litem, February 21, 2011	28
Order Appointing Lynette Hedgepath, February 21, 2011	29
Order Appointing John Kachmarsky, February 21, 2011	30
Order as to Objection Based Upon Work Product Doctrine, December 5, 2013	31
Order Granting Dan Dorn's Motion for Continuance, December 5, 2013	36
Order Naming Abbie Ilene Dorn as Party to Actions, December 5, 2013.....	38
Order Allowing Cohens to Amend the Pleadings to Conform with the Evidence, March 10, 2014.....	40
Orders Dismissing Appeals, February 9, 2015	43
Dorn Summons and Petition, November 23, 2010	50
Cohen Summons and Petition, November 24, 2010	95
Answer of Respondents Paul S. Cohen and Susan Cohen, January 3, 2011	190
Cohen Amended Summons and Amended Petition, March 3, 2011	202
Answer to Amended Petition to Affirm Payment of Fees from Special Needs Trust and to Reform Terms of Trust and Counterclaim, April 13, 2011	261
Answer of Abbie Ilene Dorn to Petitioners' Amended Petition to Affirm Payment of Fees from Special Needs Trust and to Reform Terms of Trust, May 4, 2011	283
Cohen Answer to Dorn Children Counterclaim, May 16, 2011	290
Cohens' Motion for Protective Order and to Quash, August 8, 2011.....	300
Abbie Dorn's Memorandum in Support of Granting Motion to Amend, March 28, 2013....	303

Daniel Dorn's Memorandum in Support of Denying Motion to Amend, March 29, 2013	313
Cohens' Memorandum in Support of Motion to Amend Pleadings, March 29, 2013	321
Notice of Motion and Motion for Mistrial, June 26, 2014.....	346
Respondent's Motion to Stay Appeals, October 14, 2014.....	358
Appellant's Brief, February 9, 2015	391
Designation of Matters, March 6, 2015	407
Hearing Transcript Regarding Consolidating Cases.....	409

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PAUL S. COHEN, MD AND)
SUSAN COHEN,)

PETITIONERS)

VS.)

IN RE:)
CONSERVATORSHIP OF THE)
ESTATE AND GUARDIANSHIP)
OF THE PERSON OF ABBIE)
ILENE DORN, A PROTECTED)
PERSON AND WARD, AND THE)
ABBIE DORN SPECIAL NEEDS)
TRUST.)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
FILE NO.: 2008-GC-26-24
2008-GC-26-25
2008-GC-26-50

ORDER OF TRANSFER OF
JURISDICTION

CERTIFIED TO BE A TRUE COPY
OF THE RECORDS OF THIS OFFICE

DWC
DEIRDRE W. EDMONDS
PROBATE JUDGE, HORRY COUNTY, SC

DEIRDRE W. EDMONDS
PROBATE JUDGE

2008 APR 24 PM 3:17

PROBATE COURT
HORRY COUNTY, SC

THIS MATTER came for hearing on March 19, 2008, before the undersigned Associate Judge of the Probate Court for Horry County, South Carolina, pursuant to a Petition filed on February 6, 2008, by Paul S. Cohen, M.D. and Susan Cohen (herein sometimes referred to collectively as "Petitioners Cohen") requesting a transfer of jurisdiction of the Conservatorship of the Estate and of the Conservatorship of the Person of Abbie Ilene Dorn from the Superior Court of California, County of Kern, Metropolitan Division to the Horry County Probate Court, and also requesting an Order accepting jurisdiction over the Abbie Dorn Special Needs Trust that was previously approved and established by a California Court.

Petitioners Cohen were present at the hearing and represented by their attorney, M. Robin Morris, Esquire, of Conway, South Carolina. Respondent Abbie Ilene Dorn was not present but was represented at the hearing by her court-

appointed attorney and Guardian ad Litem, V. Lee Moore, Esquire, of Surfside Beach, South Carolina.

Based upon the record, pleadings, exhibits, testimony, evidence and the entire record in these matters, the undersigned makes the following:

FINDINGS OF FACT

1. All interested persons, and all persons required by law, have been properly served with a copy of the pleadings, notices and other documents filed in this matter, with the exception of Daniel Bernard Dorn, the husband of Abbie Ilene Dorn. Abbie Ilene Dorn's adult siblings, Jeffrey Cohen and Amy Mayer, have filed a waiver of notice and right to appear at hearing in these proceedings.

2. Venue and subject matter jurisdiction are proper in this Court.

3. Petitioners were appointed Co-Conservators of the Person and Estate of Abbie Ilene Dorn, an adult person with a disability, on November 7, 2007, by the Superior Court of California, County of Kern, Metropolitan Division. Exemplified copies of such proceedings were filed with the Horry County Probate Court on January 8, 2008.

4. The Superior Court of California, County of Kern, Metropolitan Division has forwarded an exemplified copy of the transcript of the court's records to the Horry County Probate Court.

5. The Superior Court of California, County of Kern, Metropolitan Division issued an order providing for the establishment of the residence of Abbie Ilene Dorn (hereinafter the "Ward") at 1060 Waterway Lane, Myrtle Beach, South Carolina 29572.

6. The Co-Conservators established residency for Abbie Ilene Dorn, their Ward, on or about November 26, 2007 in Horry County at 1060 Waterway Lane, Myrtle Beach, South Carolina 29572. Such residence is also the residence of the Co-Conservators, who are also the parents of Abbie Ilene Dorn, the Ward.

7. By further order of the Superior Court of California, County of Kern, Metropolitan Division, the Co-Conservators were authorized and granted independent power to employ attorneys to file an action for dissolution of the marriage between the Ward and her husband, Daniel Bernard Dorn. On January 8, 2008, the Co-Conservators commenced an action for dissolution of the marriage pursuant to the California court order.

8. The Co-Conservators believe that the current residential setting in Horry County, South Carolina is best suited for the current needs of their Ward.

9. The Ward has no assets remaining in her name individually, and all moneys received from and payments as a result of the settlement of a personal injury claim have been deposited into the Abbie Dorn Special Needs Trust. Further, the Co-Conservators are currently bonded by American Contractors Indemnity Company in the amount of Thirty-Five Thousand (\$35,000.00) Dollars.

10. The Superior Court of California, County of Los Angeles, by Order dated October 25, 2007 and filed November 21, 2007, authorized Petitioners Cohen to establish the Abbie Dorn Special Needs Trust and to fund such Trust with the proceeds of the settlement received from the personal injury claim. A certified copy of said Order dated October 25, 2007, was filed with this Court on February 4, 2008.

11. On November 2, 2007, the Co-Conservators executed the Abbie Dorn Special Needs Trust Agreement and subsequently funded

the trust with funds from the settlement proceeds of the personal injury claim filed on behalf of the Ward. A copy of the Abbie Dorn Special Needs Trust is attached hereto as Exhibit "A" and is made a part of this Order.

12. The Order from the Superior Court of California, County of Los Angeles, requires that the Co-Conservators provide a copy of the Horry County South Carolina Probate Court Order whereby the Horry County Probate Court accepts jurisdiction over the Ward's special needs trust.

13. Abbie Ilene Dorn was born April 3, 1976. On June 21, 2006, she suffered a catastrophic injury during the delivery of her triplets. As a result of her injury, the Ward is suffering from a mental disability, which impairs her judgment in regards to both her financial and personal matters and she is in need of supervision and assistance. Her mental condition is such that she lacks sufficient understanding and capacity to make responsible decisions regarding the management of her property and affairs effectively. The foregoing findings are based, in part, on the records of the California court and its previous determination that the Ward is incapacitated and in need of a conservator to protect and manage her person and property and, in part, on the evidence and testimony presented to this Court during the hearing in these matters, including the report of this Court's court-appointed guardian ad litem for the Ward, V. Lee Moore.

14. The Ward has a brother, Jeffrey Cohen, and a sister, Amy Mayer. Further, Ward Dorn has three (3) minor children, all under the age of 18 years, who are in the custody of their father, Daniel Bernard Dorn, with whom they reside with in Los Angeles, California.

15. The Guardian ad Litem, V. Lee Moore, Esquire, has spoken with Daniel Bernard Dorn and, based on her conversation

with him, Ms. Moore believes and is informed that he does not object to the transfer of jurisdiction of these matters from the California courts to the Horry County Probate Court.

16. V. Lee Moore, Esquire, is the attorney and Guardian ad Litem for the Ward and has ably, zealously, and competently served the Ward during all phases of these proceedings, and her professional services are anticipated to continue hereafter through conclusion of matters relating to these proceedings. Attorney Moore is entitled to be compensated and paid for the fees, costs and expenses incurred and devoted by her and her firm on behalf of the Ward. The Affidavit of Attorney's Fees and expenditures reflects that attorney's fees, costs, and expenses incurred by Ms. Moore on behalf of the Ward are approximately One Thousand Two Hundred Eighty-nine and 03/100 (\$1,289.03) Dollars, through February 19, 2008. It is anticipated that there will be additional fees and expenditures incurred by said attorney on behalf of the Ward through the instant hearing, the conclusion of these proceedings, and entry of the Order as referred to in said attorney's Affidavit. The aforementioned attorney's fees, costs, and expenditures incurred and additional fees, costs, and expenditures incurred through conclusion of services by Ms. Moore as the Ward's attorney and Guardian ad Litem, are hereby deemed fair and reasonable and shall be a proper disbursement from the Abbie Dorn Special Needs Trust.

17. Petitioners Cohen have expended funds for attorney's fees and costs in proceeding with these matters in the amount of Five Thousand Nineteen and 75/100 (\$5,019.75) Dollars from Petitioners' funds and the Abbie Dorn Special Needs Trust. The aforementioned attorney's fees, costs, and expenditures incurred and additional fees, costs, and expenditures incurred through conclusion of services by Petitioners are hereby deemed fair and

reasonable and shall be a proper disbursement from the Abbie Dorn Special Needs Trust.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction of the subject matter and of the persons before the Court. That all interested persons and parties have been properly served with the Summons and Petition and proper and timely Notice of Hearing has been given by Petitioner to all such persons, with the exception of Daniel Bernard Dorn.

2. That a basis exists as described in S.C. § 62-5-101 et seq., for affecting the property and affairs of Abbie Ilene Dorn.

3. That pursuant to S.C. Code § 62-5-313 et seq., this Court is authorized to enter appropriate Orders transferring jurisdiction from the appointing Court to this Court.

4. That pursuant to S.C. Code § 62-5-101 et seq., this Court is authorized to enter appropriate Orders appointing a Guardian with the authority and power as conferred by law and with full authority to consent, or withhold consent, to any and all medical or other professional care, counsel, treatment or services.

5. That it is in the best interest of Abbie Ilene Dorn that Petitioners Cohen be appointed as Co-Guardians with all the authority and power as conferred by law over Abbie Ilene Dorn's person.

6. That it is in the best interest of Abbie Ilene Dorn that Petitioners Cohen be appointed as Co-Conservators of Abbie Ilene Dorn's property and estate with all the authority and power as conferred by law.

7. That a basis exists in S.C. § 62-5-411 for waiving bond where good cause is shown. Due to the fact that the Ward has no personal assets and a Special Needs Trust has been

established for her benefit, Petitioners Cohen have demonstrated good cause for waiving bond and, therefore, it is in the best interest of the Ward for bond to be waived. Further, the Co-Conservators may discharge any bond that now exists. If the Ward's financial status changes in the future, the Court will reconsider the need for a bond. Notwithstanding the foregoing, the statutory requirements for the filing an Inventory and Appraisal and annual accountings shall not be waived and the Co-Conservators appointed herein shall fully comply with all filing requirements.

BASED UPON THE FOREGOING FINDINGS OF FACT and CONCLUSIONS OF LAW, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. That this Court shall accept jurisdiction of the Conservatorship of the person and estate of Abbie Ilene Dorn, from the Superior Court of California, County of Kern, Metropolitan Division.

2. That this Court hereby accepts jurisdiction of the Abbie Dorn Special Needs Trust established pursuant to Order from the Superior Court of California, County of Los Angeles.

3. That Paul S. Cohen, M.D. and Susan Cohen shall be and are hereby appointed Co-Guardians of the person of Abbie Ilene Dorn with all the authority and power as conferred by law upon guardians, and as Co-Guardians, Paul S. Cohen, M.D. and Susan Cohen, may exercise said authority and power either jointly or individually without the consent of the other Co-Guardian being required, which power shall include, but not be limited to, the authority to consent or withhold consent to any and all medical or other professional care, counsel, treatment or services.

4. That Paul S. Cohen, M.D. and Susan Cohen shall be and are hereby appointed as Co-Conservators of the estate and affairs of Abbie Ilene Dorn with all the authority and power as conferred by law upon conservators, and as Co-Conservators, Paul

S. Cohen, M.D. and Susan Cohen, may exercise said authority and power either jointly or individually without the consent of the other Co-Conservator being required.

5. That the Co-Conservators shall file in the Register of Deeds Office for Horry County a copy of the Fiduciary Letters of Appointment.

6. That the Co-Guardians and Co-Conservators shall be entitled to reasonable sums and compensation for their services as allowed by law.

7. That all persons are directed and commanded to deliver to the Co-Conservators, on demand by the Co-Conservators and upon presentation of a copy of the Certificate of Appointment, all of the property of Abbie Ilene Dorn, of every kind and nature, which may be in such person's possession or under such person's control.

8. That the Co-Conservators are directed and authorized to promptly pay out of the funds of the Abbie Dorn Special Needs Trust all sums and amounts as referred to hereinabove in this Order for the fees and expenditures incurred by V. Lee Moore, Esquire, attorney and Guardian ad Litem for Abbie Ilene Dorn, as set forth in Attorney Moore's Affidavit of Attorneys Fees, as well as fees incurred to the conclusion of this matter.

9. That the sums and amounts referred to hereinabove and previously paid and disbursed and those to be paid at the conclusion of these matters to the attorney for Petitioners Cohen, are approved and constitute a proper disbursement from the estate and funds of the Abbie Dorn Special Needs Trust.

10. That Attorney and Guardian ad Litem, V. Lee Moore, Esquire, is relieved of her duties and her appointment in these matters is terminated upon the filing of this Order.

11. That good cause has been shown for bond to be waived and, therefore, bond shall not be required at this time.

12. That any sureties or bonds securing the Co-Conservators' performance are released. However, upon further review of the inventory and/or annual accountings the Court may at any time, if it appears appropriate, order the Co-Conservators to post a fiduciary bond.

13. That Petitioners Cohen shall mail a copy of this Order to Abbie Ilene Dorn's husband, Daniel Bernard Dorn, within fifteen (15) days of the filing of this Order and shall file with this Court within thirty (30) days of the filing of this Order a Proof of Delivery of same, and any objection to this Order made by Daniel Bernard Dorn and filed with this Court shall be heard de novo as to all issues in these proceedings.

14. That Petitioners Cohen shall file a copy of this Order with the Superior Court of California, County of Kern, Metropolitan Division within fifteen (15) days of the filing of this Order and shall file with this Court within thirty (30) days of the filing of this Order proof of such filing.

15. That proof of Petitioners Cohen discharge as Conservators for the estate and person of Abbie Ilene Dorn by the Superior Court of California, County of Kern, Metropolitan Division shall be immediately filed with the Horry County Probate Court upon Petitioner's receipt of same.

16. This Court's acceptance of jurisdiction of the Abbie Dorn Special Needs Trust shall not result in continuing supervisory proceedings by this Court. The management and distribution of the trust estate and other aspects of the administration of the trust shall proceed consistent with the terms of the Abbie Dorn Special Needs Trust, free of judicial intervention but subject to the jurisdiction of this court as invoked by interested persons or as provided by law or by the terms of such Trust.

IT IS SO ORDERED this the 24th day of April 2008.

Dundee W. Carter
HONORABLE DUNDEE CARTER
HORRY COUNTY ASSOCIATE PROBATE JUDGE

Conway, South Carolina

Exhibit "A"
Special Needs Trust

ABBIE DORN SPECIAL NEEDS TRUST

This trust is entered into with reference to the following facts:

RECITALS

A. This trust forms a part of the settlement arrived at between Abbie Dorn, an adult with a disability, by and through her Guardian Ad Litem, Daniel Dorn, et al., Plaintiffs, and Cedars-Sinai Medical Center, et al., Defendants, in Case No. BC356985, in the Superior Court of the State of California, County of Los Angeles.

B. The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Sections 3604 and 3605, and for certain payments by or on behalf of the Defendants to the trust. The amount of money that will initially be deposited into the trust is \$910,275.20, plus periodic payments in the initial amount of \$31,000 per month for the lifetime of the Beneficiary. The trust is for the primary benefit of the Plaintiff, Abbie Dorn, hereinafter sometimes referred to as the "Beneficiary." The Court in the above-described action has made the following determinations: Abbie Dorn, an adult with a disability, has a disability in the nature of severe and permanent brain injury that substantially impairs her ability to provide for her own care or custody and constitutes a substantial handicap; her condition appears to be permanent and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this trust; and the monies to be paid to this trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary.

CERTIFIED TO BE A TRUE COPY
OF THE RECORDS OF THIS OFFICE

DEIRDRE W. EDMONDS
DEIRDRE W. EDMONDS
PROBATE JUDGE, HORRY COUNTY, SC

PROBATE COURT
HORRY COUNTY, SC
2008 FEB -6 AM 11:47
DEIRDRE W. EDMONDS
PROBATE JUDGE

C. The intent and purpose of this trust is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America. The funds of the trust may be used as an emergency or backup fund secondary to public resources. Special Needs include without limitation special equipment, programs of training, education and habilitation, travel needs, and recreation, which are related to and made reasonably necessary by this Beneficiary's disabilities. This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein.

D. The settlement and the payments to this trust are all subject to the approval and order of the above-entitled Court. The settlement and all payments thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Abbie Dorn Special Needs Trust is established, Paul Cohen, M.D. and Susan Cohen are appointed as Trustee thereof, and are authorized by the Court in the above-described action to execute this trust.

ARTICLE I

TRUSTEE

1. Paul Cohen, M.D. and Susan Cohen are appointed to act jointly as the initial Trustee of the trust. Any Trustee shall have the right to resign at any time. Should either of them cease to act as trustee for any reason, the other shall continue to act as sole trustee. Any successor Trustee shall be appointed by the Court with jurisdiction over the trust, and shall be bonded to the extent required by Probate Code § 2320 or such analogous law of the State in which the Court with jurisdiction over the trust is located.

The term "Trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. Any successor Trustee shall have and succeed to all the rights, titles, interests, powers, duties, and discretions given to the initial Trustee hereunder.

2. The Trustee may hire a case worker or other persons with expertise relating to the special needs of the Beneficiary, at the expense of the Trust, to advise it regarding the special needs of the Beneficiary.

3. The Trustee shall receive just and reasonable compensation, to be paid from the Trust, for its services in an amount to be fixed and allowed by the Court on the occasion of the Trustee's court accountings or such other times as that issue may be brought before the Court with jurisdiction over the Trust. The Trustee shall also receive reimbursement for reasonable expenses incurred. Such compensation shall be chargeable to and paid from the Trust.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL

1. All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.
2. The income shall be added to and become principal, forming a common fund. The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during her lifetime, such sums and at such times as the Trustee, in its discretion, determines appropriate and reasonably necessary for the Beneficiary's Special Needs. In making distributions to the Beneficiary for her Special Needs, the Trustee shall take into consideration the applicable resource and income limitations of the public assistance programs for which the Beneficiary is eligible, and the duties of any persons legally obligated to support the Beneficiary.
3. This trust shall terminate upon the death of Beneficiary. Upon termination, whether by death or otherwise, the trustee may pay expenses of last illness, burial expenses and expenses related to administration and distribution of the trust assets, and thereafter the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act, up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under such state plan. After such payment or payments have been made, the remaining trust estate shall be distributed to the person or persons, excluding the Beneficiary, creditors of the Beneficiary, the estate of the Beneficiary, or creditors of the estate of the Beneficiary, in such manner and proportions as shall

be designated by the Beneficiary by written instrument delivered to the Trustee or by specific reference to this power by the Beneficiary's last Will. Any prospective appointment may be revoked by a subsequent written instrument delivered to the Trustee or by specific reference to the revocation by the Beneficiary's last Will. If the exercise of any of said powers of appointment is inconsistent with any other exercise of said powers, the provisions of the instrument bearing the later date shall prevail. To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn, or in default of such issue, to her heirs at law. The Trustee may withhold distributions pending receipt of a release from the South Carolina Department of Health and Human Services (or its successor). The amount to be repaid under this paragraph to the State for medical assistance shall be determined by agreement between the South Carolina Department of Health and Human Services or its successor, and the Trustee. In the event that an agreement has not been reached between the South Carolina Department of Health and Human Services and the Trustee within one year of the death of the Beneficiary, the Trustee shall pay to the appropriate Clerk of Court an amount equal to the claim of the State of reimbursement for medical care provided to the Beneficiary, and shall pay the balance of the trust estate to the then living issue, per stirpes, of Abbie Dorn or, in default of such issue, to her heirs at law. The appropriate court shall determine the validity of the claim of the State and shall direct payment to the State of this amount, with the balance distributed to the then living issue, per stirpes, of the Beneficiary, or in default of such issue, to her heirs at law.

4. This trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary's death or the trust termination be given in the manner provided in California Probate Code Section 1215 to, among others, the California State Department of Health Services, the California State Department of Mental Health and the California State Department of Developmental Services, addressed to the director of those departments at the Sacramento office of such director. However, this requirement can be waived by order of a court of competent jurisdiction if such court determines that the Beneficiary received no benefits from any such agency subsequent to the creation of this Trust.

5. If the Trustee determines that it is in the best interest of the Beneficiary to make a disbursement which will cause a reduction or elimination of the Beneficiary's right to receive public benefits, the Trustee shall not be liable for having caused the loss of such benefits. For purposes of determining the Beneficiary's Medicaid eligibility, or Supplemental Security Income (hereinafter referred to as "S.S.I.") eligibility, or eligibility for other governmental assistance programs, no part of the principal or income of the trust estate shall be considered available to said Beneficiary. In the event the Trustee is requested by any county, state, federal, or other governmental agency, to release principal or income of the trust to or on behalf of the Beneficiary to pay for equipment, medication, or services which Medicaid or S.S.I. or some other governmental program is authorized to provide, or in the event the Trustee is requested to petition a court or administrative agency for the release of trust principal or income for any of these purposes, the Trustee is authorized to deny such request and is authorized, in its discretion,

to take whatever administrative or judicial steps may be necessary to continue the Medicaid or S.S.I. or other governmental program eligibility of the Beneficiary, including obtaining instructions from a court of competent jurisdiction ruling that the principal and income of this trust is not available to the Beneficiary for Medicaid or S.S.I. or other governmental program eligibility purposes. Any expenses of the Trustee in this regard, including attorneys' fees, shall be a proper charge to the trust estate.

6. The Beneficiary has no interest in the income or principal of the trust, other than as set forth herein. No interest in the principal or income of this trust shall be anticipated, assigned, or encumbered by any beneficiary, nor shall any such interest be subject to any creditor's claim or to legal process. Furthermore, because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provisions of care and services, including residential care, by any public entity, office, department, or agency of any state, or of the United States of America (except as otherwise provided in this instrument).

7. The Trustee shall pay any inheritance, estate, or other death taxes, if any, including interest and penalties, that may be payable by reason of the death of any beneficiary of this trust and be attributable to assets included in the trust estate. The Trustee shall make no payments for expenses incurred prior to the Beneficiary's death if the Trustee shall determine, in its discretion, that payment therefor is the obligation of any county, state, federal, or other governmental agency (except as otherwise provided in this instrument).

ARTICLE III

TRUST IRREVOCABLE

This trust shall be irrevocable and not subject to amendment; provided, however, that this trust may be amended upon application of any interested party (including but not limited to the Trustee) with the approval of a Court of competent jurisdiction; provided, further, however, that any such amendment shall be consistent with, and in furtherance of, the purpose and intent of this trust as set forth herein and under applicable laws, and no amendment shall change the duties and obligations of the Trustee without its prior written consent. Provided further that such amendment or reformation shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor.

ARTICLE IV

POWERS OF THE TRUSTEE

To carry out the purposes of this trust and subject to any limitations stated elsewhere in this instrument, the Trustee is vested with the following powers:

1. The Trustee shall make investment decisions consistent with those permitted under California Probate Code section 2574; provided, however, that such investment decisions shall be further governed by the authority granted to trustees pursuant to the South Carolina Trust Code and South Carolina Probate Code.
2. The Trustee may hold securities or other property in the Trustee's own name as trustee, in the Trustee's own name, in the name of a nominee or in bearer form.
3. The Trustee may sell or exercise stock subscription or conversion rights.

4. The Trustee shall refrain from voting or to vote shares of stock owned by the trust estate at shareholders' meetings in person or by special, limited, or general proxy, and in general exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the trust estate; and to make and terminate S corporation elections for both federal and state tax law purposes.

5. The Trustee may participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the trust estate; and to deposit the stock or other securities under any plan of reorganization with any protective committee and to delegate to the committee discretionary power with relation thereto, to pay a proportionate part of the expenses of the committee and any assessments levied under any plan, to accept and retain new securities received by the Trustee pursuant to any plan, to exercise all conversion, subscription, voting and other rights, of whatever nature pertaining to the property, and to pay any amount or amounts of money as the Trustee may reasonably deem advisable in connection therewith.

6. The Trustee may enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term.

7. The Trustee may make ordinary or extraordinary repairs or alterations in buildings or other structures to demolish any improvements, to raze existing or erect new party walls or buildings which may be trust property.

8. The Trustee may collect, receive, and receipt for rents, issues, profits, and income of the trust estate.

9. The Trustee may insure the assets of the trust estate against damage or loss and to insure the health and property of the Beneficiary.

10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, Realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate. However, the compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

11. The Trustee may permit the Beneficiary and any care giver or family members living with Beneficiary to occupy rent free any residence constituting a part of the assets of the Trust and the Trustee may, in his and/or her discretion, pay any proportion of real property taxes on any residence in which Beneficiary resides (whether owned by the Trust or by Beneficiary or by the person having care and custody of Beneficiary), in addition to paying the expenses of maintaining the residence where Beneficiary resides and hazard premiums on said residence. In addition, the Trustee may pay the costs of modifying the place where Beneficiary resides without acquiring an equity interest in the residence.

12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility; any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including but not limited to claims by Beneficiary arising out of property

damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary. The compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

13. To exercise all powers in the management of the trust estate, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee reasonably deems necessary or proper to carry out the purposes of this Trust and to achieve the proper investment, management, and distribution of the Trust property.

14. Notwithstanding the applicable South Carolina Uniform Principal and Income Act, the Trustee shall have the power to adjust between income and principal to the extent the Trustee considers, in its sole discretion, necessary.

15. All rights, powers, privileges, immunities and authorities granted to the Trustee shall be exercised in such reasonable manner as may be fair and equitable under the circumstances.

16. To change the place of administration of this trust upon prior order of a court of competent jurisdiction.

17. In the administration and management of the trust, including without limitation the investment and reinvestment of the trust estate, the Trustee shall consider solely the interest of the Beneficiary, Abbie Dorn.

ARTICLE V

GENERAL PROVISIONS

1. This trust is subject to the continuing jurisdiction of the Horry County Probate Court, in Horry County, South Carolina. Court accountings shall be filed at the end of the first year of administration and biennially thereafter, unless the court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties, in the form required by California Probate Code § 1060 et seq., or such analogous law of the State in which the Court with jurisdiction over the trust is located.
2. Until the Trustee shall receive written notice of any birth, marriage, death or other event upon which the right to payments from this trust may depend, the Trustee shall incur no liability to persons whose interests may have been affected by that event for disbursements made in good faith.
3. The Trustee may apply payments under this trust for the benefit of any beneficiary, or may make payments under this trust to the guardian or conservator of the person or estate of any beneficiary who is under disability, or to the parent of any beneficiary who is a minor.
4. The Trust shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina. Provided, however, in the event that jurisdiction over the Trust is moved because the Beneficiary is then living in another State, then that Trust shall be construed, regulated and governed by and in accordance with the laws of that State.
5. If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

6. As used in this instrument, the masculine, feminine, or neuter gender and the singular or plural number shall be each deemed to include the others when the context so indicates.

7. All references in this instrument to specific statutes, codes, or regulations shall include any successor statutes, codes, or regulations of similar import.

Executed at Bakersfield, California, this 2nd day of November 2007
pursuant to that certain Order Approving Compromise of Disputed Claim of Adult with a
Disability dated _____ in Case No. BC356985, Superior Court of the State of
California, for the County of Los Angeles.

Paul Cohen
Paul Cohen, M.D., Trustee

Susan Cohen
Susan Cohen, Trustee

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

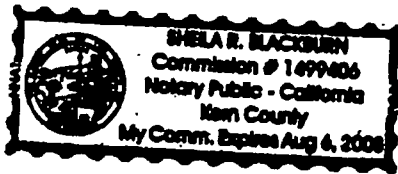
State of California

County of Kern } SS.

On November 2, 2007, before me, Sheila R. Blackburn Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
 personally appeared Paul Cohen and Susan Cohen
Name(s) of Signer(s)

☒ personally known to me
☐ 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Sheila R. Blackburn
Signature of Notary Public

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.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

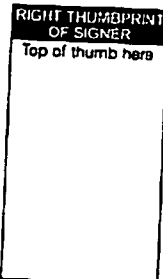
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
- ☐ Corporate Officer — Title(s): _____
- ☐ Partner — ☐ Limited ☐ General
- ☐ Attorney in Fact
- ☐ Trustee
- ☐ Guardian or Conservator
- ☐ Other: _____

Signer is Representing: _____



2008 FEB -6 AM 11:47
 DEIRDRE W. EDWARDS
 PROBATE JUDGE
 PROBATE COURT
 KERN COUNTY

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF HORRY

MATTER OF ABBIE DORN, A PROTECTED PERSON
MATTER OF ABBIE DORN SPECIAL NEEDS TRUST

CASE NUMBER: 2008-GC-26-25
2008-GC-26-50

 COPY

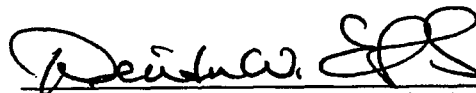
PROBATE COURT
2011 FEB 21 AM 10:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

ORDER APPOINTING GUARDIAN AD LITEM

Upon review of the incoming pleadings filed in the above-referenced matters, this Court finds that the appointment of a guardian ad litem is appropriate, necessary and/or desirable for the protected person, Abbie Dorn.

THEREFORE, IT IS HEREBY ORDERED that V. Lee Moore, Esquire, is hereby appointed guardian ad litem for Abbie Dorn, in the above matters.

Executed this 21st day of February 2011.



Hon. Deirdre W. Edmonds, Probate Judge

ACCEPTANCE

I agree to serve as attorney and guardian ad litem in these matters.

Executed this ____ day of _____ 2011.

Signature: _____
Name: V. Lee Moore, Esquire

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF HORRY

MATTER OF ABBIE DORN, A PROTECTED PERSON
MATTER OF ABBIE DORN SPECIAL NEEDS TRUST

CASE NUMBER: 2008-GC-26-25
2008-GC-26-50

 COPY

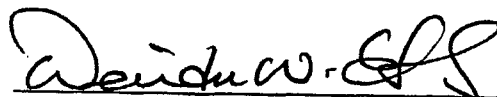
PROBATE COURT
2011 FEB 21 AM 10:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

ORDER APPOINTING ATTORNEY

Upon review of the incoming pleadings filed in the above-referenced matters, this Court finds that the appointment of an Attorney is appropriate, necessary and/or desirable for the protected person, Abbie Dorn.

THEREFORE, IT IS HEREBY ORDERED that Lynette Rogers Hedgepath, Esquire, is hereby appointed Attorney for Abbie Dorn, in the above matters.

Executed this 21st day of February 2011.



Hon. Deirdre W. Edmonds, Probate Judge

ACCEPTANCE

I agree to serve as attorney and guardian ad litem in these matters.

Executed this ____ day of _____ 2011.

Signature: _____
Name: Lynette Hedgepath, Esquire

STATE OF SOUTH CAROLINA

PROBATE COURT

COUNTY OF HORRY

MATTER OF ABBIE DORN SPECIAL NEEDS TRUST

CASE NUMBER: 2008-GC-26-50

COPY

DEIRDRE W. EDMONDS
PROBATE JUDGE

2011 FEB 21 AM 10:09

PROBATE COURT
Horry County, SC

ORDER APPOINTING ATTORNEY AND GUARDIAN AD LITEM

Upon review of the incoming pleadings filed in the above-referenced matter, this Court finds that the appointment of an Attorney and Guardian ad Litem is appropriate, necessary and/or desirable for certain contingent remainder beneficiaries of the above-referenced trust.

THEREFORE, IT IS HEREBY ORDERED that John Kachmarsky, Esquire, is hereby appointed Attorney and Guardian ad Litem for the contingent remainder beneficiaries, Esti Dorn, Reuvi Dorn and Yosse Dorn, and such Attorney and Guardian ad Litem being hereby granted the powers and duties of those positions.

Executed this 21st day of February 2011.

Hon. Deirdre W. Edmonds, Probate Judge

ACCEPTANCE

I agree to serve as attorney and guardian ad litem in this matter.

Executed this ____ day of _____ 2011.

Signature: _____

Name: John Kachmarsky, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Daniel B. Dorn, in his capacity as)
the Parent and Natural guardian of)
Esti Dorn, Reuvi Dorn, and Yosse)
Dorn,)

Petitioners,)

vs.)

Paul S. Cohen and Susan Cohen,)
Individually and in their capacity as)
the Co-Conservators of the person of)
Abbie Ilene Dorn, a protected person)
and ward, and in their capacity as)
Co-Trustees of the Abbie Dorn)
Special Needs Trust,)

Respondents.)

Paul S. Cohen, M.D. and)
Susan Cohen,)

Petitioners,)

vs.)

Esti Dorn, Reuvi Dorn, and Yosse)
Dorn, The Living Issue of Abbie)
Ilene Dorn, and the South Carolina)
Department of Health and Human)
Services,)

Respondents.)

IN RE: THE ABBIE DORN)
SPECIAL NEEDS TRUST.)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0025

PROBATE COURT
HORRY COUNTY, SC
2013 DEC -5 PM 1:50
DEIRDRE W. EDMONDS
PROBATE JUDGE

CASE NO.: 2008-GC-26-0050

ORDER AS TO OBJECTION BASED
UPON WORK PRODUCT DOCTRINE

A hearing was held before the Court in the above captioned actions on June 24, 2013, upon the Application for Attorney Fees and Costs of Lynette Rogers Hedgepath, the Court appointed Attorney for Abbie Dorn, which Application was filed on June 18, 2013. Present for the hearing were attorneys John Kachmarsky, Stephen Slotchiver, Daniel Slotchiver, Bret Davis, V. Lee Moore, Lynette Hedgepath, and Reese Boyd, counsel for all of the parties involved in these actions.

During his examination of Mrs. Hedgepath, attorney Daniel Slotchiver, counsel for Daniel Dorn, began questioning Mrs. Hedgepath regarding specific telephone conversations she had had with Reese Boyd and/or Bret Davis, counsel for Paul and Susan Cohen. When Mr. Slotchiver began questioning Mrs. Hedgepath regarding the contents of her case file and her conversations with Mr. Boyd and Mr. Davis, Mrs. Hedgepath objected based upon the work product doctrine. After hearing arguments from counsel and reviewing case law presented at the hearing as to the work product doctrine, the Court sustained Mrs. Hedgepath's objection to Mr. Slotchiver's examination of her regarding the aforementioned matters. Thereafter, upon request of Mr. Slotchiver, the parties were allowed to brief Mrs. Hedgepath's work product doctrine objection.

Upon review of all briefs and reply briefs, as well as the cited authorities, and having an opportunity to reconsider my ruling after such review, I conclude the objection of Mrs. Hedgepath that counsel for Mr. Dorn was seeking information protected by the work product doctrine should be sustained. My conclusion is based on the arguments and legal authority cited in Mrs. Hedgepath's brief(s) and Mr. Boyd's brief(s) as well as on the following grounds:

The leading case on the work product doctrine is the United State Supreme Court case of *Hickman v. Taylor*, 329 U.S. 495 (1947). That case it is directly on point. Based upon *Hickman v. Taylor*, 329 U.S. 495 (1947), there is no question in this Court's mind that the testimony that Mr. Slotchiver is trying to elicit from Mrs. Hedgepath is attorney work product. As such, the burden rests on Mr. Slotchiver to establish adequate reasons to justify invading Mrs. Hedgepath's work product, which in this case are her conversations with attorneys Boyd and Davis.

As the *Hickman* Court explained, requiring Mrs. Hedgepath to testify "as to what she remembers or what she saw fit to write down" regarding their conversations "would make [her] much less an officer of the Court and much more an ordinary witness." Further, as to oral statements made to Mrs. Hedgepath by Mr. Boyd and Mr. Davis, whether presently in the form of mental impressions or memoranda, no "showing of necessity can be made under the circumstances of this case so as to justify production." *Id.*

Also, I am not persuaded by Mr. Slotchiver's argument that Mrs. Hedgepath has not complied with the requirements of non-disclosure of privileged information by describing the nature of the communications so as to enable the other parties to assess the applicability of the privilege or protection. "First and foremost, opinion work product is to be accorded great protection by the courts." *In Re Martin Marietta Corporation v. Pollard*, 856 F.2d 619 (Ct. App. 4th 1988). "[T]he plain language of Fed.R.Civ.P. 26(b)(3) suggests especial protection for opinion work product: In ordering discovery of such materials when the required showing has been made, the Court shall protect against disclosure of the mental impressions, conclusions,

opinions, or legal theories of the attorney or other representative of a party concerning the litigation.” *Id.* at 624.

Mrs. Hedgepath has represented to the Court that her conversations and meetings with Mr. Boyd and Mr. Davis are protected under the work product doctrine. Mr. Slotchiver has provided no case that supports his position argued in his brief that Mrs. Hedgepath should be “required to disclose the nature of her communications to the Court and to opposing counsel so they may determine if privilege applies”. I find and conclude that through her testimony at the prior hearing, Mrs. Hedgepath made a sufficient showing as to the applicability of the work product doctrine to her meetings and conversations with Mr. Boyd and Mr. Davis, and that to require her to further “disclose the nature of her communications” would be to invade her work product.

Finally, I am not persuaded by Mr. Slotchiver’s argument that Mrs. Hedgepath waived the protections of the work product privilege by disclosing the information to an adversary. The *Restatement (Third) of Law Governing Lawyers §91, Voluntary Acts, Title C, Waivers and Exceptions to the Work-Product Immunity*, states:

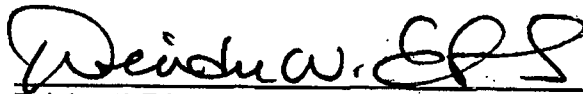
The privacy requirement for work-product materials is in some situations less exacting than the corresponding requirement for the attorney-client privilege. Effective trial preparation often entails disclosing work product to coparties and nonparties. Work product, including opinion work product, may generally be disclosed to the client, the client’s business advisers or agents, the client’s lawyer or other representative, associated lawyers and other professionals working for the client or persons similarly aligned on a matter of common interest.

I conclude that Mrs. Hedgepath has not waived the work product privilege by meeting with and/or speaking to counsel for the Cohens, especially in light of her testimony that such

meetings and conservations were necessary in order to adequately represent her client, Abbie Ilene Dorn, who is an incapacitated person.

Therefore, Mrs. Hedgepath's objection should be sustained and the testimony solicited is protected by the work product doctrine. Additionally, Mr. Slotchiver was given the opportunity to conduct other questioning; however, he had nothing further. Therefore, the hearing on Mrs. Hedgepath's fees is concluded subject, however, to Petitioner Dan Dorn's Pending Motion to Deny an Award of Attorney's Fees to Lynette Hedgepath, which was subsequently filed in these matters and is currently scheduled for hearing.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Deirdre W. Edmonds", with a stylized flourish at the end.

Deirdre W. Edmonds, Judge of Probate
Horry County Probate Court

December 5, 2013
Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0025

Daniel B. Dorn, in his capacity as)
the Parent and Natural guardian of)
Esti Dorn, Reuvi Dorn, and Yosse)
Dorn,)

Petitioners,)

vs.)

Paul S. Cohen and Susan Cohen,)
Individually and in their capacity as)
the Co-Conservators of the person of)
Abbie Ilene Dorn, a protected person)
and ward, and in their capacity as)
Co-Trustees of the Abbie Dorn)
Special Needs Trust,)

Respondents.)

Paul S. Cohen, M.D. and)
Susan Cohen,)

Petitioners,)

vs.)

Esti Dorn, Reuvi Dorn, and)
Yosse Dorn, The Living)
Issue of Abbie Ilene Dorn,)
and the South Carolina)
Department of Health and)
Human Services,)

Respondents.)

IN RE: THE ABBIE DORN)
SPECIAL NEEDS TRUST.)

PROBATE COURT
HORRY COUNTY, SC
2013DEC-5 PM 1:50
DEIRDRE W. EDMONDS
PROBATE JUDGE

CASE NO.: 2008-GC-26-0050

**ORDER GRANTING DAN DORN'S
MOTION FOR CONTINUANCE**

THE ABOVE CAPTIONED ACTIONS came before this Court via telephone status
conference on November 25, 2013. Present for the telephone status conference were attorneys

John Kachmarsky, Stephen Slotchiver, Daniel Slotchiver, Bret Davis, V. Lee Moore, Lynette Hedgepath, and Reese Boyd, counsel for all of the parties involved in these actions. During the telephone status conference, counsel and the undersigned discussed Dan Dorn's recently filed Motion for Continuance of the trial in these matters presently scheduled to resume the week of February 3rd, 2014 and the week of February 10th, 2014.

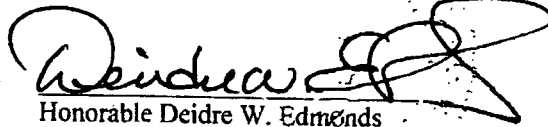
Based upon a review of Daniel Dorn's Motion for Continuance and after discussion with counsel for the parties, and without objection thereto, it is hereby ordered that the current resumption of the trial scheduled in the above actions for the weeks of February 3, 2014 and February 10, 2014 is hereby continued, and a new date to resume the trial in these actions will be established by the Court as soon as possible in consultation with the parties.

Therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Daniel Dorn's Motion for Continuance in these actions is hereby GRANTED.

IT IS SO ORDERED.

December 31, 2013
Conway, South Carolina


Honorable Deidre W. Edmonds
Judge of Probate Court, Horry County

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0025

Daniel B. Dorn, in his capacity as)
the Parent and Natural guardian of)
Esti Dorn, Reuvi Dorn, and Yosse)
Dorn,)

Petitioners,)

vs.)

Paul S. Cohen and Susan Cohen,)
Individually and in their capacity as)
the Co-Conservators of the person of)
Abbie Ilene Dorn, a protected person)
and ward, and in their capacity as)
Co-Trustees of the Abbie Dorn)
Special Needs Trust,)

Respondents.)

Paul S. Cohen, M.D. and)
Susan Cohen,)

Petitioners,)

vs.)

Esti Dorn, Reuvi Dorn, and)
Yosse Dorn, The Living)
Issue of Abbie Ilene Dorn,)
and the South Carolina)
Department of Health and)
Human Services,)

Respondents.)

IN RE: THE ABBIE DORN)
SPECIAL NEEDS TRUST.)

PROBATE COURT
HORRY COUNTY, SC
2013 DEC -5 PM 1:50
DEIRDRE W. EDMONDS
PROBATE JUDGE

CASE NO.: 2008-GC-26-0050

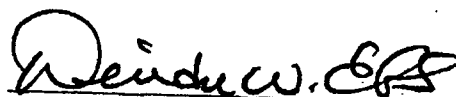
**ORDER NAMING ABBIE ILENE DORN
AS PARTY TO ACTIONS**

THE ABOVE CAPTIONED ACTIONS came before this Court via telephone status conference on November 25, 2013. Present for the telephone status conference were attorneys John Kachmarsky, Stephen Slotchiver, Daniel Slotchiver, Bret Davis, V. Lee Moore, Lynette Hedgepath, and Reese Boyd, counsel for all of the parties involved in these actions. During the

telephone status conference, the undersigned discussed the Court's review of Rule 19 of the South Carolina Rules of Civil Procedure in conjunction with the Court's earlier ruling that Abbie Ilene Dorn be joined as a party to these actions. Based upon the Court's determination that Abbie Ilene Dorn should be jointed as a named party to these actions and pursuant to Rule 19, SCRCF,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Abbie Ilene Dorn be joined as a named party in both of the above captioned actions.

IT IS SO ORDERED.


Honorable Deidre W. Edmonds
Judge of Probate Court, Horry County

December SP, 2013
Conway, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT
HORRY COUNTY

Daniel B. Dorn, in his capacity as)
the Parent and Natural guardian of)
Esti Dorn, Reuvi Dorn, and Yosse)
Dorn,)

Petitioner,)

vs.)

Paul S. Cohen and Susan Cohen,)
Individually and in their capacity as)
the Co-Conservators of the person of)
Abbie Ilene Dorn, a protected person)
and ward, and in their capacity as Co-)
Trustees of the Abbie Dorn Special)
Needs Trust,)

Respondents.)

Case No.: 2008-GC-26-25

DEIRDRE A. ENGLISH
PROBATE JUDGE

2014 MAR 10 AM 8:14

PROBATE COURT
HORRY COUNTY, SC

ORDER GRANTING
MOTION TO AMEND
PLEADINGS TO CONFORM
TO THE EVIDENCE

During the course of the trial in the above matters, in February and March, 2013, as Co-Trustee, Susan Cohen, was being examined, counsel for Petitioner Dorn, Daniel Slotchiver, Esq., objected to Mrs. Cohen's testimony regarding her reliance upon the advice of legal counsel and medical experts on the basis that such testimony was hearsay. Counsel for Abbie Dorn argued that Susan Cohen's testimony was admissible as it went to her state of mind and her reliance upon such advice was relevant to whether or not the Cohen's breached their fiduciary duty. The objection was overruled and the testimony was allowed.

Subsequently, Mr. Slotchiver argued to the Court that testimony and evidence regarding the Co-Trustees' reliance upon experts was not admissible because the parties had not properly raised the issue in their pleadings. He argued, in essence, that the Trustees' reliance upon

experts was an affirmative defense that must be pled in order to allow evidence at trial regarding the issue.

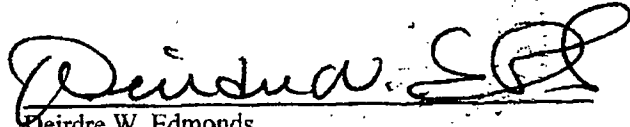
Ms. Hedgepath, as counsel for Abbie Dorn, moved pursuant to Rule 15, of the *South Carolina Rules of Civil Procedure*, to amend the pleadings in the above-captioned case to conform with the evidence presented at trial relating to the reliance of the Co-Trustees upon advice of counsel, medical providers and other experts. Mr. Boyd, counsel for the Co-Trustees, joined in the motion.

Rule 15 (a) of the *South Carolina Rules of Civil Procedure* governs motions to amend made during trial and allows the Court to provide leave for a party to amend his pleadings and further sets forth that such "leave shall be freely given when justice so requires and does not prejudice the other party." Rule 15(b) provides a specific mechanism for the amendment of pleadings to conform to the evidence presented at trial. There is no time limit for amendments to conform to the evidence, and they may be made at any time the trial court has jurisdiction of the case. A party may amend his or her pleading after trial and even after judgment.

Petitioner has had full and ample opportunity to conduct discovery of all parties and certainly more than adequate time to question why various decisions were made by the Trustees that the Petitioner believes were inappropriate. The Petitioner would suffer no prejudice by the amendment to the pleadings as Petitioner will be afforded a full opportunity to address the issues raised in the amendment. See Soil & Material Engineers, Inc. v. Folly Associates, 293 SC 498, 361 SE2d 779 (Ct. App. 1987). Therefore, it appears to the court that there is just cause for granting the motion, the merits will be served thereby, and the Petitioner will not be prejudiced.

It is therefore ORDERED that the Motion to Amend of Counsel for Abbie Dorn and Counsel for the Co-Trustees is granted and the moving parties are allowed to amend their pleadings accordingly.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "Deirdre W. Edmonds", written over a horizontal line.

Deirdre W. Edmonds
Horry County Probate Judge

March 10, 2014
Conway, South Carolina

Mo
33

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL
CASE

COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP-26-8139

Daniel B. Dorn, et al.,

v. Paul S. Cohen, et al.,

PLAINTIFFS

DEFENDANTS

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

BOX:

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE)
- ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
- ☒ Statement of Judgment by the Court:

This case came before the Court during the February 9, 2015 common pleas non-jury term for a hearing on Defendant Paul S. Cohen's Motion to Stay, filed October 15, 2014. Because this Court denied Plaintiff Daniel B. Dorn's Probate Appeal, filed December 23, 2013 as interlocutory, Defendant Paul S. Cohen's Motion to Stay, filed October 15, 2014 is resolved as moot.

This order ☐ ends ☒ does not end the case.

ORDER INFORMATION

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

AKL J. J. Allen
Circuit Court Judge

2128
Judge Code

2/10/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Christy Ford Allen, Esq.; John A. Massalon,
Esq.

Reese Rodman Boyd, III, Esq.

ATTORNEYS FOR PLAINTIFFS

ATTORNEY FOR DEFENDANTS

CLERK OF COURT

Court Reporter: H. Eugene Buckner

Mon
14

FORM 4

STATE OF SOUTH CAROLINA

COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

Daniel B. Dorn, et al.,

JUDGMENT IN A CIVIL
CASE

2014
CASE NO. 2013-CP-26-1691

v. Paul S. Cohen, et al.,

PLAINTIFFS

DEFENDANTS

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE)**
- ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.**

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
- ☒ Statement of Judgment by the Court:

This case came before the Court during the February 9, 2015 common pleas non-jury term for a hearing on Defendant Paul S. Cohen's Motion to Stay, filed October 15, 2014. Because this Court denied Plaintiff Daniel B. Dorn's Probate Appeal, filed December 26, 2013 as interlocutory, Defendant Paul S. Cohen's Motion to Stay, filed October 15, 2014 is resolved as moot.

This order ☐ ends ☒ does not end the case.

ORDER INFORMATION

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

MR. JEFFER
Circuit Court Judge

2128
Judge Code

2/10/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Christy Ford Allen, Esq.; John A. Massalon,
Esq.; Daniel Scott Slotchiver, Esq.

ATTORNEYS FOR PLAINTIFFS

Reese Rodman Boyd, III, Esq.

ATTORNEY FOR DEFENDANTS

CLERK OF COURT

Court Reporter: H. Eugene Buckner

Mon
16

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL
CASE

COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-26-1744

Esti Dorn, et al.,

v. Paul S. Cohen, et al.,

PLAINTIFFS

DEFENDANTS

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE):**
- ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
- NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
- ☒ Statement of Judgment by the Court:

This case came before the Court during the February 9, 2015 common pleas non-jury term for a hearing on Defendant Paul S. Cohen's Motion to Stay, filed October 15, 2014. Because this Court denied Plaintiff Esti Dorn's Probate Appeal, filed December 26, 2013 as interlocutory, Defendant Paul S. Cohen's Motion to Stay, filed October 15, 2014 is resolved as moot.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of	Judgment Against	Judgment Amount To be Enrolled

Mm
12

FORM 4

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL
CASE

COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP-26-8152

Esti Dorn, et al.,

v. Paul S. Cohen, et al.,

PLAINTIFFS

DEFENDANTS

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

BOX: ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

- ☐ See attached order. (Formal order to follow)
☒ Statement of Judgment by the Court:

This case came before the Court during the February 9, 2015 common pleas non-jury term for a hearing on Defendant Paul S. Cohen's Motion to Stay, filed October 15, 2014. Because this Court denied Plaintiff Esti Dorn's Probate Appeal, filed December 26, 2013 as interlocutory, Defendant Paul S. Cohen's Motion to Stay, filed October 15, 2014 is resolved as moot.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of	Judgment Against	Judgment Amount To be Enrolled

(List name(s) below)	(List name(s) below)	(List amount(s) below)
n/a		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

DR Jesse
Circuit Court Judge

2128
Judge Code

2/10/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:

Christy Ford Allen, Esq.; John Kachmarsky,
Esq.; Daniel Scott Slotchiver, Esq.

ATTORNEYS FOR PLAINTIFFS

Reese Rodman Boyd, III, Esq.

ATTORNEY FOR DEFENDANTS

CLERK OF COURT

Court Reporter: H. Eugene Buckner

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

DANIEL B. DORN, in his capacity as the
Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yosse Dorn,

Petitioner,

vs.

PAUL S. COHEN and SUSAN COHEN,
individually and in their capacity as the Co-
Conservators of the person of Abbie Ilene
Dorn, a protected person and ward, and in
their capacity as Co-Trustees of the Abbie
Dorn Special Needs Trust,

Respondents.

IN THE PROBATE COURT

CASE NO. 2008-GC-26-25

CASE NO. 2008-GC-26-50

SUMMONS

DEIRDRE W. EDMONDS
PROBATE JUDGE

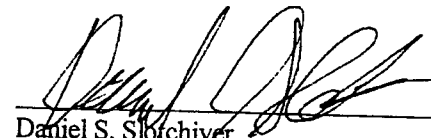
2010 NOV 23 PM 2:08

PROBATE COURT
HORRY COUNTY, SC

TO THE RESPONDENT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to respond to the Petition in this action, a copy of which is herewith served upon you, and to serve a copy of your Response to said Petition on the subscriber at his office at 44 State Street, Charleston, South Carolina, 29401, within thirty (30) days after service thereof, exclusive of the day of such service; and if you fail to respond to the Petition within the time aforesaid, the Petitioner in this action will apply to the Court for a default judgment for the relief demanded in the Petition.

SLOTCHIVER & SLOTCHIVER, LLP



Daniel S. Slotchiver

Stephen M. Slotchiver

44 State Street

Charleston, SC 29401

(843) 577-6531 (office)

(843) 577-0261 (fax)

Attorneys for Petitioner

November 22, 2010

Charleston, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

DANIEL B. DORN, in his capacity as the
Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yosse Dorn,

Petitioner,)

vs.)

PAUL S. COHEN and **SUSAN COHEN**,
individually and in their capacity as the Co-
Conservators of the person of Abbie Ilene
Dorn, a protected person and ward, and in
their capacity as Co-Trustees of the Abbie
Dorn Special Needs Trust,

Respondents.)

IN THE PROBATE COURT

CASE NO. 2008-GC-26-25

CASE NO. 2008-GC-26-50

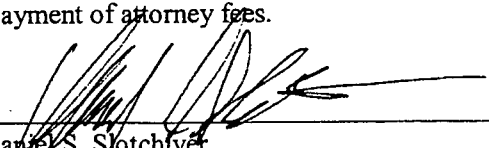
NOTICE OF MOTION FOR
TEMPORARY RESTRAINING ORDER
DELORE W. EDMONDS
PROBATE JUDGE
2008 NOV 23 PM 2:06
PROBATE COURT
HORRY COUNTY, SC

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 65(b), S.C.R.CIV. P., the undersigned will move before the Horry County Probate Court at the Horry County Justice Center located at 1301 Second Avenue, Conway, South Carolina, for a Temporary Restraining Order restraining Respondents, **PAUL S. COHEN** and **SUSAN COHEN**, in their capacity as the Co-Trustees of the Abbie Dorn Special Needs Trust, and in their capacity as the Co-Conservators of the Conservatorship established for the benefit of Abbie Ilene Dorn, a protected person and ward, from utilizing any of the assets of the Abbie Dorn Special Needs Trust and/or from any conservatorship account(s) to pay for any expenses that are not for the actual medical needs of Abbie Dorn

According to Paragraph B of the Recitals Section of the Abbie Dorn Special Needs Trust (the "Trust"), Abbie Dorn's *"condition appears to be permanent, and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this Trust; and the monies to be paid to the Trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary"*.

It is the Petitioner's belief and understanding that the cost to provide for the medical needs of Abbie Dorn is running approximately Thirty-Five Thousand (\$35,000) Dollars to Forty Thousand (\$40,000) Dollars per month wherein the Trust is currently receiving approximately Thirty-Four Thousand (\$34,000) Dollars per month. Therefore, there is a shortfall every month in the payment of her medical bills versus the annuity payment received. Paul S. Cohen and Susan Cohen have already spent from the corpus of Trust monies in excess of Three Hundred Seventy-Five Thousand (\$375,000) Dollars in unauthorized legal fees, essentially half of the corpus Trust. These expenditures are ongoing in the Superior Court of California, Los Angeles County and the amount of future related bills in this ongoing litigation is uncertain. Petitioner

contends that the expenditures to date are both unreasonable and unauthorized under the Trust, violating both the fiduciary duties owed to Abbie Dorn, as her Conservators and as Trustees of the Trust, as well as the Trust requirement regarding payment of attorney fees.



Daniel S. Slotchiver
Stephen M. Slotchiver
SLOTCHIVER & SLOTCHIVER, LLP
44 State Street
Charleston, SC 29401
(843) 577-6531
(843) 577-0261 (fax)
Attorneys for Petitioner

November 22 2010

Charleston, South Carolina.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

DANIEL B. DORN, in his capacity as the
Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yosse Dorn,

Petitioner,)

vs.)

PAUL S. COHEN and **SUSAN COHEN**,
individually and in their capacity as the Co-
Conservators of the person of Abbie Ilene
Dorn, a protected person and ward, and in
their capacity as Co-Trustees of the Abbie
Dorn Special Needs Trust,

Respondents.)

IN THE PROBATE COURT

CASE NO. 2008-GC-26-25

CASE NO. 2008-GC-26-50

EMERGENCY PETITION FOR:

- (1) ACCOUNTING;
- (2) RESTRAINT OF PERFORMANCE
OF TRUSTEES OF TRUST;
- (3) RESTRAINT OF PERFORMANCE
OF CONSERVATOR;
- (4) POSTING OF BOND;
- (5) REMOVAL OF TRUSTEES AND
- (6) REMOVAL OF CONSERVATORS

2008 NOV 23 PM 2:08
DANIEL B. DORN
PROBATE COURT
HORRY COUNTY, SC

PROBATE COURT
HORRY COUNTY, SC

The **PETITIONER, DANIEL B. DORN**, in his capacity as the parent and natural guardian of Esti Dorn, Reuvi Dorn, and Yosse Dorn, would respectfully show unto this Court as follows:

1. **PAUL S. COHEN** and **SUSAN COHEN** are currently serving as the Co-Trustees of the **ABBIE DORN SPECIAL NEEDS TRUST**, which was established on November 2, 2007 (see Exhibit A); there is currently an action pending in the Probate Court for Horry County, South Carolina, known as Case No. 2008-GC-26-50.

2. **PAUL S. COHEN** and **SUSAN COHEN** are currently also serving as the Co-Conservators of **ABBIE ILENE DORN** for which there is currently an action pending in the Horry County, South Carolina Probate Court known as Case No. 2008-GC-26-25.

3. The **ABBIE DORN SPECIAL NEEDS TRUST** (the "Trust") was established to provide for Abbie Dorn's special needs that will not be met without this Trust; and the monies paid to the Trust have been acknowledged to not exceed the amount that is reasonably necessary to meet the special needs of Abbie Dorn (see the excerpts from Paul Cohen's deposition transcript attached hereto as Exhibit B). If at the time of Abbie Dorn's demise there are assets remaining in the Trust, after payment for expenses of last illness, burial expense and expenses related to the administration and distribution of the Trust assets, the remaining Trust estate shall be subject to reimbursement under 42 U.S.C. § 1396(p)(d)(4)(a) or applicable State law to any State, or agency of a State, which has provided medical assistance to Abbie Dorn under a State plan under Title XIX of the Social Security Act, up to an amount equal to the total medical assistance paid on behalf of Abbie Dorn under such State plan. After such payment or payments have been made, the remaining Trust estate shall be distributed to the person or persons,

excluding Abbie Dorn, creditors of Abbie Dorn, the Estate of Abbie Dorn, or creditors of the Estate of Abbie Dorn, in such manner and proportions as shall be designated by Abbie Dorn by written instrument delivered to the Trustee or by specific reference to this power by Abbie Dorn's Will. To the extent any or all of the remaining Trust estate is not appointed because of the non-exercise or invalid exercise of such power, said remaining Trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn. The issue of Abbie Dorn consists of Esti Dorn, Reuvi Dorn, and Yosse Dorn, each of whom is represented by the Petitioner as their parent and guardian.

4. According to Paragraph B of the Recitals Section of the Trust, Abbie Dorn's *"condition appears to be permanent, and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this Trust; and the monies to be paid to the Trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary"*.

5. The Trust states, under Paragraph C of the Section titled Recitals of the Trust, that: *"This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein."*

6. Paragraph 2 of Article II of the Trust states: *"In making distributions to the Beneficiary for her Special Needs, the Trustee shall take into consideration the applicable resource and income limitation of the public assistance programs for which the Beneficiary is eligible, and the duties of all persons legally obligated to support the Beneficiary."*

7. Paragraph 12 of Article IV of the Trust states: *"The Trustee may employ attorneys, accountants and financial advisors, and consultants at the expense of the Trust Estate to represent the Beneficiary in connection with any and all matters involving or any way relating to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility... The compensation of the Trustee's attorney at law shall be subject to prior approval of a Court of competent jurisdiction."*

8. Paragraph 1 of Article V of the Trust states: *"Court accountings shall be filed at the end of the first year of administration and biannually thereafter, unless the Court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties,..."*

9. **PAUL S. COHEN** and **SUSAN COHEN** have failed to file an Accounting with the Horry County Probate Court accurately reflecting the receipts and disbursements made by the Trust and/or on behalf of the Conservatorship of Abbie Ilene Dorn (see the excerpts from Paul Cohen's deposition transcript attached hereto as Exhibit C; also see the excerpts from Susan's deposition transcript attached hereto as Exhibit D).

10. The Trust was initially funded with Nine Hundred Ten Thousand Two Hundred Seventy-Five Dollars and 20/100 (\$910,275.20) cash and an annuity which pays Thirty-One Thousand (\$31,000) Dollars per month for the lifetime of Abbie Dorn to be increased by approximately three (3%) percent each year.

11. According to the deposition of **SUSAN COHEN** taken on September 21, 2010, the Trust has paid approximately Three Hundred Seventy-Five Thousand (\$375,000) Dollars in legal fees (see the excerpts from Susan Cohen's deposition transcript attached hereto as **Exhibit E**).

12. Neither **SUSAN COHEN** nor **PAUL S. COHEN** obtained the prior approval of this Court as to whether the litigation commenced in California on visitation qualified as "special needs" of Abbie Dorn (see the excerpts from Susan Cohen's deposition transcript attached hereto as **Exhibit F**; also see the excerpts from Paul Cohen's deposition transcript attached hereto as **Exhibit G**). Furthermore, neither **SUSAN COHEN** nor **PAUL S. COHEN** requested the prior approval of a Court of competent jurisdiction of the compensation of the Trustee's attorney at law for the litigation currently pending in the Superior Court of California, County of Los Angeles, pursuant to Article IV, Paragraph 12, of the Trust.

13. According to the Deposition of **PAUL S. COHEN** taken on August 11, 2010, Mr. Cohen testified that, as of the time of his deposition, there was approximately Four Hundred Seventy-Five Thousand (\$475,000) Dollars remaining in the Trust of the initial Nine Hundred Ten Thousand Two Hundred Seventy-Five Dollars and 20/100 (\$910,275.20) (see the excerpt from Paul Cohen's deposition transcript attached hereto as **Exhibit H**).

14. The Petitioner, in his capacity as the parent and natural guardian of Esti Dorn, Reuvi Dorn, and Yosse Dorn, is requesting he be provided with a full and complete Accounting of the Trust in accordance with Article V, Paragraph 1, of the Trust.

15. The Petitioner is requesting an immediate Order of Restraint of Performance of **PAUL S. COHEN** and **SUSAN COHEN** as the Co-Trustees of the Trust because of the Co-Trustees' undisputed depletion of approximately one-half (1/2) of the Trust corpus. This depletion was and continues to be used to fund litigation to enforce visitation. Petitioner contends that the use of these funds for this purpose was an abuse of fiduciary responsibility, and that monies paid by Trustees for same was in violation of the terms of the Trust document.

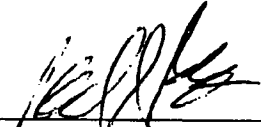
WHEREFORE, the Petitioner prays that this Honorable Court issue an Order to:

1. Require the said Trustees provide the Petitioner with a full and complete Accounting from the date of inception of the Trust until present.

2. Require **PAUL S. COHEN** and **SUSAN COHEN** to personally pay the Petitioner's legal fees and costs associated with this action.

3. Require **PAUL S. COHEN** and **SUSAN COHEN** to personally reimburse the Trust for all Trust costs and fees with this action.

4. Remove **PAUL S. COHEN** and **SUSAN COHEN** as Co-Conservators of Abbie Ilene Dorn.
5. Remove **PAUL S. COHEN** and **SUSAN COHEN** as Co-Trustees of the Trust.
6. For such other relief as this Honorable Court deems appropriate.



Dantel S. Slotchiver
Stephen M. Slotchiver
SLOTCHIVER & SLOTCHIVER, LLP
44 State Street
Charleston, SC 29401
(843) 577-6531
(843) 577-0261 (fax)
Attorneys for Petitioner

November 22, 2010

Charleston, South Carolina.

Exhibit A

ABBIE DORN SPECIAL NEEDS TRUST

This trust is entered into with reference to the following facts:

RECITALS

A. This trust forms a part of the settlement arrived at between Abbie Dorn, an adult with a disability, by and through her Guardian Ad Litem, Daniel Dorn, et al., Plaintiffs, and Cedars-Sinai Medical Center, et al., Defendants, in Case No. BC356985, in the Superior Court of the State of California, County of Los Angeles.

B. The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Sections 3604 and 3605, and for certain payments by or on behalf of the Defendants to the trust. The amount of money that will initially be deposited into the trust is \$910,275.20, plus periodic payments in the initial amount of \$31,000 per month for the lifetime of the Beneficiary. The trust is for the primary benefit of the Plaintiff, Abbie Dorn, hereinafter sometimes referred to as the "Beneficiary." The Court in the above-described action has made the following determinations: Abbie Dorn, an adult with a disability, has a disability in the nature of severe and permanent brain injury that substantially impairs her ability to provide for her own care or custody and constitutes a substantial handicap; her condition appears to be permanent and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this trust; and the monies to be paid to this trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary.

PROBATE COURT
HOLLY COUNTY, SC
2010 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

C. The intent and purpose of this trust is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America. The funds of the trust may be used as an emergency or backup fund secondary to public resources. Special Needs include without limitation special equipment, programs of training, education and habilitation, travel needs, and recreation, which are related to and made reasonably necessary by this Beneficiary's disabilities. This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein.

D. The settlement and the payments to this trust are all subject to the approval and order of the above-entitled Court. The settlement and all payments thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Abbie Dorn Special Needs Trust is established, Paul Cohen, M.D. and Susan Cohen are appointed as Trustee thereof, and are authorized by the Court in the above-described action to execute this trust.

ARTICLE I

TRUSTEE

1. Paul Cohen, M.D. and Susan Cohen are appointed to act jointly as the initial Trustee of the trust. Any Trustee shall have the right to resign at any time. Should either of them cease to act as trustee for any reason, the other shall continue to act as sole trustee. Any successor Trustee shall be appointed by the Court with jurisdiction over the trust, and shall be bonded to the extent required by Probate Code § 2320 or such analogous law of the State in which the Court with jurisdiction over the trust is located.

The term "Trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. Any successor Trustee shall have and succeed to all the rights, titles, interests, powers, duties, and discretions given to the initial Trustee hereunder.

2. The Trustee may hire a case worker or other persons with expertise relating to the special needs of the Beneficiary, at the expense of the Trust, to advise it regarding the special needs of the Beneficiary.

3. The Trustee shall receive just and reasonable compensation, to be paid from the Trust, for its services in an amount to be fixed and allowed by the Court on the occasion of the Trustee's court accountings or such other times as that issue may be brought before the Court with jurisdiction over the Trust. The Trustee shall also receive reimbursement for reasonable expenses incurred. Such compensation shall be chargeable to and paid from the Trust.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL

1. All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.
2. The income shall be added to and become principal, forming a common fund. The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during her lifetime, such sums and at such times as the Trustee, in its discretion, determines appropriate and reasonably necessary for the Beneficiary's Special Needs. In making distributions to the Beneficiary for her Special Needs, the Trustee shall take into consideration the applicable resource and income limitations of the public assistance programs for which the Beneficiary is eligible, and the duties of any persons legally obligated to support the Beneficiary.
3. This trust shall terminate upon the death of Beneficiary. Upon termination, whether by death or otherwise, the trustee may pay expenses of last illness, burial expenses and expenses related to administration and distribution of the trust assets, and thereafter the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act, up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under such state plan. After such payment or payments have been made, the remaining trust estate shall be distributed to the person or persons, excluding the Beneficiary, creditors of the Beneficiary, the estate of the Beneficiary, or creditors of the estate of the Beneficiary, in such manner and proportions as shall

be designated by the Beneficiary by written instrument delivered to the Trustee or by specific reference to this power by the Beneficiary's last Will. Any prospective appointment may be revoked by a subsequent written instrument delivered to the Trustee or by specific reference to the revocation by the Beneficiary's last Will. If the exercise of any of said powers of appointment is inconsistent with any other exercise of said powers, the provisions of the instrument bearing the later date shall prevail. To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn, or in default of such issue, to her heirs at law. The Trustee may withhold distributions pending receipt of a release from the South Carolina Department of Health and Human Services (or its successor). The amount to be repaid under this paragraph to the State for medical assistance shall be determined by agreement between the South Carolina Department of Health and Human Services or its successor, and the Trustee. In the event that an agreement has not been reached between the South Carolina Department of Health and Human Services and the Trustee within one year of the death of the Beneficiary, the Trustee shall pay to the appropriate Clerk of Court an amount equal to the claim of the State of reimbursement for medical care provided to the Beneficiary, and shall pay the balance of the trust estate to the then living issue, per stirpes, of Abbie Dorn or, in default of such issue, to her heirs at law. The appropriate court shall determine the validity of the claim of the State and shall direct payment to the State of this amount, with the balance distributed to the then living issue, per stirpes, of the Beneficiary, or in default of such issue, to her heirs at law.

4. This trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary's death or the trust termination be given in the manner provided in California Probate Code Section 1215 to, among others, the California State Department of Health Services, the California State Department of Mental Health and the California State Department of Developmental Services, addressed to the director of those departments at the Sacramento office of such director. However, this requirement can be waived by order of a court of competent jurisdiction if such court determines that the Beneficiary received no benefits from any such agency subsequent to the creation of this Trust.

5. If the Trustee determines that it is in the best interest of the Beneficiary to make a disbursement which will cause a reduction or elimination of the Beneficiary's right to receive public benefits, the Trustee shall not be liable for having caused the loss of such benefits. For purposes of determining the Beneficiary's Medicaid eligibility, or Supplemental Security Income (hereinafter referred to as "S.S.I.") eligibility, or eligibility for other governmental assistance programs, no part of the principal or income of the trust estate shall be considered available to said Beneficiary. In the event the Trustee is requested by any county, state, federal, or other governmental agency, to release principal or income of the trust to or on behalf of the Beneficiary to pay for equipment, medication, or services which Medicaid or S.S.I. or some other governmental program is authorized to provide, or in the event the Trustee is requested to petition a court or administrative agency for the release of trust principal or income for any of these purposes, the Trustee is authorized to deny such request and is authorized, in its discretion,

to take whatever administrative or judicial steps may be necessary to continue the Medicaid or S.S.I. or other governmental program eligibility of the Beneficiary, including obtaining instructions from a court of competent jurisdiction ruling that the principal and income of this trust is not available to the Beneficiary for Medicaid or S.S.I. or other governmental program eligibility purposes. Any expenses of the Trustee in this regard, including attorneys' fees, shall be a proper charge to the trust estate.

6. The Beneficiary has no interest in the income or principal of the trust, other than as set forth herein. No interest in the principal or income of this trust shall be anticipated, assigned, or encumbered by any beneficiary, nor shall any such interest be subject to any creditor's claim or to legal process. Furthermore, because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provisions of care and services, including residential care, by any public entity, office, department, or agency of any state, or of the United States of America (except as otherwise provided in this instrument).

7. The Trustee shall pay any inheritance, estate, or other death taxes, if any, including interest and penalties, that may be payable by reason of the death of any beneficiary of this trust and be attributable to assets included in the trust estate. The Trustee shall make no payments for expenses incurred prior to the Beneficiary's death if the Trustee shall determine, in its discretion, that payment therefor is the obligation of any county, state, federal, or other governmental agency (except as otherwise provided in this instrument).

ARTICLE III

TRUST IRREVOCABLE

This trust shall be irrevocable and not subject to amendment; provided, however, that this trust may be amended upon application of any interested party (including but not limited to the Trustee) with the approval of a Court of competent jurisdiction; provided, further, however, that any such amendment shall be consistent with, and in furtherance of, the purpose and intent of this trust as set forth herein and under applicable laws, and no amendment shall change the duties and obligations of the Trustee without its prior written consent. Provided further that such amendment or reformation shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor.

ARTICLE IV

POWERS OF THE TRUSTEE

To carry out the purposes of this trust and subject to any limitations stated elsewhere in this instrument, the Trustee is vested with the following powers:

1. The Trustee shall make investment decisions consistent with those permitted under California Probate Code section 2574; provided, however, that such investment decisions shall be further governed by the authority granted to trustees pursuant to the South Carolina Trust Code and South Carolina Probate Code.
2. The Trustee may hold securities or other property in the Trustee's own name as trustee, in the Trustee's own name, in the name of a nominee or in bearer form.
3. The Trustee may sell or exercise stock subscription or conversion rights.

4. The Trustee shall refrain from voting or to vote shares of stock owned by the trust estate at shareholders' meetings in person or by special, limited, or general proxy, and in general exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the trust estate; and to make and terminate S corporation elections for both federal and state tax law purposes.

5. The Trustee may participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the trust estate; and to deposit the stock or other securities under any plan of reorganization with any protective committee and to delegate to the committee discretionary power with relation thereto, to pay a proportionate part of the expenses of the committee and any assessments levied under any plan, to accept and retain new securities received by the Trustee pursuant to any plan, to exercise all conversion, subscription, voting and other rights, of whatever nature pertaining to the property, and to pay any amount or amounts of money as the Trustee may reasonably deem advisable in connection therewith.

6. The Trustee may enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term.

7. The Trustee may make ordinary or extraordinary repairs or alterations in buildings or other structures to demolish any improvements, to raze existing or erect new party walls or buildings which may be trust property.

8. The Trustee may collect, receive, and receipt for rents, issues, profits, and income of the trust estate.

9. The Trustee may insure the assets of the trust estate against damage or loss and to insure the health and property of the Beneficiary.

10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, Realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate. However, the compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

11. The Trustee may permit the Beneficiary and any care giver or family members living with Beneficiary to occupy rent free any residence constituting a part of the assets of the Trust and the Trustee may, in his and/or her discretion, pay any proportion of real property taxes on any residence in which Beneficiary resides (whether owned by the Trust or by Beneficiary or by the person having care and custody of Beneficiary), in addition to paying the expenses of maintaining the residence where Beneficiary resides and hazard premiums on said residence. In addition, the Trustee may pay the costs of modifying the place where Beneficiary resides without acquiring an equity interest in the residence.

12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility; any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including but not limited to claims by Beneficiary arising out of property

damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary. The compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

13. To exercise all powers in the management of the trust estate, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee reasonably deems necessary or proper to carry out the purposes of this Trust and to achieve the proper investment, management, and distribution of the Trust property.

14. Notwithstanding the applicable South Carolina Uniform Principal and Income Act, the Trustee shall have the power to adjust between income and principal to the extent the Trustee considers, in its sole discretion, necessary.

15. All rights, powers, privileges, immunities and authorities granted to the Trustee shall be exercised in such reasonable manner as may be fair and equitable under the circumstances.

16. To change the place of administration of this trust upon prior order of a court of competent jurisdiction.

17. In the administration and management of the trust, including without limitation the investment and reinvestment of the trust estate, the Trustee shall consider solely the interest of the Beneficiary, Abbie Dorn.

ARTICLE V

GENERAL PROVISIONS

1. This trust is subject to the continuing jurisdiction of the Horry County Probate Court, in Horry County, South Carolina. Court accountings shall be filed at the end of the first year of administration and biennially thereafter, unless the court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties, in the form required by California Probate Code § 1060 et seq., or such analogous law of the State in which the Court with jurisdiction over the trust is located.
2. Until the Trustee shall receive written notice of any birth, marriage, death or other event upon which the right to payments from this trust may depend, the Trustee shall incur no liability to persons whose interests may have been affected by that event for disbursements made in good faith.
3. The Trustee may apply payments under this trust for the benefit of any beneficiary, or may make payments under this trust to the guardian or conservator of the person or estate of any beneficiary who is under disability, or to the parent of any beneficiary who is a minor.
4. The Trust shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina. Provided, however, in the event that jurisdiction over the Trust is moved because the Beneficiary is then living in another State, then that Trust shall be construed, regulated and governed by and in accordance with the laws of that State.
5. If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

6. As used in this instrument, the masculine, feminine, or neuter gender and the singular or plural number shall be each deemed to include the others when the context so indicates.

7. All references in this instrument to specific statutes, codes, or regulations shall include any successor statutes, codes, or regulations of similar import.

Executed at _____, California, this ____ day of _____, _____, pursuant to that certain Order Approving Compromise of Disputed Claim of Adult with a Disability dated _____ in Case No. BC356985, Superior Court of the State of California, for the County of Los Angeles.

Paul Cohen, M.D., Trustee

Susan Cohen, Trustee

Exhibit B

DEPOSITION OF PAUL COHEN, VOL I

PROBATE COURT
Horry County, SC
2018 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

11:34:36 18 Q. I WOULD ASSUME THAT YOU NEED THE
11:34:38 19 30- TO 34,000 DOLLARS A MONTH FOR ABBIE'S CARE;
11:34:42 20 CORRECT?
11:34:42 21 A. THAT'S CORRECT.
11:34:43 22 Q. OKAY. SO THE 350- TO 375,000
11:34:47 23 DOLLARS FOR ATTORNEYS' FEES WOULD BE ABOVE AND
11:34:50 24 BEYOND THE MONTHLY AMOUNT; CORRECT?
11:34:52 25 A. YES. THAT'S CORRECT.

94

KELLI NORDEN AND ASSOCIATES 310.820.7733 FAX: 310.820.7933

Exhibit C

DEPOSITION OF PAUL COHEN, VOL I

PROBATE COURT
Horry County, SC

2018 NOV 23 PM 2:08

DEIRDRE W. EDMONDS
PROBATE JUDGE

11:39:18 16

Q. ARE YOU REQUIRED TO FILE AN ANNUAL

11:39:29 17

ACCOUNTING WITH THE PROBATE COURT?

11:39:31 18

A. YES.

11:39:32 19

Q. WHEN WAS THE LAST TIME YOU FILED AN

11:39:34 20

ANNUAL ACCOUNTING?

11:39:36 21

A. FOR THE LAST FISCAL YEAR.

11:39:39 22

Q. SO YOU HAVE NOT FILED AN ACCOUNTING

11:39:43 23

YET THAT DISCLOSES THE ATTORNEYS' FEES YOU'VE PAID

11:39:47 24

TO THE MEYER, OLSON, LOWY, MEYERS FIRM?

11:39:52 25

A. I DON'T BELIEVE SO.

99

KELLI NORDEN AND ASSOCIATES 310.820.7733 FAX: 310.820.7933

Exhibit D

DEPOSITION OF SUSAN COHEN, VOL. II

13:40:44 2 Q. DID YOU EVER DISCUSS WITH THE COURT
13:40:47 3 A LIMITATION ON HOW MUCH YOU COULD SPEND ON
13:40:50 4 ATTORNEYS' FEES FOR THE LITIGATION?
13:40:51 5 A. THEY NEVER GAVE ME AN AMOUNT: NOW,
13:40:56 6 I HAVE FILED THE 2010 FORMS AND I HAVEN'T HEARD
13:41:00 7 ANYTHING BACK NEGATIVELY, AND I GOT THEM BACK AS
13:41:05 8 COPIES. THEY WERE OBVIOUSLY ACCEPTABLE.

PROBATE COURT
HORRY COUNTY, SC
2010 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

145

~~KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7933~~

DEPOSITION OF SUSAN COHEN, VOL II

13:42:46 14

13:42:48 15

13:42:52 16

13:42:54 17

Q. DID THE FORM THAT YOU FILED
DISCLOSE THAT YOU HAD SPENT APPROXIMATELY 300,000
OR MORE OUT OF THE SPECIAL NEEDS TRUST?

A. NO.

PROBATE COURT
HORRY COUNTY, SC
2018 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

13:43:13 25

Q. HAVE YOU ADVISED THE COURT EITHER

146

KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7933

DEPOSITION OF SUSAN COHEN, VOL II

13:43:16 1 ORALLY OR IN A WRITTEN DOCUMENT THAT YOU HAVE
13:43:19 2 EXPENDED APPROXIMATELY 375,000 DOLLARS OUT OF
13:43:23 3 SPECIAL NEEDS TRUST FOR ATTORNEYS' FEES?

13:43:34 10 THE DEPONENT: I'VE ADVISED MY
13:43:38 11 LOCAL ATTORNEY NOW, WHO'S BRETT DAVIS.
13:43:41 12 BY MS. GREENE:
13:43:41 13 Q. TO YOUR KNOWLEDGE, HAVE YOU ADVISED
13:43:43 14 THE COURT?
13:43:43 15 A. I HAVE NOT SPECIFICALLY. I HAVE
13:43:46 16 GIVEN HIM PERMISSION TO REVEAL ANY INFORMATION.

PROBATE COURT
HORRY COUNTY, SC
2018 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

147

KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7933

Exhibit E

DEPOSITION OF SUSAN COHEN, VOL II

PROBATE COURT
HORRY COUNTY, SC

2010 NOV 23 PM 2:08

DEIRDRE W. EDMONDS
PROBATE JUDGE

13:34:16 7 THIS QUESTION, BUT YOUR HUSBAND DID TESTIFY THAT
13:34:19 8 FUNDS HAVE BEEN REMOVED FROM THE SPECIAL NEEDS
13:34:22 9 TRUST TO PAY ATTORNEYS' FEES.
13:34:24 10 IS THAT CORRECT?
13:34:24 11 A. THAT'S CORRECT. AND YES, YOU DID
13:34:27 12 ASK ME.
13:34:27 13 Q. OKAY. HOW MUCH IN TOTAL HAS BEEN
13:34:30 14 REMOVED FROM THE SPECIAL NEEDS TRUST FOR
13:34:33 15 ATTORNEYS' FEES THUS FAR?
13:34:36 16 A. APPROXIMATELY 375,000 DOLLARS.

138

KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7933

DEPOSITION OF SUSAN COHEN, VOL II

PROBATE COURT
HORRY COUNTY, SC
2010 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

13:37:26 20 Q. OKAY. NOW, THE 375,000 DOLLARS IN
13:37:29 21 ATTORNEYS' FEES THUS FAR HAS BEEN FOR CUSTODY AND
13:37:34 22 VISITATION ISSUES, THOUGH, HASN'T IT?
13:37:38 23 MS. MEYERS: OBJECTION.
13:37:38 24 THE DEPONENT: WELL, IT'S ALL PART
13:37:39 25 OF IT.

140

KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7933

DEPOSITION OF SUSAN COHEN, VOL II

PROBATE COURT
HORRY COUNTY, SC
2018 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

13:37:49 10 Q. OKAY. THE 375,000 DOLLARS THAT WAS
13:37:51 11 USED FROM THE TRUST, WASN'T THAT PAID TO THE
13:37:59 12 MEYERS (SIC), OLSON, LOWY, MEYERS FIRM?

13:38:01 13 A. WELL, I BELIEVE MOST OF IT WAS. I
13:38:03 14 CAN'T TELL YOU EXACTLY THE BREAKDOWN.

13:38:04 15 Q. OKAY. AND SO MOST OF WHAT WAS
13:38:08 16 DISTRIBUTED FROM THE SPECIAL NEEDS TRUST WAS FOR
13:38:11 17 CUSTODY AND VISITATION ISSUES, WASN'T IT?

13:38:13 18 MS. MEYERS: OBJECTION.

13:38:13 19 THE DEPONENT: I THINK --

141

~~KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7935~~

DEPOSITION OF SUSAN COHEN, VOL II

13:38:24 4 Q. OKAY. HOW MUCH OF THE 375,000
13:38:27 5 DOLLARS THAT WAS DISTRIBUTED FROM THE SPECIAL
13:38:29 6 NEEDS TRUST WAS UTILIZED FOR CUSTODY AND
13:38:32 7 VISITATION ISSUES?
13:38:33 8 A. IT'S ALL MIXED TOGETHER.
13:38:36 9 Q. CAN YOU GIVE AN ESTIMATE?
13:38:38 10 A. NO, I COULD NOT GIVE AN ESTIMATE.
13:38:41 11 I DON'T KNOW HOW TO SEPARATE IT.

13:38:59 18 Q. OKAY. DID THE PROBATE COURT
13:39:02 19 HORRY COUNTY AUTHORIZE YOU TO DISTRIBUTE SPECIAL
13:39:05 20 NEEDS TRUST FUNDS FOR CUSTODY AND VISITATION
13:39:09 21 LITIGATION?

PROBATE COURT
HORRY COUNTY, SC
2010 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

142

KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7933

Exhibit F

DEPOSITION OF SUSAN COHEN, VOL. II

13:38:24 4 Q. OKAY. HOW MUCH OF THE 375,000
13:38:27 5 DOLLARS THAT WAS DISTRIBUTED FROM THE SPECIAL
13:38:29 6 NEEDS TRUST WAS UTILIZED FOR CUSTODY AND
13:38:32 7 VISITATION ISSUES?

13:38:33 8 A. IT'S ALL MIXED TOGETHER.

13:38:36 9 Q. CAN YOU GIVE AN ESTIMATE?

13:38:38 10 A. NO, I COULD NOT GIVE AN ESTIMATE.
13:38:41 11 I DON'T KNOW HOW TO SEPARATE IT.

PROBATE COURT
HORRY COUNTY, SC
2010 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

13:38:59 18 Q. OKAY. DID THE PROBATE COURT IN
13:39:02 19 HORRY COUNTY AUTHORIZE YOU TO DISTRIBUTE SPECIAL
13:39:05 20 NEEDS TRUST FUNDS FOR CUSTODY AND VISITATION
13:39:09 21 LITIGATION?

142

KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7933

DEPOSITION OF SUSAN COHEN, VOL II

13:39:26 6 THEY DIDN'T SPECIFY. THEY TOLD ME
13:39:28 7 I COULD USE IT FOR THE DIVORCE AND THEY DIDN'T
13:39:34 8 SPECIFY. AS I SAID, I WAS TOLD THAT I HAD TO
13:39:36 9 DEFEND THE TRUST.

PROBATE COURT
HORRY COUNTY, SC
2010 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

143

KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7955

DEPOSITION OF SUSAN COHEN, VOL II

PROBATE COURT
Horry County, SC
2010 NOV 23 PM 2:08
DEBORAH W. EDMONDS
PROBATE JUDGE

8 Q. WELL, OTHER THAN DEFENDING
9 THE TRUST, IS IT YOUR
10 UNDERSTANDING THAT YOU CAN USE
11 THE SPECIAL NEEDS TRUST FOR ANY
13:40:22 12 OTHER LITIGATION?)
13:40:22 13 THE DEPONENT: WELL, IN TERMS OF
13:40:23 14 THE DIVORCE, THEY SPECIFICALLY MENTIONED TO ME
13:40:26 15 WHEN I SPOKE TO JUDGE EDMONDS IN COURT THAT I
13:40:29 16 COULD USE IT FOR THAT.
13:40:31 17 ANY OTHER? I DON'T KNOW THE ANSWER
13:40:33 18 TO THAT. YOU MEAN ANYTHING AT ALL?
13:40:35 19 BY MS. GREENE:
13:40:36 20 Q. LITIGATION.
13:40:40 21 MS. MEYERS: IN CONNECTION WITH
13:40:41 22 THIS CASE.
13:40:41 23 THE DEPONENT: OH, IN CONNECTION
13:40:42 24 WITH THE CASE, MY UNDERSTANDING IS ANYTHING IN
13:40:43 25 CONNECTION WITH THIS CASE.

144

~~KELLINORDEN AND ASSOCIATES 310.820.7733 FAX 310.820.7933~~

Exhibit G

DEPOSITION OF PAUL COHEN, VOL I

1 26:53 1 USED TO PAY THE 350- TO 375,000 DOLLARS?

11:27:00 3 Q. HAVE YOU OBTAINED A COURT ORDER
11:27:05 4 AUTHORIZING YOU TO USE THE FUNDS IN THIS MATTER?
11:27:09 5

11:27:11 6 A. IT'S PART OF THE TRUST. IT SAYS WE
11:27:15 7 CAN USE IT TO PAY ANY LEGAL FEES. THIS IS LEGAL
11:27:18 8 FEES. IT'S IN THE TRUST DOCUMENT THAT WE RETAINED
(11:27:21 9 FROM HORRY COUNTY PROBATE COURT. I READ IT THE
11:27:21 10 OTHER DAY MYSELF.

11:27:24 11 Q. DOESN'T IT, IN FACT, SAY YOU HAVE
11:27:25 12 TO GET APPROVAL FROM THE COURT?

A. I DON'T THINK SO. I DON'T --

PROBATE COURT
HORRY COUNTY, SC
2010 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

DEPOSITION OF PAUL COHEN, VOL I

PROBATE COURT
Horry County, SC
2010 NOV 23 PM 2:08
DEIRDRE W. EDMONDS
PROBATE JUDGE

11:28:21 20 Q. IS IT YOUR UNDERSTANDING THAT THE
11:28:25 21 PROBATE COURT'S AUTHORIZATION FOR YOU TO USE THE
11:28:28 22 SPECIAL NEEDS TRUST FOR LEGAL FEES INCLUDES LEGAL
11:28:32 23 FEES FOR ABBIE'S REQUEST FOR VISITATION?
11:28:35 24 A. WELL, IT'S MY IMPRESSION. BUT I'M
11:28:39 25 NOT A LAWYER, SO I CAN'T TELL YOU OFF THE TOP OF

88

KELLINORDEN AND ASSOCIATES 310.820.7733 FAX: 310.820.7933

Exhibit H

DEPOSITION OF PAUL COHEN, VOL I

11:36:03 9

Q. DO YOU KNOW HOW MUCH IS IN THERE

11:36:05 10

NOW?

11:36:06 11

A. YEAH. I THINK ABOUT 475,000.

11:36:09 12

Q. SO IS THIS THE ACCOUNT WHERE THE

11:36:12 13

APPROXIMATE 900,000 DOLLARS WENT INTO THAT ABBIE

11:36:16 14

RECEIVED?

11:36:17 15

A. YES.

11:36:17 16

Q. AND THAT ACCOUNT HAS BEEN DEPLETED

11:36:23 17

BY THE AMOUNT PAID FOR THE ATTORNEYS' FEES?

11:36:26 18

A. YES.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

DANIEL B. DORN, in his capacity as the
Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yosse Dorn,

Petitioner,

vs.

PAUL S. COHEN and **SUSAN COHEN**,
individually and in their capacity as the Co-
Conservators of the person of Abbie Ilene
Dorn, a protected person and ward, and in
their capacity as Co-Trustees of the Abbie
Dorn Special Needs Trust,

Respondents.

IN THE PROBATE COURT

CASE NO. 2008-GC-26-25

CASE NO. 2008-GC-26-50

AFFIDAVIT OF DANIEL B. DORN

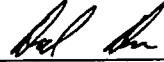
2011 NOV 23 PM 2:09
DEBORAH W. EDMONDS
PROBATE JUDGE

PROBATE COURT
HORRY COUNTY, SC

PERSONALLY APPEARED BEFORE ME, Daniel B. Dorn of Los Angeles County, California, the Petitioner herein, who being duly sworn, deposes and says as follows:

1. That he is the parent and natural guardian of Esti Dorn, Reuvi Dorn, and Yosse Dorn, each of whom are minors.
2. That he was previously married to Abbie Dorn, who is the biological mother of Esti Dorn, Reuvi Dorn, and Yosse Dorn.
3. That on September 11, 2008, the Superior Court of California, County of Los Angeles, ordered the Judgment of Dissolution in the Affiant's marriage with Abbie Dorn, whereby the marital partnership status was terminated, and the parties were restored to the status of single persons.
4. That **PAUL S. COHEN** and **SUSAN COHEN** admitted in sworn Depositions in a pending matter in California, that they have spent in excess of Three Hundred Seventy-Five Thousand (\$375,000) Dollars in legal fees paid from the Abbie Dorn Special Needs Trust, the majority of which are believed by the Affiant to be unrelated to the dissolution of marriage, and primarily pertinent to the issue of visitation of the minor children.
5. That the California-based litigation is still ongoing.

6. That Affiant is concerned on behalf of his minor children that assets of the Abbie Dorn Special Needs Trust have been and continue to be spent unreasonably and without authorization, contrary to the terms of the Abbie Dorn Special Needs Trust, and in violation of fiduciary duties owed to Abbie Ilene Dorn.



Daniel B. Dorn

SWORN TO BEFORE ME THIS
19 DAY OF November, 2010.



Notary Public for California
My Commission Expires: 1/17/2014



IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

SUMMONS FOR RELIEF

Petitioners,

IN RE:
THE ABBIE DORN SPECIAL
NEEDS TRUST

YOU ARE HEREBY SUMMONED and required to answer the Petition To Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust in the above entitled action, a copy of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at its office, 1110 London Street, Suite 201 Myrtle Beach, South Carolina 29577, within thirty (30) days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the Petition within the time aforesaid, the Petitioner in this action will apply to the Court for Judgment by default to be rendered against you for the relief demanded in the Petition.

DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800

Bret H. Davis
Attorney for the Petitioner

Myrtle Beach, South Carolina
November 24, 2010

PROBATE COURT
HARRIS COUNTY, TEXAS
2018 NOV 24 PM 2:51
DEIRDRE W. EDWARDS
PROBATE JUDGE

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)
)
)

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)
_____)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PETITION TO AFFIRM PAYMENT OF
FEES FROM SPECIAL NEEDS TRUST
AND TO REFORM TERMS OF TRUST

The Petitioners would allege and show unto this Honorable Court as follows:

1. While married to Daniel Bernard Dorn and residing in the State of California, and within eight (8) hours after the child birth of her three triplet children, Abbie Ilene Dorn (the "Protected Person") suffered substantial and irreversible injuries which rendered her permanently disabled.

2. Legal actions for negligence (the "Legal Actions") were brought and prosecuted against the hospital and the physicians associated with the Protected Person's injuries and a settlement was reached.

3. The Petitioners, who are also the parents of the Protected Person, were appointed as co-conservators of the person and estate of the Protected Person on November 7, 2007, by Order of the Superior Court of California, County of Kern, Metropolitan Division.

4. Pursuant to the provisions of 42 U.S.C. § 1396p(d)(4)(A), the Petitioners, as the Protected Person's parents and co-conservators, established the Abbie Dorn Special Needs Trust (the "Trust"). A copy of the Trust is attached hereto as Exhibit "A." The Petitioners were appointed as the initial trustees under the terms of the Trust.

PROBATE COURT
HORRY COUNTY, SC
2008 NOV 24 PM 2:51
CLERK OF COURT
PROBATE JUDGE

5. After the establishment of the Trust, the Protected Person relocated to Horry County, South Carolina to reside with the Petitioners.

6. The conservatorship of the person and estate of the Protected Person was transferred to Horry County, South Carolina, as evidenced by the Order of Transfer of Jurisdiction of the Horry County Probate Court, dated April 24, 2008, and by the Order Terminating Conservatorship of the Person and Estate of the Superior Court of California, County of Kern, Metropolitan Division, dated July 14, 2008 and executed on July 31, 2008. The Order of Transfer of Jurisdiction established the Petitioners as co-conservators and co-guardians of the Protected Person.

7. The Trust grants broad powers to the trustees to manage the matters related to the Trust, including the employment and payment of attorneys and other professionals. However, paragraphs 10 and 12 of Article IV of the Trust create a logistical impracticability in that they require the trustee of the Trust to obtain prior court approval before the trustee makes payments for services rendered by its attorney.

8. Divorce proceedings between the Protected Person and Daniel Bernard Dorn were instituted in California. As part of such divorce proceedings Daniel Bernard Dorn has sought and continues to seek to invade the Trust for child support and to pay for his legal fees and other costs related to the divorce proceedings.

9. The Protected Person is currently qualified for and is receiving Medicaid benefits, and upon information and belief, the Protected Person would lose her eligibility to receive such benefits if the trustees of the Trust were forced to use Trust funds to pay child support and the legal fees and costs incurred by Daniel Bernard Dorn in the divorce proceedings.

10. The Petitioners were previously granted authority to employ attorneys on behalf of the Protected Person for matters related to the divorce action and to pay for such services from the funds of the Protected Person and/or the Trust, as evidenced by the Letters of Conservatorship issued by the Superior Court of California, County of Kern, Metropolitan Division, filed November 15, 2007. A copy of such Letters of Conservatorship are attached hereto as Exhibit "B."

11. While the incurrence and payment of fees on behalf of the Protected Person was previously authorized under the terms of the Letters of Conservatorship, it is prudent for this Court to affirm the payment of such fees and to approve the payment of any future fees. A schedule of fees paid or to be paid by the Petitioners for matters related to the Protected Person is attached hereto as Exhibit "C."

12. The terms of the Trust pertaining to the employment of and payment for attorneys and other professionals on behalf of the Protected Person (particularly paragraphs 10 and 12 of Article IV) are logistically impracticable and need to be reformed. The new language for such paragraphs should read as follows:

"10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate, without the need for prior court approval."

"12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility;

and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including, but not limited to, claims by Beneficiary arising out of property damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary, without the need for prior court approval."

13. If the Court deems it necessary to appoint a guardian ad litem for the Protected Person, V. Lee Moore, Esquire is an attorney trained in these matters and is an appropriate person to serve in that capacity, and that any fees for such guardian services may be paid from the funds of the Protected Person and/or the Trust obtained for the benefit of the Incapacitated Person.

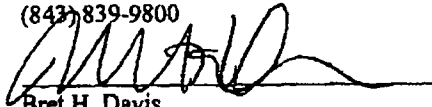
14. It is appropriate for the Petitioners to pay all legal fees and costs related to their representation in this matter from the funds of the Protected Person and/or the Trust.

WHEREFORE, the Petitioners pray that this Honorable Court inquire into the matters set forth herein and issue an order which:

- A. Affirms the previous payment of fees by the Petitioners from the funds of the Protected Person and/or the Trust.
- B. Reforms the Trust to replace the existing paragraphs 10 and 12 of Article IV with the language for such paragraphs proposed in this Petition.
- C. If necessary to appoint a guardian ad litem for the Protected Person, appoints V. Lee Moore, Esquire to serve in such capacity.
- D. Directs the Petitioners to pay all fees and costs related to the matters set forth herein from the funds of the Protected Person and/or the Trust.

- E. Directs that no child support or fees or costs incurred by Daniel Bernard Dorn be paid from the Trust estate.
- F. Provides for such other and further matters as this Honorable Court deems just and proper.

Respectfully Submitted:
DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800



Bret H. Davis
Attorney for the Petitioner

Myrtle Beach, South Carolina
November 24, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)
)
)

VERIFICATION

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)
)

PERSONALLY appeared before me, Paul S. Cohen, MD and Susan Cohen, who after being duly sworn, depose and says that they are the Petitioners in the foregoing Petition To Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust and that the facts are true of their own knowledge except those matters based upon information and belief, and as to those they believe them to be true.

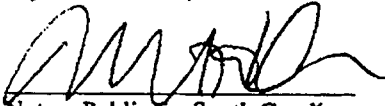


Paul S. Cohen, MD, Petitioner



Susan Cohen, Petitioner

SWORN to before me this 24th
day of November, 2010.



Notary Public for South Carolina
My Commission Expires 11/1/2012

Exhibit "A"

ABBIE DORN SPECIAL NEEDS TRUST

This trust is entered into with reference to the following facts:

RECITALS

A. This trust forms a part of the settlement arrived at between Abbie Dorn, an adult with a disability, by and through her Guardian Ad Litem, Daniel Dorn, et al., Plaintiffs, and Cedars-Sinai Medical Center, et al., Defendants, in Case No. BC356985, in the Superior Court of the State of California, County of Los Angeles.

B. The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Sections 3604 and 3605, and for certain payments by or on behalf of the Defendants to the trust. The amount of money that will initially be deposited into the trust is \$910,275.20, plus periodic payments in the initial amount of \$31,000 per month for the lifetime of the Beneficiary. The trust is for the primary benefit of the Plaintiff, Abbie Dorn, hereinafter sometimes referred to as the "Beneficiary." The Court in the above-described action has made the following determinations: Abbie Dorn, an adult with a disability, has a disability in the nature of severe and permanent brain injury that substantially impairs her ability to provide for her own care or custody and constitutes a substantial handicap; her condition appears to be permanent and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this trust; and the monies to be paid to this trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary.

PROBATE COURT
HORRY COUNTY, SC
2018 NOV 24 PM 2:51
DEIRDRE W. EDWARDS
PROBATE JUDGE

PROBATE COURT
HORRY COUNTY, SC
2008 FEB -6 AM 11:47
DEIRDRE W. EDWARDS
PROBATE JUDGE

C. The intent and purpose of this trust is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America. The funds of the trust may be used as an emergency or backup fund secondary to public resources. Special Needs include without limitation special equipment, programs of training, education and habilitation, travel needs, and recreation, which are related to and made reasonably necessary by this Beneficiary's disabilities. This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein.

D. The settlement and the payments to this trust are all subject to the approval and order of the above-entitled Court. The settlement and all payments thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Abbic Dorn Special Needs Trust is established, Paul Cohen, M.D. and Susan Cohen are appointed as Trustee thereof, and are authorized by the Court in the above-described action to execute this trust.

ARTICLE I

TRUSTEE

1. Paul Cohen, M.D. and Susan Cohen are appointed to act jointly as the initial Trustee of the trust. Any Trustee shall have the right to resign at any time. Should either of them cease to act as trustee for any reason, the other shall continue to act as sole trustee. Any successor Trustee shall be appointed by the Court with jurisdiction over the trust, and shall be bonded to the extent required by Probate Code § 2320 or such analogous law of the State in which the Court with jurisdiction over the trust is located.

The term "Trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. Any successor Trustee shall have and succeed to all the rights, titles, interests, powers, duties, and discretions given to the initial Trustee hereunder.

2. The Trustee may hire a case worker or other persons with expertise relating to the special needs of the Beneficiary, at the expense of the Trust, to advise it regarding the special needs of the Beneficiary.

3. The Trustee shall receive just and reasonable compensation, to be paid from the Trust, for its services in an amount to be fixed and allowed by the Court on the occasion of the Trustee's court accountings or such other times as that issue may be brought before the Court with jurisdiction over the Trust. The Trustee shall also receive reimbursement for reasonable expenses incurred. Such compensation shall be chargeable to and paid from the Trust.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL

1. All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.

2. The income shall be added to and become principal, forming a common fund. The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during her lifetime, such sums and at such times as the Trustee, in its discretion, determines appropriate and reasonably necessary for the Beneficiary's Special Needs. In making distributions to the Beneficiary for her Special Needs, the Trustee shall take into consideration the applicable resource and income limitations of the public assistance programs for which the Beneficiary is eligible, and the duties of any persons legally obligated to support the Beneficiary.

3. This trust shall terminate upon the death of Beneficiary. Upon termination, whether by death or otherwise, the trustee may pay expenses of last illness, burial expenses and expenses related to administration and distribution of the trust assets, and thereafter the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act, up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under such state plan. After such payment or payments have been made, the remaining trust estate shall be distributed to the person or persons, excluding the Beneficiary, creditors of the Beneficiary, the estate of the Beneficiary, or creditors of the estate of the Beneficiary, in such manner and proportions as shall

be designated by the Beneficiary by written instrument delivered to the Trustee or by specific reference to this power by the Beneficiary's last Will. Any prospective appointment may be revoked by a subsequent written instrument delivered to the Trustee or by specific reference to the revocation by the Beneficiary's last Will. If the exercise of any of said powers of appointment is inconsistent with any other exercise of said powers, the provisions of the instrument bearing the later date shall prevail. To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn, or in default of such issue, to her heirs at law. The Trustee may withhold distributions pending receipt of a release from the South Carolina Department of Health and Human Services (or its successor). The amount to be repaid under this paragraph to the State for medical assistance shall be determined by agreement between the South Carolina Department of Health and Human Services or its successor, and the Trustee. In the event that an agreement has not been reached between the South Carolina Department of Health and Human Services and the Trustee within one year of the death of the Beneficiary, the Trustee shall pay to the appropriate Clerk of Court an amount equal to the claim of the State of reimbursement for medical care provided to the Beneficiary, and shall pay the balance of the trust estate to the then living issue, per stirpes, of Abbie Dorn or, in default of such issue, to her heirs at law. The appropriate court shall determine the validity of the claim of the State and shall direct payment to the State of this amount, with the balance distributed to the then living issue, per stirpes, of the Beneficiary, or in default of such issue, to her heirs at law.

4. This trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary's death or the trust termination be given in the manner provided in California Probate Code Section 1215 to, among others, the California State Department of Health Services, the California State Department of Mental Health and the California State Department of Developmental Services, addressed to the director of those departments at the Sacramento office of such director. However, this requirement can be waived by order of a court of competent jurisdiction if such court determines that the Beneficiary received no benefits from any such agency subsequent to the creation of this Trust.

5. If the Trustee determines that it is in the best interest of the Beneficiary to make a disbursement which will cause a reduction or elimination of the Beneficiary's right to receive public benefits, the Trustee shall not be liable for having caused the loss of such benefits. For purposes of determining the Beneficiary's Medicaid eligibility, or Supplemental Security Income (hereinafter referred to as "S.S.I.") eligibility, or eligibility for other governmental assistance programs, no part of the principal or income of the trust estate shall be considered available to said Beneficiary. In the event the Trustee is requested by any county, state, federal, or other governmental agency, to release principal or income of the trust to or on behalf of the Beneficiary to pay for equipment, medication, or services which Medicaid or S.S.I. or some other governmental program is authorized to provide, or in the event the Trustee is requested to petition a court or administrative agency for the release of trust principal or income for any of these purposes, the Trustee is authorized to deny such request and is authorized, in its discretion,

to take whatever administrative or judicial steps may be necessary to continue the Medicaid or S.S.I. or other governmental program eligibility of the Beneficiary, including obtaining instructions from a court of competent jurisdiction ruling that the principal and income of this trust is not available to the Beneficiary for Medicaid or S.S.I. or other governmental program eligibility purposes. Any expenses of the Trustee in this regard, including attorneys' fees, shall be a proper charge to the trust estate.

6. The Beneficiary has no interest in the income or principal of the trust, other than as set forth herein. No interest in the principal or income of this trust shall be anticipated, assigned, or encumbered by any beneficiary, nor shall any such interest be subject to any creditor's claim or to legal process. Furthermore, because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provisions of care and services, including residential care, by any public entity, office, department, or agency of any state, or of the United States of America (except as otherwise provided in this instrument).

7. The Trustee shall pay any inheritance, estate, or other death taxes, if any, including interest and penalties, that may be payable by reason of the death of any beneficiary of this trust and be attributable to assets included in the trust estate. The Trustee shall make no payments for expenses incurred prior to the Beneficiary's death if the Trustee shall determine, in its discretion, that payment therefor is the obligation of any county, state, federal, or other governmental agency (except as otherwise provided in this instrument).

ARTICLE III

TRUST IRREVOCABLE

This trust shall be irrevocable and not subject to amendment; provided, however, that this trust may be amended upon application of any interested party (including but not limited to the Trustee) with the approval of a Court of competent jurisdiction; provided, further, however, that any such amendment shall be consistent with, and in furtherance of, the purpose and intent of this trust as set forth herein and under applicable laws, and no amendment shall change the duties and obligations of the Trustee without its prior written consent. Provided further that such amendment or reformation shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor.

ARTICLE IV

POWERS OF THE TRUSTEE

To carry out the purposes of this trust and subject to any limitations stated elsewhere in this instrument, the Trustee is vested with the following powers:

1. The Trustee shall make investment decisions consistent with those permitted under California Probate Code section 2574; provided, however, that such investment decisions shall be further governed by the authority granted to trustees pursuant to the South Carolina Trust Code and South Carolina Probate Code.
2. The Trustee may hold securities or other property in the Trustee's own name as trustee, in the Trustee's own name, in the name of a nominee or in bearer form.
3. The Trustee may sell or exercise stock subscription or conversion rights.

4. The Trustee shall refrain from voting or to vote shares of stock owned by the trust estate at shareholders' meetings in person or by special, limited, or general proxy, and in general exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the trust estate; and to make and terminate S corporation elections for both federal and state tax law purposes.

5. The Trustee may participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the trust estate; and to deposit the stock or other securities under any plan of reorganization with any protective committee and to delegate to the committee discretionary power with relation thereto, to pay a proportionate part of the expenses of the committee and any assessments levied under any plan, to accept and retain new securities received by the Trustee pursuant to any plan, to exercise all conversion, subscription, voting and other rights, of whatever nature pertaining to the property, and to pay any amount or amounts of money as the Trustee may reasonably deem advisable in connection therewith.

6. The Trustee may enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term.

7. The Trustee may make ordinary or extraordinary repairs or alterations in buildings or other structures to demolish any improvements, to raze existing or erect new party walls or buildings which may be trust property.

8. The Trustee may collect, receive, and receipt for rents, issues, profits, and income of the trust estate.

9. The Trustee may insure the assets of the trust estate against damage or loss and to insure the health and property of the Beneficiary.

10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, Realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate. However, the compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

11. The Trustee may permit the Beneficiary and any care giver or family members living with Beneficiary to occupy rent free any residence constituting a part of the assets of the Trust and the Trustee may, in his and/or her discretion, pay any proportion of real property taxes on any residence in which Beneficiary resides (whether owned by the Trust or by Beneficiary or by the person having care and custody of Beneficiary), in addition to paying the expenses of maintaining the residence where Beneficiary resides and hazard premiums on said residence. In addition, the Trustee may pay the costs of modifying the place where Beneficiary resides without acquiring an equity interest in the residence.

12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility; any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including but not limited to claims by Beneficiary arising out of property

damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary. The compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

13. To exercise all powers in the management of the trust estate, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee reasonably deems necessary or proper to carry out the purposes of this Trust and to achieve the proper investment, management, and distribution of the Trust property.

14. Notwithstanding the applicable South Carolina Uniform Principal and Income Act, the Trustee shall have the power to adjust between income and principal to the extent the Trustee considers, in its sole discretion, necessary.

15. All rights, powers, privileges, immunities and authorities granted to the Trustee shall be exercised in such reasonable manner as may be fair and equitable under the circumstances.

16. To change the place of administration of this trust upon prior order of a court of competent jurisdiction.

17. In the administration and management of the trust, including without limitation the investment and reinvestment of the trust estate, the Trustee shall consider solely the interest of the Beneficiary, Abbie Dorn.

ARTICLE V

GENERAL PROVISIONS

1. This trust is subject to the continuing jurisdiction of the Horry County Probate Court, in Horry County, South Carolina. Court accountings shall be filed at the end of the first year of administration and biennially thereafter, unless the court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties, in the form required by California Probate Code § 1060 et seq., or such analogous law of the State in which the Court with jurisdiction over the trust is located.

2. Until the Trustee shall receive written notice of any birth, marriage, death or other event upon which the right to payments from this trust may depend, the Trustee shall incur no liability to persons whose interests may have been affected by that event for disbursements made in good faith.

3. The Trustee may apply payments under this trust for the benefit of any beneficiary, or may make payments under this trust to the guardian or conservator of the person or estate of any beneficiary who is under disability, or to the parent of any beneficiary who is a minor.

4. The Trust shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina. Provided, however, in the event that jurisdiction over the Trust is moved because the Beneficiary is then living in another State, then that Trust shall be construed, regulated and governed by and in accordance with the laws of that State.

5. If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

6. As used in this instrument, the masculine, feminine, or neuter gender and the singular or plural number shall be each deemed to include the others when the context so indicates.

7. All references in this instrument to specific statutes, codes, or regulations shall include any successor statutes, codes, or regulations of similar import.

Executed at Bakersfield, California, this 2nd day of November 2007

pursuant to that certain Order Approving Compromise of Disputed Claim of Adult with a Disability dated _____ in Case No. BC356985, Superior Court of the State of California, for the County of Los Angeles.

Paul Cohen
Paul Cohen, M.D., Trustee

Susan Cohen
Susan Cohen, Trustee

PROBATE COURT
HOLLY COUNTY, SC
2018 NOV 24 PM 2:51
DEIRDRE W. LEONARD
PROBATE JUDGE

PROBATE COURT
HOLLY COUNTY, SC
2008 FEB -6 AM 11:47
DEIRDRE W. LEONARD
PROBATE JUDGE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

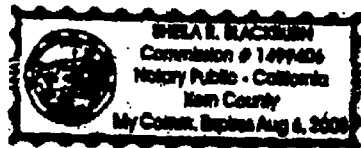
County of Kern } ss.

On November 2, 2007, before me, Sheila R. Blackburn Notary Public

personally appeared Paul Cohen and Susan Cohen

- ☒ personally known to me
☐ 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.



WITNESS my hand and official seal.

Sheila R. Blackburn
 Signature of Notary Public

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.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

- Signer's Name: _____
- ☐ Individual
 - ☐ Corporate Officer — Title(s): _____
 - ☐ Partner — ☐ Limited ☐ General
 - ☐ Attorney in Fact
 - ☐ Trustee
 - ☐ Guardian or Conservator
 - ☐ Other: _____

Signer Is Representing: _____

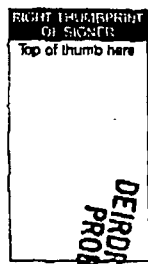


Exhibit "B"

GC-350

ATTORNEY OR PARTY WITHOUT ATTORNEY (Please, state her name and address)
☐ After receiving notice to: Louis E. Michelson, Esq. SEN 137487
15233 Ventura Blvd. PH-1
Sherman Oaks, CA 91403
TELEPHONE NO.: (818) 784-1700
FAX NO. (if any): (818) 235-0144
E-MAIL ADDRESS (if any): LEMITAJ@earthlink.net
ATTORNEY FOR (Name): Dr. Paul S. Cohen and Mrs. Susan Cohen
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern
VENUE ADDRESS: 1415 Truxton Avenue
MAILING ADDRESS: 1415 Truxton Avenue
CITY AND ZIP CODE: Bakersfield 93301
BRANCH/ROOM: Metropolitan

CONSERVATORSHIP OF (Name):

ABBIE ILENE DORN

CONSERVATEE

FOR RECORDING USE ONLY

CAPENUMBER:

S-1500-PB-57283

FOR COURT USE ONLY

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

NOV 15 2007

TERRY M. GRIFFIN, CLERK
BY: [Signature] DEPUTY

LETTERS OF CONSERVATORSHIP

☒ Person ☒ Estate ☐ Limited Conservatorship

1. ☒ (Name): Dr. Paul S. Cohen and Mrs. Susan Cohen is the appointed

☒ conservator ☐ limited conservator of the ☒ person ☒ estate

of (Name): ABBIE ILENE DORN

2. ☐ (For conservatorship that was on December 31, 1990, a guardianship of an adult

or of the person of a married minor) (Name):

was appointed the guardian of the ☐ person ☐ estate by order

dated (specify): and is now the conservator of

the ☐ person ☐ estate of (Name):

3. ☒ Other powers have been granted or conditions imposed as follows:

a. ☒ Exclusive authority to give consent for and to require the conservatee to

receive medical treatment that the conservator in good faith based on

medical advice determines to be necessary even if the conservatee objects, subject to the limitations stated in Probate Code section 2365.

(1) ☐ This treatment shall be performed by an accredited practitioner

of the religion whose tenets and practices call for reliance on

prayer alone for healing of which the conservatee was an adherent prior to the establishment of the

conservatorship.

(2) ☐ (If court order limits duration) This medical authority terminates on (date):

b. ☐ Authority to place conservatee in a care or nursing facility described in Probate Code section 2365.5(b).

c. ☐ Authority to authorize the administration of medications appropriate for the care and treatment of dementia described

in Probate Code section 2365.5(c).

d. ☒ Powers to be exercised independently under Probate Code section 2580 as specified in Attachment 3d (specify

powers, restrictions, conditions, and limitations).

e. ☐ Conditions relating to the care and custody of the property under Probate Code section 2402 as specified in Attach-

ment 3e.

f. ☐ Conditions relating to the care, treatment, education, and welfare of the conservatee under Probate Code section

2358 as specified in Attachment 3f.

g. ☐ (For limited conservatorship only) Powers of the limited conservator of the person under Probate Code section

2361.5 as specified in Attachment 3g.

h. ☐ (For limited conservatorship only) Powers of the limited conservator of the estate under Probate Code section

1830(b) as specified in Attachment 3h.

i. ☐ Other (specify): See Attachment 3i

4. ☐ The conservator is not authorized to take possession of money or any other property without a

specific court order.

5. Number of pages attached: 3

WITNESS, clerk of the court, with seal of the court affixed.

Date: NOV 15 2007

Clerk by: [Signature] Deputy

Page 1 of 2

This form may be recorded as notice of the establishment of a conservatorship of the estate as provided in Probate Code section 1870.

Form Adopted for Mandatory Use

Justified Court of California

GC-350 (Rev. January 1, 2006)

LETTERS OF CONSERVATORSHIP

Probate Code, § 1804

Local Rules of the Superior Court of California

CONSERVATORSHIP OF (Name): ABBIE ILENE DORN	CONSERVATEE	CASE NUMBER: S-1500-PB-57283

LETTERS OF CONSERVATORSHIP

AFFIRMATION

I solemnly affirm that I will perform according to law the duties of ☒ conservator ☐ limited conservator.

Executed on (date): **November 1, 1997** at (place): **Bakersfield, California**

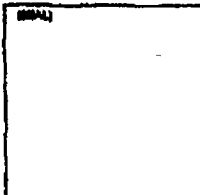
Dr. Paul Steven Shuman
(Signature of Appointee)

CERTIFICATION

I certify that this document and any attachments is a correct copy of the original on file in my office, and that the letters issued to the person appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

Date:

Clerk, by _____



PROBATE COURT
HERRY COUNTY, SC
20 NOV 24 PM 2:51
DEIRDRE W. EDMONDS
PROBATE JUDGE

OC-300 (Rev. January 1, 2000)

LETTERS OF CONSERVATORSHIP

Page 2 of 2

Lexiprint® Automated California Judicial Court Forms

LETTERS OF CONSERVATORSHIP
(FORM GC-350)

ATTACHMENTS

CONSERVATORSHIP OF ABBIE ILENE DORN
CASE NUMBER S-1500-PB-57283

INDEX OF ATTACHMENTS

<u>Tab</u>	<u>Description of Attachments/Exhibits</u>	<u>Pages</u>
Attachment 3d	Powers to be exercised independently under Probate Code Section 2590	2
Attachment 3i	Powers and duties of conservators under Probate Code Section 2352(c)	3

PROBATE COURT
HOPKINS COUNTY, MO
2018 NOV 24 PM 2:51
DEIRDRE W. EDMONDS
PROBATE JUDGE

**LETTERS OF CONSERVATORSHIP
(FORM GC-350)**

**CONSERVATORSHIP OF ABBIE ILENE DORN
CASE NUMBER S-1500-PB-57283**

ATTACHMENTS

Attachment 3d Powers to be exercised independently under Probate Code Section 2590

The Conservators are granted the independent power under Probate Code section 2591(a) to settle the pending personal injury claim brought on behalf of the proposed conservatee and to compromise or settle any dissolution action between the proposed conservatee and her husband, Daniel Bernard Dorn.

The Conservators are granted the independent power under Probate Code section 2591(q) to employ attorneys to file an action for dissolution of the marriage between the proposed conservatee and her husband Daniel Bernard Dorn and to pay the attorneys fees thereby incurred.

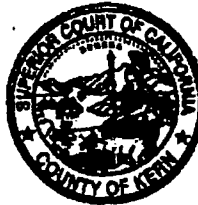
LETTERS OF CONSERVATORSHIP
(FORM GC-350)

CONSERVATORSHIP OF ABBIE ILENE DORN
CASE NUMBER S-1500-PB-57283

ATTACHMENTS

Attachment 31 Powers and duties of Conservators under Probate Code Section 2352(c)

The Conservators may establish the residence of Abbie Ilene Dorn at a place not within California, which place initially shall be the conservators' home, 1060 Waterway Lane, Myrtle Beach, South Carolina 29572.



SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF KERN, METROPOLITAN DIVISION
THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND
CORRECT COPY OF THE ORIGINAL DOCUMENT ON
FILE IN THE OFFICE OF THE CLERK OF THIS COURT.
DATED: NOV 1 8 2007
TERRY MPNALLY
BY: D. Carleton DEPUTY

Page 3

Exhibit "C"
Legal Fees Paid by Abbie Dorn Special Needs Trust

Date	Legal Services Provider	Fees
01/10/08	M. Robin Morris, Esquire	\$562.40
02/12/08	Louis Michelson, Esquire	\$1,886.39
04/04/10	M. Robin Morris, Esquire	\$973.94
04/07/08	Louis Michelson, Esquire	\$1,362.37
05/28/08	Louis Michelson, Esquire	\$722.42
06/25/08	V. Lee Moore, Esquire	\$1,469.03
07/11/08	Marina Korol, Esquire	\$215.09
08/26/08	Louis Michelson, Esquire	\$756.12
08/26/08	Marina Korol, Esquire	\$778.20
10/22/08	Marina Korol, Esquire	\$827.80
02/02/09	Marina Korol, Esquire	\$1,035.00
06/05/09	M. Robin Morris, Esquire	\$1,072.11
06/15/09	Louis Michelson, Esquire	\$315.00
06/19/09	Gary Zimmerman, Esquire	\$600.00
07/30/09	Davis Law Firm, P.A.	\$5,000.00
10/15/09	Marina Korol, Esquire	\$1,207.60
11/18/09	Marina Korol, Esquire	\$645.00
02/06/10	Meyer, Olson, Lowy & Meyers, LLP	\$25,000.00
02/09/10	Gary Zimmerman, Esquire	\$1,200.00
02/19/10	Marina Korol, Esquire	\$490.00
03/15/10	Meyer, Olson, Lowy & Meyers, LLP	\$14,553.56
04/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$114,010.61
05/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$117,664.48
06/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$52,328.12
07/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$33,175.28
08/23/10	Meyer, Olson, Lowy & Meyers, LLP	\$56,464.98
09/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$61,011.25
TOTAL		\$495,326.75

PROBATE COURT
 Horry County, SC
 2010 NOV 24 PM 2:51
 DEIRDRE W. EDMONDS
 PROBATE JUDGE

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,

SUMMONS FOR RELIEF

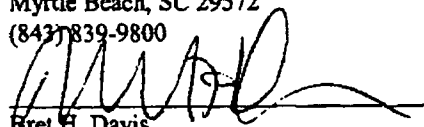
IN RE:
THE ABBIE DORN SPECIAL
NEEDS TRUST

PROBATE COURT
HORRY COUNTY, SC
2010 NOV 29 AM 11:15
DEIRDRE M. LINDGREN
PROBATE JUDGE

TO: ABBIE ILENE DORN AND HER GUARDIANS AND CONSERVATORS AND THE
TRUSTEES OF THE ABBIE DORN SPECIAL NEEDS TRUST, PAUL S. COHEN, MD
AND SUSAN COHEN;
JEFFREY COHEN, BROTHER OF ABBIE ILENE DORN; AND
AMY MAYER, SISTER OF ABBIE ILENE DORN

YOU ARE HEREBY SUMMONED and required to answer the Petition To Affirm Payment
of Fees From Special Needs Trust and to Reform Terms of Trust in the above entitled action, a copy
of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at
its office, 1110 London Street, Suite 201 Myrtle Beach, South Carolina 29577, within thirty (30)
days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the
Petition within the time aforesaid, the Petitioner in this action will apply to the Court for Judgment
by default to be rendered against you for the relief demanded in the Petition.

DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800


Bret H. Davis
Attorney for the Petitioner

Myrtle Beach, South Carolina
November 29, 2010

A HEARING IN THIS MATTER IS SCHEDULED FOR JANUARY 13, 2011, AT 8:30 AM IN
THE HORRY COUNTY PROBATE COURT, HORRY COUNTY COURTHOUSE, 1301 2ND
AVENUE, CONWAY, SOUTH CAROLINA.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)

Respondents.)

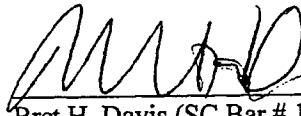
IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

AMENDED SUMMONS

PROBATE COURT
HORRY COUNTY, SC
2011 MAR -3 PM 3:11
DEIRDRE W. EDMONDS
PROBATE JUDGE

TO: ABBIE ILENE DORN AND HER GUARDIANS AND CONSERVATORS AND THE
TRUSTEES OF THE ABBIE DORN SPECIAL NEEDS TRUST, PAUL S. COHEN, MD
AND SUSAN COHEN;
JEFFREY COHEN, BROTHER OF ABBIE ILENE DORN;
AMY MAYER, SISTER OF ABBIE ILENE DORN;
SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND
DANIEL BERNARD DORN, FATHER OF THE PROTECTED PERSON'S CHILDREN

YOU ARE HEREBY SUMMONED and required to answer the Petition To Affirm Payment
of Fees From Special Needs Trust and to Reform Terms of Trust in the above entitled action, a copy
of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at
its office, 1110 London Street, Suite 201 Myrtle Beach, South Carolina 29577, within thirty (30)
days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the
Petition within the time aforesaid, the Petitioner in this action will apply to the Court for Judgment
by default to be rendered against you for the relief demanded in the Petition.



Bret H. Davis (SC Bar # 11699)
DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
(843) 839-9800 (facsimile)
bdavis@davislawfirm.us

and

Reese R. Boyd, III (SC Bar # 7151)
BOYD LAW FIRM, LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(843) 238-2112 (facsimile)
reese@boydlawllc.com

Attorneys for the Petitioner

Myrtle Beach, South Carolina

March 2, 2011

A HEARING IN THIS MATTER IS SCHEDULED FOR April 14, 2011, AT 8:30 am
IN THE HORRY COUNTY PROBATE COURT, HORRY COUNTY COURTHOUSE, 1301 2ND
AVENUE, CONWAY, SOUTH CAROLINA.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)

Respondents.)

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

AMENDED
PETITION TO AFFIRM PAYMENT OF
FEES FROM SPECIAL NEEDS TRUST
AND TO REFORM TERMS OF TRUST

PROBATE COURT
HORRY COUNTY, SC
2011 MAR -3 PM 3:14
DEIRDRE W. EDMONDS
PROBATE JUDGE

The Petitioners would allege and show unto this Honorable Court as follows:

1. While married to Daniel Bernard Dorn and residing in the State of California, and within eight (8) hours after the child birth of her three triplet children (the "Triplets"), Abbie Ilene Dorn (the "Protected Person") suffered substantial and irreversible injuries which rendered her permanently disabled.

2. Legal actions for negligence and medical malpractice (the "Legal Actions") were brought and prosecuted against the hospital and physicians associated with the Protected Person's injuries which resulted in a settlement among the parties. A portion of the settlement award was to be used for the purchase of an annuity for the Protected Person and a portion of the award was to be used to fund a special needs trust for the Protected Person. The amount designated for the annuity

was Four Million Three Hundred Thirty Thousand One Hundred Five and 00/100 (\$4,330,105.00) Dollars. The amount designated for a special needs trust was Nine Hundred Ten Thousand Two Hundred Seventy Five and 20/100 (\$910,275.20) Dollars.

3. The Petitioners, who are also the parents of the Protected Person, were appointed as co-conservators of the person and estate of the Protected Person on November 7, 2007, by Order of the Superior Court of California, County of Kern, Metropolitan Division.

4. On or about November 2, 2007, pursuant to the provisions of 42 U.S.C. § 1396p(d)(4)(A), the Petitioners, as the Protected Person's parents and co-conservators, established the Abbie Dorn Special Needs Trust (the "Trust"). The Petitioners were appointed as the initial trustees under the terms of the Trust. A copy of the Trust is attached hereto as Exhibit "A."

5. After the establishment of the Trust, the Protected Person relocated from California to Horry County, South Carolina to reside with the Petitioners.

6. The conservatorship of the person and estate of the Protected Person and jurisdiction of the Trust were transferred to Horry County, South Carolina, as evidenced by the Order of Transfer of Jurisdiction of the Horry County Probate Court, dated and filed on April 24, 2008 (a copy of which is attached hereto as Exhibit "B"), and by the Order Terminating Conservatorship of the Person and Estate of the Superior Court of California, County of Kern, Metropolitan Division, dated July 14, 2008 and executed on July 31, 2008. The Order of Transfer of Jurisdiction established the Petitioners as co-conservators and co-guardians of the Protected Person.

7. Divorce proceedings between the Protected Person and Daniel Bernard Dorn were instituted in California. As part of the divorce proceedings Daniel Bernard Dorn has sought and continues to seek to invade the Trust for child support for the Triplets and to pay for his legal fees

and other costs related to the divorce proceedings. Mr. Dorn has retained physical custody of the Triplets since their birth.

8. The Protected Person is currently qualified for and is receiving Medicaid benefits, and upon information and belief, the Protected Person would lose her eligibility to receive such benefits if the trustees of the Trust were forced to use Trust funds to pay child support and the legal fees and costs incurred by Daniel Bernard Dorn in the divorce proceedings.

9. The Trust provides that after the Protected Persons's death, the appropriate governmental agency, including, without limitation, the South Carolina Department of Health and Human Services, will be reimbursed from the Trust for benefits paid on behalf of the Protected Person. Thereafter, the remaining assets of the Trust are to be distributed (subject to a power of appointment retained by the Protected Person) to the issue of the Protected Person, per stirpes.

10. The South Carolina Department of Health and Human Services is named as a Respondent in this action because the Trust provides in Article III that any amendment or reformation of the Trust "shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor."

11. The Petitioners were previously granted authority to employ attorneys on behalf of the Protected Person for matters related to the divorce action and to pay for such services from the funds of the Protected Person and/or the Trust, as evidenced by the Letters of Conservatorship issued by the Superior Court of California, County of Kern, Metropolitan Division, filed November 15, 2007 (copy attached as Exhibit "C"), and by this Court's Order of Transfer of Jurisdiction.

12. While the incurrence and payment of fees on behalf of the Protected Person was previously authorized under the terms of the Letters of Conservatorship and under the terms of the

Order of Transfer of Jurisdiction, it is prudent for this Court to affirm the payment of such fees and to approve the payment of any future fees. A schedule of fees paid or to be paid by the Petitioners for matters related to the Protected Person is attached hereto as Exhibit "D."

13. The Trust grants broad powers to the trustees to manage the matters related to the Trust, including the employment and payment of attorneys and other professionals. However, paragraphs 10 and 12 of Article IV of the Trust create a logistical impracticability in that they require the trustee of the Trust to obtain prior court approval before the trustee makes payments for services rendered by its attorney. Such terms are unusual and unnecessary and need to be reformed. The new language for such paragraphs should read as follows:

"10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate, without the need for prior court approval."

"12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility; and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including, but not limited to, claims by Beneficiary arising out of property damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary, without the need for prior court approval."

14. If the Court deems it necessary to appoint a guardian ad litem for the Protected Person, the Court should appoint an attorney that is specially trained and experienced in the areas of probate and trust law, and that any fees for such guardian services may be paid from the funds of the Protected Person and/or the assets of the Trust.

15. It is appropriate for the Petitioners to pay all legal fees and costs related to their representation in this matter from the funds of the Protected Person and/or the Trust.

WHEREFORE, the Petitioners pray that this Honorable Court inquire into the matters set forth herein and issue an order which:

- A. Affirms the previous payment of fees by the Petitioners from the funds of the Protected Person and/or the Trust.
- B. Reforms the Trust to replace the existing paragraphs 10 and 12 of Article IV with the language for such paragraphs proposed in this Petition.
- C. If necessary to appoint a guardian ad litem for the Protected Person, appoints an attorney specially trained and experienced in the areas of probate and trust law.
- D. Directs the Petitioners to pay all fees and costs related to the matters set forth herein from the funds of the Protected Person and/or the Trust.
- E. Directs that no child support or fees or costs incurred by Daniel Bernard Dorn be paid from the Trust estate.

F. Provides for such other and further matters as this Honorable Court deems just and proper.

Respectfully Submitted:



Bret H. Davis (SC Bar # 11699)
DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
(843) 839-9800 (facsimile)
bdavis@davislawfirm.us

and

Reese R. Boyd, III (SC Bar # 7151)
BOYD LAW FIRM, LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(843) 238-2112 (facsimile)
reese@boydlawllc.com

Attorneys for the Petitioner

Myrtle Beach, South Carolina
March 2, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)

Respondents.)

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

VERIFICATION FOR
AMENDED PETITION

PERSONALLY appeared before me, Paul S. Cohen, MD and Susan Cohen, who after being duly sworn, depose and says that they are the Petitioners in the foregoing Amended Petition To Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust and that the facts are true of their own knowledge except those matters based upon information and belief, and as to those they believe them to be true.

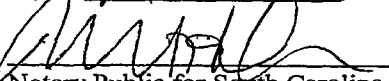


Paul S. Cohen, MD, Petitioner



Susan Cohen, Petitioner

SWORN to before me this 2nd
day of March, 2011.



Notary Public for South Carolina
My Commission Expires 11/11/2016

Exhibit "A"

ABBIE DORN SPECIAL NEEDS TRUST

This trust is entered into with reference to the following facts:

RECITALS

A. This trust forms a part of the settlement arrived at between Abbie Dorn, an adult with a disability, by and through her Guardian Ad Litem, Daniel Dorn, et al., Plaintiffs, and Cedars-Sinai Medical Center, et al., Defendants, in Case No. BC356985, in the Superior Court of the State of California, County of Los Angeles.

B. The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Sections 3604 and 3605, and for certain payments by or on behalf of the Defendants to the trust. The amount of money that will initially be deposited into the trust is \$910,275.20, plus periodic payments in the initial amount of \$31,000 per month for the lifetime of the Beneficiary. The trust is for the primary benefit of the Plaintiff, Abbie Dorn, hereinafter sometimes referred to as the "Beneficiary." The Court in the above-described action has made the following determinations: Abbie Dorn, an adult with a disability, has a disability in the nature of severe and permanent brain injury that substantially impairs her ability to provide for her own care or custody and constitutes a substantial handicap; her condition appears to be permanent and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this trust; and the monies to be paid to this trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary.

PROBATE COURT
HARRIS COUNTY, SC
2011 MAR -3 PM 3:14
DEIRDRE W. EDMONDS
PROBATE JUDGE
PROBATE COURT
HARRIS COUNTY, SC
2008 FEB -6 AM 11:47
DEIRDRE W. EDMONDS
PROBATE JUDGE

C. The intent and purpose of this trust is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America. The funds of the trust may be used as an emergency or backup fund secondary to public resources. Special Needs include without limitation special equipment, programs of training, education and habilitation, travel needs, and recreation, which are related to and made reasonably necessary by this Beneficiary's disabilities. This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein.

D. The settlement and the payments to this trust are all subject to the approval and order of the above-entitled Court. The settlement and all payments thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Abbie Dorn Special Needs Trust is established, Paul Cohen, M.D. and Susan Cohen are appointed as Trustee thereof, and are authorized by the Court in the above-described action to execute this trust.

ARTICLE I

TRUSTEE

1. Paul Cohen, M.D. and Susan Cohen are appointed to act jointly as the initial Trustee of the trust. Any Trustee shall have the right to resign at any time. Should either of them cease to act as trustee for any reason, the other shall continue to act as sole trustee. Any successor Trustee shall be appointed by the Court with jurisdiction over the trust, and shall be bonded to the extent required by Probate Code § 2320 or such analogous law of the State in which the Court with jurisdiction over the trust is located.

The term "Trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. Any successor Trustee shall have and succeed to all the rights, titles, interests, powers, duties, and discretions given to the initial Trustee hereunder.

2. The Trustee may hire a case worker or other persons with expertise relating to the special needs of the Beneficiary, at the expense of the Trust, to advise it regarding the special needs of the Beneficiary.

3. The Trustee shall receive just and reasonable compensation, to be paid from the Trust, for its services in an amount to be fixed and allowed by the Court on the occasion of the Trustee's court accountings or such other times as that issue may be brought before the Court with jurisdiction over the Trust. The Trustee shall also receive reimbursement for reasonable expenses incurred. Such compensation shall be chargeable to and paid from the Trust.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL

1. All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.

2. The income shall be added to and become principal, forming a common fund. The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during her lifetime, such sums and at such times as the Trustee, in its discretion, determines appropriate and reasonably necessary for the Beneficiary's Special Needs. In making distributions to the Beneficiary for her Special Needs, the Trustee shall take into consideration the applicable resource and income limitations of the public assistance programs for which the Beneficiary is eligible, and the duties of any persons legally obligated to support the Beneficiary.

3. This trust shall terminate upon the death of Beneficiary. Upon termination, whether by death or otherwise, the trustee may pay expenses of last illness, burial expenses and expenses related to administration and distribution of the trust assets, and thereafter the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act, up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under such state plan. After such payment or payments have been made, the remaining trust estate shall be distributed to the person or persons, excluding the Beneficiary, creditors of the Beneficiary, the estate of the Beneficiary, or creditors of the estate of the Beneficiary, in such manner and proportions as shall

be designated by the Beneficiary by written instrument delivered to the Trustee or by specific reference to this power by the Beneficiary's last Will. Any prospective appointment may be revoked by a subsequent written instrument delivered to the Trustee or by specific reference to the revocation by the Beneficiary's last Will. If the exercise of any of said powers of appointment is inconsistent with any other exercise of said powers, the provisions of the instrument bearing the later date shall prevail. To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn, or in default of such issue, to her heirs at law. The Trustee may withhold distributions pending receipt of a release from the South Carolina Department of Health and Human Services (or its successor). The amount to be repaid under this paragraph to the State for medical assistance shall be determined by agreement between the South Carolina Department of Health and Human Services or its successor, and the Trustee. In the event that an agreement has not been reached between the South Carolina Department of Health and Human Services and the Trustee within one year of the death of the Beneficiary, the Trustee shall pay to the appropriate Clerk of Court an amount equal to the claim of the State of reimbursement for medical care provided to the Beneficiary, and shall pay the balance of the trust estate to the then living issue, per stirpes, of Abbie Dorn or, in default of such issue, to her heirs at law. The appropriate court shall determine the validity of the claim of the State and shall direct payment to the State of this amount, with the balance distributed to the then living issue, per stirpes, of the Beneficiary, or in default of such issue, to her heirs at law.

4. This trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary's death or the trust termination be given in the manner provided in California Probate Code Section 1215 to, among others, the California State Department of Health Services, the California State Department of Mental Health and the California State Department of Developmental Services, addressed to the director of those departments at the Sacramento office of such director. However, this requirement can be waived by order of a court of competent jurisdiction if such court determines that the Beneficiary received no benefits from any such agency subsequent to the creation of this Trust.

5. If the Trustee determines that it is in the best interest of the Beneficiary to make a disbursement which will cause a reduction or elimination of the Beneficiary's right to receive public benefits, the Trustee shall not be liable for having caused the loss of such benefits. For purposes of determining the Beneficiary's Medicaid eligibility, or Supplemental Security Income (hereinafter referred to as "S.S.I.") eligibility, or eligibility for other governmental assistance programs, no part of the principal or income of the trust estate shall be considered available to said Beneficiary. In the event the Trustee is requested by any county, state, federal, or other governmental agency, to release principal or income of the trust to or on behalf of the Beneficiary to pay for equipment, medication, or services which Medicaid or S.S.I. or some other governmental program is authorized to provide, or in the event the Trustee is requested to petition a court or administrative agency for the release of trust principal or income for any of these purposes, the Trustee is authorized to deny such request and is authorized, in its discretion,

to take whatever administrative or judicial steps may be necessary to continue the Medicaid or S.S.I. or other governmental program eligibility of the Beneficiary, including obtaining instructions from a court of competent jurisdiction ruling that the principal and income of this trust is not available to the Beneficiary for Medicaid or S.S.I. or other governmental program eligibility purposes. Any expenses of the Trustee in this regard, including attorneys' fees, shall be a proper charge to the trust estate.

6. The Beneficiary has no interest in the income or principal of the trust, other than as set forth herein. No interest in the principal or income of this trust shall be anticipated, assigned, or encumbered by any beneficiary, nor shall any such interest be subject to any creditor's claim or to legal process. Furthermore, because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provisions of care and services, including residential care, by any public entity, office, department, or agency of any state, or of the United States of America (except as otherwise provided in this instrument).

7. The Trustee shall pay any inheritance, estate, or other death taxes, if any, including interest and penalties, that may be payable by reason of the death of any beneficiary of this trust and be attributable to assets included in the trust estate. The Trustee shall make no payments for expenses incurred prior to the Beneficiary's death if the Trustee shall determine, in its discretion, that payment therefor is the obligation of any county, state, federal, or other governmental agency (except as otherwise provided in this instrument).

ARTICLE III

TRUST IRREVOCABLE

This trust shall be irrevocable and not subject to amendment; provided, however, that this trust may be amended upon application of any interested party (including but not limited to the Trustee) with the approval of a Court of competent jurisdiction; provided, further, however, that any such amendment shall be consistent with, and in furtherance of, the purpose and intent of this trust as set forth herein and under applicable laws, and no amendment shall change the duties and obligations of the Trustee without its prior written consent. Provided further that such amendment or reformation shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor.

ARTICLE IV

POWERS OF THE TRUSTEE

To carry out the purposes of this trust and subject to any limitations stated elsewhere in this instrument, the Trustee is vested with the following powers:

1. The Trustee shall make investment decisions consistent with those permitted under California Probate Code section 2574; provided, however, that such investment decisions shall be further governed by the authority granted to trustees pursuant to the South Carolina Trust Code and South Carolina Probate Code.
2. The Trustee may hold securities or other property in the Trustee's own name as trustee, in the Trustee's own name, in the name of a nominee or in bearer form.
3. The Trustee may sell or exercise stock subscription or conversion rights.

4. The Trustee shall refrain from voting or to vote shares of stock owned by the trust estate at shareholders' meetings in person or by special, limited, or general proxy, and in general exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the trust estate; and to make and terminate S corporation elections for both federal and state tax law purposes.

5. The Trustee may participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the trust estate; and to deposit the stock or other securities under any plan of reorganization with any protective committee and to delegate to the committee discretionary power with relation thereto, to pay a proportionate part of the expenses of the committee and any assessments levied under any plan, to accept and retain new securities received by the Trustee pursuant to any plan, to exercise all conversion, subscription, voting and other rights, of whatever nature pertaining to the property, and to pay any amount or amounts of money as the Trustee may reasonably deem advisable in connection therewith.

6. The Trustee may enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term.

7. The Trustee may make ordinary or extraordinary repairs or alterations in buildings or other structures to demolish any improvements, to raze existing or erect new party walls or buildings which may be trust property.

8. The Trustee may collect, receive, and receipt for rents, issues, profits, and income of the trust estate.

9. The Trustee may insure the assets of the trust estate against damage or loss and to insure the health and property of the Beneficiary.

10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, Realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate. However, the compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

11. The Trustee may permit the Beneficiary and any care giver or family members living with Beneficiary to occupy rent free any residence constituting a part of the assets of the Trust and the Trustee may, in his and/or her discretion, pay any proportion of real property taxes on any residence in which Beneficiary resides (whether owned by the Trust or by Beneficiary or by the person having care and custody of Beneficiary), in addition to paying the expenses of maintaining the residence where Beneficiary resides and hazard premiums on said residence. In addition, the Trustee may pay the costs of modifying the place where Beneficiary resides without acquiring an equity interest in the residence.

12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility; any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including but not limited to claims by Beneficiary arising out of property

damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary. The compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

13. To exercise all powers in the management of the trust estate, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee reasonably deems necessary or proper to carry out the purposes of this Trust and to achieve the proper investment, management, and distribution of the Trust property.

14. Notwithstanding the applicable South Carolina Uniform Principal and Income Act, the Trustee shall have the power to adjust between income and principal to the extent the Trustee considers, in its sole discretion, necessary.

15. All rights, powers, privileges, immunities and authorities granted to the Trustee shall be exercised in such reasonable manner as may be fair and equitable under the circumstances.

16. To change the place of administration of this trust upon prior order of a court of competent jurisdiction.

17. In the administration and management of the trust, including without limitation the investment and reinvestment of the trust estate, the Trustee shall consider solely the interest of the Beneficiary, Abbie Dorn.

ARTICLE V

GENERAL PROVISIONS

1. This trust is subject to the continuing jurisdiction of the Horry County Probate Court, in Horry County, South Carolina. Court accountings shall be filed at the end of the first year of administration and biennially thereafter, unless the court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties, in the form required by California Probate Code § 1060 et seq., or such analogous law of the State in which the Court with jurisdiction over the trust is located.

2. Until the Trustee shall receive written notice of any birth, marriage, death or other event upon which the right to payments from this trust may depend, the Trustee shall incur no liability to persons whose interests may have been affected by that event for disbursements made in good faith.

3. The Trustee may apply payments under this trust for the benefit of any beneficiary, or may make payments under this trust to the guardian or conservator of the person or estate of any beneficiary who is under disability, or to the parent of any beneficiary who is a minor.

4. The Trust shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina. Provided, however, in the event that jurisdiction over the Trust is moved because the Beneficiary is then living in another State, then that Trust shall be construed, regulated and governed by and in accordance with the laws of that State.

5. If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

6. As used in this instrument, the masculine, feminine, or neuter gender and the singular or plural number shall be each deemed to include the others when the context so indicates.

7. All references in this instrument to specific statutes, codes, or regulations shall include any successor statutes, codes, or regulations of similar import.

Executed at Bokeston, California, this 2nd day of November 2007
pursuant to that certain Order Approving Compromise of Disputed Claim of Adult with a
Disability dated _____ in Case No. BC356985, Superior Court of the State of
California, for the County of Los Angeles.

Paul Cohen
Paul Cohen, M.D., Trustee

Susan Cohen
Susan Cohen, Trustee

PROBATE COURT
HERRY COUNTY, SC
2011 MAR -3 PM 3:14
DEIRDRE W. EDMONDS
PROBATE JUDGE

PROBATE COURT
HERRY COUNTY, SC
2008 FEB -6 AM 11:47
DEIRDRE W. EDMONDS
PROBATE JUDGE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Kern

SS.

On November 2, 2007, before me, Sheila R. Blackburn Notary Public

Date

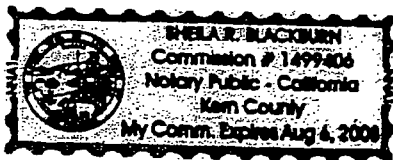
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Paul Cohen and Susan Cohen

Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) were 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Sheila R. Blackburn

Signature of Notary Public

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.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

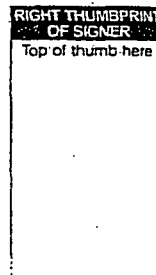
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
PAUL S. COHEN, MD AND)
SUSAN COHEN,)
PETITIONERS)
VS.)
IN RE:)
CONSERVATORSHIP OF THE)
ESTATE AND GUARDIANSHIP)
OF THE PERSON OF ABBIE)
ILENE DORN, A PROTECTED)
PERSON AND WARD, AND THE)
ABBIE DORN SPECIAL NEEDS)
TRUST.)

Exhibit "B"

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
FILE NO.: 2008-GC-26-
2008-GC-26-
2008-GC-26-5

ORDER OF TRANSFER OF
JURISDICTION

CERTIFIED TO BE A TRUE COPY
OF THE RECORDS OF THIS OFFICE.

DEIRDRE W. EDMONDS
PROBATE JUDGE, HORRY COUNTY, SC

PROBATE COURT
HORRY COUNTY, SC
2008 MAR -3 PM 3:14
DEIRDRE W. EDMONDS
PROBATE JUDGE

2008 APR 24 PM 3:17
DEIRDRE W. EDMONDS
PROBATE JUDGE

THIS MATTER came for hearing on March 19, 2008, before the undersigned Associate Judge of the Probate Court for Horry County, South Carolina, pursuant to a Petition filed on February 6, 2008, by Paul S. Cohen, M.D. and Susan Cohen (herein sometimes referred to collectively as "Petitioners Cohen") requesting a transfer of jurisdiction of the Conservatorship of the Estate and of the Conservatorship of the Person of Abbie Ilene Dorn from the Superior Court of California, County of Kern, Metropolitan Division to the Horry County Probate Court, and also requesting an Order accepting jurisdiction over the Abbie Dorn Special Needs Trust that was previously approved and established by a California Court.

Petitioners Cohen were present at the hearing and represented by their attorney, M. Robin Morris, Esquire, of Conway, South Carolina. Respondent Abbie Ilene Dorn was not present but was represented at the hearing by her court-

appointed attorney and Guardian ad Litem, V. Lee Moore, Esquire, of Surfside Beach, South Carolina.

Based upon the record, pleadings, exhibits, testimony, evidence and the entire record in these matters, the undersigned makes the following:

FINDINGS OF FACT

1. All interested persons, and all persons required by law, have been properly served with a copy of the pleadings, notices and other documents filed in this matter, with the exception of Daniel Bernard Dorn, the husband of Abbie Ilene Dorn. Abbie Ilene Dorn's adult siblings, Jeffrey Cohen and Amy Mayer, have filed a waiver of notice and right to appear at hearing in these proceedings.

2. Venue and subject matter jurisdiction are proper in this Court.

3. Petitioners were appointed Co-Conservators of the Person and Estate of Abbie Ilene Dorn, an adult person with a disability, on November 7, 2007, by the Superior Court of California, County of Kern, Metropolitan Division. Exemplified copies of such proceedings were filed with the Horry County Probate Court on January 8, 2008.

4. The Superior Court of California, County of Kern, Metropolitan Division has forwarded an exemplified copy of the transcript of the court's records to the Horry County Probate Court.

5. The Superior Court of California, County of Kern, Metropolitan Division issued an order providing for the establishment of the residence of Abbie Ilene Dorn (hereinafter the "Ward") at 1060 Waterway Lane, Myrtle Beach, South Carolina 29572.

6. The Co-Conservators established residency for Abbie Ilene Dorn, their Ward, on or about November 26, 2007 in Horry County at 1060 Waterway Lane, Myrtle Beach, South Carolina 29572. Such residence is also the residence of the Co-Conservators, who are also the parents of Abbie Ilene Dorn, the Ward.

7. By further order of the Superior Court of California, County of Kern, Metropolitan Division, the Co-Conservators were authorized and granted independent power to employ attorneys to file an action for dissolution of the marriage between the Ward and her husband, Daniel Bernard Dorn. On January 8, 2008, the Co-Conservators commenced an action for dissolution of the marriage pursuant to the California court order.

8. The Co-Conservators believe that the current residential setting in Horry County, South Carolina is best suited for the current needs of their Ward.

9. The Ward has no assets remaining in her name individually, and all moneys received from and payments as a result of the settlement of a personal injury claim have been deposited into the Abbie Dorn Special Needs Trust. Further, the Co-Conservators are currently bonded by American Contractors Indemnity Company in the amount of Thirty-Five Thousand (\$35,000.00) Dollars.

10. The Superior Court of California, County of Los Angeles, by Order dated October 25, 2007 and filed November 21, 2007, authorized Petitioners Cohen to establish the Abbie Dorn Special Needs Trust and to fund such Trust with the proceeds of the settlement received from the personal injury claim. A certified copy of said Order dated October 25, 2007, was filed with this Court on February 4, 2008.

11. On November 2, 2007, the Co-Conservators executed the Abbie Dorn Special Needs Trust Agreement and subsequently funded

the trust with funds from the settlement proceeds of the personal injury claim filed on behalf of the Ward. A copy of the Abbie Dorn Special Needs Trust is attached hereto as Exhibit "A" and is made a part of this Order.

12. The Order from the Superior Court of California, County of Los Angeles, requires that the Co-Conservators provide a copy of the Horry County South Carolina Probate Court Order whereby the Horry County Probate Court accepts jurisdiction over the Ward's special needs trust.

13. Abbie Ilene Dorn was born April 3, 1976. On June 21, 2006, she suffered a catastrophic injury during the delivery of her triplets. As a result of her injury, the Ward is suffering from a mental disability, which impairs her judgment in regards to both her financial and personal matters and she is in need of supervision and assistance. Her mental condition is such that she lacks sufficient understanding and capacity to make responsible decisions regarding the management of her property and affairs effectively. The foregoing findings are based, in part, on the records of the California court and its previous determination that the Ward is incapacitated and in need of a conservator to protect and manage her person and property and, in part, on the evidence and testimony presented to this Court during the hearing in these matters, including the report of this Court's court-appointed guardian ad litem for the Ward, V. Lee Moore.

14. The Ward has a brother, Jeffrey Cohen, and a sister, Amy Mayer. Further, Ward Dorn has three (3) minor children, all under the age of 18 years, who are in the custody of their father, Daniel Bernard Dorn, with whom they reside with in Los Angeles, California.

15. The Guardian ad Litem, V. Lee Moore, Esquire, has spoken with Daniel Bernard Dorn and, based on her conversation

with him, Ms. Moore believes and is informed that he does not object to the transfer of jurisdiction of these matters from the California courts to the Horry County Probate Court.

16. V. Lee Moore, Esquire, is the attorney and Guardian ad Litem for the Ward and has ably, zealously, and competently served the Ward during all phases of these proceedings, and her professional services are anticipated to continue hereafter through conclusion of matters relating to these proceedings. Attorney Moore is entitled to be compensated and paid for the fees, costs and expenses incurred and devoted by her and her firm on behalf of the Ward. The Affidavit of Attorney's Fees and expenditures reflects that attorney's fees, costs, and expenses incurred by Ms. Moore on behalf of the Ward are approximately One Thousand Two Hundred Eighty-nine and 03/100 (\$1,289.03) Dollars, through February 19, 2008. It is anticipated that there will be additional fees and expenditures incurred by said attorney on behalf of the Ward through the instant hearing, the conclusion of these proceedings, and entry of the Order as referred to in said attorney's Affidavit. The aforementioned attorney's fees, costs, and expenditures incurred and additional fees, costs, and expenditures incurred through conclusion of services by Ms. Moore as the Ward's attorney and Guardian ad Litem, are hereby deemed fair and reasonable and shall be a proper disbursement from the Abbie Dorn Special Needs Trust.

17. Petitioners Cohen have expended funds for attorney's fees and costs in proceeding with these matters in the amount of Five Thousand Nineteen and 75/100 (\$5,019.75) Dollars from Petitioners' funds and the Abbie Dorn Special Needs Trust. The aforementioned attorney's fees, costs, and expenditures incurred and additional fees, costs, and expenditures incurred through conclusion of services by Petitioners are hereby deemed fair and

reasonable and shall be a proper disbursement from the Abbie Dorn Special Needs Trust.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction of the subject matter and of the persons before the Court. That all interested persons and parties have been properly served with the Summons and Petition and proper and timely Notice of Hearing has been given by Petitioner to all such persons, with the exception of Daniel Bernard Dorn.

2. That a basis exists as described in S.C. § 62-5-101 et seq., for affecting the property and affairs of Abbie Ilene Dorn.

3. That pursuant to S.C. Code § 62-5-313 et seq., this Court is authorized to enter appropriate Orders transferring jurisdiction from the appointing Court to this Court.

4. That pursuant to S.C. Code § 62-5-101 et seq., this Court is authorized to enter appropriate Orders appointing a Guardian with the authority and power as conferred by law and with full authority to consent, or withhold consent, to any and all medical or other professional care, counsel, treatment or services.

5. That it is in the best interest of Abbie Ilene Dorn that Petitioners Cohen be appointed as Co-Guardians with all the authority and power as conferred by law over Abbie Ilene Dorn's person.

6. That it is in the best interest of Abbie Ilene Dorn that Petitioners Cohen be appointed as Co-Conservators of Abbie Ilene Dorn's property and estate with all the authority and power as conferred by law.

7. That a basis exists in S.C. § 62-5-411 for waiving bond where good cause is shown. Due to the fact that the Ward has no personal assets and a Special Needs Trust has been

established for her benefit, Petitioners Cohen have demonstrated good cause for waiving bond and, therefore, it is in the best interest of the Ward for bond to be waived. Further, the Co-Conservators may discharge any bond that now exists. If the Ward's financial status changes in the future, the Court will reconsider the need for a bond. Notwithstanding the foregoing, the statutory requirements for the filing an Inventory and Appraisalment and annual accountings shall not be waived and the Co-Conservators appointed herein shall fully comply with all filing requirements.

BASED UPON THE FOREGOING FINDINGS OF FACT and CONCLUSIONS OF LAW, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. That this Court shall accept jurisdiction of the Conservatorship of the person and estate of Abbie Ilene Dorn, from the Superior Court of California, County of Kern, Metropolitan Division.

2. That this Court hereby accepts jurisdiction of the Abbie Dorn Special Needs Trust established pursuant to Order from the Superior Court of California, County of Los Angeles.

3. That Paul S. Cohen, M.D. and Susan Cohen shall be and are hereby appointed Co-Guardians of the person of Abbie Ilene Dorn with all the authority and power as conferred by law upon guardians, and as Co-Guardians, Paul S. Cohen, M.D. and Susan Cohen, may exercise said authority and power either jointly or individually without the consent of the other Co-Guardian being required, which power shall include, but not be limited to, the authority to consent or withhold consent to any and all medical or other professional care, counsel, treatment or services.

4. That Paul S. Cohen, M.D. and Susan Cohen shall be and are hereby appointed as Co-Conservators of the estate and affairs of Abbie Ilene Dorn with all the authority and power as conferred by law upon conservators, and as Co-Conservators, Paul

S. Cohen, M.D. and Susan Cohen, may exercise said authority and power either jointly or individually without the consent of the other Co-Conservator being required.

5. That the Co-Conservators shall file in the Register of Deeds Office for Horry County a copy of the Fiduciary Letters of Appointment.

6. That the Co-Guardians and Co-Conservators shall be entitled to reasonable sums and compensation for their services as allowed by law.

7. That all persons are directed and commanded to deliver to the Co-Conservators, on demand by the Co-Conservators and upon presentation of a copy of the Certificate of Appointment, all of the property of Abbie Ilene Dorn, of every kind and nature, which may be in such person's possession or under such person's control.

8. That the Co-Conservators are directed and authorized to promptly pay out of the funds of the Abbie Dorn Special Needs Trust all sums and amounts as referred to hereinabove in this Order for the fees and expenditures incurred by V. Lee Moore, Esquire, attorney and Guardian ad Litem for Abbie Ilene Dorn, as set forth in Attorney Moore's Affidavit of Attorneys Fees, as well as fees incurred to the conclusion of this matter.

9. That the sums and amounts referred to hereinabove and previously paid and disbursed and those to be paid at the conclusion of these matters to the attorney for Petitioners Cohen, are approved and constitute a proper disbursement from the estate and funds of the Abbie Dorn Special Needs Trust.

10. That Attorney and Guardian ad Litem, V. Lee Moore, Esquire, is relieved of her duties and her appointment in these matters is terminated upon the filing of this Order.

11. That good cause has been shown for bond to be waived and, therefore, bond shall not be required at this time.

12. That any sureties or bonds securing the Co-Conservators' performance are released. However, upon further review of the inventory and/or annual accountings the Court may at any time, if it appears appropriate, order the Co-Conservators to post a fiduciary bond.

13. That Petitioners Cohen shall mail a copy of this Order to Abbie Ilene Dorn's husband, Daniel Bernard Dorn, within fifteen (15) days of the filing of this Order and shall file with this Court within thirty (30) days of the filing of this Order a Proof of Delivery of same, and any objection to this Order made by Daniel Bernard Dorn and filed with this Court shall be heard de novo as to all issues in these proceedings.

14. That Petitioners Cohen shall file a copy of this Order with the Superior Court of California, County of Kern, Metropolitan Division within fifteen (15) days of the filing of this Order and shall file with this Court within thirty (30) days of the filing of this Order proof of such filing.

15. That proof of Petitioners Cohen discharge as Conservators for the estate and person of Abbie Ilene Dorn by the Superior Court of California, County of Kern, Metropolitan Division shall be immediately filed with the Horry County Probate Court upon Petitioner's receipt of same.

16. This Court's acceptance of jurisdiction of the Abbie Dorn Special Needs Trust shall not result in continuing supervisory proceedings by this Court. The management and distribution of the trust estate and other aspects of the administration of the trust shall proceed consistent with the terms of the Abbie Dorn Special Needs Trust, free of judicial intervention but subject to the jurisdiction of this court as invoked by interested persons or as provided by law or by the terms of such Trust.

IT IS SO ORDERED this the 24th day of April 2008.

Dundee W. Carter
HONORABLE DUNDEE CARTER
HORRY COUNTY ASSOCIATE PROBATE JUDGE

Conway, South Carolina

Exhibit "A"
Special Needs Trust

ABBIE DORN SPECIAL NEEDS TRUST

This trust is entered into with reference to the following facts:

RECITALS

A. This trust forms a part of the settlement arrived at between Abbie Dorn, an adult with a disability, by and through her Guardian Ad Litem, Daniel Dorn, et al., Plaintiffs, and Cedars-Sinai Medical Center, et al., Defendants, in Case No. BC356985, in the Superior Court of the State of California, County of Los Angeles.

B. The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Sections 3604 and 3605, and for certain payments by or on behalf of the Defendants to the trust. The amount of money that will initially be deposited into the trust is \$910,275.20, plus periodic payments in the initial amount of \$31,000 per month for the lifetime of the Beneficiary. The trust is for the primary benefit of the Plaintiff, Abbie Dorn, hereinafter sometimes referred to as the "Beneficiary." The Court in the above-described action has made the following determinations: Abbie Dorn, an adult with a disability, has a disability in the nature of severe and permanent brain injury that substantially impairs her ability to provide for her own care or custody and constitutes a substantial handicap; her condition appears to be permanent and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this trust; and the monies to be paid to this trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary.

CERTIFIED TO BE A TRUE COPY
OF THE RECORDS OF THIS OFFICE.

C. The intent and purpose of this trust is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America. The funds of the trust may be used as an emergency or backup fund secondary to public resources. Special Needs include without limitation special equipment, programs of training, education and habilitation, travel needs, and recreation, which are related to and made reasonably necessary by this Beneficiary's disabilities. This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein.

D. The settlement and the payments to this trust are all subject to the approval and order of the above-entitled Court. The settlement and all payments thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Abbie Dorn Special Needs Trust is established, Paul Cohen, M.D. and Susan Cohen are appointed as Trustee thereof, and are authorized by the Court in the above-described action to execute this trust.

ARTICLE I

TRUSTEE

1. Paul Cohen, M.D. and Susan Cohen are appointed to act jointly as the initial Trustee of the trust. Any Trustee shall have the right to resign at any time. Should either of them cease to act as trustee for any reason, the other shall continue to act as sole trustee. Any successor Trustee shall be appointed by the Court with jurisdiction over the trust, and shall be bonded to the extent required by Probate Code § 2320 or such analogous law of the State in which the Court with jurisdiction over the trust is located.

The term "Trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. Any successor Trustee shall have and succeed to all the rights, titles, interests, powers, duties, and discretions given to the initial Trustee hereunder.

2. The Trustee may hire a case worker or other persons with expertise relating to the special needs of the Beneficiary, at the expense of the Trust, to advise it regarding the special needs of the Beneficiary.

3. The Trustee shall receive just and reasonable compensation, to be paid from the Trust, for its services in an amount to be fixed and allowed by the Court on the occasion of the Trustee's court accountings or such other times as that issue may be brought before the Court with jurisdiction over the Trust. The Trustee shall also receive reimbursement for reasonable expenses incurred. Such compensation shall be chargeable to and paid from the Trust.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL

1. All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.

2. The income shall be added to and become principal, forming a common fund. The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during her lifetime, such sums and at such times as the Trustee, in its discretion, determines appropriate and reasonably necessary for the Beneficiary's Special Needs. In making distributions to the Beneficiary for her Special Needs, the Trustee shall take into consideration the applicable resource and income limitations of the public assistance programs for which the Beneficiary is eligible, and the duties of any persons legally obligated to support the Beneficiary.

3. This trust shall terminate upon the death of Beneficiary. Upon termination, whether by death or otherwise, the trustee may pay expenses of last illness, burial expenses and expenses related to administration and distribution of the trust assets, and thereafter the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act, up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under such state plan. After such payment or payments have been made, the remaining trust estate shall be distributed to the person or persons, excluding the Beneficiary, creditors of the Beneficiary, the estate of the Beneficiary, or creditors of the estate of the Beneficiary, in such manner and proportions as shall

be designated by the Beneficiary by written instrument delivered to the Trustee or by specific reference to this power by the Beneficiary's last Will. Any prospective appointment may be revoked by a subsequent written instrument delivered to the Trustee or by specific reference to the revocation by the Beneficiary's last Will. If the exercise of any of said powers of appointment is inconsistent with any other exercise of said powers, the provisions of the instrument bearing the later date shall prevail. To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn, or in default of such issue, to her heirs at law. The Trustee may withhold distributions pending receipt of a release from the South Carolina Department of Health and Human Services (or its successor). The amount to be repaid under this paragraph to the State for medical assistance shall be determined by agreement between the South Carolina Department of Health and Human Services or its successor, and the Trustee. In the event that an agreement has not been reached between the South Carolina Department of Health and Human Services and the Trustee within one year of the death of the Beneficiary, the Trustee shall pay to the appropriate Clerk of Court an amount equal to the claim of the State of reimbursement for medical care provided to the Beneficiary, and shall pay the balance of the trust estate to the then living issue, per stirpes, of Abbie Dorn or, in default of such issue, to her heirs at law. The appropriate court shall determine the validity of the claim of the State and shall direct payment to the State of this amount, with the balance distributed to the then living issue, per stirpes, of the Beneficiary, or in default of such issue, to her heirs at law.

4. This trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary's death or the trust termination be given in the manner provided in California Probate Code Section 1215 to, among others, the California State Department of Health Services, the California State Department of Mental Health and the California State Department of Developmental Services, addressed to the director of those departments at the Sacramento office of such director. However, this requirement can be waived by order of a court of competent jurisdiction if such court determines that the Beneficiary received no benefits from any such agency subsequent to the creation of this Trust.

5. If the Trustee determines that it is in the best interest of the Beneficiary to make a disbursement which will cause a reduction or elimination of the Beneficiary's right to receive public benefits, the Trustee shall not be liable for having caused the loss of such benefits. For purposes of determining the Beneficiary's Medicaid eligibility, or Supplemental Security Income (hereinafter referred to as "S.S.I.") eligibility, or eligibility for other governmental assistance programs, no part of the principal or income of the trust estate shall be considered available to said Beneficiary. In the event the Trustee is requested by any county, state, federal, or other governmental agency, to release principal or income of the trust to or on behalf of the Beneficiary to pay for equipment, medication, or services which Medicaid or S.S.I. or some other governmental program is authorized to provide, or in the event the Trustee is requested to petition a court or administrative agency for the release of trust principal or income for any of these purposes, the Trustee is authorized to deny such request and is authorized, in its discretion,

to take whatever administrative or judicial steps may be necessary to continue the Medicaid or S.S.I. or other governmental program eligibility of the Beneficiary, including obtaining instructions from a court of competent jurisdiction ruling that the principal and income of this trust is not available to the Beneficiary for Medicaid or S.S.I. or other governmental program eligibility purposes. Any expenses of the Trustee in this regard, including attorneys' fees, shall be a proper charge to the trust estate.

6. The Beneficiary has no interest in the income or principal of the trust, other than as set forth herein. No interest in the principal or income of this trust shall be anticipated, assigned, or encumbered by any beneficiary, nor shall any such interest be subject to any creditor's claim or to legal process. Furthermore, because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provisions of care and services, including residential care, by any public entity, office, department, or agency of any state, or of the United States of America (except as otherwise provided in this instrument).

7. The Trustee shall pay any inheritance, estate, or other death taxes, if any, including interest and penalties, that may be payable by reason of the death of any beneficiary of this trust and be attributable to assets included in the trust estate. The Trustee shall make no payments for expenses incurred prior to the Beneficiary's death if the Trustee shall determine, in its discretion, that payment therefor is the obligation of any county, state, federal, or other governmental agency (except as otherwise provided in this instrument).

ARTICLE III
TRUST IRREVOCABLE

This trust shall be irrevocable and not subject to amendment; provided, however, that this trust may be amended upon application of any interested party (including but not limited to the Trustee) with the approval of a Court of competent jurisdiction; provided, further, however, that any such amendment shall be consistent with, and in furtherance of, the purpose and intent of this trust as set forth herein and under applicable laws, and no amendment shall change the duties and obligations of the Trustee without its prior written consent. Provided further that such amendment or reformation shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor.

ARTICLE IV
POWERS OF THE TRUSTEE

To carry out the purposes of this trust and subject to any limitations stated elsewhere in this instrument, the Trustee is vested with the following powers:

1. The Trustee shall make investment decisions consistent with those permitted under California Probate Code section 2574; provided, however, that such investment decisions shall be further governed by the authority granted to trustees pursuant to the South Carolina Trust Code and South Carolina Probate Code.
2. The Trustee may hold securities or other property in the Trustee's own name as trustee, in the Trustee's own name, in the name of a nominee or in bearer form.
3. The Trustee may sell or exercise stock subscription or conversion rights.

4. The Trustee shall refrain from voting or to vote shares of stock owned by the trust estate at shareholders' meetings in person or by special, limited, or general proxy, and in general exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the trust estate; and to make and terminate S corporation elections for both federal and state tax law purposes.

5. The Trustee may participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the trust estate; and to deposit the stock or other securities under any plan of reorganization with any protective committee and to delegate to the committee discretionary power with relation thereto, to pay a proportionate part of the expenses of the committee and any assessments levied under any plan, to accept and retain new securities received by the Trustee pursuant to any plan, to exercise all conversion, subscription, voting and other rights, of whatever nature pertaining to the property, and to pay any amount or amounts of money as the Trustee may reasonably deem advisable in connection therewith.

6. The Trustee may enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term.

7. The Trustee may make ordinary or extraordinary repairs or alterations in buildings or other structures to demolish any improvements, to raze existing or erect new party walls or buildings which may be trust property.

8. The Trustee may collect, receive, and receipt for rents, issues, profits, and income of the trust estate.

9. The Trustee may insure the assets of the trust estate against damage or loss and to insure the health and property of the Beneficiary.

10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, Realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate. However, the compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

11. The Trustee may permit the Beneficiary and any care giver or family members living with Beneficiary to occupy rent free any residence constituting a part of the assets of the Trust and the Trustee may, in his and/or her discretion, pay any proportion of real property taxes on any residence in which Beneficiary resides (whether owned by the Trust or by Beneficiary or by the person having care and custody of Beneficiary), in addition to paying the expenses of maintaining the residence where Beneficiary resides and hazard premiums on said residence. In addition, the Trustee may pay the costs of modifying the place where Beneficiary resides without acquiring an equity interest in the residence.

12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility, any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including but not limited to claims by Beneficiary arising out of property

damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary. The compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

13. To exercise all powers in the management of the trust estate, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee reasonably deems necessary or proper to carry out the purposes of this Trust and to achieve the proper investment, management, and distribution of the Trust property.

14. Notwithstanding the applicable South Carolina Uniform Principal and Income Act, the Trustee shall have the power to adjust between income and principal to the extent the Trustee considers, in its sole discretion, necessary.

15. All rights, powers, privileges, immunities and authorities granted to the Trustee shall be exercised in such reasonable manner as may be fair and equitable under the circumstances.

16. To change the place of administration of this trust upon prior order of a court of competent jurisdiction.

17. In the administration and management of the trust, including without limitation the investment and reinvestment of the trust estate, the Trustee shall consider solely the interest of the Beneficiary, Abbie Dorn.

ARTICLE V

GENERAL PROVISIONS

1. This trust is subject to the continuing jurisdiction of the Horry County Probate Court, in Horry County, South Carolina. Court accountings shall be filed at the end of the first year of administration and biennially thereafter, unless the court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties, in the form required by California Probate Code § 1060 et seq., or such analogous law of the State in which the Court with jurisdiction over the trust is located.

2. Until the Trustee shall receive written notice of any birth, marriage, death or other event upon which the right to payments from this trust may depend, the Trustee shall incur no liability to persons whose interests may have been affected by that event for disbursements made in good faith.

3. The Trustee may apply payments under this trust for the benefit of any beneficiary, or may make payments under this trust to the guardian or conservator of the person or estate of any beneficiary who is under disability, or to the parent of any beneficiary who is a minor.

4. The Trust shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina. Provided, however, in the event that jurisdiction over the Trust is moved because the Beneficiary is then living in another State, then that Trust shall be construed, regulated and governed by and in accordance with the laws of that State.

5. If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

6. As used in this instrument, the masculine, feminine, or neuter gender and the singular or plural number shall be each deemed to include the others when the context so indicates.

7. All references in this instrument to specific statutes, codes, or regulations shall include any successor statutes, codes, or regulations of similar import.

Executed at Bakersfield, California, this 2nd day of Nov. mts. 2007
pursuant to that certain Order Approving Compromise of Disputed Claim of Adult with a
Disability dated _____ in Case No. BC356985, Superior Court of the State of
California, for the County of Los Angeles.

Paul Cohen
Paul Cohen, M.D., Trustee

Susan Cohen
Susan Cohen, Trustee

CALIFORNIA ALL PURPOSE ACKNOWLEDGMENT

State of California

County of Kern

SS.

On November 2, 2007, before me, Sheik R. Blackburn Notary Public

personally appeared Paul Cohen and Susan Cohen

☒ personally known to me
☐ 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Sheik R. Blackburn
 Signature of Notary Public

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.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
 OF SIGNER
 Top of thumb here

Exhibit "C"
GC-350

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
☐ After recording return to: Louis E. Michelson, Esq. SBN 137487
15233 Ventura Blvd., PH-1
Sherman Oaks, CA 91403
TELEPHONE NO.: (818) 784-1700
FAX NO. (Optional): (818) 235-0144
E-MAIL ADDRESS (Optional): LEMTAX@earthlink.net
ATTORNEY FOR (Name): Dr. Paul S. Cohen and Mrs. Susan Cohen

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern
STREET ADDRESS: 1415 Truxtun Avenue
MAILING ADDRESS: 1415 Truxtun Avenue
CITY AND ZIP CODE: Bakersfield 93301
BRANCH NAME: Metropolitan

CONSERVATORSHIP OF (Name):

ABBIE ILENE DORN

CONSERVATEE

FOR RECORDER'S USE ONLY

CASE NUMBER:

S-1500-PB-57283

FOR COURT USE ONLY

FILED
SUPERIOR COURT, METROPOLITAN DIVISION
COUNTY OF KERN

NOV 15 2007

TERRY MONAGHAN, CLERK
BY [Signature] DEPUTY

LETTERS OF CONSERVATORSHIP

☒ Person ☒ Estate ☐ Limited Conservatorship

1. ☒ (Name) Dr. Paul S. Cohen and Mrs. Susan Cohen is the appointed ☒ conservator ☐ limited conservator of the ☒ person ☒ estate of (name) ABBIE ILENE DORN
2. ☐ (For conservatorship that was on December 31, 1980, a guardianship of an adult or of the person of a married minor) (Name):
was appointed the guardian of the ☐ person ☐ estate by order dated (specify):
and is now the conservator of the ☐ person ☐ estate of (name):

3. ☒ Other powers have been granted or conditions imposed as follows:

- a. ☒ Exclusive authority to give consent for and to require the conservatee to receive medical treatment that the conservator in good faith based on medical advice determines to be necessary even if the conservatee objects, subject to the limitations stated in Probate Code section 2356.
(1) ☐ This treatment shall be performed by an accredited practitioner of the religion whose tenets and practices call for reliance on prayer alone for healing of which the conservatee was an adherent prior to the establishment of the conservatorship.
(2) ☐ (If court order limits duration) This medical authority terminates on (date):
- b. ☐ Authority to place conservatee in a care or nursing facility described in Probate Code section 2356.5(b).
- c. ☐ Authority to authorize the administration of medications appropriate for the care and treatment of dementia described in Probate Code section 2356.5(c).
- d. ☒ Powers to be exercised independently under Probate Code section 2590 as specified in Attachment 3d (specify powers, restrictions, conditions, and limitations).
- e. ☐ Conditions relating to the care and custody of the property under Probate Code section 2402 as specified in Attachment 3e.
- f. ☐ Conditions relating to the care, treatment, education, and welfare of the conservatee under Probate Code section 2358 as specified in Attachment 3f.
- g. ☐ (For limited conservatorship only) Powers of the limited conservator of the person under Probate Code section 2351.5 as specified in Attachment 3g.
- h. ☐ (For limited conservatorship only) Powers of the limited conservator of the estate under Probate Code section 1830(b) as specified in Attachment 3h.
- ☒ Other (specify): See Attachment 3i

4. ☐ The conservator is not authorized to take possession of money or any other property without a specific court order.

5. Number of pages attached: 3

WITNESS, clerk of the court, with seal of the court affixed.

Date: NOV 15 2007

Clerk, by

Deputy

Page 1 of 2



This form may be recorded as notice of the establishment of a conservatorship of the estate as provided in Probate Code section 1876.
Form Adopted for Mandatory Use
Judicial Council of California
GC-350 (Rev. January 1, 2003)

LETTERS OF CONSERVATORSHIP

Probate Code, § 1834

Lexipress® Automated California Judicial Council Forms

CONSERVATORSHIP OF (Name): ABBIE ILENE DORN	CONSERVATEE	CASE NUMBER: S-1500-PB-57283

LETTERS OF CONSERVATORSHIP

AFFIRMATION

I solemnly affirm that I will perform according to law the duties of ☒ conservator ☐ limited conservator.

Executed on (date): **November 1, 1007** , at (place): **Bakersfield, California**

Dr. Paul Steven Jackson Echar
(SIGNATURE OF APPOINTEE)

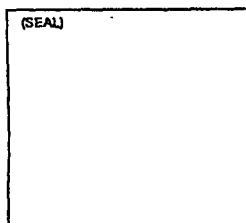
PROBATE COURT
HERRY COUNTY, SO
2011 MAR -3 PM 3:15
DEIRDRE W. EDMONDS
PROBATE JUDGE

CERTIFICATION

I certify that this document and any attachments is a correct copy of the original on file in my office, and that the letters issued to the person appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

Date:

Clerk, by _____, Deputy



GC-350 (Rev. January 1, 2003)

LETTERS OF CONSERVATORSHIP

Page 2 of 2

LexisNexis® Automated California Judicial Council Forms

LETTERS OF CONSERVATORSHIP
(FORM GC-350)

ATTACHMENTS

CONSERVATORSHIP OF ABBIE ILENE DORN
CASE NUMBER S-1500-PB-57283

INDEX OF ATTACHMENTS

<u>Tab</u>	<u>Description of Attachments/Exhibits</u>	<u>Pages</u>
Attachment 3d	Powers to be exercised independently under Probate Code Section 2590	2
Attachment 3i	Powers and duties of conservators under Probate Code Section 2352(c)	3

PROBATE COURT
Horry County, SC
2011 MAR -3 PM 3:15
DEIRDRE W. EDMONDS
PROBATE JUDGE

LETTERS OF CONSERVATORSHIP
(FORM GC-350)

CONSERVATORSHIP OF ABBIE ILENE DORN
CASE NUMBER S-1500-PB-57283

ATTACHMENTS

Attachment 3d Powers to be exercised independently under Probate Code Section 2590

The Conservators are granted the independent power under Probate Code section 2591(a) to settle the pending personal injury claim brought on behalf of the proposed conservatee and to compromise or settle any dissolution action between the proposed conservatee and her husband, Daniel Bernard Dorn.

The Conservators are granted the independent power under Probate Code section 2591(q) to employ attorneys to file an action for dissolution of the marriage between the proposed conservatee and her husband Daniel Bernard Dorn and to pay the attorneys fees thereby incurred.

PROBATE COURT
HORRY COUNTY, SC
2011 MAR -3 PM 3:15
DEIRDRE W. EDMONDS
PROBATE JUDGE

LETTERS OF CONSERVATORSHIP
(FORM GC-350)

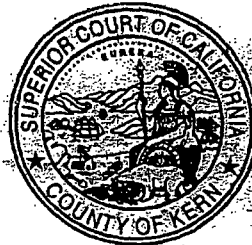
CONSERVATORSHIP OF ABBIE ILENE DORN
CASE NUMBER S-1500-PB-57283

ATTACHMENTS

Attachment 3i Powers and duties of Conservators under Probate Code Section 2352(c)

The Conservators may establish the residence of Abbie Ilene Dorn at a place not within California, which place initially shall be the conservators' home, 1060 Waterway Lane, Myrtle Beach, South Carolina 29572.

PROBATE COURT
Horry County, SC
2011 MAR -3 PM 3:15
DEIRDRE W. EDMONDS
PROBATE JUDGE



SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF KERN, METROPOLITAN DIVISION
THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND
CORRECT COPY OF THE ORIGINAL DOCUMENT ON
FILE IN THE OFFICE OF THE CLERK OF THIS COURT.

DATED: NOV 16 2007

TERRY McNALLY
BY: D. Carleton DEPUTY

Exhibit "D"
Legal Fees Paid by Abbie Dorn Special Needs Trust

Date	Legal Services Provider	
01/10/08	M. Robin Morris, Esquire	\$662.00
02/12/08	Louis Michelson, Esquire	\$1,386.28
04/04/08	M. Robin Morris, Esquire	\$973.90
04/07/08	Louis Michelson, Esquire	\$1,362.37
05/28/08	Louis Michelson, Esquire	\$722.42
06/25/08	V. Lee Moore, Esquire	\$1,469.03
07/11/08	Marina Korol, Esquire	\$215.09
08/26/08	Louis Michelson, Esquire	\$756.12
08/26/08	Marina Korol, Esquire	\$778.20
10/22/08	Marina Korol, Esquire	\$827.80
02/02/09	Marina Korol, Esquire	\$1,035.00
06/05/09	M. Robin Morris, Esquire	\$1,072.11
06/15/09	Louis Michelson, Esquire	\$315.00
06/19/09	Gary Zimmerman, Esquire	\$600.00
07/30/09	Davis Law Firm, P.A.	\$5,000.00
10/15/09	Marina Korol, Esquire	\$1,207.60
11/18/09	Marina Korol, Esquire	\$645.00
02/06/10	Meyer, Olson, Lowy & Meyers, LLP	\$25,000.00
02/09/10	Gary Zimmerman, Esquire	\$1,200.00
02/19/10	Marina Korol, Esquire	\$490.00
03/15/10	Meyer, Olson, Lowy & Meyers, LLP	\$14,553.56
04/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$114,010.61
05/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$117,664.48
06/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$52,328.12
07/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$33,175.28
08/23/10	Meyer, Olson, Lowy & Meyers, LLP	\$56,464.98
09/28/10	Meyer, Olson, Lowy & Meyers, LLP	\$61,011.25
11/01/10	Meyer, Olson, Lowy & Meyers, LLP	\$25,789.51
11/29/10	Meyer, Olson, Lowy & Meyers, LLP	\$47,338.02
12/01/10	Davis Law Firm, P.A.	\$25,000.00
12/01/10	Boyd Law Firm, LLC	\$5,000.00
12/06/10	Meyer, Olson, Lowy & Meyers, LLP	\$50,539.87
12/31/10	Meyer, Olson, Lowy & Meyers, LLP	\$19,460.13
TOTAL		\$668,454.28

PROBATE COURT
 HARRY COLEMAN, JR.
 2011 MAR -3 PM 3:15
 DEIRDRE W. EDMONDS
 PROBATE JUDGE

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)

Respondents.)

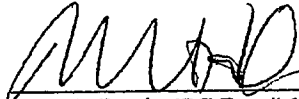
IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

AMENDED SUMMONS

PROBATE COURT
HORRY COUNTY, SC
2011 MAR -3 PM 3:44
DEIRORE W. EDMONDS
PROBATE JUDGE

TO: ABBIE ILENE DORN AND HER GUARDIANS AND CONSERVATORS AND THE
TRUSTEES OF THE ABBIE DORN SPECIAL NEEDS TRUST, PAUL S. COHEN, MD
AND SUSAN COHEN;
JEFFREY COHEN, BROTHER OF ABBIE ILENE DORN;
AMY MAYER, SISTER OF ABBIE ILENE DORN;
SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND
DANIEL BERNARD DORN, FATHER OF THE PROTECTED PERSON'S CHILDREN

YOU ARE HEREBY SUMMONED and required to answer the Petition To Affirm Payment
of Fees From Special Needs Trust and to Reform Terms of Trust in the above entitled action, a copy
of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at
its office, 1110 London Street, Suite 201 Myrtle Beach, South Carolina 29577, within thirty (30)
days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the
Petition within the time aforesaid, the Petitioner in this action will apply to the Court for Judgment
by default to be rendered against you for the relief demanded in the Petition.



Bret H. Davis (SC Bar # 11699)
DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
(843) 839-9800 (facsimile)
bdavis@davislawfirm.us

and

Reese R. Boyd, III (SC Bar # 7151)
BOYD LAW FIRM, LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(843) 238-2112 (facsimile)
reese@boydlawllc.com

Attorneys for the Petitioner

Myrtle Beach, South Carolina
March 2, 2011

A HEARING IN THIS MATTER IS SCHEDULED FOR April 14, 2011, AT 8:30 am
IN THE HORRY COUNTY PROBATE COURT, HORRY COUNTY COURTHOUSE, 1301 2ND
AVENUE, CONWAY, SOUTH CAROLINA.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PAUL S. COHEN, MD AND
SUSAN COHEN,

Petitioners,

ESTI DORN, REUVI DORN, AND
YOSSE DORN, THE LIVING
ISSUE OF ABBIE ILENE DORN,
AND THE SOUTH CAROLINA
DEPARTMENT OF HEALTH
AND HUMAN SERVICES,

Respondents,

IN RE: THE ABBIE DORN
SPECIAL NEEDS TRUST

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2008-GC-26-0050

CERTIFICATE OF SERVICE

I, Wyn Bessent Gotto, being duly sworn, deposes as follows:

1. That she is employed with Davis Law Firm, P.A., Bret H. Davis, Esquire, being the attorney for the Petitioners in the above-captioned matter; and
2. That on the 19 day of March, a copy of Petitioners' Amended Summons and Petition to Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust, dated March 2, 2011, was placed in an envelope and served by U.S. First Class Mail upon the following:

John Kachmarsky, Esquire
171 Church St Suite 330
Charleston, SC 29401
Attorney and Guardian ad Litem
for the contingent remainder
beneficiaries, Esti Dorn, Reuvi Dorn,
and Yosse Dorn

Lynette Rogers Hedgepath, Esquire
207 Beaty St
Conway, SC 29526
Attorney for Protected Person, Abbie Illene Dorn

V. Lee Moore, Esquire
Moore, Johnson, & Saranti Law Firm, P.A.
PO Box 14737
Surfside Beach, SC 29587
Guardian ad Litem for
Protected Person, Abbie Illene Dorn

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, L.L.P.
44 State St
Charleston, SC 29401
Attorney for Daniel Bernard Dorn

The South Carolina Department of Health and Human Services
Office of General Counsel
George Burnett
PO Box 8206
Columbia, SC 29202

SWORN TO BEFORE ME THIS

10th day of March, 2011

Rachel Copeland
Notary Public for South Carolina

8-13-19
My Commission Expires

By: Wyn Bessent Gotto
Wyn Bessent Gotto, Esquire
Davis Law Firm, P.A.
PO Box 70517
Myrtle Beach, SC 29572
843-839-9800
843-839-9801 (fax)

BRET H. DAVIS, JD*, CPA
WYN BESSENT GOTTO
wgotto@davislawfirm.us
*Licensed in SC and NC

DAVIS LAW FIRM, P.A.
Attorneys & Counselors at Law

Physical Address:
1110 London Street, Suite 201
Myrtle Beach, SC 29577

Please Respond To:
Post Office Box 70517
Myrtle Beach, SC 29572

Telephone: (843) 839-9800
Facsimile: (843) 839-9801
www.davislawfirm.us

March 10, 2011

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, L.L.P.
44 State St
Charleston, SC 29401

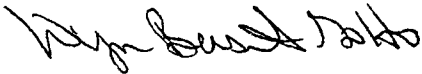
Re: Conservatorship, Guardianship, Special Needs Trust and Medicaid Matters for Abbie Ilene Dorn
Case No. 2008-ES-26-0050
Our File No: 0253.001

Dear Mr. Slotchiver:

Enclosed, please find a clocked copy of the Amended Summons and Petition to Affirm Payment of Fees from Special Needs Trust and to Reform Terms of Trust, which I hereby serve upon you as Attorney for Daniel Bernard Dorn. I have also enclosed a copy of the Certificate of Service.

Sincerely,

DAVIS LAW FIRM, P.A.



Wyn Bessent Gotto

Enclosures/stated

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)
)
)

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)
)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PETITION TO AFFIRM PAYMENT OF
FEES FROM SPECIAL NEEDS TRUST
AND TO REFORM TERMS OF TRUST

The Petitioners would allege and show unto this Honorable Court as follows:

1. While married to Daniel Bernard Dorn and residing in the State of California, and within eight (8) hours after the child birth of her three triplet children, Abbie Ilene Dorn (the "Protected Person") suffered substantial and irreversible injuries which rendered her permanently disabled.

2. Legal actions for negligence (the "Legal Actions") were brought and prosecuted against the hospital and the physicians associated with the Protected Person's injuries and a settlement was reached.

3. The Petitioners, who are also the parents of the Protected Person, were appointed as co-conservators of the person and estate of the Protected Person on November 7, 2007, by Order of the Superior Court of California, County of Kern, Metropolitan Division.

4. Pursuant to the provisions of 42 U.S.C. § 1396p(d)(4)(A), the Petitioners, as the Protected Person's parents and co-conservators, established the Abbie Dorn Special Needs Trust (the "Trust"). A copy of the Trust is attached hereto as Exhibit "A." The Petitioners were appointed as the initial trustees under the terms of the Trust.

PROBATE COURT
HORRY COUNTY, SC
2018 NOV 24 PM 2:51
DEBORAH W. EDMONDS
PROBATE JUDGE

5. After the establishment of the Trust, the Protected Person relocated to Horry County, South Carolina to reside with the Petitioners.

6. The conservatorship of the person and estate of the Protected Person was transferred to Horry County, South Carolina, as evidenced by the Order of Transfer of Jurisdiction of the Horry County Probate Court, dated April 24, 2008, and by the Order Terminating Conservatorship of the Person and Estate of the Superior Court of California, County of Kern, Metropolitan Division, dated July 14, 2008 and executed on July 31, 2008. The Order of Transfer of Jurisdiction established the Petitioners as co-conservators and co-guardians of the Protected Person.

7. The Trust grants broad powers to the trustees to manage the matters related to the Trust, including the employment and payment of attorneys and other professionals. However, paragraphs 10 and 12 of Article IV of the Trust create a logistical impracticability in that they require the trustee of the Trust to obtain prior court approval before the trustee makes payments for services rendered by its attorney.

8. Divorce proceedings between the Protected Person and Daniel Bernard Dorn were instituted in California. As part of such divorce proceedings Daniel Bernard Dorn has sought and continues to seek to invade the Trust for child support and to pay for his legal fees and other costs related to the divorce proceedings.

9. The Protected Person is currently qualified for and is receiving Medicaid benefits, and upon information and belief, the Protected Person would lose her eligibility to receive such benefits if the trustees of the Trust were forced to use Trust funds to pay child support and the legal fees and costs incurred by Daniel Bernard Dorn in the divorce proceedings.

10. The Petitioners were previously granted authority to employ attorneys on behalf of the Protected Person for matters related to the divorce action and to pay for such services from the funds of the Protected Person and/or the Trust, as evidenced by the Letters of Conservatorship issued by the Superior Court of California, County of Kern, Metropolitan Division, filed November 15, 2007. A copy of such Letters of Conservatorship are attached hereto as Exhibit "B."

11. While the incurrence and payment of fees on behalf of the Protected Person was previously authorized under the terms of the Letters of Conservatorship, it is prudent for this Court to affirm the payment of such fees and to approve the payment of any future fees. A schedule of fees paid or to be paid by the Petitioners for matters related to the Protected Person is attached hereto as Exhibit "C."

12. The terms of the Trust pertaining to the employment of and payment for attorneys and other professionals on behalf of the Protected Person (particularly paragraphs 10 and 12 of Article IV) are logistically impracticable and need to be reformed. The new language for such paragraphs should read as follows:

"10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate, without the need for prior court approval."

"12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility;

and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including, but not limited to, claims by Beneficiary arising out of property damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary, without the need for prior court approval.”

13. If the Court deems it necessary to appoint a guardian ad litem for the Protected Person, V. Lee Moore, Esquire is an attorney trained in these matters and is an appropriate person to serve in that capacity, and that any fees for such guardian services may be paid from the funds of the Protected Person and/or the Trust obtained for the benefit of the Incapacitated Person.

14. It is appropriate for the Petitioners to pay all legal fees and costs related to their representation in this matter from the funds of the Protected Person and/or the Trust.

WHEREFORE, the Petitioners pray that this Honorable Court inquire into the matters set forth herein and issue an order which:

- A. Affirms the previous payment of fees by the Petitioners from the funds of the Protected Person and/or the Trust.
- B. Reforms the Trust to replace the existing paragraphs 10 and 12 of Article IV with the language for such paragraphs proposed in this Petition.
- C. If necessary to appoint a guardian ad litem for the Protected Person, appoints V. Lee Moore, Esquire to serve in such capacity.
- D. Directs the Petitioners to pay all fees and costs related to the matters set forth herein from the funds of the Protected Person and/or the Trust.

- E. Directs that no child support or fees or costs incurred by Daniel Bernard Dorn be paid from the Trust estate.
- F. Provides for such other and further matters as this Honorable Court deems just and proper.

Respectfully Submitted:
DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800



Bret H. Davis
Attorney for the Petitioner

Myrtle Beach, South Carolina
November 24, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

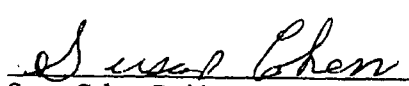
Petitioners,)

VERIFICATION

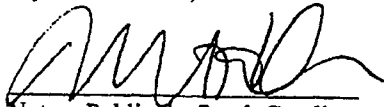
IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

PERSONALLY appeared before me, Paul S. Cohen, MD and Susan Cohen, who after being duly sworn, depose and says that they are the Petitioners in the foregoing Petition To Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust and that the facts are true of their own knowledge except those matters based upon information and belief, and as to those they believe them to be true.


Paul S. Cohen, MD, Petitioner

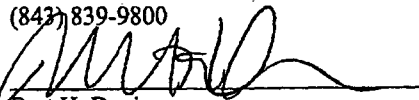

Susan Cohen, Petitioner

SWORN to before me this 24th
day of November, 2010.


Notary Public for South Carolina
My Commission Expires 11/11/2016

- E. Directs that no child support or fees or costs incurred by Daniel Bernard Dorn be paid from the Trust estate.
- F. Provides for such other and further matters as this Honorable Court deems just and proper.

Respectfully Submitted:
DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800



Bret H. Davis
Attorney for the Petitioner

Myrtle Beach, South Carolina
November 24, 2010

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

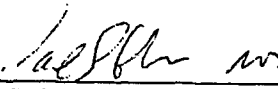
PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)

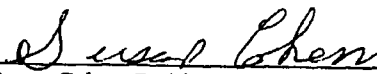
VERIFICATION

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

PERSONALLY appeared before me, Paul S. Cohen, MD and Susan Cohen, who after being duly sworn, depose and says that they are the Petitioners in the foregoing Petition To Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust and that the facts are true of their own knowledge except those matters based upon information and belief, and as to those they believe them to be true.

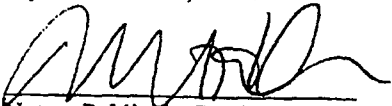


Paul S. Cohen, MD, Petitioner



Susan Cohen, Petitioner

SWORN to before me this 24th
day of November, 2010.



Notary Public for South Carolina
My Commission Expires 11/1/2016

COPY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Daniel B. Dorn, in his capacity as the
Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yosse Dorn,

Petitioner,

vs.

Paul S. Cohen and Susan Cohen,
individually and in their capacity as
the Co-Conservators of the person of
Abbie Ilene Dorn, a protected person
and ward, and in their capacity as Co-
Trustees of the Abbie Dorn Special
Needs Trust,

Respondents.

IN THE PROBATE COURT

Case No.: 2010-GC-26-25 ✓

Case No.: 2010-GC-26-50

ANSWER OF
RESPONDENTS PAUL S. COHEN
AND SUSAN COHEN

PROBATE COURT
HORRY COUNTY, SC
11 JAN -3 PM 3:35
DEIRDRE W. EDMONDS
PROBATE JUDGE

TO: Daniel S. Slotchiver and Stephen Slotchiver, Attorneys for Petitioner:

COME NOW the Respondents Paul S. Cohen and Susan Cohen, who for
their ANSWER to the Emergency Petition of Daniel B. Dorn, would hereby state
or allege and would show this Honorable Court as follows:

FOR A FIRST DEFENSE
(General Denial)

1. The Respondents deny each and every allegation contained in the
Emergency Petition that is not not specifically hereinafter admitted. For each
such allegation so denied, strict proof thereof is hereby demanded by the
Respondents.

FOR A SECOND DEFENSE
(Answer)

2. The Respondents re-allege and reiterate the allegations contained in the above paragraph, as if each were repeated here verbatim.

3. Respondents admit that they are currently serving as the Co-Trustees of the Abbie Dorn Special Needs Trust, and also as Co-Conservators of Abbie Ilene Dorn, as this Court has previously provided by Order of the Honorable Dundee Carter dated April 24, 2008.

4. With respect to the specific factual allegations contained in the Petitioner's Emergency Petition, the Respondents would respond as follows:

5. Paragraphs 1 and 2 of the Emergency Petition are admitted.

6. With respect to Paragraph 3 of the Emergency Petition, Respondents admit that the Abbie Dorn Special Needs Trust (the "Trust") was established to provide for the special care and needs of Abbie Ilene Dorn. Other statements or allegations contained in Paragraph 3 of the Emergency Petition state numerous conclusions of law which do not require a response. To the extent a response is required, the same are hereby denied, with strict proof thereof demanded.

7. Paragraphs 4, 5, and 6 of the Emergency Petition are admitted.

8. Paragraph 7 of the Emergency Petition is admitted insofar as Petitioner has included an "ellipsis" indicating that certain text from the original document has been omitted in the quote. While the Respondents acknowledge that the quote is technically accurate, Respondents would also note that

Paragraph 7 of the Emergency Petition does not accurately convey the full meaning of Article IV, Paragraph 12 of the Trust because of the referenced omission.

9. Paragraph 8 of the Emergency Petition is denied. In further answering Paragraph 8 of the Emergency Petition, Respondents would note that the Petitioner has failed to accurately quote the Trust document, and that Petitioner's "quote" is specifically erroneous in that Petitioner has replaced the word "biennially" in the Trust with the word "biannually" in the purported quote from the Trust document that Petitioner includes at Paragraph 8 of the Emergency Petition. The alteration is significant insofar as "biennially" means "once every two years," while "biannually" means "twice a year." Black's Law Dictionary 163, 161 (6th ed. 1990); see also attached Exhibit "A." The Petitioner's quote from the Trust, accurately stated, would read as follows:

"Court accountings shall be filed at the end of the first year of administration and biennially thereafter, unless the court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties"

Trust at Article V, Paragraph 1 (emphasis added).

10. In response to Paragraph 9 of the Emergency Petition, the Respondents would state that they have filed with the Probate Court every document which they were aware of or which they have known has needed to be filed, that they have been in regular and continuing communication with the Probate Court since the Trust was domiciled in Horry County in an effort to ensure their compliance with all requirements of the trust and any rules of trust

administration in South Carolina or Horry County which might apply, and that they have not knowingly or intentionally failed to file *any accounting or any other document of any type with the Probate Court*. Any allegation or inference to the contrary contained in Paragraph 9 of the Emergency Petition is hereby expressly denied, with strict proof thereof demanded by the Respondents. Further responding to Paragraph 9 of the Emergency Petition, Respondents note that they are in the process of preparing an updated accounting with respect to the Trust, and will be filing the same with the Probate Court in the near future.

11. Upon information and belief, Paragraph 10 of the Emergency Petition is admitted.

12. Respondents object to Paragraphs 11, 12, 13, and any other paragraphs or provisions of the Emergency Petition that attempt or would otherwise purport to introduce into the record of this case deposition transcripts which have been selectively edited and redacted, which are without foundation, which have not been properly authenticated, and/or which are offered without the opportunity for the witness(es) in question to be examined or questioned with respect to same, as would be required to properly lay an evidentiary foundation for the proper admission into the record of such document(s).

13. Further responding to Paragraph 11 of the Emergency Petition, Respondents would note that significant sums of money have been disbursed from the Trust to pay legal fees, but that the extent of such fees has largely and substantially been the result of the actions of Petitioner, Daniel B. Dorn.

Respondents would further note that any such expenditure of legal fees by the Trust has been necessary and prudent in their judgment to protect the interests of Abbie Ilene Dorn, and that such expenditures are not and have not in any way been improper. Any inference or allegation to the contrary contained in the Emergency Petition is hereby expressly denied, with strict proof thereof demanded.

14. Without waiving and specifically reserving prior objections to Paragraphs 12 and 13 of the Emergency Petition, such Paragraphs are, upon information and belief, admitted.

15. Paragraph 14 of the Emergency Petition does not require a response from the Respondents; however, Respondents would note with respect to Paragraph 14 of the Emergency Petition that they do not object to sharing past and future accountings of the Trust with the Petitioner, insofar as and to the extent that this Court may rule the Petitioner to be an "interested person" in the Trust.

16. Paragraph 15 of the Emergency Petition states conclusions of law which do not require a response. To the extent that a response is required, these Respondents would deny the same with strict proof thereof demanded.

FOR A THIRD DEFENSE
(Good Faith Exercise of Trustees' and Conservators' Authority)

17. The Respondents re-allege and reiterate the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

18. In further responding to the allegations contained in the Emergency Petition, Respondents would further state that at all times relevant to their service as Co-Trustees of the Trust and Co-Conservators of Abbie Ilene Dorn, they have acted in way and manner consistent with all relevant trust documents, any and all applicable court orders, and in manner absolutely consistent with their fiduciary obligations as Co-Trustees and Co-Conservators. Any allegation or inference to the contrary contained in the Emergency Petition is hereby expressly denied by these Respondents, with strict proof thereof demanded.

FOR A FOURTH DEFENSE
(Estoppel and Unclean Hands)

19. The Respondents re-allege and reiterate the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

20. Respondents assert the defenses of estoppel and unclean hands as a complete and absolute bar to any and all relief sought by Petitioner in his Emergency Petition.

FOR A FIFTH DEFENSE
(Judicial Estoppel)

21. The Respondents re-allege and reiterate the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

22. By his Emergency Petition, the Petitioner now complains of the Respondents in manner factually and legally inconsistent with the position(s) he has taken in a California civil action currently pending in Los Angeles County,

California, which was brought by the Respondents herein at the request of Petitioner, seeking the dissolution of Petitioner's marriage to Abbie Ilene Dorn (the "California Action"). With the Emergency Petition, Daniel Dorn in the instant cases now complains of actions on the part of the Respondents that are the direct result(s) of action(s) or position(s) that Dorn (Petitioner herein) has taken in the California Action.

23. Respondents assert the defense of judicial estoppel as a complete and absolute bar to any and all relief sought by Petitioner in his Emergency Petition. Petitioner is precluded at law from adopting a position contrary or inconsistent with position(s) taken previously in the same or related litigation.

**FOR A SIXTH DEFENSE
(Reservation and Non-Waiver)**

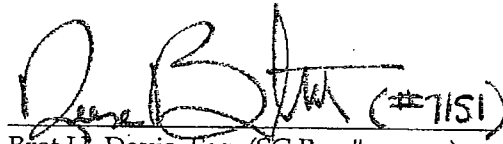
24. The Respondents re-allege and reiterate the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

25. The Respondents hereby give notice of their intent to assert any further affirmative defenses that the discovery process or their further research and investigations in the instant case may indicate are appropriate, available to them, and/or supported by the facts and/or the law of the case.

WHEREFORE, having fully answered the Petitioner's Emergency Petition, Respondents would respectfully request of this Court the following:

- a) That Petitioner neither have, recover, nor be awarded any of the injunctive or other relief requested in the Emergency Petition;
- b) That this Court enter judgment in favor of these Respondents as to all claims that Petitioner has alleged against them in this case;
- c) That the Court grant to these Respondents their costs and attorneys' fees associated with this action; and
- d) That the Court aware to the Respondents such other and further relief as this Court may deem just and proper under the circumstance of this case.

Respectfully submitted,



Bret H. Davis, Esq. (SC Bar #: _____)

Davis Law Firm, P.A.

Post Office Box 70517

1110 London St., Suite 201

Myrtle Beach, SC 29577

(843) 839-9800

(843) 839-9901 (fax)

bdavis@davislawfirm.com

- and -

Reese R. Boyd, III, Esq. (SC Bar #: 7151)

Boyd Law Firm LLC

Post Office Box 15358

Myrtle Beach, SC 29587

(843) 238-1978

(843) 238-2112 (fax)

reese@boydlawllc.com

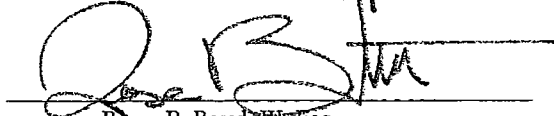
Attorneys for the Respondents Paul S.
Cohen and Susan Cohen

Dated: January 3, 2011
Myrtle Beach, South Carolina

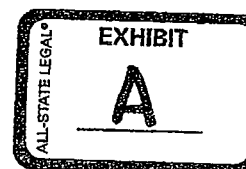
CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 3rd day of January, 2011.

A handwritten signature in black ink, appearing to read "Reese R. Boyd, III", is written over a horizontal line.

Reese R. Boyd, III, Esq.
Boyd Law Firm LLC



Dictionary

bi•en•ni•al |bī'enēəl|

adjective

1 taking place every other year : *summit meetings are normally biennial.*

2 (esp. of a plant) living or lasting for two years.

noun

1 a plant that takes two years to grow from seed to fruition and die. Compare with ANNUAL , PERENNIAL .

2 an event celebrated or taking place every two years.

DERIVATIVES

bi•en•ni•al•ly adverb

ORIGIN early 17th cent.: from Latin *biennis* (from *bi-* 'twice' + *annus* 'year') + -AL .

USAGE **Biennial** means 'lasting or occurring every two years': *congressional elections are a biennial phenomenon.* A | *biennial plant* is one that lives a two-year cycle, flowering and producing seed in the second year. **Biannual** means 'twice a year': | *the solstice is a biannual event.*

PROBATE COURT
HARRY COOPER
11 JAN -3 PM 3:36
DEBORAH W. EDMONDS
PROBATE JUDGE

Dictionary

bi•an•nu•al |bī'anyoōəl|

adjective

occurring twice a year : *the biannual meeting of the planning committee.*

DERIVATIVES

bi•an•nu•al•ly adverb

USAGE See **usage** at BIENNIAL .

PROBATE COURT
HON. JUDGE
11 JAN - 3 PM 3:36
DEBORAH E. JUDGE
PROBATE JUDGE

BOYD LAW FIRM, LLC

Telephone: (843) 238-1978
Facsimile: (843) 238-2112

1500 Highway 17 North
The Courtyard, Suite 212
Myrtle Beach, South Carolina 29575

January 3, 2011

 **COPY**
Mailing Address:
Post Office Box 15358
Myrtle Beach, South Carolina 29587

via Hand Delivery

Ms. Myrtle H. "Pete" Cagle
Conservatorship Clerk
Horry County Probate Court
1301 Second Avenue
Conway, SC 29526

Re: Trust and Conservatorship Matters in Re: Abbie Ilene Dorn
Case Numbers: 2008-GC-26-0025 and 2008-GC-26-0050
Our File No.: 010.033

Dear Ms. Cagle:

Enclosed please find the following documents for filing with the Probate Court. Please note that these are identical documents, with one original to be filed in case number 2008-GC-26-25 and one original to be filed in case number 2008-GC-26-50:

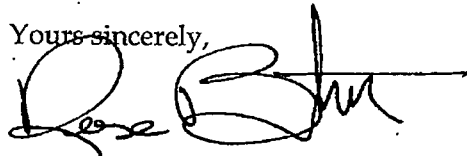
- Two (2) originals and two (2) copies of the Respondents' Answer to Emergency Petition, with included Certificate of Service with respect to same.

Please file the enclosed originals and return the clocked-copies to me in the enclosed, self-addressed envelope. By carbon copy of this correspondence, I am herewith serving all counsel of record with copies of the enclosed.

Should you have any questions concerning the enclosed, or the matter generally, please do not hesitate to contact Bret Davis or me.

With kindest regards, I am

Yours sincerely,



Reese R. Boyd, III

RRB/lcb
Enclosures

cc: Bret Davis, Esq.
~~Daniel C. Slotchiver, Esq.~~
Dr. and Mrs. Paul Cohen

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)

Respondents.)

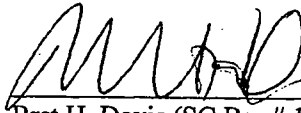
IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

AMENDED SUMMONS

PROBATE COURT
HORRY COUNTY, SC
2011 MAR -3 PM 3:11
DEIRDRE W. EDMONDS
PROBATE JUDGE

TO: ABBIE ILENE DORN AND HER GUARDIANS AND CONSERVATORS AND THE
TRUSTEES OF THE ABBIE DORN SPECIAL NEEDS TRUST, PAUL S. COHEN, MD
AND SUSAN COHEN;
JEFFREY COHEN, BROTHER OF ABBIE ILENE DORN;
AMY MAYER, SISTER OF ABBIE ILENE DORN;
SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND
DANIEL BERNARD DORN, FATHER OF THE PROTECTED PERSON'S CHILDREN

YOU ARE HEREBY SUMMONED and required to answer the Petition To Affirm Payment
of Fees From Special Needs Trust and to Reform Terms of Trust in the above entitled action, a copy
of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at
its office, 1110 London Street, Suite 201 Myrtle Beach, South Carolina 29577, within thirty (30)
days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the
Petition within the time aforesaid, the Petitioner in this action will apply to the Court for Judgment
by default to be rendered against you for the relief demanded in the Petition.



Bret H. Davis (SC Bar # 11699)
DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
(843) 839-9800 (facsimile)
bdavis@davislawfirm.us

and

Reese R. Boyd, III (SC Bar # 7151)
BOYD LAW FIRM, LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(843) 238-2112 (facsimile)
reese@boydlawllc.com

Attorneys for the Petitioner

Myrtle Beach, South Carolina

March 2, 2011

A HEARING IN THIS MATTER IS SCHEDULED FOR April 14, 2011, AT 8:30 am
IN THE HORRY COUNTY PROBATE COURT, HORRY COUNTY COURTHOUSE, 1301 2ND
AVENUE, CONWAY, SOUTH CAROLINA.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)

Respondents.)

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

AMENDED

PETITION TO AFFIRM PAYMENT OF
FEES FROM SPECIAL NEEDS TRUST
AND TO REFORM TERMS OF TRUST

PROBATE COURT
HORRY COUNTY, SC
2011 MAR -3 PM 3:14
DEIRDRE W. EDMONDS
PROBATE JUDGE

The Petitioners would allege and show unto this Honorable Court as follows:

1. While married to Daniel Bernard Dorn and residing in the State of California, and within eight (8) hours after the child birth of her three triplet children (the "Triplets"), Abbie Ilene Dorn (the "Protected Person") suffered substantial and irreversible injuries which rendered her permanently disabled.

2. Legal actions for negligence and medical malpractice (the "Legal Actions") were brought and prosecuted against the hospital and physicians associated with the Protected Person's injuries which resulted in a settlement among the parties. A portion of the settlement award was to be used for the purchase of an annuity for the Protected Person and a portion of the award was to be used to fund a special needs trust for the Protected Person. The amount designated for the annuity

was Four Million Three Hundred Thirty Thousand One Hundred Five and 00/100 (\$4,330,105.00) Dollars. The amount designated for a special needs trust was Nine Hundred Ten Thousand Two Hundred Seventy Five and 20/100 (\$910,275.20) Dollars.

3. The Petitioners, who are also the parents of the Protected Person, were appointed as co-conservators of the person and estate of the Protected Person on November 7, 2007, by Order of the Superior Court of California, County of Kern, Metropolitan Division.

4. On or about November 2, 2007, pursuant to the provisions of 42 U.S.C. § 1396p(d)(4)(A), the Petitioners, as the Protected Person's parents and co-conservators, established the Abbie Dorn Special Needs Trust (the "Trust"). The Petitioners were appointed as the initial trustees under the terms of the Trust. A copy of the Trust is attached hereto as Exhibit "A."

5. After the establishment of the Trust, the Protected Person relocated from California to Horry County, South Carolina to reside with the Petitioners.

6. The conservatorship of the person and estate of the Protected Person and jurisdiction of the Trust were transferred to Horry County, South Carolina, as evidenced by the Order of Transfer of Jurisdiction of the Horry County Probate Court, dated and filed on April 24, 2008 (a copy of which is attached hereto as Exhibit "B"), and by the Order Terminating Conservatorship of the Person and Estate of the Superior Court of California, County of Kern, Metropolitan Division, dated July 14, 2008 and executed on July 31, 2008. The Order of Transfer of Jurisdiction established the Petitioners as co-conservators and co-guardians of the Protected Person.

7. Divorce proceedings between the Protected Person and Daniel Bernard Dorn were instituted in California. As part of the divorce proceedings Daniel Bernard Dorn has sought and continues to seek to invade the Trust for child support for the Triplets and to pay for his legal fees

and other costs related to the divorce proceedings. Mr. Dorn has retained physical custody of the Triplets since their birth.

8. The Protected Person is currently qualified for and is receiving Medicaid benefits, and upon information and belief, the Protected Person would lose her eligibility to receive such benefits if the trustees of the Trust were forced to use Trust funds to pay child support and the legal fees and costs incurred by Daniel Bernard Dorn in the divorce proceedings.

9. The Trust provides that after the Protected Persons's death, the appropriate governmental agency, including, without limitation, the South Carolina Department of Health and Human Services, will be reimbursed from the Trust for benefits paid on behalf of the Protected Person. Thereafter, the remaining assets of the Trust are to be distributed (subject to a power of appointment retained by the Protected Person) to the issue of the Protected Person, per stirpes.

10. The South Carolina Department of Health and Human Services is named as a Respondent in this action because the Trust provides in Article III that any amendment or reformation of the Trust "shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor."

11. The Petitioners were previously granted authority to employ attorneys on behalf of the Protected Person for matters related to the divorce action and to pay for such services from the funds of the Protected Person and/or the Trust, as evidenced by the Letters of Conservatorship issued by the Superior Court of California, County of Kern, Metropolitan Division, filed November 15, 2007 (copy attached as Exhibit "C"), and by this Court's Order of Transfer of Jurisdiction.

12. While the incurrence and payment of fees on behalf of the Protected Person was previously authorized under the terms of the Letters of Conservatorship and under the terms of the

Order of Transfer of Jurisdiction, it is prudent for this Court to affirm the payment of such fees and to approve the payment of any future fees. A schedule of fees paid or to be paid by the Petitioners for matters related to the Protected Person is attached hereto as Exhibit "D."

13. The Trust grants broad powers to the trustees to manage the matters related to the Trust, including the employment and payment of attorneys and other professionals. However, paragraphs 10 and 12 of Article IV of the Trust create a logistical impracticability in that they require the trustee of the Trust to obtain prior court approval before the trustee makes payments for services rendered by its attorney. Such terms are unusual and unnecessary and need to be reformed. The new language for such paragraphs should read as follows:

"10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate, without the need for prior court approval."

"12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility; and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including, but not limited to, claims by Beneficiary arising out of property damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary, without the need for prior court approval."

14. If the Court deems it necessary to appoint a guardian ad litem for the Protected Person, the Court should appoint an attorney that is specially trained and experienced in the areas of probate and trust law, and that any fees for such guardian services may be paid from the funds of the Protected Person and/or the assets of the Trust.

15. It is appropriate for the Petitioners to pay all legal fees and costs related to their representation in this matter from the funds of the Protected Person and/or the Trust.

WHEREFORE, the Petitioners pray that this Honorable Court inquire into the matters set forth herein and issue an order which:

- A. Affirms the previous payment of fees by the Petitioners from the funds of the Protected Person and/or the Trust.
- B. Reforms the Trust to replace the existing paragraphs 10 and 12 of Article IV with the language for such paragraphs proposed in this Petition.
- C. If necessary to appoint a guardian ad litem for the Protected Person, appoints an attorney specially trained and experienced in the areas of probate and trust law.
- D. Directs the Petitioners to pay all fees and costs related to the matters set forth herein from the funds of the Protected Person and/or the Trust.
- E. Directs that no child support or fees or costs incurred by Daniel Bernard Dorn be paid from the Trust estate.

F. Provides for such other and further matters as this Honorable Court deems just and proper.

Respectfully Submitted:



Bret H. Davis (SC Bar # 11699)
DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
(843) 839-9800 (facsimile)
bdavis@davislawfirm.us

and

Reese R. Boyd, III (SC Bar # 7151)
BOYD LAW FIRM, LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(843) 238-2112 (facsimile)
reese@boydlawllc.com

Attorneys for the Petitioner

Myrtle Beach, South Carolina
March 2, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)

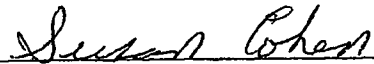
Respondents.)

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

VERIFICATION FOR
AMENDED PETITION

PERSONALLY appeared before me, Paul S. Cohen, MD and Susan Cohen, who after being duly sworn, depose and says that they are the Petitioners in the foregoing Amended Petition To Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust and that the facts are true of their own knowledge except those matters based upon information and belief, and as to those they believe them to be true.


Paul S. Cohen, MD, Petitioner


Susan Cohen, Petitioner

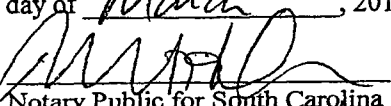
SWORN to before me this 2nd
day of March, 2011.

Notary Public for South Carolina
My Commission Expires 11/11/2016

Exhibit "A"

ABBIE DORN SPECIAL NEEDS TRUST

This trust is entered into with reference to the following facts:

RECITALS

A. This trust forms a part of the settlement arrived at between Abbie Dorn, an adult with a disability, by and through her Guardian Ad Litem, Daniel Dorn, et al., Plaintiffs, and Cedars-Sinai Medical Center, et al., Defendants, in Case No. BC356985, in the Superior Court of the State of California, County of Los Angeles.

B. The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Sections 3604 and 3605, and for certain payments by or on behalf of the Defendants to the trust. The amount of money that will initially be deposited into the trust is \$910,275.20, plus periodic payments in the initial amount of \$31,000 per month for the lifetime of the Beneficiary. The trust is for the primary benefit of the Plaintiff, Abbie Dorn, hereinafter sometimes referred to as the "Beneficiary." The Court in the above-described action has made the following determinations: Abbie Dorn, an adult with a disability, has a disability in the nature of severe and permanent brain injury that substantially impairs her ability to provide for her own care or custody and constitutes a substantial handicap; her condition appears to be permanent and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this trust; and the monies to be paid to this trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary.

PROBATE COURT
HARRIS COUNTY, SC
2011 MAR -3 PM 3:14
DEBORAH W. EDMONDS
PROBATE JUDGE

PROBATE COURT
HARRIS COUNTY, SC
2008 FEB -6 AM 11:47
DEBORAH W. EDMONDS
PROBATE JUDGE

C. The intent and purpose of this trust is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America. The funds of the trust may be used as an emergency or backup fund secondary to public resources. Special Needs include without limitation special equipment, programs of training, education and habilitation, travel needs, and recreation, which are related to and made reasonably necessary by this Beneficiary's disabilities. This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein.

D. The settlement and the payments to this trust are all subject to the approval and order of the above-entitled Court. The settlement and all payments thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Abbie Dorn Special Needs Trust is established, Paul Cohen, M.D. and Susan Cohen are appointed as Trustee thereof, and are authorized by the Court in the above-described action to execute this trust.

ARTICLE I

TRUSTEE

1. Paul Cohen, M.D. and Susan Cohen are appointed to act jointly as the initial Trustee of the trust. Any Trustee shall have the right to resign at any time. Should either of them cease to act as trustee for any reason, the other shall continue to act as sole trustee. Any successor Trustee shall be appointed by the Court with jurisdiction over the trust, and shall be bonded to the extent required by Probate Code § 2320 or such analogous law of the State in which the Court with jurisdiction over the trust is located.

The term "Trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. Any successor Trustee shall have and succeed to all the rights, titles, interests, powers, duties, and discretions given to the initial Trustee hereunder.

2. The Trustee may hire a case worker or other persons with expertise relating to the special needs of the Beneficiary, at the expense of the Trust, to advise it regarding the special needs of the Beneficiary.

3. The Trustee shall receive just and reasonable compensation, to be paid from the Trust, for its services in an amount to be fixed and allowed by the Court on the occasion of the Trustee's court accountings or such other times as that issue may be brought before the Court with jurisdiction over the Trust. The Trustee shall also receive reimbursement for reasonable expenses incurred. Such compensation shall be chargeable to and paid from the Trust.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL

1. All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.

2. The income shall be added to and become principal, forming a common fund. The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during her lifetime, such sums and at such times as the Trustee, in its discretion, determines appropriate and reasonably necessary for the Beneficiary's Special Needs. In making distributions to the Beneficiary for her Special Needs, the Trustee shall take into consideration the applicable resource and income limitations of the public assistance programs for which the Beneficiary is eligible, and the duties of any persons legally obligated to support the Beneficiary.

3. This trust shall terminate upon the death of Beneficiary. Upon termination, whether by death or otherwise, the trustee may pay expenses of last illness, burial expenses and expenses related to administration and distribution of the trust assets, and thereafter the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act, up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under such state plan. After such payment or payments have been made, the remaining trust estate shall be distributed to the person or persons, excluding the Beneficiary, creditors of the Beneficiary, ~~the estate of the~~ Beneficiary, or creditors of the estate of the Beneficiary, in such manner and proportions as shall

be designated by the Beneficiary by written instrument delivered to the Trustee or by specific reference to this power by the Beneficiary's last Will. Any prospective appointment may be revoked by a subsequent written instrument delivered to the Trustee or by specific reference to the revocation by the Beneficiary's last Will. If the exercise of any of said powers of appointment is inconsistent with any other exercise of said powers, the provisions of the instrument bearing the later date shall prevail. To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn, or in default of such issue, to her heirs at law. The Trustee may withhold distributions pending receipt of a release from the South Carolina Department of Health and Human Services (or its successor). The amount to be repaid under this paragraph to the State for medical assistance shall be determined by agreement between the South Carolina Department of Health and Human Services or its successor, and the Trustee. In the event that an agreement has not been reached between the South Carolina Department of Health and Human Services and the Trustee within one year of the death of the Beneficiary, the Trustee shall pay to the appropriate Clerk of Court an amount equal to the claim of the State of reimbursement for medical care provided to the Beneficiary, and shall pay the balance of the trust estate to the then living issue, per stirpes, of Abbie Dorn or, in default of such issue, to her heirs at law. The appropriate court shall determine the validity of the claim of the State and shall direct payment to the State of this amount, with the balance distributed to the then living issue, per stirpes, of the Beneficiary, or in default of such issue, to her heirs at law.

4. This trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary's death or the trust termination be given in the manner provided in California Probate Code Section 1215 to, among others, the California State Department of Health Services, the California State Department of Mental Health and the California State Department of Developmental Services, addressed to the director of those departments at the Sacramento office of such director. However, this requirement can be waived by order of a court of competent jurisdiction if such court determines that the Beneficiary received no benefits from any such agency subsequent to the creation of this Trust.

5. If the Trustee determines that it is in the best interest of the Beneficiary to make a disbursement which will cause a reduction or elimination of the Beneficiary's right to receive public benefits, the Trustee shall not be liable for having caused the loss of such benefits. For purposes of determining the Beneficiary's Medicaid eligibility, or Supplemental Security Income (hereinafter referred to as "S.S.I.") eligibility, or eligibility for other governmental assistance programs, no part of the principal or income of the trust estate shall be considered available to said Beneficiary. In the event the Trustee is requested by any county, state, federal, or other governmental agency, to release principal or income of the trust to or on behalf of the Beneficiary to pay for equipment, medication, or services which Medicaid or S.S.I. or some other governmental program is authorized to provide, or in the event the Trustee is requested to petition a court or administrative agency for the release of trust principal or income for any of these purposes, the Trustee is authorized to deny such request and is authorized, in its discretion,

to take whatever administrative or judicial steps may be necessary to continue the Medicaid or S.S.I. or other governmental program eligibility of the Beneficiary, including obtaining instructions from a court of competent jurisdiction ruling that the principal and income of this trust is not available to the Beneficiary for Medicaid or S.S.I. or other governmental program eligibility purposes. Any expenses of the Trustee in this regard, including attorneys' fees, shall be a proper charge to the trust estate.

6. The Beneficiary has no interest in the income or principal of the trust, other than as set forth herein. No interest in the principal or income of this trust shall be anticipated, assigned, or encumbered by any beneficiary, nor shall any such interest be subject to any creditor's claim or to legal process. Furthermore, because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provisions of care and services, including residential care, by any public entity, office, department, or agency of any state, or of the United States of America (except as otherwise provided in this instrument).

7. The Trustee shall pay any inheritance, estate, or other death taxes, if any, including interest and penalties, that may be payable by reason of the death of any beneficiary of this trust and be attributable to assets included in the trust estate. The Trustee shall make no payments for expenses incurred prior to the Beneficiary's death if the Trustee shall determine, in its discretion, that payment therefor is the obligation of any county, state, federal, or other governmental agency (except as otherwise provided in this instrument).

ARTICLE III

TRUST IRREVOCABLE

This trust shall be irrevocable and not subject to amendment; provided, however, that this trust may be amended upon application of any interested party (including but not limited to the Trustee) with the approval of a Court of competent jurisdiction; provided, further, however, that any such amendment shall be consistent with, and in furtherance of, the purpose and intent of this trust as set forth herein and under applicable laws, and no amendment shall change the duties and obligations of the Trustee without its prior written consent. Provided further that such amendment or reformation shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor.

ARTICLE IV

POWERS OF THE TRUSTEE

To carry out the purposes of this trust and subject to any limitations stated elsewhere in this instrument, the Trustee is vested with the following powers:

1. The Trustee shall make investment decisions consistent with those permitted under California Probate Code section 2574; provided, however, that such investment decisions shall be further governed by the authority granted to trustees pursuant to the South Carolina Trust Code and South Carolina Probate Code.
2. The Trustee may hold securities or other property in the Trustee's own name as trustee, in the Trustee's own name, in the name of a nominee or in bearer form.
3. The Trustee may sell or exercise stock subscription or conversion rights.

4. The Trustee shall refrain from voting or to vote shares of stock owned by the trust estate at shareholders' meetings in person or by special, limited, or general proxy, and in general exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the trust estate; and to make and terminate S corporation elections for both federal and state tax law purposes.

5. The Trustee may participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the trust estate; and to deposit the stock or other securities under any plan of reorganization with any protective committee and to delegate to the committee discretionary power with relation thereto, to pay a proportionate part of the expenses of the committee and any assessments levied under any plan, to accept and retain new securities received by the Trustee pursuant to any plan, to exercise all conversion, subscription, voting and other rights, of whatever nature pertaining to the property, and to pay any amount or amounts of money as the Trustee may reasonably deem advisable in connection therewith.

6. The Trustee may enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term.

7. The Trustee may make ordinary or extraordinary repairs or alterations in buildings or other structures to demolish any improvements, to raze existing or erect new party walls or buildings which may be trust property.

8. The Trustee may collect, receive, and receipt for rents, issues, profits, and income of the trust estate.

9. The Trustee may insure the assets of the trust estate against damage or loss and to insure the health and property of the Beneficiary.

10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, Realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate. However, the compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

11. The Trustee may permit the Beneficiary and any care giver or family members living with Beneficiary to occupy rent free any residence constituting a part of the assets of the Trust and the Trustee may, in his and/or her discretion, pay any proportion of real property taxes on any residence in which Beneficiary resides (whether owned by the Trust or by Beneficiary or by the person having care and custody of Beneficiary), in addition to paying the expenses of maintaining the residence where Beneficiary resides and hazard premiums on said residence. In addition, the Trustee may pay the costs of modifying the place where Beneficiary resides without acquiring an equity interest in the residence.

12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility; any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including but not limited to claims by Beneficiary arising out of property

damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary. The compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

13. To exercise all powers in the management of the trust estate, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee reasonably deems necessary or proper to carry out the purposes of this Trust and to achieve the proper investment, management, and distribution of the Trust property.

14. Notwithstanding the applicable South Carolina Uniform Principal and Income Act, the Trustee shall have the power to adjust between income and principal to the extent the Trustee considers, in its sole discretion, necessary.

15. All rights, powers, privileges, immunities and authorities granted to the Trustee shall be exercised in such reasonable manner as may be fair and equitable under the circumstances.

16. To change the place of administration of this trust upon prior order of a court of competent jurisdiction.

17. In the administration and management of the trust, including without limitation the investment and reinvestment of the trust estate, the Trustee shall consider solely the interest of the Beneficiary, Abbie Dorn.

ARTICLE V

GENERAL PROVISIONS

1. This trust is subject to the continuing jurisdiction of the Horry County Probate Court, in Horry County, South Carolina. Court accountings shall be filed at the end of the first year of administration and biennially thereafter, unless the court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties, in the form required by California Probate Code § 1060 et seq., or such analogous law of the State in which the Court with jurisdiction over the trust is located.

2. Until the Trustee shall receive written notice of any birth, marriage, death or other event upon which the right to payments from this trust may depend, the Trustee shall incur no liability to persons whose interests may have been affected by that event for disbursements made in good faith.

3. The Trustee may apply payments under this trust for the benefit of any beneficiary, or may make payments under this trust to the guardian or conservator of the person or estate of any beneficiary who is under disability, or to the parent of any beneficiary who is a minor.

4. The Trust shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina. Provided, however, in the event that jurisdiction over the Trust is moved because the Beneficiary is then living in another State, then that Trust shall be construed, regulated and governed by and in accordance with the laws of that State.

5. If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

6. As used in this instrument, the masculine, feminine, or neuter gender and the singular or plural number shall be each deemed to include the others when the context so indicates.

7. All references in this instrument to specific statutes, codes, or regulations shall include any successor statutes, codes, or regulations of similar import.

Executed at Bakersfield, California, this 2nd day of November 2007 pursuant to that certain Order Approving Compromise of Disputed Claim of Adult with a Disability dated _____ in Case No. BC356985, Superior Court of the State of California, for the County of Los Angeles.

Paul Cohen M.D.
Paul Cohen, M.D., Trustee

Susan Cohen
Susan Cohen, Trustee

PROBATE COURT
HERRY COUNTY, SC
2011 MAR -3 PM 3:14
DEIRDRE W. EDMONDS
PROBATE JUDGE

PROBATE COURT
HERRY COUNTY, SC
2008 FEB -6 AM 11:47
DEIRDRE W. EDMONDS
PROBATE JUDGE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Kern

} ss.

On November 2, 2007, before me, Sheila R. Blackburn Notary Public

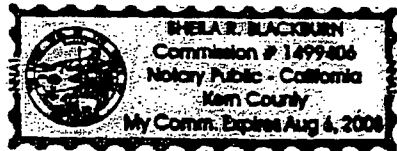
Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Paul Cohen and Susan Cohen

Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) were 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Sheila R. Blackburn
Signature of Notary Public

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.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____

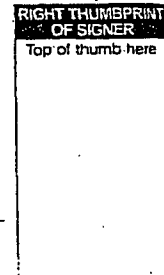


Exhibit "B"

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PAUL S. COHEN, MD AND)
SUSAN COHEN,)

PETITIONERS)

VS.)

IN RE:)
CONSERVATORSHIP OF THE)
ESTATE AND GUARDIANSHIP)
OF THE PERSON OF ABBIE)
ILENE DORN, A PROTECTED)
PERSON AND WARD, AND THE)
ABBIE DORN SPECIAL NEEDS)
TRUST.)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
FILE NO.: 2008-GC-26-
2008-GC-26-
2008-GC-26-5

ORDER OF TRANSFER OF
JURISDICTION

CERTIFIED TO BE A TRUE COPY
OF THE RECORDS OF THIS OFFICE

DEIRDRE W. EDMONDS
PROBATE JUDGE, HORRY COUNTY, SC

PROBATE COURT
HORRY COUNTY, SC
2011 MAR -3 PM 3:14
DEIRDRE W. EDMONDS
PROBATE JUDGE

PROBATE COURT
HORRY COUNTY, SC
2008 APR 24 PM 3:17
DEIRDRE W. EDMONDS
PROBATE JUDGE

THIS MATTER came for hearing on March 19, 2008, before the undersigned Associate Judge of the Probate Court for Horry County, South Carolina, pursuant to a Petition filed on February 6, 2008, by Paul S. Cohen, M.D. and Susan Cohen (herein sometimes referred to collectively as "Petitioners Cohen") requesting a transfer of jurisdiction of the Conservatorship of the Estate and of the Conservatorship of the Person of Abbie Ilene Dorn from the Superior Court of California, County of Kern, Metropolitan Division to the Horry County Probate Court, and also requesting an Order accepting jurisdiction over the Abbie Dorn Special Needs Trust that was previously approved and established by a California Court.

Petitioners Cohen were present at the hearing and represented by their attorney, M. Robin Morris, Esquire, of Conway, South Carolina. Respondent Abbie Ilene Dorn was not present but was represented at the hearing by her court-

appointed attorney and Guardian ad Litem, V. Lee Moore, Esquire, of Surfside Beach, South Carolina.

Based upon the record, pleadings, exhibits, testimony, evidence and the entire record in these matters, the undersigned makes the following:

FINDINGS OF FACT

1. All interested persons, and all persons required by law, have been properly served with a copy of the pleadings, notices and other documents filed in this matter, with the exception of Daniel Bernard Dorn, the husband of Abbie Ilene Dorn. Abbie Ilene Dorn's adult siblings, Jeffrey Cohen and Amy Mayer, have filed a waiver of notice and right to appear at hearing in these proceedings.

2. Venue and subject matter jurisdiction are proper in this Court.

3. Petitioners were appointed Co-Conservators of the Person and Estate of Abbie Ilene Dorn, an adult person with a disability, on November 7, 2007, by the Superior Court of California, County of Kern, Metropolitan Division. Exemplified copies of such proceedings were filed with the Horry County Probate Court on January 8, 2008.

4. The Superior Court of California, County of Kern, Metropolitan Division has forwarded an exemplified copy of the transcript of the court's records to the Horry County Probate Court.

5. The Superior Court of California, County of Kern, Metropolitan Division issued an order providing for the establishment of the residence of Abbie Ilene Dorn (hereinafter the "Ward") at 1060 Waterway Lane, Myrtle Beach, South Carolina 29572.

6. The Co-Conservators established residency for Abbie Ilene Dorn, their Ward, on or about November 26, 2007 in Horry County at 1060 Waterway Lane, Myrtle Beach, South Carolina 29572. Such residence is also the residence of the Co-Conservators, who are also the parents of Abbie Ilene Dorn, the Ward.

7. By further order of the Superior Court of California, County of Kern, Metropolitan Division, the Co-Conservators were authorized and granted independent power to employ attorneys to file an action for dissolution of the marriage between the Ward and her husband, Daniel Bernard Dorn. On January 8, 2008, the Co-Conservators commenced an action for dissolution of the marriage pursuant to the California court order.

8. The Co-Conservators believe that the current residential setting in Horry County, South Carolina is best suited for the current needs of their Ward.

9. The Ward has no assets remaining in her name individually, and all moneys received from and payments as a result of the settlement of a personal injury claim have been deposited into the Abbie Dorn Special Needs Trust. Further, the Co-Conservators are currently bonded by American Contractors Indemnity Company in the amount of Thirty-Five Thousand (\$35,000.00) Dollars.

10. The Superior Court of California, County of Los Angeles, by Order dated October 25, 2007 and filed November 21, 2007, authorized Petitioners Cohen to establish the Abbie Dorn Special Needs Trust and to fund such Trust with the proceeds of the settlement received from the personal injury claim. A certified copy of said Order dated October 25, 2007, was filed with this Court on February 4, 2008.

11. On November 2, 2007, the Co-Conservators executed the Abbie Dorn Special Needs Trust Agreement and subsequently funded

the trust with funds from the settlement proceeds of the personal injury claim filed on behalf of the Ward. A copy of the Abbie Dorn Special Needs Trust is attached hereto as Exhibit "A" and is made a part of this Order.

12. The Order from the Superior Court of California, County of Los Angeles, requires that the Co-Conservators provide a copy of the Horry County South Carolina Probate Court Order whereby the Horry County Probate Court accepts jurisdiction over the Ward's special needs trust.

13. Abbie Ilene Dorn was born April 3, 1976. On June 21, 2006, she suffered a catastrophic injury during the delivery of her triplets. As a result of her injury, the Ward is suffering from a mental disability, which impairs her judgment in regards to both her financial and personal matters and she is in need of supervision and assistance. Her mental condition is such that she lacks sufficient understanding and capacity to make responsible decisions regarding the management of her property and affairs effectively. The foregoing findings are based, in part, on the records of the California court and its previous determination that the Ward is incapacitated and in need of a conservator to protect and manage her person and property and, in part, on the evidence and testimony presented to this Court during the hearing in these matters, including the report of this Court's court-appointed guardian ad litem for the Ward, V. Lee Moore.

14. The Ward has a brother, Jeffrey Cohen, and a sister, Amy Mayer. Further, Ward Dorn has three (3) minor children, all under the age of 18 years, who are in the custody of their father, Daniel Bernard Dorn, with whom they reside with in Los Angeles, California.

15. The Guardian ad Litem, V. Lee Moore, Esquire, has spoken with Daniel Bernard Dorn and, based on her conversation

with him, Ms. Moore believes and is informed that he does not object to the transfer of jurisdiction of these matters from the California courts to the Horry County Probate Court.

16. V. Lee Moore, Esquire, is the attorney and Guardian ad Litem for the Ward and has ably, zealously, and competently served the Ward during all phases of these proceedings, and her professional services are anticipated to continue hereafter through conclusion of matters relating to these proceedings. Attorney Moore is entitled to be compensated and paid for the fees, costs and expenses incurred and devoted by her and her firm on behalf of the Ward. The Affidavit of Attorney's Fees and expenditures reflects that attorney's fees, costs, and expenses incurred by Ms. Moore on behalf of the Ward are approximately One Thousand Two Hundred Eighty-nine and 03/100 (\$1,289.03) Dollars, through February 19, 2008. It is anticipated that there will be additional fees and expenditures incurred by said attorney on behalf of the Ward through the instant hearing, the conclusion of these proceedings, and entry of the Order as referred to in said attorney's Affidavit. The aforementioned attorney's fees, costs, and expenditures incurred and additional fees, costs, and expenditures incurred through conclusion of services by Ms. Moore as the Ward's attorney and Guardian ad Litem, are hereby deemed fair and reasonable and shall be a proper disbursement from the Abbie Dorn Special Needs Trust.

17. Petitioners Cohen have expended funds for attorney's fees and costs in proceeding with these matters in the amount of Five Thousand Nineteen and 75/100 (\$5,019.75) Dollars from Petitioners' funds and the Abbie Dorn Special Needs Trust. The aforementioned attorney's fees, costs, and expenditures incurred and additional fees, costs, and expenditures incurred through conclusion of services by Petitioners are hereby deemed fair and

reasonable and shall be a proper disbursement from the Abbie Dorn Special Needs Trust.

CONCLUSIONS OF LAW

1. That this Court has jurisdiction of the subject matter and of the persons before the Court. That all interested persons and parties have been properly served with the Summons and Petition and proper and timely Notice of Hearing has been given by Petitioner to all such persons, with the exception of Daniel Bernard Dorn.

2. That a basis exists as described in S.C. § 62-5-101 et seq., for affecting the property and affairs of Abbie Ilene Dorn.

3. That pursuant to S.C. Code § 62-5-313 et seq., this Court is authorized to enter appropriate Orders transferring jurisdiction from the appointing Court to this Court.

4. That pursuant to S.C. Code § 62-5-101 et seq., this Court is authorized to enter appropriate Orders appointing a Guardian with the authority and power as conferred by law and with full authority to consent, or withhold consent, to any and all medical or other professional care, counsel, treatment or services.

5. That it is in the best interest of Abbie Ilene Dorn that Petitioners Cohen be appointed as Co-Guardians with all the authority and power as conferred by law over Abbie Ilene Dorn's person.

6. That it is in the best interest of Abbie Ilene Dorn that Petitioners Cohen be appointed as Co-Conservators of Abbie Ilene Dorn's property and estate with all the authority and power as conferred by law.

7. That a basis exists in S.C. § 62-5-411 for waiving bond where good cause is shown. Due to the fact that the Ward has no personal assets and a Special Needs Trust has been

established for her benefit, Petitioners Cohen have demonstrated good cause for waiving bond and, therefore, it is in the best interest of the Ward for bond to be waived. Further, the Co-Conservators may discharge any bond that now exists. If the Ward's financial status changes in the future, the Court will reconsider the need for a bond. Notwithstanding the foregoing, the statutory requirements for the filing an Inventory and Appraisal and annual accountings shall not be waived and the Co-Conservators appointed herein shall fully comply with all filing requirements.

BASED UPON THE FOREGOING FINDINGS OF FACT and CONCLUSIONS OF LAW, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. That this Court shall accept jurisdiction of the Conservatorship of the person and estate of Abbie Ilene Dorn, from the Superior Court of California, County of Kern, Metropolitan Division.

2. That this Court hereby accepts jurisdiction of the Abbie Dorn Special Needs Trust established pursuant to Order from the Superior Court of California, County of Los Angeles.

3. That Paul S. Cohen, M.D. and Susan Cohen shall be and are hereby appointed Co-Guardians of the person of Abbie Ilene Dorn with all the authority and power as conferred by law upon guardians, and as Co-Guardians, Paul S. Cohen, M.D. and Susan Cohen, may exercise said authority and power either jointly or individually without the consent of the other Co-Guardian being required, which power shall include, but not be limited to, the authority to consent or withhold consent to any and all medical or other professional care, counsel, treatment or services.

4. That Paul S. Cohen, M.D. and Susan Cohen shall be and are hereby appointed as Co-Conservators of the estate and affairs of Abbie Ilene Dorn with all the authority and power as conferred by law upon conservators, and as Co-Conservators, Paul

S. Cohen, M.D. and Susan Cohen, may exercise said authority and power either jointly or individually without the consent of the other Co-Conservator being required.

5. That the Co-Conservators shall file in the Register of Deeds Office for Horry County a copy of the Fiduciary Letters of Appointment.

6. That the Co-Guardians and Co-Conservators shall be entitled to reasonable sums and compensation for their services as allowed by law.

7. That all persons are directed and commanded to deliver to the Co-Conservators, on demand by the Co-Conservators and upon presentation of a copy of the Certificate of Appointment, all of the property of Abbie Ilene Dorn, of every kind and nature, which may be in such person's possession or under such person's control.

8. That the Co-Conservators are directed and authorized to promptly pay out of the funds of the Abbie Dorn Special Needs Trust all sums and amounts as referred to hereinabove in this Order for the fees and expenditures incurred by V. Lee Moore, Esquire, attorney and Guardian ad Litem for Abbie Ilene Dorn, as set forth in Attorney Moore's Affidavit of Attorneys Fees, as well as fees incurred to the conclusion of this matter.

9. That the sums and amounts referred to hereinabove and previously paid and disbursed and those to be paid at the conclusion of these matters to the attorney for Petitioners Cohen, are approved and constitute a proper disbursement from the estate and funds of the Abbie Dorn Special Needs Trust.

10. That Attorney and Guardian ad Litem, V. Lee Moore, Esquire, is relieved of her duties and her appointment in these matters is terminated upon the filing of this Order.

11. That good cause has been shown for bond to be waived and, therefore, bond shall not be required at this time.

12. That any sureties or bonds securing the Co-Conservators' performance are released. However, upon further review of the inventory and/or annual accountings the Court may at any time, if it appears appropriate, order the Co-Conservators to post a fiduciary bond.

13. That Petitioners Cohen shall mail a copy of this Order to Abbie Ilene Dorn's husband, Daniel Bernard Dorn, within fifteen (15) days of the filing of this Order and shall file with this Court within thirty (30) days of the filing of this Order a Proof of Delivery of same, and any objection to this Order made by Daniel Bernard Dorn and filed with this Court shall be heard de novo as to all issues in these proceedings.

14. That Petitioners Cohen shall file a copy of this Order with the Superior Court of California, County of Kern, Metropolitan Division within fifteen (15) days of the filing of this Order and shall file with this Court within thirty (30) days of the filing of this Order proof of such filing.

15. That proof of Petitioners Cohen discharge as Conservators for the estate and person of Abbie Ilene Dorn by the Superior Court of California, County of Kern, Metropolitan Division shall be immediately filed with the Horry County Probate Court upon Petitioner's receipt of same.

16. This Court's acceptance of jurisdiction of the Abbie Dorn Special Needs Trust shall not result in continuing supervisory proceedings by this Court. The management and distribution of the trust estate and other aspects of the administration of the trust shall proceed consistent with the terms of the Abbie Dorn Special Needs Trust, free of judicial intervention but subject to the jurisdiction of this court as invoked by interested persons or as provided by law or by the terms of such Trust.

IT IS SO ORDERED this the 24th day of April 2008.

Dundee W. Carter
HONORABLE DUNDEE CARTER
HORRY COUNTY ASSOCIATE PROBATE JUDGE

Conway, South Carolina

Exhibit "A"
Special Needs Trust

ABBIE DORN SPECIAL NEEDS TRUST

This trust is entered into with reference to the following facts:

RECITALS

A. This trust forms a part of the settlement arrived at between Abbie Dorn, an adult with a disability, by and through her Guardian Ad Litem, Daniel Dorn, et al., Plaintiffs, and Cedars-Sinai Medical Center, et al., Defendants, in Case No. BC356985, in the Superior Court of the State of California, County of Los Angeles.

B. The settlement provides in part for establishment of a special needs trust in accordance with California Probate Code Sections 3604 and 3605, and for certain payments by or on behalf of the Defendants to the trust. The amount of money that will initially be deposited into the trust is \$910,275.20, plus periodic payments in the initial amount of \$31,000 per month for the lifetime of the Beneficiary. The trust is for the primary benefit of the Plaintiff, Abbie Dorn, hereinafter sometimes referred to as the "Beneficiary." The Court in the above-described action has made the following determinations: Abbie Dorn, an adult with a disability, has a disability in the nature of severe and permanent brain injury that substantially impairs her ability to provide for her own care or custody and constitutes a substantial handicap; her condition appears to be permanent and she is not expected to experience significant improvement in the future; she is likely to have special needs related to the disability described above that will not be met without this trust; and the monies to be paid to this trust do not exceed the amount that appears reasonably necessary to meet the special needs of the Beneficiary.

CERTIFIED TO BE A TRUE COPY
OF THE RECORDS OF THIS OFFICE.

C. The intent and purpose of this trust is to provide a discretionary, spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. As used in this instrument, the term "Special Needs" means the requisites for maintaining the Beneficiary's good health, safety, and welfare when, in the discretion of the Trustee, such requisites are not being provided by any public agency, office, or department of the State of California, or of any other state, or of the United States of America. The funds of the trust may be used as an emergency or backup fund secondary to public resources. Special Needs include without limitation special equipment, programs of training, education and habilitation, travel needs, and recreation, which are related to and made reasonably necessary by this Beneficiary's disabilities. This is not a trust for the support of the Beneficiary. All payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein.

D. The settlement and the payments to this trust are all subject to the approval and order of the above-entitled Court. The settlement and all payments thereunder are the result of a compromise and settlement of disputed claims, wherein no party is acknowledging any liability. With the approval and order of the Court in the above-described action, this Abbie Dorn Special Needs Trust is established, Paul Cohen, M.D. and Susan Cohen are appointed as Trustee thereof, and are authorized by the Court in the above-described action to execute this trust.

ARTICLE I

TRUSTEE

1. Paul Cohen, M.D. and Susan Cohen are appointed to act jointly as the initial Trustee of the trust. Any Trustee shall have the right to resign at any time. Should either of them cease to act as trustee for any reason, the other shall continue to act as sole trustee. Any successor Trustee shall be appointed by the Court with jurisdiction over the trust, and shall be bonded to the extent required by Probate Code § 2320 or such analogous law of the State in which the Court with jurisdiction over the trust is located.

The term "Trustee" as used in this instrument shall include any Trustee or Trustees named herein or appointed pursuant to the provisions hereof. Any successor Trustee shall have and succeed to all the rights, titles, interests, powers, duties, and discretions given to the initial Trustee hereunder.

2. The Trustee may hire a case worker or other persons with expertise relating to the special needs of the Beneficiary, at the expense of the Trust, to advise it regarding the special needs of the Beneficiary.

3. The Trustee shall receive just and reasonable compensation, to be paid from the Trust, for its services in an amount to be fixed and allowed by the Court on the occasion of the Trustee's court accountings or such other times as that issue may be brought before the Court with jurisdiction over the Trust. The Trustee shall also receive reimbursement for reasonable expenses incurred. Such compensation shall be chargeable to and paid from the Trust.

ARTICLE II

DISTRIBUTION OF INCOME AND PRINCIPAL

1. All property now or hereafter subject to this trust shall constitute the trust estate and shall be held, allocated, administered, and distributed as hereinafter provided.
2. The income shall be added to and become principal, forming a common fund. The Trustee may distribute from such common fund to or for the benefit of the Beneficiary during her lifetime; such sums and at such times as the Trustee, in its discretion, determines appropriate and reasonably necessary for the Beneficiary's Special Needs. In making distributions to the Beneficiary for her Special Needs, the Trustee shall take into consideration the applicable resource and income limitations of the public assistance programs for which the Beneficiary is eligible, and the duties of any persons legally obligated to support the Beneficiary.
3. This trust shall terminate upon the death of Beneficiary. Upon termination, whether by death or otherwise, the trustee may pay expenses of last illness, burial expenses and expenses related to administration and distribution of the trust assets, and thereafter the remaining trust estate shall be subject to reimbursement under 42 U.S.C. § 1396p(d)(4)(a) or applicable state law to any state, or agency of a state, which has provided medical assistance to the Beneficiary under a state plan under Title XIX of the Social Security Act, up to an amount equal to the total medical assistance paid on behalf of the Beneficiary under such state plan. After such payment or payments have been made, the remaining trust estate shall be distributed to the person or persons, excluding the Beneficiary, creditors of the Beneficiary, the estate of the Beneficiary, or creditors of the estate of the Beneficiary, in such manner and proportions as shall

be designated by the Beneficiary by written instrument delivered to the Trustee or by specific reference to this power by the Beneficiary's last Will. Any prospective appointment may be revoked by a subsequent written instrument delivered to the Trustee or by specific reference to the revocation by the Beneficiary's last Will. If the exercise of any of said powers of appointment is inconsistent with any other exercise of said powers, the provisions of the instrument bearing the later date shall prevail. To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn, or in default of such issue, to her heirs at law. The Trustee may withhold distributions pending receipt of a release from the South Carolina Department of Health and Human Services (or its successor). The amount to be repaid under this paragraph to the State for medical assistance shall be determined by agreement between the South Carolina Department of Health and Human Services or its successor, and the Trustee. In the event that an agreement has not been reached between the South Carolina Department of Health and Human Services and the Trustee within one year of the death of the Beneficiary, the Trustee shall pay to the appropriate Clerk of Court an amount equal to the claim of the State of reimbursement for medical care provided to the Beneficiary, and shall pay the balance of the trust estate to the then living issue, per stirpes, of Abbie Dorn or, in default of such issue, to her heirs at law. The appropriate court shall determine the validity of the claim of the State and shall direct payment to the State of this amount, with the balance distributed to the then living issue, per stirpes, of the Beneficiary, or in default of such issue, to her heirs at law.

4. This trust is subject to the provisions and requirements of California Probate Code Sections 3604 and 3605, which require that notice of the Beneficiary's death or the trust termination be given in the manner provided in California Probate Code Section 1215 to, among others, the California State Department of Health Services, the California State Department of Mental Health and the California State Department of Developmental Services, addressed to the director of those departments at the Sacramento office of such director. However, this requirement can be waived by order of a court of competent jurisdiction if such court determines that the Beneficiary received no benefits from any such agency subsequent to the creation of this Trust.

5. If the Trustee determines that it is in the best interest of the Beneficiary to make a disbursement which will cause a reduction or elimination of the Beneficiary's right to receive public benefits, the Trustee shall not be liable for having caused the loss of such benefits. For purposes of determining the Beneficiary's Medicaid eligibility, or Supplemental Security Income (hereinafter referred to as "S.S.I.") eligibility, or eligibility for other governmental assistance programs, no part of the principal or income of the trust estate shall be considered available to said Beneficiary. In the event the Trustee is requested by any county, state, federal, or other governmental agency, to release principal or income of the trust to or on behalf of the Beneficiary to pay for equipment, medication, or services which Medicaid or S.S.I. or some other governmental program is authorized to provide, or in the event the Trustee is requested to petition a court or administrative agency for the release of trust principal or income for any of these purposes, the Trustee is authorized to deny such request and is authorized, in its discretion,

to take whatever administrative or judicial steps may be necessary to continue the Medicaid or S.S.I. or other governmental program eligibility of the Beneficiary, including obtaining instructions from a court of competent jurisdiction ruling that the principal and income of this trust is not available to the Beneficiary for Medicaid or S.S.I. or other governmental program eligibility purposes. Any expenses of the Trustee in this regard, including attorneys' fees, shall be a proper charge to the trust estate.

6. The Beneficiary has no interest in the income or principal of the trust, other than as set forth herein. No interest in the principal or income of this trust shall be anticipated, assigned, or encumbered by any beneficiary, nor shall any such interest be subject to any creditor's claim or to legal process. Furthermore, because this trust is to be conserved and maintained for the Special Needs of the Beneficiary, no part of the principal or income of the trust shall be construed to be part of the Beneficiary's "estate" or be subject to the claims of voluntary or involuntary creditors for the provisions of care and services, including residential care, by any public entity, office, department, or agency of any state, or of the United States of America (except as otherwise provided in this instrument).

7. The Trustee shall pay any inheritance, estate, or other death taxes, if any, including interest and penalties, that may be payable by reason of the death of any beneficiary of this trust and be attributable to assets included in the trust estate. The Trustee shall make no payments for expenses incurred prior to the Beneficiary's death if the Trustee shall determine, in its discretion, that payment therefor is the obligation of any county, state, federal, or other governmental agency (except as otherwise provided in this instrument).

ARTICLE III

TRUST IRREVOCABLE

This trust shall be irrevocable and not subject to amendment; provided, however, that this trust may be amended upon application of any interested party (including but not limited to the Trustee) with the approval of a Court of competent jurisdiction; provided, further, however, that any such amendment shall be consistent with, and in furtherance of, the purpose and intent of this trust as set forth herein and under applicable laws, and no amendment shall change the duties and obligations of the Trustee without its prior written consent. Provided further that such amendment or reformation shall be made only after submission to and approval by the South Carolina Department of Health and Human Services, or its successor.

ARTICLE IV

POWERS OF THE TRUSTEE

To carry out the purposes of this trust and subject to any limitations stated elsewhere in this instrument, the Trustee is vested with the following powers:

1. The Trustee shall make investment decisions consistent with those permitted under California Probate Code section 2574; provided, however, that such investment decisions shall be further governed by the authority granted to trustees pursuant to the South Carolina Trust Code and South Carolina Probate Code.
2. The Trustee may hold securities or other property in the Trustee's own name as trustee, in the Trustee's own name, in the name of a nominee or in bearer form.
3. The Trustee may sell or exercise stock subscription or conversion rights.

4. The Trustee shall refrain from voting or to vote shares of stock owned by the trust estate at shareholders' meetings in person or by special, limited, or general proxy, and in general exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the trust estate; and to make and terminate S corporation elections for both federal and state tax law purposes.

5. The Trustee may participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the trust estate; and to deposit the stock or other securities under any plan of reorganization with any protective committee and to delegate to the committee discretionary power with relation thereto, to pay a proportionate part of the expenses of the committee and any assessments levied under any plan, to accept and retain new securities received by the Trustee pursuant to any plan, to exercise all conversion, subscription, voting and other rights, of whatever nature pertaining to the property, and to pay any amount or amounts of money as the Trustee may reasonably deem advisable in connection therewith.

6. The Trustee may enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term.

7. The Trustee may make ordinary or extraordinary repairs or alterations in buildings or other structures to demolish any improvements, to raze existing or erect new party walls or buildings which may be trust property.

8. The Trustee may collect, receive, and receipt for rents, issues, profits, and income of the trust estate.

9. The Trustee may insure the assets of the trust estate against damage or loss and to insure the health and property of the Beneficiary.

10. The Trustee may employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, Realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate. However, the compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

11. The Trustee may permit the Beneficiary and any care giver or family members living with Beneficiary to occupy rent free any residence constituting a part of the assets of the Trust and the Trustee may, in his and/or her discretion, pay any proportion of real property taxes on any residence in which Beneficiary resides (whether owned by the Trust or by Beneficiary or by the person having care and custody of Beneficiary), in addition to paying the expenses of maintaining the residence where Beneficiary resides and hazard premiums on said residence. In addition, the Trustee may pay the costs of modifying the place where Beneficiary resides without acquiring an equity interest in the residence.

12. The Trustee may employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent the Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility; any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including but not limited to claims by Beneficiary arising out of property

damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary. The compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction.

13. To exercise all powers in the management of the trust estate, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee reasonably deems necessary or proper to carry out the purposes of this Trust and to achieve the proper investment, management, and distribution of the Trust property.

14. Notwithstanding the applicable South Carolina Uniform Principal and Income Act, the Trustee shall have the power to adjust between income and principal to the extent the Trustee considers, in its sole discretion, necessary.

15. All rights, powers, privileges, immunities and authorities granted to the Trustee shall be exercised in such reasonable manner as may be fair and equitable under the circumstances.

16. To change the place of administration of this trust upon prior order of a court of competent jurisdiction.

17. In the administration and management of the trust, including without limitation the investment and reinvestment of the trust estate, the Trustee shall consider solely the interest of the Beneficiary, Abbie Dorn.

ARTICLE V

GENERAL PROVISIONS

1. This trust is subject to the continuing jurisdiction of the Horry County Probate Court, in Horry County, South Carolina. Court accountings shall be filed at the end of the first year of administration and biennially thereafter, unless the court with jurisdiction over the Trust orders that they be filed with different frequency, or at any time requested by the Trustee or other interested parties, in the form required by California Probate Code § 1060 et seq., or such analogous law of the State in which the Court with jurisdiction over the trust is located.

2. Until the Trustee shall receive written notice of any birth, marriage, death or other event upon which the right to payments from this trust may depend, the Trustee shall incur no liability to persons whose interests may have been affected by that event for disbursements made in good faith.

3. The Trustee may apply payments under this trust for the benefit of any beneficiary, or may make payments under this trust to the guardian or conservator of the person or estate of any beneficiary who is under disability, or to the parent of any beneficiary who is a minor.

4. The Trust shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina. Provided, however, in the event that jurisdiction over the Trust is moved because the Beneficiary is then living in another State, then that Trust shall be construed, regulated and governed by and in accordance with the laws of that State.

5. If any provision of this instrument is unenforceable, the remaining provisions shall nevertheless be carried into effect.

6. As used in this instrument, the masculine, feminine, or neuter gender and the singular or plural number shall be each deemed to include the others when the context so indicates.

7. All references in this instrument to specific statutes, codes, or regulations shall include any successor statutes, codes, or regulations of similar import.

Executed at Bakersfield, California, this 2nd day of November 2007
pursuant to that certain Order Approving Compromise of Disputed Claim of Adult with a
Disability dated _____ in Case No. BC356985, Superior Court of the State of
California, for the County of Los Angeles.

Paul Cohen
Paul Cohen, M.D., Trustee

Susan Cohen
Susan Cohen, Trustee

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Kern

SS.

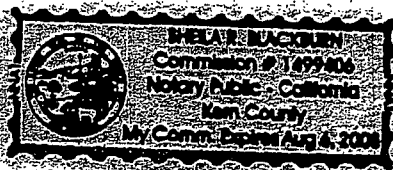
On November 2, 2007, before me, Shirley R. Blackburn, Notary Public

personally appeared Paul Cohen and Susan Cohen

Name(s) of Signer(s)

- ☒ personally known to me.
☐ 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.



Place Notary Seal Above

WITNESS my hand and official seal.

Shirley R. Blackburn
 Signature of Notary Public

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.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____

Number of Pages: _____

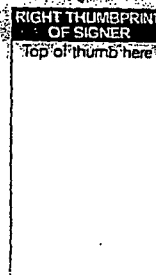
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- ☐ Individual
☐ Corporate Officer — Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: _____



PROBATE COURT
HERRY COUNTY, SC
2011 MAR -3 PM 3:15
DEIRDRE W. EDMONDS
PROBATE JUDGE

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):
☐ After recording return to: Louis E. Michelson, Esq. SBN 137487
 15233 Ventura Blvd., PH-1
 Sherman Oaks, CA 91403
 TELEPHONE NO.: (818) 784-1700
 FAX NO. (Optional): (818) 235-0144
 E-MAIL ADDRESS (Optional): LEMTAX@earthlink.net
 ATTORNEY FOR (Name): Dr. Paul S. Cohen and Mrs. Susan Cohen

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Kern
 STREET ADDRESS: 1415 Truxton Avenue
 MAILING ADDRESS: 1415 Truxton Avenue
 CITY AND ZIP CODE: Bakersfield 93301
 BRANCH NAME: Metropolitan

CONSERVATORSHIP OF (Name):

FOR RECORDER'S USE ONLY

ABBIE ILENE DORN CONSERVATEE

CASE NUMBER:
S-1500-PB-57283

LETTERS OF CONSERVATORSHIP
☒ Person ☒ Estate ☐ Limited Conservatorship

FOR COURT USE ONLY
 FILED
 SUPERIOR COURT, METROPOLITAN DIVISION
 COUNTY OF KERN
 NOV 15 2007
 TERRY McNALLY, CLERK
 BY [Signature] DEPUTY

1. ☒ (Name): Dr. Paul S. Cohen and Mrs. Susan Cohen is the appointed ☒ conservator ☐ limited conservator of the ☒ person ☒ estate of (name): ABBIE ILENE DORN
2. ☐ (For conservatorship that was on December 31, 1980, a guardianship of an adult or of the person of a married minor) (Name): was appointed the guardian of the ☐ person ☐ estate by order dated (specify): and is now the conservator of the ☐ person ☐ estate of (name):
3. ☒ Other powers have been granted or conditions imposed as follows:
 - a. ☒ Exclusive authority to give consent for and to require the conservatee to receive medical treatment that the conservator in good faith based on medical advice determines to be necessary even if the conservatee objects, subject to the limitations stated in Probate Code section 2356.
 - (1) ☐ This treatment shall be performed by an accredited practitioner of the religion whose tenets and practices call for reliance on prayer alone for healing of which the conservatee was an adherent prior to the establishment of the conservatorship.
 - (2) ☐ (If court order limits duration) This medical authority terminates on (date):
 - b. ☐ Authority to place conservatee in a care or nursing facility described in Probate Code section 2356.5(b).
 - c. ☐ Authority to authorize the administration of medications appropriate for the care and treatment of dementia described in Probate Code section 2356.5(c).
 - d. ☒ Powers to be exercised independently under Probate Code section 2590 as specified in Attachment 3d (specify powers, restrictions, conditions, and limitations):
 - e. ☐ Conditions relating to the care and custody of the property under Probate Code section 2402 as specified in Attachment 3e.
 - f. ☐ Conditions relating to the care, treatment, education, and welfare of the conservatee under Probate Code section 2358 as specified in Attachment 3f.
 - g. ☐ (For limited conservatorship only) Powers of the limited conservator of the person under Probate Code section 2351.5 as specified in Attachment 3g.
 - h. ☐ (For limited conservatorship only) Powers of the limited conservator of the estate under Probate Code section 1830(b) as specified in Attachment 3h.
 - i. ☒ Other (specify): See Attachment 3i



4. ☐ The conservator is not authorized to take possession of money or any other property without a specific court order.
5. Number of pages attached: 3

WITNESS, clerk of the court, with seal of the court affixed.

Date: NOV 15 2007

Clerk, by [Signature], Deputy
Page 1 of 2

CONSERVATORSHIP OF (Name): ABBIE ILENE DORN	CASE NUMBER: S-1500-PB-57283
CONSERVATEE	

LETTERS OF CONSERVATORSHIP

AFFIRMATION

I solemnly affirm that I will perform according to law the duties of ☒ conservator ☐ limited conservator.

Executed on (date): **November 1, 1007** , at (place): **Bakersfield, California**

Dr. Paul Steven Simon Eber
(SIGNATURE OF APPOINTEE)

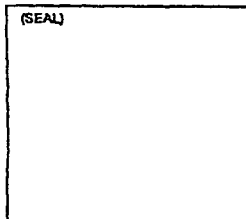
PROBATE COURT
HOLLY COUNTY, SC
2011 MAR -3 PM 3:15
DEIRDRE W. EDMONDS
PROBATE JUDGE

CERTIFICATION

I certify that this document and any attachments is a correct copy of the original on file in my office, and that the letters issued to the person appointed above have not been revoked, annulled, or set aside, and are still in full force and effect.

Date:

Clerk, by _____, Deputy



GC-350 [Rev. January 1, 2003]

LETTERS OF CONSERVATORSHIP

Page 2 of 2

LexisNexis® Automated California Judicial Council Forms

LETTERS OF CONSERVATORSHIP
(FORM GC-350)

ATTACHMENTS

CONSERVATORSHIP OF ABBIE ILENE DORN
CASE NUMBER S-1500-PB-57283

INDEX OF ATTACHMENTS

<u>Tab</u>	<u>Description of Attachments/Exhibits</u>	<u>Pages</u>
Attachment 3d	Powers to be exercised independently under Probate Code Section 2590	2
Attachment 3i	Powers and duties of conservators under Probate Code Section 2352(c)	3

PROBATE COURT
Horry County, SC
2011 MAR -3 PM 3:15
DEIRDRE W. EDMONDS
PROBATE JUDGE

LETTERS OF CONSERVATORSHIP
(FORM GC-350)

CONSERVATORSHIP OF ABBIE ILENE DORN
CASE NUMBER S-1500-PB-57283

ATTACHMENTS

Attachment 3d Powers to be exercised independently under Probate Code Section 2590

The Conservators are granted the independent power under Probate Code section 2591(a) to settle the pending personal injury claim brought on behalf of the proposed conservatee and to compromise or settle any dissolution action between the proposed conservatee and her husband, Daniel Bernard Dorn.

The Conservators are granted the independent power under Probate Code section 2591(q) to employ attorneys to file an action for dissolution of the marriage between the proposed conservatee and her husband Daniel Bernard Dorn and to pay the attorneys fees thereby incurred.

PROBATE COURT
HORRY COUNTY, SC
2011 MAR -3 PM 3:15
DEIRDRE W. EDMONDS
PROBATE JUDGE

LETTERS OF CONSERVATORSHIP
(FORM GC-350)

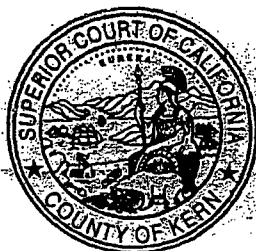
CONSERVATORSHIP OF ABBIE ILENE DORN
CASE NUMBER S-1500-PB-57283

ATTACHMENTS

Attachment 3i Powers and duties of Conservators under Probate Code Section 2352(c)

The Conservators may establish the residence of Abbie Ilene Dorn at a place not within California, which place initially shall be the conservators' home, 1060 Waterway Lane, Myrtle Beach, South Carolina 29572.

PROBATE COURT
HARRY COUNTY, SC
2011 MAR -3 PM 3:15
DEIRDRE W. EDMONDS
PROBATE JUDGE



SUPERIOR COURT, STATE OF CALIFORNIA
COUNTY OF KERN, METROPOLITAN DIVISION
THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND
CORRECT COPY OF THE ORIGINAL DOCUMENT ON
FILE IN THE OFFICE OF THE CLERK OF THIS COURT.

DATED: NOV 16 2007

TERRY McNALLY
BY: D. Carleton DEPUTY

Exhibit "D"
Legal Fees Paid by Abbie Dorn Special Needs Trust

Date	Legal Services Provider	
01/10/08	M. Robin Morris, Esquire	
02/12/08	Louis Michelson, Esquire	
04/04/08	M. Robin Morris, Esquire	
04/07/08	Louis Michelson, Esquire	
05/28/08	Louis Michelson, Esquire	
06/25/08	V. Lee Moore, Esquire	
07/11/08	Marina Korol, Esquire	
08/26/08	Louis Michelson, Esquire	
08/26/08	Marina Korol, Esquire	
10/22/08	Marina Korol, Esquire	
02/02/09	Marina Korol, Esquire	
06/05/09	M. Robin Morris, Esquire	
06/15/09	Louis Michelson, Esquire	
06/19/09	Gary Zimmerman, Esquire	
07/30/09	Davis Law Firm, P.A.	
10/15/09	Marina Korol, Esquire	
11/18/09	Marina Korol, Esquire	
02/06/10	Meyer, Olson, Lowy & Meyers, LLP	
02/09/10	Gary Zimmerman, Esquire	
02/19/10	Marina Korol, Esquire	
03/15/10	Meyer, Olson, Lowy & Meyers, LLP	
04/28/10	Meyer, Olson, Lowy & Meyers, LLP	
05/28/10	Meyer, Olson, Lowy & Meyers, LLP	
06/28/10	Meyer, Olson, Lowy & Meyers, LLP	
07/28/10	Meyer, Olson, Lowy & Meyers, LLP	
08/23/10	Meyer, Olson, Lowy & Meyers, LLP	
09/28/10	Meyer, Olson, Lowy & Meyers, LLP	
11/01/10	Meyer, Olson, Lowy & Meyers, LLP	
11/29/10	Meyer, Olson, Lowy & Meyers, LLP	
12/01/10	Davis Law Firm, P.A.	
12/01/10	Boyd Law Firm, LLC	
12/06/10	Meyer, Olson, Lowy & Meyers, LLP	
12/31/10	Meyer, Olson, Lowy & Meyers, LLP	
	TOTAL	

PROBATE COURT
 HARRY J. COLEMAN, JR.
 2011 MAR -3 PM 3:10
 DEBORAH W. EDMONDS
 PROBATE JUDGE

\$62.10
 \$1,386.36
 \$973.94
 \$1,362.37
 \$722.42
 \$1,469.03
 \$215.09
 \$756.12
 \$778.20
 \$827.80
 \$1,035.00
 \$1,072.11
 \$315.00
 \$600.00
 \$5,000.00
 \$1,207.60
 \$645.00
 \$25,000.00
 \$1,200.00
 \$490.00
 \$14,553.56
 \$114,010.61
 \$117,664.48
 \$52,328.12
 \$33,175.28
 \$56,464.98
 \$61,011.25
 \$25,789.51
 \$47,338.02
 \$25,000.00
 \$5,000.00
 \$50,539.87
 \$19,460.13

\$668,454.28

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD AND)
SUSAN COHEN)

Petitioners,)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
AND HUMAN SERVICES)

Respondents.)

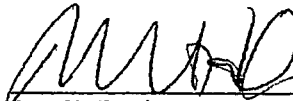
IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST)

AMENDED SUMMONS

PROBATE COURT
HORRY COUNTY, SC
2011 MAR -3 PM 3:14
DELORE W. EDMONDS
PROBATE JUDGE

TO: ABBIE ILENE DORN AND HER GUARDIANS AND CONSERVATORS AND THE
TRUSTEES OF THE ABBIE DORN SPECIAL NEEDS TRUST, PAUL S. COHEN, MD
AND SUSAN COHEN;
JEFFREY COHEN, BROTHER OF ABBIE ILENE DORN;
AMY MAYER, SISTER OF ABBIE ILENE DORN;
SOUTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN SERVICES; AND
DANIEL BERNARD DORN, FATHER OF THE PROTECTED PERSON'S CHILDREN

YOU ARE HEREBY SUMMONED and required to answer the Petition To Affirm Payment
of Fees From Special Needs Trust and to Reform Terms of Trust in the above entitled action, a copy
of which is herewith served upon you, and to serve a copy of your answer upon the undersigned at
its office, 1110 London Street, Suite 201 Myrtle Beach, South Carolina 29577, within thirty (30)
days after service hereof upon you, exclusive of the day of such service, and if you fail to answer the
Petition within the time aforesaid, the Petitioner in this action will apply to the Court for Judgment
by default to be rendered against you for the relief demanded in the Petition.



Bret H. Davis (SC Bar # 11699)
DAVIS LAW FIRM, P.A.
Post Office Box 70517
Myrtle Beach, SC 29572
(843) 839-9800
(843) 839-9800 (facsimile)
bdavis@davislawfirm.us

and

Reese R. Boyd, III (SC Bar # 7151)
BOYD LAW FIRM, LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(843) 238-2112 (facsimile)
reese@boydlawllc.com

Attorneys for the Petitioner

Myrtle Beach, South Carolina

March 2, 2011

A HEARING IN THIS MATTER IS SCHEDULED FOR April 14, 2011, AT 8:30 am
IN THE HORRY COUNTY PROBATE COURT, HORRY COUNTY COURTHOUSE, 1301 2ND
AVENUE, CONWAY, SOUTH CAROLINA.

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PAUL S. COHEN, MD AND)
SUSAN COHEN,)

Petitioners,)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
AND HUMAN SERVICES,)

Respondents,)

IN RE: THE ABBIE DORN)
SPECIAL NEEDS TRUST)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2008-GC-26-0050

CERTIFICATE OF SERVICE

I, Wyn Bessent Gotto, being duly sworn, deposes as follows:

1. That she is employed with Davis Law Firm, P.A., Bret H. Davis, Esquire, being the attorney for the Petitioners in the above-captioned matter; and
2. That on the 19 day of March, a copy of Petitioners' Amended Summons and Petition to Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust, dated March 2, 2011, was placed in an envelope and served by U.S. First Class Mail upon the following:

John Kachmarsky, Esquire
171 Church St Suite 330
Charleston, SC 29401
Attorney and Guardian ad Litem
for the contingent remainder
beneficiaries, Esti Dorn, Reuvi Dorn,
and Yosse Dorn

Lynette Rogers Hedgepath, Esquire
207 Beaty St
Conway, SC 29526
Attorney for Protected Person, Abbie Illene Dorn

V. Lee Moore, Esquire
Moore, Johnson, & Saranti Law Firm, P.A.
PO Box 14737
Surfside Beach, SC 29587
Guardian ad Litem for
Protected Person, Abbie Illene Dorn

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, L.L.P.
44 State St
Charleston, SC 29401
Attorney for Daniel Bernard Dorn

The South Carolina Department of Health and Human Services
Office of General Counsel
George Burnett
PO Box 8206
Columbia, SC 29202

SWORN TO BEFORE ME THIS
18th day of March, 2011

Rachel Copeland
Notary Public for South Carolina

8-13-19
My Commission Expires

By: Wyn Bessent Gotto
Wyn Bessent Gotto, Esquire
Davis Law Firm, P.A.
PO Box 70517
Myrtle Beach, SC 29572
843-839-9800
843-839-9801 (fax)

BRET H. DAVIS, JD*, CPA
WYN BESSENT GOTTO
wgotto@davislawfirm.us
**Licensed in SC and NC*

DAVIS LAW FIRM, P.A.
Attorneys & Counselors at Law

Physical Address:
1110 London Street, Suite 201
Myrtle Beach, SC 29577

Please Respond To:
Post Office Box 70517
Myrtle Beach, SC 29572

Telephone: (843) 839-9800
Facsimile: (843) 839-9801
www.davislawfirm.us

March 10, 2011

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, L.L.P.
44 State St
Charleston, SC 29401

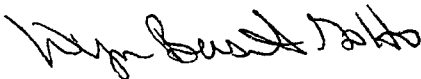
Re: Conservatorship, Guardianship, Special Needs Trust and Medicaid Matters for Abbie Ilene Dorn
Case No. 2008-ES-26-0050
Our File No: 0253.001

Dear Mr. Slotchiver:

Enclosed, please find a clocked copy of the Amended Summons and Petition to Affirm Payment of Fees from Special Needs Trust and to Reform Terms of Trust, which I hereby serve upon you as Attorney for Daniel Bernard Dorn. I have also enclosed a copy of the Certificate of Service.

Sincerely,

DAVIS LAW FIRM, P.A.



Wyn Bessent Gotto

Enclosures/stated

261

FOR A SECOND DEFENSE

(Answer)

2. The Respondents re-allege and reiterate the allegations contained in the above paragraph, as if each were repeated here verbatim.

3. Upon information and belief, the Respondents admit the allegations contained in Paragraph 1.

4. Upon information and belief, the Respondents admit the allegations contained in Paragraph 2.

5. Upon information and belief, the Respondents admit the allegations contained in Paragraph 3.

6. Upon information and belief, the Respondents admit the allegations contained in Paragraph 4.

7. Upon information and belief, the Respondents admit the allegations contained in Paragraph 5.

8. Upon information and belief, the Respondents admit the allegations contained in Paragraph 6.

9. Upon information and belief, the Respondents admit the allegations of the first and second sentences contained in Paragraph 7. The Respondents further admit that they have been in the physical custody of Mr. Dorn since their birth.

10. The Respondents are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 8, and accordingly deny the same.

11. The Respondents admit the allegations contained in Paragraph 9.

12. The Respondents are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10, and accordingly deny the same.

13. With respect to the allegations of Paragraph 11, the Respondents admit that the Letters of Conservatorship issued by the Superior Court of California, County of Kern, Metropolitan Division, contained the following provision: "The Conservators are granted the independent power under Probate Code section 2591(q) to employ attorneys to file an action for dissolution of the marriage between the proposed conservatee and her husband Daniel Bernard Dorn and to pay the attorneys fees thereby incurred." The Respondents further admit that the Order of Transfer of Jurisdiction by this Court acknowledged that the Superior Court of California had "authorized and granted independent power to employ attorneys to file an action for dissolution of the marriage between the ward and her husband, Daniel Bernard Dorn"; and the Court further found that:

- a. "the services by Ms. V. Lee Moore, as the Ward's attorney and Guardian ad Litem, are hereby deemed fair and reasonable and shall be a proper disbursement from the Abbie Dorn Special Needs Trust."
- b. "the attorney's fees and costs in proceeding with these matters in the amount of Five Thousand Nineteen and 75/100 (\$5,019.75) Dollars are hereby deemed fair and reasonable and shall be a proper disbursement from the Abbie Dorn Special Needs Trust." (Referring to the payment of administrative legal fees for services relating to the Special Needs Trust).
- c. "the co-conservators are directed and authorized to promptly pay out of the funds of the Abbie Dorn Special-Needs Trust all sums and amounts as referred to hereinabove in this order for the fees and expenditures incurred by V. Lee Moore, Esquire, attorney and Guardian-ad-Litem for Abbie Ilene

Dorn, as set forth and attorney Moore's Affidavit of Attorneys Fees, as well as fees incurred to the conclusion of this matter."

- d. "the sums and amounts referred to hereinabove and previously paid and dispersed and those to be paid at the conclusion of these matters to the attorney for petitioners Cohen are approved and constitute a proper disbursement from the estate and funds of the Abbie Dorn Special-Needs Trust." (Referring to the payment of administrative legal fees for services relating to the Special Needs Trust).

The Respondents deny the remaining allegations of Paragraph 11.

14. The Respondents deny the allegations of Paragraph 12 except as specifically set forth in paragraph 13 above and in further answering the allegations contained in Paragraph 12 would show that:

- a. Paragraphs 10 and 12 of Article IV of the Abbie Dorn Special Needs Trust specifically require that "the compensation of the Trustee's attorney at law shall be subject to prior approval of a court of competent jurisdiction."
- b. That upon information and belief, a divorce between Abbie Dorn and Daniel Bernard Dorn was obtained and finalized on or about August 20, 2008.
- c. Exhibit "D" of the Amended Petition sets forth a schedule of the payment of various attorney fees incurred during a period of time beginning January 1, 2008 and ending December 31, 2010 in the total amount of \$668,454.28. Of this total, only \$9,553.76 of the fees were incurred through December 31, 2008, a period during which the Trustees would have had authority to pay attorneys fees for proceedings relating to the divorce between Abbie Dorn and

Daniel B. Dorn pursuant to the Superior Court of California order without further Court approval.

- d. That upon information and belief, Petitioners paid attorneys fees after December 31, 2008 in pursuit of visitation rights with the Respondents and for other matters unknown to the Respondents in an amount totaling approximately \$658,900.52, all being paid by the Petitioners without obtaining prior court approval as required by the explicit terms of the trust agreement.

15. The Respondents deny the allegations of Paragraph 13.

16. The Respondents are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 14, and accordingly deny the same.

17. The Respondents deny the allegations of Paragraph 15.

RESPONDENTS' COUNTERCLAIM
(Breach of Fiduciary Duty)

18. The Respondents re-allege and reiterate the allegations contained in the above paragraphs, as if each were repeated here verbatim.

19. The Respondent's father, Daniel B. Dorn filed with the Horry County Probate Court a Notice of Motion for Temporary Restraining Order and Emergency Petition For: (1) Accounting; (2) Restraint of Performance of Trustees of Trust; (3) Restraint of Performance of Conservator; (4) Posting of Bond; (5) Removal of Trustee; and (6) Removal of Conservators, on November 23, 2010.

20. On the next day, November 24, 2010, the Petitioners filed with the Court a Petition to Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust,

failing to name the Respondents as parties, seeking Court approval of attorney fees in the amount of \$495,326.75 that had already been paid.

21. On February 3, 2011, the Petitioners filed with the Court trust accountings for 2007, 2008 and 2009, which were required by the terms of the trust to be filed "at the end of the first year of administration and biennially thereafter."

22. On March 3, 2011, the Petitioners filed an Amended Petition to Affirm Payment of Fees From Special Needs Trust and to Reform Terms of Trust, naming the Respondents as parties, and seeking Court approval of attorneys fees in the amount of \$668,454.28, or \$173,127.53 more than in the original Petition.

23. A final decision and Order regarding temporary visitation was announced on April 7, 2011 by the California Court, a copy of which is attached to the Respondents' Answer and Counterclaim as Exhibit "A." The Court holds, in part, on page 3 that "Dan (Dorn) additionally argues that this is really a case of disguised grandparent visitation, because Susan's (Cohen) ulterior motive in this case is to gain visitation for herself and not for Abbie. On the latter argument, Dan has a point. Susan has clearly and repeatedly articulated her desire to have visitation with Esti, Reuvi, and Yossi, and she has in fact appeared uninvited at Dan's home and Temple to see the children. By her demeanor and actions, Susan demonstrates a degree of preoccupation with achieving visitation with the children regardless of Dan's preferences. Susan has shown that she does not consider any objection that Dan may have to this concept as being valid."

24. The Court holds, in part, on page 7 of its Order that "There is no compelling evidence that the visitations by the children will have any benefit to Abbie."

25. Recital B of the Abbie Dorn Special Needs Trust states that "The trust is for the primary benefit of Plaintiff, Abbie Dorn"; that "all payments made under this Trust must be reasonably necessary in providing for this Beneficiary's special needs, as defined herein."

26. Article II, paragraph 3 of the Trust states that "the trust shall terminate upon the death of the beneficiary" and after payment of certain expenses, the remainder shall be distributed "in such manner and proportions as shall be designated by the Beneficiary by written instrument delivered to the Trustee or by specific reference to this power by the Beneficiary's last Will" and "To the extent any or all of the remaining trust estate is not appointed because of the nonexercise or invalid exercise of such power, said remaining trust estate shall be distributed to the then living issue, per stirpes, of Abbie Dorn, or in default of such issue, to her heirs at law."

27. The Petitioners, as Trustees, have a fiduciary duty to all of the beneficiaries of Trust including the Respondents who are, and will remain the remainder beneficiaries of the trust in that Abbie Dorn does not possess the capacity to execute a Last Will and Testament and most likely will never possess such capacity.

28. Prior to Daniel B. Dorn's filing of a Notice of Motion for Temporary Restraining Order and Emergency Petition, the Petitioners, as Trustees, failed to file or provide accountings or any type of notices to the Court or Respondents regarding expenditures made from the trust and did not seek the Court's approval for any attorney's fees paid from the Trust.

29. The Petitioners have spent \$668,454.28 in legal fees which essentially have dissipated the trust's original corpus of \$910,275.20 without Court approval in breach of their fiduciary duty to the Respondents.

30. The Petitioners have already paid \$35,000.00 in legal fees to the attorneys representing them in this matter without first obtaining Court approval in direct violation of the terms of the trust and in further breach of their fiduciary duty to the Respondents.

31. In addition, the Petitioners, on a monthly basis, have and continue to spend more than the monthly annuity received and the Respondents would demand further proof as to the need and appropriateness of these expenditures before they are approved by the Court.

32. Based on recent proceedings held in California, and on the Court's decision rendered April 7, 2011, it appears that the Petitioners continue to dissipate the trust corpus in pursuit of visitation rights while the Court has held that "there is no compelling evidence that the visitations by the children will have any benefit to Abbie" in further breach of their fiduciary duty to the Respondents.

33. The Petitioners have failed to exercise any degree of prudence or discretion in their pursuit of visitation of the Respondents and have failed to account to the Court or the Respondents, all in complete disregard of the interests of the Respondents, as remainder beneficiaries, and in breach of their fiduciary duty to the Respondents.

WHEREFORE, having fully answered the Petitioners' Amended Petition to Affirm Payment of Fees from Special Needs Trust and to Reform Terms of Trust, the Respondents pray that this Honorable Court award them the following relief:

a. Deny the payment of the legal fees set forth in Exhibit "D" of the Petitioners' Amended Petition, other than those specifically authorized under the Order of Transfer of Jurisdiction and Letters of Conservatorship;

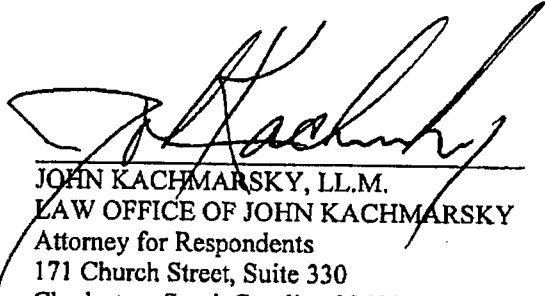
b. Deny the Petitioners' request to approve the payment of future fees from the Abbie Dorn Special Needs Trust without Court approval;

- c. Deny the Petitioners' request to amend the terms of the Abbie Dorn Special Needs Trust;
- d. Order the Petitioners to reimburse the Abbie Dorn Special Needs Trust for all expenses not approved by the Court and resulting from the Petitioners' breach of fiduciary duty;
- e. Tax the costs of this action, including the Respondents' attorney fees, against the Petitioners;
- f. Grant such other relief in favor of the Respondents as the Court may deem just and appropriate.

Executed this 13 day of April, 2011.

Signature:

Attorney:


JOHN KACHMARSKY, LL.M.
LAW OFFICE OF JOHN KACHMARSKY
Attorney for Respondents

Address:

171 Church Street, Suite 330
Charleston, South Carolina 29401

Telephone:

(843) 720-3724

(Exhibit "A"

Case Number: BD478403
ABBIE ILENE DORN VS DANIEL DORN

Filing Date: 01/08/2008
Case Type: Dissolution of Marriage (General Jurisdiction)
Status: Judgment By Court 08/20/2008

Statement of Decision (CCP §632)
04/07/2011

Following the court's announcement of decision and the expiration of time within which to submit to the court objections and proposals for further orders, the court now issues the statement of decision on the pendente lite matter of child custody and visitation. In making this final decision the court has considered the 04/01/2011 "Request" filed by Respondent.

All factual information cited in this decision has been obtained from percipient witnesses except for several paragraphs that are referred to as follows: [confidential portion of this decision is not printed here – the full opinion including the confidential portion is filed under seal.]

The confidential version of this decision is not to be disclosed to any third party.

The court also forwards to the parties a non-confidential version which may be disclosed.

(1) Legal standard for decision

This is the initial custody hearing to determine custody and visitation orders for triplets Esti, Reuvi, and Yossi all born on 06/20/2006 to Abbie Dorn ("Abbie") and Dan Dorn ("Dan").

There is no doubt in the court's mind that Abbie suffers from a profound brain injury that had led to her nearly total and complete disability. Abbie suffered these disabilities, apparently as a complication of childbirth, giving birth to the completely normal triplets whose custody and visitation are now before the court. After 18 months of therapy in California, Abbie was transferred to South Carolina and now lives in the Myrtle Beach home of Susan Cohen ("Susan") and Paul Cohen ("Paul"), the childrens' grandparents, who have also been appointed as Abbie's conservators, and who have transformed their home into a virtual hospital to accommodate Abbie's special needs. Abbie is unable to function and is totally and completely dependent upon a large number of care providers for life.

Susan filed the OSC in this case seeking the court to order visitation on Abbie's behalf. Susan argues that the appropriate legal standard for the court to employ in making this decision is F.C. §3100(a), which states that the court must grant reasonable visitation to a requesting parent, unless it is shown that visitation with that parent would be detrimental

to the children. Susan further argues that such authorities as Marriage of Carney (1979) 24 Cal. 3d 725 and F.C. §3049 hold that a parent's disability alone is not sufficient grounds to deny a parent visitation; rather the court should weigh the disability as one factor together with all other relevant factors in order to carefully determine whether the parent's condition will in fact have a substantial and lasting adverse effect on the best interests of the children.

Although Dan does not disagree with the concept of the children having visitation on his terms, he states that the court is without authority to order him to do so in this case. Dan states that F.C. §3100(a) does not apply in the case of an "unfit" parent. Dan argues that because Abbie is totally disabled and in a vegetative state that she is "unfit" and that he is therefore the only person entitled to determine how his children will be raised and that any order to the contrary violates his constitutional liberty interests as set forth in such cases as Herbst v. Swan (2002) 102 Cal. App. 4th 813, Hunsly v. Ho (2001) 87 Cal. App. 4th 1099, and Troxel v. Granville (2000) 530 U.S. 57.

In determining Abbie's degree of disability, the court is not permitted to make decisions on the basis of possibilities or a wishful desire to find that Abbie possesses sufficient degree of awareness to be able to see the beautiful children she has created. The videotaped "deposition" of Abbie Dorn and the testimony of Abbie's evaluating neurologist, Dr. Hays, must be viewed under the preponderance of the evidence standard. Given this standard, the court concludes that it is more likely than not that Abbie Dorn does not have any significant cognitive function, that her eye blinking and smiling and movements are involuntary movements described by Dr. Hays as brain stem reflexes. There is no greater disability that the court can envision. It is because of Abbie's profound damage that her pursuit of this case is through her conservators.

However, the court does not agree with Dan that Abbie's profound and permanent disability alone makes Abbie an unfit parent which would disqualify her conservators from seeking visitation. F.C. §3049 and California Supreme Court decision of Marriage of Carney (1979) 24 Cal. 3d 725 articulate a very important public policy central to the court's decision in issue in this case. As stated in Carney at pages 740-741:

"Both the state and federal governments now pursue the commendable goal of total integration of handicapped persons into the mainstream of society: the Legislature declares that 'It is the policy of this state to encourage and enable disabled persons to participate fully in the social and economic life of the state' (citations) No less important to this policy is the integration of the handicapped into the responsibilities and satisfactions of family life, cornerstone of our social system. Yet as more and more physically disabled persons marry and bear or adopt children -- or, as in the case at bar, previously nonhandicapped parents become disabled through accident or illness -- custody disputes similar to that now before us may well recur. In discharging their admittedly difficult duty in such proceedings, the trial courts must avoid impairing or

defeating the foregoing public policy. With the assistance of the considerations discussed herein, we are confident of their ability to do so." [emphasis added]

Carney also cited with approval Welfare and Institutions Code §300(a) which states that a child may be made a ward of the court because of lack of parental care and control, but "No parent shall be found to be incapable of exercising proper and effective parental care or control solely because of a physical disability . . . "

As Dan points out the Carney case involved a disability of much less magnitude than Abbie has sustained; but, the Carney decision intended by its holding to apply to disabilities of every type. The case of Abbie and Dan Dorn is clearly within the scope of the Carney decision. The Carney court went on to point out that:

"In particular, if a person has a physical handicap it is impermissible for the court simply to rely on that condition as prima facie evidence of the person's unfitness as a parent or of probable detriment to the child; rather, in all cases the court must view the handicapped person as an individual and the family as a whole. To achieve this, the court should inquire into the person's actual and potential physical capabilities, learn how he or she has adapted to the disability and manages its problems, consider how the other members of the household have adjusted thereto, and take into account the special contributions the person may make to the family despite -- or even because of -- the handicap. Weighing these and all other relevant factors together, the court should then carefully determine whether the parent's condition will in fact have a substantial and lasting adverse effect on the best interests of the child." [emphasis added]

None of the authorities cited by Dan, including Herbst v. Swan (2002) 102 Cal. App. 4th 813, Hunsly v. Ho (2001) 87 Cal. App. 4th 1099, and Troxel v. Granville (2000) 530 U.S. 57, compel a different standard than that expressed by Carney when one is evaluating the case in terms of custody disputes between two parents.

Dan additionally argues that this really a case of disguised grandparent visitation, because Susan's ulterior motive in this case is to gain visitation for herself and not for Abbie. On the latter argument, Dan has a point. Susan has clearly and repeatedly articulated her desire to have visitation with Esti, Reuvi, and Yossi, and she has in fact appeared uninvited at Dan's home and Temple to see the children. By her demeanor and actions, Susan demonstrates a degree of preoccupation with achieving visitation with the children regardless of Dan's preferences. Susan has shown that she does not consider any objection that Dan may have to this concept as being valid. The problem is made much worse by the fact that Abbie lives in Susan's home and Dan cannot gain access to Abbie without having to interact with Susan. As such, due to Abbie's condition, visitation with Abbie is de facto visitation with the grandparent. The problem is further compounded by the fact that Susan feels the need to parent Dan's children, and she has, for example, used

the opportunity with the children created by the first voluntary visit Dan made with the children to visit Abbie to instill in the children her belief that Abbie is communicating and that Abbie may get better; Dan is outraged by these unrealistic ideas.

Under Troxel, as Dan is a fit parent, he is entitled to the presumption that his parenting decisions including visitation with a non-parent are in the best interests of the children, and the court cannot unduly infringe on Dan's fundamental right to make decisions for the children.

There is no doubt in the court's mind that Susan has been a tireless, fully devoted, and successful advocate for her daughter Abbie and has arranged and managed an array of treatments and therapies for Abbie that can only be described as impressive. Abbie has already outlived the life expectancy given to her by her treating physicians because of Susan's extremely persistent and devoted attention to every detail of Abbie Dorn's life. Susan has also created an environment for her family in South Carolina that integrates Abbie fully into the lives of every family member. Notwithstanding these great accomplishments, Dan still has the fundamental right to make the decision that the children shall not have a relationship with Susan, Paul, or other family members or third persons and to prevent Susan from indoctrinating the children into a belief system that Dan finds to be wrong.

(2) Best Interests/Detriment analysis

This is a difficult case because of the factual setting involved. The court finds that F.C. §3100(a) applies as the basic standard upon which the court should determine custody and visitation. However, the court finds that visitation orders must be formulated in such a way as not to infringe upon Dan's fundamental constitutional right to make parenting decisions for his children including excluding Susan from visitation.

Pursuant to F.C. §3011, the court is required to consider which custody order is in best interests of the minor child as defined by F.C. §3011. The "best interests" standard has been said to be "an elusive guideline that belies rigid definition." However, the purpose of the best interests standard is to "maximize a child's opportunity to develop into a stable, well-adjusted adult." Adoption of Matthew B. (1991) 232 Cal. App. 3d 1239, 1263. The standard to be employed is not whether in an absolute sense a particular set of circumstances is in the best interests of the child, but whether a particular set of circumstances in relation to an alternative set of circumstances is in the best interests of the child. 232 Cal. App. 3d at page 1264. The court must consider the following factors in determining the child's best interests. These factors are set forth in F.C. §3011(a) – (d):

1. The child's health, safety, and welfare;
2. The nature and amount of the child's contact with both parents;
3. History of drug or alcohol abuse;
4. History of physical abuse;
5. Any other factors that the court deems relevant.

It is important to note that the court cannot view these factors from the perspective of Dan alone, or Susan. In reviewing these factors, the court must weigh those factors and determine the child's best interests solely from the child's standpoint. The court should not consider the feelings and desires of the contesting parents except as they affect the child's best interests. 232 Cal. App. 3d at page 1264.

Factors 3 and 4 are not relevant to this proceeding. There are really no health issues (children's health) that would present a risk to the children of visitation. Aside from air travel, there are no safety issues that bear on the best interests of the children. Thus the three F.C. 3011 factors that bear on the court's decision are factors 1-welfare, 2-nature and amount of contact with both parents, and 5-other factors the court deems relevant.

(2)(a) The nature and amount of the child's contact with both parents

The nature and amount of the child's contact with both parents is a relevant consideration. Since the Dorn children were newborn babies, there have been only four visits between the children and Abbie. These occurred during a one-week visit that Dan took with the children in December 2010. Other than these limited visits, Dan has been the parent solely responsible in all aspects of the children's life.

Dan testified that after Abbie fell into a coma soon after the delivery of the children, she stayed at Cedars Sinai hospital for about three months. She then was transferred to an interim rehabilitation facility in Oxnard for about three months, and then Abbie was transferred to a Bakersfield facility for about ten months. Dan took the triplets to see Abbie one time per week when at Cedars, then once or twice per week when she was in Oxnard, then when Abbie was transferred two hours away by car to Bakersfield, he only took the children twice. Between November 2007 and December 2010 the children did not visit Abbie.

Dan testified that on each visit with the children before November 2007 and in December 2010 Abbie had no changes. He never saw Abbie have any response to the children – "none whatsoever."

During the recent visit in December 2010, Dan took a number of photographs that were admitted in evidence. For example, Exhibit 117 shows Reuvi and Esti in the room with Abbie. Exhibit 110 shows Susan playing with Esti and Abbie is in the background. Exhibit 120 shows Esti and Yossi playing in a room with Abbie. At all times Abbie is sitting on a large chair or couch in a seated but somewhat slumped position and her legs are dangling in an unnatural manner. However, the expression on Abbie's face is not unpleasant, and her eyes are open, though not focused on any activity in the room. The photographs do not show a person who is in any way deformed or what the court would find to be disturbing to any visitor or the children.

The court also viewed the videotape of Abbie's "deposition" taken by Paul. The "deposition" revealed that Abbie does move around on her own in bed, blinks her eyes, smiles at times, and changes the direction of her head. Dan testified that the condition on

the video is the same condition as the date of the visit with Abbie, and this was the same condition Abbie was in on each of the prior visits with the children. As such, the court concludes that the children's visitation with their mother has been very limited, with no interaction by Abbie, but with Abbie's countenance and demeanor being non-threatening and at times of her smiles, engaging.

During the visits in December Susan arranged many activities for the children so they would not be bored – she had an art table, had the children participate in Abbie's music therapy by helping Abbie play her xylophone. Also, during the second visit in Abbie's bedroom Susan had the art table brought in there, and the children were engaged in age appropriate activities. Both Dan and Susan agreed that during the recent visit the children were happy and cheerful. At one point during the visit one of the children affectionately rubbed Abbie's arm and leg, Yossi swung from a trapeze device that was used for Abbie's care, and the children called Abbie "mommy." During the visit Dan demonstrated his compassion by holding Abbie's hand and telling the children that Abbie was their mother. Except for one time that Abbie cried out, there was nothing unexpected or apparently unsettling to the children. The children interacted with Abbie and were very affectionate toward her. The children did not seem afraid or shy away from her. It appears that it was a very positive experience for the children.

On the other hand there were problems between Dan and Susan during the visit. Several times during the visit Susan made statements to the children about Abbie's condition. When Susan asked a question of Abbie, Susan indicated that Abbie had answered by blinking. In another conversation Susan made a statement to the effect that Abbie would get better some day. A third incident occurred when Susan took Esti upstairs and closed herself and the child in a bathroom in an apparent effort to speak to Esti outside the hearing of Dan and tried to keep Dan out of the bathroom.

(2)(b) Childrens' welfare

Susan and Paul have a large home in Myrtle Beach, South Carolina that is two stories. There is a large yard that is directly on the Intracoastal Waterway. The rooms are large and from the home one can see the boats moving on the waterway. Abbie has a large bathroom and room. The home has ample of facilities for children – a playroom and large living area, and a library. There are children's toys, a swing outside, and frequently Abbie's sister Amy's five children are running around the house and yard. Thus, in spite of Abbie's condition, the physical surroundings of the home where the children would visit are beautiful and child friendly.

All witnesses testified that all three children were developing normally and were in fact thriving under Dan's care. They are regarded as loving, easy going children who are happy, inquisitive, and without anxiety. Considering the children's disposition, their personalities, and the nature of the visitation with Abbie in December, it is evident to the court that Abbie's condition does not constitute any threat to the welfare of the children during any visit.

The court has read and considered the report of Jane Schatz in this matter. [confidential portion of this decision is not printed here – the full opinion including the confidential portion is filed under seal.]

After the children returned home, Dan gave a photograph of Abbie to the children. They held onto the photograph for a prolonged time. It appears that even though the children were with their mother for only a short period of time, they bonded with her.

There is a significant concern regarding Susan's impulsive behavior during the visits and continuing after the visits that impacts on the children's welfare. While Susan has devoted her life to Abbie, she has not respected the boundaries that Dan has the right to impose. Susan's insistent belief that Abbie will recover, or will get better, that she is communicating, and placing herself in a position of speaking as if she is Abbie directly contradicts Dan's beliefs and observations. Susan's insistence on selling the children on a different reality than the one their own father believes in and has told the children creates a risk of undermining the relationship between the children and father. In Dan's view, Susan's behavior constitutes a threat to the children, because it is an unrealistic view of the world that will give the children false hope and disappointments that will cause them damage. However, the negative impact of Susan's behavior on the children's welfare should not prevent visitation so long as the children can be protected from her prior conduct that would serve to undermine the children's relationship with their father.

(2)(c) Any other factors that the court deems relevant

During the entire process of this hearing, Dan has repeatedly expressed his belief that provided the visitation is done on his terms, the children would benefit from visitation with their mother. Dan expresses a desire that the children wait until age 6 or 7 to visit. He states this request because: (1) Abbie is not able to give the children any type of affection or love; (2) Susan is speaking for Abbie and in Abbie's name in front of the children; (3) Dan wants the children to be more aware and cognizant of his beliefs before any further visits so they will not be harmed by Susan's statements; and, (4) because they will be more mature and better able to handle the visits when older.

The children have never spent any overnight period away from their father, which is a factor in support of limiting visitation to day visits.

The children have had other day care providers than Dan and go to pre-school. It appears that the children are doing well in school and are used to new experiences and social interactions.

After the December visitation, one of the children experienced bedwetting, but there is no evidence that this was due to any particular cause.

There is no compelling evidence that the visitations by the children will have any benefit to Abbie.

Because Abbie's sister (Amy) and brother live near Susan, and because Amy has five children, visiting Abbie will give the triplets an opportunity to visit extended family if Dan in his discretion determines that they should.

(2)(d) Detriment to the children

F.C. §3100(a) states that the court must grant reasonable visitation to a requesting parent, unless it is shown that visitation with that parent would be detrimental to the children. Stated another way, the Carney court indicated that the court should not order visitation if such visits would create "a substantial and lasting adverse effect on the best interests of the child."

On the basis of the findings made above there is no compelling evidence that visitation with Abbie will be detrimental to the children aside from any undermining of the father-child relationship that is discussed above from prior incidents between the children and Susan. Assuming that detrimental behavior of Susan can be avoided, the court sees no reason to believe that the children would be harmed by any visit with their mother.

(3) Custody and visitation order

(a) Dan is granted sole legal and sole physical custody of Esti, Reuvi, and Yossi all born on 06/20/2006.

(b) Abbie, by and through her conservators, is granted visitation one time each year for a period of 5 consecutive days commencing in the summer, 2011, and continuing each summer thereafter. Visitation shall be for three hours each day between the hours of 1 p.m. and 4 p.m., unless Susan or Paul and Dan agree to a different time. Dan shall be present during the visits. Dan may choose the week of the visit and must provide at least three weeks' notice to Susan and Paul.

The court does not agree with Dan's desire to delay the visitation until the children are 6 or 7, because Abbie has already outlived her life expectancy, and it is quite probable that she may have a complication of her injuries that will take her life in spite of the remarkable care provided by Susan and Paul. The children need to have a relationship with their mother established before she dies. The court finds that even though Abbie cannot interact with the children, the children can interact with Abbie – and that the interaction is beneficial for the children. They can touch her, see her, bond with her, and can carry these memories with them. If the children are unable to have this experience, the court finds that they will likely suffer psychological harm that will negatively affect their development and their relationship with their father.

The court does not agree with Susan that these visits can be overnight, as the children have never experienced an overnight period without their father. Moreover, there is no purpose to exposing the children to a prolonged period with their comatose mother.

The court does not agree with Susan that the visitation should be without father being present. The court finds that Dan must be present to protect the children from any unwanted socialization, contacts, or input that may be instilled that is contrary to his belief system. Dan has the right to indoctrinate the children into his world view and protect the children from exposure to a different viewpoint that in his mind would cause them harm. Dan has the right to control the persons who have access to the children during any visitation.

More frequent visitation is just not feasible given the age of the children, the distance to South Carolina, and Abbie's condition. It is not possible to have Abbie come to California due to her disability. The children, in the court's view established a bond with their mother in the one visit they had, and this annual visit will maintain the bond. Dan has already expressed a willingness to visit with the children once per year.

(c) The visitations may be controlled by Dan. During the visitation, Abbie may have any of her usual caretakers present, but Susan Cohen and any extended family must not be present in the room with the children and Abbie unless Dan agrees. Susan may receive the children and Dan into the home and interact with the children only in the presence of Dan. Susan is restrained from making any comments to the children regarding what Abbie thinks, her prognosis, how she is communicating, or from making comments that Abbie may recover. These restrictions are necessary to avoid exposure of the children to the potentially damaging comments previously made by Susan as stated above.

(d) The Cohens shall pay for reasonable expenses travel, accommodations, and food for the visitations for Dan, the triplets, and an assistant caretaker to be determined by Dan. Dan may tell the Cohens what his travel plans are, and the Cohens must advance the costs.

(e) In addition to the physical visitations, Dan and Susan must set up a two-way SKPE connection between Abbie's room and Dan's home so that the children may see their mother, and a person in Abbie's room can see the children via SKPE once per month on the first Sunday of each month for at least 30 minutes. Unless Dan and Susan or Paul agree otherwise, this shall be between 12:00 and 12:30 Pacific Time. During the SKPE, Paul Cohen may read the children a story or undertake some other interactive activity or communication with the children involving Abbie or the children may watch as Abbie receives music therapy with Paul Cohen and/or the caretaker/care provider describing what is done. Interaction with Abbie shall not suggest that Abbie is communicating with the caretaker or therapist. Susan Cohen may not be in the room during the SKPE contact, unless Dan agrees in a conversation outside the hearing of the children. Dan must assure that the children are present at the designated time and participate in the SKPE call.

Due to the age of the children frequent visitation is desirable. However, due to the distance the court must rely upon some form of technology to achieve this goal. The court does not believe that more frequent contact is beneficial to the children, since the children are not expected to receive any varied or different types of experience with their mother

or benefit from the visits because of Abbie's condition other than to keep the memory of their mother fresh in their minds.

(f) Dan is ordered to set up a shelf or table that is open and available to the children 24 hours a day, 7 days per week, in his home devoted to the childrens' mother Abbie and place photographs and other significant items associated with Abbie on the shelf or table in the home.

The children have already established a bond with their mother and have shown a degree of attachment to the photograph of their mother that they had previously received. The children would benefit from having these photographs and important items as symbols for the presence and existence of their mother, and it would reinforce in the children that Abbie is part of their lives.

(g) Request for therapy for Dan or Dan and the children or for the children are denied. The court does not find any need for such therapy. The children and Dan are well-adjusted to each other; the children showed no trauma or harm from the prior visitations.

IT IS SO ORDERED:

Frederick C. Shaller, Judge

Y

1

1

1

2

3

1

11

)

)

22

)

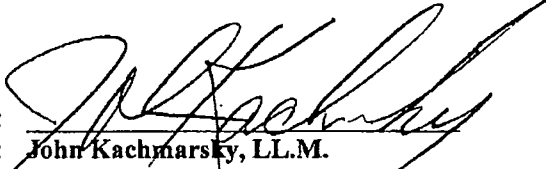
)

5

!

)

Signature:

Attorney:  John Kachmarsky, LL.M.

Address: LAW OFFICE OF JOHN KACHMARSKY
171 Church Street, Suite 330
Charleston, South Carolina 29401

Telephone: 843.720.3724

ATTORNEY FOR RESPONDENTS
ESTI DORN, REUVI DORN, AND YOSSE
DORN, THE LIVING ISSUE OF ABBIE
ILENE DORN

Dated April 13, 2011.

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD, AND)
SUSAN COHEN,)
Petitioners,)

vs.)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
HUMAN SERVICES,)
Respondents.)

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST.)

**ANSWER OF ABBIE ILENE DORN TO
PETITIONERS' AMENDED PETITION
TO AFFIRM PAYMENT OF FEES FROM
SPECIAL NEEDS TRUST AND TO REFORM
TERMS OF TRUST**

PROBATE COURT
HORRY COUNTY, SC
2011 MAY -4 PM 4:09
DEIRDRE W. EDWARDS
PROBATE JUDGE

Abbie Ilene Dorn, by and through her Court appointed Attorney, Lynette Rogers Hedgepath, answering the Amended Petition To Affirm Payment of Fees From Special Needs Trust and To Reform Terms of Trust of Petitioners above-named, hereby alleges and respectfully shows unto this Honorable Court as follows:

1. Each and every allegation of the Amended Petition not hereinafter specifically admitted, modified, qualified or denied, is denied and strict proof demanded thereof.
2. Answering the allegations contained in Paragraphs 1 and 2 of the Amended Petition, according to the documentation reviewed by the undersigned, she believes same to be true, and therefore, admits the allegations contained in Paragraphs 1 and 2.

3. The undersigned admits the allegations contained in Paragraph 3 of the Amended Petition.
4. As to the allegations contained in Paragraph 4 of the Amended Petition, the undersigned alleges that the Abbie Dorn Special Needs Trust attached to the Amended Petition speaks for itself.
5. The undersigned admits the allegations contained in Paragraph 5 of the Amended Petition.
6. The undersigned admits the allegations contained in Paragraph 6 of the Amended Petition.
7. The undersigned admits the allegations contained in Paragraph 7 of the Amended Petition.
8. The undersigned is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 8 of the Amended Petition, and therefore, denies the same and demands strict proof thereof.
9. Answering the allegations contained in Paragraphs 9 and 10 of the Amended Petition, the undersigned alleges that the Trust document speaks for itself.
10. Answering the allegations contained in Paragraph 11 of the Amended Petition, according to the documentation reviewed by the undersigned, she believes same to be true, and therefore, admits the allegations contained in Paragraph 11.
11. The undersigned is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 12 of the Amended Petition, and therefore, denies the same and demands strict proof thereof.
12. Answering the allegations contained in Paragraph 13 of the Amended Petition, the undersigned again alleges that the Trust document speaks for itself.
13. The undersigned admits the allegations contained in Paragraph 14 of the Amended Petition.

14. The undersigned lacks knowledge or information sufficient at this time to form a belief as to the truth or falsity of the allegations contained in Paragraph 15 of the Amended Petition, and therefore, denies the same and demands strict proof thereof.

WHEREFORE, having fully answered the Amended Petition of the Petitioners, Abbie Ilene Dorn, by and through her Court appointed Attorney, Lynette Rogers Hedgepath, prays that this Court inquire into the matters alleged and protect the interest of Abbie Ilene Dorn.

THE HEDGEPATH LAW FIRM, P. A.


Lynette Rogers Hedgepath, Esquire (SC Bar #14241)
Court Appointed Attorney for Abbie Ilene Dorn
207 Beaty Street
Conway, South Carolina 29526
(843) 488-3161 Office; (843) 488-3173 Fax
lynette@scccoast.net

Conway, South Carolina

May 4, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0050

PAUL S. COHEN, MD, AND)
SUSAN COHEN,)

Petitioners,)

vs.)

CERTIFICATE OF SERVICE

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING)
ISSUE OF ABBIE ILENE DORN,)
AND THE SOUTH CAROLINA)
DEPARTMENT OF HEALTH)
HUMAN SERVICES,)

Respondents.)

IN RE:)
THE ABBIE DORN SPECIAL)
NEEDS TRUST.)

I, **Gloria M. Bussey**, an employee of The Hedgepath Law Firm, certify that I have this day,
May 4, 2011, mailed a copy of the Answer of Abbie Ilene Dorn to Petitioners' Amended Petition
To Affirm Payment of Fees From Special Needs Trust and To Reform Terms of Trust, by placing
the same in an envelope and served by U. S. First Class Mail upon the following:

Attorneys For The Petitioners:

Bret H. Davis, Esquire
Davis Law Firm, P. A.
Post Office Box 70517
Myrtle Beach, SC 29572

Reese R. Boyd, III, Esquire
Boyd Law Firm, LLC
Post Office Box 15358
Myrtle Beach, SC 29572

Guardian ad Litem for Abbie Ilene Dorn:

V. Lee Moore, Esquire
Moore Johnson & Saraniti Law Firm, P. A.
Post Office Box 14737
Surfside Beach, SC 29587-4737

Attorney For Daniel Bernard Dorn:

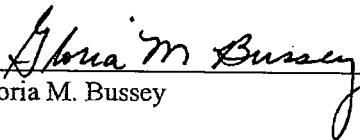
Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, L.L.P.
44 State Street
Charleston, SC 29401

Attorney & Guardian ad Litem for Esti Dorn, Reuvi Dorn, and Yosse Dorn:

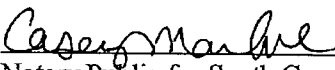
John Kachmarsky, Esquire
171 Church Street, Suite 330
Charleston, SC 29401

Attorney for The South Carolina Department of Health and Human Services:

The South Carolina Department of Health and Human Services
Office of General Counsel
George Burnett
Post Office Box 8206
Columbia, SC 29202


Gloria M. Bussey

SWORN To Before me this
4th day of May, 2011.


Notary Public for South Carolina
My Commission Expires: 3/8/18

THE HEDGEPATH LAW FIRM, P.A.

207 BEATY STREET

CONWAY, SOUTH CAROLINA 29526

LYNETTE ROGERS HEDGEPATH
E-MAIL: lynette@sccoast.net

PAULA A. SARTOR
E-MAIL: paulas@sccoast.net



TELEPHONE: (843) 488-3161

FAX: (843) 488-3173

WEB: <http://www.lawyers.com/hedgepathlawfirm>

May 4, 2011

Wyn Bessent Gotto, Esquire
Davis Law Firm, P. A.
Post Office Box 70517
Myrtle Beach, SC 29572

RE: Conservatorship, Guardianship, Special Needs Trust and Medicaid Matters for Abbie
Ilene Dorn
Case No.: 2008-ES-26-0050
Our File No.: 600-953

Dear Wyn:

I enclosed herewith and serve upon you the Answer of Abbie Ilene Dorn To Petitioners' Amended Petition To Affirm Payment of Fees From Special Needs Trust and To Reform Terms of Trust, in connection with the above-referenced matter, along with a Certificate of Service.

With kindest regards, I am

Very truly yours,

THE HEDGEPATH LAW FIRM, P. A.

A handwritten signature in black ink, appearing to read 'Lynette', followed by a long horizontal flourish line.

Lynette Rogers Hedgepath

LRH:gmb

Enclosures:

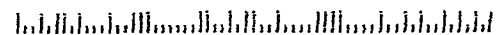
cc: Reese R. Boyd, III, Esquire
V. Lee Moore, Esquire
Daniel S. Slotchiver, Esquire
John Kachmarsky, Esquire
George Burnett, Esquire
w/enclosures

THE HEDGEPA. M, P.A.
207 BEATY ST.
CONWAY, SOUTH CAROLINA 29526



Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, L.L.P.
44 State Street
Charleston, SC 29401

2940182810



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Paul S. Cohen, MD, and Susan
Cohen,

Petitioners,

vs.

Esti Dorn, Reuvi Dorn, and Yosse
Dorn, the Living Issue of Abbie Ilene
Dorn, and the South Carolina
Department of Human Resources,

Respondents.

IN RE: The Abbie Dorn Special
Needs Trust

IN THE PROBATE COURT

Case No.: 2008-GC-26-00050

**PETITIONERS' ANSWER TO
COUNTERCLAIM OF
GUARDIAN-AD-LITEM
FOR THE DORN RESPONDENTS**

TO: JOHN KACHMARSKY, LLM, Attorney and Guardian-ad-Litem for
Respondents Esti Dorn, Reuvi Dorn, and Yosse Dorn:

COME NOW the Petitioners, Paul S. Cohen and Susan Cohen (herein, the
"Cohens" or the "Petitioners"), who for their ANSWER to the COUNTER-CLAIM (the
"Counterclaim") of the Guardian-ad-Litem for Respondents Esti Dorn, Reuvi Dorn, and
Yosse Dorn (hereinafter, the "Dorn Respondents"), would state or allege and would
show this Honorable Court as follows:

**FOR A FIRST DEFENSE
(General Denial)**

1. The Petitioners deny each and every allegation contained in the
Counterclaim that is not specifically hereinafter admitted. For each such allegation so
denied, strict proof thereof is hereby demanded by the Petitioners.

FOR A SECOND DEFENSE
(Answer)

2. The Petitioners re-allege and reiterate the allegations contained in the above paragraph, as if each were repeated here verbatim.

3. Paragraphs 1 through 18 of the Answer and Counterclaim do not require a response from the Petitioners.

4. Petitioners deny that they have breached their fiduciary duties as Trustees of the Abbie Dorn Special Needs Trust (the "ADSNT") in any manner. Further responding to the specific allegations of the Counterclaim, the Petitioners would respond and allege as follows:

5. Paragraphs 19, 20, 21 and 22 of the Counterclaim are admitted upon information and belief.

6. Responding to Paragraph 23 of the Counterclaim, Petitioners would state that the referenced Order of the California court will speak for itself. Petitioners would further state, in response to Paragraph 23 of the Counterclaim, that certain Objections to the [California] Court's Tentative Ruling of March 25, 2011, previously filed by Abbie Dorn on April 5, 2007, remain open in the April 7, 2011 Order. See the Court's Minute Order Rulings of April 7, 2011 on Petitioner's (Susan [Cohen's]) Objections to the Tentative Decision. Thus, the document that was filed as Exhibit "A" to the Counterclaim is not necessarily the final version of the order in question. However, in the event that the California court further revises the April 7, 2011 Order, Petitioners would again state that the document in its final form will continue to speak for itself.

7. Responding to Paragraph 24 of the Counterclaim, Petitioners would again state that the referenced Order of the California court will speak for itself. Petitioners admit that the cited language is contained in the California court's order of April 7, 2011, but would deny that such statement by the California court is binding upon the parties in these proceedings.

8. In response to those allegations contained in Paragraph 25 of the Counterclaim, Petitioners would deny the same inasmuch as certain language quoted therein is not contained in Recital B of the Abbie Dorn Special Needs Trust, as alleged. Further responding to the said allegations, Petitioner would state that the terms of the ADSNT document will speak for themselves. However, Petitioners do admit that the ADSNT was established to provide for the special care and needs of Abbie Ilene Dorn.

9. Paragraph 26 of the Counterclaim is denied, with strict proof thereof demanded. Further responding to Paragraph 26 of the Counterclaim, Petitioners would state that the terms of the ADSNT document will speak for themselves. Petitioners would also state, however, that by selectively quoting language from Article II, Paragraph 3 of the ADSNT, Paragraph 26 of the Counterclaim materially alters the import and meaning of Article II, Paragraph 3 of the ADSNT document.

10. Paragraph 27 of the Counterclaim states conclusions of law which do not require a response. To the extent a response is required, Petitioners would deny the same, with strict proof thereof demanded.

11. In response to Paragraph 28 of the Counterclaim, Petitioners would state that they have filed with the Probate Court every document which they were aware of

or which they have known has needed to be filed, and that they have been in regular and continuing communication with the Horry County Probate Court since the ADSNT was domiciled in Horry County in an effort to ensure their compliance with all requirements of the ADSNT and of the Court.

12. Paragraph 29 of the Counterclaim states conclusions of law which do not require a response. To the extent a response is required, Petitioners would deny the same, with strict proof thereof demanded.

13. Paragraph 30 of the Counterclaim does not require a response, in that it inquires into matters protected by the Attorney-Client privilege. To the extent a response is required, and without waiving any Attorney-Client privilege or other applicable privilege, Paragraph 30 of the Counterclaim is denied, with strict proof thereof demanded.

14. Paragraphs 31 and 32 of the Counterclaim are denied, with strict proof thereof demanded.

15. Paragraph 33 of the Counterclaim states conclusions of law that do not require a response. To the extent a response is required, Paragraph 33 of the Counterclaim is denied, with strict proof thereof demanded.

16. The Dorn Respondent's Prayer for Relief in the Counterclaim does not require a response, but to the extent that a response is required, the Petitioners would deny the same, and ask this Court to deny the Dorn Respondents the relief sought therein.

FOR A THIRD DEFENSE
(Failure to State a Claim)

17. The Petitioners re-allege and reiterate the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

18. The Dorn Respondents have failed to state facts upon which any claim for relief may be granted against the Petitioners. Therefore, pursuant to Rule 12(b)(6) of the S.C. Rules of Civil Proc., this Court should dismiss the Counterclaim.

FOR A FOURTH DEFENSE
(Reservation and Non-Waiver)

19. The Petitioners re-allege and reiterate the allegations contained in each of the above paragraphs, as if each were repeated here verbatim.

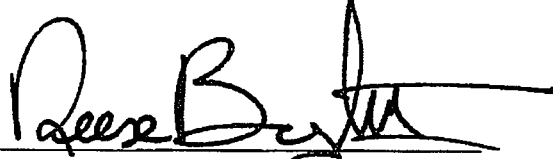
20. The Petitioners hereby give notice of their intent to assert any further affirmative defenses that the discovery process or their further research and investigation into the facts and law of the case may indicate are appropriate, available to them, or otherwise found to be supported by the facts or the law of the case.

WHEREFORE, having fully answered the Counterclaim of the Dorn Respondents, Petitioners would respectfully request of this Court the following:

- a) That the Dorn Respondents neither have, recover, nor be awarded any of the relief requested in their Counterclaim;
- b) That this Court enter judgment in favor of the Petitioners on all claims raised in the Counterclaim; and

- c) That the Court award to the Petitioners such other and further relief as this Court may deem just and proper under the circumstances.

Respectfully submitted,



Reese R. Boyd, III, Esq. (SC Bar #: 7151)
Boyd Law Firm LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(843) 238-2112 (fax)
reese@boydlawllc.com

- and -

Bret H. Davis, Esq.
Davis Law Firm, P.A.
Post Office Box 70517
1110 London St., Suite 201
Myrtle Beach, SC 29577
(843) 839-9800
(843) 839-9901 (fax)
bdavis@davislawfirm.com

Attorneys for the Petitioners
Paul S. Cohen, MD and Susan Cohen

Dated: May 13, 2011

Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE PROBATE COURT
Case No.: 2008-GC-26-00050

Paul S. Cohen, MD, and Susan
Cohen,

Petitioners,

vs.

CERTIFICATE OF SERVICE

Esti Dorn, Reuvi Dorn, and Yosse
Dorn, the Living Issue of Abbie Ilene
Dorn, and the South Carolina
Department of Human Resources,

Respondents.

IN RE: The Abbie Dorn Special
Needs Trust

I hereby certify that on this 13th day of May, 2011, I served the following document(s):

- (1) Petitioners' Answer to Counterclaim of Guardian-Ad-Litem for the Dorn Respondents
- (2) Certificate of Service

upon the following counsel of record in the above-captioned matter, in keeping with the applicable Rule of Civil Procedure, by placing the same in the United States mail, First Class postage prepaid, and addressed as follows:

Virginia Lee Moore, Esq.
Moore, Johnson & Saraniti Law Firm, PA
Post Office Box 14737
Surfside Beach, SC 29587

Lynette Rogers Hedgepath, Esq.
Hedgepath Law Firm
207 Beatty Street
Conway, SC 29526

Daniel S. Slotchiver, Esq.
Stephen M. Slotchiver, Esq.
Slotchiver & Slotchiver
44 State Street
Charleston, SC 29401

Bret H. Davis, Esq.
Davis Law Firm, P.A.
P.O. Box 70517
Myrtle Beach, SC 29572

The South Carolina Department
Of Health and Human Services
Office of General Counsel
George Burnett
P.O. Box 8206
Columbia, SC 29202

John Kachmarsky, Esq.
Law Office of John Kachmarsky
171 Church Street, Suite 330
Charleston, SC 29401



Reese R. Boyd, III
BOYD LAW FIRM LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(843) 238-2112 (fax)

Dated: May 13, 2011

BOYD LAW FIRM, LLC

Telephone: (843) 238-1978
Facsimile: (843) 238-2112

1500 Highway 17 North
The Courtyard, Suite 212
Myrtle Beach, South Carolina 29575

May 13, 2011

Mailing Address:
Post Office Box 15358
Myrtle Beach, South Carolina 29587

The Honorable Deirdre Edmonds
Probate Court Judge
Horry County Probate Court
Post Office Box 288
Conway, SC 29526

Re: Matters in Re: Abbie Ilene Dorn Special Needs Trust
Case Number: 2008-GC-26-0050
Our File No.: 010.033

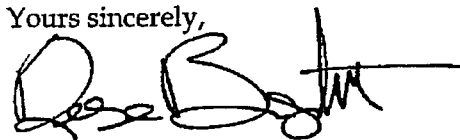
Dear Judge Edmonds:

Enclosed please the Answer of the Petitioners, Paul and Susan Cohen, to the Counterclaim of the Guardian-Ad-Litem for the Dorn Respondents in connection with the above-referenced matter, along with a Certificate of Service with respect to same.

By carbon copy of this letter, I am also serving these documents upon all counsel of record in the matter, as further set forth below.

With kindest regards, I am

Yours sincerely,



Reese R. Boyd, III

RRB/tbc
Enclosures

cc: Bret Davis, Esq.
Lynette Rogers Hedgepath, Esq.
John Kachmarsky, Esq.
Virginia Lee Moore, Esq.
Daniel S. Slotchiver, Esq.
George Burnett, Esq.

BOYD LAW FIRM, LLC

Telephone: (843) 238-1978
Facsimile: (843) 238-2112

1500 Highway 17 North
The Courtyard, Suite 212
Myrtle Beach, South Carolina 29575

Mailing Address:
Post Office Box 15358
Myrtle Beach, South Carolina 29587

August 8, 2011

The Honorable Deirdre Edmonds
Probate Court Judge
Horry County Probate Court
Post Office Box 288
Conway, SC 29526

Re: Matters in Re: Abbie Ilene Dorn Special Needs Trust
Case Numbers: 2008-GC-26-0025 and 2008-GC-26-0050
Our File No.: 010.033

Dear Judge Edmonds:

I enclose for filing in connection with the above-referenced matter, one (1) original and one (1) copy of Respondents' Motion for Protective Order and to Quash Subpoena. Please accept the original for filing and return the clocked copy to the undersigned in the return envelope provided with the enclosures.

We appreciate the Court's courtesies in this matter. If you have additional questions or need further information, please let us know.

With kindest regards, I am

Yours sincerely,



Reese R. Boyd, III

RRB/pew

cc: Daniel S. Slotchiver, Esq.
Lynette Rogers Hedgepath, Esq.
V. Lee Moore, Esq.

Bret H. Davis, Esq.
John Kachmarsky, Esq.
George Burnett, Esq.

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Daniel B. Dorn, in his capacity as the
Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yosse Dorn,

Petitioner,

vs.

Paul S. Cohen and Susan Cohen,
individually and in their capacity as
the Co-Conservators of the person of
Abbie Ilene Dorn, a protected person
and ward, and in their capacity as Co-
Trustees of the Abbie Dorn Special
Needs Trust,

Respondents.

IN THE PROBATE COURT
HORRY COUNTY

Case No.: 2010-GC-26-25

Case No.: 2010-GC-26-50

**MOTION FOR PROTECTIVE ORDER
AND TO QUASH SUBPOENA**

PLEASE TAKE NOTICE that the Respondents, by and through their undersigned attorney, will move this Honorable Court ten days hence, or as soon thereafter as may be heard, for an Order pursuant to Rule 45, South Carolina Rules of Civil Procedure, quashing the Subpoena issued to M. Robin Morris by the Petitioner herein on July 27, 2011, and imposing Protection for M. Robin Morris with respect to certain dates, as further set forth herein.

This Motion is based upon the following:

- (1) M. Robin Morris has advised Counsel for the Respondents that she has a family medical matter involving her mother, who has recently fallen and injured herself. The matter necessitated the transport of

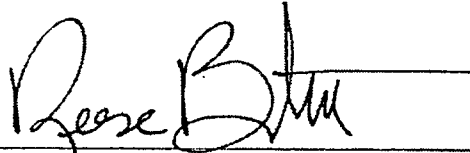
Ms. Morris' mother from Winston-Salem, North Carolina to Pawleys Island, South Carolina, where she will recuperate at the home of Ms. Morris. Ms. Morris has indicated that she will be moving her mother on August 8 and 9, 2011. She has therefore advised that she will not be available for deposition on August 9, 2011, as the Petitioner has demanded.

- (2) Ms. Morris has further advised that her son is currently visiting her from Australia, and that he will be staying with her in Pawleys Island, South Carolina through August 22, 2011. Given the significant inconvenience and expense of travel from Australia to South Carolina, Ms. Morris has requested that Respondents seek a Protective Order on her behalf, providing that her deposition in this matter not be scheduled before August 22, 2011.
- (3) Finally, Ms. Morris has an attorney-client relationship with the Respondents, Paul and Susan Cohen, and the Respondents therefore seek a Protective Order that the deposition of Robin Morris may not be used to inquire into matters that are subject to the attorney-client privilege of the Respondents, except in such limited scope as the Respondents may otherwise agree, in writing, or except as this Court may otherwise order.

This Motion will be supported by any exhibits, pleadings, affidavits, memoranda, or other documents as may be presented at or before the hearing of this

matter, and/or such case law, statutory law, or other legal authorities as movants may present to this Court.

Respectfully Submitted,



Reese R. Boyd, III, Esq. (SC Bar #: 7151)
Boyd Law Firm LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(800) 489-3519 (fax)
reese@boydlawllc.com

Attorneys for Respondents Paul S. Cohen and
Susan Cohen

Dated:

August 8, 2011

Myrtle Beach, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 8th day of August 2011.



Renee B. Goldfinch, Legal Assistant to
Boyd Law Firm LLC

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Daniel B. Dorn, in his capacity as)
the Parent and Natural guardian of)
Esti Dorn, Reuvi Dorn, and Yosse)
Dorn,)

Petitioners,)

vs.)

Paul S. Cohen and Susan Cohen,)
Individually and in their capacity as)
the Co-Conservators of the person of)
Abbie Ilene Dorn, a protected person)
and ward, and in their capacity as)
Co-Trustees of the Abbie Dorn)
Special Needs Trust,)

Respondents.)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-0025
CASE NO.: 2008-GC-26-0050

**MEMORANDUM IN SUPPORT OF
COUNSEL FOR ABBIE ILENE DORN
TO AMEND PLEADINGS AND PRESENT
WITNESSES AND EVIDENCE AT TRIAL**

This matter comes before the court upon the Motion of attorney, Lynette Rogers Hedgepath, seeking to amend her pleadings to conform to the evidence. The motion was precipitated in part based upon Mr. Boyd's examination of the Co-Trustee Susan Cohen. During Susan Cohen's testimony, the attorney Daniel Slotchiver objected to certain parts of her testimony regarding her reliance upon the advice of legal counsel and medical experts on the basis that such testimony was hearsay. Counsel for Abbie Dorn argued that Susan Cohen's testimony was admissible as it went to her state of mind and her reliance upon such advice was relevant to whether or not the Cohen's breached their fiduciary duty. The objection was overruled and the testimony was allowed.

Subsequently, Mr. Slotchiver argued to the Court that testimony and evidence regarding

the Co-Trustees' reliance upon experts was not admissible because the parties had not properly raised the issue in their pleadings. He argued in essence that the Trustees' reliance upon experts was an affirmative defense that must be pled in order to allow evidence at trial regarding the issue. Although Abbie Dorn ("Abbie") is not a named party in this action and as such would not normally plead an affirmative defense, she is in fact *the* party in interest in this case as the matters before the Court involve the Special Needs Trust established for Abbie's sole benefit. The court appointed counsel and guardian ad litem for Abbie are entitled to present evidence and testimony regarding the Trustees' reliance upon experts in performing their duties as Trustees as this is central to the issue of the Trustees' performance of their fiduciary duties.

No one in this action has a greater interest in the Trustees' fiduciary duty than Abbie. The court appointed attorney for Abbie Dorn's children, John Kachmansky, has filed pleadings seeking the removal of Abbie's parents, Susan and Paul Cohen, as Trustees and has questioned the Trustees about the cost of placing Abbie in an institution rather than maintain her at home under the care and supervision of her parents where she receives excellent medical care and attention.

In representing Abbie and her best interest it is imperative that her attorney and guardian ad litem be allowed to present evidence to the Court regarding the performance of the Trustees and the care that Abbie is receiving. Accordingly, to the extent the Court may consider an amendment to the pleadings necessary for Abbie's counsel to present evidence and testimony regarding the Trustees' reliance upon experts in performing their fiduciary duties, counsel does hereby respectfully request that she be allowed to make such an amendment to conform with the evidence presented at trial.

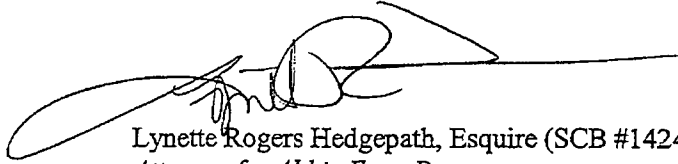
Rule 15 (a) of the South Carolina Rules of Civil Procedure governs motions to amend made during trial and allows the Court to provide leave for a party to amend his pleadings and further sets forth that such "leave shall be freely given when justice so requires and does not prejudice the other party." Rule 15(b) provides a specific mechanism for the amendment of pleadings to conform to the evidence presented at trial. There is no time limit for amendments to conform to the evidence, and they may be made at any time the trial court has jurisdiction of the case.

[A]mendments to conform to proof should be liberally allowed when no prejudice to the opposing party will result therefrom; see Campana v. Eller, 755 F.2d 212 (1st Cir.1985) (*construing* F.R.Civ.P. 15(b)). In considering potential prejudice to the opposing party, the court should consider whether the opposing party 'has had the opportunity to prepare for the issue now being raised formally.' H. Lightsey & J. Flanagan, South Carolina Rules of Civil Procedure at 291.

Soil & Material Engineers, Inc. v. Folly Associates, 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct. App. 1987).

Petitioners have had full and ample opportunity to conduct discovery of all parties and certainly more than adequate time to questions why various decisions were made by the Trustees which the Petitioners believe were inappropriate. The Petitioners would suffer no prejudice by the amendment to the pleadings as they will be afforded a full opportunity to address the issues raised in the amendment.

THE HEDGEPATH LAW FIRM, P. A.



Lynette Rogers Hedgepath, Esquire (SCB #14241)

Attorney for Abbie Ilene Dorn

207 Beaty Street

Conway, South Carolina 29528

(843) 488-3161 - Office (843) 488-3173 - Fax

E-Mail: lynette@sccocast.net

Conway, South Carolina

28 day of March, 2013

293 S.C. 498
Court of Appeals of South Carolina.

SOIL & MATERIAL ENGINEERS, INC., Appellant,
v.
FOLLY ASSOCIATES, A South Carolina Limited
Partnership, and Doug Allen Enterprises, Inc.,
General Partner of Folly Associates, Respondents.

No. 1035. | Heard Oct. 12,
1987. | Decided Oct. 26, 1987.

In action brought by subcontractor, seeking payment for services rendered in connection with construction project, the Common Pleas Court, Charleston County, George M. Stuckey, Special Circuit Judge, denied subcontractor's motion to amend reply to conform to the evidence, and subsequently dismissed both subcontractor's claim and a counterclaim. Subcontractor appealed. The Court of Appeals, Goolsby, J., held that denial of subcontractor's motion to amend pleading to conform to the proof was an abuse of discretion.

Reversed and remanded.

West Headnotes (3)

[1] Appeal and Error

⇨ Amended and Supplemental Pleadings

Pleading

⇨ Discretion of Court

Question of allowing an amendment of pleadings to conform to the proof is addressed to the sound discretion of the trial judge, whose decision will not be disturbed absent an abuse of discretion.

6 Cases that cite this headnote

[2] Pleading

⇨ Amendment to Conform to Proofs

Trial judge abused its discretion in denying subcontractor's motion to amend its pleading to conform to the proof, in breach of contract action concerning construction project, where opposing party had been alerted to possibility of amendment by subcontractor's answers to

previously propounded interrogatories, and there was no indication that, had amendment been allowed, opposing party would not have been afforded full opportunity to introduce evidence relating to subcontractor's responsibilities under contract, the substance of the proposed amendment.

13 Cases that cite this headnote

[3] Pleading

⇨ Amendment to Conform to Proofs

Testimony in contract action was at variance with plaintiff's pleadings, and was the proper subject of plaintiff's motion to amend, notwithstanding judge's comment that testimony in question was "not inconsistent with the pleadings."

1 Cases that cite this headnote

Attorneys and Law Firms

**780 *499 Thomas R. Goldstein, of Charles S. Bernstein, P.A., Charleston, for appellant.

William B. Regan, Charleston, for respondents.

Opinion

GOOLSBY, Judge.

The appellant Soil & Material Engineers, Inc. ("Soil & Material") instituted this action against the respondents Folly Associates, a South Carolina Limited Partnership, and Doug Allen Enterprises, Inc. ("Allen Enterprises"), Folly Associates' general partner, for payment of services rendered by it for Folly Associates in connection with a pile driving operation performed during the construction of a motel on Folly Beach. Folly Associates defended by asserting a setoff and a counterclaim in which it alleged a cost overrun caused by Soil & Material's failure to do "an adequate job in overseeing" the construction of the motel's foundation. The trial court dismissed both the complaint and the counterclaim, not finding in favor of either Soil & Material or Folly Associates. Soil & Material appeals. The question we address is whether the trial court committed reversible error in not allowing Soil & Material to amend its reply to conform to the evidence. We reverse and remand the case for a new trial.

Soil & Material admitted in its reply to allegations in Folly Associates' and Allen Enterprises' setoff and counterclaim that Folly Associates and Allen Enterprises had "requested [Soil & Material to] provide services to [Folly Associates and Allen Enterprises] by overseeing the construction *500 of the foundation of the Holiday Inn...." Soil & Material affirmatively alleged in its reply to allegations in the setoff that it had "performed adequately pursuant to the parties' agreement in overseeing the construction of the foundation wall" and in its reply to allegations in the counterclaim that it had "performed its job as contemplated by the parties, which was soil and geologic analysis...."

At the beginning of the trial, Soil & Material introduced testimony through its first witness, William B. Wright, the branch manager of its Charleston office, that "[i]t was the company's job" under its oral contract with Folly Associates simply "to monitor the installation of the piles" for the purpose of determining that the pilings were driven to their proper depth. The **781 trial judge, however, limited this evidence on his own motion, stating that "[y]our witness is testifying contrary to the pleadings, counsellor." Soil & Material's attorney then moved pursuant to Rule 15(b) to be allowed to amend its reply to reflect that Soil & Material's responsibility under the contract was not "to oversee" the pile driving operation but "to monitor" it. The trial judge refused to allow the amendment on the ground that motion to amend came too late and that the testimony "was not inconsistent with the pleadings."

The evidence showed that the pilings were not driven in a straight line.

In dismissing the complaint, the trial judge held that the contract between the parties required Soil & Material to "oversee[]" the construction of the motel's foundation, that "overseeing was different from monitoring," and "that overseeing required [Soil & Material] not only to make certain that the pilings were driven to a certain foundation [sic] but ... also in a straight position to be able to support the structure."

The trial judge placed great emphasis on the pleadings, which Soil & Material had sought to amend, in reaching his decision. He remarked just prior to dismissing the complaint, "Gentlemen, ... it was admitted in the pleadings that [Soil & Material] was hired by [Folly Associates] to provide services

to [it] by overseeing the construction of the foundation of the Holiday Inn on Folly Beach."

Rule 15(b) of the new South Carolina Rules of Civil Procedure provides in part:

*501 If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subverted thereby and the objecting party fails to satisfy the court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The court shall upon motion grant a continuance reasonably necessary to enable the objecting party to meet such evidence.

[1] As our new rule makes manifest, amendments to conform to proof should be liberally allowed when no prejudice to the opposing party will result therefrom. H. LIGHTSEY & J. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE at 291 (1985); see *Campana v. Eller*, 755 F.2d 212 (1st Cir.1985) (construing F.R.Civ.P. 15(b)). In considering potential prejudice to the opposing party, the court should consider whether the opposing party "has had the opportunity to prepare for the issue now being raised formally." H. LIGHTSEY & J. FLANAGAN, *supra* at 291. The court should grant a continuance "[i]f prejudice can be eliminated or substantially minimized by a continuance so that the opposing party can meet the evidence." *Id.* An amendment to conform to proof provides the opposing party with no just cause to complain if the opposing party "is afforded full opportunity to introduce testimony bearing on the subject of the amendment." 61A Am.Jur.2d *Pleading* § 329 at 322 (1981). The question of allowing an amendment to pleadings to conform to proof, however, is addressed to the sound discretion of the trial judge whose decision will not be disturbed absent an abuse of discretion. *Crowley v. Spivey*, 285 S.C. 397, 329 S.E.2d 774 (Ct.App.1985).

[2] Here, there was an abuse of discretion. Simply because an amendment to conform to proof was made late in the trial affords no basis for holding that the amendment comes too

late. Rather, as the rule makes clear, the question is one of prejudice to the opposing party.

The trial judge, however, made no finding of prejudice and Folly Associates made no showing of any. Indeed, prejudice could not properly have been found since Soil & Material *502 plainly stated in its answers to Folly Associates' interrogatories that Soil and Material's duty was to "monitor the contractor's driving of piles on the job" and that it would offer at trial an expert witness to testify that "the course of practice in the industry is for the contractor to be responsible for ... the driving of the piles." [Emphasis added.] This answer was enough to alert Folly Associates, notwithstanding **782 the allegations contained in the reply, to prepare for the contention that Soil & Material sought to raise by an amendment to its pleadings.

Moreover, the record does not show that Folly Associates, had the amendment been allowed, would not have been afforded a full opportunity to introduce evidence relating to what it regarded were Soil & Material's responsibilities under the contract. In fact, L. Douglas Allen, who owns Allen Enterprises, testified that Folly Associates relied on Soil &

Material "to see that the piles [were] driven properly," that Soil & Material had duties in addition to making a count of the number of blows to drive the pilings, and that Soil & Material was hired "for the purpose of insuring that the foundation was built pursuant to the plans and [specifications]."

[3] Regarding the other ground on which the trial judge denied the motion to amend, evidence cannot be both "contrary to the pleadings" and "not inconsistent with the pleadings" at the same time. In any case, the testimony that the trial judge limited on his own motion was at variance with the pleadings.

We need not address Soil & Material's other exceptions.

REVERSED and REMANDED.

SANDERS, C.J., and GARDNER, J., concur.

Parallel Citations

361 S.E.2d 779

End of Document

© 2013 Thomson Reuters. No claim to original U.S. Government Works.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2008-GC-26-25
CASE NO.: 2008-GC-26-50

Daniel B. Dorn, in his capacity as)
the Parent and Natural guardian of)
Esti Dorn, Reuvi Dorn, and Yosse)
Dorn,)

Petitioners,)

vs.)

Paul S. Cohen and Susan Cohen,)
individually and in their capacity as)
the Co-Conservators of the person of)
Abbie Ilene Dorn, a protected person)
and ward, and in their capacity as)
Co-Trustees of the Abbie Dorn)
Special Needs Trust,)

Respondents.)

CERTIFICATE OF SERVICE

28th I, **Gloria M. Bussey**, an employee of The Hedgepath Law Firm, certify that I have this day of March, 2013, served a copy of the Memorandum In Support Of Counsel For Abbie Ilene Dorn To Amend Pleadings And Present Witnesses And Evidence At Trial, upon the parties listed below, by placing the same in the U. S. Mail, First Class, with proper postage affixed thereto, and addressed as follows:

Attorney For Daniel Bernard Dorn:

Daniel S. Slotchiver, Esquire
Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, L.L.P.
44 State Street
Charleston, SC 29401

Attorneys For Defendants Paul S. Cohen and Susan Cohen:

Bret H. Davis, Esquire
Davis Law Firm, P. A.
Post Office Box 70517
Myrtle Beach, SC 29572

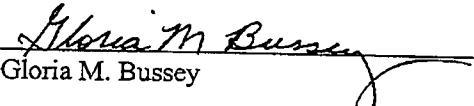
Reese R. Boyd, III, Esquire
Boyd Law Firm, LLC
Post Office Box 15358
Myrtle Beach, SC 29572

Guardian ad Litem for Abbie Ilene Dorn:

V. Lee Moore, Esquire
Moore Johnson & Saraniti Law Firm, P. A.
Post Office Box 14737
Surfside Beach, SC 29587-4737

Attorney & Guardian ad Litem for Esti Dorn, Reuvi Dorn, and Yosse Dorn:

John Kachmarsky, Esquire
171 Church Street, Suite 330
Charleston, SC 29401


Gloria M. Bussey

SWORN To Before me this
28 day of March, 2013.


Notary Public for South Carolina
My Commission Expires: 3-14-16

CCFY

THE HEDGEPATH LAW FIRM, P.A.

207 BEATY STREET
CONWAY, SOUTH CAROLINA 29526

LYNETTE ROGERS HEDGEPATH
E-MAIL: lynette@sccoast.net



TELEPHONE: (843) 488-3161
FAX: (843) 488-3173
WEB: <http://www.hedgepathlawfirm.com>

PAULA A. SARTOR
E-MAIL: paulas@sccoast.net

March 28, 2013

The Honorable Deirdre W. Edmonds
Horry County Probate Judge
Post Office Box 288
Conway, SC 29528

RE: Daniel B. Dorn, in his capacity as the Parent and Natural guardian of Esti Dorn, Reuvi Dorn, and Yosse Dorn vs. Paul S. Cohen and Susan Cohen, individually and in their capacity as the Co-Conservators of the person of Abbie Ilene Dorn, a protected person and ward, and in their capacity as Co-Trustees of the Abbie Dorn Special Needs Trust
Case Numbers: 2008-GC-26-25 and 2008-GC-26-50
Our File Number: 6001-653

Dear Judge Edmonds:

I enclose herewith and forward to you our Memorandum In Support Of Counsel For Abbie Ilene Dorn To Amend Pleadings And Present Witnesses And Evidence At Trial, along with a Certificate of Mailing.

With kindest regards, I am

Very truly yours,

THE HEDGEPATH LAW FIRM, P. A.

A handwritten signature in black ink, appearing to read 'Lynette', followed by a long horizontal line.

Lynette Rogers Hedgepath

LRH:gmb
Enclosures
cc w/enclosures:

Daniel S. Slotchiver, Esquire
Stephen M. Slotchiver, Esquire
Bret H. Davis, Esquire
Reese R. Boyd, Esquire
Virginia Lee Moore, Esquire
John Kachmarsky, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
DANIEL B. DORN, in his capacity as the)
Parent and Natural Guardian of Esti Dorn,)
Reuvi Dorn, and Yosse Dorn,)
Petitioner,)
vs.)
PAUL S. COHEN and **SUSAN COHEN**,)
Individually and in their capacity as the Co-)
Conservators of the person of Abbie Ilene)
Dorn, a protected person and ward, and in)
their capacity as Co- Trustees of the Abbie)
Dorn Special Needs Trust,)
Respondents,)

IN THE PROBATE COURT

CASE NO. 2008-GC-26-0025
CASE NO. 2008-GC-26-0050

**PETITIONER'S MEMORANDUM IN
SUPPORT OF DENYING
RESPONDENTS' MOTIONS FOR
LEAVE TO AMEND PLEADINGS,
INTRODUCTION OF AN AFFIRMATIVE
DEFENSE, TESTIMONY BY WITNESSES
NOT PROPERLY IDENTIFIED UNDER
STANDARD DISCOVERY REQUESTS,
AND TO LIMIT EVIDENCE SUBMITTED
BY PETITIONER**

Petitioner, by and through his undersigned counsel, hereby moves pursuant to Rules 8(c), 12(b), 33(b), and 15(b) of the South Carolina Rules of Civil Procedure to ask this court to: (1) bar Respondents from amending their pleading to include affirmative defenses not previously made in their Answer or Counterclaim, (2) deny Respondents motion to reconsider the Court's earlier ruling prohibiting the testimony of witnesses not included in discovery responses, (3) deny motion to amend the pleadings to conform to the evidence, and (4) deny motion of Respondents to limit the evidence presented by Petitioner.

AMENDING PLEADINGS AND AFFIRMATIVE DEFENSES

The general rules of pleadings states that a party must assert any affirmative defense in their responsive pleading, Rule 8(c), SCRPC. The South Carolina Rules of Civil Procedure requires that "every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required." Rule 12, SCRPC. Therefore, affirmative defenses to a cause of action in any pleading must be asserted in the opposing party's responsive pleading. Strickland v.

Strickland, 650 S.E.2d 465, 470 (S.C. 2007) (citing Wright v. Craft, 640 S.E.2d 486, 497 (S.C. Ct.App. 2006)). Furthermore, the South Carolina Supreme Court has held that the failure to assert an affirmative defense constitutes a waiver of the right to assert it. Whitehead v. State, 574 S.E.2d 200, 202 (S.C. 2002); see Earthscapes Unlimited, Inc. v. Ulbrich, 703 S.E.2d 221, 225 (S.C. 2010) (a party cannot benefit from an affirmative defense that was never pled).

Rule 15(b) of the South Carolina Rules of Civil Procedure does provide an exception to this general requirement by allowing the court the discretionary ability to grant a party leave to amend their pleadings to conform to the evidence. However, the courts have noted that while leave to amend pleadings, pursuant to Rule 15, SCRPC, should be freely granted, it should only be given so long as it does not prejudice the other party. Parker v. Spartanburg Sanitation Sewer Dist., 607 S.E.2d 711, 716 (S.C. Ct. App. 2005) (citing Crestwood Golf Club, Inc. v. Potter, 493 S.E.2d 826 (S.C. 1997)).

Among the many factors the court might consider, in addition to prejudice, are the lapse of time since service of the original pleading, the length of the delay in making the motion (that is, how long the amending party was aware of the facts upon which the motion is predicated), the reasonableness of the explanation for the delay, the extent of pretrial preparation that has already occurred, the duplication of effort required if the amendment is permitted, how far the case has progressed, and the impact upon the date of trial if the amendment is permitted. 1B West's McKinney's Forms Civil Practice Law and Rules § 4:304; see Rosenthal v. Allstate Ins. Co., , 670 N.Y.S.2d 862 (2d Dep't 1998) ("In deciding whether to grant an application to amend pleadings, the Supreme Court should consider such factors as the delay in moving, surprise, and significant prejudice, the latter being the foremost consideration" (citation omitted)). However, the later in the lawsuit the motion for leave to amend is made, the less chance it will be granted

because the greater the likelihood of prejudice to the other parties. 1B West's McKinney's Forms Civil Practice Law and Rules § 4:304.

The prejudice envisioned by Rule 15, SCRPC, which provides leave to amend a pleading more than 30 days from service of responsive pleading, is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it. Stanley v. Kirkpatrick, 592 S.E.2d 296 (S.C. 2004) reh'g denied; Parker, 607 S.E.2d at 716 (citing Tanner v. Florence Cnty. Treasurer, 521 S.E.2d 153 (S.C. 1999); see City of North Myrtle Beach v. Lewis-Davis, 599 S.E.2d 462, 465 (S.C. Ct. App. 1998); Soil & Material Eng'rs, Inc. v. Folly Assoc., 361 S.E.2d 779, 781 (S.C. Ct. App. 1987). Furthermore, the South Carolina Court of Appeals has held that prejudice occurs when the amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action. Ball v. Canadian Am. Exp. Co., 442 S.E.2d 620 (S.C. Ct. App. 1994). Finally, the Supreme Court of South Carolina has held that granting leave to amend a pleading would be prejudicial if the amendment would change substantially the claim or defense of the party seeking the same. S.C. State Highway Dep't v. Rural Land Co., 156 S.E.2d 333, 338 (S.C. 1967); Oyler v. Oyler, 358 S.E.2d 170 (S.C. Ct. App. 1987) (Adultery, as a defense in an alimony case, was a new factual matter and that by asserting this avoidance or defense for the first time, two days into trial, gave the wife no notice of his intent to prove adultery as a bar to her claim; she had no time to plead or establish a case to refute this claim).

In Collins Entm't, Inc. v. White, the court of appeals further defined this prejudicial effect when it explained that it would be prejudicial to allow the defendant to raise a defense during trial when the opposing party did not have time to prepare a case against that defense prior to trial. 611 S.E.2d 262 (S.C. Ct. App. 2005). The court held that the opposing party was prejudiced simply by the fact that they had prepared their case around the defendant's pleadings

and were not afforded the ability to prepare their case against any affirmative defense absent from the pleadings. Id. Notably, the court denied leave to amend the pleadings even though the defendant claimed that statements made during trial, in support of the defenses they plead, established evidence of the defense they were seeking to incorporate into their amended pleading. Id. Additionally, the Supreme Court of South Carolina has held that reliance of counsel serves as an affirmative defense. See Mason v. Williams, 9 S.E.2d 537 (S.C. 1940); see generally, Rule 8(c), SCRPC (“... and any other matter constituting and avoidance.”).

As this Court is well aware, the Petitioner has, at great expense, deposed and produced witnesses, addressed thousands of documents in discovery and trial, and formulated trial strategies based upon same for the past two years. As such, it would be unduly prejudicial to allow Respondents, and the court appointed attorney for the ward, Abbie Ilene Dorn, to amend the pleadings to conform to the evidence and to allow Respondents to assert an affirmative defense two weeks into trial. In addition to the prejudicial effect, judicial efficiency would be frustrated. Petitioner would need several months to submit additional discovery requests, depose more witnesses, retain additional experts, and potentially recall every witness that has testified thus far in order to respond to this issue.

Moreover, Petitioner believes this needless delay in the proceedings would only burden the Abbie Dorn Special Needs Trust with unnecessary costs. None of this would have been necessitated had Respondents and/or the counsel for the ward raised these matters in a timely manner. Accordingly, the sole prejudice would apply to Petitioner, who has acted in accordance with rules and procedure throughout this proceeding; as opposed to Respondents, whom this Court sanctioned prior to suit for discovery violations and cautioned numerous times throughout the trial.

In the present case, Respondents never asserted in their responsive pleadings the affirmative defense that the Cohen's, in any capacity, relied on the advice of counsel in formulating their decisions. Further, Respondents did not list said counsel as a witness, an expert or the like, and instead refused Petitioner the right to examine said "attorney", asserting a claim of attorney-client privilege. Notably, this Court held a hearing in February 2012, upon Petitioner's motion to compel regarding this very issue. During this hearing, both Respondents and Mrs. Morris successfully asserted that attorney-client privilege. Respondents made a calculated decision, and to allow them to change their opinion now, in light of what has transpired in trial to date, could be unfair to Petitioner. If the Respondents were allowed to surprise Petitioner with this defense, it would be extremely prejudicial to Petitioner, as it would substantially change the posture of this case. Petitioner, due to the malfeasance of Respondents, would have no time to plead or establish a case to refute this claim, nor to call witness or experts in connection with same. Moreover, the prejudicial effect is amplified by the fact that the Petitioner has concluded his case in chief.

Counsel for the Respondents cannot deny that they have had every opportunity to discuss this case with their clients and review their discovery responses in order to formulate a legal defense. Suddenly, two weeks into this trial, Respondents, and the court appoint attorney for the ward, request leave to amend their pleadings to conform to evidence and Respondents wish to assert an affirmative defense. Petitioner would be unduly prejudiced if Respondents, and the court appointed attorney for the ward, were allowed to amend their pleadings as Petitioner has not been afforded an opportunity to plead or establish a case to refute this claim and leave to do so would result in several months of additional discovery. Furthermore, any additional delay in these proceedings would frustrate judicial efficiency and result in further harm to the Abbie Dorn Special Needs Trust—the very thing Petitioner is attempting to protect.

For these reasons, this Court should deny Respondents and the court appointed attorney for the ward, Abbie Ilene Dorn, leave to amend the pleadings to conform to the evidence and deny Respondents' motion to amend their pleadings to include an affirmative defense.

WITNESSES AT TRIAL

Rule 33(b), SCRCP, *inter alia*, requires disclosure to opposing counsel of the names and addresses of known witnesses as to the facts of the case. Furthermore, the court of appeals has held that this is a continuing duty. Briggs v. Richardson, 343 S.E.2d 653, 655 (S.C. Ct. App. 1986). "A party or witness is allowed to claim, among other things, that certain information requested in discovery is privileged. However, a party or witness claiming attorney client privilege is asserting that opposing party is not intending to introduce that evidence and/or testimony in court." S.C. State Highway Dep't v. Booker, 195 S.E.2d 615, 620 (S.C. 1973). The parties' disclosure of information before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing. Bensch v. Davidson, 580 S.E.2d 128, 132-33 (S.C. 2003) (citing Reed v. Clark, 286 S.E.2d 384 (S.C. 1982)).

Petitioner sent South Carolina Supreme Court "Standard Interrogatories" to Respondents, pursuant to Rule 33, requesting the names of witnesses, important facts they would testify to, and the like. Respondents failed to respond to the request that they "set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness.

For these reasons, to allow Respondents to now introduce witnesses, having not complied with the discovery rules, would severely prejudice Petitioner in this matter, who has been denied the right to prepare, depose, and/or subpoena documents from same due to the malfeasance of Respondents. Therefore, Respondents' motion should be denied.

RESPONDENTS MOTION TO LIMIT EVIDENCE SUBMITTED BY PETITIONER

The motion made by Respondents is vague and ambiguous. Further, it is untimely, having been made after the conclusion of Petitioner's case. Without this motion being more definite and certain, Petitioner is unable to respond to same, other than to assert that all evidence presented in Petitioner's case is consistent with the pleadings filed by Petitioner in this action, governed by rules of civil procedure that apply in the state of South Carolina.

CONCLUSION

For the reasons stated above, Petitioner respectfully requests that this Court deny the aforementioned motions: leave to amend their pleadings; the ability to assert an affirmative defense not previously raised in Respondents' responsive pleadings; the ability to present testimony by witnesses not properly identified in discovery; and Respondents motion to limit evidence submitted by Petitioner. Petitioner believes that to allow any of these motions made by the Respondents, and/or the court appointed attorney for the ward, two weeks into trial, would be unduly prejudicial, frustrate judicial efficiency, and unnecessarily result in further harm to the Abbie Dorn Special Needs Trust.

Respectfully submitted:



Daniel S. Slotchiver, Esquire
Stephen S. Slotchiver, Esquire
SLOTCHIVER & SLOTCHIVER, LLP
44 State Street
Charleston, SC 29401
(843) 577-6531
(843) 577-0261(fax)

ATTORNEYS FOR PETITIONER

March 29, 2013

Charleston, South Carolina

SLOTCHIVER & SLOTCHIVER, L.L.P.
ATTORNEYS AT LAW

IRVIN J. SLOTCHIVER
DANIEL S. SLOTCHIVER
STEPHEN M. SLOTCHIVER

44 STATE STREET
CHARLESTON, SC 29401-2810
TELEPHONE (843) 577-6531
FACSIMILE (843) 577-0261

March 29, 2013

The Honorable Deirdre W. Edmonds
Horry County Probate Court
1301 Second Avenue
P.O. Box 288
Conway, SC 29528

Re: Abbie Ilene Dorn, a protected person and ward
Abbie Dorn Special Needs Trust
Case Numbers: 2008-GC-26-25
2008-GC-26-50

Dear Judge Edmonds:

Enclosed please find for filing an original and three (3) copies of Petitioner's Memorandum in Support of Denying Respondents' Motions for Leave to Amend Pleadings, Introduction of an Affirmative Defense, Testimony by Witnesses Not Properly Identified Under Standard Discovery Requests, and to Limit Evidence Submitted by Petitioner in the above-referenced matter. Please forward same to the clerk for filing and return the certified copies to me in the enclosed pre-addressed, stamped envelope.

In the event you have any questions, or if I need to provide anything further, please do not hesitate to contact me.

By copy of this correspondence to opposing counsel, I am notifying them of same.

Sincerely,



Daniel S. Slotchiver

DSS:kmb
Enclosure

cc: Brett H. Davis, Esquire (w/enc.)
Reese R. Boyd, III, Esquire (w/enc.)
John Kachmarsky, Esquire (w/enc.)
V. Lee Moore, Esquire (w/enc.)
Lynette R. Hedgepath, Esquire (w/enc.)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE PROBATE COURT
HORRY COUNTY

Daniel B. Dorn, in his capacity as the
Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yosse Dorn,

Petitioner,

vs.

Paul S. Cohen and Susan Cohen,
individually and in their capacity as
the Co-Conservators of the person of
Abbie Ilene Dorn, a protected person
and ward, and in their capacity as Co-
Trustees of the Abbie Dorn Special
Needs Trust,

Respondents.

Case No.: 2010-GC-26-25

Case No.: 2010-GC-26-50

**RESPONDENTS'
MEMORANDUM IN
SUPPORT OF MOTION TO
AMEND PLEADINGS
TO BE CONFORMED
TO THE EVIDENCE
PRESENTED**

Respondents hereby submit this Memorandum in Support of their pending Motion to Amend the Pleadings in this matter to be conformed to the evidence that has been presented. Respondents made their Motion for Leave to Amend Pleadings during the proceedings in Court on March 4, 2013. (See Rough Draft Transcript, Trial Proceedings, March 4, 2013, pp. 303-05.)

SUMMARY OF ARGUMENT:

This Court should allow the Respondents, Paul S. Cohen and Susan Cohen, to amend their pleadings to conform to the evidence that has been presented to date in these matters, as no party can demonstrate they will be prejudiced by such amendment, and the contemplated amendment serves the interests of justice in the case.

Standard for Granting Motion to Amend Pleadings:

Our Rule 15, S.C. Rules of Civil Procedure, and the case law interpreting the same, makes clear that "amendments [to pleadings] to conform to the proof should be liberally allowed when no prejudice to the opposing party will result." Harvey v. Strickland, 566 S.E.2d 529, 535 (S.C. 2002); Kelly v. S.C. Farm Bureau Mut. Ins. Co., 450 S.E.2d 59, 61 (S.C. App. 1994) (holding that amendments are to be freely granted when justice requires and there is no prejudice to the opposing party). A motion to amend a party's pleadings is addressed to the "sound discretion of the trial judge," and the "party opposing the motion has the burden of establishing prejudice." Armstrong v. Collins, 621 S.E.2d 368, 380 (S.C. App. 2005).

Factual Background:

1. Respondents' Motion to Amend the Pleadings to Conform to the Evidence Presented stems in principle part from Petitioner's suggestion that Respondents not be allowed to assert any information or evidence concerning their prior reliance on counsel in the circumstances giving rise to this action, and that they be precluded from asserting the defense of reliance on counsel (*See* Rough Draft Transcript, Trial Proceedings, March 4, 2013, p. 201, l. 19 – p. 210, l. 25).

2. Petitioner cannot show the requisite prejudice or unfair advantage on the part of the Respondents that would suffice to deny Respondents the relief sought in their pending Motion to amend the pleadings to conform to the evidence presented. The trial testimony to date in regard to M. Robin Morris, an attorney residing in Pawleys Island who is currently retired, but who served as counsel to the Respondents

in the past, was far from the first that Petitioner has heard of Ms. Morris. The role Attorney Morris has played in the history of this matter has been discussed, and previously argued, at significant length in these proceedings:

3. During her deposition testimony on May 18, 2011 in these proceedings, Respondent Susan Cohen referenced Ms. Morris and the advice Ms. Morris had given her with respect to the California marital action that is the subject of these proceedings. (See Attached Ex. "A" to this Memorandum.)

4. Subsequent to the deposition of Susan Cohen, Petitioner served a subpoena *duces tecum* on Attorney M. Robin Morris, on or about July 27, 2011, commanding the production of her entire file related to the Respondents and the Abbie Dorn Special Needs Trust, and her appearance at deposition in this matter.

5. In response to the Robin Morris subpoena, Respondents filed a Motion for Protective Order and to Quash the subpoena on August 8, 2011. (See Attached Ex. "B" to this Memorandum.)

6. This Court heard arguments in the matter on September 19, 2011, and issued an Order Granting Motion for Protective Order on November 2, 2011 (the "Protective Order"). (See Attached Ex. "C" to this Memorandum.)

7. The Protective Order found, in pertinent part, that Attorney M. Robin Morris "previously advised and gave legal counsel to Respondents Paul and Susan Cohen on matters related to the subjects in controversy in these proceedings," and that Susan Cohen had referenced such advice in her deposition. (See Protective Order, at p. 2, Paragraphs 5-6.) Further, and as a result, this Court found that:

The deposition of M. Robin Morris may proceed, and Petitioner through his counsel may take such deposition, subject to the following limitations:

- (i) The Court finds that Respondent Susan Cohen has waived her attorney-client privilege with M. Robin Morris with respect to that advice given by Ms. Morris to Ms. Cohen which directly relates to the testimony given by Ms. Cohen at her deposition in this matter, which is quoted . . . on Page 3 of this Order. Counsel for Respondents agreed at the hearing of this matter that Respondents do not object to Ms. Morris testifying on this specific subject.

* * *

The Deposition of M. Robin Morris shall be scheduled at a time and place agreed upon by the Parties in accordance with the SC Rules of Civil Procedure applicable to these proceedings.

(See Protective Order, at pp. 3-4) (emphasis added).

8. Petitioner Dorn did not subsequently seek to take or re-notice the deposition of M. Robin Morris. At trial, however, as noted herein above, counsel for the Petitioner Dan Dorn has objected to any and all references to advice given the Respondents by Attorney Morris, or to any reliance on such advice of counsel by the Respondents as a defense in the present action. Upon such objections, the present motions now pending related to the amendment of the pleadings in this matter, and of Respondents' ability to argue the affirmative defense of reliance on counsel, ensued.

Argument:

Petitioner now objects to any suggestion that the Respondents relied on the advice of counsel in the actions and undertakings that gave rise to these proceedings. However, Petitioner cannot prevent Respondents from raising evidence of their

retention and reliance on the advice of counsel, or from asserting the affirmative defense of reliance on counsel, for the following reasons:

- I. The facts and circumstances surrounding the Respondent's reliance on the advice of M. Robin Morris and other counsel have been, and remain, an integral part of this case. Petitioner may not therefore now claim that he is prejudiced or surprised by the Respondents' statements that they retained counsel, and relied on the advice they received thereby, in these proceedings.

In the Armstrong case cited herein above, the Court of Appeals noted that a motion to amend the pleadings to conform to the proof presented at trial by the plaintiff was appropriate, notwithstanding the opposing party's argument that the additional causes of action had never been pled and that he was prejudiced by the surprise amendment, where "the trial court founds that the [additional] contract causes of action were an integral part of the case." Armstrong, 621 S.E.2d at 380.

Indeed, exactly as in Armstrong, reliance on counsel by Respondents, including the counsel Respondents received from M. Robin Morris, is not only an *integral part of this case*, it has *previously been the subject of multiple filings and arguments before the Court during the pre-trial phases of this litigation*. Further, the Court in Armstrong found that the new causes of action (breach of contract) brought in by the amended pleadings were appropriate, even though opposing counsel had "noted early in the trial that the issue of breach of contract had not been pled in the case." Armstrong, 621 S.E.2d at 381.

- II. Respondents' Motion to Amend their Pleadings to Conform to the Evidence Presented at Trial is Proper because it does not Prejudice the Petitioner.

As Respondents have noted herein above, references to their reliance on counsel, and specifically to the counsel of M. Robin Morris, adduced during the trial of this matter were far from the first time that Petitioner has heard of Ms. Morris or her role in advising the Cohens with respect to the Abbie Dorn Special Needs Trust. Not only was there no surprise in this testimony, the questions related to Ms. Morris and her role in the case, as noted above, have become an integral part of the case.

In Armstrong, the Court of Appeals noted that a significant question in assessing whether a motion to amend a pleading is appropriate, is whether or not the party opposing an amendment to the pleadings has been prejudiced by the proposed amendment. Id. at 381. In analyzing this question, the Armstrong court noted that a trial court should "consider whether the opposing party has had the opportunity to prepare for the issue now being formally raised." Id. at 381 (citing Soil & Material Eng'rs, Inc. v. Folly Assoc., 361 S.E.2d 779, 781 (S.C. App. 1987); and Pool v. Pool, 494 S.E.2d 820, 823 (1998) (citing Folly Assoc. for the premise that the prejudice contemplated by Rule 15, SCRCp, is the lack of opportunity to refute any new evidence connected with the amended complaint)).

Here, Petitioner not only had an *opportunity* to refute the evidence connected with the proposed amended pleadings and the reliance on counsel defense, he was invited by the Respondents and by the Court to do so. (See Paragraph 7, herein above, and Protective Order, Ex. C, at pp. 3-4) The requisite degree of prejudice (or, indeed, *any prejudice*) has therefore not been shown, and Petitioner may not properly object to the Respondents' proposed amendment at this time. The Motion of the Respondents to

amend their pleadings to conform to the evidence adduced at trial is therefore proper, and this Court should grant the same.

III. Even if this Court should Find that Respondents' Motion to Amend their Pleadings is Not Properly Taken, the Existing Responsive Pleadings Filed by the Respondents are Sufficiently Broad to Encompass Arguments Related to their Reliance on Counsel in these Matters.

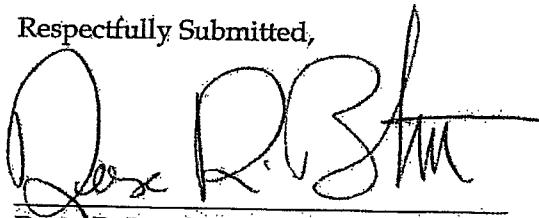
While Respondents did not specifically include a particular affirmative defense in their responsive pleadings captioned "Reliance on Counsel," they pled the very similar defense of "Good Faith Exercise of Trustees' and Conservators' Authority." (See Respondents' Answer filed Jan. 3, 2011, at pp. 5-6, Paragraphs 17-18.) Our Courts have noted that reliance on counsel is simply one factor to consider in evaluating a party's conduct: "we hold that advice of counsel is merely one factor to be considered in determining whether a defendant has acted willfully, wantonly, or recklessly." Kuznik v. Bees Ferry Assocs., et al., 538 S.E.2d 15, at 32 (S.C. App. 2000). In the instant case, regardless of whether they have specifically pled "reliance on counsel" as a separate and discreet affirmative defense, the Cohens are nonetheless entitled to introduce evidence at trial of their reliance on counsel, in order to show this Court that they have, throughout the matters at issue in this litigation, acted in good faith in the belief that they were appropriately discharging their duties as Conservators of Abbie Ilene Dorn and as Trustees of the Abbie Dorn Special Needs Trust, which they have pled as an affirmative defense in this action.

Conclusion:

For the reasons set forth herein, and for those additional reasons previously set forth by the Respondents in oral arguments before the Court during the trial of this matter, Respondents pray that this Court GRANT their Motion to Amend the Pleadings to Conform to the Evidence Presented at Trial, and further pray that this Court DENY any motion of any party now pending that would limit the Respondents' ability to present evidence of their reliance on counsel in these matters.

Respondents pray that the Court issue its rule accordingly. The Court's consideration of this Memorandum is appreciated.

Respectfully Submitted,



Reese R. Boyd, III, Esq. (SC Bar #: 7151)

Boyd Goldfinch Law Firm LLC

Post Office Box 15358

Myrtle Beach, SC 29587

(843) 357-9301

(800) 489-3519 (fax)

reese@boydgoldfinch.com

- and -

Bret H. Davis, III, Esq.

Davis Law Firm P.A.

Post Office Box 70517

Myrtle Beach, SC 29572

(843) 839-9800

(843) 839-9801 (fax)

bdavis@davislawfirm.us

- 8 -

Dated: March 29, 2013
Myrtle Beach, South Carolina

Attorneys for Respondents Paul S. Cohen and
Susan Cohen

STATE OF SOUTH CAROLINA

COUNTY OF HORRY IN THE PROBATE COURT

DANIEL B. DORN, in his capacity as the
Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yasse Dorn,
Plaintiff,

vs. CASE NO. 2008-GC-26-25
2008-GC-26-50

PAUL S. COHEN and SUSAN COHEN, individually
and in their capacity as the co-conservators
of the person of Abbie Ilene Dorn, a protected
person and ward, and in their capacity as
co-trustees of the Abbie Dorn Special Needs
Trust,
Defendants

DEPOSITION OF: SUSAN COHEN

DATE: May 18, 2011

TIME: 10:10 a.m.

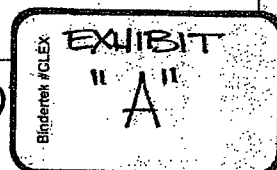
LOCATION: Boyd Goldfinch, LLC
11019 Tournament Boulevard
Suite 202
Murrells Inlet, SC

TAKEN BY: Counsel for Plaintiff

REPORTED BY: BONNIE L. SABADOS,
Registered Professional
Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES
Fast, Accurate & Friendly
Charleston, SC Hilton Head, SC Myrtle Beach, SC
(843)722-8414 (843)785-3263 (843)839-3376
Columbia, SC Greenville, SC Charlotte, NC
(803)731-5224 (864)234-7030 (704)573-3919

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800)
scheduledepo.com



1 Q. But at that time -- I'm going to ask
2 you once again, I'm going to ask that you answer
3 the question.

4 A. Okay. I didn't know that there was
5 going to be. Is that what you're saying, did I
6 know?

7 Q. Yes.

8 A. No, I didn't know that. What Dan said
9 to me, Dan Dorn. I'm sorry, I don't mean to
10 confuse the two of you. He said he was going to
11 go on Legal Zoom and just file for the divorce.
12 That's what he told me. And that seemed fine.

13 Q. You accepted the responsibility as the
14 trustee?

15 A. Yes.

16 Q. And before you accepted it, you had an
17 opportunity to see the trust and to consult with
18 counsel if so desired, correct?

19 A. Right.

20 Q. And I'm assuming you did that?

21 A. Yes.

22 Q. To understand what you were accepting?

23 A. Yes, I spoke with Robin Morris who
24 advised me, as I said, that I had to defend
25 against the action.

1 Q. At this point, there was no action
2 filed at the time you accepted the responsibility
3 to be the trustee.

4 A. No, there was no action filed.

5 Q. So at the time that you accepted that
6 responsibility, you accepted it based on what the
7 trust set forth as your requirements, your
8 responsibility.

9 A. Yes.

10 Q. Would you agree with me that at the
11 time you accepted this, that you knew as a
12 fiduciary that there weren't enough monies in the
13 trust, comprising the trust based on the annuity
14 and what I call the reserve fund to sufficiently
15 care for your daughter?

16 MR. BOYD: Objection to form.

17 THE WITNESS: To sufficiently care for
18 my daughter. I would never leave her without
19 care. But no, I don't see that --

20 BY MR. SLOTCHIVER:

21 Q. I'm not talking about your financial
22 contribution, if you decided to make one. I'm
23 talking about the funds available through the
24 trust itself.

25 A. Right.

1 THE WITNESS: I always tried to bring
2 that issue up. It just didn't happen. I don't
3 set the agenda. A judge sets the agenda. I don't
4 see how I can -- I don't have any power in the
5 courts in California or anywhere. I'm a puppet.

6 BY MR. SLOTCHIVER:

7 Q. Were you ever concerned about your
8 ability to pay attorney's fees without court
9 approval in advance?

10 A. Was I concerned?

11 Q. Yes.

12 A. I believe that I had been given
13 approval.

14 Q. Which court gave you approval to pay
15 the attorney's fees?

16 A. From my understanding when I talked to
17 Robin Morris, Horry County court told me I had to
18 defend the invasion of the trust by Dan Dorn.
19 That was my understanding. So if that was one of
20 the issues on the table, I didn't see any way that
21 if the judge wouldn't separate it, I didn't see
22 how I could. I didn't see where I had any power.

23 Q. And who told you this?

24 A. Robin Morris.

25 Q. Robin Morris was -- what was the

1 reason for retaining her?

2 A. For the trust. She set it up here in
3 South Carolina and got it established in South
4 Carolina.

5 Q. Okay. And I see based on the bills
6 paid, the last bill that was paid to her would
7 have been for in June of '09; is that correct?

8 A. Right. She retired.

9 Q. So you understood as of June of '09 --

10 A. Do I have to confirm this?

11 Q. Yes, ma'am.

12 A. June '09. Yes, that's correct. I
13 don't see anything after that.

14 Q. Okay. Now, after -- my understanding
15 based on this bill is you would not have retained
16 Bret Davis until --

17 A. She retired.

18 Q. Until July of '09; is that right? Or
19 was that July '10?

20 A. No, it's '09. So she gave me the
21 referral to him and she called him.

22 Q. Okay. So from that point forward, is
23 it your testimony then that you believed that you
24 had the right to pay fee without having to go to
25 the court for approval in advance?

1 would you ask him to petition the court?

2 A. Because my understanding was the
3 purpose was to make the three documents the same.
4 Two of them said one thing, one of them was
5 unclear. And Vicki Green was harassing me
6 continuously. I wanted to stop the bleeding in
7 California. So I wanted the three documents to
8 read the same. I never had any doubts about what
9 the court told me.

10 Q. The court through your conversation
11 with your lawyer who was retired that spoke to the
12 court.

13 A. Right.

14 Q. Not through a conversation you had
15 with the court.

16 A. No, I don't have any conversations
17 with the court. I don't have any right to talk to
18 the court. I don't know what you're saying.

19 Q. If I were to take the deposition of --

20 A. Robin Morris.

21 Q. -- Robin Morris, is it your testimony
22 that she would advise me that she told you that
23 you can spend the money in all of these actions?

24 MR. BOYD: Objection.

25 THE WITNESS: Again, I don't know.

1 MR. BOYD: Dan, you've asked and
2 answered --

3 MR. SLOTCHIVER: There are no speaking
4 objections. And I'm going to ask that you not
5 voice them. I haven't asked and answered this.

6 BY MR. SLOTCHIVER:

7 Q. This is coming around in different
8 ways of trying to get through what's a very
9 difficult shell to get through to understand the
10 answers. I'm not disparaging, but it's a hard
11 issue, and you haven't understood a lot of my
12 questions. I'm trying to ask them in many
13 different ways. And I apologize if it seems like
14 I've asked and answered. I'm not trying to do
15 that. I'm just trying to get an answer.

16 A. I realize that. That's why I said my
17 financial understanding is not that great. I'm
18 trying to understand what you're asking me.

19 MS. HEDGEPATH: Would it help if
20 Ms. Cohen takes a break now?

21 (A luncheon recess transpired.)

22 BY MR. SLOTCHIVER:

23 Q. Back on the record. Ms. Cohen, we're
24 going to resume the deposition where we took off
25 before we went to lunch. Okay?

BOYD • GOLDFINCH LLC

ATTORNEYS AND COUNSELORS AT LAW

Physical Address:

11019 Tournament Blvd., Suite 202
Murrells Inlet, South Carolina 29576

Telephone: (843) 357-9301

Facsimile: (843) 357-9303

Mailing Address:

Post Office Box 15358
Myrtle Beach, South Carolina 29587

March 29, 2013

Ms. Julia J. Branton
Administrative Assistant
Horry County Probate Court
Post Office Box 288
Conway, SC 29526

Re: Matters in Re: Abbie Ilene Dorn Special Needs Trust
Case Numbers: 2008-GC-26-0025 and 2008-GC-26-0050
Our File No.: 010.033

Dear Julia:

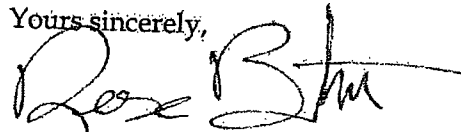
Enclosed for filing in connection with the above-referenced matters, please find an original and one (1) copy (each) of the supplemental memoranda requested by Judge Edmonds in connection with the various motions currently pending before the Court in the case.

I also enclose a self-addressed return envelope for your use in returning the clocked copies to us. By copy of this correspondence, with attachments, I am herewith serving all counsel of record on these items as well.

We appreciate the Court's assistance in these matters. Should there be any questions, or if we can provide additional information, please let us know.

With kindest regards, I am

Yours sincerely,



Reese R. Boyd, III

Ms. Julia J. Branton
March 29, 2013
Page 2 of 2

RRB/pew

Enclosures

cc: Bret H. Davis, Esq.
Lynette Rogers Hedgepath, Esq.
V. Lee Moore, Esq.
John Kachmarsky, Esq.
Daniel S. Slotchiver, Esq.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE PROBATE COURT
HORRY COUNTY

Daniel B. Dorn, in his capacity as the
Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yosse Dorn,

Case No.: 2010-GC-26-25
Case No.: 2010-GC-26-50

Petitioner,

vs.

**MOTION FOR PROTECTIVE ORDER
AND TO QUASH SUBPOENA**

Paul S. Cohen and Susan Cohen,
individually and in their capacity as
the Co-Conservators of the person of
Abbie Ilene Dorn, a protected person
and ward, and in their capacity as Co-
Trustees of the Abbie Dorn Special
Needs Trust,

Respondents.

PLEASE TAKE NOTICE that the Respondents, by and through their undersigned attorney, will move this Honorable Court ten days hence, or as soon thereafter as may be heard, for an Order pursuant to Rule 45, South Carolina Rules of Civil Procedure, quashing the Subpoena issued to M. Robin Morris by the Petitioner herein on July 27, 2011, and imposing Protection for M. Robin Morris with respect to certain dates, as further set forth herein.

This Motion is based upon the following:

- (1) M. Robin Morris has advised Counsel for the Respondents that she has a family medical matter involving her mother, who has recently fallen and injured herself. The matter necessitated the transport of



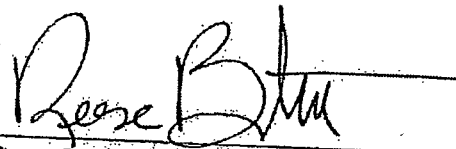
Ms. Morris' mother from Winston-Salem, North Carolina to Pawleys Island, South Carolina, where she will recuperate at the home of Ms. Morris. Ms. Morris has indicated that she will be moving her mother on August 8 and 9, 2011. She has therefore advised that she will not be available for deposition on August 9, 2011, as the Petitioner has demanded.

- (2) Ms. Morris has further advised that her son is currently visiting her from Australia, and that he will be staying with her in Pawleys Island, South Carolina through August 22, 2011. Given the significant inconvenience and expense of travel from Australia to South Carolina, Ms. Morris has requested that Respondents seek a Protective Order on her behalf, providing that her deposition in this matter not be scheduled before August 22, 2011.
- (3) Finally, Ms. Morris has an attorney-client relationship with the Respondents, Paul and Susan Cohen, and the Respondents therefore seek a Protective Order that the deposition of Robin Morris may not be used to inquire into matters that are subject to the attorney-client privilege of the Respondents, except in such limited scope as the Respondents may otherwise agree, in writing, or except as this Court may otherwise order.

This Motion will be supported by any exhibits, pleadings, affidavits, memoranda, or other documents as may be presented at or before the hearing of this

matter, and/or such case law, statutory law, or other legal authorities as movants may present to this Court.

Respectfully Submitted,



Reese R. Boyd, III, Esq. (SC Bar #: 7151)
Boyd Law Firm LLC
Post Office Box 15358
Myrtle Beach, SC 29587
(843) 238-1978
(800) 489-3519 (fax)
reese@boydlawllc.com

Attorneys for Respondents Paul S. Cohen and
Susan Cohen

Dated: August 8, 2011
Myrtle Beach, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 8th day of August, 2011.



Renee B. Goldfinch, Legal Assistant to
Boyd Law Firm LLC

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

DANIEL B. DORN, in his capacity as the)
Parent and Natural Guardian of Esti Dorn,)
Reuvi Dorn, and Yosse Dorn,)

Petitioner,)

vs.)

PAUL S. COHEN and SUSAN COHEN,)
individually and in their capacity as the Co-)
Conservators of the person of Abbie Ilene)
Dorn, a protected person and ward, and in)
their capacity as Co-Trustees of the Abbie)
Dorn Special Needs Trust,)

Respondents.)

IN THE PROBATE COURT

Case No. 2008-GC-26-025

Case No. 2008-GC-26-050

ORDER GRANTING MOTION FOR
PROTECTIVE ORDER

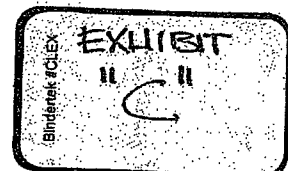
PROBATE COURT
HORRY COUNTY, SC
2011 NOV -2 PM12:19
DEBORAH W. EDWARDS
PROBATE JUDGE

THIS MATTER CAME BEFORE THE COURT for a hearing on September 19, 2011, on Motion of the Respondents, Paul and Susan Cohen, for a Protective Order following their filing of a Notice of Motion and Motion for Protective Order and Motion to Quash (the "Motion") on August 8, 2011. Present at the hearing were Daniel S. Slotchiver, Esquire and Stephen M. Slotchiver, Esquire, on behalf of the Petitioner, Daniel B. Dorn; Reese R. Boyd, III, Esquire, on behalf of the Respondents, the moving party here; John Kachmarsky, Esquire, Attorney and Guardian ad Litem for Respondents Esti Dorn, Reuvi Dorn, and Yosse Dorn; Lynette Rogers Hedgepath, Attorney for Abbie Ilene Dorn, a Protected Person; and V. Lee Moore, Esquire, Guardian ad Litem for Abbie Ilene Dorn, a Protected Person.

Based upon the Motion, memoranda, and affidavits submitted by the Parties, as well as

Page 1 of 4

Order Granting Mtn Protective Order 11-02-2011.pdf



the arguments made by counsel at the hearing on this matter, this Court makes the following findings of fact, conclusions of law and ruling in this matter:

1. On or about July 27, 2011, counsel for Petitioner Daniel B. Dorn issued and served a *Subpoena Duces Tecum* on M. Robin Morris, an attorney and resident of Pawleys Island, South Carolina, compelling her to appear for deposition in the matter herein.
2. M. Robin Morris is not a party to this action, but is an attorney who formerly advised and counseled the Respondents, Paul and Susan Cohen, with respect to certain matters related to Abbie Eileen Dorn and to the Abbie Dorn Special Needs Trust.
3. Counsel for Respondents Paul and Susan Cohen subsequently filed a Motion to Quash and Motion for Protective Order with respect to the above *Subpoena Duces Tecum* served upon M. Robin Morris, seeking to have the deposition delayed, and a protective order issued.
4. All interested parties have been afforded proper notice of this matter in accordance with S.C. Code Ann. § 62-1-401 (1976, as amended).
5. Respondents Paul and Susan Cohen have established to the satisfaction of this Court that an attorney-client relationship has existed and continues to exist between them and M. Robin Morris, whom Petitioner now seeks to depose in this matter, and that M. Robin Morris previously advised and gave legal counsel to Respondents Paul and Susan Cohen on matters related to the subjects in controversy in these proceedings.
6. Respondent Susan Cohen has referenced certain previous advice provided to her by M. Robin Morris in response to questioning she received from Dan S. Slotchiver, Esq. during her deposition. The Court notes the following exchange between Mr. Slotchiver and Respondent Susan Cohen at Ms. Cohen's deposition held on May 18, 2011, in this matter:

BY MR. SLOCHIVER, questioning SUSAN COHEN:

Q. Were you ever concerned about your ability to pay attorney's fees without court approval in advance?

A. Was I concerned?

Q. Yes.

A. I believe that I had been given approval.

Q. Which court gave you approval to pay the attorney's fees?

A. From my understanding when I talked to Robin Morris, Horry County court told me I had to defend the invasion of the trust by Dan Dorn. That was my understanding. So if that was one of the issues on the table, I didn't see any way that if the judge wouldn't separate it, I didn't see how I could. I didn't see where I had any power.

Q. And who told you this?

A. Robin Morris.

Q. Robin Morris was - what was the reason for retaining her?

A. For the trust. She set it up here in South Carolina and got it established in South Carolina.

Deposition of Susan Cohen, May 18, 2011, at pp. 87-8, lines 7-25 (p.87) and 1-4 (p.88).

BASED ON THE ABOVE FINDINGS AND CONCLUSIONS,

IT IS, THEREFORE ORDERED, ADJUDGED AND DECREED that the Respondent's Motion for Protective Order is hereby GRANTED in the following particulars:

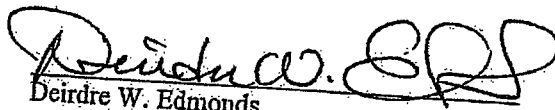
(a) The Deposition of M. Robin Morris may proceed, and Petitioner through his counsel may take such deposition, subject to the following limitations:

(i) The Court finds that Respondent Susan Cohen has waived her attorney-client privilege with M. Robin Morris with respect to that advice given by Ms. Morris to Ms. Cohen which directly relates to the testimony given by Ms. Cohen at her deposition in this matter, which is quoted above on Page 3 of this Order. Counsel for Respondent Susan Cohen agreed at the

hearing of this matter that Respondents do not object to Ms. Morris testifying on this specific subject.

- (ii) With respect to matters between M. Robin Morris and Respondents, Paul and Susan Cohen, which matters would otherwise be subject to the attorney-client privilege, and which do not directly relate to the testimony given by Susan Cohen at her deposition and quoted above, the attorney-client privilege with respect to such other matters has not been waived, and Ms. Morris may not be compelled to testify in relation to such other matters, unless the privilege is subsequently waived by the Respondents;
- (b) The Deposition of M. Robin Morris shall be scheduled at a time and place agreed upon by the Parties in accordance with the SC Rules of Civil Procedure applicable to these proceedings.

IT IS SO ORDERED.


Deirdre W. Edmonds
Horry County Probate Judge

November 2, 2011
Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE PROBATE COURT for
HORRY COUNTY

PAUL S. COHEN, M.D., AND SUSAN
COHEN,

Case Nos.: 2008-GC-26-50 and
2008-GC-26-25

Petitioners,

vs.

ESTI DORN, REUVI DORN, AND
YOSSE DORN, THE LIVING ISSUE OF
ABBIE ILENE DORN, AND THE
SOUTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES,

Respondents.

IN RE:
THE ABBIE ILENE DORN SPECIAL
NEEDS TRUST

NOTICE OF MOTION
AND MOTION FOR
MISTRIAL

PROBATE COURT
HORRY COUNTY, SC
2014 JUN 26 AM 9:20
DEIRDRE W. EDMONDS
PROBATE JUDGE

PLEASE TAKE NOTICE that the Petitioners, by and through their undersigned attorneys, will move this Honorable Court ten days hence, or as soon thereafter as may be heard, pursuant to Rule 63 of the South Carolina Rules of Civil Procedure, for an Order declaring a mistrial in the above-referenced proceedings, and setting the matters for new trial beginning on or after January 2, 2015.

This Motion is based in principal part upon the following:

- (1) On June 10, 2014, a primary election was held in Horry County in connection with the South Carolina Republican Primary.
- (2) The incumbent Chief Probate Judge for Horry County, the Honorable Deirdre Edmonds, who has served as the trial judge in

the above-captioned proceedings, was not re-elected in the June 10, 2014, Republican Primary, and as a result, will no longer hold her current position of Chief Judge of the Probate Court for Horry County after December 31, 2014.

- (3) The current procedural status of this case, and particularly in light of its current pending appeals, makes it highly unlikely that this case will be returned to the trial court in sufficient time for this Court to resume proceedings before the end of 2014.
- (4) As it is foreseeable and, in fact, highly likely that the current trial judge, the Honorable Deirdre W. Edmonds, will be unable to conclude the current proceedings prior to the end of her term, thus making it, in turn, highly likely that these current proceedings will ultimately result in a mistrial, Petitioners would hereby move for a mistrial at this time.

In light of the above considerations, Petitioners believe that it is ultimately in the interests of justice for the Court to declare a mistrial at this time, and the Petitioners so move. Alternatively, continuing these proceedings under the present circumstances will serve to waste the resources of the parties and the Abbie Ilene Dorn Special Needs Trust, and is therefore not in the interests of the parties, nor in the interests of justice or judicial economy. Thus, Petitioners believe this Motion is in the interests of the parties and in the interests of justice, as it serves to protect the resources of the Abbie Ilene

Dorn Special Needs Trust, and Petitioners therefore move this Honorable Court to declare a Mistrial at this time.

This Motion will be supported by any exhibits, pleadings, affidavits, memoranda, or other documents as may be presented at or before the hearing of this matter, and such case law, statutory law, or other legal authorities as the movant Petitioners may present to this Court.

Respectfully Submitted,



Reese R. Boyd, III, Esq. (SC Bar #: 7151)

Bret H. Davis, III, Esq.

Davis & Boyd LLC

Post Office Box

Myrtle Beach, SC 29587

(843) 839-9800

(843) 839-9801 (fax)

reese@davisboydlaw.com

Attorneys for Petitioners Paul S. Cohen and
Susan Cohen

Dated: June 26, 2014

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Notice of Motion and Motion for Mistrial was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 26th day of June, 2014.

Linda Parker

Linda Parker, Paralegal
Davis & Boyd Law Firm LLC

STATE OF SOUTH CAROLINA	)	IN THE PROBATE COURT FOR
	)	HORRY COUNTY
COUNTY OF HORRY	)	
PAUL S. COHEN, M.D., AND SUSAN	)	Case Nos.: 2008-GC-26-50 and
COHEN,	)	2008-GC-26-25
	)	
Petitioners,	)	
	)	
<i>vs.</i>	)	
	)	MEMORANDUM OF LAW
ESTI DORN, REUVI DORN, AND	)	AND AUTHORITIES IN
YOSSE DORN, THE LIVING ISSUE OF	)	SUPPORT OF PETITIONERS'
ABBIE ILENE DORN, AND THE	)	MOTION FOR MISTRIAL
SOUTH CAROLINA DEPARTMENT OF	)	
HEALTH AND HUMAN SERVICES,	)	
	)	
Respondents.	)	
	)	
IN RE:	)	
THE ABBIE ILENE DORN SPECIAL	)	
NEEDS TRUST	)	

Petitioners, Paul and Susan Cohen (the "Cohens")¹, hereby submit this Memorandum of Law and Authorities in Support of their pending Notice of Motion and Motion for Mistrial (the "Motion") filed with the Court on June 26, 2014 in the above-referenced proceedings.

Procedural Background:

¹ Petitioners Paul and Susan Cohen filed their initial Motion herein on June 26, 2014, under the above caption for Case No. 2008-GC-26-0050, which has been consolidated for purposes of trial with Case No. 2008-GC-26-0025. Petitioner in the latter case (0025), Daniel B. Dorn, subsequently filed, as "Petitioner," on August 25, 2014, his Written Objections to the pending Motion herein. For purposes of clarity, and in an effort to avoid confusion, movants Paul and Susan Cohen are referred to herein neither as Petitioners or Respondents, but as the "Cohens."

As the Cohens observe in the instant Motion, the Honorable Deidre Edmonds, who has served as the trial judge in the above-captioned matters, will leave office on January 1, 2015, as a result of a primary election for the position of Horry County Probate Judge, held in Horry County on June 10, 2014. The current procedural status of these cases, with multiple interlocutory appeals now pending, means that it is a practical impossibility that this case will be returned to the trial court in sufficient time for this Court to reconvene the matter prior to the end of 2014. As it is foreseeable that the Honorable Deidre W. Edmonds will be unable to conclude these current proceedings prior to the end of her term, the Cohens believe that a mistrial will be the ultimate and unavoidable result, as no successor trial judge can be substituted in place of the Honorable Deirdre W. Edmonds without unduly and unavoidably prejudicing one or more of the parties to these proceedings. While the Cohens regret that it was necessary to bring their Motion, they believe that under the present circumstances, the interests of justice and judicial economy dictate that this Court must declare a mistrial at this time.

Summary of the Cohen Petitioners' Argument:

The Cohens have premised their Motion on Rule 63, South Carolina Rules of Civil Procedure, which addresses those issues that may arise from the death or disability of a judge. While it is true that under certain circumstances, Rule 63 does allow a successor judge to be substituted in place of a trial judge who has become disabled, the applicable and required circumstances are not present here. The Rule provides that the successor judge may (but is not required) to proceed with trial, but

only "upon *certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties.*" Rule 63, S.C.R.C.P. (emphasis added). The Cohens submit that a successor judge, forced into the position not only as the trier of the law, but also the factfinder in these proceedings, will face a daunting and nearly impossible predicament. She will be forced to issue her ruling without the benefit of having participated in these proceedings, but rather based solely on her review of many hundreds of pages of trial transcripts and enumerable other filings which make up the voluminous record in this matter. The Cohens submit that such a task simply cannot be undertaken without impermissibly prejudicing one or more parties to these proceedings, and that as a result, the determinations and certifications required by Rule 63 of any successor judge cannot realistically or reasonably be made or anticipated in this case.

Argument:

The Cohens find no direct and applicable authority from our jurisdiction which applies these facts to the current Rule 63. However, interpreting the plain text of the present Rule, and further interpreting that text in light of the many available persuasive cases and authorities, clearly demonstrates that any determination to proceed under a successor judge is enhanced: (1) where the parties have not consented to the same, (2) where issues of credibility are present, or credibility determinations with respect to transcript testimony are required; and (3) particularly where, as here, the matter is a non-jury proceeding, such that there is no continuity in a jury, but rather the successor judge sits both as the determiner of law and as the trier of fact. *See, generally, Christy v.*

Christy, 556 S.E.2d 701 (S.C.App. 2001), and Stern, Neil: Death or Disability of Judges in Civil Litigation – Substitution Under Federal Rule 63, 44 Ohio St. L.J. 1125 (1983).

In Christy, our Court of Appeals considered the case of a family court judge who had tried the first portion of a bifurcated trial, and had prepared, but not signed or filed, a draft order, when he suffered a debilitating stroke. As the Christy court noted:

Two exceptions have developed to the general operation of Rule 63. First, if all parties consent, a successor judge may make findings of fact and conclusions of law based on the trial transcript. Second, the successor judge may consider the trial transcript as akin to “supporting affidavits” for summary judgment purposes and render judgment *if no credibility determinations are required*. Emerson Elec. Co. v. Gen. Elec. Co., 846 F.2d 1324, 1326 (11th Cir. 1988). Absent consent of the parties, a successor judge cannot make credibility determinations. *Id.*; see also Whalen v. Ford Motor Credit Co., 684 F.2d 272, 274 (4th Cir. 1982) (finding Rule 63 communicates a positive prohibition on substitution of a judge prior to verdict where all parties have not stipulated their consent).

Christy, 556 S.E.2d, at 705 (emphasis added). Here it is improbable and best, and more than likely impossible, for any successor judge to assess the credibility of, and the weight to be afforded, the hundreds of pages of trial testimony given by numerous witnesses. In light of such a daunting (and indeed a nearly impossible) task, a declaration of mistrial is the appropriate and the most prudent course available to the Court and to the parties at this time.

As one commentator has noted, “although the situation is rare, the legal principle guiding this court’s approach to [midtrial substitution] is basic and familiar. That principle, simply stated, is that the factfinder who is given the opportunity to observe witnesses as they testify is in a better position to make factual findings based on that

evidence than is the factfinder who is restricted to a written record of the same testimony." Stern, 44 Ohio St. L.J. at *1133 (citing Dickman v. Schoenfield (In re Schoenfield), 608 F.2d 930 (2d Cir. 1979). With respect to proceedings such as this in the nature of a bench trial, or where the credibility of the witnesses is at issue, Stern further notes that:

Many state courts emphasize the fact that when credibility is at issue the interest in a trial *de novo* is particularly strong. One court has gone so far as to hold that when witness credibility is at issue in a bench trial, the parties cannot even stipulate that a successor judge determine the case on the record of the prior proceedings.

Id. at *1140-41 (citing multiple authorities at n. 137 and n. 138, (multiple citations omitted)). While there are no decisions directly on point in this jurisdiction, many courts, in multiple persuasive opinions, have observed the enhanced scrutiny that the use of substitute judges must receive in the bench trial context. *See, e.g., Henry A. Knott Co. v Chesapeake and Potomac Tele. Co.*, 772 F.2d 78 (4th Cir. 1985), where the court noted that, in considering a trial that was not held before a jury, that, where the judge "later died or was disqualified before making findings and conclusions, then a successor judge could not continue the case, unless the parties consented." Knott, 772 F.2d at 82 (citing Townsend v. Gray Line Bus Co., 767 F.2d 11, 18 (1st Cir. 1985), for the proposition that the "implications of Rule 63 and constitutional considerations require new trial, where trial judge dies before filing findings and rulings." (emphasis added)). Significantly, the Knott court noted:

[In] the case at hand . . . the referral order placed the special master in the same role as a district court judge because the master was required to make findings of fact and conclusions

of law. It was the special master who heard the live testimony of the witnesses and had the opportunity to judge their credibility. The district judge in this case . . . decided the case based solely on the record, which is typically the function of an appellate court, not a trial court. The person who decided the case was not the person who heard the case presented. Having the same judge presiding throughout the trial is even more important in a case that is not tried before a jury, because it is the judge who will make the decisions as to which witnesses are more credible based upon the live testimony and demeanor of the witnesses.

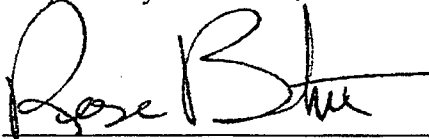
Knott, 772 F.2d at 83 (emphasis added). This passage captures the essence of the numerous difficulties any successor judge in these proceedings will face, and likewise the reasoning which underlies the Cohen's Motion for Declaration of a Mistrial.

Conclusion:

For the reasons set forth herein, and based on the points, authorities, and additional arguments as set forth hereinabove, the Cohens have reluctantly but, we believe necessarily, moved this honorable Court for an Order declaring a mistrial. Continuing the instant proceedings, and the associated pending appeals, under these present circumstances, will serve only to waste the resources of the Abbie Ilene Dorn Special Needs Trust and of the other parties to these proceedings. The Cohens therefore believe that this Motion is in the interest of all parties, as it served the interests of justice and of judicial economy. It further serves to protect the resources of the Abbie Ilene Dorn Special Needs Trust.

For these reasons the Cohen have filed their Motion, and we respectfully pray that this Court issue its ruling accordingly, and that the Motion be GRANTED.

Respectfully Submitted,



Reese R. Boyd, III, Esq.

Davis & Boyd LLC

Post Office Box 70517

Myrtle Beach, SC 29572

(843) 839-9800

(800) 839-9801 (fax)

reese@davisboydlaw.com

- and -



Bret H. Davis, Esq.

Davis & Boyd LLC

Post Office Box 70517

Myrtle Beach, SC 29572

(843) 839-9800

(843) 839-9801 (fax)

bdavis@davisboydlaw.com

Attorneys for Petitioners and Movants,
Paul S. Cohen and Susan Cohen

Dated:

August 29, 2014

Myrtle Beach, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Memorandum of Law and Authorities in Support of Petitioner's Motion for Mistrial was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 29th day of August, 2014.

Heather L. Harris

Heather L. Harris, Paralegal Assistant
to Reese R. Boyd, III / Davis & Boyd LLC

THE STATE OF SOUTH CAROLINA
In the Circuit Court

APPEAL FROM THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT
HORRY COUNTY

Deidre W. Edmonds, Judge

Probate Case No. 2008-GC-26-0025

Appeals Case No.: 2013-CP-26-8139

Appeals Case No.: 2014-CP-26-1691

Daniel B. Dorn, in his Capacity as the Parent and Natural Guardian of Esti Dorn,
Reuvi Dorn, and Yosse Dorn, ... Appellant

v.

Paul S. Cohen and Susan Cohen, Individually and in their capacity as the Co-
Conservators of the person of Abbie Ilene Dorn, a protected person and ward,
and in their capacity as Co-Trustees of the Abbie Ilene Dorn Special Needs Trust
..... Respondents.

Probate Case No. 2008-GC-26-0050

Appeals Case No.: 2013-CP-26-8152

Appeals Case No.: 2014-CP-26-1744

Esti Dorn, Reuvi Dorn, and Yosse Dorn, the Living Issue of Abbie Ilene Dorn,
..... Appellants

v.

Paul S. Cohen and Susan Cohen, and the South Carolina Department of Health
and Human Services Respondents.

NOTICE OF MOTION AND
MOTION TO STAY APPEALS

COME NOW the Respondents, Paul S. Cohen and Susan Cohen, who give notice of their motion and hereby move this honorable Court for an order staying the appeal cases herein, on the following grounds as set forth herein below.

Respondents' Motion to Stay Appeals (this "Motion") is based upon the following: on June 23, 2014, this Court issued a Scheduling Order by consent of the parties, which provided the following briefing schedule for these appeals, with all dates to run from the entry of an order by the Dorchester County Probate Court appointing appellate counsel for John Kachmarsky, the appointed trial counsel for Esti Dorn, Reuvi Dorn, and Yosse Dorn. The said Order appointing appellate counsel for Mr. Kachmarsky was issued on October 3, 2014. The dates set forth in the June 23 Scheduling Order, based on the October 3 Order of the Dorchester County Probate Court, are as follows:

(1)	Appellant's Brief and Designation of Matters:	Nov. 17, 2014
(2)	Respondents' Brief and Designation of Matters:	Jan. 1, 2015
(3)	Reply Briefs	Jan. 11, 2015
(4)	Record on Appeal	Feb. 10, 2015

Respondents submit that the above referenced Scheduling Order, and the instant appeals, should be stayed by this Court, based upon the following:

These appeals are interlocutory in nature, having been filed during the pending consolidated trial of these matters which took place in the Horry County Probate Court before the Honorable Deidre W. Edmonds, beginning February 25, 2013, and being recessed on March 7, 2013. During the trial, the Probate Judge entered several orders which are the subject of these appeals.

Subsequent to the filing of these appeals, the following significant developments have occurred:

- (1) On June 10, 2014, a primary election was held in Horry County in connection with the South Carolina Republican Primary.
- (2) Judge Deirdre W. Edmonds was not re-elected in the June 10, 2014, Republican Primary, and as a result, will no longer hold her current position of Probate Judge Court for Horry County after December 31, 2014.
- (3) Based on the complex nature and procedural status of the underlying probate matters, Petitioners herein filed a Motion for Mistrial on June 26, 2014, on the grounds that it was, and remains, highly unlikely that the case will not be returned to the trial court in sufficient time for the Probate Court to resume and conclude trial proceedings before the end of 2014, at which time Judge Edmonds will leave office, therefore making it highly likely that the ultimate outcome of the trial proceeding below, regardless of the outcome of

the instant appeals, will be a mistrial. (See Respondent's Motion for Mistrial attached as Exhibit "A" to this Motion.)

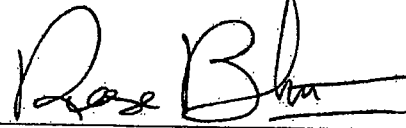
- (4) On August 13, 2014, Judge Edmonds advised the parties that she intended to grant the pending motion for mistrial, unless objections were filed. Objections were subsequently filed and the parties began briefing the Mistrial Motion. (See attached Exhibit "B".)
- (5) During the briefing of the Mistrial Motion, Judge Edmonds issued an Order recusing herself in the matter on September 3, 2014. Judge Edmonds further requested on September 3, 2014, that Court Administration appoint a Special Probate Judge for Horry County to further preside over the pending litigation in these matters. (See attached Exhibit "C".)

The Respondents herein believe and submit that further briefing or expenditure of time and resources on the pending interlocutory appeals herein will represent a waste of the parties resources, and will not be in the interests of justice or judicial economy, until such time as it has been determined: (1) who will be appointed by Court Administration to preside over the trial of this matter going forward, and when; and (2) whether such appointment, and the timing of same, will result in the initial, partial trial of this matter either (a) continuing to its conclusion, or (b) being declared a mistrial. Proceeding with the instant appeals at this time, when the underlying proceeding is very likely to be declared a mistrial, will therefore waste the resources of the Abbie Ilene Dorn

Special Needs Trust, and of the parties, and is therefore not in the interest of the parties, nor in the interests of justice or of judicial economy. Thus, Respondents believes that it is in the interests of justice, and in the interest of the parties, and that it will further serve to protect the resources of the Abbie Ilene Dorn Special Needs Trust, if this Court will stay these appeals until such time as Court Administration has appointed a Special Probate Judge to continue the trial proceedings below, and that judge has determined whether the trial below shall continue, or whether the initial trial of this matter will be declared a mistrial. Respondents would further request that this Court provide in its order that any monies paid by the Abbie Ilene Dorn Special Needs Trust, and held in trust by any appellate counsel in these proceedings, not be drawn from trust, or charged against, while the instant appeals are stayed.

This Motion will be supported by any exhibits, pleadings, affidavits, memoranda, or other documents as may be presented at or before the hearing of this matter, and such case law, statutory law, or other legal authorities as the movant Respondents may present to this Court.

Respectfully Submitted,



Reese R. Boyd, III, Esq. (SC Bar #: 7151)

Bret H. Davis, III, Esq.

Davis & Boyd LLC

Post Office Box

Myrtle Beach, SC 29587

(843) 839-9800

(843) 839-9801 (fax)

reese@davisboydlaw.com

Dated: October 14, 2014

Attorneys for Respondents Paul S.
Cohen and Susan Cohen

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Notice of Motion and Motion to Stay Appeals was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 14th day of October, 2014.

A handwritten signature in cursive script, appearing to read 'Heather L. Harris', written over a horizontal line.

Heather L. Harris, Paralegal to Reese Boyd III
Davis & Boyd Law Firm LLC

Exhibit "A"

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT for
HORRY COUNTY

PAUL S. COHEN, M.D., AND SUSAN)
COHEN,)

Case Nos.: 2008-GC-26-50 and
2008-GC-26-25

Petitioners,)

vs.)

**NOTICE OF MOTION
AND MOTION FOR
MISTRIAL**

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING ISSUE OF)
ABBIE ILENE DORN, AND THE)
SOUTH CAROLINA DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)

Respondents.)

IN RE:)
THE ABBIE ILENE DORN SPECIAL)
NEEDS TRUST)

PROBATE COURT
HORRY COUNTY, SC
2014 JUN 26 AM 9:20
DEIRDRE W. EDMONDS
PROBATE JUDGE

PLEASE TAKE NOTICE that the Petitioners, by and through their undersigned attorneys, will move this Honorable Court ten days hence, or as soon thereafter as may be heard, pursuant to Rule 63 of the South Carolina Rules of Civil Procedure, for an Order declaring a mistrial in the above-referenced proceedings, and setting the matters for new trial beginning on or after January 2, 2015.

This Motion is based in principal part upon the following:

- (1) On June 10, 2014, a primary election was held in Horry County in connection with the South Carolina Republican Primary.
- (2) The incumbent Chief Probate Judge for Horry County, the Honorable Deirdre Edmonds, who has served as the trial judge in

the above-captioned proceedings, was not re-elected in the June 10, 2014, Republican Primary, and as a result, will no longer hold her current position of Chief Judge of the Probate Court for Horry County after December 31, 2014.

- (3) The current procedural status of this case, and particularly in light of its current pending appeals, makes it highly unlikely that this case will be returned to the trial court in sufficient time for this Court to resume proceedings before the end of 2014.
- (4) As it is foreseeable and, in fact, highly likely that the current trial judge, the Honorable Deirdre W. Edmonds, will be unable to conclude the current proceedings prior to the end of her term, thus making it, in turn, highly likely that these current proceedings will ultimately result in a mistrial, Petitioners would hereby move for a mistrial at this time.

In light of the above considerations, Petitioners believe that it is ultimately in the interests of justice for the Court to declare a mistrial at this time, and the Petitioners so move. Alternatively, continuing these proceedings under the present circumstances will serve to waste the resources of the parties and the Abbie Ilene Dorn Special Needs Trust, and is therefore not in the interests of the parties, nor in the interests of justice or judicial economy. Thus, Petitioners believe this Motion is in the interests of the parties and in the interests of justice, as it serves to protect the resources of the Abbie Ilene

Dorn Special Needs Trust, and Petitioners therefore move this Honorable Court to declare a Mistrial at this time.

This Motion will be supported by any exhibits, pleadings, affidavits, memoranda, or other documents as may be presented at or before the hearing of this matter, and such case law, statutory law, or other legal authorities as the movant Petitioners may present to this Court.

Respectfully Submitted,



Reese R. Boyd, III, Esq. (SC Bar #: 7151)

Bret H. Davis, III, Esq.

Davis & Boyd LLC

Post Office Box

Myrtle Beach, SC 29587

(843) 839-9800

(843) 839-9801 (fax)

reese@davisboydlaw.com

Attorneys for Petitioners Paul S. Cohen and
Susan Cohen

Dated: June 26, 2014

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Notice of Motion and Motion for Mistrial was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 26th day of June, 2014.

Linda Parker
Linda Parker, Paralegal
Davis & Boyd Law Firm LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT FOR
HORRY COUNTY

PAUL S. COHEN, M.D., AND SUSAN)
COHEN,)
)

Case Nos.: 2008-GC-26-50 and
2008-GC-26-25

Petitioners,)
)

vs.)
)

ESTI DORN, REUVI DORN, AND)
YOSSE DORN, THE LIVING ISSUE OF)
ABBIE ILENE DORN, AND THE)
SOUTH CAROLINA DEPARTMENT OF)
HEALTH AND HUMAN SERVICES,)
)

Respondents.)
)

IN RE:)
THE ABBIE ILENE DORN SPECIAL)
NEEDS TRUST)
)

**MEMORANDUM OF LAW
AND AUTHORITIES IN
SUPPORT OF PETITIONERS'
MOTION FOR MISTRIAL**

Petitioners, Paul and Susan Cohen (the "Cohens")¹, hereby submit this Memorandum of Law and Authorities in Support of their pending Notice of Motion and Motion for Mistrial (the "Motion") filed with the Court on June 26, 2014 in the above-referenced proceedings.

Procedural Background:

¹ Petitioners Paul and Susan Cohen filed their initial Motion herein on June 26, 2014, under the above caption for Case No. 2008-GC-26-0050, which has been consolidated for purposes of trial with Case No. 2008-GC-26-0025. Petitioner in the latter case (0025), Daniel B. Dorn, subsequently filed, as "Petitioner," on August 25, 2014, his Written Objections to the pending Motion herein. For purposes of clarity, and in an effort to avoid confusion, movants Paul and Susan Cohen are referred to herein neither as Petitioners or Respondents, but as the "Cohens."

As the Cohens observe in the instant Motion, the Honorable Deidre Edmonds, who has served as the trial judge in the above-captioned matters, will leave office on January 1, 2015, as a result of a primary election for the position of Horry County Probate Judge, held in Horry County on June 10, 2014. The current procedural status of these cases, with multiple interlocutory appeals now pending, means that it is a practical impossibility that this case will be returned to the trial court in sufficient time for this Court to reconvene the matter prior to the end of 2014. As it is foreseeable that the Honorable Deidre W. Edmonds will be unable to conclude these current proceedings prior to the end of her term, the Cohens believe that a mistrial will be the ultimate and unavoidable result, as no successor trial judge can be substituted in place of the Honorable Deirdre W. Edmonds without unduly and unavoidably prejudicing one or more of the parties to these proceedings. While the Cohens regret that it was necessary to bring their Motion, they believe that under the present circumstances, the interests of justice and judicial economy dictate that this Court must declare a mistrial at this time.

Summary of the Cohen Petitioners' Argument:

The Cohens have premised their Motion on Rule 63, South Carolina Rules of Civil Procedure, which addresses those issues that may arise from the death or disability of a judge. While it is true that under certain circumstances, Rule 63 does allow a successor judge to be substituted in place of a trial judge who has become disabled, the applicable and required circumstances are not present here. The Rule provides that the successor judge may (but is not required) to proceed with trial, but

only "upon *certifying familiarity with the record and determining that the proceedings may be completed without prejudice to the parties.*" Rule 63, S.C.R.C.P. (emphasis added). The Cohens submit that a successor judge, forced into the position not only as the trier of the law, but also the factfinder in these proceedings, will face a daunting and nearly impossible predicament. She will be forced to issue her ruling without the benefit of having participated in these proceedings, but rather based solely on her review of many hundreds of pages of trial transcripts and enumerable other filings which make up the voluminous record in this matter. The Cohens submit that such a task simply cannot be undertaken without impermissibly prejudicing one or more parties to these proceedings, and that as a result, the determinations and certifications required by Rule 63 of any successor judge cannot realistically or reasonably be made or anticipated in this case.

Argument:

The Cohens find no direct and applicable authority from our jurisdiction which applies these facts to the current Rule 63. However, interpreting the plain text of the present Rule, and further interpreting that text in light of the many available persuasive cases and authorities, clearly demonstrates that any determination to proceed under a successor judge is enhanced: (1) where the parties have not consented to the same, (2) where issues of credibility are present, or credibility determinations with respect to transcript testimony are required; and (3) particularly where, as here, the matter is a non-jury proceeding, such that there is no continuity in a jury, but rather the successor judge sits both as the determiner of law and as the trier of fact. *See, generally, Christy v.*

Christy, 556 S.E.2d 701 (S.C.App. 2001), and Stern, Neil: Death or Disability of Judges in Civil Litigation – Substitution Under Federal Rule 63, 44 Ohio St. L.J. 1125 (1983).

In Christy, our Court of Appeals considered the case of a family court judge who had tried the first portion of a bifurcated trial, and had prepared, but not signed or filed, a draft order, when he suffered a debilitating stroke. As the Christy court noted:

Two exceptions have developed to the general operation of Rule 63. First, if all parties consent, a successor judge may make findings of fact and conclusions of law based on the trial transcript. Second, the successor judge may consider the trial transcript as akin to “supporting affidavits” for summary judgment purposes and render judgment *if no credibility determinations are required*. Emerson Elec. Co. v. Gen. Elec. Co., 846 F.2d 1324, 1326 (11th Cir. 1988). Absent consent of the parties, a successor judge cannot make credibility determinations. *Id.*; see also Whalen v. Ford Motor Credit Co., 684 F.2d 272, 274 (4th Cir. 1982) (finding Rule 63 communicates a positive prohibition on substitution of a judge prior to verdict where all parties have not stipulated their consent).

Christy, 556 S.E.2d, at 705 (emphasis added). Here it is improbable and best, and more than likely impossible, for any successor judge to assess the credibility of, and the weight to be afforded, the hundreds of pages of trial testimony given by numerous witnesses. In light of such a daunting (and indeed a nearly impossible) task, a declaration of mistrial is the appropriate and the most prudent course available to the Court and to the parties at this time.

As one commentator has noted, “although the situation is rare, the legal principle guiding this court’s approach to [midtrial substitution] is basic and familiar. That principle, simply stated, is that the factfinder who is given the opportunity to observe witnesses as they testify is in a better position to make factual findings based on that

evidence than is the factfinder who is restricted to a written record of the same testimony." Stern, 44 Ohio St. L.J. at *1133 (citing Dickman v. Schoenfield (In re Schoenfield), 608 F.2d 930 (2d Cir. 1979)). With respect to proceedings such as this in the nature of a bench trial, or where the credibility of the witnesses is at issue, Stern further notes that:

Many state courts emphasize the fact that when credibility is at issue the interest in a trial *de novo* is particularly strong. One court has gone so far as to hold that when witness credibility is at issue in a bench trial, the parties cannot even stipulate that a successor judge determine the case on the record of the prior proceedings.

Id. at *1140-41 (citing multiple authorities at n. 137 and n. 138, (multiple citations omitted)). While there are no decisions directly on point in this jurisdiction, many courts, in multiple persuasive opinions, have observed the enhanced scrutiny that the use of substitute judges must receive in the bench trial context. See, e.g., Henry A. Knott Co. v Chesapeake and Potomac Tele. Co., 772 F.2d 78 (4th Cir. 1985), where the court noted that, in considering a trial that was not held before a jury, that, where the judge "later died or was disqualified before making findings and conclusions, then a successor judge could not continue the case, unless the parties consented." Knott, 772 F.2d at 82 (citing Townsend v. Gray Line Bus Co., 767 F.2d 11, 18 (1st Cir. 1985), for the proposition that the "implications of Rule 63 and constitutional considerations require new trial where trial judge dies before filing findings and rulings." (emphasis added)). Significantly, the Knott court noted:

[In] the case at hand . . . the referral order placed the special master in the same role as a district court judge because the master was required to make findings of fact and conclusions

of law. It was the special master who heard the live testimony of the witnesses and had the opportunity to judge their credibility. The district judge in this case . . . decided the case based solely on the record, which is typically the function of an appellate court, not a trial court. The person who decided the case was not the person who heard the case presented. Having the same judge presiding throughout the trial is even more important in a case that is not tried before a jury, because it is the judge who will make the decisions as to which witnesses are more credible based upon the live testimony and demeanor of the witnesses.

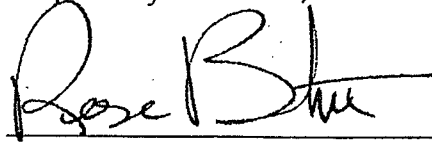
Knott, 772 F.2d at 83 (emphasis added). This passage captures the essence of the numerous difficulties any successor judge in these proceedings will face, and likewise the reasoning which underlies the Cohen's Motion for Declaration of a Mistrial.

Conclusion:

For the reasons set forth herein, and based on the points, authorities, and additional arguments as set forth hereinabove, the Cohens have reluctantly but, we believe necessarily, moved this honorable Court for an Order declaring a mistrial. Continuing the instant proceedings, and the associated pending appeals, under these present circumstances, will serve only to waste the resources of the Abbie Ilene Dorn Special Needs Trust and of the other parties to these proceedings. The Cohens therefore believe that this Motion is in the interest of all parties, as it served the interests of justice and of judicial economy. It further serves to protect the resources of the Abbie Ilene Dorn Special Needs Trust.

For these reasons the Cohen have filed their Motion, and we respectfully pray that this Court issue its ruling accordingly, and that the Motion be GRANTED.

Respectfully Submitted,



Reese R. Boyd, III, Esq.

Davis & Boyd LLC

Post Office Box 70517

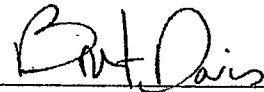
Myrtle Beach, SC 29572

(843) 839-9800

(800) 839-9801 (fax)

reese@davisboydlaw.com

- and -



Bret H. Davis, Esq.

Davis & Boyd LLC

Post Office Box 70517

Myrtle Beach, SC 29572

(843) 839-9800

(843) 839-9801 (fax)

bdavis@davisboydlaw.com

Attorneys for Petitioners and Movants,
Paul S. Cohen and Susan Cohen

Dated:

August 29, 2014
Myrtle Beach, South Carolina

- 7 -

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing Memorandum of Law and Authorities in Support of Petitioner's Motion for Mistrial was served on each party or counsel of record by mailing or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 29th day of August, 2014.

Heather L. Harris

Heather L. Harris, Paralegal Assistant
to Reese R. Boyd, III / Davis & Boyd LLC

Exhibit “B”

"Edmonds, Deirdre" <EdmondsD@HorryCounty.org>

August 13, 2014 11:31 PM

To: Lynette Hedgepath <lynette@sccoast.net>, "Daniel Slotchiver
(dan@slotchiverlaw.com)" <dan@slotchiverlaw.com>, "Reese R. Boyd, III
(reese@davisboydlaw.com)" <reese@davisboydlaw.com>, "Bret H. Davis"
<bdavis@davislawfirm.us>, "V. Lee Moore" <moore@grandstrandlawyers.com>, 'JohnKachmarsky'
<JohnK@jktaxlaw.com>, "steve@slotchiverlaw.com" <steve@slotchiverlaw.com>
Matter of Abbie Dorn - 2008-GC-26-25 & 50

1 Attachment, 11 KB

Counsel, please be advised that unless I receive a written objection by 5:00 PM, Monday, August 25, 2014, I intend to grant Petitioners' Motion for Mistrial without a hearing on same. In the meantime, I am happy to consider Applications/Motions for fees/costs from court-appointed counsel and the guardians ad litem. I have recently received John's Application for fees and costs. If any counsel desire a telephone conference to discuss, informally, the Motion or other issues, please let me know and I will schedule same immediately. Best regards,

Deirdre W. Edmonds
Horry County Probate Judge
Horry County Probate Court
1201 2nd Avenue
Conway, SC 29526
(843) 915-5370
edmondsd@horrycounty.org<mailto:edmondsd@horrycounty.org>

CONFIDENTIALITY NOTICE - This email message, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information of the Horry County Probate Court. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.

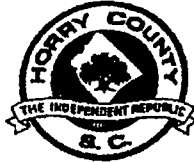
wirmail.dat (11 KB)

Exhibit "C"

HORRY COUNTY PROBATE COURT
HORRY COUNTY GOVERNMENT AND JUSTICE CENTER
1301 SECOND AVENUE, P. O. BOX 288
CONWAY, SOUTH CAROLINA 29528
PHONE (843) 915-5370 FAX (843) 915-6371
probatecourt.horrycounty.org

Deirdre W. Edmonds, Judge of Probate
Deirdre W. Carter, Associate Judge

SATELLITE OFFICE
9630 SCIPPIO LANE, SUITE F
MYRTLE BEACH, SC 29588
PHONE: (843) 915-5371
FAX: (843) 205-6373



SATELLITE OFFICE
107 HWY 57 NORTH, BOX 8
LITTLE RIVER, SC 29566
PHONE: (843) 915-5372
FAX: (843) 399-4374

September 3, 2014
Via Email and Regular Mail

Attn: Y. Elizabeth Wellman
Probate Court Representative
South Carolina Court Administration
1015 Sumter Street, Ste. 200
Columbia, SC 29201-3747

Re: **Order of Disqualification - Request for Recusal Form**
Litigation Involving: **Matter of Abbie Dorn - 2008-GC-26-25 and 2008-GC-26-50**

Dear Ms. Wellman:

Enclosed herewith please find a clocked copy of an Order of Disqualification that I have entered with respect to the above-referenced matters along with the necessary Request for Recusal form. I would appreciate your requesting the Chief Justice appoint a Special Probate Judge for Horry County to preside over the litigation pending in these matters. If you have any questions or comments regarding this matter, please do not hesitate to contact me. Thank you for assistance in this matter and we look forward to receiving the Court's order appointing a Special Probate Judge at your earliest convenience. With warmest regards, I remain

Respectfully yours,

Deirdre W. Edmonds
Horry County Judge of Probate

Enclosures as stated.

cc: With enclosures via email only:
Daniel S. Slotchiever, Esq.
Stephen M. Slotchiever, Esq.
Bret H. Davis, Esq.
Reese R. Boyd, III, Esq.
Lynette Rogers Hedgepath, Esq.
V. Lee Moore, Esq.
John Kachmarsky, Esq.

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE PROBATE COURT
HORRY COUNTY

Daniel B. Dorn, in his capacity as)
the Parent and Natural guardian of)
Esti Dorn, Reuvi Dorn, and Yosse)
Dorn,)

Case No.: 2008-GC-26-25 and
2008-GC-26-50

Petitioner,)

vs.)

ORDER OF DISQUALIFICATION

Paul S. Cohen and Susan Cohen,)
Individually and in their capacity as)
the Co-Conservators of the person of)
Abbie Ilene Dorn, a protected person)
and ward, and in their capacity as Co-)
Trustees of the Abbie Dorn Special)
Needs Trust,)

Respondents.)

Paul S. Cohen, M.D. and Susan)
Cohen,)

Petitioners,)

vs.)

Esti Dorn, Reuvi Dorn, and Yosse)
Dorn, the Living Issue of Abbie Ilene)
Dorn, and the South Carolina)
Department of Health and Human)
Services,)

Respondents.)

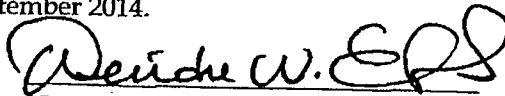
In RE:)
The Abbie Dorn Special Needs Trust)

PROBATE COURT
HORRY COUNTY, SC
2014 SEP -2 PM 4:56
DEIRDRE W. EDWARDS
PROBATE JUDGE

In order to promote and preserve the public confidence in the integrity and impartiality of the judiciary, I find and conclude that it would be in the best interest of all of the parties, their counsel and the judiciary for the undersigned to disqualify herself from all further proceedings involving the above actions. Therefore,

I HEREBY DISQUALIFY myself from serving as Probate Judge in the above cases under Canon 3.E. of the Code of Judicial Conduct and I hereby request that the Chief Justice of the Supreme Court appoint a special probate judge to serve as probate judge for the above actions.

IT IS SO ORDERED the 2nd day of September 2014.



Hon. Deirdre W. Edmonds
Horry County Probate Judge

Conway, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE PROBATE COURT
HORRY COUNTY

Daniel B. Dorn, in his capacity as
the Parent and Natural guardian of
Esti Dorn, Reuvi Dorn, and Yosse
Dorn,

Case No.: 2008-GC-26-25 and
2008-GC-26-50

Petitioner,

vs.

REQUEST FOR RECUSAL

Paul S. Cohen and Susan Cohen,
Individually and in their capacity as
the Co-Conservators of the person of
Abbie Ilene Dorn, a protected person
and ward, and in their capacity as Co-
Trustees of the Abbie Dorn Special
Needs Trust,

Respondents.

Paul S. Cohen, M.D. and Susan
Cohen,

Petitioners,

vs.

Esti Dorn, Reuvi Dorn, and Yosse
Dorn, the Living Issue of Abbie Ilene
Dorn, and the South Carolina
Department of Health and Human
Services,

Respondents.

In RE:
The Abbie Dorn Special Needs Trust

PROBATE COURT
HORRY COUNTY, SC
2014 SEP -2 PM 4:56
DEIRDRE W. EDMONDS
PROBATE JUDGE

I request to be recused from all portions of the above listed cases:

- (1)_____ Administration
(2)xxxx Litigation
(3)_____ Other:

Explanation: (Optional)

SEE ORDER OF DISQUALIFICATION DATED SEPTEMBER 2, 2014.

Attorneys Involved:

Daniel S. Slotchiver, Esq.
Slotchiver & Slotchiver, L.L.P.
44 State Street
Charleston, SC 29401

Stephen M. Slotchiver, Esquire
Slotchiver & Slotchiver, L.L.P.
44 State Street
Charleston, SC 29401

Bret H. Davis, Esq.
Davis Boyd Law Firm, P.A.
1110 London Street, Suite 201
Myrtle Beach, SC 29577

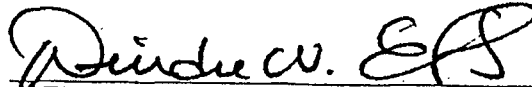
Reese R. Boyd, III, Esq.
Davis Boyd Law Firm, P.A.
1110 London Street, Suite 201
Myrtle Beach, SC 29577

Lynette Rogers Hedgepath, Esq.
The Hedgepath Law Firm, P.A.
207 Beaty Street
Conway, SC 29526

V. Lee Moore, Esq.
Moore Johnson & Saraniti, P.A.
Post Office Box 14737
Surfside Beach, S.C. 29575

John Kachmarsky, Esq.
Law Offices of John Kachmarsky
171 Church Street, Suite 330
Charleston, SC 29401

DATE: September 2, 2014



DEIRDRE W. EDMONDS,
Horry County Probate Judge

BRET H. DAVIS, JD*, CPA

**Licensed in SC and NC*

DAVIS & BOYD, LLC
ATTORNEYS AND COUNSELORS AT LAW

REESE R. BOYD, III

1110 London Street, Suite 201
Myrtle Beach, SC 29577

Mailing Address:
Post Office Box 70517
Myrtle Beach, SC 29572

Telephone: (843) 839-9800
Facsimile: (843) 839-9801
www.davisboydlaw.com

October 14, 2014

Dan Slotchiver, Esq.
Stephen M. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
44 State St. Charleston, SC 29401

Lynette Rogers Hedgepath, Esq.
Hedgepath Law Firm, P.A.
207 Beaty St.
Conway, SC 29526

John Kachmarsky, Esq.
Law Office of John Kachmarsky
171 Church St., Suite 330
Charleston, SC 29401

V. Lee Moore, Esq.
Moore Johnson & Saraniti, P.A.
Post Office Box 74737
Surfside Beach, SC 29587

Constance Holloway, Esq.
S.C. D.H.H.S.
1801 Main St.
Columbia, SC 29202

Christy Ford Allen, Esq.
Wills Massalon & Allen LLC
97 Broad St.
Charleston, SC 29401

Re: Matters in Re: Abbie Ilene Dorn Special Needs Trust
Case Numbers: 2008-GC-26-0025 and 2008-GC-26-0050
Appeals Nos.: 2013-CP-26-8139, 2014-CP-26-1691, 2013-CP-268152,
And 2014-CP-26-1744
Our File No.: 010.033

Dear Counsel:

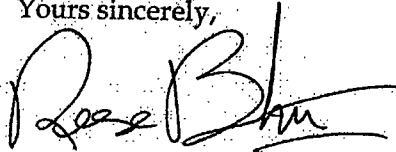
Enclosed is a Motion to Stay Appeals which is being filed in connection with the above-referenced matters.

Should you have any questions, please do not hesitate to contact me.

All Counsel of Record, Matters in RE: Abbie Ilene Dorn Special Needs Trust
October 14, 2014
Page 2

With kind regards, I remain,

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Reese R. Boyd, III". The signature is stylized with a large, looped "R" and a long, horizontal flourish extending to the right.

Reese R. Boyd, III

RRB/pw

Enclosures

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Daniel B. Dorn, in his Capacity as the Parent and
Natural Guardian of Esti Dorn, Reuvi Dorn, and
Yosse Dorn

Vs. Appellant,

Paul S. Cohen and Susan Cohen, Individually and
in their Capacity as the Co-Conservators of the
Person of Abbie Ilene Dorn, a Protected Person
and Ward, and in their Capacity as Co-Trustees of
the Abbie Dorn Special Needs Trust

Respondents.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-26-8139

**MOTION INFORMATION FORM
AND COVERSHEET**

Appellant's Attorney:
Christy Ford Allen, Esq.
Wills, Massalon & Allen LLC
Address:

Post Office Box 859, Charleston, SC 29402

Phone: 843-727-1144 Fax 843-727-7696

E-mail: callen@wmalawfirm.net Other:

Respondent's Attorney:

Reese R. Boyd, III, Bar No. 7151

Davis & Boyd, LLC

Address:

Post Office Box 70517, Myrtle Beach, SC 29577

Phone: 843-839-9800 Fax 843-839-9801

E-mail: reese@davisboydlaw.com Other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Stay

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Appellant / ☒ Respondents

10-14-2014
Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

- ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

THE STATE OF SOUTH CAROLINA
In The Circuit Court

**APPEAL FROM THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT**

Deidre W. Edmonds, Judge

Probate Case No. 2008-GC-26-0025

Appeals Case No.: 2013-CP-26-8139

Appeals Case No: 2014-CP-26-1691 ✓

Daniel B. Dorn, in his Capacity as the Parent and Natural Guardian of Esti Dorn, Reuvi Dorn, and
Yosse Dorn..... *Appellant*

vs.

Paul S. Cohen and Susan Cohen, Individually and in their capacity as the Co-Conservators of the
person of Abbie Ilene Dorn, a protected person and ward, and in their capacity as Co-Trustees of
the Abbie Dorn Special Needs Trust..... *Respondents*

Probate Case No. 2008-GC-26-0050

Appeals Case No.: 2013-CP-26-8152

Appeals Case No.: 2014-CP-26- 1744

Esti Dorn, Reuvi Dorn, and Yosse Dorn, the Living Issue of Abbie Ilene Dorn..... *Appellants*

vs.

Paul S. Cohen, M.D. and Susan Cohen, and the South Carolina Department of Health and Human
Services..... *Respondents*

FACTUAL BACKGROUND & PROCEDURAL POSTURE:

This appeal arises from a Petition filed in the Probate Court for Horry County by the Appellant, Mr. Daniel Dorn, (hereinafter "Mr. Dorn") which sought to remove the Respondents, Paul and Susan Cohen (hereinafter "Mr. Cohen" and "Ms. Cohen" or "the Cohens") as the Co-Conservators and Co-Trustees of the Abbie Dorn Special Needs Trust.

Mr. Dorn and Mrs. Abbie Ilene Dorn (hereinafter "Mrs. Dorn") were married in the State of California in 2002. In or around June 2006, Abbie Ilene Dorn gave birth to three (3) children, Reuvi, Este, and Yosse Dorn. (hereinafter "the Dorn children") Tragically, during childbirth, Mrs. Dorn suffered catastrophic injuries. The first two babies were delivered normally at Cedars-Sinai Medical Center, then, while attempting to reposition the third child for delivery, the doctor accidentally cut Mrs. Dorn's uterus causing massive blood loss, shock, and ultimately cardiac arrest. As a result of this accident, Mrs. Dorn was left paralyzed, unable to speak totally unable to function. To date, Mrs. Dorn remains totally and permanently disabled—stuck in a persistent vegetative state. She lacks any mental faculties or the ability to communicate, perceive, or be aware of the world around her.

A medical malpractice claim was filed in the State of California on behalf of Mrs. Dorn, which ultimately resulted in settlement. Pursuant to the terms of the settlement agreement, a sum of just under One Million (\$1,000,000) Dollars was placed into the Abbie Dorn Special Needs Trust (hereinafter "the Trust") with additional future contributions to be made to same. Mrs. Dorn is currently a ward of the Court, and she also is under the Guardianship of her parents, the Cohens. (R. Transfer Order, and Abbie Dorn Special Needs Trust)

Mr. Dorn now has custody of the Dorn children, who are now eight (8) years of age. However, this arrangement only developed after years of litigation brought by the Cohens in the California Superior Court against Mr. Dorn. The Cohens sought visitation of the Dorn children by their daughter, who was at the time, and still remains in a persistent vegetative state. The litigation was

costly, and unfortunately, the Cohens allowed the Trust to bear the burden of their legal pursuits, depleting almost One Million (\$1,000,000) Dollars from the Trust in legal fees alone.

As a result of this Mr. Dorn first filed this action against the Cohens, both individually and as Co-Conservators and Co-Trustees of Mrs. Dorn and the Trust. The Petition filed by Mr. Dorn sought removal of the Cohens as "trustees" and requested monetary reimbursement to the Trust for the legal expenses incurred by the Cohens in the failed California litigation. Mr. Dorn alleged various causes of action including breach of several fiduciary duties and willful violations by the Cohens of the terms of the Trust while acting as Conservators and Trustees. (R. Petition 1) In a strange turn of events, one day after Mr. Dorn filed his petition, the Cohens filed a separate Petition against Mr. Dorn and the Dorn Children seeking to amend the terms of the Trust to allow the Cohens to incur legal fees without advance approval from the Court—the very same conduct for which Mr. Dorn filed the initial Petition. (R. Complaint 2).

The Probate Judge appointed Attorney V. Lee Moore as the Guardian ad Litem (hereinafter "GAL") for Mrs. Dorn. (R. Order Appointing GAL) The Probate Judge also appointed Attorney Lynette R. Hedgepath to serve as the attorney for Mrs. Dorn, individually. The Court did not appoint any attorney to represent the GAL. (R. Order Appointing Lynette Hedgepath).

Given the number of common issues arising in both matters, the Court consolidated the two matters for discovery and trial purposes only. In the Order consolidating the matters, the Court indicated that separate final Orders would be issued in each matter. (R. Order Consolidating Cases) Although Mr. Dorn filed his petition on behalf of the Dorn Children, the Cohens objected to Counsel for Mr. Dorn serving as Counsel for the Dorn Children in the Petition filed by the Cohens, wherein the Dorn children were named as Respondents. Accordingly, the Court appointed Attorney John Kachmarsky as Attorney and GAL to the Dorn Children, as beneficiaries of the Trust. (R. Order Appointing John Kachmarsky)

Once the Court resolved the issues concerning consolidation and Court appointments, litigation commenced. Over the course of the next several years, formal written discovery, depositions, and pretrial hearings were conducted in the consolidated cases. In the Petition filed by Mr. Dorn, Mrs. Dorn was not listed as a party in his action. The Cohens, in their petition, did however list Mrs. Dorn as a Respondent. Accordingly, Mr. Dorn did not serve the Petition upon Mrs. Dorn, her GAL, nor her Court appointed Attorney as they were not identified parties to the Petition. Further, no discovery was served upon Mrs. Dorn, the GAL, nor the Court appointed Attorney for Mrs. Dorn. During the course of discovery, only Counsel for Mr. Dorn, Counsel for the Respondents, and the Court appointed GAL and Attorney for the Dorn children ever participated in the exchange of formal discovery.

Prior to the commencement of trial, Mrs. Dorn, nor her Attorney or GAL ever served an Answer to either of the Petitions filed. No person, other than the Cohens, acting on behalf of Abbie Dorn provided a witness list or exhibit list in advance of trial. Over objection by Appellant, the Court allowed both Mrs. Dorn's GAL and Mrs. Dorn's Attorney to make opening and closing statements and to cross-examine witnesses. (R. Trial Transcript, March 4, 2013 718-719.) The Court stated that "Ms. Hedgepath does not represent Ms. Moore as guardian ad litem. She represents, as attorney, Abbie Dorn." *Id.* at 719. Mrs. Dorn's GAL confirmed that neither she nor Mrs. Dorn's Attorney ever received any written discovery from either the Appellants or the Respondents. Mrs. Dorn's GAL noted on the record that she thought the lack of discovery was "strange", and that she was "concerned that certain witnesses were not listed." (R. Trial Transcript, March 4, 2013 793-94.) Mrs. Dorn's GAL stated that decided not to disclose the witnesses she felt were relevant, but she "felt like it was not a benefit to [Mrs. Dorn] for [Appellant's counsel] to know who our witnesses would be." (*Id.* at 795.)

At trial, Mr. Dorn presented evidence and testimony of several witnesses, including Mr. Dorn and the Cohens. Following the conclusion of witness testimony by both Mr. Dorn and the Cohens,

Mr. Dorn rested his case. It was at this time that the GAL and the Attorney for Mrs. Dorn sought to call additional witnesses. Counsel for Mr. Dorn objected, stating that while witnesses may be permitted in the Petition filed by the Cohens, wherein Mrs. Dorn was a named party, said witness testimony could not and should not be permitted in the Petition filed by Mr. Dorn as all parties had concluded the calling of their witnesses. It was at this point, for the very first time, that the trial Judge stated that Mrs. Dorn was, in fact, a Party to both of the actions. (Id.)

The line of questioning, related objections, and discussion amongst all Counsel and the Court led to the ultimate question as to whether Mrs. Dorn was an actual party to both actions. The implications of which would decide whether or not her Court appointed Attorney would be able to call her own witnesses. Mr. Dorn objected on the basis that Mrs. Dorn was neither a party, and to the extent that she was, had never previously listed or identified that she intended to call any witnesses in defense of an action to which she was not even a named party

The Court indicated that they intended to allow Mrs. Dorn's GAL and Attorney to call the previously undisclosed witnesses. However, the Court's schedule did not allow for the extensive time necessary to complete the trial. On the morning of the sixth day of trial, the last available day on the docket for same, Mr. Dorn informed that court he would be finished with his case by the end of that day. (R. Trial Transcript, March 7, 2013 1813) Counsel for Mr. Dorn repeated his objections to the calling of witnesses by Mrs. Dorn's Court appointed Attorney and GAL:

As nonparties, Your Honor, we would not have the right to serve discovery on nonparties, and nonparties, while they have the right to examine witnesses, do not have the right to call witnesses, and therefore, with reference to the action that [Mr. Dorn] has brought ... in his capacity as guardian for the minor children against the Cohens in their capacity as trustees and conservators, ... the guardian and the ... attorney for [Mrs. Dorn] have every right to cross-examine anybody that I call as a witness or anybody that the Cohens call as a witness, but they do not have the right in [Mr. Dorn's] action, the one that we filed, to call their witnesses.

(R. Trial Transcript, March 7, 2013 1815:21 to 1816:33) At this time, the Court attempted to clarify previous statements, and issued a verbal ruling that Mrs. Dorn should have been named as a party:

[Mrs. Dorn] may not be named as a party, but let's be clear, in my opinion, she is a party to your action to remove the Trustees of her trust . . . so my position is [Mrs. Dorn] is a party to {Mr. Dorn's} action.

(Id. at 1814:20 to 1815:2 and 1817, ll. 4-5) With respect to the case brought by the Cohens, the GAL and Attorney for the Dorn Children joined in the position of Counsel for Mr. Dorn, highlighting the following to the Court:

The amended Petition [filed by the Cohens] names the three children, [and] the Department of Health and Human Services, and does *not* name Abbie Dorn, so for the record, I'd like to put on the record that I take the same position as [Counsel for Mr. Dorn.]

(R. Trial Transcript, March 7, 2013 1820:12-1820:20) (*emphasis added*)

At the conclusion of the last scheduled day for trial, the Court recessed the trial, and agreed to entertain a formal written Motion by Mrs. Dorn's Attorney to have Mrs. Dorn added as a Party to the case. Other parties were allowed to brief the Court on the issue in response to Mrs. Dorn's Motion. Id. at 2281:15 to 2284:11.

On or about March 13, 2013, Mrs. Dorn's Attorney mailed a witness list to the trial Judge in a sealed envelope marked 'For Judge's Eyes Only'. (R. March 13, 2013 Correspondence from L. Hedgepath) By the end of April 2013, while the trial was still in recess, the motion to add Abbie Dorn as a party and to allow her Attorney and GAL to call witnesses on her behalf was fully briefed. (R. Briefs and Reply Briefs).

At the conclusion of testimony on March 7, 2013, it was the position of the Appellant that his case, with respect to the Petition filed by Mr. Dorn—was concluded given that both Mr. Dorn and the Cohens had put up all of their witnesses. Therefore, if Mrs. Dorn's Attorney and GAL were not allowed to call any additional witnesses then Mr. Dorn's Petition would be ripe for decision. It is not disputed by any party or person related to this case that the Attorney for the Dorn children intended

to call a couple of witnesses. However, it was only the presentation of that testimony which remained in order to complete trial. However, the Court did not immediately reschedule the trial.

Rather, upon reviewing the briefs and replies submitted by all Counsel, on or about December 5, 2013, the Court issued an Order joining Mrs. Dorn as a party in both cases. The Court also issued an Order, over Appellant's vigorous objection, allowing Mrs. Dorn's Attorney to assert the work-product privilege to prevent Appellant's Counsel from questioning her regarding communications she had with Counsel for the Cohens. Finally, also over Appellant's vigorous objection to same, the Court entered an Order allowing the Cohens to Amend the Pleadings to Conform to the Evidence. Shortly thereafter, despite the fact that trial had almost completed, Mrs. Dorn was allowed to file an Answer to Appellant's Petition. (R. Answer of Abbie Ilene Dorn)

Since filing the Notice of Appeal with respect to the aforementioned Orders, the Court has not sent any correspondence to Counsel regarding rescheduling of the Trial. In the interim, the presiding Judge, Deidre Edmonds, lost her bid for re-election in June of 2014. In December 2014, the new Probate Judge took the bench.

STATEMENT OF ISSUES PRESENTED:

1. Whether an Order adding Mrs. Dorn as a named party to the Appellant's Petition is proper when doing so affects the substantial right of the Appellant to name his own Defendants and to control the presentation of evidence during trial within the parameters of the South Carolina Rules of Civil Procedure?
2. Whether an Order allowing Respondents to amend their Pleadings to Conform to the Evidence is proper where Respondents now seek to rely upon an affirmative defense based wholly on witness testimony Appellant was prohibited from examining or deposing during his case in chief?

3. Whether an Order allowing the testimony of additional undisclosed witnesses, as well as previously-barred witnesses, when said witnesses were never disclosed during the course of discovery.

LEGAL ANALYSIS:

The Court's Order designating Abbie Ilene Dorn, the ward of the Court, a separate party to the cases after the trial had almost completed should be vacated as she was not a necessary party under Rule 19, SCRCPP and because the Order unduly prejudiced the Appellant.

1.

Standard of Review

The decision to grant or deny a motion to join an action pursuant to Rule 19, SCRCPP, or intervene in an action pursuant to Rule 24, SCRCPP, lies within the sound discretion of the trial court. See Berkeley Elec. Coop., Inc. v. Town of Mt. Pleasant, 302 S.C. 186, 189, 394 S.E.2d 712, 714 (1990); and Hunnicut v. Rickenbacker, 268 S.C. 511, 517, 234 S.E.2d 887, 890 (1977). "This Court will not disturb the lower court's decision on appeal unless a manifest abuse of discretion is found resulting in an error of law. Moreover, the error of law must be so opposed to the lower court's sound discretion as to amount to a deprivation of the legal rights of the party." Jeter v. South Carolina Dep't of Transp., 369 S.C. 433, 633 S.E.2d 143, 146 (2006).

The order allowing the amendment to add Abbie Dorn as a party defendant, two weeks into the trial, was an abuse of discretion and deprived Appellant of his "substantial right to name its [his] defendant." See Neeltec Enters. v. Long, 402 S.C. 524, 741 S.E.2d 767 (Ct. App. 2013) (holding substitution of corporate party for individual in unfair trade practices act case interfered with plaintiff's substantial right to name its defendant, and was therefore immediately appealable).

2.

The trial court abused its discretion in adding Abbie Ilene Dorn as a separate party where her presence is unnecessary to accord Mr. Dorn complete relief on his claim.

The probate judge relied on SCRCP, Rule 19 as the basis on which to name Abbie Dorn as a separate party defendant. Rule 19(a)(1), SCRCP, provides, in part, that a person subject to process shall be joined as a party in the action if "in his absence complete relief cannot be accorded among those already parties." The rule allows the court the authority under Rule 19 to add Mrs. Dorn, as a party if she is necessary to afford complete relief to Appellant. See Shah v. Richland Mem.'l Hosp., 350 S.C. 139, 564 S.E.2d 681 (Ct. App.2002).

The addition of Abbie Dorn as a separate party is not necessary because Mrs. Dorn is already represented by the presence of the Cohens as Respondents in the action. Her presence as a separate party plays no substantive role in the relief Mr. Dorn is seeking in his case—the removal of the Cohens from their duties as Co-Trustees of the Abbie Dorn Special Needs Trust.¹ Specifically, Mr. Dorn is challenging the Cohens' use of the Abbie Dorn Special Needs Trust² assets instead of their personal assets in funding the California litigation. At the time of filing the Petition, the amount spent by the Cohens on legal fees was estimated to range between Two Hundred Thousand (\$200,000.00) Dollars to Three Hundred Thousand (\$300,000.00) Dollars. The actual figure was later determined to be closer to approximately One Million (\$1,000,000) Dollars.

The Cohens utilized these Trust assets to undertake a myriad of litigation strategies against Mr. Dorn in the California Divorce case. Despite these efforts, the case ultimately was determined in Mr. Dorn's favor when all parties, including the Cohens, signed a consent Order which held (amongst other things) that Mrs. Dorn received no benefit from visitation with the children. In this case, it is undisputed that the Cohens served as Abbie Dorn's Co-Guardians, Co-Conservators, and Co-

¹ It is important to point out that Abbie Dorn is an adult in a persistent vegetative state, and unquestionably incompetent within the meaning of "incompetent" under the Rules of Civil Procedure.

² The stated purpose of the Abbie Dorn Special Needs Trust is to . . . provide a discretionary spendthrift trust, to supplement public resources and benefits when such resources and benefits are unavailable or insufficient to provide for the Special Needs of the Beneficiary. It is not a trust for the support of the Beneficiary. (R. Special Needs Trust of Abbie Ilene Dorn.)

Trustees of the Abbie Dorn Special Needs Trust. As such, the Cohens were the appropriate parties to serve as representatives of Abbie Dorn, and they did exactly that in the trial of these cases.

SCRCP, Rule 17(c) provides the following persons may sue or defend on behalf of an incompetent person: a general guardian; a committee; a conservator; or a like fiduciary. The court may appoint a "guardian ad litem" for an incompetent person not otherwise represented. In Gaddy v. Douglas, 359 S.C. 329, 597 S.E.2d 12 (Ct. App. 2004), an action brought by one attorney-in-fact for Ms. M, an elderly person with severe dementia, against another alleged attorney-in-fact, the court held that the incompetent person [Ms. M] was not a necessary party to the case because Ms. M was adequately represented by her attorney-in-fact serving in a representative capacity for her.

The Cohens, in defending this action in their role as Co-Conservators and Co-Trustees of the Abbie Dorn Special Needs Trust, participated in the formal pleadings, participated in formal discovery with the opposing counsel, identified witnesses, and should be deemed adequate representatives of Abbie Dorn for the purposes of this case. No further representatives or legal counsel are required. The case by Mr. Dorn against the Cohens contained all parties necessary to accord the relief being sought by Mr. Dorn, and the Court should vacate the probate court order adding Abbie Dorn as a separate party two weeks into the trial where she is not necessary.

3. An Order adding Abbie Dorn, two weeks in to the trial and at the conclusion of Mr. Dorn's case, is an abuse of discretion where adding Mrs. Dorn caused undue prejudice to Appellant Mr. Dorn. Likewise, an Order allowing for an amendment to the pleadings to add additional affirmative Defenses after the close of Petitioner's case is an abuse of discretion for the same resulting undue prejudice.

"The test of whether an amendment should be allowed is whether the amendment will prejudice or work an injustice to the adverse party." Forrester v. Smith & Steele Builders, Inc., 295 S.C. 504, 509, 369 S.E.2d 156, 159 (Ct. App. 1988)." The undersigned has been unable to locate any South Carolina cases commenting on the appropriateness, or lack thereof, of a court allowing the

addition of a *party* in the middle of a trial. However, the general considerations when reviewing extent of prejudice in amendments would be applicable in this instance.

Courts have taken the following factors into consideration: the lapse of time since the service of the original pleading; how long the amending party was aware of the facts upon which the motion is predicated; the reasonableness of the explanation of the delay; the extent that pretrial preparation has already occurred; the duplication of effort required if the amendment is permitted; and the impact of the trial date if the amendment is permitted. See, 1B WEST MCKINNEY'S FORMS CIVIL PRACTICE LAW AND RULES § 4.304; See also, Rosenthal v. Allstate Ins. Co., 670 N.Y.S. 2d 862 (2d Dept. 1988) (the later a motion to amend is made, the less chance it will be granted).

The Supreme Court of South Carolina has held, in the context of a Rule 15 amendment, that granting leave to amend is prejudicial "if the amendment would change substantially the claim or defense of the party seeking the same." Ball v. Canadian Am. Exp. Co., 442 S.E.2d 620 (S.C. Ct. App. 1994). The prejudice envisioned by Rule 15, SCRCP, which provides leave to amend a pleading more than 30 days from service of responsive pleading, is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it. Stanley v. Kirkpatrick, 592 S.E.2d 296 (S.C. 2004) reh'g denied; Parker, 607 S.E.2d at 716 (citing Tanner v. Florence Cnty. Treasurer, 521 S.E.2d 153 (S.C. 1999); see City of North Myrtle Beach v. Lewis-Davis, 599 S.E.2d 462, 465 (S.C. Ct. App. 1998); Soil & Material Eng'rs, Inc. v. Folly Assoc., 361 S.E.2d 779, 781 (S.C. Ct. App. 1987). Furthermore, the South Carolina Court of Appeals has held that prejudice occurs when the amendment states a new claim or defense which would require the opposing party to introduce additional or different evidence to prevail in the amended action. Ball v. Canadian Am. Exp. Co., 442 S.E.2d 620 (S.C. Ct. App. 1994).

In Collins Entm't, Inc. v. White, the court of appeals further defined this prejudicial effect when it explained that it would be prejudicial to allow the defendant to raise a defense

during trial when the opposing party did not have time to prepare a case against that defense prior to trial. 611 S.E.2d 262 (S.C. Ct. App. 2005). The court held that the opposing party was prejudiced simply by the fact that they had prepared their case around the defendant's pleadings and were not afforded the ability to prepare their case against any affirmative defense absent from the pleadings. Id. Notably, the court denied leave to amend the pleadings even though the defendant claimed that statements made during trial, in support of the defenses they plead, established evidence of the defense they were seeking to incorporate into their amended pleading. Id. Additionally, the Supreme Court of South Carolina has held that reliance of counsel serves as an affirmative defense. See Mason v. Williams, 9 S.E.2d 537 (S.C. 1940); see generally, Rule 8(c), SCRPC ("... and any other matter constituting and avoidance.").

Appellant, in this case, has, at great expense, deposed and produced witnesses, addressed thousands of documents in discovery and trial, and formulated trial strategies based upon same. As such, it would be unduly prejudicial to allow the court appointed attorney for the ward, Abbie Dorn, to amend the pleadings to conform to add Abbie Dorn as a separate party which appears be a *nunc pro tunc* method to allow Attorneys Hedgepath and Moore to call admittedly undisclosed witnesses on the issue of reasonable reliance by Mrs. Cohen on legal advice.

Moreover, Petitioner believes this needless delay in the proceedings would only burden the Abbie Dorn Special Needs Trust with unnecessary costs. None of this would have been necessitated had the issue been raised in a timely manner – prior to the commencement of the trial. Disclosure of information before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing. Bensch v. Davidson, 580 S.E.2d 128, 132-33 (S.C. 2003) (citing Reed v. Clark, 286 S.E.2d 384 (S.C. 1982). Rule 33(b), SCRPC, *inter alia*, requires disclosure to opposing counsel of the names and addresses of known witnesses as to the facts of the case. Furthermore, the court of appeals has held that this is a continuing duty. Briggs v. Richardson,

343 S.E.2d 653, 655 (S.C. Ct. App. 1986). "A party or witness is allowed to claim, among other things, that certain information requested in discovery is privileged. However, a party or witness claiming attorney client privilege is asserting that opposing party is not intending to introduce that evidence and/or testimony in court." S.C. State Highway Dep't v. Booker, 195 S.E.2d 615, 620 (S.C. 1973).

In this case, there was no real explanation of the delay in alerting the other parties or the court to this issue – other than counsel Hedgepath and Moore's desire to surprise counsel for Appellant with undisclosed (and unnamed by the other parties) witnesses. This intent to surprise is even illustrated during the trial by the refusal of Attorney Hedgepath, even after this issue was being fully debated, to identify who she intended to call the following day. (R. letter to Judge dated March 13, 2013).

Further, in allowing the additional affirmative defenses, based wholly upon the testimony of witnesses that the Appellant heretofore has been unable to depose, receive discovery on, or even determine the identity of same strikes at the fundamental fairness underlying these proceedings. An Order allowing such an amendment, and allowing the addition of Abbie Dorn as a party as the means by which the opposing side may introduce new witnesses and new evidence causes grave and injurious harm to Appellant's ability to be fairly heard before this tribunal. The undue prejudice implicated by such Orders is great.

The factors to consider when addressing prejudice, not surprisingly, appear to assume such amendments are made prior to the actual trial. In this case, all pretrial preparation had already occurred and Appellant had produced and examined all of his witnesses, including two (2) experts. The prejudice here is enormous. If this amendment were to be allowed, duplicated effort and duplicated expense would be great – Appellant would need to depose these new witnesses, assuming he is informed of their identity before they take the stand, possibly revise his plans with

regard to his own experts and the scope of their work, recall those experts, do additional discovery, and essentially left to retry his entire case at great personal expense. At this juncture, appellant may simply be unable to put on an effective litigation, and as such, will suffer the undue prejudice created by these Orders.

The timing of this amendment and its relationship to the efforts of these attorneys for the incompetent ward, Abbie Dorn, to call undisclosed witnesses render this Order a deprivation of the legal rights (that to name one's own defendant) of Appellant, and should be vacated so that this case can be concluded and ruled upon.

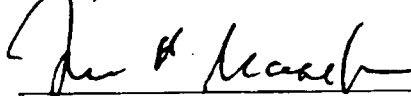
CONCLUSION:

The events of this case, and progress (or lack thereof) of this trial have been unusual. The actual and proper parties to the case of Dorn v. Cohen and Cohen v. Dorn et al. should be allowed to have their case heard, but only when the hearings are conducted within the parameters of the Rules of Civil Procedure and within the bounds of fundamental fairness. Allowing the addition of a party at this stage in the proceedings who is neither (1) necessary to accord complete relief amongst the parties, and (2) causes undue prejudice to the Appellant is an abuse of discretion by the trial judge, and as such, the Orders should be vacated. Such Orders have undermined the fairness of the proceedings and have adversely affected Mr. Dorn's substantial legal rights with respect to the right to choose his own Defendants and prepare for his day in Court. Mr. Dorn has litigated his case, and is entitled to a judgment on the same without the addition of new parties, new defenses, and new witnesses which, up until the signing of these Orders, were wholly unanticipated by the Appellant.

The undersigned respectfully requests that the Order to add Abbie Dorn as a separate party, and the resulting impact of that decision – allowing Attorneys Hedgepath and Moore to put up additional witnesses- should be vacated.

Respectfully Submitted,

WILLS, MASSALON & ALLEN, LLC



John A. Massalon, Esquire
Christy Ford Allen, Esquire
97 Broad Street
Charleston, SC 29401
(843) 727-1144

COUNSEL FOR THE APPELLANT

On this 9th day of February, 2015

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Circuit Court

CONSOLIDATED
APPEALS FROM THE PROBATE COURT
FIFTEENTH JUDICIAL CIRCUIT

Deidre W. Edmonds, Judge
(Probate Case No. 2008-GC-26-0025)

2015 MAR -6 AM 10:06
CLERK OF COURT
JUDICIAL BRANCH

Civil Case No.: 2013-CP-26-8139
Civil Case No: 2014-CP-26-1691

Daniel B. Dorn, in his Capacity as the Parent and Natural Guardian of Esti Dorn, Esti Dorn, Reuvi Dorn, and Yosse Dorn..... Appellant

v.

Paul S. Cohen and Susan Cohen, Individually and in their capacity as the Co-Conservators of the person of Abbie Ilene Dorn, a protected person and ward, and in their capacity as Co-Trustees of the Abbie Dorn Special Needs Trust Respondents.

(Probate Case No. 2008-GC-26-0050)

Civil Case No.: 2013-CP-26-8152
Civil Case No: 2014-CP-26-1744

Esti Dorn, Reuvi Dorn, and Yosse Dorn, the Living Issue of Abbie Ilene Dorn Appellants

v.

Paul S. Cohen, M.D. and Susan Cohen, and the South Carolina Department of Health and Human Services Respondents.

**CONSOLIDATED
DESIGNATION OF MATTERS TO BE INCLUDED IN RECORD**

Appellant Daniel B. Dorn, in his Capacity as the Parent and Natural Guardian of Esti Dorn, Esti Dorn, Reuvi Dorn, and Yosse Dorn and Appellants Esti Dorn, Reuvi Dorn, and Yosse Dorn, the Living Issue of Abbie Ilene Dorn in this Consolidated Appeal propose and submit the following to be included in the Record on Appeal:

1. Order of December 5, 2013;
2. Dorn Summons and Petition
3. Cohen Summons and Petition, Amended Petition
4. Order appointing Lee Moore
5. Order appointing Lynette Hedgepath
6. Hearing Transcript regarding Consolidating Cases
7. Order appointing John Kachmarsky
8. Cohens' Motion for Protective Order and To Quash
9. Hedgepath to Edmonds mailing witness list "for judge's eyes only" dated 3/13/13
10. Daniel Dorn's Memorandum in Support of Denying Motion to Amend
11. Abbie Dorn's Memorandum in Support of Granting Motion to Amend
12. Cohens' Memorandum In Support of Motion to Amend Pleadings
13. Judge Edmonds recusal and correspondence
14. Transcript of Part I of Probate Court trial February 26, 27, March 4, 5, 6, and 7, 2013;
15. Abbie Dorn Special Needs Trust
16. Respondent's Motion to Stay Appeals
17. Form 4 Orders 2/10/2015

I certify that this designation contains no matter which is irrelevant to this appeal.



John A. Massalon
Christy Ford Allen
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net
callen@wmalawfirm.net

-and-

Page 2 of 3

Daniel S. Slotchiver, Esquire
Slotchiver & Slotchiver, LLP
44 State Street
Charleston, SC 29401
(843) 577-6531
dan@slotchiverlaw.com

ATTORNEYS FOR APPELLANTS

CHARLESTON, SOUTH CAROLINA

March 3, 2015

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 3, 2015, a copy of the attached pleading/discovery has been served upon the following via:

x	United States Postal Service
	Hand Delivery
	VIA OVER NIGHT FEDERAL EXPRESS

Reese R. Boyd, III, Esquire
Bret H. Davis, Esquire
Davis & Boyd, LLC
1110 London Street, Ste. 201
P.O. Box 15358 (29587)
Myrtle Beach, South Carolina 29577
(843) 839-9800
reese@boydgoldfinch.com
bdavis@davislawfirm.us

ATTORNEYS FOR RESPONDENTS
PAUL S. COHEN AND SUSAN COHEN

Virginia Lee Moore, Esquire
Moore, Johnson & Saranti
P.O. Box 14737
Surfside Beach, South Carolina 29587
(843) 650-9757
moore@grandstrandlawyers.com

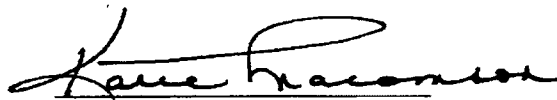
ATTORNEYS FOR GUARDIAN AD LITEM
FOR ABBIE ILENE DORN

Lynette Rogers Hedgepath, Esquire
The Hedgepath Law Firm, PA
207 Beatty Street
Conway, South Carolina 29526
(843) 488-3161
lynette@sccoast.net

COURT APPOINTED ATTORNEY
FOR ABBIE DORN

John Kachmarsky, Esquire
Law Office of John Kachmarsky
171 Church Street, Suite 330
Charleston, South Carolina 29401
(843) 720-3724
johnk@jktaxlaw.com

COURT APPOINTED ATTORNEY
AND GUARDIAN AD LITEM FOR
ESTI DORN, REUVI DORN AND YOSSE DORN


WILLS MASSALON & ALLEN LLC

1 STATE OF SOUTH CAROLINA IN THE PROBATE COURT
 2 COUNTY OF HORRY

3 RE: TEMPORARY RESTRAINING ORDER

4 DANIEL B. DORN, in his capacity as the
 5 Parent and Natural Guardian of Esti Dorn,
 Reuvi Dorn, and Yasse Dorn,
 Plaintiffs,

6 VS. CASE NO. 2008-GC-26-25
 2008-GC-26-50

7 PAUL S. COHEN and SUSAN COHEN, individually
 8 and in their capacity as the co-conservators of
 the person of Abbie Ilene Dorn, a protected
 9 person and ward, and in their capacity as
 co-trustees of the Abbie Dorn Special Needs
 Trust,

10 Defendants.

11
 12 HEARING BEFORE: HONORABLE DEIRDRE EDMONDS

13 DATE: December 15, 2010

14 TIME: 12:30 p.m.

15 LOCATION: Horry County Probate Court
 16 Courtroom 2A
 1301 2nd Avenue
 17 Conway, SC

18 REPORTED BY: BONNIE L. SABADOS,
 19 Registered Professional
 Reporter

20 A. WILLIAM ROBERTS, JR., & ASSOCIATES
 Fast, Accurate & Friendly
 21 Charleston, SC Hilton Head, SC Myrtle Beach, SC
 (843) 722-8414 (843) 785-3263 (843) 839-3376
 22 Columbia, SC Greenville, SC Charlotte, NC
 23 (803) 731-5224 (864) 234-7030 (704) 573-3919
 24
 25

PLAINTIFF'S
 EXHIBIT

3

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 451-1000
 scheduledepo.com

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
3 DANIEL B. DORN:4 SLOTCHIVER & SLOTCHIVER, LLP
5 BY: DANIEL S. SLOTCHIVER
6 STEPHEN M. SLOTCHIVER
7 44 State Street
8 Charleston, SC 29401
9 (843) 577-6531
10 slotchivers@aol.com11 ATTORNEY FOR THE DEFENDANTS
12 PAUL S. COHEN and SUSAN COHEN:13 DAVIS LAW FIRM, PA
14 BY: BRET H. DAVIS
15 1110 London Street, Suite 201
16 Myrtle Beach, SC 29577
17 (843) 839-9800
18 BDavis@DavisLawFirm.us19 BOYD LAW FIRM, LLC
20 BY: REESE R. BOYD, III
21 1500 Highway 17 North, Suite 212
22 Myrtle Beach, SC 29575
23 (843) 238-1978
24 reese@boydlawllc.com
25

18 (INDEX AT REAR OF TRANSCRIPT)

TRO Hearing - December 15, 2010

3

1 THE COURT: We are here this afternoon
2 regarding the matter of the Abbie Dorn Special
3 Needs Trust, file number 2008-GC-26-50.

4 The matter before the Court today is a
5 motion for temporary restraining order that was
6 filed by the petitioner, Daniel Dorn, as the
7 parent and natural guardian of the Dorn children,
8 who I understand is not present.

9 MR. DANIEL SLOCHIVER: No.

10 THE COURT: Represented by Daniel
11 Slotch --

12 MR. DANIEL SLOCHIVER: Slotchiver,
13 Your Honor.

14 THE COURT: And Stephen --

15 MR. STEPHEN SLOCHIVER: Slotchiver.
16 Yes, Your Honor.

17 THE COURT: And I understand also
18 present today is Bret Davis who represents the
19 co-trustees of the supplemental needs trust who is
20 present today with Dr. and Mrs. Susan Cohen as the
21 co-trustees.

22 Mr. Davis?

23 MR. DAVIS: Your Honor, Reese Boyd is
24 also counsel in this matter.

25 THE COURT: All right. Thank you.

**A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com**

1 All right. Are we ready to proceed?

2 MR. DANIEL SLOTCHIVER: Yes, Your
3 Honor.

4 THE COURT: All right. Mr.
5 Slotchiver.

6 MR. DANIEL SLOTCHIVER: Yes. I'm
7 happy to come up, but I can work from my desk if
8 that is okay.

9 THE COURT: That is here for other
10 court proceedings. I'll be happy to hear you from
11 there, if you like. You don't have to use the
12 podium.

13 MR. DANIEL SLOTCHIVER: Thank you.

14 THE COURT: Are you Daniel?

15 MR. DANIEL SLOTCHIVER: Yes, ma'am.
16 Thank you.

17 THE COURT: Yes, thank you.

18 MR. DANIEL SLOTCHIVER: Certainly, I
19 believe everybody recognizes it's a very
20 unfortunate circumstance under which all of this
21 has arisen. That being said, we have got some
22 issues that we want to bring before the Court and
23 have it addressed.

24 Your Honor, the issue that we have got
25 before us right now is that of whether or not the

1 conservator and special needs trustees should be
2 restrained from taking action spending monies that
3 are available through the special needs trust. As
4 I understand it, Your Honor, the documents support
5 that in addition to an annuity that has been
6 created which the expenditures are paid or
7 utilized to pay expenses for Abbie Dorn, it's not
8 enough money. And there is a little bit left over
9 that has to be expended on her behalf also in
10 addition to that amount of money. In addition to
11 the annuity, there is a separate account, and the
12 account had roughly \$900,000 in it. Now, the
13 reason we're bringing this action is because in
14 review of the trust documents, it appears that
15 before expenditures can be made from the trust,
16 from the special needs trust, there must be
17 approval by the Court. We recognize that, and we
18 anticipate that one of the arguments that will be
19 made is that there was approval for dissolution of
20 marriage, and expenditures that would be related
21 to the dissolution of marriage issue.

22 We have got two concerns with that,
23 Your Honor.

24 First, as stated in the petition, the
25 dissolution of marriage which was authorized by

1 the California court was concluded on
2 September 11th, 2008. On September 11, 2008, the
3 court order judgment of dissolution is entered.
4 Marital or domestic partnership status is
5 terminated, and parties are restored to the status
6 of a single person. It's relevant, Your Honor, to
7 recognize in connection with this while we
8 understand that the family court in California has
9 the authority to hear all issues surrounding a
10 marriage, they are different than South Carolina.
11 It can be bifurcated. And in that case, my client
12 through counsel moved to bifurcate the issue of
13 dissolution of marriage from everything else. The
14 dissolution of marriage was resolved in 2008.
15 Everything else is still out there and is still
16 being handled. The reason everything else is
17 important is because the provision in California
18 that allowed the trustee to pay for the expenses
19 and attorney's fees related to the dissolution of
20 marriage did not say it could pay for everything
21 else. So I want to go into that a little more in
22 detail.

23 In conjunction with that, I want to
24 address the fact that regardless of that, there is
25 also, as we know, there is a fiduciary

1 responsibility when you are a trustee to any trust
2 to make expenditures that are realistic that make
3 sense that are appropriate. It may not violate
4 necessarily the term of the trust on its written
5 language, but it would violate the spirit of it
6 and the legality of it based on the fiduciary
7 responsibility. For example, if a trustee wanted
8 to buy -- if the trust had \$200,000, and those
9 were the monies that were necessary to pay for its
10 ward, for the person it's protecting. And if you
11 wanted to buy that person a \$150,000 car, it would
12 not be appropriate to do even if they want it. We
13 are not here today addressing any mental capacity
14 issues. That's not before the Court. That's not
15 something that we are engaged in today. We are
16 addressing the expenditures that have been made.

17 Your Honor, there have been
18 depositions taken, and we put transcripts in our
19 package of the depositions, and I'm sure you had
20 an opportunity to review it. But included in
21 there is reference to the fact that at the time of
22 the deposition, expenditures from that \$900,000
23 exceeded \$375,000. So that amount of money has
24 been depleted quite substantially, which we would
25 argue based on documents is primarily for

1 visitation issues and certainly has taken place
2 subsequent to the dissolution of the marriage.
3 Since that time, and if I'm going too fast, please
4 tell me, Your Honor, because I'll be happy to slow
5 down, because I can get moving sometimes. But
6 since that time, there was a petition that was
7 filed the day after we received this from the
8 Court or we actually called the Court to see if
9 there was anything in there. We got a copy of it.
10 The day after we filed our action, a petition was
11 filed by Paul and Susan Cohen to approve fees so
12 they could make expenditures. And in that
13 petition, there was reference to \$495,326.75 in
14 fees. And if you pull the petition, Your Honor,
15 you see that the majority of it well in excess of
16 \$400,000 was expended from the trust from March
17 15, 2010, incurred by the trust since March of
18 2010 long after the dissolution took place.

19 Of additional concern is that there
20 was a filing made in California one week after
21 this petition was filed in your court, and the
22 filing was made by the trustee by her California
23 attorneys wherein she referenced not only their
24 fees outstanding, but you've got a copy of this, I
25 believe, the California declaration.

1 MR. DAVIS: I do not have a copy of
2 that.

3 MR. DANIEL SLOCHIVER: This was done
4 by your clients.

5 MR. DAVIS: That's what was filed in
6 California.

7 MR. DANIEL SLOCHIVER: This is
8 California. One week later, referencing not only
9 have there been expenditures, Your Honor, that
10 were incurred, but it references -- I'll be happy
11 to provide a copy to the Court. To date, I have
12 paid my attorneys this amount in fees and costs
13 from that \$900,000, \$597,856. And there is a
14 balance owed that has yet to be paid of \$4,823.
15 So at this point, Your Honor, we understand that
16 from the \$900,000 which we'll categorize as a nest
17 egg to cover overflow of expenses. Since the
18 paperwork hasn't been filed in the trust, we don't
19 know what the expenses are going to be. The
20 deposition certainly reflected the expenses have
21 exceeded the annuity amount, but from that
22 \$900,000, over \$600,000 has been paid out in
23 litigation in costs primarily related to
24 visitation. And in a case, Your Honor, which as
25 we stand here today has yet to go to trial, has

1 yet to be fully litigated, and when it goes to
2 trial, it could be appealed. And at such point,
3 that money is going to run out.

4 And I believe that's the basis for
5 which two things have to be done. One is the
6 Court has protection. You have to authorize
7 expenditures. These expenditures that have come
8 from that trust have not been authorized by this
9 Court. And in authorizing those expenditures, I
10 know the Court looks to the fiduciary
11 responsibility of protecting the person. Can they
12 afford to have these expenditures made.

13 Your Honor, I want to point out that,
14 cause I anticipate argument being made, and I'll
15 be happy to provide this to the Court. Filed in
16 California December 7, 2010. It's an accounting
17 by the law firm for the trust that they expended
18 this amount of money.

19 If I may approach, Your Honor.

20 THE COURT: Yes.

21 MR. DANIEL SLOTCHIVER: And the
22 pertinent language, Your Honor, that deals with
23 the numbers is right here on this page.

24 THE COURT: Did you want to submit
25 this as an exhibit?

1 MR. DANIEL SLOCHIVER: I would.

2 THE COURT: Any objection, Mr. Davis?

3 MR. DAVIS: No. Your Honor.

4 THE COURT: Thank you. The Court will
5 mark this as Plaintiff's Exhibit number 1. Enter
6 it without objection.

7 MR. DAVIS: Can you just tell me again
8 what that is so I can make a note to get a copy of
9 that?

10 THE COURT: It says: income and
11 expenses declaration. That's the title of the
12 documents, it appears.

13 (PLF. EXH. 1, Income and Expenses
14 Declaration, was marked for identification.)

15 MR. DAVIS: Your Honor, I do reserve
16 the right to challenge the authenticity of it
17 later. I don't think it will be, but I do want to
18 reserve that right.

19 MR. DANIEL SLOCHIVER: Your Honor, if
20 I may, whenever you're ready.

21 THE COURT: Yes, sir. I'll note
22 your --

23 MR. DAVIS: Reservation.

24 THE COURT: Uh-huh, on the record.
25 We'll go ahead and enter without objection.

1 Yes, sir.

2 MR. DANIEL SLOCHIVER: Under the
3 trust document that controls the background of
4 this, Your Honor, I didn't see your name attached
5 to it from the inception when it was transferred
6 from California to South Carolina. I believe it
7 was an associated judge. But the background is
8 the Court accepted the trust with the provisions
9 and enforcing those same provisions, nothing has
10 been changed. And paragraph 10 of the trust
11 states that the trustee may employ and compensate
12 agents, accountants, and attorneys, in fact
13 attorneys at law, et cetera. However, the
14 compensation of the trustees' attorney at law
15 shall be subject to prior approval of the Court of
16 competent jurisdiction, which has not taken place
17 in this, Your Honor. And it has resulted in
18 \$600,000 or so of expenditures that have been some
19 small portion of that were done after the
20 dissolution, that were done before the dissolution
21 of marriage. The majority were done after the
22 dissolution of marriage.

23 We believe, Your Honor, that Ms. Dorn
24 has had the wonderful ability to have her parents
25 involved in her care, and it has provided her a

1 benefit that many other people in a like position
2 would not have had. It also has probably provided
3 her with the savings of some expenditures that
4 would have been made otherwise because she's able
5 to live at home. She's able to have the care
6 provided to her by her mother and her father who
7 are both in the medical field, as I understand.
8 That being said, our concern is that, as I
9 understand it, there is no determination that she
10 shows any shorter life expectancy than somebody
11 would who had not had this problem. Therefore, at
12 some point, her expenditures could go up if
13 something were to happen to her parents. There's
14 no nest egg that's been left over. It's been
15 eradicated. Eradicated for an issue which is
16 still ongoing. And by all likelihood will be gone
17 at some point in the near months if not years. In
18 fact, if you look since the time of the deposition
19 until December, the expenses went from \$375,000
20 to \$600,000 in just that short window. From the
21 time the filing was made, it went from 400 and
22 some odd numbers to almost \$600,000. Your Honor,
23 these expenditures are inappropriate based on the
24 trust as it was created. It's inappropriate --
25 it's our contention it's inappropriate based on

1 the fiduciary's responsibility that you owe to
2 somebody to maintain their money. Certainly we
3 all look at the fact that under special needs
4 trust, there are provisions that allow you to do
5 some things. But even those things have got to be
6 regulated by what's practical under the particular
7 case. And even assuming, you know, for the sake
8 of argument that she was cognizant, and she
9 certainly desired to have visitation with her
10 children, it would not -- the argument would be
11 that it would not be appropriate to spend all of
12 this money. Certainly if her parents wanted to
13 spend it on their own, or family members wanted to
14 spend on their own situation, but her spending
15 this money from her special needs trust and
16 exhausting the special needs trust we believe was
17 inappropriate.

18 I have had the opportunity, Your
19 Honor, this morning, Mr. Davis has handed me a
20 copy of filings that he made in the court
21 yesterday. Primarily a declaration from Lisa
22 Helfend Meyer, who is an attorney of Meyer, Olson,
23 Lowy & Meyers in California who represents the
24 Cohens, or, you know, as trustees for their
25 daughter. It's the same firm referenced in his

1 package that he submitted to the court in his
2 pleadings which showed the expenditures that have
3 been made of about \$400,000 of expenses that he's
4 pled, asked for authority to pay, but we
5 understand based on the documents we have seen,
6 have been paid. You know, from my short glance at
7 this because I had about 20 minutes to look at it.
8 It looks to me like this is a document that seems
9 to affirm that since she's been involved, the
10 issue she's been addressing is that of visitation.
11 There is no reference here to anything else. So
12 it's not a situation where, as stated in the
13 depositions, there was a duty to defend the trust.
14 There was no ongoing litigation against the trust.
15 At one point, I understand there was litigation
16 wherein my client was seeking child support and it
17 was being defended. The argument was it would
18 violate the special needs trust to provide child
19 support. That's certainly as I understand it
20 based on my understanding, number one. But based
21 on that documentation, that has not been an issue
22 since the Meyer's firm became engaged in this.

23 So the only thing that's going on at
24 this point is protracted continued litigation
25 expending the money for the effort of seeking

1 visitation. I understand the California court has
2 ruled that the matter is a proper matter before
3 the court. But the California court is not the
4 court to rule or to approve expenditures. That's
5 this court here.

6 Therefore, Your Honor, we're asking at
7 this point that you issue a restraining order and
8 require an accounting of all expenditures that
9 have been made since the inception of the trust,
10 and that you restrain the Cohens as trustees from
11 making any expenditures other than for medical
12 needs until this matter can be fully adjudicated.

13 Also, Your Honor, we are aware of the
14 petition, just by circumstances, that was filed by
15 Mr. Davis on behalf of his clients. We have just
16 become aware of that, and certainly believe that
17 our client as a representative of his kids or a
18 guardian of his kids, should have received notice
19 of that. I understand there is a hearing coming
20 up at some point in January to which my client has
21 not been served. And as the guardian of the
22 children who based on the trust are the
23 beneficiaries, he certainly would have an
24 opportunity to be served. That matter, Your
25 Honor, was filed essentially arguing that it would

1 be inconvenient to come to the Court and ask the
2 Court to approve expenditures before they were
3 made, and ask that the Court provide the Cohens
4 with the ability to make those expenditures
5 without having to seek prior Court approval.

6 As you can imagine, Your Honor, it's a
7 little concerning in light of the fact that we now
8 understand that expenditures have been made
9 without Court approval. And those expenditures
10 have been made based on the deposition, based on
11 their representation, they thought they could do
12 it. At the same time, we've got filings that were
13 made here asking that the Court allow them to make
14 these expenditures. Then we have declarations
15 filed in California saying those expenditures have
16 not only been made, but expenditures in excess of
17 that amount have been made. Based on all these
18 concerns, we would ask that you issue a
19 restraining order and require the accounting.
20 This other action will be filed for, but they're
21 not here on an emergency basis. Thank you, Your
22 Honor.

23 THE COURT: Thank you. Just a couple
24 things before I hear from Mr. Davis and Mr. Boyd.
25 I did not note in the motion for temporary

1 restraining order that there was a request for an
2 accounting. I saw that in the emergency petition.
3 So I don't know that that's a matter for the Court
4 to address today.

5 MR. DANIEL SLOTCHIVER: I thought it
6 had, but if it was not, then certainly we
7 understand that.

8 THE COURT: Well, I'll give you an
9 opportunity to look through your motion while I
10 hear from Mr. Davis. I did not note that that was
11 in the motion.

12 MR. DANIEL SLOTCHIVER: Thank you.

13 THE COURT: So at this point,
14 Mr. Davis and Mr. Boyd, you can only address the
15 request for the temporary restraining order and
16 not the issue of accounting, unless counsel can
17 point that out to me in their motion.

18 MR. DAVIS: Yes. If it may please the
19 Court, Your Honor.

20 THE COURT: Certainly.

21 MR. DAVIS: And I want to applaud
22 counsel. I think he painted a pretty convincing
23 picture. I don't agree with it, obviously. I
24 think there is some evidence we got that's going
25 to show otherwise. It does appear to be a

1 tremendous amount of money. Actually, not only
2 does it appear, it is a tremendous amount of money
3 that's been paid. There's a reason why it's been
4 paid I'll get into later, a lot of which were
5 caused by his client. We can indicate later.

6 THE COURT: Mr. Davis, let me say the
7 only thing I'll hear today is on the motion for
8 temporary restraining order. I'm not here to
9 really hear the merits of the case, as to whether
10 the Court should grant his petition where he
11 actually requested a restraint of the performance
12 of the PR's and removal -- excuse me, of the
13 trustees and so forth, and accounting. I'm just
14 here to hear the request -- the motion for
15 temporary restraining order to restrain the Cohens
16 in his petition.

17 And I will note also at this time that
18 it doesn't appear that the Court has scheduled a
19 hearing on your petition, Mr. Slotchiver.

20 MR. DANIEL SLOTCHIVER: That's
21 correct, Your Honor. Part of that was I was asked
22 if we wanted to have it scheduled. Part of it was
23 based on how we were going to work with the Court
24 as far as if we had discovery to be done, exchange
25 of documents.

1 MR. DAVIS: Also the other action may
2 need to be consolidated with this action. That
3 was something I was going to ask the Court about.
4 I can address service of his client and all that
5 at the same time.

6 THE COURT: Okay. So if we can
7 concentrate on the motion for temporary
8 restraining order which appears to be just
9 restrain the co-trustees and the co-conservators,
10 but I didn't have an opportunity to review the
11 conservatorship file.

12 MR. DAVIS: I think all the money is
13 in the trust, Your Honor.

14 THE COURT: That's right.

15 MR. DAVIS: If I get off that line,
16 just slap me, and I'll get right back, Your Honor.

17 THE COURT: All right, Mr. Davis.

18 MR. DAVIS: I will certainly make
19 every effort to stay focused on what you asked me
20 to stay focused on.

21 The points that were made by counsel
22 were that the dissolution of the marriage does not
23 include visitation which we can obviously
24 completely disagree with. He also made a
25 statement that this has been contracted and

1 continued litigation which we certainly would
2 advance to the Court that it has been. It started
3 and has continued. It never has stopped.

4 Then he made a point of saying that we
5 do not have approval to pay fees or the trustees
6 do not have approval, prior approval to pay fees
7 from the trust. And Your Honor, there is two
8 documents that are actually in the court's file
9 that I've copied, and I would like to bring them
10 up. I don't know how you want to handle evidence.
11 They are already part of the court file. I would
12 like to bring them up separately. I'll give him a
13 copy here.

14 May I approach, Your Honor?

15 THE COURT: Yes, sir.

16 MR. DAVIS: Let me get both of them at
17 the same time, Your Honor. These were from
18 California. This is the same thing. I turn to
19 this page, draw your attention to it. That's from
20 California. I'm going to be going through several
21 paragraphs of this one. All right. Your Honor,
22 if you look at that page that I turned to on these
23 California documents. They were appointed, they
24 being the Cohens, Dr. and Mrs. Cohen, were
25 appointed as conservators in an action I'll make

1 comments about, and I'll show you later if you
2 need to. It's an action their client consented
3 to -- I've got two written and signed consents as
4 well, Your Honor. But in the documents you will
5 see that second paragraph on attachment 23, it
6 says: Conservators are granted independent power
7 under Probate code section 2591 (Q), which I have
8 a copy of and can provide to you, Your Honor.
9 That has been changed but at this time, that
10 portion talks about the payment of fees. But it's
11 all included in this paragraph. So I can depend
12 on this paragraph without having to see that now,
13 Your Honor. To employ attorneys to file an action
14 for dissolution of marriage between a proposed
15 conservatee and her husband, Daniel Bernard Dorn,
16 pay the attorneys fees thereby incurred.

17 So we would certainly make the point
18 that they had approval from the Court to pay for
19 the dissolution of the marriage as conservators.
20 And that's a little bit of a distinction because
21 they have been appointed as co-guardians,
22 co-conservators, and co-trustees. Those are all
23 different fiduciary capacities, obviously as you
24 know. However, it's the same funds that we dealt
25 with as a conservator and that are being dealt

1 with as trustees. The same funds came from the
2 settlement of the malpractice action, and it just
3 flowed right into the trust. So this all deals
4 with the same funds.

5 Even if for some reason that were an
6 issue, when this matter was transferred to South
7 Carolina, we have had an order of transfer in the
8 court records.

9 One thing real quick, the reason
10 Mr. Dorn was not served is because he was also not
11 served with this petition for this transfer. We
12 just followed along that same line, but we'll be
13 happy to -- obviously we'll include them now.

14 THE COURT: I believe that order did
15 require that they were to be served on him.

16 MR. DAVIS: The order, okay.

17 THE COURT: I believe so. I believe
18 that was --

19 MR. DAVIS: It did, Your Honor. I
20 agree. Yes. Initial pleadings were not, and I
21 think Judge Carter noticed that, and I looked at
22 the draft, and I looked at what she had changed,
23 and it did deal with that, and we're going to deal
24 with it if we consolidate the hearings. I think
25 that will be resolved. I don't think that will be

1 an issue.

2 THE COURT: Okay.

3 MR. DAVIS: I apologize to the Court
4 if that's causing confusion to the Court. I'll be
5 happy to amend by summons if you would like me to.

6 THE COURT: You know, I looked for
7 your petition this morning, Mr. Davis, when I was
8 looking over this file, and it appeared to me
9 you're asking in that petition to approve the
10 payment of the attorneys fees by the co-trustees
11 and to reform the trust. Kind of clarify whether
12 they have the authority or not or giving them
13 authority, and I think the remainder of the
14 beneficiaries of that trust would be interested
15 parties which would be the minor children. I
16 think it would be appropriate to either this Court
17 to appoint an attorney/guardian ad litem to
18 represent them or to be represented through their
19 natural guardian, their father.

20 MR. DAVIS: Would you like me to amend
21 the summons to include Mr. Dorn, is that what
22 you're saying?

23 THE COURT: I believe so. And I'll be
24 happy to hear from counsel after we conclude this
25 hearing. Normally what this Court would do when

1 we have minor parties is to appoint an attorney/
2 guardian ad litem to represent them. And so I am
3 happy to hear from counsel as to whether it would
4 be appropriate for the Court to do that or just to
5 name Mr. Dorn as their natural parent and natural
6 guardian.

7 MR. DAVIS: And we can address that to
8 the extent that you like. I don't think that
9 matter has been resolved in California. He has
10 physical custody now. I'm not certain -- and we
11 can check with counsel for him and counsel for
12 Mrs. Dorn and find out the current status of that.
13 I don't know if there is necessarily an issue or
14 problem with that. I don't know if he's been
15 awarded legal custody or what the exact status of
16 that is. Because as we're arguing, the marriage
17 matter is continuing to go on. So there is a lot
18 of unresolved issues.

19 THE COURT: And it would appear to me
20 there could be, I don't know, a conflict if he
21 stands in their shoes and represents them in that
22 action. I might feel more inclined to have an
23 independent.

24 MR. DANIEL SLOCHIVER: Be happy to
25 address it whenever you like.

1 THE COURT: Let's go forward. We'll
2 stay on that.

3 MR. DAVIS: We have a number of
4 issues, Your Honor. It's going to be kind of hard
5 to reign this in so we all work together.

6 Okay. This Court's order is where I
7 am now. If you will turn to --

8 THE COURT: Is there any objection --
9 let me ask Mr. Slotchiver whether he has any
10 objection to the admission of this California
11 document into the record as an exhibit in this
12 proceeding?

13 MR. DANIEL SLOTCHIVER: No, not at
14 all.

15 MR. DAVIS: Again, those are already
16 in the Court's file.

17 THE COURT: Yes, sir. I'm just going
18 to mark this as Defendant's Exhibit 1 without
19 objection. This is the California pleading.

20 (DFT. EXH. 1, California pleading, was
21 marked for identification.)

22 THE COURT: All right, Mr. Davis.

23 MR. DAVIS: You know, one side note
24 before we schedule a hearing. Maybe we could ask
25 for a court reporter and a heater. It's cold in

1 here. Maybe we can bring a space heater, Your
2 Honor.

3 All right. Page three, these are the
4 findings of fact, paragraph number seven. I'll
5 read through this as quickly as possible. I don't
6 want to bore everybody with my reading. By
7 further order of the Superior Court of California,
8 County of Kern, metropolitan. Co-conservators
9 were authorized and granted independent power to
10 employ attorneys to file an action for dissolution
11 of the marriage between the ward and her husband,
12 Daniel Bernard Dorn. On January 8th, the
13 co-conservators commenced an action for
14 dissolution of the marriage pursuant to the
15 California court order.

16 And Judge, I would like to give a
17 little bit of information as a side note. It says
18 that the co-conservators brought the action. And
19 my question was why did they bring the action and
20 not Mr. Dorn. That was a mutual agreement between
21 the parties. It's not an issue over it, not any
22 reason why they brought it and he didn't bring it.
23 Just so you will have that information.

24 Paragraph 10, down to the third line.
25 Authorized Petitioner Cohen to establish the Abbie

1 Dorn Special Needs Trust and to fund such trust
2 with the proceeds of the settlement received from
3 the personal injury claim. So we are all on the
4 same page we understand where the funds came from
5 that eventually ended up in the trust.

6 All right. If you could turn, Your
7 Honor, and opposing counsel to paragraph five.

8 THE COURT: What page, sir?

9 MR. DAVIS: Page five, I'm sorry,
10 paragraph 17. Petitioners Cohen have expended
11 funds for attorneys fees and costs in proceeding
12 with these matters in the amount of five thousand
13 nineteen and seventy-five one hundred dollars from
14 the petitioner funds in the Abbie Dorn Special
15 Needs Trust. The aforementioned attorneys fees,
16 costs, and expenditures incurred and -- I want to
17 make some special note of this, Your Honor, and
18 additional fees, costs and expenditures incurred
19 through conclusion of service by petitioners are
20 hereby deemed fair, reasonable, and shall be a
21 proper disbursement from the Abbie Dorn Special
22 Needs Trust. Those are the findings of fact.

23 Move into the conclusions of law in
24 the actual decree. Next page. Page six,
25 paragraph seven. There is also something in the

1 pleadings that they filed, Your Honor, about a
2 bond. And I will deal with this. It's not
3 exactly on point. I think it's part of what they
4 are asking. But if it's not, tell me, and I'll
5 get off it.

6 Anyway, they are asking for a bond. I
7 believe the Court has examined that issue,
8 paragraph seven.

9 THE COURT: That would be in his
10 petition we'll hear at a later time.

11 MR. DAVIS: Later time, no problem.
12 All right. If we continue to the actual decree on
13 page eight where this Court made a formal decree
14 and order. Paragraph nine: That the sums and
15 amounts referred to here and above, and previously
16 paid and disbursed. And then again, and those to
17 be paid, which obviously is a future reference,
18 Your Honor. At the conclusion of these matters,
19 plural, to the attorney for the petitioners Cohen
20 are approved and constitute a proper disbursement
21 from the estate and funds of the Abbie Dorn
22 Special Needs Trust.

23 Your Honor, I don't know how more
24 clear this court can state it that we have a
25 marriage issue in the Family Court in California,

1 and fees are being paid from the trust. Trust
2 requires prior approval, which, Your Honor, I
3 would like to make a side note I'll come back to,
4 is not the way you normally do it. As you know,
5 you've approved several trusts that I have done.
6 The trusts I've done, they are all public records.
7 Do not require prior court approval. This one
8 does. Under these terms whether we like them or
9 don't like them, they require prior court
10 approval. And I don't know how else we can get
11 prior court approval. We have got prior approval
12 in the California court and we have prior approval
13 in the Horry County, South Carolina court. So
14 under the terms of the trust, the Cohens have
15 complied. I as an attorney, I'm trained to read
16 documents and understand every little clause and
17 comma and period. And as a trained person, I
18 believe they have prior approval. As a lay
19 person, as trustees, it's clear that they would
20 think that they have prior approval because you
21 have language regarding future events that have
22 not happened yet to be paid. And these matters,
23 plural. I mean, I'm not trying to be cute, Your
24 Honor, but I really don't know what else you could
25 have in here that would give me or my clients an

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 indication that they have prior court approval as
2 the trust requires. And this matter, as opposing
3 counsel has mentioned, has been being contracted
4 and continued disregarding a marital relationship.
5 We're talking about visitation issues between the
6 mother and her three blooded children, the
7 triplets, and child support which we'll address at
8 a later time, and the actual termination of the
9 marriage. These are all parts they are still in
10 the same court. They still are going along. I
11 believe they still all have the same case number,
12 if I'm not mistaken, Your Honor. So I don't see
13 any termination at all in the actions. They have
14 been ongoing. They haven't stopped. They have
15 been continuing the whole time. And we have prior
16 court approval from California and from Horry
17 County, South Carolina. So I don't see any
18 grounds for granting an injunctive relief that is
19 this restraining order. It's a self-serving
20 statement. I'm trying to be objective as I can.
21 I don't see any grounds that exist.

22 If you would like, opposing counsel
23 made a very large deal with the amount of the
24 fees. I've got a ton of information that I
25 brought. I don't want to overload the Court.

1 I'll be happy to give you as much information or
2 little information as you would like to explain to
3 you how we arrived at those fees. And a lot of
4 that came from the declaration from Lisa Meyer.

5 MR. DANIEL SLOCHIVER: Your Honor, I
6 don't want to interrupt. This is not an issue
7 about the amount of fees.

8 THE COURT: I agree.

9 MR. DANIEL SLOCHIVER: It's the
10 expenditure of it.

11 MR. DAVIS: No problem.

12 THE COURT: Just whether at this time
13 the Court will restrain the co-trustees in paying
14 anymore fees until we can hear the underlying
15 petition.

16 MR. DAVIS: Okay. Absolutely. Your
17 Honor, one other thing I would like to address.
18 Counsel kept mentioning, you know, there is not
19 enough funds to take care of Abbie because of, you
20 know, we got an annuity coming in. We have got
21 this kind of stuff. I don't believe they have
22 standing to bring an action to worry about whether
23 Abbie will have enough money to be taken care of.
24 I think clearly if there is any issue -- we still
25 may challenge it later. It would have to be

1 related to remainder persons. I don't know why
2 they would bring that up. I don't believe that's
3 really their issue to be concerned about. Their
4 concern that Abbie won't have enough money to take
5 care of her, they don't have standing to do that,
6 Your Honor. We certainly believe, I don't think
7 it needs to be regulated absolutely. We believe
8 they have been in the terms of the trust, which I
9 don't necessarily like. Even under the terms I do
10 believe things have been regulated.

11 Let's see if there is any other
12 comments that I had, that I thought I needed to
13 have, Your Honor.

14 I would like to ask the Court a
15 question. I've got information on an accounting
16 for the special needs trust. If you don't want to
17 hear anything about the accounting, then I won't
18 share it.

19 THE COURT: I don't think so. Not
20 today.

21 MR. DAVIS: Okay. Your Honor, also, I
22 am prepared to have Doctor and Mrs. Cohen take the
23 stand. I've got questions for them, answer any
24 questions that you may have, and answer any
25 questions that they have. We want to make sure

1 that the Court sees our transparency, that
2 everything is out there. We are completely
3 comfortable with what they have done.

4 THE COURT: Thank you, Mr. Davis.

5 MR. DAVIS: If I may ask co-counsel if
6 there is anything he wants to say.

7 MR. BOYD: May it please the Court.
8 Your Honor, I'll be brief, understanding the
9 narrow issue before the Court. And I don't really
10 have too much to add to what counsel has said. I
11 just point out I would draw the Court's attention.
12 First of all, I think it's a little bit
13 disingenuous for Mr. Dorn through counsel to stand
14 here and say we're concerned because we're
15 depleting the trust. There might not be enough
16 money to take care of Abbie, when as we've heard
17 today, Mr. Dorn has attempted to invade the trust
18 for purposes of child support in California, and
19 irrespective of the fact that any award of child
20 support is going to act to obviously deplete the
21 trust. There was an obvious issue that draws any
22 question to the ward's Medicare eligibility. So
23 on one end, you've got issues where in California
24 litigation, Mr. Dorn is acting with complete
25 disregard to whether the amount that might be in

1 the trust might be depleted from the trust,
2 actually acting to deplete the trust. Then they
3 come into court in Horry County and say well,
4 we're concerned because we don't want the trust to
5 be depleted. So I think there is some issues
6 there that the Court needs to pay attention to.

7 I think the affidavit that we filed
8 from Susan Cohen -- excuse me. The affidavit that
9 we filed, we just filed yesterday with the court
10 that we have referenced, it gives a procedural
11 history, Your Honor, of the California action.
12 With all due respect to Mr. Slotchiver, there
13 appears to be some effort to make much of the fact
14 the issue currently at hand in the California
15 marital proceeding is visitation. But again, Your
16 Honor, if the Court will have time to look at that
17 declaration that's been filed, the procedural
18 posture of the case in California is being driven
19 not by the respondents here, but by Mr. Dorn. And
20 so the current posture of the case, and I
21 apologize, Your Honor. I've just become involved
22 recently, and I'm not as familiar with the
23 background. But the current posture of the case,
24 if Your Honor will take a look at that declaration
25 and the attached exhibit, is a result of the way

1 Mr. Dorn's counsel has structured the proceedings,
2 by the way of the bifurcation. It's not that the
3 other issues are off the table. It's just that
4 they're not at the moment. The court in
5 California has been dealing with the standing and
6 visitation issues. But again, that's by the
7 design of Mr. Dorn's counsel. And so I think it's
8 a little bit disingenuous to complain about that.

9 And finally, Your Honor knows this
10 well, but the remedy that Mr. Slotchiver is
11 requesting on behalf of his client is Rule 65
12 makes it clear that the extraordinary remedy, as
13 the court stated in the Longcove Club Owners case,
14 this is our Court of Appeals from 1994: The
15 remedy of injunctions, the TRO they're asking for
16 here, is a drastic one and should be cautiously
17 applied only when the legal rights are
18 willfully -- unlawfully invaded and legal duties
19 are willfully or wantonly neglected. I don't
20 think there is any evidence, the Court will review
21 the records, that the Cohens are willfully or
22 wantonly neglecting any legal rights. We don't
23 think a TRO is appropriate at this time, Your
24 Honor, and would request that it be denied. And I
25 just want to draw Your Honor's attention to the

1 declaration which I believe we filed. That's a
2 declaration of Susan Cohen.

3 MR. DAVIS: That has not been filed.

4 MR. BOYD: Okay, I apologize, Your
5 Honor. I thought it had been filed at this time.
6 Again, the TRO is an extraordinary remedy. We
7 don't think it's appropriate at this time.

8 MR. DANIEL SLOCHIVER: If I may be
9 brief, Your Honor.

10 THE COURT: Yes, sir.

11 MR. DANIEL SLOCHIVER: Just to be
12 clear so there is no confusion. A dissolution of
13 marriage was entered into by the court September
14 11th of '08. I believe you've got a copy of that,
15 Your Honor. And it clearly uses the language
16 judgment of dissolution is entered, which is the
17 same language that was used in the pleadings in
18 the paperwork from California that gave the
19 conservator the authority to file the action which
20 later was approved by the court. I want to point
21 out since September '08 -- before September '08,
22 the expenses were minimal. This is all based on
23 the pleadings that were filed by Mr. Davis the day
24 after we filed our petition. And my understanding
25 based on the documents submitted by Lisa Helfend

1 Meyer, based on my understanding of the case, none
2 of the cases dealt with the issues, with any
3 issues other than this case since they became
4 involved. If it was, it was minimal at best.
5 Since they became involved, I just want to point
6 out to the Court the expenditures that have been
7 made to her. I think it's important for the Court
8 to have knowledge making this decision. Certainly
9 recognize this is a difficult situation, that the
10 underlying situation does not allow what's taken
11 place to go forward. Since they became involved
12 in February '06, they received a check for
13 \$25,000. In March -- that was February 6 of 2010.
14 March 15, 14,553.56. April 28, \$114,010.61.
15 May 28, \$117,664.48. June 28 --

16 MR. DAVIS: Your Honor, I would make
17 an objection. We have gone over two or three
18 times he said he's not questioning the amount of
19 the fees, just the payment of the fees. So we're
20 going back again to that same thing.

21 MR. DANIEL SLOTCHIVER: Your Honor,
22 the amount is significant because it is done
23 without authority from the court. And it's an
24 exorbitant amount of money. Abbie Dorn had
25 \$900,000 cash as a surplus fund which was being

1 depleted on a monthly basis based on deposition
2 testimony. Based on deposition testimony, every
3 month they depleted more than the annuity amount
4 provided. She's a young woman. She may live for
5 a very, very, very long time. You're exhausting
6 this amount in an effort to fight for the
7 visitation of the children, and the case has not
8 gone forward yet. They've spent over \$600,000 of
9 the amount of money, the majority of which were
10 spent by their firm dealing solely on the issue of
11 visitation. I think it's practical to decide,
12 number one, do they have the fiduciary
13 responsibility to spend her money. This is
14 necessary money for her care in an effort to seek
15 visitation.

16 THE COURT: I don't think that's
17 necessarily before me today.

18 MR. DANIEL SLOCHIVER: In the
19 emergency petition, it deals with -- and we pled
20 it, with the emergency restraining order we did
21 plead we don't think they have the legal right or
22 the practical right to do it, based on the
23 fiduciary duties that they owe and also based on
24 the documents that were provided.

25 And what's also concerning, Judge, is

1 you've got documents that are inconsistent with
2 each other. And we're asking you to restrain them
3 from spending money, but you've got documents
4 where they said we understand we're not allowed to
5 spend money without approval. We're asking for
6 authority to spend \$475,000. We've now got
7 documents that say actually you've already spent
8 \$597,000. And I don't know since December 7th at
9 the rate they're spending money, how much has been
10 spent since that time. Because at the rate they
11 are going, seems to be at times a hundred plus
12 thousand dollars a month seems to be not
13 extraordinary in this case. And that money could
14 be fully depleted at this time.

15 Your Honor, even that being said, when
16 you look at the deposition transcripts we have
17 attached to our pleadings, one of the questions
18 asked was to Susan Cohen: Did you ever discuss
19 with the court limitations on how much money you
20 could spend -- this is on page 145 of her
21 deposition. How much money you could spend on
22 attorneys fees for litigation? They never gave me
23 an amount. I filed the 2010 forms, and I haven't
24 heard anything back negatively, and I got back
25 copies. They were obviously acceptable. Follow

1 up question page 146. Did the form that you
2 filled out disclose that you had spent
3 approximately \$300,000 or more? Answer: No. So
4 for this Court at this point, if the Court doesn't
5 step in and put a restraining order, then when we
6 come back for the next hearing, there may be none
7 left, assuming there is anything left at this
8 point.

9 MR. DAVIS: Your Honor, if I may.

10 THE COURT: Yes, sir.

11 MR. DAVIS: I want to make a
12 statement, Your Honor, which I wholeheartedly
13 believe we certainly can back it up with some
14 information. This is a run away train. It's
15 obviously a run away train. The reason it's a run
16 away train is Mr. Dorn's attorney in California,
17 they've taken an approach that we're going to
18 outspend them. Bear in mind his fees are similar.
19 Mr. Dorn's fees are similar to what these fees
20 are. So it's not like they are paying all these
21 and he's paying this. They are similar. He's
22 driving this. What we're trying to accomplish, we
23 just want the mother -- we want to have visitation
24 so the mother can have the children. He's hell
25 bent on the mother not seeing the children. I

1 don't know exactly why. He's hell bent on the
2 mother not seeing her three triplets. That's what
3 this is about. He's driving it. He's pushing it.
4 So then if the Court comes in and says you can't
5 pay anymore fees, then he's over here driving it,
6 and we can't defend it. How could the trust
7 defend itself if this Court steps in and says you
8 can't pay anymore legal fees? Well, then he's
9 over here just going crazy with all kinds of
10 action, and they can't do anything. Then what do
11 we do. That wouldn't be appropriate. There is no
12 way they -- they're not in a position to fund it.
13 It wouldn't be appropriate for them to fund it
14 themselves, Doctor and Mrs. Cohen. The trust is
15 simply on the defense. If they don't want these
16 fees to be incurred, Your Honor, then they need to
17 stop with all these legal actions. We would love
18 that to happen.

19 One other thing, the opposing counsel
20 said we filed documents to approve fees indicating
21 that we didn't think what we were doing is
22 appropriate. That's not correct, Your Honor. We
23 want to reform the trust and ratify fees that have
24 already been paid. We believe we have authority.
25 We kind of got wind that some more litigation was

1 coming because of the reputation of the counsel
2 for Mr. Dorn in California. She loves to make up
3 stuff and reconsider it, reconsider it.
4 Reconsider the same issues. Call it something
5 else, reconsider it. We wanted a shortcut that
6 would save fees. And in our process to do that,
7 we get new litigation in South Carolina. I think
8 if the Court were to step in and say it can't pay
9 anymore fees, then it should also step in and say
10 Mr. Dorn can't file anymore actions or can't do
11 anything from a legal standpoint. Because then
12 there is no way for it to defend itself, Your
13 Honor.

14 THE COURT: Well, I certainly can't do
15 that.

16 MR. DANIEL SLOCHIVER: Your Honor, as
17 you know, there is no bond in this case. And if
18 what counsel alleged his clients can't afford to
19 pay the money back, what's going to happen when
20 the money is gone? Who is going to protect Abbie
21 Dorn when this money is gone? If you look back to
22 the letters written to the Court initially by
23 their earlier counsel which was Robin Morris, she
24 stated in her correspondence that as a result of
25 her injuries, she is suffering from mental

1 disability which impairs her judgment with regard
2 to both financial and personal matters. She is in
3 need of supervision and assistance that her mental
4 condition is such that she lacks the understanding
5 and capacity to make reasonable decisions
6 regarding the management of her property and
7 affairs. Well, I would suggest to this Court that
8 what's been done spending this money to argue over
9 visitation is not reasonable. She can't afford
10 that luxury. Because in the future, she won't
11 have those monies, and the case as stated their
12 intention is to continue to spend the money,
13 continue to incur the expenses without the ability
14 to reimburse, without a bond, without getting the
15 Court's approval. When the money is gone, it's
16 gone. And in light of the way it's going so far,
17 they haven't tried the case yet. When they try
18 it, my presumption on what I've seen in the case,
19 there's a good likelihood whoever loses will
20 appeal it. When the money is gone, what happens
21 then? And this Court's job, as I understand, is
22 to look after her interests, not after the
23 trustees, after her interests. What's in the best
24 interest of the person who is being protected, and
25 are the terms of the trust being followed, and do

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 you have fiduciary responsibility, and has it been
2 complied with. And the fact that they want to
3 defend the action doesn't mean -- some cases you
4 can't afford to defend the action. Some cases
5 have been driven by the fact the monies have been
6 spent on one side may be remotely similar to the
7 other side is really not the facts before the
8 Court at this point. What's before the Court at
9 this point is whether or not it follows the terms
10 of the trust, and whether or not it's practical to
11 allow this to go forward. And last, I'm gravely
12 concerned about how much money has been spent
13 since the December 7th filing with the court.
14 Thank you, Your Honor.

15 THE COURT: Anything else from you,
16 Mr. Davis?

17 MR. DAVIS: I talk to my family. A
18 lot of times we'll kid around, we say hop on the
19 train of truth, you know, it will take you through
20 the valleys and hop on that train of truth. Your
21 Honor, we have got a train of truth here that's in
22 black and white. This Horry County, South
23 Carolina Probate Court has already granted prior
24 court approval. There were no limitations, no
25 restrictions, no specific parameters. We

1 currently have approval for what is being done
2 now. And, Your Honor, again, I've got the Cohens
3 here, and I will be more than happy to put them on
4 the stand and let you ask them any questions about
5 the litigation that's taken place, the payment of
6 fees, why the litigation has taken place, the fact
7 that they have been on the defensive. This is not
8 something that they are driving. Whatever the
9 Court feels would be appropriate, Your Honor, I'll
10 be happy to do.

11 THE COURT: Thank you. Give me just a
12 moment please.

13 I am going to mark the order even
14 though it's already in the court's record, of
15 course. But it's the order that Mr. Davis
16 referenced from the Probate Court. I'm just going
17 to mark that as Exhibit 2 to make sure everyone is
18 aware of that.

19 (DFT. EXH. 2, Probate Court Order, was
20 marked for identification.)

21 MR. DANIEL SLOCHIVER: Yes, Your
22 Honor.

23 THE COURT: At this time, the Court is
24 going to deny the request for the temporary
25 restraining order. Under Rule 65, the cases in

1 South Carolina have provided that an injunction
2 is a drastic remedy, and the Court should use its
3 discretion in granting the temporary order to
4 prevent irreparable harm. The Court should look
5 at the particular facts of each case and the
6 equities of each of the parties to determine which
7 side is more entitled to equitable relief. The
8 purpose of the injunction is to preserve the
9 status quo and prevent irreparable injury to the
10 party pending the litigation. We have your
11 pending petition before the Court. That has not
12 been scheduled yet. I do not find that your
13 client, who is Mr. Dorn as the natural parent of
14 the minor children, who are the remainder
15 beneficiaries of the trust who you've said this
16 trust is likely to continue for many, many years.
17 The primary beneficiary of the trust is Abbie
18 Dorn, and it's only after her death, and it's only
19 after the state has been repaid from the
20 supplemental needs trust for all the costs that
21 the state has paid on her behalf, whatever is
22 left, if any, are to go to the remainder
23 beneficiaries who are her children. I do not find
24 that you've shown that there will be irreparable
25 harm if the Court doesn't grant the temporary

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 restraining order. The temporary restraining
2 order would only be issued and in place until the
3 Court could hear the full petition which I intend
4 to schedule hopefully today. I do not find that
5 there will be irreparable injury if I do not
6 issue the temporary restraining order. I don't
7 see that you've proven that to the Court that they
8 are going to be injured if I don't issue the
9 temporary restraining order.

10 I also do not find that you've shown
11 that you will likely succeed on the merits. I
12 think the respondents, the co-trustees have made
13 good arguments here that they may succeed on the
14 merits. I'm not hear to hear the merits, but you
15 have to show that there is a likelihood that you
16 will succeed on the merits. And I'm not sure that
17 you've shown that today in order for me to issue
18 the temporary restraining order. And I don't
19 think you've shown -- well, you may have shown
20 there could be an inadequate remedy at law because
21 there's no bond in place and they may be depleting
22 the assets. But I think I have to have all three
23 things. You have to prove irreparable injury to
24 your clients, and that you will likely succeed on
25 the merits, and that there is no accurate remedy

1 at law, and I don't think you have met the
2 requirements for the Court to issue a temporary
3 restraining order at this time to restrain the
4 co-personal representatives from paying legal
5 fees. I think in reviewing the terms of the trust
6 and reviewing this court order, the California
7 court order, I think there is some question as to
8 whether they have authority or not. I don't think
9 it's clear that they don't have authority. I'm
10 not sure that it's entirely clear that they do
11 have authority. But I don't think you have met
12 the requirements under Rule 65 for the Court to
13 issue a temporary restraining order. So at this
14 time, the Court is going to deny the request for
15 the temporary restraining order.

16 Getting onto the other matters before
17 the Court. Your pending petition, and Mr. Davis'
18 pending petition. Mr. Davis, I would like you to
19 prepare an order to that effect, if you will, on
20 the motion. I do believe, as I mentioned earlier,
21 that I believe that the remainder beneficiaries of
22 the trust who are the minor children, without
23 having looked at the trust code on its surface,
24 and I'm happy, Mr. Davis, if you want to look at
25 the trust code. You know, our trust code makes a

1 distinction between qualified beneficiaries and
2 non-qualified beneficiaries. And there is a
3 convoluted definition in determining whether
4 someone is a qualified beneficiary. And if they
5 are a qualified beneficiary, then they are
6 entitled to notice of certain court proceedings.
7 If it turns out that the remainder beneficiaries
8 are qualified beneficiaries, then I think they are
9 entitled to notice of Mr. Davis' petition before
10 the Court. My gut feeling is that they are
11 because you're asking first for the Court to go
12 back in and approve the fees that have been paid,
13 but in addition to that, to reform the trust. And
14 I think probably any reformation of the trust,
15 that would likely be interested parties for the
16 purpose of that. So I do think, Mr. Davis, you
17 need to amend your action to actually name, and I
18 know the trust agreement states that the remainder
19 beneficiaries after the death of Abbie and after
20 the state had been paid back, the remainder of the
21 trust will go to her issue. I think first it has
22 power of appointment actually. And then following
23 the power of appointment, I think it's to hear
24 issues and default issues to her heirs at law. I
25 think at this time, we have issues identified. So

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

1 even though they are not named in the trust, I
2 think we have issues currently, so I think they
3 are likely proper parties. You can go back and
4 look, Mr. Davis, if you think in reviewing the
5 trust code that they are not proper parties to
6 your action. I'll be happy to hear from you on
7 that if you want to file a motion or we want to
8 have a telephone conference about it. I think
9 they probably are, but I didn't look at the trust
10 code this morning to satisfy myself entirely.

11 MR. DAVIS: Can I ask one quick
12 question?

13 THE COURT: Yes, sir.

14 MR. DAVIS: Do you believe the
15 Department of Health & Human Services would also
16 be an interested party? They have to get notice.

17 THE COURT: Yes, I think the trust
18 itself says that if there is any amendment to the
19 trust, HHS is to be notified. So I think you're
20 going to have to name them as well. So I think
21 you're probably going to have to amend your
22 petition. I think the children rather than their
23 parents would be the proper party, the children in
24 their individual names. And upon receipt of that,
25 the Court would appoint an attorney/guardian ad

1 litem to represent the minor children. And then,
2 of course, that attorney can represent them and
3 speak with their father, speak with the
4 co-trustees, the co-conservators, whoever, and
5 then be able to represent their interests in that
6 action. But I certainly do think that the minor
7 children are probably going to be named, need to
8 be named. But you can look at the trust code to
9 clarify, make sure, Mr. Davis. And I think Health
10 & Human Services, I believe I saw in the trust
11 agreement, needs to be named, which means I think
12 your hearing in January is probably going to have
13 to be continued. I think it's currently scheduled
14 for the 13th.

15 MR. DAVIS: Yes, Your Honor. And
16 that's a matter I felt like that was sort of
17 tentative date based on what we are doing here
18 today. I would like for the Court to consider
19 whether we should consolidate these matters, or
20 how the Court wants to handle this.

21 THE COURT: It seems to me that
22 Mr. Dorn in his petition he has on behalf of the
23 children asked for an accounting, asked to
24 restrain the performance of the trustees,
25 requested a bond, requested the removal of the

1 trustees, the removal of the co-conservators. It
2 would seem appropriate to me to combine these
3 actions, and for the Court to hear them at the
4 same time.

5 MR. DANIEL SLOTCHIVER: Your Honor,
6 I'm a little perplexed because on the one hand, we
7 filed an action by Mr. Dorn as the parent and
8 guardian of his children. On the other hand,
9 you're representing that you may remove him and
10 appoint -- not remove him from his action, but
11 appoint somebody else. I would ask that if that's
12 still your inclination, you allow him to nominate
13 a South Carolina attorney to serve as a guardian
14 for his children. I'm worried about the
15 expenditures. He's got one action on behalf of
16 his kids. I think it would be appropriate to
17 allow him to serve fully on behalf of his children
18 in reference to this action. If you are not
19 inclined to do that, I'm worried we're going to be
20 having somebody doing the same thing.

21 THE COURT: You know what, I think if
22 the Court -- I understand that. I do see that
23 as a problem. Because my petitioner in one action
24 is Mr. Dorn as a natural guardian of his children.
25 He's representing them in this action, and I'm

1 instructing Mr. Davis that I think in his action,
2 he actually needs to name the children, not your
3 client. And then the Court would appoint an
4 attorney/guardian ad litem to represent them in
5 that action. I see there is conflict there, but
6 what I also see is under our trust code, they are
7 the parties to the trust action, the minor
8 children, because they are the beneficiaries. The
9 code talks about a parent representing a qualified
10 or minor beneficiary of a trust if there is no
11 conflict of interest. I see Mr. Dorn having a
12 conflict of interest in representing his children
13 in that action because he is fighting the
14 co-trustees over the visitation, and I don't think
15 his interests are separate and apart from the
16 children. I mean I think they are, and I think he
17 would have a conflict.

18 MR. DANIEL SLOTCHIVER: As you have
19 noticed here in the argument we have made, Your
20 Honor, it's not -- there is no argument we've made
21 today nor do we anticipate making it at any point
22 in this case that gives rise to a conflict. The
23 argument we have made the expenditures were
24 inappropriate and unauthorized. We have not --
25 we've been relatively silent to the issue of

1 visitation other than arguing that the monies have
2 been used for visitation as opposed to the
3 dissolution of marriage.

4 So from our perspective, I don't
5 believe that there is a conflict with him stepping
6 in because his argument is going to be the same.
7 This case that they filed to a large extent it
8 doesn't mirror our case. Ours is more inclusive,
9 but it has a very similar finding. And in fact, I
10 think it would be appropriate from that standpoint
11 to have them litigated together. But if you are
12 inclined to separate them and distinguish the
13 cases, I would ask that they not be consolidated,
14 that we argue the cases separately. I think it's
15 going to be a little confusing to have our client
16 as the guardian of his kids on the one hand on one
17 issue, and next to us is a Court appointed
18 guardian. Obviously their allegiance is going to
19 be allied, and I think all we're doing is
20 expending more money when I don't know if it's
21 really going to serve a purpose. Certainly that's
22 your call, not mine.

23 THE COURT: I think it will be
24 somewhat confusing. Mr. Davis?

25 MR. DAVIS: I would prefer -- it would

1 be much more costly and confusing to have two
2 separate actions. A lot less confusion to have a
3 guardian ad litem and Mr. Dorn sitting there. I
4 think the Court needs some information from the
5 guardian ad litem, and the children need some --
6 let me make another point.

7 This has been a long and protracted
8 matter. I think it would be very beneficial for
9 the children to have an objective person helping
10 them out than their father helping them out in
11 this case, Your Honor. I really think that would
12 be helpful. As much as I hate to -- I'm not
13 intending to increase the stuff that we have got
14 going on in the action. I think it would be
15 helpful. That's what my gut says, Your Honor.

16 MR. DANIEL SLOTCHIVER: Your Honor, we
17 are not arguing over visitation. We are arguing
18 over the appropriateness of spending money.

19 THE COURT: Right.

20 MR. DANIEL SLOTCHIVER: I don't
21 understand how this gives rise to an issue that
22 would require the appointment of a guardian ad
23 litem separate than the father. This issue is
24 purely about whether or not they appropriately
25 spent the money, whether or not they could spend

1 it, whether or not it's wrong to spend it, whether
2 or not there is harm to the kids. The TRO
3 standards are a lot different than the standards
4 for the other actions that are being -- that have
5 been filed which is the appropriateness of them.
6 So I would be inclined if you want to consolidate
7 them, no objection to it. I would ask that you
8 allow Mr. Dorn, as most parents do for their
9 children, to serve as the guardian. I don't
10 believe there is any conflict of interest. It's
11 the exact same case. We're going to be present
12 either way.

13 THE COURT: Let me just say this. It
14 is in very few cases in my court, especially in
15 trust actions or in estate matters that parents
16 represent the minor children. Very few. I have
17 had only a couple of trust matters where it was
18 clear to me that there was no conflict between the
19 position of the parents and their minor children,
20 and I allowed them to be their representatives in
21 the trust matters under the trust code. In the
22 majority of the cases, either there is a clear
23 conflict between the parent and the child, or I
24 just routinely appoint -- the parent is not
25 necessarily a party to the action of the minor

1 children, and I'll appoint an attorney/guardian ad
2 litem to represent with the parents. So it's not
3 that I'm doing anything different in this case, in
4 Mr. Davis' case that I would not normally do. I
5 routinely appoint a separate attorney/guardian ad
6 litem to represent minor beneficiaries of a trust.

7 MR. DANIEL SLOCHIVER: Then are we
8 going to have an appointment with reference to his
9 case, and with reference to the case that's been
10 filed we'll continue to litigate on behalf of my
11 client as guardian?

12 THE COURT: I'm sorry. Say that
13 again.

14 MR. DANIEL SLOCHIVER: I'm not sure I
15 understand. Are you looking --

16 THE COURT: I'm looking at Mr. Davis'
17 case initially and saying in his case I believe
18 the minor children need to be named as parties.
19 And again, this makes a little bit more sense in
20 his case. And again, I didn't glance at my trust
21 code before I came out here. In his case, the
22 minor children are remainder beneficiaries of the
23 trust. Their parent is not a beneficiary and is
24 not in any way a party to the trust other than as
25 the natural guardian of the children. So in this

1 case -- and I understand you have filed the
2 action.

3 MR. DANIEL SLOTCHIVER: In our case,
4 we have filed it on behalf of the minor children
5 representing the parent as the guardian.

6 THE COURT: I understand that.

7 MR. DANIEL SLOTCHIVER: It's really
8 the same.

9 THE COURT: I understand that.

10 MR. DANIEL SLOTCHIVER: So it's our
11 case --

12 THE COURT: I'm talking about his case
13 now.

14 MR. DANIEL SLOTCHIVER: With reference
15 to our case, is it going to stay as it is?

16 THE COURT: Let me get to that. Okay.
17 In Mr. Davis' case, I've instructed him that I
18 think he needs to look at the code and likely name
19 the children as parties to his action to reform
20 the trust and approve the fees. In that case,
21 they will be parties to a proceeding. They are
22 minor parties. They need to be represented. And
23 my position is 99 percent of those types of trust
24 matters are that the Court would appoint an
25 attorney/guardian ad litem to represent those

1 minor parties.

2 MR. DAVIS: Your Honor, if I may.

3 THE COURT: Yes, sir.

4 MR. DAVIS: The previous order of
5 transfer of jurisdiction had Attorney Lee Moore
6 appointed as guardian. In my petition, I've made
7 note that if the Court finds it necessary to
8 appoint a guardian, that the Court would appoint
9 Lee Moore again. I like Lee. I've worked with
10 her. I like a number of people. Don't have to
11 have Lee. She's familiar with this case. So I
12 clearly had contemplated having a guardian
13 appointed for the children, because the Court
14 normally does in these other cases that we do.

15 MR. DANIEL SLOCHIVER: Your Honor, we
16 would like the opportunity to nominate the person
17 that should be appointed as guardian. We'll find
18 a counsel that practices in your court here that
19 the Court is aware of. I think in light of the
20 nature of the case and everything that's taken
21 place, we would rather have some say if that would
22 be appropriate.

23 THE COURT: And probably because I
24 guess my only concern with Ms. Moore, Mr. Davis,
25 is that this Court would then need to disclose a

1 potential conflict in Ms. Moore, just because of
2 her involvement in my election as Probate judge.
3 And without them waiving that, I think this case
4 then leaves Horry County. So I would rather not
5 complicate things anymore.

6 MR. DAVIS: Your Honor, I can make
7 that easy. If they will mention some names, as
8 long as you Your Honor are comfortable with them,
9 I don't have a problem.

10 THE COURT: So I think in Mr. Davis'
11 case, he's likely going to name the minor children
12 as parties. The Court will appoint an
13 attorney/Guardian ad Litem to represent them.
14 I'll be happy to get a couple names from you, and
15 if Mr. Davis doesn't have a strong objection to
16 any of those, I'll be happy -- even though we're
17 bringing in someone new, I don't think there is so
18 much that's gone on, so much history of this case
19 that a newer person coming in can't get up to
20 speed very quickly. Even though I think Ms. Moore
21 was involved before, it was an uncontested matter,
22 and she has some knowledge. I don't think it's
23 very difficult for a new person.

24 MR. DANIEL SLOCHIVER: If we can
25 converse after court and come up with some names

1 and get them to you.

2 THE COURT: Sure, fine.

3 MR. DANIEL SLOCHIVER: Okay,
4 thank you.

5 THE COURT: Then the issue that you
6 raised, Mr. Slotchiver, has to do with your action
7 and whether it's going to be consolidated with
8 Mr. Davis' action, and whether the Court is going
9 to remove your client as the person representing
10 his children. It would not be my position at this
11 time -- I would allow him to go forward as the
12 petitioner as the parent/natural guardian for the
13 children. I will have to consider whether I think
14 it's appropriate to appoint a separate guardian ad
15 litem in that action to represent the minor
16 children. I'm not sure. You were asking that
17 maybe the case not be consolidated.

18 MR. DANIEL SLOCHIVER: My concern is,
19 Your Honor, historically, the only reason we're
20 here today is because we brought the action, and
21 now to come and say we're going to remove you --

22 THE COURT: Well, at this time. That
23 doesn't mean that Mr. Davis wouldn't have filed
24 something after that once he got wind of this.

25 MR. DANIEL SLOCHIVER: With reference

1 to our action.

2 THE COURT: Right.

3 MR. DANIEL SLOTCHIVER: To remove my
4 client as the guardian/natural parent for his kids
5 and replace him with somebody, would be a rather
6 drastic remedy that I don't believe is warranted
7 or justified itself.

8 So we're happy to proceed with
9 reference -- if it's your ruling, with reference
10 to our case, we'll proceed with him as parent and
11 natural guardian. With reference to Mr. Davis'
12 case, we'll proceed with whoever you appoint as
13 guardian. If Dan Dorn is not serving in the
14 capacity as guardian, then what capacity would he
15 be here? It's the only capacity he has. It's the
16 only standing he has is guardian. That's why we
17 brought the action as guardian of the minor
18 children.

19 THE COURT: Is it your position
20 then -- and I'm not inclined to remove him from
21 that position. Is it your position then that if
22 the Court allows him to proceed as the natural
23 guardian of the minor children in his action and
24 appoints someone separate to represent the minor
25 children in Mr. Davis' action that there would be

1 too much of a conflict there, and they should not
2 be consolidated?

3 MR. DANIEL SLOTCHIVER: I don't see it
4 as being too much -- my preference would be that
5 he would serve for everybody because I believe
6 there really are almost identical positions that
7 are taken between the two different matters. If
8 your inclination is to proceed as you've suggested
9 you're inclined to do, then I would suggest we go
10 forward with one hearing instead of having
11 multiple hearings, and we could do it sooner.

12 THE COURT: So you're saying combining
13 it?

14 MR. DANIEL SLOTCHIVER: What I'm
15 saying the same set of facts are going to be
16 argued.

17 THE COURT: And there may be a
18 point -- and I'm happy to combine to the extent
19 that we can do that. Because I think they're very
20 much related. I do strongly believe that there
21 would be a conflict, and that's just from my
22 position as beneficiaries of a trust and an action
23 to reform the trust, and the father having brought
24 an action on behalf of the minor children to
25 remove the co-trustees and so forth. I don't

1 think it would be appropriate for Mr. Dorn to
2 represent the children in Mr. Davis' action.

3 MR. DANIEL SLOTCHIVER: I see the
4 distinction.

5 THE COURT: I think there is conflict
6 there. I would go forward and appoint a separate
7 attorney/guardian ad litem. I'm happy to consider
8 who you want the Court to appoint. Let Mr. Davis
9 look at it. I'm happy to consolidate these
10 matters. If we get into it and the
11 attorney/guardian ad litem on this side says: I
12 have a problem keeping these things separate, and,
13 you know, arguing this case at the same time we're
14 hearing this, we may need to bifurcate the case
15 and go back and hear one and the other separately.
16 If we could hear them together, I certainly have
17 no objection to doing that --

18 MR. DANIEL SLOTCHIVER: Absolutely.

19 THE COURT: As long as you don't
20 object. I thought initially you did.

21 MR. DANIEL SLOTCHIVER: No, I don't
22 object. Your Honor, at this point, we're going to
23 get with the court, schedule a time, understanding
24 that there will be some discovery that will take
25 place between the time -- between today's date and

1 the time we come back for the hearing; is that
2 correct? Some discovery, some depositions, some
3 exchange?

4 MR. DAVIS: That will be up to you.
5 It will open up to the Rules of Civil Procedure.
6 We've got a few rules in Probate Court.

7 MR. DANIEL SLOTCHIVER: And my
8 question, that being said, because there will be
9 some limited discovery, and it might take 60 days
10 to comply. Normally we have this time to comply
11 with discovery requests.

12 THE COURT: Right.

13 MR. DANIEL SLOTCHIVER: My concern is,
14 put this out --

15 THE COURT: Mr. Davis has got to amend
16 his pleading to name the children. And the Court
17 has to appoint someone to represent them. So
18 that's going to take a couple of weeks I'm sure.

19 MR. DANIEL SLOTCHIVER: In the
20 interim, Your Honor, is there any limitation on
21 the expenditures that can be made from the trust
22 because I'm concerned that there may not be a need
23 to come back.

24 MR. DAVIS: We have already disposed
25 of that matter.

1 MR. DANIEL SLOTCHIVER: I think the
2 Court on its own merit can state limitations. We
3 have done that regularly in Charleston. Some
4 extent of limitations, because if not, there may
5 be no reason to come back.

6 THE COURT: The only thing I'll do
7 with respect to that is to encourage the
8 co-trustees to consult with counsel as to what
9 their duties are as trustees of the trust, what
10 type of liability they face if they have somehow
11 breached their fiduciary duties to the
12 beneficiaries of the trust, what type of personal
13 liability they might be subject to if the Court
14 finds at a later date that they have improperly
15 expended trust assets.

16 MR. DANIEL SLOTCHIVER: And the
17 hearing today, just so I'm clear, has not
18 confirmed or approved the actions. It has just
19 determined that there is not sufficient basis for
20 a restraining order which you've made no decision
21 whatsoever as to whether these expenditures are
22 appropriate or not.

23 THE COURT: Exactly. That's exactly
24 right.

25 MR. DANIEL SLOTCHIVER: Thank you,

1 Your Honor.

2 THE COURT: Getting back to a time
3 frame. Clearly we're going to continue the
4 hearing on the 13th that had previously been
5 scheduled. Mr. Davis, do you have a time frame,
6 when would you expect to file your amendment
7 naming the children as parties? First week in
8 January?

9 MR. DAVIS: I may have Mr. Boyd
10 address that.

11 MR. BOYD: Well, we're out for
12 Christmas. Then I've got a family outing for my
13 son in Denver, Colorado the week of Christmas, so
14 I will be out from next Wednesday until the first
15 of the year.

16 THE COURT: Would you think maybe the
17 first week of January?

18 MR. BOYD: The first or second week of
19 January, yes, Your Honor, is what I'm thinking.

20 THE COURT: Would that give you ample
21 time to consider local counsel to represent the
22 children and share that with the Court and
23 Mr. Davis?

24 MR. DANIEL SLOCHIVER: I'm hoping to
25 have that resolved this week. We're ready to move

1 forward as soon as we can.

2 THE COURT: And I'm happy -- if you
3 would like to share the names that you would
4 suggest to the Court with Mr. Davis, if y'all can
5 agree on one, and then provide me with that name,
6 then I'll be happy to go with that. I don't have
7 to have your entire list if y'all can agree on
8 something.

9 MR. DANIEL SLOCHIVER: I'll be
10 contacting him directly.

11 THE COURT: Okay. So that would be
12 the first or second week of January. Then, of
13 course, the attorney/guardian ad litem for the
14 minor children would have some additional
15 discovery. I'd be happy to schedule this in
16 February for a hearing.

17 MR. DANIEL SLOCHIVER: Your Honor,
18 would it be appropriate -- I haven't got my
19 calendar in front of me. Would it be appropriate
20 if I were to contact the Court today or tomorrow,
21 contact and kind of work out, get a schedule? I
22 would like to do it in February. That would be
23 perfect, but I don't have a particular date yet
24 that I can give the Court.

25 THE COURT: I understand. Maybe

1 counsel can talk about the time, talk about the
2 issues of discovery, how much time you think, let
3 me know. First week, second, third, fourth week
4 of February. And then I'll just look at my
5 calendar. I would imagine we're pretty free the
6 month of February at this time. May have a couple
7 dates already. Most of that month should be free.
8 If you think we can do it anytime, just let me
9 know what week of February and give me -- I'm
10 assuming maybe a day. Let me know whether you
11 think it's going to take more than a day so I can
12 block out an appropriate amount of time, and then
13 I'll schedule it and notify counsel of the hearing
14 which will be on your petition as well as
15 Mr. Davis' petition.

16 MR. DAVIS: Okay, your Honor. I
17 appreciate your efforts today. I've got one last
18 matter that I would like to ask you about.
19 Actually, I'll need these documents back.

20 THE COURT: I have three exhibits
21 today.

22 MR. DAVIS: We have a sensitive
23 disclosure issue with the declaration filed by
24 Lisa Meyer. There is a doctor's report that
25 cannot be in the public domain. And it cannot be

1 referenced in the public domain. And it is
2 referenced in the declaration, so what I would ask
3 the Court to consider is one of two things. I've
4 got a redacted declaration. I've got a black pen.
5 I can go through the copy that you have and black
6 out the parts that can't be in public domain or
7 the Court can seal it, seal the whole thing. It's
8 not confidential with regard to opposing counsel.
9 They can see it and they have. Their colleagues
10 in California have a copy of the report from the
11 doctors. There is no issue between us. There is
12 no issue with the Court. It's just that
13 California has proposed an order that says that
14 report or any reference to it cannot be part of
15 the public domain. So before that filing makes it
16 into the records that go into the file room, we
17 need to either redact that portion, which I can do
18 right now with this pen, or the Court can just
19 seal it and not make it part of the public
20 records.

21 THE COURT: Okay. Now, I understand,
22 Mr. Davis, yesterday or some time after you filed
23 the documents, you notified the court staff that
24 there was a document that should not be part of
25 the court records. And Ms. Pete placed that in an

1 envelope. It has been clocked, and is this the
2 document? Cause I want to make sure. This is a
3 stipulation settlement agreement, six pages,
4 originally filed October 4th, 2010. Is this the
5 document?

6 MR. DAVIS: Right. That's the order
7 that says it cannot be part of the public records.
8 Actually the declaration, I've got that here. I
9 can show you. You don't have a copy of the
10 doctor's report. You don't have that. The only
11 thing --

12 THE COURT: Oh, so you haven't already
13 filed --

14 MR. DAVIS: I filed the declaration
15 referencing the doctor's report, and it cannot do
16 that.

17 THE COURT: Okay. So you didn't file
18 the doctor's report. It's the reference in the
19 declaration to the report?

20 MR. DAVIS: May I approach the bench?

21 THE COURT: Yes, sir.

22 MR. DAVIS: Here is one that has not
23 been redacted. Of course, you can look at
24 anything and counsel can. It just cannot go in
25 the public domain. I can take and do that or seal

1 it.

2 THE COURT: And that's actually the
3 declaration?

4 MR. DAVIS: This is the declaration.

5 THE COURT: Have you had an
6 opportunity to review this?

7 MR. DANIEL SLOTCHIVER: I have not,
8 Your Honor.

9 MR. DAVIS: They can keep the full
10 declaration. They'll have a non-redacted --

11 MR. DANIEL SLOTCHIVER: I think you
12 gave us two full ones, two non-redacted.

13 MR. DAVIS: Okay. Well, I've got a
14 copy of the redacted also. They'll have both.

15 MR. DANIEL SLOTCHIVER: Is that the
16 medical records the same in the redacted report?

17 THE COURT: He said the medical record
18 is not in there though. It's just the declaration
19 in reference to the medical report?

20 MR. DAVIS: Of Dr. Schatz.

21 MR. DANIEL SLOTCHIVER: Your Honor,
22 one more -- I'm sorry, were you done?

23 MR. DAVIS: I want to give a copy to
24 the Court.

25 MR. DANIEL SLOTCHIVER: Your Honor,

1 one more issue that we were chatting about, and
2 I'm not sure -- I wanted to ask you about.

3 THE COURT: Can we resolve this one
4 first real quick?

5 MR. DANIEL SLOCHIVER: Yes.

6 MR. DAVIS: If you like, Judge, I can
7 take the one you've got and black it out.

8 THE COURT: Talking about the
9 declaration?

10 MR. DAVIS: Right. And I can black it
11 out, and you can leave it right in there.

12 THE COURT: Okay. Let me ask Mr.
13 Slotchiver. Any objection to the redaction that
14 he is requesting?

15 MR. DANIEL SLOCHIVER: I haven't seen
16 what's being redacted.

17 THE COURT: Can you show him that,
18 Mr. Davis?

19 MR. DANIEL SLOCHIVER: I have no
20 opposition.

21 THE COURT: You had some more to be
22 redacted?

23 MR. DAVIS: Yeah, any reference to Dr.
24 Schatz' report.

25 MR. DANIEL SLOCHIVER: I have no

1 opposition to that.

2 THE COURT: Okay. And is the Court
3 going to get an unredacted copy that we could
4 place not within the court records? What I'm
5 inclined to do then if there's no objection,
6 because this is already in the record. It was
7 filed yesterday. It has not been released to
8 anyone. Yesterday morning. No one received a
9 copy of this. You received your copy from
10 Mr. Davis today?

11 MR. DANIEL SLOCHIVER: Yes, ma'am.

12 THE COURT: So I don't have any
13 objection to redacting the original that's in the
14 record. I think it would be easier than taking
15 the declaration out, is to allow him now to use
16 the marker and redact out what needs to be
17 redacted out, then provide the Court with an
18 unredacted copy that I'll keep outside of the
19 court's records. Then there is no objection?

20 MR. DANIEL SLOCHIVER: No.

21 THE COURT: That's my unredacted that
22 I will just keep with my notes, and I will request
23 that you now with counsel --

24 MR. DAVIS: Can I put on top there:
25 Do not place in public records.

1 THE COURT: That will be fine. I'll
2 keep that one with my actual records, my actual
3 notes. So this, Mr. Davis, is fine to be in the
4 court's records?

5 MR. DAVIS: I would like to keep that
6 with this, Your Honor, if I can. I mean I
7 guess -- well, it's a California court order. I
8 guess it doesn't matter.

9 THE COURT: Okay. So we are going to
10 file this in the file. If you will go through now
11 with your copy and mark out those provisions that
12 should be redacted.

13 MR. DANIEL SLOCHIVER: Judge, while
14 he's doing that, could I raise one more issue?

15 THE COURT: If you could just do that
16 right here.

17 MR. DANIEL SLOCHIVER: For
18 clarification.

19 THE COURT: Just be very careful we
20 don't redact out anything --

21 MR. DAVIS: I'll do that right here.

22 THE COURT: Okay. That would be fine.

23 MR. DANIEL SLOCHIVER: My
24 understanding, Your Honor, is that generally
25 speaking when the Court appoints a guardian for a

1 minor child, the payment of the expense of the
2 fees related to that appointment come out of the
3 corpus. Usually it happens with a
4 conservatorship.

5 THE COURT: Right.

6 MR. DANIEL SLOTCHIVER: In this case,
7 there is no money in the conservatorship. The
8 only money is contained within the special needs
9 trust, and I don't know whether or not the monies
10 can be spent from the special needs trust whether
11 or not it's an appropriate expenditure, not
12 violating the special needs trust. I want to
13 raise that issue to the Court, and it may be a
14 reason -- I'm not opposed to having somebody
15 appointed. It may be a reason for everybody to
16 reconsider having Mr. Dorn serve in that capacity.

17 THE COURT: I would authorize in the
18 order appointing the attorney/guardian ad litem
19 for the minor parties that the fees for the
20 attorney/guardian ad litem be paid by the
21 co-trustees out of the trust.

22 MR. DANIEL SLOTCHIVER: Thank you,
23 ma'am. Just want to make sure we addressed that
24 issue.

25 THE COURT: In your action --

1 MR. DAVIS: Lee Moore was paid from
2 the trust.

3 THE COURT: Right, right.

4 MR. DANIEL SLOTCHIVER: Thank you,
5 Your Honor.

6 MR. DAVIS: So the same thing you're
7 talking about, okay, just like Lee was paid,
8 you're talking about doing the exact same thing?

9 THE COURT: Yeah. Whatever
10 attorney/guardian ad litem we appoint to represent
11 the minor beneficiaries of the trust in the order.
12 I'll try to remember to include that in the order.
13 And I'm happy if counsel want to submit a proposed
14 order. Normally we would use the form. I would
15 amend the form. And I'll just include that the
16 attorney's fees and costs be paid by the
17 co-trustees out of the trust, and the Court
18 authorizes.

19 MR. DAVIS: I normally do that anyway.
20 It will be what I submit to you. I'll submit it
21 in Word form. I'll submit it to him and you at
22 the same time.

23 THE COURT: Now, my only other concern
24 about this redaction is to insure that all clocked
25 copies of that declaration have been redacted as

1 we have redacted it.

2 MR. DAVIS: You've got the only other
3 clocked copy.

4 THE COURT: Is there a copy --

5 MR. DAVIS: Photocopies. I've got a
6 number of copies.

7 THE COURT: Let me tell you my
8 concern. Someone having a copy of something
9 that's been clocked from the court that's
10 different from the court record, and the court
11 record is now being redacted. I think somebody
12 can have an unclocked copy that's not redacted.
13 But I think a clocked copy has to include the
14 redaction because that's what my record shows.

15 MR. DAVIS: Do you want me to black
16 out the recording information on his copy? Would
17 you black out the recording information?

18 THE COURT: How many copies --

19 MR. DAVIS: I made like four copies.
20 I only have two blue copies. You've got both of
21 them.

22 THE COURT: I've got two blues, and
23 how many photocopies of that?

24 MR. DAVIS: We have four -- there's
25 eight. There are four that are redacted and two

1 that are --

2 MR. DANIEL SLOTCHIVER: I will hand
3 you back and you can discard this. I understand
4 your concern. You just don't want copies floating
5 around that's different from the court's.

6 THE COURT: That's different from the
7 court's records.

8 MR. DAVIS: If I get them all back,
9 I'll destroy them.

10 THE COURT: Do you want to give them
11 to me, the clocked copies?

12 MR. DAVIS: Sure.

13 MR. DANIEL SLOTCHIVER: You'll send us
14 another one unredacted?

15 THE COURT: Unredacted and unclocked.

16 MR. STEPHEN SLOTCHIVER: That one is
17 redacted.

18 MR. DAVIS: This one is not clocked.

19 MR. STEPHEN SLOTCHIVER: But it's
20 redacted. Those were not redacted.

21 MR. DAVIS: All right. So the only
22 ones I've got are not clocked, Your Honor. These
23 have been redacted. All these are not clocked,
24 and these are the clocked ones. And I don't think
25 I have anymore copies.

1 THE COURT: Clocked copies?

2 MR. DAVIS: She brought the copies,
3 that's all we had. We had an original and a copy.
4 She brought it back, and I had it, and we made
5 some photocopies. I believe this is everything.

6 THE COURT: And those are all
7 unredacted?

8 MR. DAVIS: Those are unredacted.
9 These are redacted and unclocked.

10 THE COURT: If you want a clocked
11 copy, you need to get a copy that's been redacted.
12 I will shred these.

13 MR. DANIEL SLOCHIVER: With reference
14 to these cases now, I know you're going to serve
15 us on your case, but from this point forward,
16 we'll be on copy for everything that's filed with
17 the court?

18 MR. DAVIS: Yes. Whatever we're
19 required to do under the rules. We'll file it and
20 we'll serve it. We were going to do that with
21 this, but we knew we had a hearing. It was a
22 motion hearing. Ten days notice. Not a full
23 regular hearing. So we didn't have a chance to do
24 it, and we had a confidentiality issue.

25 MR. STEPHEN SLOCHIVER: You will send

1 us a full copy of this package you just submitted
2 yesterday?

3 MR. DAVIS: Yes.

4 MR. BOYD: Your Honor, I'll just note
5 that the redaction effort here is not entirely
6 effective, but I think we complied for the most
7 part.

8 MR. DANIEL SLOTCHIVER: You make a
9 copy of that, and --

10 MR. BOYD: The first generation
11 original it's hard to --

12 MR. DAVIS: Are we pretty much done
13 here?

14 THE COURT: I think so. As soon as I
15 get my record back that's been redacted. If
16 everybody is confident that we've redacted what we
17 need to, I will shred these other four clocked
18 copies. These were the only clocked copies,
19 Mr. Davis, that you made?

20 MR. DAVIS: Yes. If I find another
21 one, I'll do whatever you want to with it. I'll
22 shred it.

23 THE COURT: I just want to make sure
24 we don't have a clocked copy that looks different
25 from the court records.

1 MR. DAVIS: I don't think I do.

2 THE COURT: If you could prepare an
3 order, Mr. Davis, for the Court on the motion for
4 the temporary restraining order. As soon as I
5 hear from counsel, if there is an agreement on who
6 to appoint to represent the minor children. Once
7 I get your amended pleadings, that's when I'll
8 then make the appointment of the attorney/guardian
9 ad litem once the pleadings are filed and the
10 minors are named as parties.

11 MR. DANIEL SLOCHIVER: If we could
12 have a copy of the order in case we have any
13 issues we would like to address on the proposed
14 order.

15 MR. DAVIS: I'm going to email it to
16 you and her at the same time.

17 MR. DANIEL SLOCHIVER: Okay.

18 THE COURT: Certainly. He'll email it
19 to you when he sends it to me by email.

20 MR. DANIEL SLOCHIVER: And what time
21 table are we looking at? I'm actually going on
22 vacation on Friday for a week. And I just wanted
23 to get -- I don't think we're in a rush because if
24 it's not going to issue then it's not a rush.

25 THE COURT: I think it's unlikely.

1 I've got about seven orders I need to do no later
2 than Friday. This is not on my list.

3 MR. DAVIS: You've got a huge case on
4 Friday.

5 THE COURT: Two. I have to hear that
6 case and --

7 MR. DAVIS: The reason I say that I
8 saw it in the newspaper.

9 THE COURT: I saw it in the paper
10 today. But I probably will not have any time to
11 look at his order until the first of January.
12 It's pretty unlikely.

13 MR. DANIEL SLOCHIVER: Okay. That
14 will give me plenty of time to respond. Thank
15 you, Your Honor.

16 (The hearing was concluded at 2:05
17 p.m.)
18
19
20
21
22
23
24
25

1
2 CERTIFICATE OF REPORTER
3

4 I, Bonnie L. Sabados, Registered
5 Professional Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the foregoing transcript is a true,
8 accurate, and complete record.

9 I further certify that I am neither related
10 to nor counsel for any party to the cause pending
11 or interested in the events thereof.

12 Witness my hand, I have hereunto affixed my
13 official seal this 22nd day of December, 2010, at
14 Conway, Horry County, South Carolina.
15
16
17
18
19
20
21
22

23 _____
Bonnie L. Sabados
24 Registered Professional
Reporter
25 My Commission expires
July 8, 2015

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

I N D E X

CERTIFICATE OF REPORTER..... 85

E X H I B I T S

Page/Line

PLF. EXH. 1, Income and Expenses

Declaration.....11 13

DFT. EXH. 1, California documents.....26 20

DFT. EXH. 2, Order.....46 18

(Exhibits retained by the Court.)